

Authorised Version No. 024
National Electricity (Victoria) Act 2005

No. 8 of 2005

Authorised Version incorporating amendments as at
1 January 2018

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purpose	1
2 Commencement	1
3 Definitions	1
4 Crown to be bound	3
5 Extra-territorial operation	3
Part 2—National Electricity (Victoria) Law and National Electricity (Victoria) Regulations	5
6 Application in Victoria of the National Electricity Law	5
7 Application of Regulations under National Electricity Law	5
8 Interpretation of some expressions in the National Electricity (Victoria) Law and the National Electricity (Victoria) Regulations	5
9 Proceedings in respect of breaches of the National Electricity (Victoria) Law, the National Electricity (Victoria) Regulations and National Electricity Rules	6
10 National Electricity (Victoria) Law and National Electricity Rules may be relevant legislation	6
11 Personal Property Securities	7
11A Extension of AER functions and powers	7
11B Prescription of provisions of the regulations as civil penalty provisions	7
12 Supreme Court—limitation of jurisdiction	8
12A Regulations	8
Part 3—Modification of application of the National Electricity Law	12
Division 1—Interpretation	12
13 Definitions	12

<i>Section</i>	<i>Page</i>
Division 2—General modifications	14
14 NEL provisions providing for access to distribution services do not apply during specified period	14
15 Modification of application of National Electricity Law and National Electricity Rules by Order	15
16 Role of National Electricity Law and Rules in relation to distribution determinations and Victorian distribution pricing determinations	16
Division 2A—Feed-in tariff modifications	18
16A Solar feed-in credit obligation is a regulatory obligation or requirement	18
16AB Modification of National Electricity Rules for the purpose of transitional feed-in tariff scheme	20
Division 2B—Metering	20
16B Disapplication of national smart meter rollout provisions	20
16BA Modification of National Electricity Rules to be consistent with advanced metering infrastructure Orders	20
Division 3—The f-factor scheme	21
16C Order in Council for establishment of f-factor scheme	21
16D Functions and powers conferred and duties imposed on AER	25
16E Application of NEL provisions after the Victorian distribution pricing determination end date	25
16F Interrelationship between f-factor determinations and distribution determinations	28
16G Power of AER to request information relating to f-factor determinations	29
Division 4—Application of pre-2011 service adjustment scheme and efficiency carryover mechanism	30
16H Definitions	30
16I Application	33
16J Efficiency carryover mechanism is an efficiency benefit sharing scheme	33
16K Modification of definition of regulatory control period for purposes of this Division	34
16L Service adjustment is a service target performance incentive scheme	34
16M Distribution pricing proposals	34
16N Approval of distribution pricing proposals	36
16O AER compliance with Tribunal decisions inconsistent with this Division	37

<i>Section</i>	<i>Page</i>
16P Victorian DNSPs are not required to comply with AER decisions or determinations that are inconsistent with this Division	38
Division 5—Distribution network connections and retail customer connection arrangements	39
16Q Application of certain provisions of the National Electricity (South Australia) Act 1996—distribution network connections etc.	39
16R Amendment of the National Electricity Rules	39
16S Further modification of the amended National Electricity Rules	40
16T Transitional provisions for retail customer connection arrangements	41
Division 6—Wholesale electricity markets and network service providers	41
16U Application of certain provisions of the National Electricity (South Australia) Act 1996—wholesale electricity markets and network service providers	41
16V Regulations	42
Part 4—Economic regulatory distribution functions transitional arrangements	43
17 Definitions	43
18 Meaning of distribution services	45
19 Meaning of relevant regulatory duty	46
20 Meaning of relevant regulatory function or power	46
21 Specified distribution licence conditions	47
22 Specified ESC code or guideline provisions	47
22A Specified regulatory law or instrument provisions are ESC enforceable regulatory requirements	48
23 Certain ESC regulatory functions, powers and duties conferred and imposed on the AER	48
24 ESC ceases to have certain distribution system related regulatory functions, powers and duties	49
25 Enforcement of Victorian distribution pricing determination and distribution licences by AER	50
26 ESC cannot enforce Victorian pricing determination or certain distribution licence conditions	51
27 AER may request amendment of distribution licences and distribution service related code or guideline	52
27A AER determinations under the AMI Order	52
28 Provision of information and assistance by ESC to the AER	54
28A Provision of information and assistance by AER to the ESC	55
29 Appeals against certain decisions or actions of the AER	56

<i>Section</i>	<i>Page</i>
29A Interveners in appeals against decisions or determinations under the AMI Order	59
Part 5—Victorian declared networks	61
Division 1—Ministerial declarations	61
30 Declaration of declared transmission system	61
31 Declaration of declared transmission system operator	61
Division 2—AEMO's declared network functions	61
32 Application of AEMO's declared network functions	61
33 Certain defined terms for the purposes of the National Electricity (Victoria) Law	61
Division 3—Regulatory arrangements	62
34 Definitions	62
35 Declaration of current connection agreements and current network agreements	63
36 Ministerial specification of ESC code or guideline or provision under ESC code or guideline	64
37 Current network agreements	64
38 Current connection agreements	65
39 Specified code or guidelines and specified VENCORP provisions	65
40 Current VENCORP transmission determination	65
41 VENCORP's negotiating framework and negotiated transmission service criteria	66
Division 4—Land access for augmentations	67
42 Definition	67
43 Model lease and licence	67
44 Declared transmission system operator must provide access to land and premises	67
45 Resolution of dispute arising from attempt to negotiate a lease or licence	68
46 Termination of lease or licence	69
47 General principles governing AER determinations	69
Division 5—Other matters	70
48 Notice of change to declared transmission system operator	70
49 Appointment of Responsible Officer	71
50 Customer load shedding arrangements	71

<i>Section</i>	<i>Page</i>
Schedule 1—Specified building block amounts applying to applicable Victorian distribution determinations	72
Schedule 2—Amendment of National Electricity Rules	75
Schedule 3—Transitional provisions for retail customer connection arrangements	142
Schedule 4—Modifications for wholesale electricity markets and network service providers	149
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Endnotes	168
1 General information	168
2 Table of Amendments	170
3 Amendments Not in Operation	173
4 Explanatory details	174

Authorised Version No. 024
National Electricity (Victoria) Act 2005
No. 8 of 2005

Authorised Version incorporating amendments as at
1 January 2018

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to make provision in relation to the national electricity market.

2 Commencement

This Act comes into operation on a day to be proclaimed.

3 Definitions

(1) In this Act—

2006–2010 distribution pricing determination—

- (a) means the determination of the ESC under Part 3 of the **Essential Services Commission Act 2001** made on 18 October 2005 applying to charges for connection to, and the use of, distribution systems in Victoria (as amended in accordance with the decision of the appeal panel (within the meaning of the **Essential Services Commission Act 2001**) on 17 February 2006); and
- (b) includes amendments made to that determination before the commencement of section 5 of the **National Electricity (Victoria) Amendment Act 2007**;

S. 3(1) def. of
2006–2010
distribution
pricing
determination
inserted by
No. 66/2007
s. 3(a).

S. 3(1) def. of
*Essential
Services
Commission*
or *ESC*
inserted by
No. 66/2007
s. 3(a).

Essential Services Commission or *ESC* means the
Essential Services Commission established
under section 7 of the **Essential Services
Commission Act 2001**;

S. 3(1) def. of
*National
Electricity
(Victoria)
Regulations*
amended by
No. 66/2007
s. 3(b).

National Electricity (Victoria) Law means the
provisions applying because of section 6 of
this Act;

National Electricity (Victoria) Regulations
means the provisions applying because of
section 7 of this Act;

S. 3(1) def. of
Tariff Order
inserted by
No. 66/2007
s. 3(c).

Tariff Order has the same meaning as in the
Electricity Industry Act 2000;

S. 3(1) def. of
*Victorian
distribution
pricing
determination*
inserted by
No. 66/2007
s. 3(c).

Victorian distribution pricing determination
means—

- (a) the 2006–2010 distribution pricing
determination as amended from time to
time; or
- (b) a determination under Part 3 of the
**Essential Services Commission Act
2001** or the *Tariff Order* applying to
charges for connection to, and the use
of, distribution systems in Victoria that
revokes and substitutes—
 - (i) the 2006–2010 distribution pricing
determination; or

- (ii) a determination applying to charges for connection to, and the use of, distribution systems in Victoria—

as amended from time to time.

- (2) Words and expressions used in the National Electricity (Victoria) Law and in this Act have the same respective 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 (Victoria) Law and the National Electricity (Victoria) Regulations bind the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5 Extra-territorial operation

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

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;

National Electricity (Victoria) Act 2005
No. 8 of 2005
Part 1—Preliminary

- (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 (Victoria) Law and National Electricity (Victoria) Regulations

6 Application in Victoria of the 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 Victoria; and
- (b) as so applying may be referred to as the National Electricity (Victoria) Law.

7 Application 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 (Victoria) Law; and
- (b) as so applying may be referred to as the National Electricity (Victoria) Regulations.

8 Interpretation of some expressions in the National Electricity (Victoria) Law and the National Electricity (Victoria) Regulations

- (1) In the National Electricity (Victoria) Law and the National Electricity (Victoria) Regulations—

Legislature of this jurisdiction means the Parliament of Victoria;

the jurisdiction or *this jurisdiction* means the State of Victoria;

the National Electricity Law or *this Law* means the National Electricity (Victoria) 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 Victoria; 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 (Victoria) Law.

9 Proceedings in respect of breaches of the National Electricity (Victoria) Law, the National Electricity (Victoria) Regulations and National Electricity Rules

Except as otherwise provided in section 59(1) of the National Electricity (Victoria) Law, proceedings may not be instituted in a relevant court in respect of a breach of a provision of the National Electricity (Victoria) Law, the National Electricity (Victoria) Regulations or the National Electricity Rules that is not an offence provision by any person (other than the AER).

10 National Electricity (Victoria) Law and National Electricity Rules may be relevant legislation

- (1) The Governor in Council, by Order published in the Government Gazette, may declare the provisions of the National Electricity (Victoria) Law or of the National Electricity Rules, or specified provisions of that Law or those Rules, to be relevant legislation for the purposes of section 10 of the **Essential Services Commission Act 2001**.

- (2) On the commencement of an Order under subsection (1) the provisions declared in the Order are, despite anything to the contrary in the **Essential Services Commission Act 2001**, to be taken to be relevant legislation for the purposes of section 10 of that Act.

Note

By operation of section 7A(b) of the **Electricity Industry Act 2000** the electricity industry is a regulated industry for the purposes of the **Essential Services Commission Act 2001**.

11 Personal Property Securities

For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, registration under the National Electricity (Victoria) Law is declared not to be personal property.

S. 11
amended by
No. 66/2007
s. 6,
repealed by
No. 23/2009
s. 3, new s. 11
inserted by
No. 74/2010
s. 29.

11A Extension of AER functions and powers

Without limiting section 6, the following provisions of the National Electricity (Victoria) Law apply as laws of Victoria as if a reference in any such provision to the Law included a reference to regulations made under this Act—

- (a) Parts 3 and 6 and Schedule 2;
- (b) any other provision of the National Electricity (Victoria) Law, the National Electricity (Victoria) Regulations or the National Electricity Rules prescribed by the regulations for the purposes of this section.

S. 11A
inserted by
No. 24/2016
s. 3.

11B Prescription of provisions of the regulations as civil penalty provisions

- (1) The regulations may prescribe a provision of the regulations as a civil penalty provision.

S. 11B
inserted by
No. 24/2016
s. 3.

- (2) A reference in the National Electricity (Victoria) Law or the National Electricity (Victoria) Regulations to a civil penalty provision is taken to include a reference to a provision prescribed under subsection (1).
- (3) Subsection (2) applies despite anything to the contrary in the National Electricity (Victoria) Law.

12 Supreme Court—limitation of jurisdiction

It is the intention of section 9 to alter or vary section 85 of the **Constitution Act 1975**.

S. 12A
inserted by
No. 24/2016
s. 4.

12A Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), regulations may be made under that subsection for or with respect to—
 - (a) the undergrounding, relocation, modification, replacement or removal of distribution systems, including—
 - (i) proposals for the undergrounding, relocation, modification, replacement or removal of distribution systems; and
 - (ii) requiring a distribution company which receives a proposal for the undergrounding, relocation, modification, replacement or removal of a distribution system to make an offer to underground, relocate, modify, replace or remove a distribution system;

- (b) the content of proposals referred to in paragraph (a)(i) or offers referred to in paragraph (a)(ii), including the price of, or an estimate of costs to be incurred for, the undergrounding, relocation, modification, replacement or removal of a distribution system;
- (c) the determination, calculation, allocation or breakdown of a price or costs referred to in paragraph (b) or allocation or apportionment of costs referred to in that paragraph;
- (d) requiring a distribution company to call for tenders for the performance of—
 - (i) works to augment or extend a distribution system for the purpose of connecting generating units or customer premises to the system and associated works;
 - (ii) works arising out of an offer to underground, relocate, modify, replace or remove a distribution system and associated works;
- (e) the development or adoption of tender policies, or compliance with tender policies, by a distribution company, for the performance of works referred to in paragraph (d);
- (f) the content of tender policies referred to in paragraph (e) including—
 - (i) the price, or the estimated costs, of the works; and
 - (ii) procedures for dealing with and resolving disputes that may arise in relation to the performance of the works;

(g) the public availability of tender policies referred to in paragraph (e).

(3) Regulations made under this section may—

- (a) be of general or limited application;
- (b) differ according to differences in time, place or circumstance;
- (c) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification, or method, formulated, issued, prescribed or published by any person or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published or amended from time to time;
- (d) confer a function, power or discretionary authority or impose a duty on the Minister or the AER;
- (e) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Minister or the AER;
- (f) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; or
 - (ii) either wholly or to such an extent as is specified.

(4) Regulations made for or in relation to the content of proposals for the undergrounding, relocation, modification, replacement or removal of distribution systems, or the content of tenders for the performance of works referred to in subsection (2)(d), have effect according to their tenor despite anything to the contrary in any agreement or contract.

(5) In this section—

costs includes avoided costs;

distribution company has the same meaning as in the **Electricity Industry Act 2000**.

Pt 3 (Heading and ss 13–16) repealed by No. 28/2007 s. 3(Sch. item 44), new Pt 3 (Heading and ss 13–16) inserted by No. 66/2007 s. 4.

Part 3—Modification of application of the National Electricity Law

Pt 3 Div. 1 (Heading) inserted by No. 55/2010 s. 39.

Division 1—Interpretation

New s. 13 inserted by No. 66/2007 s. 4.

13 Definitions

In this Part—

S. 13 def. of *Country Fire Authority* inserted by No. 55/2010 s. 40.

Country Fire Authority means the Country Fire Authority appointed under the **Country Fire Authority Act 1958**;

S. 13 def. of *Distribution Network Service Provider* inserted by No. 55/2010 s. 40.

Distribution Network Service Provider has the same meaning as in the National Electricity Rules;

S. 13 def. of *Energy Safe Victoria* inserted by No. 55/2010 s. 40.

Energy Safe Victoria means Energy Safe Victoria established under the **Energy Safe Victoria Act 2005**;

S. 13 def. of *f-factor amount determination* inserted by No. 55/2010 s. 40.

f-factor amount determination means a determination made by the AER in accordance with an Order under section 16C(1)(b);

f-factor scheme determination means a determination made by the AER in accordance with an Order under section 16C(1)(a);

S. 13 def. of *f-factor scheme determination* inserted by No. 55/2010 s. 40.

first distribution determination period means the period—

S. 13 def. of *first distribution determination period* inserted by No. 55/2010 s. 40.

- (a) commencing on the day after the day that is the Victorian distribution pricing determination end date; and
- (b) ending on—
 - (i) 31 December 2015; or
 - (ii) for a distribution determination that continues to be in force after that date, the date on which that distribution determination ceases to be in force;

Metropolitan Fire and Emergency Services Board means the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**;

S. 13 def. of *Metropolitan Fire and Emergency Services Board* inserted by No. 55/2010 s. 40.

NEL means 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;

relevant entity means—

- (a) the Secretary to the Department of Environment and Primary Industries; or
- (b) Energy Safe Victoria; or
- (c) the Country Fire Authority; or

S. 13 def. of *relevant entity* inserted by No. 55/2010 s. 40, amended by No. 70/2013 s. 4(Sch. 2 item 33).

(d) the Metropolitan Fire and Emergency Services Board;

S. 13 def. of *service target performance incentive scheme* inserted by No. 55/2010 s. 40.

service target performance incentive scheme has the same meaning as in the National Electricity Rules;

Victorian distribution pricing determination end date means—

- (a) 31 December 2010; or
- (b) if a Victorian distribution pricing determination provides that it will cease to have effect on a later date—that date.

Pt 3 Div. 2 (Heading) inserted by No. 55/2010 s. 41.

Division 2—General modifications

New s. 14 inserted by No. 66/2007 s. 4.

14 NEL provisions providing for access to distribution services do not apply during specified period

- (1) Despite section 6, during the specified period—
 - (a) section 2A, Division 3B of Part 6, Part 10 and section 157 of the NEL (as each of those provisions apply to access to services provided by means of a distribution system, or connection to a distribution system) do not apply as a law of Victoria; and
 - (b) a Rule made for the purposes of any provision referred to in paragraph (a) does not have the force of law in Victoria.

(2) In this section—

specified period means the period—

- (a) commencing on the day section 46 of the National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007 of South Australia commences operation; and
- (b) ending on the Victorian distribution pricing determination end date.

15 Modification of application of National Electricity Law and National Electricity Rules by Order

New s. 15
inserted by
No. 66/2007
s. 4.

- (1) The Minister, by Order published in the Government Gazette, may declare that, despite section 6—
 - (a) a provision of the NEL that relates to the economic regulation of the provision of distribution services—
 - (i) does not apply as a law of Victoria until a date specified in the Order (being a date that is not after the Victorian distribution pricing determination end date);
 - (ii) ceases to apply as a law of Victoria for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date);
 - (iii) applies as a law of Victoria with any modifications that are specified in the Order for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date);

- (b) a provision of the National Electricity Rules that relates to the economic regulation of the provision of distribution services—
 - (i) does not have the force of law in Victoria until a date specified in the Order (being a date that is not after the Victorian distribution pricing determination end date);
 - (ii) ceases to have the force of law in Victoria for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date);
 - (iii) has the force of law in Victoria with any modifications that are specified in the Order for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date).

(2) Despite section 6—

- (a) the NEL applies as a law of Victoria subject to any Order under subsection (1) that is in force;
- (b) the National Electricity Rules have the force of law in Victoria subject to any Order under subsection (1) that is in force.

New s. 16
inserted by
No. 66/2007
s. 4.

16 Role of National Electricity Law and Rules in relation to distribution determinations and Victorian distribution pricing determinations

- (1) To avoid doubt, nothing in this Part is to be taken as preventing the making of a distribution determination under—
 - (a) the NEL as it applies as a law of Victoria under this Act; and

- (b) the National Electricity Rules as they have the force of law in Victoria under this Act—
that takes effect after the Victorian distribution pricing determination end date.
- (2) To avoid doubt, nothing in this Part is to be taken as preventing the AER (before, on or after the Victorian distribution pricing determination end date) performing a function or duty, or exercising a power, for the purposes of making a distribution determination under—
- (a) the NEL as it applies as a law of Victoria under this Act; and
- (b) the National Electricity Rules as they have the force of law in Victoria under this Act—
that takes effect after the Victorian distribution pricing determination end date.
- (3) Despite anything to the contrary in the National Electricity (Victoria) Law or the National Electricity Rules, the provisions of that Law and those Rules that relate to the economic regulation of the provision of distribution services do not apply to a Victorian distribution pricing determination.
- (4) To avoid doubt—
- (a) the AER cannot perform any function or duty, or exercise any power, under a provision of the National Electricity (Victoria) Law or the National Electricity Rules that relates to the economic regulation of the provision of distribution services under a Victorian distribution pricing determination; and
- (b) a Victorian distribution pricing determination is not a distribution determination for the purposes of the

National Electricity (Victoria) Law or the
National Electricity Rules.

(5) In this section—

distribution services has the same meaning as in
Chapter 10 of the National Electricity Rules.

Pt 3 Div. 2A
(Heading)
inserted by
No. 11/2013
s. 11.

Division 2A—Feed-in tariff modifications

S. 16A
inserted by
No. 41/2009
s. 15.

16A Solar feed-in credit obligation is a regulatory obligation or requirement

(1) During the relevant solar feed-in tariff period for
a regulated distribution system operator that is a
distribution company—

(a) Division 5A of Part 2 of the **Electricity
Industry Act 2000** is deemed to be an Act of
this jurisdiction that relates to the protection
of the environment referred to in
section 2D(1)(b)(iv) of the National
Electricity (Victoria) Law; and

(b) the solar feed-in credit obligation is deemed
to be an obligation under the **Electricity
Industry Act 2000**.

(2) In this section—

distribution company has the same meaning as
the **Electricity Industry Act 2000**;

distributor obligation period has the same
meaning as in section 40F(1) of the
Electricity Industry Act 2000;

S. 16A(2)
def. of
*distribution
obligation
period*
amended as
*distributor
obligation
period* by
No. 64/2011
s. 23(a).

distributor TFiT obligation period has the same meaning as in section 40F(1) of the **Electricity Industry Act 2000**;

S. 16A(2)
def. of
distributor TFiT obligation period
inserted by
No. 64/2011
s. 23(d).

relevant solar feed-in tariff period, for a regulated distribution system operator that is a distribution company, means the period—

S. 16A(2)
def. of
relevant solar feed-in tariff period
amended by
No. 64/2011
s. 23(b).

- (a) commencing on the day after the Victorian distribution pricing determination end date; and
- (b) ending on—
 - (i) in the case of the solar feed-in credit obligation, the day the distributor obligation period that applies to that operator ends;
 - (ii) in the case of the TFiT feed-in credit obligation, the day the TFiT distributor obligation period that applies to that operator ends;

solar feed-in credit obligation means an obligation on a regulated distribution system operator that is a distribution company arising because of section 40FH(2) of the **Electricity Industry Act 2000**;

S. 16A(2)
def. of
solar feed-in credit obligation
amended by
No. 64/2011
s. 23(c).

TFiT feed-in credit obligation means an obligation on a regulated distribution system operator that is a distribution company arising because of section 40FH(2A) of the **Electricity Industry Act 2000**.

S. 16A(2)
def. of
TFiT feed-in credit obligation
inserted by
No. 64/2011
s. 23(d).

S. 16AB
inserted by
No. 64/2011
s. 24.

16AB Modification of National Electricity Rules for the purpose of transitional feed-in tariff scheme

Despite section 6, the National Electricity Rules have the force of law in Victoria as if after rule 6.18.7A(e)(1)(iv) of the Rules there were inserted—

"(v) Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Act 2011 (Vic);".

Pt 3 Div. 2B
(Heading)
inserted by
No. 11/2013
s. 12.

Division 2B—Metering

S. 16B
inserted by
No. 55/2010
s. 38.

16B Disapplication of national smart meter rollout provisions

Despite section 6—

- (a) Part 8A of the NEL does not apply as a law of Victoria; and
- (b) any Rule made for the purposes of that Part does not have the force of law in Victoria.

S. 16BA
inserted by
No. 11/2013
s. 13.

16BA Modification of National Electricity Rules to be consistent with advanced metering infrastructure Orders

- (1) The Minister, by Order published in the Government Gazette, may declare that—
 - (a) a provision of Chapter 7 of the National Electricity Rules—
 - (i) does not have the force of law in Victoria;
 - (ii) has the force of law in Victoria subject to modifications, if any, specified in the Order;

- (b) Rule 6.18 of the National Electricity Rules has the force of law in Victoria subject to the modifications specified in the Order.
- (2) The Minister may make an Order under subsection (1)(a) or (b) for the purpose of any matter necessary or consequential on the making of an Order under Division 6A of Part 2 of the **Electricity Industry Act 2000**.
- (3) Despite section 6, the National Electricity Rules have the force of law in Victoria subject to any Order under subsection (1) that is in force.

Division 3—The f-factor scheme

16C Order in Council for establishment of f-factor scheme

- (1) The Governor in Council, by Order published in the Government Gazette, for the purpose of reducing the risk of fire starts and reducing the risk of loss or damage caused by fire starts, may confer functions and powers, or impose duties, on the AER to make—
 - (a) a determination for the purpose of providing incentives for Distribution Network Service Providers to reduce the risk of fire starts and reduce the risk of loss or damage caused by fire starts;
 - (b) a determination for each year of the first distribution determination period specifying an amount that is to be treated as a positive pass through amount or a negative pass through amount for the purposes of Chapter 6 of the National Electricity Rules.

Pt 3 Div. 3
(Heading and
ss 16C–16G)
inserted by
No. 55/2010
s. 42.

S. 16C
inserted by
No. 55/2010
s. 42.

- (2) Without limiting subsection (1), an Order under that subsection may—
- (a) specify how the AER is to make, publish, implement and administer an f-factor scheme determination and an f-factor amount determination;
 - (b) specify the kinds of fire starts to be covered by an f-factor scheme determination or require the AER to determine the kinds of fire starts to be covered by an f-factor scheme determination;
 - (c) require the AER, before making an f-factor scheme determination, to consult with one or more of the following—
 - (i) the Minister;
 - (ii) a Distribution Network Service Provider;
 - (iii) a relevant entity;
 - (iv) any other person whose interests are affected and who is specified as a person with whom the AER must consult;
 - (d) require the AER, when consulting with persons referred to in paragraph (c), to comply with specified consultation procedures;
 - (e) require the AER to include benchmarks or targets for Distribution Network Service Providers as part of an f-factor scheme determination;
 - (f) require the AER to assess the performance of Distribution Network Service Providers in relation to any benchmarks or targets included as part of an f-factor scheme

- determination and for the purpose of making an f-factor amount determination;
- (g) specify any benchmarks, targets, incentives, rewards or penalties for inclusion in an f-factor scheme determination that will apply to Distribution Network Service Providers and for the purpose of making f-factor amount determinations;
- (h) require the AER, in making an f-factor scheme determination, to have regard to specified criteria, including—
- (i) the need to ensure that the benefits to consumers likely to result from the making of an f-factor scheme determination are sufficient to warrant the determination's benchmarks, targets, incentives, rewards or penalties for Distribution Network Service Providers;
 - (ii) any regulatory obligation or requirement to which Distribution Network Service Providers are subject;
 - (iii) a distribution system's history of fire starts;
 - (iv) the willingness of end users to pay for enhanced fire safety;
 - (v) criteria for determining benchmarks, targets, incentives, rewards or penalties that will apply to Distribution Network Service Providers and for the purpose of making an f-factor amount determination;
 - (vi) any interaction between the Order and a service target performance incentive scheme;

- (vii) any interaction between the Order and any other incentive scheme, including an incentive scheme in relation to services provided by means of a distribution system (other than a service target performance incentive scheme that applies to a Distribution Network Service Provider);
 - (i) specify, for a Distribution Network Service Provider, the interaction between an f-factor scheme determination and a service target performance incentive scheme that apply to that Distribution Network Service Provider.
- (3) An Order under subsection (1) may be made so as to apply, adopt or incorporate wholly or partially or as amended by the Order, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (a) as formulated, issued, prescribed or published at the time the Order is made or at any time before the Order is made; or
 - (b) as amended from time to time.
- (4) An Order under subsection (1) may—
 - (a) leave any matter to be decided by the AER; and
 - (b) without limiting paragraph (a), direct the AER to make amendments to any instrument made by the AER to give effect to any matter specified in an Order made under this section.
- (5) The provisions of an Order under subsection (1) may—
 - (a) be of general or limited application;

- (b) differ according to differences in time, place and circumstances.
- (6) An Order under subsection (1) has effect as from the day specified in the Order and until the day specified in the Order.
- (7) An f-factor scheme determination or f-factor amount determination made under an Order under subsection (1) cannot come into effect before the Victorian distribution pricing determination end date.

16D Functions and powers conferred and duties imposed on AER

S. 16D
inserted by
No. 55/2010
s. 42.

A function or power conferred or a duty imposed on the AER by an Order under section 16C is taken to be conferred or imposed by this Act.

Note

See sections 44AH and 44AI of the Competition and Consumer Act 2010 of the Commonwealth.

Note to s. 16D
amended by
No. 21/2012
s. 239(Sch. 6
item 29.1).

16E Application of NEL provisions after the Victorian distribution pricing determination end date

S. 16E
inserted by
No. 55/2010
s. 42.

- (1) Despite section 6, after the Victorian distribution pricing determination end date—
 - (a) unless the context otherwise requires, a reference in the NEL to "the Law" or "this Law" is to be read as including a reference to an Order under section 16C;
 - (b) a reference in the NEL to a function or power of the AER (including, but not limited to, an AER economic regulatory function or power) is to be read as including a reference to a function or power conferred or a duty imposed on the AER under section 16D;

- (c) section 14B of the NEL is to be read as if after "that operator" there were inserted "and an f-factor scheme determination and an f-factor amount determination that applies to that operator";
 - (d) sections 28F(1), 28ZC and 28ZD of the NEL are to be read as if after every reference in those sections to "or the Rules" there were inserted "or an Order under section 16C under the **National Electricity (Victoria) Act 2005**";
 - (e) Division 6 of Part 3 of the NEL is to be read as if after every reference in that Division to "or the Rules" there were inserted "or an Order under section 16C under the **National Electricity (Victoria) Act 2005**";
 - (f) section 28F(3)(d) of the NEL is to be read as if after "performance report" there were inserted ", other than a service provider performance report relating to a Distribution Network Service Provider's compliance with an f-factor scheme determination or f-factor amount determination";
 - (g) section 28V(2)(a) of the NEL is to be read as if after subparagraph (iii) there were inserted—
 - "(iv) complying with an f-factor scheme determination and an f-factor amount determination; and".
- (2) Despite section 6, on and after the date the first Order made under section 16C comes into effect, the National Electricity Rules have the force of law in Victoria as if—

- (a) after rule 6.13 of the Rules there were inserted—

"6.13A Variations to distribution determinations for purpose of f-factor scheme determinations

- (a) Despite anything to the contrary in these *Rules* and subject to this rule, the *AER* may, as a consequence of the making of an f-factor scheme determination (within the meaning of section 13 of the **National Electricity (Victoria) Act 2005**), vary a distribution determination during the course of the *regulatory control period*.
- (b) The *AER* must not vary a distribution determination under this rule unless the *AER* has complied with any consultation procedures specified in an Order under section 16C of the **National Electricity (Victoria) Act 2005**.
- (c) Once the *AER* has made a decision under this rule varying a distribution determination, the *AER* cannot make another decision under this rule to vary that distribution determination.
- (d) Despite anything to the contrary in these *Rules*, the *AER*, in varying a distribution determination under this rule, is not required to follow any process specified in the *Rules* in relation to the making of a distribution determination.

(e) To avoid doubt—

- (1) a decision of the *AER* to vary a distribution determination under this rule is taken not to be a reviewable regulatory decision (within the meaning of section 71A of the *National Electricity Law*); and
- (2) a distribution determination (as varied by the *AER* under this rule) is not by reason only of that variation taken to be a reviewable regulatory decision (within the meaning of section 71A of the *National Electricity Law*)."; and

(b) after paragraph (d) of the definition of **pass through event** in Chapter 10 of the Rules there were inserted—

"(e) an f-factor amount determination (within the meaning of section 13 of the **National Electricity (Victoria) Act 2005**).".

S. 16F
inserted by
No. 55/2010
s. 42.

16F Interrelationship between f-factor determinations and distribution determinations

The making of an f-factor scheme determination or an f-factor amount determination is not to be taken as affecting the process already commenced by the *AER* for the making of a distribution determination that is to apply during the first distribution determination period.

16G Power of AER to request information relating to f-factor determinations

S. 16G
inserted by
No. 55/2010
s. 42.

- (1) If the AER considers it necessary for the purposes of making an f-factor scheme determination or an f-factor amount determination, the AER may request a relevant entity to provide information relating to fire starts to the AER.
- (2) Before making a request under subsection (1), the AER must consult with the relevant entity about its intention to make that request.
- (3) A request under subsection (1) must—
 - (a) be in writing; and
 - (b) specify the period of time within which the information requested is to be provided.
- (4) The period of time referred to in subsection (3)(b) must be reasonable.
- (5) A request under subsection (1) may request information in relation to one or more of the following—
 - (a) the number of fire starts caused by, or believed to be caused by, electric lines or electrical installations during a specified period;
 - (b) the date, time and location of each of those fire starts;
 - (c) if known and determinable, the cause of each of those fire starts;
 - (d) the nature and extent of any loss or damage caused by each of those fire starts.
- (6) A relevant entity must comply with a request under subsection (1) to the extent that it is reasonably practicable for the entity to do so.

- (7) For the purposes of subsection (6), it is reasonably practicable for a relevant entity not to comply with a request under subsection (1) if the entity is of the view that compliance with the request would impose an unreasonable administrative or financial burden on the entity.

Pt 3 Div. 4
(Heading and
ss 16H–16P)
inserted by
No. 51/2012
s. 10.

Division 4—Application of pre-2011 service adjustment scheme and efficiency carryover mechanism

S. 16H
inserted by
No. 51/2012
s. 10.

16H Definitions

- (1) In this Division—

applicable regulatory control period means the period commencing 1 January 2011 and ending on 31 December 2015;

applicable Victorian distribution determination means—

- (a) in the case of the Victorian DNSP that is Citipower Pty Ltd (ABN 76 064 651 056)—Citipower distribution determination 2011-15;
- (b) in the case of the Victorian DNSP that is Jemena Electricity Networks (Vic) Ltd (ABN 82 064 651 083)—Jemena distribution determination 2011-15;
- (c) in the case of the Victorian DNSP that is Powercor Australia Limited (ABN 89 064 651 109)—Powercor distribution determination 2011-15;

- (d) in the case of the Victorian DNSP that is SPI Electricity Pty Limited (ABN 91 164 651 118)—SPI Electricity distribution determination 2011-15;
- (e) in the case of the Victorian DNSP that is United Energy Distribution Pty Ltd (ABN 70 064 651 029)—United Energy distribution determination 2011-15;

Citipower distribution determination 2011-15 means the distribution determination made by the AER in October 2010 under Rule 6.11.1 of the National Electricity Rules that applies to electricity network services provided by Citipower Pty Ltd (ABN 76 064 651 056), as varied or remade from time to time;

efficiency carryover mechanism, in relation to a Victorian DNSP, means the scheme of that name given effect under the Victorian distribution pricing determination that is applicable to the Victorian DNSP;

Jemena distribution determination 2011-15 means the distribution determination made by the AER in October 2010 under Rule 6.11.1 of the National Electricity Rules that applies to electricity network services provided by Jemena Electricity Networks (Vic) Ltd (ABN 82 064 651 083), as varied or remade from time to time;

modified Rules means the National Electricity Rules as they have the force of law in this jurisdiction subject to this Division;

Powercor distribution determination 2011-15
means the distribution determination made by the AER in October 2010 under Rule 6.11.1 of the National Electricity Rules that applies to electricity network services provided by Powercor Australia Limited (ABN 89 064 651 109), as varied or remade from time to time;

service adjustment, in relation to a Victorian DNSP, means the adjustment to the distribution price control applicable to that Victorian DNSP determined in accordance with section 2.3.9 of Volume II of the Victorian distribution pricing determination;

SPI Electricity distribution determination 2011-15 means the distribution determination made by the AER in October 2010 under Rule 6.11.1 of the National Electricity Rules that applies to electricity network services provided by SPI Electricity Pty Limited (ABN 91 164 651 118), as varied or remade from time to time;

United Energy distribution determination 2011-15 means the distribution determination made by the AER in October 2010 under Rule 6.11.1 of the National Electricity Rules that applies to electricity network services provided by United Energy Distribution Pty Ltd (ABN 70 064 651 029), as varied or remade from time to time;

Victorian DNSP means—

- (a) Citipower Pty Ltd
(ABN 76 064 651 056);
- (b) Jemena Electricity Networks (Vic) Ltd
(ABN 82 064 651 083);

- (c) Powercor Australia Limited
(ABN 89 064 651 109);
 - (d) SPI Electricity Pty Limited
(ABN 91 164 651 118);
 - (e) United Energy Distribution Pty Ltd
(ABN 70 064 651 029).
- (2) Words and expressions used in this Division that are defined in Chapter 10 of the National Electricity Rules—
- (a) have, subject to paragraph (b), the same meaning in this Division as they have under the Rules; and
 - (b) are to be read subject to any modifications made to those words or expressions by this Division.
- (3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

16I Application

- (1) The National Electricity (Victoria) Law applies as a law of this jurisdiction subject to this Division.
- (2) The National Electricity Rules have the force of law in this jurisdiction subject to this Division.

S. 16I
inserted by
No. 51/2012
s. 10.

16J Efficiency carryover mechanism is an efficiency benefit sharing scheme

Despite anything to the contrary in the National Electricity (Victoria) Law or the National Electricity Rules, the definition of *efficiency benefit sharing scheme* in Chapter 10 of the Rules is to be read as if after "clause 6.5.8" there were inserted ", and in the case of a *Distribution Network Service Provider* that is a Victorian DNSP, the efficiency carryover mechanism that applied to that Victorian DNSP".

S. 16J
inserted by
No. 51/2012
s. 10.

S. 16K
inserted by
No. 51/2012
s. 10.

16K Modification of definition of regulatory control period for purposes of this Division

Despite anything to the contrary in the National Electricity (Victoria) Law or the National Electricity Rules—

- (a) the reference to a control mechanism in paragraph (b) of the definition of *regulatory control period* in Chapter 10 of the Rules, as it applies to a Victorian DNSP, is taken to include the efficiency carryover mechanism and service adjustment applicable to that Victorian DNSP;
- (b) paragraph (b) of the definition of *regulatory control period* in Chapter 10 of the Rules is to be read as if after "determination" there were inserted ", and in the case of a *Distribution Network Service Provider* that is a Victorian DNSP, the Victorian distribution pricing determination".

S. 16L
inserted by
No. 51/2012
s. 10.

16L Service adjustment is a service target performance incentive scheme

Despite anything to the contrary in the National Electricity (Victoria) Law or the National Electricity Rules, the definition of *service target performance incentive scheme* in Chapter 10 of the Rules is to be read as if after "clause 6.6.2" there were inserted ", and in the case of a *Distribution Network Service Provider* that is a Victorian DNSP, the service adjustment that applied to that Victorian DNSP".

S. 16M
inserted by
No. 51/2012
s. 10.

16M Distribution pricing proposals

- (1) This section applies to a Victorian DNSP that submits a pricing proposal under rule 6.18.2(a)(2) of the National Electricity Rules for the third and each subsequent regulatory year of the applicable regulatory control period.

- (2) Despite anything to the contrary in the National Electricity Rules, rule 6.18.2 of the Rules applies to the Victorian DNSP as if a reference to any applicable distribution determination in that rule were a reference to the applicable Victorian distribution determination as modified by operation of subsection (3).
- (3) For the purposes of subsection (2), an applicable Victorian distribution determination is taken to include—
- (a) in the case of the applicable Victorian distribution determination that is the Citipower distribution determination 2011-15—Tables 19 and 20 set out in Part A of Schedule 1 instead of Tables 19 and 20 of that determination;
 - (b) in the case of the applicable Victorian distribution determination that is the Jemena distribution determination 2011-15—Tables 19 and 20 set out in Part B of Schedule 1 instead of Tables 19 and 20 of that determination;
 - (c) in the case of the applicable Victorian distribution determination that is the Powercor distribution determination 2011-15—Tables 19 and 20 set out in Part C of Schedule 1 instead of Tables 19 and 20 of that determination;
 - (d) in the case of the applicable Victorian distribution determination that is the SPI Electricity distribution determination 2011-15—Tables 19 and 20 set out in Part D of Schedule 1 instead of Tables 19 and 20 of that determination;

- (e) in the case of the applicable Victorian distribution determination that is the United Energy distribution determination 2011-15—Tables 18 and 19 set out in Part E of Schedule 1 instead of Tables 18 and 19 of that determination.
- (4) To avoid doubt—
 - (a) the reference to the applicable Victorian distribution determination in subsections (2) and (3) is not to be read as—
 - (i) including any variations made to that determination that are inconsistent with the modified Rules or this Division; or
 - (ii) if that determination is remade, including any part of that remade determination that is inconsistent with the modified Rules or this Division; and
 - (b) the matters that the Victorian DNSP must set out in the pricing proposal in accordance with rule 6.18.2(b)(1) to (6) and rule 6.18.2(b)(6A) and (6B) must be consistent with subsections (2) and (3).

S. 16N
inserted by
No. 51/2012
s. 10.

16N Approval of distribution pricing proposals

- (1) This section applies if a Victorian DNSP submits a pricing proposal to the AER for approval under rule 6.18.8 of the National Electricity Rules that is a pricing proposal to which section 16M applies.
- (2) Despite anything to the contrary in the National Electricity Rules, rule 6.18.8 of the Rules is taken to apply to the AER as if a reference to any applicable distribution determination in that rule were a reference to the applicable Victorian distribution determination modified to include the building block amounts set out in the Tables in the Part of Schedule 1 applicable to that determination (the *modified distribution determination*).

- (3) In addition, despite anything to the contrary in the National Electricity Rules, the AER must refuse to approve the pricing proposal or a part of the pricing proposal if the proposal or part does not comply with the modified distribution determination.
- (4) To avoid doubt—
- (a) the reference to the applicable Victorian distribution determination in subsection (2), or the modified distribution determination in subsection (3), is not to be read as—
- (i) including any variations made to that determination that are inconsistent with the modified Rules or this Division; or
- (ii) if that determination is remade, including any part of that remade determination that is inconsistent with the modified Rules or this Division; and
- (b) subsection (3) is not to be read as preventing the AER from approving any other part of the pricing proposal that is consistent with the modified distribution determination.

160 AER compliance with Tribunal decisions inconsistent with this Division

S. 160
inserted by
No. 51/2012
s. 10.

- (1) The AER is not required to comply with those parts of—
- (a) the decision of the Australian Competition Tribunal in the proceedings known as *Application by United Energy Distribution Pty Limited* [2012] ACompT 1 (file numbers ACT 6 of 2010, ACT 7 of 2010, ACT 8 of 2010, ACT 9 of 2010, ACT 10 of 2010); or

(b) any other decision of the Australian Competition Tribunal that relates to an applicable Victorian distribution determination—

that are inconsistent with the modified Rules or this Division.

(2) Subsection (1) applies despite anything to the contrary in the National Electricity (Victoria) Law or the National Electricity Rules.

S. 16P
inserted by
No. 51/2012
s. 10.

16P Victorian DNSPs are not required to comply with AER decisions or determinations that are inconsistent with this Division

(1) A Victorian DNSP is not required to comply with a decision or determination, or any part of a decision or determination, of the AER that is inconsistent with the modified Rules or this Division.

(2) Subsection (1) applies despite anything to the contrary in—

- (a) the National Electricity (Victoria) Law; or
- (b) the National Electricity Rules; or
- (c) the **Electricity Industry Act 2000**; or
- (d) a licence under the **Electricity Industry Act 2000** held by a Victorian DNSP.

Division 5—Distribution network connections and retail customer connection arrangements

Pt 3 Div. 5
(Heading and
ss 16Q–16T)
inserted by
No. 24/2016
s. 5.

16Q Application of certain provisions of the National Electricity (South Australia) Act 1996—distribution network connections etc.

S. 16Q
(Heading)
amended by
No. 1/2017
s. 16.

Despite section 6—

- (a) section 34(1)(a)(iv) and (aa) and (3)(fa) of the NEL applies as a law of Victoria as if it were included in the National Electricity (Victoria) Law; and
- (b) section 34(3)(h)(i) of the National Electricity (Victoria) Law applies as if for "or (f)" there were substituted ", (f) or (fa)"; and
- (c) Schedule 1 to the National Electricity (Victoria) Law applies as if after item 26K there were inserted—

S. 16Q
inserted by
No. 24/2016
s. 5.

"Sale and supply of electricity to retail customers

26M Charges for the provision of connection services."

Note

Until the commencement of this section, amendments made to the NEL by the Statutes Amendment (National Energy Retail Law) Act 2011 of South Australia did not apply as laws of Victoria: see clause 24 of Schedule 3 to the NEL. The effect of this section is to apply some of those amendments as laws of Victoria.

16R Amendment of the National Electricity Rules

- (1) The National Electricity Rules as in force as a law of Victoria are amended as set out in Schedule 2.
- (2) To avoid doubt, the amendments made by Schedule 2 (other than punctuation included in those amendments) form part of the National

S. 16R
inserted by
No. 24/2016
s. 5.

Electricity Rules and may be amended in accordance with the National Electricity (Victoria) Law.

Note

The National Electricity Rules have the force of law in this jurisdiction: see section 9 of the National Electricity (Victoria) Law. Until the commencement of this section, amendments made to the National Electricity Rules by the National Electricity (National Energy Retail Law) Amendment Rule 2012 did not apply as laws of Victoria: see clause 24 of Schedule 3 to the NEL. The effect of this section and Schedule 2 is that some of those amendments have the force of law in Victoria.

S. 16S
inserted by
No. 24/2016
s. 5.

16S Further modification of the amended National Electricity Rules

Despite section 6, the National Electricity Rules have the force of law in Victoria as if—

- (a) in clause 5A.A.1 the definition of *customer connection contract* were revoked; and
- (b) clause 5A.C.1(c) and (d) were revoked; and
- (c) the note to clause 5A.E.4(c) were revoked; and
- (d) clause 5A.F.5(b)(2) were revoked; and
- (e) for the definition of *energy laws* in Chapter 10 there were substituted—

"energy laws

Includes:

- (a) legislation of Victoria that regulates electricity in Victoria, or any instrument made or issued under or for the purposes of that legislation;
- (b) national electricity legislation within the meaning of the National Electricity (Victoria) Law;

- (c) the Rules;
- (d) any instrument made or issued under or for the purposes of the Rules."; and
- (f) for the definition of *energy ombudsman* in Chapter 10 there were substituted—

"energy ombudsman

Is a person administering a customer dispute resolution scheme approved by the Essential Services Commission that is referred to in section 28 of the *Electricity Industry Act 2000* (VIC).".

16T Transitional provisions for retail customer connection arrangements

Schedule 3 has effect.

S. 16T
inserted by
No. 24/2016
s. 5.

Division 6—Wholesale electricity markets and network service providers

Pt 3 Div. 6
(Heading and
ss 16U, 16V)
inserted by
No. 1/2017
s. 17.

16U Application of certain provisions of the National Electricity (South Australia) Act 1996—wholesale electricity markets and network service providers

Despite section 6, the modifications to the NEL set out in Schedule 4 have effect.

S. 16U
inserted by
No. 1/2017
s. 17.

Note

Until the commencement of section 16Q and this section, amendments made to the NEL by the Statutes Amendment (National Energy Retail Law) Act 2011 of South Australia did not apply as laws of Victoria: see clause 24 of Schedule 3 to the NEL. The effect of section 16Q and this section is to apply some of those amendments as laws of Victoria.

S. 16V
inserted by
No. 1/2017
s. 17.

16V Regulations

- (1) The Governor in Council may make regulations prescribing the amount of electricity for the purposes of the definition of *small customer* set out in item 34.1 of Schedule 4.
- (2) Regulations made under this section may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance.

Part 4—Economic regulatory distribution functions transitional arrangements

Pt 4 (Heading and ss 17–29) inserted by No. 66/2007 s. 5 (as amended by No. 59/2008 ss 43, 44).

17 Definitions

S. 17 inserted by No. 66/2007 s. 5.

In this Part—

AMI Order means—

- (a) the initial AMI Order; or
- (b) any other Order made by the Governor in Council under section 46D of the **Electricity Industry Act 2000** that is in force immediately before the transitional period commencement date;

distribution licence has the same meaning as in the **Electricity Industry Act 2000**;

distribution services has the meaning given by section 18;

ESC enforceable regulatory requirement means a relevant regulatory law or instrument, or a provision of a relevant regulatory law or instrument, specified under an Order under section 22A;

S. 17 def. of *ESC enforceable regulatory requirement* inserted by No. 11/2013 s. 14.

initial AMI Order means the Order—

- (a) made by the Governor in Council under sections 15A and 46D of the **Electricity Industry Act 2000**; and
- (b) published in the Government Gazette on 28 August 2007;

relevant distributor means—

- (a) a distribution company within the meaning of the **Electricity Industry Act 2000**; or
- (b) a person who—
 - (i) engages in the distribution or supply of electricity; and
 - (ii) is exempted under an Order under section 17 of the **Electricity Industry Act 2000** from the requirement to obtain a licence under that Act in respect of that activity;

relevant regulatory duty has the meaning given by section 19;

relevant regulatory function or power has the meaning given by section 20;

relevant regulatory law or instrument means—

- (a) the **Essential Services Commission Act 2001**; or
- (b) the **Electricity Industry Act 2000**; or
- (c) any regulation made under the **Essential Services Commission Act 2001** or the **Electricity Industry Act 2000**; or
- (d) the Tariff Order; or
- (e) an AMI Order; or
- (f) an Order made by the Governor in Council (other than the Tariff Order or an AMI Order) under the **Electricity Industry Act 2000**; or
- (g) the 2006–2010 distribution pricing determination; or

(h) a distribution licence; or

(i) a code or guideline made by the ESC;

specified distribution licence condition means a condition of a distribution licence specified by Order under section 21;

specified ESC code or guideline provision means a provision of a code or guideline published by the ESC specified by Order under section 22;

transitional period commencement date means the date on which section 5 of the **National Electricity (Victoria) Amendment Act 2007** comes into operation.

18 Meaning of distribution services

- (1) Distribution services are services provided by means of, or in connection with, a distribution system.
- (2) Without limiting subsection (1), distribution services include—
 - (a) services provided relating to the connection to, and use of, a distribution system; and
 - (b) services provided relating to augmentations to a distribution system; and
 - (c) metering services; and
 - (d) services to facilitate access to services provided by means of, or in connection with, a distribution system; and
 - (e) the supply of electricity from a distribution system; and
 - (f) services to facilitate the distribution of electricity; and
 - (g) public lighting services.

S. 18
inserted by
No. 66/2007
s. 5.

S. 19
inserted by
No. 66/2007
s. 5.

19 Meaning of relevant regulatory duty

A relevant regulatory duty is—

- (a) a duty the ESC had, immediately before the transitional period commencement date, under a relevant regulatory law or instrument that relates to the economic regulation of the provision of distribution services by a relevant distributor other than a duty—
 - (i) to (or refuse to) grant, vary, revoke, or approve the transfer of, a distribution licence; or
 - (ii) to make or amend a code or guideline that relates to the provision of distribution services; or
- (b) a duty the ESC has under—
 - (i) a specified distribution licence condition; or
 - (ii) a specified ESC code or guideline provision.

S. 20
inserted by
No. 66/2007
s. 5.

20 Meaning of relevant regulatory function or power

A relevant regulatory function or power is—

- (a) a function or power the ESC had, immediately before the transitional period commencement date, under a relevant regulatory law or instrument that relates to the economic regulation of the provision of distribution services by a relevant distributor other than a function or power—
 - (i) to (or refuse to) grant, vary, revoke, or approve the transfer of, a distribution licence; or
 - (ii) to make or amend a code or guideline that relates to the provision of distribution services; or

- (b) a function or power the ESC has under—
 - (i) a specified distribution licence condition; or
 - (ii) a specified ESC code or guideline provision.

21 Specified distribution licence conditions

The Minister, by Order published in the Government Gazette, may specify a condition of a distribution licence that—

- (a) relates to the provision of distribution services and does not relate to the economic regulation of the provision of those services; and
- (b) confers a function or power, or imposes a duty, on the ESC—

as a specified distribution licence condition if the Minister considers that the AER must be conferred that function or power, or be subject to that duty, for the purposes of this Part.

22 Specified ESC code or guideline provisions

The Minister, by Order published in the Government Gazette, may specify a provision of a code or guideline published by the ESC that—

- (a) relates to the provision of distribution services and does not relate to the economic regulation of the provision of those services; and
- (b) confers a function or power, or imposes a duty, on the ESC—

as a specified ESC code or guideline provision if the Minister considers that the AER must be conferred that function or power, or be subject to that duty, for the purposes of this Part.

S. 21
inserted by
No. 66/2007
s. 5.

S. 22
inserted by
No. 66/2007
s. 5.

S. 22A
inserted by
No. 11/2013
s. 15.

22A Specified regulatory law or instrument provisions are ESC enforceable regulatory requirements

The Minister, by Order published in the Government Gazette, may specify a relevant regulatory law or instrument, or a provision of a relevant regulatory law or instrument, as an ESC enforceable regulatory requirement.

S. 23
inserted by
No. 66/2007
s. 5.

23 Certain ESC regulatory functions, powers and duties conferred and imposed on the AER

- (1) On and from the transitional period commencement date the AER is, by force of this subsection—
 - (a) conferred a relevant regulatory function or power; and
 - (b) subject to a relevant regulatory duty.
- (2) In addition, the AER has the functions and powers conferred, and is subject to the duties imposed, on it under this Part.
- (3) For the purposes of this Part, on and from the transitional period commencement date, every reference to the Essential Services Commission (by whatever name described) in—
 - (a) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by a relevant distributor); or
 - (b) a specified distribution licence condition; or
 - (c) a specified ESC code or guideline provision—

is to be taken to be a reference to the AER or the Essential Services Commission, as the case requires.

S. 23(3)
amended by
No. 11/2013
s. 16.

24 ESC ceases to have certain distribution system related regulatory functions, powers and duties

(1) Despite anything to the contrary in any Act or instrument, on the transitional period commencement date the ESC, by force of this section, ceases to have any function or power, or to be subject to any duty, under—

(a) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by a relevant distributor); or

(b) a specified distribution licence condition; or

(c) a specified ESC code or guideline provision.

(2) On and after the commencement of section 17 of the **Energy Legislation Amendment (Flexible Pricing and Other Matters) Act 2013**, the ESC has every function or power under a specified law, instrument or provision necessary for it to perform a function or duty or exercise a power under the **Essential Services Commission Act 2001**.

(3) Subsection (2) applies despite anything to the contrary in subsection (1).

(4) In subsection (2), *specified law, instrument or provision* means—

(a) a relevant regulatory law or instrument; or

(b) a specified distribution licence condition; or

(c) a specified ESC code or guideline provision.

S. 24
inserted by
No. 66/2007
s. 5,
amended by
No. 11/2013
s. 17 (LA
s. 39B(1)).

S. 24(2)
inserted by
No. 11/2013
s. 17.

S. 24(3)
inserted by
No. 11/2013
s. 17.

S. 24(4)
inserted by
No. 11/2013
s. 17.

S. 25
inserted by
No. 66/2007
s. 5.

25 Enforcement of Victorian distribution pricing determination and distribution licences by AER

- (1) This section applies if a relevant distributor has contravened or is contravening or, in the opinion of the AER, is likely to contravene, as the case requires—
- (a) a Victorian distribution pricing determination; or
 - (b) a condition of a distribution licence that requires compliance with—
 - (i) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by the relevant distributor); or
 - (ii) a code or a guideline published by the ESC that relates to the economic regulation of the provision of distribution services by the distributor—

and the AER considers that the contravention or likely contravention is not of a trivial nature.

- (2) The AER may serve a provisional order or a final order on the relevant distributor requiring the distributor—
- (a) to comply with—
 - (i) a Victorian distribution pricing determination; or
 - (ii) the relevant distribution licence condition; and
 - (b) if a contravention has already occurred, to take such actions as are specified in the order to rectify the contravention.

(3) Section 53(2) to (9) and section 54 of the **Essential Services Commission Act 2001** apply as if—

- (a) reference in those sections to a provisional order or a final order were a reference to a provisional order or a final order made and served under this section; and
- (b) a reference to the Commission were a reference to the AER.

26 ESC cannot enforce Victorian pricing determination or certain distribution licence conditions

(1) On and from the transitional period commencement date, the ESC cannot make or serve a provisional order or a final order under section 53 of the **Essential Services Commission Act 2001** in respect of a contravention or likely contravention by a relevant distributor of, as the case requires—

- (a) a Victorian distribution pricing determination; or
- (b) a condition of a distribution licence that requires compliance with—
 - (i) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by a relevant distributor); or
 - (ii) a code or a guideline published by the ESC that relates to the economic regulation of the provision of distribution services by a distributor.

(2) Subsection (1) does not apply to a contravention or likely contravention by a relevant distributor of a condition of the distribution licence held by that

S. 26
inserted by
No. 66/2007
s. 5,
amended by
No. 11/2013
s. 18 (LA
s. 39B(1)).

S. 26(2)
inserted by
No. 11/2013
s. 18.

distributor that requires compliance with an ESC enforceable regulatory requirement.

S. 27
inserted by
No. 66/2007
s. 5.

27 AER may request amendment of distribution licences and distribution service related code or guideline

- (1) The AER may request the ESC to amend—
 - (a) a distribution licence; or
 - (b) a code or guideline published by the ESC that relates to the provision of distribution services.
- (2) On receiving a request under subsection (1), the ESC may, after consulting with the AER, amend the distribution licence, code or guideline (as the case may be).

S. 27A
inserted by
No. 66/2007
s. 5 (as
amended by
No. 59/2008
s. 43).

27A AER determinations under the AMI Order

- (1) Without limiting this Part, on and from the transitional period commencement date, the AER must take action under the AMI Order as if it were the ESC, including the making of a determination under the AMI Order.
- (2) For the purposes of this section—
 - (a) any Pricing Proposal (as defined in the AMI Order) made before the transitional period commencement date, and any information provided to the ESC by a distributor (as defined in the AMI Order) in connection with, or for the purposes of, a Pricing Proposal must be taken to be provided to the AER; and
 - (b) any Application (as defined in the AMI Order) made before the transitional period commencement date, and any information provided to the ESC by a distributor in connection with or for the purposes of an

- Application must be taken to be made or provided to the AER; and
- (c) all actions taken, or things done, by the ESC before the transitional period commencement date in respect of a Pricing Proposal or an Application must be taken to be actions taken, or things done, by the AER; and
 - (d) information provided to the ESC by a distributor before the transitional period commencement date in connection with, or for the purposes of, a Pricing Proposal or an Application may be used and relied on by it and the AER in connection with, or for the purposes of, any determination that the AER must make under the AMI Order (whether or not the determination is a determination with respect to the Pricing Proposal or Application).
- (3) Subsection (2)(c) does not limit the actions that the AER may take or the things that the AER may do for the purpose of making a determination under the AMI Order.
- (4) Subsection (2)(d) does not limit the information that—
- (a) the AER may request from a distributor in accordance with the AMI Order for the purpose of making a determination under the AMI Order; or
 - (b) a distributor may be required to provide to the AER under the AMI Order for the purpose of enabling the AER to make a determination under the AMI Order.

S. 28
inserted by
No. 66/2007
s. 5.

28 Provision of information and assistance by ESC to the AER

- (1) Despite any other Act or law, the ESC is authorised, on its own initiative or at the request of the AER—
 - (a) to provide the AER with such information (including information given in confidence) in the possession or control of the ESC that is reasonably required by the AER for the purposes of this Part; and
 - (b) to provide the AER with such other assistance as is reasonably required by the AER to perform a function or duty, or exercise a power, conferred or imposed under this Part.
- (2) Nothing done, or authorised to be done, by the ESC in acting under subsection (1)—
 - (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or any other obligee wholly or in part from an obligation.

28A Provision of information and assistance by AER to the ESC

S. 28A
inserted by
No. 11/2013
s. 19.

- (1) Despite any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**), the AER is authorised, on its own initiative or at the request of the ESC—
- (a) to provide the ESC with relevant regulatory information that is reasonably required by the ESC for the purposes of performing a function or duty or exercising a power under the **Essential Services Commission Act 2001** in relation to a contravention or likely contravention by a relevant distributor of a condition of the distribution licence held by that distributor constituted by a contravention or likely contravention of an ESC enforceable regulatory requirement; and
 - (b) to provide the ESC with such other assistance as is reasonably required by the ESC to perform a function or duty, or exercise a power referred to in paragraph (a).
- (2) Nothing done, or authorised to be done, by the AER in acting under subsection (1)—
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
 - (d) constitutes a civil or criminal wrong; or

- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or any other obligee wholly or in part from an obligation.

(3) In this section—

relevant regulatory information means information (including information given in confidence) in the possession or control of the AER that the AER has obtained in performing a function or duty or exercising a power under this Part.

S. 29
inserted by
No. 66/2007
s. 5 (as
amended by
No. 59/2008
s. 44).

29 Appeals against certain decisions or actions of the AER

- (1) This section applies if the AER, in exercise or performance, or purported exercise or performance, of a relevant regulatory function or power conferred on it under section 23, makes—
 - (a) a requirement under section 37 of the **Essential Services Commission Act 2001**;
or
 - (b) a decision to disclose information or the contents of a document given to the AER by a person under a notice given by the AER under section 38(2)(c) or 38(2)(d) of the **Essential Services Commission Act 2001**;
or
 - (c) a determination that—
 - (i) revokes and substitutes the 2006–2010 distribution pricing determination or a subsequent determination applying to charges for connection to, and the use of, distribution systems in Victoria; or

- (ii) amends—
- (A) the 2006–2010 distribution pricing determination; or
 - (B) a subsequent determination applying to charges for connection to, and the use of, distribution systems in Victoria; or
- (d) a decision or determination under the AMI Order.
- (2) A person who is aggrieved by the requirement, decision or determination may appeal to the Tribunal against the making of the requirement, decision or determination.
- (3) Sections 55 and 56 of the **Essential Services Commission Act 2001** apply to an appeal under this section as if—
- (a) section 55(1) were omitted; and
 - (ab) in section 55(1A), the reference to subsection (1) were a reference to subsection (2) of this section; and
 - (ac) in those sections—
 - (i) a reference to section 55(1)(a) were a reference to subsection (1)(a) of this section; and
 - (ii) a reference to section 55(1)(b) were a reference to subsection (1)(b) of this section; and
 - (iii) a reference to section 55(1)(c) were a reference to subsection (1)(c) or (d) of this section; and

S. 29(3)(a)
substituted by
No. 55/2010
s. 43.

S. 29(3)(ab)
inserted by
No. 55/2010
s. 43.

S. 29(3)(ac)
inserted by
No. 55/2010
s. 43.

National Electricity (Victoria) Act 2005
No. 8 of 2005

Part 4—Economic regulatory distribution functions transitional arrangements

- (b) in section 55(3) for "the Registrar" there were substituted "the Tribunal"; and
 - (c) section 56(1) to (3) and (5) were omitted; and
 - (d) a reference in those sections to the Commission were a reference to the AER; and
 - (e) a reference in those sections to an appeal panel were a reference to the Tribunal.
- (4) Part 3 of the Essential Services Commission Regulations 2011 applies to an appeal under this section as if—
- (a) regulations 11 and 12 of that Part were omitted; and
 - (b) a reference in that Part to the Commission were a reference to the AER; and
 - (c) a reference in that Part to an appeal panel were a reference to the Tribunal; and
 - (d) a reference in that Part to the Registrar were a reference to the Tribunal.
- (5) In this section—
- Tribunal*** means the Australian Competition Tribunal referred to in the Competition and Consumer Act 2010 of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal.

S. 29(4)
amended by
No. 46/2015
s. 3(a).

S. 29(4)(a)
amended by
No. 46/2015
s. 3(b).

S. 29(5) def. of
Tribunal
amended by
No. 21/2012
s. 239(Sch. 6
item 29.2).

29A Interveners in appeals against decisions or determinations under the AMI Order

S. 29A
inserted by
No. 46/2015
s. 4.

- (1) The following persons are entitled to intervene in an appeal under section 29 against a decision or determination under the AMI Order—
 - (a) the Minister;
 - (b) a person who represents a consumer or user group.
- (2) For the purposes of subsection (1)(b), a person who represents a consumer or user group includes an end user representative.
- (3) A person who intervenes under subsection (1) may raise a ground that an appellant may raise in such an appeal even if the ground is not raised by the appellant.
- (4) In this section—

end user means a person who acquires electricity for consumption purposes;

end user representative means any of the following (whether incorporated or unincorporated)—

- (a) an association or body—
 - (i) the members of which include more than one end user; and
 - (ii) that represents and promotes the interests of those members in relation to the distribution, supply, sale or consumption of electricity;
- (b) an association or body—
 - (i) the members of which may or may not include an end user; and

- (ii) that has, as an object or purpose, the object or purpose of representing and promoting the interests of end users in relation to the distribution, supply, sale or consumption of electricity.

Part 5—Victorian declared networks

Division 1—Ministerial declarations

30 Declaration of declared transmission system

The Minister, by Order published in the Government Gazette, may declare a transmission system, or a part of a transmission system, situated wholly or substantially in Victoria to be the declared transmission system.

Pt 5
(Heading and
ss 30–50)
inserted by
No. 23/2009
s. 4.

S. 30
inserted by
No. 23/2009
s. 4.

31 Declaration of declared transmission system operator

The Minister, by Order published in the Government Gazette, may declare a person who owns, controls or operates the declared transmission system, or a part of the declared transmission system, to be a declared transmission system operator.

S. 31
inserted by
No. 23/2009
s. 4.

Division 2—AEMO's declared network functions

32 Application of AEMO's declared network functions

Subdivision 3 of Division 2 of Part 5 of the National Electricity (Victoria) Law applies in this jurisdiction.

Note

See section 50(2) of the National Electricity (Victoria) Law.

S. 32
inserted by
No. 23/2009
s. 4.

33 Certain defined terms for the purposes of the National Electricity (Victoria) Law

For the purposes of the National Electricity (Victoria) Law—

declared transmission system means a transmission system or a part of a transmission system declared by Order under

S. 33
inserted by
No. 23/2009
s. 4.

section 30 to be the declared transmission system;

declared transmission system operator means a person declared by Order under section 31 to be a declared transmission system operator, or any successor in law or assignee of that person.

Division 3—Regulatory arrangements

34 Definitions

In this Division—

approved VENC Corp revised pricing methodology means the pricing methodology—

- (a) for the prices to be charged by VENC Corp for prescribed common transmission services and prescribed TUOS services provided by it from 1 July 2008; and
- (b) that was approved by the AER under the current VENC Corp transmission determination;

current connection agreement means an agreement specified by Order under section 35 to be a current connection agreement;

current network agreement means an agreement specified by Order under section 35 to be a current network agreement;

current VENC Corp transmission determination means the transmission determination made by the AER on 11 April 2008 regulating, for the period commencing 1 July 2008 and ending 30 June 2014—

S. 34
inserted by
No. 23/2009
s. 4.

- (a) the revenues specified in the determination to be earned by VENCORP in that period; and
- (b) the prices to be charged for prescribed common transmission services and prescribed TUOS services provided by VENCORP in that period;

prescribed common transmission services has the same meaning as in the National Electricity Rules;

prescribed TUOS services has the same meaning as in the National Electricity Rules;

specified code or guideline means a code or guideline specified, or specified as modified, under an Order under section 36;

specified VENCORP provision means a provision of a code or guideline specified, or specified as modified, under an Order under section 36;

transition day means the day on which section 34 of the **Energy Legislation Amendment (Australian Energy Market Operator) Act 2009** comes into operation.

35 Declaration of current connection agreements and current network agreements

S. 35
inserted by
No. 23/2009
s. 4.

- (1) The Minister, by Order published in the Government Gazette, may specify an agreement to which VENCORP is a party to be—
 - (a) a current connection agreement; or
 - (b) a current network agreement.
- (2) To avoid doubt, subsection (1) does not prevent the Minister from specifying an agreement to be both a current connection agreement and a current network agreement.

S. 36
inserted by
No. 23/2009
s. 4.

36 Ministerial specification of ESC code or guideline or provision under ESC code or guideline

- (1) The Minister, by Order published in the Government Gazette, may specify a code or guideline published by the ESC, or a provision of such a code or guideline, that—
 - (a) relates to the provision of electricity network services by a declared transmission system operator or relates to the declared transmission system; and
 - (b) confers a function or power, or imposes a duty, on VENCORP—

as, as the case requires, a specified code or guideline or a specified VENCORP provision if the Minister considers that AEMO must be conferred that function or power, or be subject to that duty.

- (2) The code or guideline published by the ESC, or the provision of such a code or guideline, that is specified by an Order under subsection (1), may be specified as modified by that Order to make any necessary or consequential amendments to the code or guideline, or the provision of the code or guideline, in its application to AEMO.

S. 37
inserted by
No. 23/2009
s. 4.

37 Current network agreements

On the transition day, a current network agreement is to be taken to be a network agreement (within the meaning of section 50D(1) of the National Electricity (Victoria) Law).

Note

By operation of section 238 of the **Gas Industry Act 2001**, AEMO replaced VENCORP as a party in every agreement to which VENCORP was a party immediately before the transition day.

38 Current connection agreements

On the transition day, a current connection agreement is to be taken to be a connection agreement under section 50E of the National Electricity (Victoria) Law.

Note

By operation of section 238 of the **Gas Industry Act 2001**, AEMO replaced VENCORP as a party in every agreement to which VENCORP was a party immediately before the transition day.

S. 38
inserted by
No. 23/2009
s. 4.

39 Specified code or guidelines and specified VENCORP provisions

- (1) On and after the transition day, AEMO is, by force of this subsection—
 - (a) conferred a function or power VENCORP had under a specified code or guideline or specified VENCORP provision immediately before that day; and
 - (b) subject to every duty imposed on VENCORP under a specified code or guideline or specified VENCORP provision immediately before that day.
- (2) On and after the transition day, every reference to VENCORP in a specified code or guideline or specified VENCORP provision is to be taken to be a reference to AEMO unless the context otherwise requires.

S. 39
inserted by
No. 23/2009
s. 4.

40 Current VENCORP transmission determination

- (1) On and after the transition day, the approved VENCORP revised pricing methodology is to be taken to—
 - (a) apply to prices to be charged by AEMO for prescribed common transmission services and prescribed TUOS services provided by AEMO by means of, or in connection with,

S. 40
inserted by
No. 23/2009
s. 4.

the declared shared network on and after the transition day; and

(b) is to be regarded as the AEMO pricing methodology.

(2) On and after the transition day, every reference to VENCORP in the approved AEMO pricing methodology is to be taken to be a reference to AEMO unless the context otherwise requires.

S. 41
inserted by
No. 23/2009
s. 4.

41 VENCORP's negotiating framework and negotiated transmission service criteria

(1) In this section—

VENCORP negotiating framework means the negotiating framework (as defined in Chapter 10 of the National Electricity Rules) approved by the AER under the current VENCORP transmission determination;

S. 41(1) def. of
VENCORP negotiated transmission service criteria
amended by
No. 55/2010
s. 44.

VENCORP negotiated transmission service criteria means the negotiated transmission service criteria (as defined in Chapter 10 of the National Electricity Rules) specified under the current VENCORP transmission determination.

(2) On and after the transition day, the VENCORP negotiating framework is to be taken to apply to AEMO and every reference in that framework to VENCORP is to be taken to be a reference to AEMO unless the context otherwise requires.

(3) On and after the transition day, the VENCORP negotiated transmission service criteria are to be taken to apply to AEMO and every reference in those criteria to VENCORP is to be taken to be a reference to AEMO unless the context otherwise requires.

Division 4—Land access for augmentations

42 Definition

In this Division—

prospective declared transmission system

operator means a person who is authorised or required under the National Electricity (Victoria) Law to augment the declared transmission system and who may therefore become a declared transmission system operator on completion of the augmentation.

S. 42
inserted by
No. 23/2009
s. 4.

43 Model lease and licence

The Minister, by Order published in the Government Gazette, may—

- (a) specify a lease for land to be a model lease for the purpose of this Division; or
- (b) specify a licence over land to be a model licence for the purpose of this Division.

S. 43
inserted by
No. 23/2009
s. 4.

44 Declared transmission system operator must provide access to land and premises

- (1) A declared transmission system operator must—
 - (a) allow a prospective declared transmission system operator, and any agents and contractors of the prospective declared transmission system operator, such access to the land and premises of the declared transmission system operator on which the declared transmission system is situated as may be reasonably necessary for the construction and operation of the augmentation of the declared transmission system; and

S. 44
inserted by
No. 23/2009
s. 4.

- (b) grant to the prospective declared transmission system operator any lease or licence the prospective declared transmission system operator reasonably requires for the purposes of constructing and operating the augmentation.
- (2) A declared transmission system operator must allow AEMO, and any agents and contractors of AEMO, such access to the land and premises of the declared transmission system operator on which the declared transmission system is situated as may be reasonably required by AEMO to facilitate the planning of an augmentation of the declared transmission system.

S. 45
inserted by
No. 23/2009
s. 4.

45 Resolution of dispute arising from attempt to negotiate a lease or licence

- (1) The AER, on application by a declared transmission system operator or prospective declared transmission system operator, may make a determination to resolve a dispute arising from an attempt to negotiate the granting of a lease or licence referred to in section 44(1)(b).
- (2) The determination may determine the terms and conditions of the lease or licence.
- (3) In making a determination, the AER must have regard to the model lease or model licence (as the case requires).
- (4) If the AER determines the terms and conditions of a lease or licence, a lease or licence is taken to arise between the interested parties in accordance with the AER's determination.
- (5) A determination may only be made under this section if—
 - (a) the AER is satisfied that the applicant has made a reasonable, but unsuccessful, attempt to negotiate the lease or licence; and

- (b) the AER has given the declared transmission system operator and prospective declared transmission system operator an opportunity to make representations about the terms of the proposed determination.
- (6) A determination under this section takes effect on a date specified in the determination.
- (7) A determination under this section must be published on the website of—
 - (a) the AER; and
 - (b) AEMO.

46 Termination of lease or licence

A lease or licence granted or taken to have arisen under this Division may not be terminated or revoked during the period of construction or operation of the augmentation unless agreed by both parties or as expressly provided for in the lease or licence.

S. 46
inserted by
No. 23/2009
s. 4.

47 General principles governing AER determinations

The provisions applicable to the determination of an access dispute in the National Electricity (Victoria) Law apply to a determination by the AER of a dispute under this Division with the following changes—

- (a) section 131(1)(c), section 131(2), section 132 and section 133 do not apply;
- (b) any further changes necessary to adapt those provisions to the determination of a dispute under this Division.

S. 47
inserted by
No. 23/2009
s. 4.

Division 5—Other matters

S. 48
inserted by
No. 23/2009
s. 4.

48 Notice of change to declared transmission system operator

- (1) If a declared transmission system operator enters into any agreement that transfers or assigns the ownership, control or operation of the declared transmission system or a part of the declared transmission system, the operator must provide, as soon as practicable after entering into the agreement, the required details to—
 - (a) the Minister; and
 - (b) AEMO.
- (2) On receipt of the required details under subsection (1), AEMO must publish those details on its website.
- (3) AEMO, by publishing the required details on its website, incurs no liability for breach of contract, breach of confidence or any other civil wrong.
- (4) In this section—

required details means the following details of the person to whom a declared transmission system operator transfers or assigns the ownership, control or operation of the declared transmission system or a part of the declared transmission system—

- (a) name;
- (b) Australian Company Number or Australian Business Number;
- (c) principal place of business;
- (d) any other information specified by the Minister by notice published in the Government Gazette.

49 Appointment of Responsible Officer

(1) The Minister may, by instrument, delegate to AEMO the powers, duties and functions of the Minister under clause 3.10 and 3.11 of the Memorandum.

(2) In this section—

Memorandum means the National Electricity Market Memorandum of Understanding on the Use of Emergency Powers entered into between the State of New South Wales, the State of Victoria, the State of Queensland, the State of South Australia, the Australian Capital Territory, and NEMMCO, dated 24 November 1998.

S. 49
inserted by
No. 23/2009
s. 4.

50 Customer load shedding arrangements

On the commencement of section 12 of the **Energy Legislation Amendment (Australian Energy Market Operator) Act 2009**, an agreement, arrangement or determination made under section 80 of the **Electricity Industry Act 2000**, and in force immediately before that commencement, is deemed to be an agreement, arrangement or determination under section 115A of the National Electricity (Victoria) Law.

S. 50
inserted by
No. 23/2009
s. 4.

National Electricity (Victoria) Act 2005
No. 8 of 2005
Schedule 1—Specified building block amounts applying to applicable
Victorian distribution determinations

Sch. 1
inserted by
No. 51/2012
s. 11.

**Schedule 1—Specified building block
amounts applying to applicable Victorian
distribution determinations**

Sections 16M and 16N

Part A

Citipower distribution determination 2011-15

Table 19

**Building block amounts resulting from ESCV ECM carryover for
CitiPower (\$ million, 2010)**

2011	2012	2013	2014	Total
4.38	-8.01	-5.74	-4.93	-14.30

Table 20

**Building blocks resulting from the ESCV S factor close out
(\$ million, 2010)**

2011	2012	2013	2014	2015
-2.19	-4.50	-3.33	-0.33	-3.53

Part B

Jemena distribution determination 2011-15

Table 19

**Building block amounts resulting from ESCV ECM carryover for
Jemena (\$ million, 2010)**

2011	2012	2013	2014	Total
17.75	11.73	13.99	-1.90	41.57

National Electricity (Victoria) Act 2005
No. 8 of 2005
Schedule 1—Specified building block amounts applying to applicable
Victorian distribution determinations

Table 20

**Building blocks resulting from the ESCV S factor close out
(\$ million, 2010)**

2011	2012	2013	2014	2015
5.46	0.92	-0.20	-0.19	-9.63

Part C

Powercor distribution determination 2011-15

Table 19

**Building block amounts resulting from ESCV ECM carryover for
Powercor (\$ million, 2010)**

2011	2012	2013	2014	Total
0.0	11.18	-4.66	-9.72	-3.20

Table 20

**Building blocks resulting from the ESCV S factor close out
(\$ million, 2010)**

2011	2012	2013	2014	2015
-5.95	-20.94	-5.22	-0.31	0.67

Part D

SPI Electricity distribution determination 2011-15

Table 19

**Building block amounts resulting from ESCV ECM carryover for
SPI Electricity (\$ million, 2010)**

2011	2012	2013	2014	Total
11.11	-23.64	-8.64	1.78	-19.39

National Electricity (Victoria) Act 2005
No. 8 of 2005
Schedule 1—Specified building block amounts applying to applicable
Victorian distribution determinations

Table 20

**Building blocks resulting from the ESCV S factor close out
(\$ million, 2010)**

2011	2012	2013	2014	2015
40.22	20.21	-7.04	-1.59	-78.38

Part E

United Energy distribution determination 2011-15

Table 18

**Building block amounts resulting from ESCV ECM carryover for
United Energy (\$ million, 2010)**

2011	2012	2013	2014	Total
-	-	-	-	-

Table 19

**Building blocks resulting from the ESCV S factor close out
(\$ million, 2010)**

2011	2012	2013	2014	2015
-4.80	-4.80	-6.21	-6.15	-10.76

Schedule 2—Amendment of National Electricity Rules

Sch. 2
inserted by
No. 24/2016
s. 6.

Section 16R

1 Clause 5.1.3—Principles

1.1 In clause 5.1.3(d)(2) of the National Electricity Rules, after "*Network Users*;" **insert** "and".

1.2 For clause 5.1.3(e) and (f) of the National Electricity Rules **substitute**—

"(e) the operation of the *Rules* should result in the achievement of:

- (1) long term benefits to *Registered Participants* in terms of cost and *reliability* of the *national grid*; and
- (2) open communication and information flows relating to *connections* between *Registered Participants* themselves, and between *Registered Participants* and *AEMO*, while ensuring the security of *confidential information* belonging to competitors in the *market*."

2 Clause 5.3.1—Process and procedures

2.1 For clause 5.3.1 of the National Electricity Rules **substitute**—

"5.3.1 Process and procedures

(a) For the purposes of this rule 5.3:

establish a connection includes modify an existing *connection* or alter *plant* but does not include alterations to *generating plant* in the circumstances set out in clause 5.3.9.

(b) A *Registered Participant* or person intending to become a *Registered Participant* who wishes to establish a *connection* to a *network* must follow the procedures in this rule 5.3.

(c) A *Generator* wishing to alter *connected generating plant* must comply with clause 5.3.9.

(d) *AEMO* must comply with clause 5.3.11 in relation to requests to change *normal voltage*."

3 Clause 5.3.2—Connection enquiry

3.1 In clause 5.3.2(a) of the National Electricity Rules omit "or (c)".

4 Insertion of new Chapter 5A

4.1 After Chapter 5 of the National Electricity Rules insert—

"Chapter 5A—Electricity connection for retail customers

Part A—Preliminary

5A.A.1 Definitions

In this Chapter:

basic connection service

means a *connection service* related to a *connection* (or a proposed *connection*) between a *distribution system* and a *retail customer's* premises (excluding a non-registered *embedded generator's* premises) in the following circumstances:

(a) either:

- (1) the *retail customer* is typical of a significant class of *retail customers* who have sought, or are likely to seek, the service; or

- (2) the *retail customer* is, or proposes to become, a *micro-embedded generator*; and
- (b) the provision of the service involves minimal or no *augmentation* of the *distribution network*; and
- (c) a *model standing offer* has been approved by the *AER* for providing that service as a *basic connection service*.

basic micro EG connection service

means a *basic connection service* for a *retail customer* who is a *micro embedded generator*.

confidential information

means, in relation to a *Registered Participant*, *AEMO* or a *connection applicant*, information which is or has been provided to that *Registered Participant*, *AEMO* or *connection applicant* under or in connection with the *Rules* and which is stated under the *Rules*, or by *AEMO*, the *AER* or the *AEMC*, to be *confidential information* or is otherwise confidential or commercially sensitive. It also includes any information which is derived from such information.

connection

means a physical link between a *distribution system* and a *retail customer's* premises to allow the flow of electricity.

connection alteration

means an alteration to an existing *connection* including an addition, upgrade, *extension*, expansion, *augmentation* or any other kind of alteration.

connection applicant

means an applicant for a *connection service* of 1 of the following categories:

- (a) *retail customer*;
- (b) *retailer* or other person acting on behalf of a *retail customer*;
- (c) *real estate developer*.

connection application

means an application under clause 5A.D.3.

connection charge

means a charge imposed by a *Distribution Network Service Provider* for a *connection service*.

connection charge guidelines

– see clause 5A.E.3.

connection charge principles

– see clause 5A.E.1.

connection contract

means a contract formed by the making and acceptance of a *connection offer*.

connection offer

means an offer by a *Distribution Network Service Provider* to enter into a *connection contract* with:

- (a) a *retail customer*; or
- (b) a *real estate developer*.

connection policy

means a document, approved as a *connection policy* by the AER under Chapter 6, Part E, setting out the circumstances in which *connection charges* are payable and the basis for determining the amount of such charges.

connection service

means either or both of the following:

- (a) a service relating to a *new connection* for premises;
- (b) a service relating to a *connection alteration* for premises.

contestable

– a service is *contestable* if the laws of the *participating jurisdiction* in which the service is to be provided permit the service to be provided by more than one supplier as a *contestable* service or on a competitive basis.

customer connection contract

– see section 67 of the *NERL*.

embedded generator

means a person that owns, controls or operates an *embedded generating unit*.

enquiry

means a preliminary *enquiry* under clause 5A.D.2.

micro EG connection

means a *connection* between an *embedded generating unit* and a *distribution network* of the kind contemplated by Australian Standard AS 4777 (Grid connection of energy systems via inverters).

micro embedded generator

means a *retail customer* who operates, or proposes to operate, an *embedded generating unit* for which a *micro EG connection* is appropriate.

model standing offer

means a document approved by the *AER* as a *model standing offer* to provide *basic connection services* (see clause 5A.B.3) or as a *model standing offer* to provide *standard connection services* (see clause 5A.B.5).

negotiated connection contract

– see clause 5A.C.1.

new connection

means a *connection* established or to be established, in accordance with this Chapter and applicable *energy laws*, where there is no existing *connection*.

non-registered embedded generator

means an *embedded generator* that is neither a *micro embedded generator* nor a *Registered Participant*.

premises connection assets

means the components of a *distribution system* used to provide *connection services*.

real estate developer

means a person who carries out a *real estate development*.

real estate development

means the commercial development of land including its development in 1 or more of the following ways:

- (a) subdivision;
- (b) the construction of commercial or industrial premises (or both);
- (c) the construction of multiple new residential premises.

retail customer

includes a non-registered *embedded generator* and a *micro embedded generator*.

standard connection service

means a *connection service* (other than a *basic connection service*) for a particular class (or sub-class) of *connection applicant* and for which a *model standing offer* has been approved by the AER.

supply service

means a service (other than a *connection service*) relating to the *supply* of electricity.

5A.A.2 Application of this Chapter

- (a) This Chapter does not apply to, or in relation to, a *connection applicant* that is a *Registered Participant* or an *Intending Participant* unless the *Registered Participant* or *Intending Participant* is acting as the agent of a *retail customer*.
- (b) Where a non-registered embedded generator wishing to *connect* an *embedded generating unit* to a *Distribution Network Service Provider's network*:
 - (1) falls within a particular class (or subclass) of *connection applicant* for which that *Distribution Network Service Provider* provides a *standard connection service*, this Chapter will apply;
 - (2) does not fall within a particular class (or subclass) of *connection applicant* for which that *Distribution Network Service Provider* provides a *standard connection service*, paragraph (c) will apply.
- (c) A non-registered embedded generator that meets the requirements in paragraph (b)(2) may elect to seek *connection* of the relevant *embedded generating unit* under rule 5.3A instead of this Chapter.

- (d) Any election made by a non-registered embedded generator under paragraph (c) must be:
- (1) made before an *enquiry* is made or if no *enquiry* is made, before a *connection application* is lodged with the relevant *Distribution Network Service Provider*;
 - (2) in writing; and
 - (3) delivered to the relevant *Distribution Network Service Provider* at the same time as lodging an *enquiry* under clause 5.3A.5.
- (e) For the avoidance of doubt, clause 5A.C.1(a)(2) is still applicable when a non-registered embedded generator meets the requirements in paragraph (b)(1).

5A.A.3 Small Generation Aggregator deemed to be agent of a retail customer

A Market Small Generation Aggregator is deemed to be the agent of a retail customer, where there is an agreement between the Market Small Generation Aggregator and the retail customer relating to the retail customer's small generating unit under which the Market Small Generation Aggregator is financially responsible for the market connection point at which the small generating unit is connected to the national grid.

Part B—Standardised offers to provide basic and standard connection services

Division 1—Basic connection services

5A.B.1 Obligation to have model standing offer to provide basic connection services

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* must have a *model standing offer* to provide *basic connection services* to retail customers.
- (b) *Basic connection services* are of 2 classes:
 - (1) *basic connection services* for retail customers who are not *embedded generators*; and
 - (2) *basic connection services* for retail customers who are micro *embedded generators*.

Note

Basic connection services are not available to non-registered *embedded generators*.

- (c) A *model standing offer* may relate to each class of *basic connection services* (or a subclass for which there is significant demand) within the area served by the relevant *distribution network*.

5A.B.2 Proposed model standing offer for basic connection services

- (a) A *Distribution Network Service Provider* must submit for the AER's approval a proposed *model standing offer* to provide *basic connection services* for each class (or subclass) of *basic connection services* on specified terms and conditions.
- (b) The terms and conditions of the proposed *model standing offer* must cover:
- (1) a description of the *connection* (and the *premises connection assets* of which it is to be comprised) including a statement of its maximum capacity; and
 - (2) timeframes for commencing and completing the work; and
 - (3) the qualifications required for carrying out the work involved in providing a *contestable* service (including reference to the jurisdictional or other legislation and statutory instruments under which the qualifications are required); and
 - (4) the safety and technical requirements (including reference to the jurisdictional or other legislation and statutory instruments under which the requirements are imposed) to be complied with by the provider of a *contestable* service or the *retail customer* (or both); and

- (5) details of the *connection charges* (or the basis on which they will be calculated) including details of the following (so far as applicable):
- (i) the cost of any necessary *extension* to the *distribution system* for which provision has not already been made through existing *distribution use of system* charges or a tariff applicable to the *connection*;
 - (ii) *meter* type and cost;
 - (iii) the cost of any other relevant *premises connection assets*;
 - (iv) the costs of common components of minor variations from the standard specifications;
 - (v) any other incidental costs;
and
- (6) the manner in which *connection charges* are to be paid by the *retail customer*; and
- (7) if the service is a *basic micro EG connection service*, the particular requirements with regard to the export of electricity into the *distribution system* including:
- (i) the special requirements for *metering* and other equipment for the export of electricity; and

- (ii) the required qualification for installers of relevant equipment (including reference to the jurisdictional or other legislation and statutory instruments under which the qualifications are required); and
- (iii) the special safety and technical requirements (including reference to the jurisdictional or other legislation and statutory instruments under which they are imposed) to be complied with by the provider of a *contestable* service or the *retail customer* (or both).

5A.B.3 Approval of terms and conditions of model standing offer to provide basic connection services

- (a) The *AER* may approve a proposed *model standing offer* to provide *basic connection services* of a particular class (or subclass) on specified terms and conditions if satisfied that:
 - (1) the services are likely to be sought by:
 - (i) a significant number of *retail customers* in the area served by the *distribution network* (excluding *embedded generators*); or
 - (ii) micro-embedded *generators*; and

- (2) the *connection charges* are consistent with the *Distribution Network Service Provider's distribution determination* including the *connection policy*; and
 - (3) the terms and conditions are fair and reasonable; and
 - (4) the terms and conditions comply with applicable requirements of the *energy laws*.
- (b) In deciding whether to approve a proposed *model standing offer* to provide *basic connection services* on specified terms and conditions, the *AER* must have regard to:
- (1) the *national electricity objective*; and
 - (2) the basis on which the *Distribution Network Service Provider* has provided the relevant services in the past; and
 - (3) the geographical characteristics of the area served by the relevant *distribution network*.
- (c) If the *AER* does not approve a proposed *model standing offer* to provide *basic connection services* of a particular class on specified terms and conditions:
- (1) the *AER* must give the *Distribution Network Service Provider* written reasons for its decision; and

(2) the *Distribution Network Service Provider* must re-submit the proposed *model standing offer* with appropriate amendments as soon as reasonably practicable.

(d) The *AER* must deal expeditiously with a proposed *model standing offer* to provide *basic connection services*.

Division 2—Standard connection services

5A.B.4 Standard connection services

- (a) A *Distribution Network Service Provider* may submit for the *AER's* approval a proposed *model standing offer* to provide *standard connection services* on specified terms and conditions.
- (b) Different sets of terms and conditions may be submitted under this *rule* for different classes of *connection services* or different classes of *retail customer*.
- (c) The terms and conditions must cover:
- (1) a description of the *connection* (and the *premises connection assets* of which it is to be comprised) including a statement of its maximum capacity; and
 - (2) timeframes for commencing and completing the work; and
 - (3) the qualifications required for carrying out the work involved in providing a *contestable* service (including reference to the jurisdictional or other legislation

and statutory instruments under which the qualifications are required); and

- (4) the safety and technical requirements (including reference to the jurisdictional or other legislation and statutory instruments under which the requirements are imposed) to be complied with by the provider of a *contestable* service or the *retail customer* (or both); and
- (5) details of the *connection charges* (or the basis on which they will be calculated) including details of the following (so far as applicable):
 - (i) the cost of *premises connection assets* to which the *connection charges* relate;
 - (ii) the cost of any necessary *augmentation* of the *distribution system* for which provision has not already been made through existing *distribution use of system charges* or a tariff applicable to the *connection*;
 - (iii) the costs of common components of minor variations from the standard specifications;
 - (iv) any other incidental costs; and

- (6) the manner in which *connection charges* are to be paid by the *retail customer*.

5A.B.5 Approval of model standing offer to provide standard connection services

- (a) The *AER* may approve a proposed *model standing offer* to provide a particular class of *standard connection services* on specified terms and conditions if satisfied that:
- (1) the terms and conditions are fair and reasonable; and
 - (2) the *connection charges* are consistent with the *Distribution Network Service Provider's distribution determination* including the *connection policy*; and
 - (3) the terms and conditions comply with applicable requirements of the *energy laws*.
- (b) In deciding whether to approve the proposed *model standing offer*, the *AER* must have regard to the *national electricity objective*.
- (c) If the *AER* does not approve a proposed *model standing offer* to provide *standard connection services*:
- (1) the *AER* must give the *Distribution Network Service Provider* written reasons for its decision; and

(2) the *Distribution Network Service Provider* may re-submit the proposed *model standing offer* with appropriate amendments.

(d) The *AER* must deal expeditiously with a proposed *model standing offer* to provide *standard connection services*.

Division 3—Miscellaneous

5A.B.6 Amendment etc of model standing offer

- (a) A *Distribution Network Service Provider* may submit, for the *AER's* approval, a proposal:
- (1) for the amendment or substitution of a *model standing offer* to provide *basic connection services*; or
 - (2) for the amendment, substitution or revocation of a *model standing offer* to provide *standard connection services*.
- (b) In deciding whether to approve a proposal submitted for its approval under this clause, the *AER* must, so far as relevant, apply the same principles and have regard to the same matters as are relevant to the approval of a proposed *model standing offer* to provide *basic connection services* or *standard connection services*.
- (c) The amendment, substitution or revocation of a *model standing offer* takes effect on the date of the *AER's* approval or a later date fixed by the *AER* in its approval.

- (d) If the *AER* does not approve a proposal submitted under paragraph (a):
- (1) the *AER* must give the *Distribution Network Service Provider* written reasons for its decision; and
 - (2) the *Distribution Network Service Provider* may re-submit the proposal with appropriate amendments.
- (e) The amendment, substitution or revocation of a *model standing offer* does not affect the validity or effect of:
- (1) a *connection offer* made before the amendment, substitution or revocation takes effect; or
 - (2) a *connection contract* formed on the basis of such an offer.
- (f) The *AER* must deal expeditiously with a proposal for the amendment, substitution or revocation of a *model standing offer*.
- (g) If the *AER*, after making a *distribution determination*, considers that an existing *model standing offer* to provide *basic connection services* or *standard connection services* may be inconsistent with the *Distribution Network Service Provider's distribution determination* (including the *connection policy*), the *AER* may require the *Distribution Network Service Provider* to submit a proposal under paragraph (a) to bring the *model standing offer* into consistency with the *distribution determination*.

5A.B.7 Publication of model standing offers

A Distribution Network Service Provider must publish, on its website, each of its model standing offers to provide basic connection services or standard connection services.

Part C—Negotiated connection

5A.C.1 Negotiation of connection

- (a) *A connection applicant and a Distribution Network Service Provider may negotiate a connection contract (a **negotiated connection contract**):*
- (1) *where the connection service sought by the connection applicant is neither a basic connection service nor a standard connection service; or*
 - (2) *where the connection service sought by the connection applicant is a basic connection service or a standard connection service but the connection applicant elects to negotiate the terms and conditions on which the connection service is to be provided.*
- (b) *The negotiations may, if the connection applicant elects, extend to supply services available from the Distribution Network Service Provider.*
- (c) *This Part sets out the requirements for negotiation referred to in the NERL.*

- (d) When reading this Part in the context of the *NERL*:
- (1) a reference to a *connection applicant* in this Part corresponds to a reference to a *customer* in the *NERL*; and
 - (2) a reference to a *Distribution Network Service Provider* in this Part corresponds to a reference to a distributor in the *NERL*; and
 - (3) this Part will be read subject to any further adaptations and modifications necessary to give effect to the intendment of the *NERL*.
- (e) If, but for this paragraph, a contract negotiable under this Part, or parts or aspects of such a contract, would also be negotiable under Chapter 6, this Part applies to the exclusion of the relevant provisions of Chapter 6.

5A.C.2 Process of negotiation

A *Distribution Network Service Provider* and a *connection applicant* for a negotiated *connection contract* must negotiate in accordance with the negotiation framework set out in clause 5A.C.3.

5A.C.3 Negotiation framework

- (a) The following rules (collectively described as the **negotiation framework**) govern negotiations between a *Distribution Network Service Provider* and a *connection applicant*:
- (1) each party must negotiate in good faith.

- (2) the *connection applicant* must, at the request of the *Distribution Network Service Provider*, provide the *Distribution Network Service Provider* with information it reasonably requires in order to negotiate on an informed basis.

Note

The information might (for example) include estimates of average and *maximum demand* for electricity to be *supplied* through the *connection*.

- (3) the *Distribution Network Service Provider* must provide the *connection applicant* with information the *connection applicant* reasonably requires in order to negotiate on an informed basis including;
- (i) an estimate of the amount to be charged by the *Distribution Network Service Provider* for assessment of the application and the making of a *connection offer* for a negotiated *connection contract*; and
 - (ii) an estimate of *connection charges*; and
 - (iii) a statement of the basis on which *connection charges* are calculated; and

- (iv) if the *connection applicant* has elected to extend the negotiations to *supply services*— an estimate of any applicable charges for *supply services* and a statement of the basis of their calculation.

Note

The *Distribution Network Service Provider* might, according to the circumstances of a particular case, need to provide further information to ensure the *connection applicant* is properly informed – for example, information about:

- technical and safety requirements;
- the types of *connection* that are technically feasible;
- *network* capacity at the proposed *connection point*;
- possible strategies to reduce the cost of the *connection*.

- (4) the *Distribution Network Service Provider* may consult with other users of the *distribution network* who may be adversely affected by the proposed *new connection* or *connection alteration*.
- (5) in assessing the application, the *Distribution Network Service Provider* must determine:
- (i) the technical requirements for the proposed *new connection* or *connection alteration*; and

- (ii) the extent and costs of any necessary *augmentation* of the *distribution system*; and
 - (iii) any consequent *change* in charges for *distribution use of system* services; and
 - (iv) any possible material effect of the proposed *new connection* or *connection alteration* on the *network power transfer capability* of the *distribution network* to which the *new connection* or *connection alteration* is proposed to be made and any other *distribution network* that might be affected by the proposed *new connection* or *connection alteration*.
- (6) the *Distribution Network Service Provider* must make reasonable endeavours to make a *connection offer* that complies with the *connection applicant's* reasonable requirements.

Example

Reasonable requirements as to the location of the proposed *connection point* or the level and standard of the *distribution network's power transfer capability*.

- (7) the *Distribution Network Service Provider* must comply with its *connection policy*.

- (b) The following supplementary rules apply:
- (1) if a *Distribution Network Service Provider* requires information from a *connection applicant* in addition to the information provided in the application, a request for the additional information under paragraph (a)(2) must (if practicable) be made within 20 *business days* after the *Distribution Network Service Provider* receives the relevant application;
 - (2) the *Distribution Network Service Provider* must provide the information required under paragraph (a)(3) as soon as practicable after the *Distribution Network Service Provider* receives the *connection applicant's* application or, if the *Distribution Network Service Provider* requests additional information under paragraph (a)(2), as soon as practicable after the *Distribution Network Service Provider* receives the relevant information.
- (c) Each party to the negotiations must maintain the confidentiality of *confidential information* disclosed by the other party in the course of the negotiations unless disclosure of the information is authorised:
- (1) by the party to whom the duty of confidentiality is owed; or

(2) under:

- (i) the Law or the Rules; or
- (ii) any other law.

5A.C.4 Fee to cover cost of negotiation

- (a) A *Distribution Network Service Provider* may charge a *connection applicant* for a negotiated *connection contract* a reasonable fee to cover expenses directly and reasonably incurred by the *Distribution Network Service Provider* in assessing the applicant's application and making a *connection offer*.
- (b) A fee charged under paragraph (a) is recoverable as a debt (whether or not the *connection applicant* accepts the *connection offer*).

Part D—Application for connection service

Division 1—Information

5A.D.1 Publication of information

- (a) A *Distribution Network Service Provider* must publish on its website the following:
 - (1) an application form for a *new connection* or a *connection alteration*; and

- (2) a description of how an application for a *new connection* or a *connection alteration* is to be made (including a statement of the information required for the application); and
- (3) a description of the *Distribution Network Service Provider's basic connection services* and *standard connection services* and the classes (or subclasses) of *retail customer* to which they apply. If the *Distribution Network Service Provider* does not provide *standard connection services* for all or some non-registered embedded generators, a clear statement to this effect must also be included in the description; and
- (4) an explanation of the *connection applicant's* right to negotiate with the *Distribution Network Service Provider* for a negotiated *connection contract* and a description of the negotiation process; and
- (5) the requirements for an expedited *connection*; and
- (6) the basis for calculation of *connection charges*; and
- (7) information set out in clause 5.3A.3(b)(1)(vii), (2)-(7) as such information relates to the *connection of embedded generating units* by a non-registered embedded generator.

- (b) To the extent a *Distribution Network Service Provider* has provided the information required under paragraph (a)(7) by including that information in its information pack *published* under clause 5.3A.3(a)(3), it will be taken to have complied with paragraph (a)(7).

5A.D.1A Register of completed embedded generation projects

- (a) For the purposes of this clause 5A.D.1A:

completed non-registered embedded generation projects means all *embedded generating units*, operated or controlled by a non-registered embedded generator that are *connected* to the *Distribution Network Service Provider's network*.

DAPR date has the same meaning as in clause 5.13.2.

- (b) In relation to completed non-registered embedded generation projects, a *Distribution Network Service Provider* must establish and *publish*, on its website, a register of the *plant*, including but not limited to:
- (1) technology of *generating unit* (e.g. *synchronous generating unit*, induction generator, photovoltaic array, etc) and its make and model;
 - (2) maximum power *generation capacity* of all *embedded generating units* comprised in the relevant *generating system*;

- (3) contribution to fault levels;
 - (4) the size and rating of the relevant *transformer*;
 - (5) a single line diagram of the *connection* arrangement;
 - (6) *protection systems* and communication systems;
 - (7) *voltage control, power factor control and/or reactive power capability* (where relevant); and
 - (8) details specific to the location of a *facility connected to the network* that are relevant to any of the details in subparagraphs (1)-(7).
- (c) The *Distribution Network Service Provider* must not *publish confidential information* as part of, or in connection with, the register, unless disclosure of the information is authorised:
- (1) by the party to whom the duty of confidentiality is owed; or
 - (2) under:
 - (i) the *National Electricity Law* or the *Rules*; or
 - (ii) any other law.
- (d) The *Distribution Network Service Provider* must:
- (1) by the DAPR date each year, include in the register the details contained in paragraph (b) for all completed non-registered embedded generation projects since the date the register referred

to in paragraph (b) is established;
and

- (2) in the fifth year after the establishment of the register, and in each year thereafter, update the register by the DAPR date with details of all completed non-registered embedded generation projects in the 5 year period preceding the DAPR date.
- (e) To the extent a *Distribution Network Service Provider* includes the information required under paragraphs (b) and (d) in its register established under clause 5.4.5, it will be taken to have complied with paragraphs (b) and (d).

Division 2—Preliminary enquiry

5A.D.2 Preliminary enquiry

- (a) A *Distribution Network Service Provider* must, within 5 *business days* after receiving an *enquiry* about a *connection service* (or some other period agreed between the *Distribution Network Service Provider* and the enquirer), provide the enquirer with the information required to make an informed application.
- (b) The information must include:
 - (1) a description of the *Distribution Network Service Provider's* basic and *standard connection services* and the terms and conditions of the *model standing offers* to

provide such services (including possible costs); and

- (2) a description of the process, including a statement of the information required, for submission of a *connection application* including an application for an expedited *connection*; and
- (3) a statement of possible site inspection charges; and
- (4) a statement of a *connection applicant's* right to negotiate the terms of a *connection contract* and a description of the relevant process (including the types of possible costs and expenses); and
- (5) an indication of whether any aspects of the proposed *connection* are likely to be *contestable*; and
- (6) any additional information reasonably required by the enquirer.

- (c) A *Distribution Network Service Provider* that publishes any of the above information on its website complies with its obligation to disclose information under this clause if it refers the enquirer to the relevant part of the website.

Exception:

If the enquirer asks for a written reply to the *enquiry* or asks for specific advice about the enquirer's particular situation, the *Distribution Network*

Service Provider must reply to the *enquiry* as soon as reasonably practicable and in writing if requested.

- (d) If an *enquiry* is made to a *Distribution Network Service Provider* about a *connection* within the area of another *Distribution Network Service Provider*, the *Distribution Network Service Provider*:
- (1) must inform the enquirer of the identity, and contact details, of the responsible *Distribution Network Service Provider*; and
 - (2) on doing so, is released from further obligations in relation to the *enquiry*.

Division 3—Applications

5A.D.3 Application process

- (a) An application for a *connection service* must be in the appropriate form determined by the *Distribution Network Service Provider*.
- (b) An application for a *connection service* may be made by:
 - (1) a *retail customer* for whom the *connection service* is sought; or
 - (2) a *retailer* or other person acting on behalf of a *retail customer*; or
 - (3) a *real estate developer* who seeks *connection services* for premises comprised in a *real estate development*.

- (c) If an application for a *connection service* has been made in error to the wrong *Distribution Network Service Provider*, that *Distribution Network Service Provider*:
- (1) must inform the *connection applicant* of the identity, and contact details, of the responsible *Distribution Network Service Provider*; and
 - (2) on doing so, is released from further obligations in relation to the application.
- (d) If an application is incomplete in a *material* respect, the *Distribution Network Service Provider* must advise the applicant of the deficiency and may require the *connection applicant* to complete the application and re-submit it.
- (e) If the *Distribution Network Service Provider* reasonably requires additional information to assess the application, it may require the *connection applicant* to provide the necessary information.
- (f) The *Distribution Network Service Provider* must, within 10 *business days* after receipt of a complete application for a *connection service* or if the *connection applicant* is required to provide additional information under paragraph (e), within 10 *business days* after receipt of the information, (or some other period agreed between the *Distribution Network Service Provider* and the *connection applicant*):

(1) subject to any statements made on its website under clause 5A.D.1(a)(3), *advise* the *connection applicant* whether the proposed *connection service* is a *basic connection service*, a *standard connection service* or neither; and

(2) if;

(i) the *connection service* is neither a *basic connection service* nor a *standard connection service*; or

(ii) the *connection applicant* elects to have a negotiated *connection contract* even though the proposed *connection service* is a basic or *standard connection service*;

advise the *connection applicant* of the negotiated *connection* process and of possible costs and expenses related to the negotiations.

(g) A single application may relate to multiple *connection services* of the same or different kinds.

5A.D.4 Site inspection

If a *Distribution Network Service Provider* reasonably needs to make a site inspection in order to determine the nature of a *connection service* sought by a *connection applicant*, the *Distribution Network Service Provider* may charge its reasonable expenses to the *connection applicant* and recover those expenses as a debt.

Part E—Connection charges

5A.E.1 Connection charge principles

- (a) This clause states the *connection charge principles*.
- (b) A *retail customer* (other than a non-registered *embedded generator* or a *real estate developer*) who applies for a *connection service* for which an *augmentation* is required cannot be required to make a capital contribution towards the cost of the *augmentation* (insofar as it involves more than an *extension*) if:
 - (1) the application is for a *basic connection service*; or
 - (2) a relevant threshold set in the *Distribution Network Service Provider's connection policy* is not exceeded.

Note

In general, the intention is to exclude deep system *augmentation* charges for *retail customers*.

- (c) Subject to paragraph (b), in determining *connection charges* in accordance with its *connection policy*, a *Distribution Network Service Provider* must apply the following principles:
 - (1) if an *extension* to the *distribution network* is necessary in order to provide a *connection service*, *connection charges* for the service may include a reasonable capital contribution towards the cost of

the *extension* necessary to provide the service;

- (2) if *augmentation of premises connection assets* at the *retail customer's connection point* is necessary in order to provide a *connection service*, *connection charges* for the service may include a reasonable capital contribution towards the cost of the *augmentation of premises connection assets* at the *connection point* necessary to provide the service;
- (3) if *augmentation of the distribution system* is necessary in order to provide a *standard connection service*, *connection charges* for the service may include a reasonable capital contribution towards the cost of the *augmentation* necessary to provide the service;
- (4) if *augmentation of the distribution system* is necessary in order to provide a *connection service* under a negotiated *connection contract*, *connection charges* for the service may, subject to any agreement to the contrary, include a reasonable capital contribution towards the cost of *augmentation* of the *distribution system* to the extent necessary to provide the service and to any further extent that a prudent service provider would consider necessary to

provide efficiently for forecast
load growth;

(5) despite subparagraphs (1) to (4) if
augmentation of the distribution system is necessary in order to provide, on the application of a *real estate developer*, *connection services* for premises comprised in a *real estate development*, *connection charges* for the services may, subject to any agreement to the contrary, include a reasonable capital contribution towards the cost of *augmentation of the distribution system* to the extent necessary to provide the services and to any further extent that a prudent service provider would consider necessary to provide efficiently for forecast *load* growth;

(6) however, a capital contribution may only be required in the circumstances described in subparagraphs (1) to (5) if provision for the costs has not already been made through existing *distribution use of system* charges or a tariff applicable to the *connection*.

(d) If:

(1) a *connection asset* ceases, within 7 years after its construction or installation, to be dedicated to the exclusive use of the *retail customer* occupying particular premises; and

(2) the *retail customer* is entitled, in accordance with the *connection charge guidelines*, to a refund of *connection charges*;

the *Distribution Network Service Provider* must make the refund, and may recover the amount of the refund, by way of a *connection charge*, from the new users of the asset.

- (e) For the purposes of paragraph (d), a person is taken to be a new user of a *connection asset* if the asset comes to be used to provide a *connection* to that person's premises
- (f) For the purposes of this clause capital contribution includes a prepayment or financial guarantee.

5A.E.2 Itemised statement of connection charges

A *connection offer* must be accompanied by a schedule containing an itemised statement of *connection costs* including (so far as relevant) the following:

- (a) applicable *connection charges*;
- (b) cost of *network extension*;
- (c) details of upstream *augmentation* required to provide the *connection service* and associated cost;
- (d) any other incidental costs and the basis of their calculation including, if relevant, costs of minor deviation from the standard specification for a *basic connection service* or a *standard connection service* (as the case may require).

5A.E.3 Connection charge guidelines

- (a) The *AER* must develop and *publish* guidelines (***connection charge guidelines***) for the development of *connection policies* by *Distribution Network Service Providers*.
- (b) The purpose of the guidelines is to ensure that *connection charges*:
 - (1) are reasonable, taking into account the efficient costs of providing the *connection services* arising from the *new connection* or *connection alteration* and the revenue a prudent operator in the circumstances of the relevant *Distribution Network Service Provider* would require to provide those *connection services*; and
 - (2) provide, without undue administrative cost, a user-pays signal to reflect the efficient cost of providing the *connection services*; and
 - (3) limit cross-subsidisation of *connection costs* between different classes (or subclasses) of *retail customer*; and
 - (4) if the *connection services* are *contestable* – are competitively neutral.
- (c) The guidelines must:
 - (1) describe the method for determining charges for *premises connection assets*; and

- (2) describe the circumstances (or how to determine the circumstances) under which a *Distribution Network Service Provider* may receive a capital contribution, prepayment or financial guarantee from a *retail customer* or *real estate developer* for the provision of a *connection service*; and
- (3) describe how the amount of any such capital contribution, prepayment or financial guarantee is to be determined; and
- (4) establish principles for fixing a threshold (based on capacity or any other measure the *AER* thinks fit) below which *retail customers* (not being a non-registered *embedded generator* or a *real estate developer*) are exempt from any requirement to pay *connection charges* (or to give consideration in the form of a capital contribution, prepayment or financial guarantee) for an *augmentation* (other than an *extension*) to the *distribution network* necessary to make the *connection*; and
- (5) describe the methods for calculating the *augmentation* component for the *connection assets* and, if the *augmentation* consists of or includes an *extension*, the *extension* component of a *connection charge*; and

(6) describe the method for calculating:

(i) the amount of a refund of *connection charges* for a *connection asset* when an *extension* asset originally installed to *connect* the premises of a single *retail customer* is used, within 7 years of its installation, to *connect* other premises and thus comes to be used for the benefit of 2 or more *retail customers*; and

(ii) the threshold below which the refund is not payable; and

(7) describe the treatment of *augmentation* assets.

(d) The principles for establishing an exemption under paragraph (c)(4) must ensure that the exemption only operates in the following circumstances:

(1) the *connection* is a *low voltage connection*; and

(2) the *connection* would not normally require *augmentation* of the *network* beyond the *extension* to the *distribution network* necessary to make the *connection*; and

- (3) the *connection* is not expected to increase the *load* on the *distribution network* beyond a level the *Distribution Network Service Provider* could reasonably be expected to cope with in the ordinary course of managing the *distribution network*.
- (e) In developing the guidelines, the *AER* must have regard to:
- (1) historical and geographical differences between *networks*; and
 - (2) inter-jurisdictional differences related to regulatory control mechanisms, classification of services and other relevant matters; and
 - (3) the circumstances in which *connection services* may be provided by persons other than *Distribution Network Service Providers* (and are therefore *contestable*).
- (f) In developing guidelines dealing with the method for calculating the amount of a refund of *connection charges* paid before a *connection asset* becomes a shared asset, the *AER* must have regard to:
- (1) the *Distribution Network Service Provider's* obligation to make the refund; and

- (2) future projections of *distribution network* expansion and usage and any consequent effect on the *Distribution Network Service Provider's* capacity to finance the acquisition of *augmentation* assets out of increased revenue; and
 - (3) the fact that the *Distribution Network Service Provider's* obligation to make the refund will expire after 7 years.
- (g) In developing guidelines under this clause, the *AER* must act in accordance with the *distribution consultation procedures*.

5A.E.4 Payment of connection charges

- (a) *Connection charges* payable in respect of a *connection service* must be paid to the *Distribution Network Service Provider* by the *retail customer's* retailer unless:
- (1) the *retailer* did not apply for the *connection service* and the *Distribution Network Service Provider* has notified the *retail customer* that the *customer* must pay the *connection charge* directly; or
 - (2) the *retail customer* asks to pay the *connection charge* directly and the *Distribution Network Service Provider* agrees; or

(3) the *Distribution Network Service Provider* and the *retailer* agree that the *Distribution Network Service Provider* is to recover the *connection charge* from the *retail customer*.

(b) If the *retail customer* pays, or is required to pay, a *connection charge* directly to a *Distribution Network Service Provider* under paragraph (a), the *Distribution Network Service Provider* must not recover that charge from the *retail customer's retailer*.

(c) The *Distribution Network Service Provider* must separately identify each *connection charge* on the statement or invoice to the *retailer*.

Note

Rule 25 of the *National Energy Retail Rules* requires the listing of *connection charges* that are passed through by a *retailer* to a retail customer in the customer's bill.

Part F—Formation and integration of connection contracts

Division 1—Offer and acceptance – basic and standard connection services

5A.F.1 Distribution Network Service Provider's response to application

(a) If the *connection service* sought by a *connection applicant* is a *basic connection service* or a *standard connection service* (and the applicant does not elect to apply for a negotiated *connection contract*), the *Distribution*

Network Service Provider must make a *connection offer* to the applicant within:

- (1) 10 *business days* after receiving a properly completed application for the service and the additional information (if any) reasonably required under clause 5A.D.3(e);
or
 - (2) some other period agreed between the *Distribution Network Service Provider* and the *connection applicant*.
- (b) The *connection offer* must be in accordance with the relevant *model standing offer* and must include:
- (1) the date of the offer; and
 - (2) details of the *connection service* to be provided; and
 - (3) a statement of the *connection charges* payable by the *connection applicant*.

5A.F.2 Acceptance of connection offer

- (a) A *connection offer* to provide a *basic connection service* or *standard connection service* remains open for acceptance for 45 *business days* from the date of the offer and, if not accepted within that period, lapses unless the period for acceptance is extended by agreement between the *connection applicant* and the *Distribution Network Service Provider*.
- (b) This clause does not apply if the *connection application* is for an expedited *connection*.

5A.F.3 Offer and acceptance—application for expedited connection

(a) If:

- (1) a *connection applicant* requests an expedited *connection* in the *connection application*; and
- (2) the *Distribution Network Service Provider* is satisfied that the *connection application* is for a *basic connection service* or *standard connection service* that falls within the terms of the relevant *model standing offer*; and
- (3) the *connection applicant* indicates in the *connection application* that a *connection offer* in terms of the relevant *model standing offer* would be acceptable to the applicant,

the *Distribution Network Service Provider* is taken to have made, and the *connection applicant* is taken to have accepted, a *connection offer* in terms of the relevant *model standing offer* on the date the *Distribution Network Service Provider* receives the application.

- (b) If a *connection applicant* applies for an expedited *connection* but the *Distribution Network Service Provider* does not agree that an offer in terms of any *model standing offer* is appropriate, the *Distribution Network Service Provider* must notify the *connection applicant* accordingly and draw the applicant's attention to the provisions of

these *Rules* dealing with negotiated *connection*.

Division 2—Offer and acceptance – negotiated connection

5A.F.4 Negotiated connection offer

- (a) A *Distribution Network Service Provider* must use its best endeavours to make a negotiated *connection offer* to the *connection applicant* within 65 *business days* after the date of the application for *connection* (but the *time* taken by the applicant to provide information reasonably sought by the *Distribution Network Service Provider* under clause 5A.C.3(a)(2) will not be counted).
- (b) A negotiated *connection offer*:
 - (1) must be in the form of an offer to enter into a contract in specified terms; and
 - (2) must comply with the minimum requirements set out in Schedule 5A.1.
- (c) If the *connection applicant* elected to extend the negotiations to *supply services*, the *connection offer* must contain terms and conditions relating to the *supply services*.
- (d) A negotiated *connection offer* must not include a *connection charge* that is inconsistent with the *Distribution Network Service Provider's connection policy*.

- (e) A negotiated *connection offer* remains open for acceptance for 20 *business days* from the date of the offer and then lapses unless the period for acceptance is extended by agreement between the *Distribution Network Service Provider* and the *connection applicant*.

Division 3—Formation of contract

5A.F.5 Acceptance of connection offer

- (a) If a *connection offer* to provide a *connection service* is accepted, the terms and conditions of the *connection offer*:
- (1) become terms and conditions of a *connection contract* formed between the *Distribution Network Service Provider* and the *connection applicant*; and
 - (2) subject to rule 5A.F.6, are enforceable accordingly.
- (b) The *Distribution Network Service Provider* must, at the request of a *connection applicant*, provide a copy of:
- (1) the contract formed under paragraph (a); or
 - (2) if that contract has been integrated with, and forms part of, a *customer connection contract* arising under the *NERL*—the integrated contract.

Division 4—Contractual performance

5A.F.6 Carrying out connection work

- (a) A *Distribution Network Service Provider* must use its best endeavours to ensure that *connection* work is carried out within the applicable *time* limits fixed by the relevant provisions of the *connection contract*.
- (b) However, a *Distribution Network Service Provider* is not obliged to commence or continue with *connection* work if the *connection applicant* fails to comply with conditions that are to be complied with by the *connection applicant*.

Examples

The *connection applicant* fails to pay *connection charges*.

The *connection applicant* fails to comply with technical or safety requirements.

The *connection applicant* fails to complete work that is to be carried out on the *connection applicant's* premises.

The *connection applicant* fails to comply with the *Distribution Network Service Provider's* reasonable request to allow the *Distribution Network Service Provider* safe and unhindered access to the applicant's premises.

5A.F.7 Retailer required for energisation where new connection

A *Distribution Network Service Provider* is not required to *energise* a *new connection* unless a request to *energise* the *new connection* is submitted by a *retailer*, or the *Distribution Network Service Provider* is otherwise satisfied that there is a relevant

contract with a *retailer* in relation to the premises.

Part G—Dispute resolution between Distribution Network Service Providers and customers

5A.G.1 Relevant disputes

(a) In this Part:

customer means:

- (a) a *retail customer*; or
- (b) a *real estate developer*.

relevant dispute means:

- (1) a dispute between a Distribution Network Service Provider and a customer about:
 - (i) the terms and conditions on which a *basic connection service* or a *standard connection service* is to be provided; or
 - (ii) the proposed or actual terms and conditions of a negotiated *connection contract*; or
- (2) a dispute between a *Distribution Network Service Provider* and a *customer* about *connection charges*.

- (b) A relevant dispute is an access dispute for the purposes of section 2A of the Law.

5A.G.2 Determination of dispute

- (a) In determining a relevant dispute, the *AER* must (so far as applicable) give effect to:
- (1) the relevant *connection policy*;
and
 - (2) a relevant *model standing offer* to provide a basic or *standard connection service*; and
 - (3) this Chapter and any other *applicable regulatory instrument*.
- (b) In determining a relevant dispute, the *AER* may also:
- (1) have regard to other matters the *AER* considers relevant; and
 - (2) hear evidence or receive submissions from the *Distribution Network Service Provider* and the *customer*; and
 - (3) if the dispute relates to a negotiated *connection contract* – have regard to the negotiation framework set out in clause 5A.C.3.

5A.G.3 Termination of proceedings

- (a) If the *AER* considers that a relevant dispute could be effectively resolved by some means other than an access determination, the *AER* may give the parties to the *dispute notice* of the

alternative means of resolving the dispute.

Example

The *AER* might give such a notice if of the opinion that a particular dispute could be dealt with more efficiently, and with less expense, by a jurisdictional ombudsman.

- (b) The giving of such a notice is a specified dispute termination circumstance for the purposes of section 131(3) of the Law.

Note

It follows that the *AER* may exercise its power to terminate the dispute without making an access determination (See section 131(1)(d) of the Law).

SCHEDULE 5A.1—Minimum content requirements for connection contract

Part A—Connection offer not involving embedded generation

- (a) A *connection offer* must contain:
- (1) a provision stating that a *connection contract* will be formed, and will come into operation, on acceptance of the *connection offer*; and
 - (2) details of the *connection point*, the maximum capacity of the *connection*, and the *connection assets* required at the *connection point*; and

- (3) details of the *premises connection assets* and additional equipment to be installed on the premises and responsibility for undertaking the work; and
- (4) details of any *distribution network extension* or other *augmentation* required for the purposes of the *connection*; and
- (5) an undertaking to complete the work required to establish the *connection* within a specified *time frame*; and
- (6) a requirement that the *retail customer* have appropriate *metering installed*; and
- (7) the relevant technical and safety obligations to be met by the *retail customer* relating to the installation; and
- (8) the *retail customer's* obligation to allow access to the premises by the *Distribution Network Service Provider's* agents, contractors and employees; and
- (9) the *retail customer's* obligation to accommodate on its premises, and protect from harm, any equipment necessary for the *connection*; and
- (10) details of the *retail customer's* monetary obligations including billing arrangements and any security to be provided by the *customer*; and

- (11) details of the *Distribution Network Service Provider's* monetary obligations (if any) to the *retail customer*; and
 - (12) a provision requiring the *Distribution Network Service Provider* to provide information about the *connection* to the *retail customer*; and
 - (13) provision for amendment of the *connection contract* by agreement between the *Distribution Network Service Provider* and the *retail customer*.
- (b) A *connection offer* that relates to *supply services* must also deal with:
- (1) the *Distribution Network Service Provider's* power to interrupt or reduce the *supply* of electricity to the *connection point*; and
 - (2) warranties and limitations on the *Distribution Network Service Provider's* liability; and
 - (3) *disconnection* and reconnection; and
 - (4) reporting and correction of faults; and
 - (5) dispute resolution; and
 - (6) ongoing *customer* obligations; and
 - (7) termination of the *connection contract*.

Part B—Connection offer involving embedded generation

- (a) A *connection offer* to a person who operates, or proposes to operate, an *embedded generating unit* (the **embedded generator**) must contain:
- (1) a provision stating that a *connection contract* will be formed, and will come into operation, on acceptance of the *connection offer*; and
 - (2) details of the *connection point*, the maximum capacity of the *connection* to import and export electricity, and the *embedded generator's* installation required at the *connection point*; and
 - (3) details of the *premises connection assets* and additional equipment to be installed on the premises and responsibility for undertaking the work; and
 - (4) details of any *distribution network extension* or other *augmentation* required for the purposes of the *connection*; and
 - (5) an undertaking to complete the work required to establish the *connection* within a specified *time frame*; and
 - (6) a requirement that the *embedded generator* have appropriate *metering installed*; and

- (7) the relevant technical and safety obligations to be met by the *embedded generator* relating to the installation; and
- (8) the *embedded generator's* obligation to allow access to the premises by the *Distribution Network Service Provider's* agents, contractors and employees; and
- (9) the *embedded generator's* obligation to accommodate on its premises, and protect from harm, any equipment necessary for the *connection*; and
- (10) details of the *embedded generator's* monetary obligations including billing arrangements and any security to be provided by the *embedded generator*; and
- (11) details of the *Distribution Network Service Provider's* monetary obligations (if any) to the *embedded generator*; and
- (12) a provision requiring the *Distribution Network Service Provider* to provide information about the *connection* to the *embedded generator*; and
- (13) provision for amendment of the *connection contract* by agreement between the *Distribution Network Service Provider* and the *embedded generator*.

- (b) A *connection contract* that relates to *supply services* must also deal with:
- (1) the *Distribution Network Service Provider's* power to interrupt or reduce the *supply* of electricity to the *connection point*; and
 - (2) warranties and limitations on the *Distribution Network Service Provider's* liability; and
 - (3) *disconnection* and reconnection; and
 - (4) reporting and correction of faults; and
 - (5) dispute resolution; and
 - (6) ongoing obligations of the *Distribution Network Service Provider* and the *embedded generator*; and
 - (7) termination of the *connection contract*."

5 Clause 6.1.2—Structure of Chapter 6

5.1 After clause 6.1.2(b)(4) of the National Electricity Rules **insert**—

"(4A) Part DA deals with the preparation of, requirements for and approval of, *connection policies*;"

6 Clause 6.2.1—Classification of distribution services

6.1 At the foot of clause 6.2.1(a) of the National Electricity Rules **insert**—

"Note

If the AER decides against classifying a *distribution service*, the service is, subject to Chapter 5A, not regulated under the *Rules*."

7 Clause 6.2.2—Classification of direct control services as standard control services or alternative control services

7.1 In clause 6.2.2(c)(5) of the National Electricity Rules, for "customer" **substitute** "person".

8 New Part DA inserted in Chapter 6

8.1 After Part D of Chapter 6 of the National Electricity Rules **insert**—

"Part DA—Connection policies

6.7A Connection policy requirements

This *Rule* deals with the preparation of, requirements for and approval of *connection policies*.

6.7A.1 Preparation of, and requirements for, connection policy

- (a) A *Distribution Network Service Provider* must prepare a document (its proposed *connection policy*) setting out the circumstances in which it may require a *retail customer* or *real estate developer* to pay a *connection charge*, for the provision of a *connection service* under Chapter 5A.
- (b) The proposed *connection policy*:
 - (1) must be consistent with:
 - (i) the *connection charge principles*; and
 - (ii) the *connection charge guidelines*; and

(2) must specify:

- (i) the categories of persons that may be required to pay a *connection charge* and the circumstances in which such a requirement may be imposed; and
- (ii) the aspects of a *connection service* for which a *connection charge* may be made; and

Example

The *Distribution Network Service Provider* might (for example) make separate *connection charges* for the provision of a *connection asset* and for making a necessary *extension to*, or other *augmentation of*, the *distribution network*.

- (iii) the basis on which *connection charges* are determined; and
- (iv) the manner in which *connection charges* are to be paid (or equivalent consideration is to be given); and

Examples

The payment (or equivalent consideration) might take the form of a capital contribution, prepayment or financial guarantee.

- (v) a threshold (based on capacity or any other measure identified in the *connection charge*

guidelines) below which a *retail customer* (not being a non-registered *embedded generator* or a *real estate developer*) will not be liable for a *connection charge* for an *augmentation* other than an *extension*."

9 Clause 6.8.2—Submission of regulatory proposal

9.1 After clause 6.8.2(c)(5) of the National Electricity Rules **insert**—

"(5A) the proposed *connection policy*;"

10 Clause 6.12.1—Constituent decisions

10.1 For clause 6.12.1(17) of the National Electricity Rules **substitute**—

"(17) a decision on the policies and procedures for assigning *retail customers* to *tariff classes*, or reassigning *retail customers* from one *tariff class* to another (including any applicable restrictions);"

10.2 After clause 6.12.1(20) of the National Electricity Rules **insert**—

"(21) a decision on the *connection policy* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *connection policy* as proposed by the *Distribution Network Service Provider*, some variant of it, or a policy substituted by the *AER*)."

11 Clause 6.12.3—Extent of AER's discretion in making distribution determinations

11.1 After clause 6.12.3(h) of the National Electricity Rules **insert**—

- "(i) The *AER* must approve the proposed *connection policy* if the *AER* is satisfied that it adequately complies with the requirements of Part DA.
- (j) If the *AER* refuses to approve the proposed *connection policy*, the approved amended *connection policy* must be:
 - (1) determined on the basis of the current proposed *connection policy*; and
 - (2) amended from that basis only to the extent necessary to *enable* it to be approved in accordance with the *Rules*.
- (k) The *AER* must approve a *Distribution Network Service Provider's* proposed *tariff structure statement* unless the *AER* is reasonably satisfied that the proposed *tariff structure statement* does not comply with the *pricing principles for direct control services* or other applicable requirements of the *Rules*.
- (l) If, in making a distribution determination in relation to a *Distribution Network Service Provider*, the *AER* refuses to approve the *Distribution Network Service Provider's* proposed *tariff structure statement*, the *AER* must include in that distribution determination an amended *tariff structure statement* which is:

- (1) determined on the basis of the *Distribution Network Service Provider's proposed tariff structure statement*; and
- (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*."

12 Clause 6.18.3—Tariff classes

- 12.1 In clause 6.18.3(c) of the National Electricity Rules, for "customers" (where twice occurring) **substitute** "*retail customers*".
- 12.2 In clause 6.18.3(d)(1) of the National Electricity Rules, for "customers" **substitute** "*retail customers*".

13 Clause 6.18.4—Principles governing assignment or re-assignment of retail customers to tariff classes and assessment and review of basis of charging

- 13.1 In the heading to clause 6.18.4 of the National Electricity Rules, for "**customers**" substitute "**retail customers**".
- 13.2 In clause 6.18.4(a) of the National Electricity Rules, for "customers" (wherever occurring) **substitute** "*retail customers*".

14 Clause 6.18.6—Side constraints on tariffs for standard control services

- 14.1 In clause 6.18.6(d)(2) of the National Electricity Rules, for "customers" **substitute** "*retail customers*".

15 Clause 6.18.7—Recovery of designated pricing proposal charges

- 15.1 In clause 6.18.7(a) of the National Electricity Rules, for "customers" **substitute** "*retail customers*".

15.2 In clause 6.18.7(b) of the National Electricity Rules, for "customers" **substitute** "*retail customers*".

15.3 In clause 6.18.7(c)(2) of the National Electricity Rules, for "customers" **substitute** "*retail customers*".

16 Clause 6.19.2—Confidentiality of distribution network pricing information

16.1 In clause 6.19.2(b) of the National Electricity Rules, for "customer" **substitute** "*retail customer*".

17 Insertion of definitions in Chapter 10

17.1 Insert the following definitions in alphabetical order in Chapter 10 of the National Electricity Rules—

"basic connection service

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

basic micro EG connection service

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

connection alteration

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

connection application

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

connection charge

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

connection charge guidelines

Has the meaning given in clause 5A.D.3.

connection charge principles

Has the meaning given in clause 5A.E.1.

connection contract

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

connection offer

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

connection policy

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

customer connection service

Has (in the context of Chapter 6B) the meaning given in clause 6B.A1.2.

energy laws

Has the meaning given in section 2(1) of the NERL

energy ombudsman

Has the same meaning as in the NERL.

enquiry

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

micro EG connection

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

micro embedded generator

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

model standing offer

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

new connection

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

premises connection assets

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

real estate developer

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

real estate development

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1

retail customer

Has the same meaning as in the *National Electricity Law*.

Otherwise, a person to whom electricity is sold by a *retailer*, and supplied in respect of *connection points*, for the premises of the person, and includes a person (or a person who is of a class of persons) prescribed by these *Rules* for the purposes of this definition.

Note:

In the context of Chapter 5A, the above definition has been supplemented by a definition specifically applicable to that Chapter. See clause 5A.A.1.

retailer

Has the same meaning as in the *National Electricity Law*.

Otherwise, a *Customer* who engages in the activity of selling electricity to end users.

standard connection service

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1.

supply service

Has (in the context of Chapter 5A) the meaning given in clause 5A.A.1".

- 17.2 In Chapter 10 of the National Electricity Rules, at the foot of the definition of ***confidential information, insert—***

"Note:

In the context of Chapter 5A, the above definition has been displaced by a definition specifically applicable to that Chapter. See clause 5A.A.1".

- 17.3 In Chapter 10 of the National Electricity Rules, at the foot of the definition of ***connect, connected, connection, insert—***

"Note:

In the context of Chapter 5A, the above definition has been displaced by a definition specifically applicable to that Chapter. See clause 5A.A.1".

- 17.4 In Chapter 10 of the National Electricity Rules, at the foot of the definition of ***connection service, insert—***

"Note:

In the context of Chapter 5A, the above definition has been displaced by a definition specifically applicable to that Chapter. See clause 5A.A.1".

17.5 In Chapter 10 of the National Electricity Rules, at the foot of the definition of *contestable*, **insert—**

"Note:

In the context of Chapter 5A, the above definition has been displaced by a definition specifically applicable to that Chapter. See clause 5A.A.1."

17.6 In Chapter 10 of the National Electricity Rules, at the foot of the definition of *Embedded Generator*, **insert—**

"Note:

In the context of Chapter 5A, the above definition has been displaced by a definition specifically applicable to that Chapter. See clause 5A.A.1."

Schedule 3—Transitional provisions for retail customer connection arrangements

Section 16T

Part 1—Preliminary

1 Definitions

(1) In this Schedule—

applicable regulatory control period, for a distribution company, means the regulatory control period imposed under the next distribution determination which applies to the distribution company;

distribution company means any of the following companies—

- (a) Citipower Pty Ltd (ACN 064 651 056);
- (b) Jemena Electricity Networks (Vic) Ltd (ACN 064 651 083);
- (c) Powercor Australia Ltd (ACN 064 651 109);
- (d) AusNet Electricity Services Pty Ltd (ACN 064 651 118);
- (e) United Energy Distribution Pty Limited (ACN 064 651 029);

next distribution determination, for a distribution company, means the first distribution determination made after the relevant distribution determination which applies to the distribution company;

relevant distribution determination, for a distribution company, means the 2016-2020 distribution determination made by the AER under the National Electricity Rules that applies to the

distribution company (as amended or substituted from time to time);

relevant provisions means Chapter 5A and Part DA of Chapter 6 of the National Electricity Rules;

specified date means a date specified by the Minister under clause 2(1);

transition period, for a distribution company, means the period—

- (a) beginning on the day on which section 6 of the **National Electricity (Victoria) Further Amendment Act 2016** comes into operation; and
 - (b) ending on the day on which the applicable regulatory control period for that distribution company commences.
- (2) Words and expressions used in the National Electricity Rules have the same respective meanings in this Schedule as they have in those Rules.

2 Minister may specify date for purposes of certain clauses

- (1) The Minister, by notice published in the Government Gazette, may specify a date for the purposes of clause 4, 6, 7 or 8.
- (2) To avoid doubt, the Minister may specify more than one date under subclause (1) for the purposes of clause 4, 6, 7 or 8, including a date that replaces an earlier specified date.

3 Transitional operation of relevant provisions

- (1) During the transition period, the relevant provisions operate subject to the exclusions, qualifications and modifications prescribed by this Schedule.

- (2) However, the relevant provisions operate without the exclusions, qualifications and modifications prescribed by this Schedule insofar as they relate to a period beyond the transition period.

Example

A distribution company which submits a regulatory proposal for the regulatory control period that follows the distribution company's transition period is bound by the relevant provisions (without exclusion, qualification or modification) in relation to the regulatory proposal even though the proposal is submitted during the transition period.

- (3) A transaction commenced by or with a distribution company during the transition period may be continued and completed after the transition period without regard to changes to the rules governing the transaction that take effect at the end of the transition period.

4 Extended meaning of some terms

During the transition period—

- (a) a basic connection service includes not only a connection service for which a model standing offer has been approved by the AER (see paragraph (c) of the definition in clause 5A.A.1 of the National Electricity Rules) but also one for which the AER's approval of a model standing offer is not required; and
- (b) a standard connection service includes not only a connection service for which a model standing offer has been approved by the AER (see the definition in clause 5A.A.1 of the National Electricity Rules) but also one for which the AER's approval of a model standing offer is not required; and

- (c) a model standing offer includes a document prepared and published by a distribution company, without the AER's approval, as a model standing offer to have effect during the transition period (but not beyond the specified date).

Part 2—Exclusions, qualifications and modifications

5 Connection policy

A document, prepared by a distribution company and published on the distribution company's Internet site, will (although not approved by the AER) be taken to be the distribution company's connection policy if—

- (a) it sets out the circumstances in which connection charges are payable and the basis for determining the amount of such charges; and
- (b) it is consistent with—
- (i) the connection charge principles and the connection charge guidelines; and
 - (ii) legislation of Victoria that regulates electricity in Victoria, or any instrument made or issued under or for the purposes of that legislation; and
 - (iii) the relevant distribution determination for the distribution company (if applicable).

6 Model standing offer (basic connection services)

- (1) A document, prepared by a distribution company and published on the distribution company's Internet site, will (although not approved by the AER) be regarded as a model standing offer to provide basic connection services until the

specified date if it complies with the requirements of clause 5A.B.2(b) of the National Electricity Rules as to its terms and conditions.

- (2) If, before the specified date, the AER approves a model standing offer for the same basic connection services, the approved model standing offer supersedes the former model standing offer.
- (3) A distribution company's obligation to have a model standing offer to provide basic connection services (clause 5A.B.1 of the National Electricity Rules) operates during the transition period but the AER's approval of the standing offer is not required until the specified date.

7 Model standing offer (standard connection services)

- (1) A document, prepared by a distribution company and published on the distribution company's Internet site, will (although not approved by the AER) be regarded as a model standing offer to provide standard connection services until the specified date if it complies with the requirements of clause 5A.B.4(c) of the National Electricity Rules as to its terms and conditions.
- (2) If, before the specified date, the AER approves a model standing offer for the same standard connection services, the approved model standing offer supersedes the former model standing offer.
- (3) A distribution company may submit for the AER's approval a proposed model standing offer to provide standard connection services (clause 5A.B.4 of the National Electricity Rules) before the specified date, but the AER's approval of the model standing offer is not required until the specified date.

8 Amendment of standing offers

Until the specified date, a distribution company may amend a standing offer to provide basic connection services or standard connection services by publishing the amendments and the amended text on its Internet site. (This clause applies until the specified date to the exclusion of clause 5A.B.6 of the National Electricity Rules).

Part 3—General provisions

9 Connection charges

A distribution company must comply with its connection policy and any other applicable regulatory obligation or requirement when calculating or imposing a connection charge for the transition period.

10 References

A reference to any of the relevant provisions in a legislative or other instrument will be construed, during the transition period, as a reference to the provision as modified by this Schedule.

11 Authorisation of certain relevant distribution determinations

- (1) This clause applies if—
 - (a) the AER made a relevant distribution determination under the Rules on or after section 6 of the **National Electricity (Victoria) Further Amendment Act 2016** was enacted, but before the commencement of that section; and
 - (b) the AER made that determination as if the Rules had been amended by Schedule 2.

National Electricity (Victoria) Act 2005
No. 8 of 2005
Schedule 3—Transitional provisions for retail customer connection
arrangements

- (2) For the purposes of the National Electricity (Victoria) Law and the Rules, the relevant distribution determination (to the extent it has been made as if the Rules under which the determination was made were the Rules as amended by Schedule 2)—
- (a) is taken to be authorised to have been made under the Rules; and
 - (b) has effect from that commencement subject to that Law or Rules so applying.

Schedule 4—Modifications for wholesale electricity markets and network service providers

Sch. 4
inserted by
No. 1/2017
s. 18.

Section 16U

1 Definitions

1.1 Section 2 of the NEL applies as a law of Victoria
as if—

- (a) before "In this Law" there were inserted
"(1)"; and
- (b) the following definitions were inserted in it
(in the appropriate alphabetical place)—

"*civil penalty* means—

- (a) in the case of a breach of a civil
penalty provision (other than a
rebidding civil penalty provision)
by—

- (i) a natural person—

- (A) an amount not
exceeding \$20 000; and

- (B) an amount not
exceeding \$2 000 for
every day during which
the breach continues; or

- (ii) a body corporate—

- (A) an amount not
exceeding \$100 000;
and

- (B) an amount not
exceeding \$10 000 for
every day during which
the breach continues; or

(b) in the case of a breach of a rebidding civil penalty provision by any person—

- (i) an amount not exceeding \$1 000 000; and
- (ii) an amount not exceeding \$50 000 for every day during which the breach continues;

civil penalty provision—see section 2AA(1);

conduct provision—see section 2AA(2);

connection service means a connection service within the meaning of the Rules;

energy ombudsman means a person administering a customer dispute resolution scheme approved by the Essential Services Commission that is referred to in section 28 of the *Electricity Industry Act 2000* of Victoria;

National Gas Law means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia;

National Gas Rules has the same meaning as in the National Gas Law;

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

retail customer means a person to whom electricity is sold by a retailer, and supplied in respect of connection points, for the premises of the person, and includes a person (or a person who

is of a class of persons) prescribed
by the Rules for the purposes of this
definition;

retailer has the same meaning as in the
Electricity Industry Act 2000 of
Victoria;

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

- (c) for the definition of **end user** there were
substituted—

"**end user** means a person who acquires
electricity for consumption purposes,
and includes a retail customer;"; and

- (d) the definitions of **recognised energy
industry ombudsman** and **relevant
participant** were omitted; and

- (e) at the end of the section there were
inserted—

"(2) A reference in this Law to an end user
includes a reference to a prospective
end user."

2 Section 2A substituted and new section 2AA inserted

- 2.1 The NEL applies as a law of Victoria as if for
section 2A there were substituted—

"2A—Meaning of access dispute

An access dispute is—

- (a) a dispute between a network
service user (or prospective
network service user) and a

network service provider about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies; or

- (b) without limiting paragraph (a)—
a dispute between a retail customer (or other person specified by the Rules) and a regulated distribution system operator about an aspect of access to a connection service specified by the Rules to be an aspect to which Part 10 applies.

2AA—Meaning of civil penalty provision and conduct provision

- (1) A civil penalty provision is—
- (a) a provision of this Law specified in the Table at the foot of this subsection; or
- (b) a rebidding civil penalty provision; or
- (c) a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a civil penalty provision.

Table

Provision	Section heading
Section 11(1), (2), (3) and (4)	Electricity market activities in this jurisdiction
Section 14A	Regulated transmission system operator must comply with transmission determination

National Electricity (Victoria) Act 2005
No. 8 of 2005
Schedule 4—Modifications for wholesale electricity markets and network
service providers

Provision	Section heading
Section 14B	Regulated distribution system operator must comply with distribution determination
Section 28N	Compliance with regulatory information notice that is served
Section 28O	Compliance with general regulatory information order
Section 50D(1)	Network agreement
Section 50F(1), (4) and (5)	Augmentation
Section 53C(3) and (4)	Compliance with market information instrument
Section 136	Compliance with access determination
Section 157(1)	Preventing or hindering access

- (2) A conduct provision is a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a conduct provision."

3 New section 10A inserted

- 3.1 The NEL applies as a law of Victoria as if after section 10 there were inserted—

"10A—Corporations Act displacement

- (1) The National Electricity (Victoria) Regulations may declare a relevant provision to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the

Commonwealth in relation to the provisions of Chapter 5 of that Act.

(2) In this section—

relevant provision means a provision of the Rules that relates to any of the following:

- (a) the application by AEMO of money in any security deposit fund;
- (b) the functions of AEMO under procedures relating to defaults by retailers."

4 Electricity market activities in this jurisdiction

4.1 Section 11 of the NEL applies as a law of Victoria as if—

- (a) for the reference to "section 58" in the note at the foot of section 11(1) there were substituted "section 2AA(1)"; and
- (b) for the reference to "section 58" in the note at the foot of section 11(2) there were substituted "section 2AA(1)"; and
- (c) for the reference to "section 58" in the note at the foot of section 11(3) there were substituted "section 2AA(1)"; and
- (d) for the reference to "section 58" in the note at the foot of section 11(4) there were substituted "section 2AA(1)".

5 Regulated transmission system operator must comply with transmission determination

5.1 Section 14A of the NEL applies as a law of Victoria as if for the reference to "section 58" in the note at the foot of that section there were substituted "section 2AA(1)".

6 Regulated distribution system operator must comply with distribution determination

6.1 Section 14B of the NEL applies as a law of Victoria as if for the reference to "section 58" in the note at the foot of that section there were substituted "section 2AA(1)".

7 Functions and powers of AER

7.1 Section 15(1)(c)(i) of the NEL applies as a law of Victoria as if for the words "relevant participants" in that paragraph there were substituted "persons".

8 Manner in which AER performs AER economic regulatory functions or powers

8.1 Section 16(2)(b) of the NEL applies as a law of Victoria as if after the word "economic" in that paragraph there were inserted "regulatory".

9 Compliance with regulatory information notice that is served

9.1 Section 28N of the NEL applies as a law of Victoria as if at the foot of that section there were inserted—

"Note—

This section is a civil penalty provision."

10 Compliance with general regulatory information order

10.1 Section 28O of the NEL applies as a law of Victoria as if at the foot of that section there were inserted—

"Note—

This section is a civil penalty provision."

11 Section 28ZD substituted

11.1 The NEL applies as a law of Victoria as if for section 28ZD there were substituted—

"28ZD—Use of information provided under a notice under section 28 or a regulatory information instrument

The AER may use information provided to it by a person in compliance with a notice under section 28 or a regulatory information instrument for any purposes connected with the performance or exercise of a function or power of the AER under—

- (a) this Law or the Rules; or
- (b) the National Gas Law or the National Gas Rules."

12 AER enforcement guidelines

12.1 Section 28ZF(1) of the NEL applies as a law of Victoria as if—

- (a) in paragraph (b), for the reference to "section 74." in that paragraph there were substituted "section 74; or"; and
- (b) after paragraph (b) there were inserted—
 - "(c) accepting an enforceable undertaking under section 59A."

13 New sections 28ZH and 28ZI inserted

13.1 The NEL applies as a law of Victoria as if after section 28ZG there were inserted—

"28ZH—Single documentation

- (1) This section applies if the AER is authorised to prepare a document under this Law or the Rules for a purpose and is also authorised to prepare a

document or documents under any of
the following:

- (a) the National Gas Law;
- (b) the National Gas Rules,

for the same or a similar, related or
corresponding purpose.

- (2) The AER may satisfy the requirements
of this Law and the Rules regarding the
document under this Law and the Rules
by preparing and making (and where
relevant publishing) a single document.

Note—

See also section 68A of the National
Gas Law.

28ZI—Use of information

- (1) The AER may use the information
obtained under this Law or the Rules
for a purpose connected with the
performance or exercise of a function
or power of the AER under any of the
following:
 - (a) the National Gas Law;
 - (b) the National Gas Rules.
- (2) The AER may use the information
obtained under any such Law or Rules
for a purpose connected with the
performance or exercise of a function
or power of the AER under this Law or
the Rules.

- (3) This section does not limit any other provision of this Law that provides for the use of information obtained under this Law or the Rules.

Note—

See also section 68B of the National Gas Law."

14 Network agreement

- 14.1 Section 50D(1) of the NEL applies as a law of Victoria as if at the foot of that section there were inserted—

"Note—

Subsection (1) is a civil penalty provision."

15 Augmentation

- 15.1 Section 50F of the NEL applies as a law of Victoria as if for the reference to "section 58" in the note at the foot of that section there were substituted "section 2AA(1)".

16 Compliance with market information instrument

- 16.1 Section 53C(3) of the NEL applies as a law of Victoria as if at the foot of that section there were inserted—

"Note—

Subsection (3) is a civil penalty provision."

- 16.2 Section 53C(4) of the NEL applies as a law of Victoria as if at the foot of that section there were inserted—

"Note—

Subsection (4) is a civil penalty provision."

17 Disclosure required or permitted by law etc.

- 17.1 Section 54C(2) of the NEL applies as a law of Victoria as if for paragraph (f) there were substituted—

"(f) if the information is reasonably required by an energy ombudsman to resolve a dispute between a Registered participant and a retail customer but the information is not end-use consumer information—the energy ombudsman;"

18 Omission of section 58

18.1 The NEL applies as a law of Victoria as if section 58 were omitted.

19 New Division 1A of Part 6 inserted

19.1 The NEL applies as a law of Victoria as if after Division 1 of Part 6 there were inserted—

"Division 1A—Enforceable undertakings

59A—Enforceable undertakings

- (1) The AER may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the AER has a function or power under this Law or the Rules.
- (2) A person may withdraw or vary the undertaking at any time, but only with the consent of the AER.
- (3) If the AER considers that the person who gave the undertaking has breached any of its terms, the AER may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:

- (a) an order directing the person to comply with that term of the undertaking;
- (b) an order directing the person to pay the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is attributable to the breach;
- (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate."

20 Time limit within which AER may institute proceedings

20.1 Section 60 of the NEL applies as a law of Victoria as if—

- (a) before "A proceeding" there were inserted "(1)"; and
- (b) for the words "relevant participant" in that section there were substituted "person"; and
- (c) at the end of that section there were inserted—

"(2) A person, other than the AER, may only institute a proceeding for a breach of a conduct provision by another person within 6 years after the date on which the breach occurred."

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

21.1 Section 61(1), (2), (3) and (4) of the NEL
applies as a law of Victoria as if for the words
"relevant participant" (wherever occurring in
those subsections) there were substituted "person".

22 New sections 61A and 61B inserted

22.1 The NEL applies as a law of Victoria as if after
section 61 there were inserted—

**"61A—Proceedings for declaration that a
person is in breach of a conduct provision**

- (1) The Court may make an order, on
application by a person other than the
AER, declaring that another person is
in breach of a conduct provision.
- (2) If the order declares a person to be
in breach of a conduct provision, the
order may include one or more of the
following:
 - (a) an order that the person in
breach cease, within a specified
period, the act, activity or practice
constituting the breach;
 - (b) an order that the person in breach
take such action, or adopt such
practice, as the Court requires
for remedying the breach or
preventing a recurrence of the
breach;
 - (c) an order that the person in breach
implement a specified program for
compliance with this Law, the
Regulations and the Rules;
 - (d) an order of a kind prescribed by
the Regulations.

- (3) If a person has engaged, or is engaging or proposing to engage in any conduct in breach of a conduct provision, the Court may, on application by another person (other than the AER), grant an injunction—
- (a) restraining the first mentioned person from engaging in the conduct; and
 - (b) if, in the Court's opinion, it is desirable to do so—requiring the first mentioned person to do something.
- (4) The power of the 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.

**61B—Actions for damages by persons for
breach of conduct provisions**

A person other than the AER who suffers loss or damage by conduct of another person that was done in breach of a conduct provision may recover the amount of the loss or damage by action against that other person in a court of competent jurisdiction."

**23 Matters for which there must be regard in
determining amount of civil penalty**

23.1 Section 64 of the NEL applies as a law of Victoria as if for the words "relevant participant" (wherever occurring in that section) there were substituted "person".

**24 Conduct in breach of more than one civil penalty
provision**

24.1 Section 67(1) and (2) of the NEL applies as a law of Victoria as if for the words "relevant participant" (wherever occurring in those subsections) there were substituted "person".

25 Section 68 substituted and new section 68A inserted

25.1 The NEL applies as a law of Victoria as if for section 68 there were substituted—

**"68—Persons involved in breach of civil
penalty provision or conduct provision**

(1) A person must not—

- (a) aid, abet, counsel or procure a breach of a civil penalty provision or conduct provision by another person; or
- (b) be in any way directly or indirectly knowingly concerned in, or a party to, a breach of a civil

penalty provision or conduct
provision by another person.

- (2) This Law applies to a person who breaches subsection (1) in relation to a civil penalty provision or conduct provision as if the person were a person who has breached the civil penalty provision or conduct provision.

68A—Attempt to breach civil penalty provision

A person who attempts to commit a breach of a civil penalty provision commits a breach of that provision."

26 Civil penalties payable to the Commonwealth

- 26.1 Section 69 of the NEL applies as a law of Victoria as if for the words "relevant participant" in that section there were substituted "person".

27 Power to serve a notice

- 27.1 Section 74(1) and (2) of the NEL applies as a law of Victoria as if for the words "relevant participant" (wherever occurring in those subsections) there were substituted "person".

28 Form of notice

- 28.1 Section 75(i) of the NEL applies as a law of Victoria as if for the words "relevant participant" in that paragraph there were substituted "person".

29 Withdrawal of notice

- 29.1 Section 79(1) and (2) of the NEL applies as a law of Victoria as if for the words "relevant participant" (wherever occurring in those subsections) there were substituted "person".

30 Payment expiates breach of civil penalty provision

30.1 Section 81 of the NEL applies as a law of Victoria as if for the words "relevant participant" in that section there were substituted "person".

31 Conduct in breach of more than one civil penalty provision

31.1 Section 83(1) and (2) of the NEL applies as a law of Victoria as if for the words "relevant participant" (wherever occurring in those subsections) there were substituted "person".

32 Section 86 substituted

32.1 The NEL applies as a law of Victoria as if for section 86 there were substituted—

"86—Corporations also in breach if officers and employees are in breach

If an officer or employee of a corporation commits an act in their capacity as officer or employee of the corporation that would, if that act were committed by the corporation, constitute a breach of a provision of this Law, the Regulations or the Rules, the corporation is taken to have contravened that provision."

33 AEMC may make Rules that are consequential to a Rule request

33.1 Section 91B of the NEL applies as a law of Victoria as if for subsection (1) of that section there were substituted—

"(1) Despite section 91(2), the AEMC may, having regard to a request to make a Rule under section 91(1), make a Rule under this Law or the National Gas Law that is necessary or consequential, or corresponds, to the Rule."

34 Immunity in relation to failure to supply electricity

34.1 Section 120 of the NEL applies as a law of Victoria as if—

(a) after subsection (2) of that section there were inserted—

"(2A) Subsection (2) does not apply in relation to an agreement between a retailer, or a regulated distribution system operator, and a person who is a small customer."; and

(b) in subsection (4) of that section the following definitions were inserted (in the appropriate alphabetical place)—

"business customer means a customer who is not a residential customer;

business premises means premises of a business customer, other than premises used solely or principally for personal, household or domestic use;

customer means a person—

(a) to whom electricity is sold for premises by a retailer; or

(b) who proposes to purchase electricity for premises from a retailer;

residential customer means a customer who purchases electricity principally for personal, household or domestic use at premises;

small customer means a customer—

- (a) who is a residential customer; or
- (b) who is a business customer who consumes less than the prescribed amount of electricity at business premises;".

35 Compliance with access determination

35.1 Section 136 of the NEL applies as a law of Victoria as if at the foot of that section there were inserted—

"Note—

This section is a civil penalty provision."

36 Preventing or hindering access

36.1 Section 157(1) of the NEL applies as a law of Victoria as if at the foot of that subsection there were inserted—

"Note—

Subsection (1) is a civil penalty provision."

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 24 February 2005

Legislative Council: 24 March 2005

The long title for the Bill for this Act was "to make provision for the operation of the national electricity market, to repeal the **National Electricity (Victoria) Act 1997**, to amend the **Electricity Industry Act 2000**, the **Electricity Industry (Residual Provisions) Act 1993** and the **Interpretation of Legislation Act 1984** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 24 February 2005

Legislative Council: 24 March 2005

Absolute majorities:

Legislative Assembly: 23 March 2005

Legislative Council: 20 April 2005

The **National Electricity (Victoria) Act 2005** was assented to on 27 April 2005 and came into operation on 1 July 2005: Special Gazette (No. 120) 28 June 2005 page 2.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **National Electricity (Victoria) Act 2005** by Acts and subordinate instruments.

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 44) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **National Electricity (Victoria) Act 2005**

National Electricity (Victoria) Amendment Act 2007, No. 66/2007 (as amended by No. 59/2008)

Assent Date: 11.12.07
Commencement Date: S. 6 on 12.12.07: s. 2(2); ss 3–4 on 1.1.08: Government Gazette 20.12.07 p. 3118; s. 5 on 1.1.09: s. 2(3)
Current State: All of Act in operation

Energy Legislation Amendment (Australian Energy Market Operator) Act 2009, No. 23/2009

Assent Date: 17.6.09
Commencement Date: Ss 3, 4 on 1.7.09: Special Gazette (No. 222) 30.6.09 p. 1
Current State: This information relates only to the provision/s amending the **National Electricity (Victoria) Act 2005**

Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009, No. 41/2009

Assent Date: 5.8.09
Commencement Date: S. 15 on 1.11.09: Government Gazette 29.10.09 p. 2729
Current State: This information relates only to the provision/s amending the **National Electricity (Victoria) Act 2005**

Energy and Resources Legislation Amendment Act 2010, No. 55/2010

Assent Date: 14.9.10
Commencement Date: Ss 38–44 on 14.10.10: Government Gazette 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **National Electricity (Victoria) Act 2005**

National Electricity (Victoria) Act 2005
No. 8 of 2005
Endnotes

**Personal Property Securities (Statute Law Revision and Implementation)
Act 2010, No. 74/2010**

Assent Date: 19.10.10
Commencement Date: S. 29 on 30.1.12: Special Gazette (No. 423) 21.12.11
p. 3
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

**Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Act 2011,
No. 64/2011**

Assent Date: 22.11.11
Commencement Date: Ss 23, 24 on 1.1.12: Special Gazette (No. 407)
13.12.11 p. 1
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 29) on 1.7.12: Special Gazette
(No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

Energy Legislation Amendment Act 2012, No. 51/2012

Assent Date: 18.9.12
Commencement Date: Ss 10, 11 on 27.9.12: Special Gazette (No. 324)
26.9.12 p. 1
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

**Energy Legislation Amendment (Flexible Pricing and Other Matters) Act 2013,
No. 11/2013**

Assent Date: 13.3.13
Commencement Date: Ss 11–19 on 18.4.13: Special Gazette (No. 141)
16.4.13 p. 2
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 33) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

National Electricity (Victoria) Act 2005
No. 8 of 2005
Endnotes

National Electricity (Victoria) Amendment Act 2015, No. 46/2015

Assent Date: 22.9.15
Commencement Date: Ss 3, 4 on 1.11.15: Special Gazette (No. 317)
27.10.15 p. 1
Current State: All of Act in operation

National Electricity (Victoria) Further Amendment Act 2016, No. 24/2016

Assent Date: 10.5.16
Commencement Date: Ss 3–6 on 1.7.16: Special Gazette (No. 194) 21.6.16
p. 1
Current State: All of Act in operation

Energy Legislation Amendment (Feed-in Tariffs and Improving Safety and Markets) Act 2017, No. 1/2017

Assent Date: 14.2.17
Commencement Date: Ss 16–18 on 1.1.18: s. 2(3)
Current State: This information relates only to the provision/s
amending the **National Electricity (Victoria)
Act 2005**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.