

South Australia



**NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (MISCELLANEOUS)
AMENDMENT ACT 1998**

No. 68 of 1998

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ELIZABETHAE II REGINAE

A.D. 1998

No. 68 of 1998

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

[Assented to 13 November 1998]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. (1) This Act may be cited as the *National Electricity (South Australia) (Miscellaneous) Amendment Act 1998*.

(2) The *National Electricity (South Australia) Act 1996* is referred to in this Act as "the principal Act".

Commencement

2. (1) This Act (other than Part 3) comes into operation on the day on which it is assented to by the Governor.

(2) Part 3 will come into operation on a day to be fixed by proclamation.

(3) A proclamation may be made for the purposes of subsection (2) only on the unanimous recommendation of the Ministers of the participating jurisdictions (within the meaning of the principal Act).

(4) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to the commencement of Part 3.

**PART 2
GENERAL AMENDMENTS**

Amendment of s. 10 of Sched.—Proceedings in respect of Code

3. Section 10 of the Schedule of the principal Act is amended by striking out from subsection (2) "and the other person are Code participants" and substituting "is a Code participant and the other person is also a Code participant or is NECA".

Amendment of s. 25 of Sched.—Arrangement of business

4. Section 25 of the Schedule of the principal Act is amended by striking out from subsection (2) "declaration" and substituting "direction".

Amendment of s. 43 of Sched.—Reviewable decisions

5. Section 43 of the Schedule of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) An application may be made to the Tribunal for review of a reviewable decision by—

(a) a person whose interests are affected by the decision; or

(b) the Minister of a participating jurisdiction.;

(b) by striking out subsection (3) and substituting the following subsection:

(3) An application to the Tribunal for a review of a decision must be made to the Tribunal, in writing—

(a) if the applicant is required under this Law or the Code to be given notice of the decision—within 28 days of the giving of that notice; or

(b) in any other case—within 28 days of publication in accordance with the regulations of notice of the decision.

Amendment of s. 44 of Sched.—Tribunal may make certain orders

6. Section 44 of the Schedule of the principal Act is amended by inserting after paragraph (e) of subsection (2) the following paragraphs:

(f) a requirement for physical disconnection of the Code participant's market loads as contemplated by the Code;

(g) a requirement of a kind prescribed by regulation.;

Amendment of s. 60 of Sched.—Staff of Tribunal

7. Section 60 of the Schedule of the principal Act is amended by striking out "and Deputy Registrar" and substituting "or Deputy Registrar (or both)".

Amendment of s. 71 of Sched.—Search warrant

8. Section 71 of the Schedule of the principal Act is amended—

(a) by striking out from subsection (2) "28" and substituting "seven";

(b) by striking out from subsection (3)(d) "28" and substituting "seven".

Amendment of s. 74 of Sched.—Powers under right of entry

9. Section 74 of the Schedule of the principal Act is amended by striking out paragraph (e).

Repeal of s. 75 of Sched.

10. Section 75 of the Schedule of the principal Act is repealed.

Amendment of s. 76 of Sched.—Safety and security of electricity system**11. Section 76 of the Schedule of the principal Act is amended—**

- (a) by striking out from subsection (2) "requested" and substituting "required";
- (b) by inserting after subsection (2) the following subsections:

(3) A person who requires a Code participant to take action, or who takes action, in accordance with an authorisation under subsection (1) does not incur any civil monetary liability for the action taken by the Code participant or the person unless the person makes the requirement or takes the action in bad faith.

(4) A Code participant does not incur any civil monetary liability for action taken in accordance with a requirement made under this section unless the action is taken in bad faith.

(5) In this section—

"civil monetary liability" means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under this Law or the costs of a proceeding.

Substitution of s. 78 of Sched.

12. Section 78 of the Schedule of the principal Act is repealed and the following sections are substituted:

Immunity of NEMMCO and network service providers

77A. (1) NEMMCO or an officer or employee of NEMMCO does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Code unless the act or omission is done or made in bad faith.

(2) A network service provider or an officer or employee of a network service provider does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power unless the act or omission is done or made in bad faith.

(3) Subsections (1) and (2) expire on the prescribed day.

(4) After the prescribed day—

- (a) NEMMCO or an officer or employee of NEMMCO does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Code unless the act or omission is done or made in bad faith or through negligence;
- (b) a network service provider or an officer or employee of a network service provider does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power unless the act or omission is done or made in bad faith or through negligence;

- (c) civil monetary liability for an act or omission of a kind referred to in paragraph (a) or (b) done or made through negligence may not exceed the prescribed maximum amount.

(5) The regulations may, for the purposes of subsection (4)(c), without limitation—

- (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the regulations;
- (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
- (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

(6) NEMMCO or a network service provider may enter into an agreement with a person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

(7) This section does not apply to any liability of an officer of a body corporate to the body corporate.

(8) In this section—

"**civil monetary liability**" means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under this Law or the costs of a proceeding;

"**network service provider**" means a person who is registered as a network service provider under the Code;

"**officer**", in relation to a body corporate, includes a person who is an officer within the meaning of section 82A of the *Corporations Law*;

"**prescribed day**" means—

- (a) the first anniversary of the day of commencement of this section; or
- (b) if a regulation fixes a day prior to the first anniversary of the day of commencement of this section as the prescribed day—that day;

"**system operations function or power**" means a function or power prescribed as a system operations function or power.

Immunity in relation to failure to supply electricity

78. (1) A Code participant or an officer or employee of a Code participant does not incur any civil monetary liability for any partial or total failure to supply electricity unless the failure is due to an act or omission done or made by the Code participant or officer or employee in bad faith or through negligence.

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

(3) This section does not apply—

- (a) to NEMMCO or an officer or employee of NEMMCO in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of NEMMCO under this Law or the Code; or
- (b) to a network service provider or an officer or employee of a network service provider in relation to an act or omission in the performance or exercise, or purported performance or exercise, of a system operations function or power; or
- (c) to any liability of an officer of a body corporate to the body corporate.

(4) In this section—

"civil monetary liability", "network service provider", "officer" and "system operations function or power" have the same meanings as in section 77A.

PART 3 AMENDMENTS RELATING TO FUNCTIONS OF TRIBUNAL UNDER TASMANIAN ACT

Insertion of Div. 4 of Part 5 of Sched.

13. The following Division is inserted after Division 3 of Part 5 of the Schedule of the principal Act:

DIVISION 4—FUNCTIONS OF TRIBUNAL UNDER TASMANIAN ACT

Definitions

64A. In this Division—

"Tasmanian Act" means the *Electricity Supply Industry Act 1995* of Tasmania, as in force for the time being;

"Tasmanian member" means the member of the Tribunal appointed under section 64D;

"Tasmanian Minister" means the Minister for the time being responsible for the administration of the Tasmanian Act;

"Tasmanian Regulator" means the Regulator under the Tasmanian Act.

Functions under Tasmanian Act and exclusion of Divisions 1, 2 and 3

64B. (1) The Tribunal has any functions and powers that are conferred on it under the Tasmanian Act relating to the review of decisions or to proceedings in respect of breaches under that Act.

(2) This Division and the Tasmanian Act apply, to the exclusion of Divisions 1, 2 and 3 of this Part, in relation to the functions and powers of the Tribunal under the Tasmanian Act.

Composition

64C. For the purposes of this Division, the Tribunal consists of the chairperson, deputy chairpersons and other members appointed under Division 1 and a further member appointed under this Division.

Appointment of further member

64D. (1) A further member of the Tribunal is to be appointed by the Governor of South Australia on the recommendation of—

- (a) a majority of the Ministers of the participating jurisdictions; and
- (b) the Tasmanian Minister.

(2) The Tasmanian member is appointed on a part-time basis.

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

Terms and conditions of appointment of Tasmanian member

64E. (1) The Tasmanian member is appointed for such term (not exceeding five years) as is specified in the member's instrument of appointment but is eligible for reappointment.

(2) The Tasmanian member holds office, subject to this Division, on such terms and conditions as are determined by—

- (a) a majority of the Ministers of the participating jurisdictions; and
- (b) the Tasmanian Minister.

Resignation and termination of Tasmanian member

64F. (1) The Tasmanian member may resign by notice in writing signed by the member and delivered to the Governor of South Australia.

(2) The Governor of South Australia, on the recommendation of a majority of—

- (a) the Ministers of the participating jurisdictions; and
- (b) the Tasmanian Minister,

may terminate the appointment of the Tasmanian member if the member—

- (c) is an insolvent under administration within the meaning of the *Corporations Law*; or
- (d) is convicted, whether within or outside Australia, of an offence that, if committed in a participating jurisdiction or Tasmania, would be punishable by imprisonment for 12 months or more; or

- (e) has, contrary to the Tasmanian Act, failed to disclose an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to a proceeding; or
- (f) is guilty of misconduct; or
- (g) is unable, by reason of physical or mental illness, to perform the duties of the office.

Arrangement of business

64G. (1) Subject to section 64H, the chairperson of the Tribunal may give directions as to the arrangement of the business of the Tribunal and as to the member or members who are to constitute the Tribunal for the purposes of particular proceedings under the Tasmanian Act.

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

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

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

Constitution of Tribunal

64H. (1) Subject to section 64I, the Tribunal is to be constituted for the purposes of the hearing and determination of a proceeding under the Tasmanian Act by two or three members, of whom at least one is the chairperson or a deputy chairperson and, whenever practicable, one is the Tasmanian member.

(2) For the purposes of proceedings under the Tasmanian Act, the presiding member of the Tribunal is—

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

Member ceasing to be available

64I. (1) If the hearing of a proceeding under the Tasmanian Act has been started or completed by the Tribunal constituted by three members but, before the matter to which the proceeding relates has been determined, one of the members constituting the Tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the chairperson does not give a direction under section 64G, the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining members or member; or
- (b) in any other case, the proceeding is to be reheard by the Tribunal as reconstituted under section 64H.

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

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

Sitting places

64J. For the purposes of this Division, sittings of the Tribunal may be held from time to time as required at any place in Tasmania.

Management of administrative affairs of Tribunal

64K. Subject to section 64L, the chairperson of the Tribunal is responsible for managing the administrative affairs of the Tribunal in relation to the performance of its functions under the Tasmanian Act.

Staff of Tribunal

64L. There is to be a Registrar or Deputy Registrar (or both) of the Tribunal in Tasmania appointed under the Tasmanian Act.

Annual budget and funds

64M. (1) The chairperson of the Tribunal must prepare and submit to the Tasmanian Regulator for each financial year a draft budget for the performance of its functions under this Division in the same form, and at the same time, as is required in relation to its draft budget under Division 3 for that financial year.

(2) The draft budget, subject to such changes as may be agreed between the chairperson of the Tribunal and the Tasmanian Regulator within two months after the draft budget is submitted to the Tasmanian Regulator, will be the Tribunal's budget for the performance of its functions under this Division for the financial year to which it relates.

(3) The Tribunal may only authorise expenditure for the performance of its functions under this Division in accordance with the budget or with the agreement of the Tasmanian Regulator.

(4) The Tribunal is not required to perform functions under this Division to the extent that funds for the performance of those functions have not been provided to the Tribunal by the Tasmanian Regulator.

Annual report

64N. The chairperson of the Tribunal must—

- (a) include in each annual report under Division 3 a report on the operations of the Tribunal under this Division, including the costs of those operations, during the year to which the report relates; and
- (b) give a copy of each such report to the Tasmanian Minister within four months after the end of the year to which the report relates.

Delegation

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

Amendment of s. 66 of Sched.—Civil penalties fund

14. Section 66 of the Schedule of the principal Act is amended—

- (a) by inserting in subsection (3)(a) "(excluding costs and expenses incurred for the purposes of Division 4 of Part 5)" after "Tribunal";
- (b) by inserting in subsection (3)(b) "(excluding costs and expenses incurred for the purposes of Division 4 of Part 5)" after "Tribunal".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor