

# Parliamentary Counsel’s Committee

## National Energy Laws Amendment (Data Access) Bill 2023

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## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *National Energy Laws Amendment (Data Access) Bill 2023*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Amendment provisions**

In this Act—

- (a) a provision in Part 2 amends the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996*; and
- (b) a provision in Part 3 amends the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008*; and
- (c) a provision in Part 4 amends the *National Electricity (South Australia) Regulations*; and
- (d) a provision in Part 5 amends the *National Gas (South Australia) Regulations*.

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

### **4 Amendment of section 28W (Authorised disclosure of information given to the AER in confidence)**

Section 28W, note, ‘section 29’—

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*omit, insert—*

section 18

**5 Amendment of section 49 (AEMO’s statutory functions)**

Section 49, after paragraph (f)—

*insert—*

(faa) to disclose information held by AEMO to other persons or bodies in accordance with this Law, the Rules and the Regulations;

(fab) to provide advisory and support services related to information held by, or otherwise available to, AEMO;

**6 Amendment of section 53D (Use of information)**

Section 53D, ‘Subject to this Law, the Rules and the Regulations’—

*omit, insert—*

Subject to anything to the contrary in this Law

**7 Amendment of section 54 (Protected information)**

(1) Section 54(1), ‘protect from unauthorised use or disclosure’—

*omit, insert—*

ensure it does not make unauthorised use, or an unauthorised disclosure, of

(2) Section 54(2), ‘, the Rules or the Regulations’—

*omit.*

(3) Section 54, Note for subsection (2), ‘the Law, the Rules and the Regulations’—

*omit, insert—*

anything to the contrary in this Law

- (4) Section 54(3), ‘, the Rules or the Regulations’—

*omit.*

- (5) Section 54, after subsection (3)—

*insert—*

- (4) To avoid doubt, nothing in the Rules or the Regulations prevents AEMO using or disclosing information for any purpose connected with the performance of any of its statutory functions.

**8 Amendment of section 54C (Disclosure required or permitted by law etc)**

- (1) Section 54C(2), after paragraph (e)—

*insert—*

- (ea) the Australian Bureau of Statistics;
- (eb) the Clean Energy Regulator;
- (ec) each department responsible for the administration of the application Act of a participating jurisdiction;
- (ed) the Minister of a participating jurisdiction;

- (2) Section 54C(2), after paragraph (g)—

*insert—*

- (ga) a person or body who—
  - (i) satisfies any requirements or criteria prescribed for the purposes of this paragraph; or
  - (ii) is a member of a class of persons or bodies prescribed for the purposes of this paragraph;

- (3) Section 54C(3), ‘A’—

*omit, insert—*

Subject to any conditions imposed under

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subsection (4), a

(4) Section 54C(5)—

*omit, insert—*

(5) Subject to any conditions imposed under subsection (4), the disclosure of protected information by a person in the ordinary course of carrying out functions as an officer or employee of, or consultant to, a body mentioned in subsection (2) is authorised.

## 9 Insertion of new sections 54CA and 54CB

After section 54C—

*insert—*

### **54CA Authorised disclosure to particular entities for data sharing purposes**

- (1) AEMO may disclose protected information to the following entities (each a *relevant entity*) if the disclosure is for a data sharing purpose—
- (a) any of the following—
    - (i) an Australian university;
    - (ii) a research facility that is part of an Australian university and conducting research in relation to energy;
    - (iii) an Australian university researcher who is conducting research in relation to energy;
  - (b) Energy Consumers Australia Limited;
  - (c) the Australian Renewable Energy Agency;
  - (d) the Clean Energy Finance Corporation;
  - (e) a prescribed body;
  - (f) a person or body who—

- (i) satisfies any requirements or criteria prescribed for the purposes of this paragraph; or
  - (ii) is a member of a class of persons or bodies prescribed for the purposes of this paragraph;
- (g) any staff assisting a person or body mentioned above in performing its functions or exercising its powers.
- (2) For the purposes of this section, each of the following is a ***data sharing purpose***—
  - (a) the delivery of government services;
  - (b) informing government planning, policy or programs;
  - (c) research in relation to energy.
- (3) However, AEMO must not disclose protected information under this section for any of the following purposes—
  - (a) detecting, investigating, prosecuting or punishing:
    - (i) an offence; or
    - (ii) a contravention of a law punishable by a pecuniary penalty;
  - (b) detecting, investigating or addressing acts or practices detrimental to public revenue;
  - (c) detecting, investigating or remedying serious misconduct;
  - (d) conducting surveillance or monitoring, or intelligence-gathering activities;
  - (e) conducting protective or custodial activities;
  - (f) enforcing a law relating to the confiscation of proceeds of crime;

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- (g) preparing for, or conducting, proceedings before a court or tribunal or implementing a court or tribunal order.
- (4) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (5), a relevant entity to whom protected information is disclosed under subsection (1) may use the information for the data sharing purpose for which it was disclosed.
- (5) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (1).
- (6) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (5), a person to whom protected information is disclosed under subsection (1) may use the information in the ordinary course of carrying out functions as an officer or employee of a relevant entity.
- (7) A relevant entity to whom protected information is disclosed for a data sharing purpose under subsection (1) must not use or disclose the information for another purpose (a *secondary purpose*) unless—
  - (a) AEMO has given written consent for the use or disclosure of the information for the secondary purpose; or
  - (b) the entity is authorised by or under another Act or law to use or disclose the information for the secondary purpose.
- (8) A relevant entity to whom protected information is disclosed under subsection (1) —
  - (a) must take reasonable steps to protect the information from—
    - (i) misuse, interference or loss; and



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- (ii) unauthorised use, access, modification or disclosure; and
    - (b) must ensure that the information is de-identified or destroyed when the information is no longer required.
  - (9) Subsection (10) applies if a relevant entity to whom protected information is disclosed under subsection (1) reasonably suspects or becomes aware that a requirement under subsection (7) or (8) has not been complied with.
  - (10) The entity must make a report to the AER about the non-compliance—
    - (a) as soon as practicable, but not later than 5 business days, after the entity reasonably suspects or becomes aware that the requirement has not been complied with; and
    - (b) in the form (if any) approved and published by the AER.
  - (11) In this section—

***Australian university*** means a registered higher education provider—

    - (a) that, for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth, is registered in the ‘Australian University’ provider category; and
    - (b) that is established by or under a law of the Commonwealth or a State or Territory.

***Australian university researcher*** means—

    - (a) a member of staff of an Australian university; or
    - (b) an undergraduate or postgraduate student of an Australian university; or

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(c) a consultant to an Australian university.

***court or tribunal order***—

(a) means an order, direction or other instrument made by—

(i) a court; or

(ii) a judge (including a judge acting in a personal capacity) or a person acting as a judge; or

(iii) a magistrate (including a magistrate acting in a personal capacity) or a person acting as a magistrate; or

(iv) any other person or body that has the power to act judicially under a law of the Commonwealth or a State or Territory; or

(v) a tribunal; or

(vi) a member or an officer of a tribunal; and

(b) includes an order, direction or other instrument that is of an interim or interlocutory nature.

***delivery of government services*** means the delivery of any of the following services by the Commonwealth or a State or Territory—

(a) providing information;

(b) providing services, other than services relating to a payment, entitlement or benefit;

(c) determining eligibility for a payment, entitlement or benefit;

(d) paying a payment, entitlement or benefit.

*Note—*

Subsections (7), (8) and (10) are civil penalty provisions: See the definition of *civil penalty provision* in section 2AA(1).

**54CB Disclosure of protected information by officer or employee of, or consultant to, AEMO**

The disclosure of protected information by a person in the ordinary course of carrying out functions as an officer or employee of, or consultant to, AEMO under section 54C(2) or 54CA(1) is authorised.

**10 Insertion of new section 90EC**

After section 90EB—

*insert—*

**90EC South Australian Minister to make initial Rules relating to data access**

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the *South Australian Minister*) may make Rules—
  - (a) for or with respect to the data access amendments; and
  - (b) that revoke or amend a Rule as a consequence of the enactment of the data access amendments.
- (2) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (3) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.

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this Law, the Rules, the Procedures and the Regulations;

(eb) to provide advisory and support services related to information held by, or otherwise available to, AEMO;

**12 Amendment of section 91FD (Use of information)**

Section 91FD, ‘Subject to this Law, the Rules, the Regulations and the Procedures’—

*omit, insert—*

Subject to anything to the contrary in this Law

**13 Amendment of section 91G (Protected information)**

(1) Section 91G(1), ‘protect from unauthorised use or disclosure’—

*omit, insert—*

ensure it does not make unauthorised use, or an unauthorised disclosure, of

(2) Section 91G(2), ‘, the Rules, the Procedures or the Regulations’—

*omit.*

(3) Section 91G, Note for subsection (2), ‘the Law, the Rules, the Procedures and the Regulations’—

*omit, insert—*

anything to the contrary in this Law

(4) Section 91G(3), ‘, the Rules, the Procedures or the Regulations’—

*omit.*

(5) Section 91G, after subsection (3)—

*insert—*

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- (4) To avoid doubt, nothing in the Rules, the Procedures or the Regulations prevents AEMO using or disclosing information for any purpose connected with the performance of any of its statutory functions.

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**14 Amendment of section 91GC (Disclosure required or permitted by law etc)**

- (1) Section 91GC(2), after paragraph (f)—

*insert—*

- (fa) the Australian Bureau of Statistics;
- (fb) the Clean Energy Regulator;
- (fc) each department responsible for the administration of the application Act of a participating jurisdiction;
- (fd) the Minister of a participating jurisdiction;

- (2) Section 91GC(2), after paragraph (h)—

*insert—*

- (ha) a person or body who—
  - (i) satisfies any requirements or criteria prescribed for the purposes of this paragraph; or
  - (ii) is a member of a class of persons or bodies prescribed for the purposes of this paragraph;

- (3) Section 91GC(3), ‘A’—

*omit, insert—*

Subject to any conditions imposed under subsection (4), a

- (4) Section 91GC(5)—

*insert—*

- 
- (5) Subject to any conditions imposed under subsection (4), the disclosure of protected information by a person in the ordinary course of carrying out functions as an officer or employee of, or consultant to, a body mentioned in subsection (2) is authorised.

**15 Insertion of new sections 91GCA and 91GCB**

After section 91GC—

*insert—*

**91GCA Authorised disclosure to particular entities for data sharing purposes**

- (1) AEMO may disclose protected information to the following entities (each a *relevant entity*) if the disclosure is for a data sharing purpose mentioned in subsection (2)—
- (a) any of the following—
    - (i) an Australian university;
    - (ii) a research facility that is part of an Australian university and conducting research in relation to energy;
    - (iii) an Australian university researcher who is conducting research in relation to energy;
  - (b) Energy Consumers Australia Limited;
  - (c) the Australian Renewable Energy Agency;
  - (d) the Clean Energy Finance Corporation;
  - (e) a prescribed body;
  - (f) a person or body who—
    - (i) satisfies any requirements or criteria prescribed for the purposes of this paragraph; or

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- (ii) is a member of a class of persons or bodies prescribed for the purposes of this paragraph;
  - (g) any staff assisting a person or body mentioned above in performing its functions or exercising its powers.
- (2) For the purposes of this section, each of the following is a *data sharing purpose*—
  - (a) the delivery of government services;
  - (b) informing government planning, policy or programs;
  - (c) research in relation to energy.
- (3) However, AEMO must not disclose protected information under this section for any of the following purposes—
  - (a) detecting, investigating, prosecuting or punishing:
    - (i) an offence; or
    - (ii) a contravention of a law punishable by a pecuniary penalty;
  - (b) detecting, investigating or addressing acts or practices detrimental to public revenue;
  - (c) detecting, investigating or remedying serious misconduct;
  - (d) conducting surveillance or monitoring, or intelligence-gathering activities;
  - (e) conducting protective or custodial activities;
  - (f) enforcing a law relating to the confiscation of proceeds of crime;
  - (g) preparing for, or conducting, proceedings before a court or tribunal or implementing a court or tribunal order.



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- (4) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (5), a relevant entity to whom protected information is disclosed under subsection (1) may use the information for the data sharing purpose for which it was disclosed.
  - (5) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (1).
  - (6) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (5), a person to whom protected information is disclosed under subsection (1) may use the information in the ordinary course of carrying out functions as an officer or employee of a relevant entity.
  - (7) A relevant entity to whom protected information is disclosed for a data sharing purpose under subsection (1) must not use the information for another purpose (a *secondary purpose*) unless—
    - (a) AEMO has given written consent for the use or disclosure of the information for the secondary purpose; or
    - (b) the entity is authorised by or under another Act or law to use or disclose the information for the secondary purpose.
  - (8) A relevant entity to whom protected information is disclosed under subsection (1) —
    - (a) must take reasonable steps to protect the information from—
      - (i) misuse, interference or loss; and
      - (ii) unauthorised use, access, modification or disclosure; and

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- (b) must ensure that the information is de-identified or destroyed when the information is no longer required.
- (9) Subsection (10) applies if a relevant entity to whom protected information is disclosed under subsection (1) reasonably suspects or becomes aware that a requirement under subsection (7) or (8) has not been complied with.
- (10) The entity must make a report to the AER about the non-compliance—
  - (a) as soon as practicable, but not later than 5 business days, after the entity reasonably suspects or becomes aware that the requirement has not been complied with; and
  - (b) in the form (if any) approved and published by the AER.
- (11) In this section—
 

***Australian university*** means a registered higher education provider—

  - (a) that, for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth, is registered in the ‘Australian University’ provider category; and
  - (b) that is established by or under a law of the Commonwealth or a State or Territory.

***Australian university researcher*** means—

  - (a) a member of staff of an Australian university; or
  - (b) an undergraduate or postgraduate student of an Australian university; or
  - (c) a consultant to an Australian university.

***court or tribunal order***—

- 
- (a) means an order, direction or other instrument made by—
- (i) a court; or
  - (ii) a judge (including a judge acting in a personal capacity) or a person acting as a judge; or
  - (iii) a magistrate (including a magistrate acting in a personal capacity) or a person acting as a magistrate; or
  - (iv) any other person or body that has the power to act judicially under a law of the Commonwealth or a State or Territory; or
  - (v) a tribunal; or
  - (vi) a member or an officer of a tribunal; and
- (b) includes an order, direction or other instrument that is of an interim or interlocutory nature.

***delivery of government services*** means the delivery of any of the following services by the Commonwealth or a State or Territory—

- (a) providing information;
- (b) providing services, other than services relating to a payment, entitlement or benefit;
- (c) determining eligibility for a payment, entitlement or benefit;
- (d) paying a payment, entitlement or benefit.

**91GCB Disclosure of protected information by officer or employee of, or consultant to, AEMO**

The disclosure of protected information by a person in the ordinary course of carrying out

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functions as an officer or employee of, or consultant to, AEMO under section 91GC(2) or 91GCA(1) is authorised.

## **Part 4                      Amendment of National Electricity (South Australia) Regulations**

### **16            Amendment of Schedule 1 (Civil penalty provision)**

Schedule 1, Part 2, Provisions of the new National Electricity Law, after entry for section 18ZD—

*insert—*

Section 54CA(7), (8) and (10)

## **Part 5                      Amendment of National Gas (South Australia) Regulations**

### **17            Amendment of Schedule 3 (Civil penalty provision)**

Schedule 3, Part 2, Provisions of the NGL, after entry for section 91FEE—

*insert—*

Section 91GCA(7), (8) and (10)