

AUSTRALASIAN PARLIAMENTARY COUNSEL'S COMMITTEE

ENERGY AND CLIMATE CHANGE MINISTERIAL COUNCIL

National Energy Laws Amendment (Data Access) Bill 2023

REPORT OF THE AUSTRALASIAN PARLIAMENTARY COUNSEL'S COMMITTEE

On 24 January 2023, officers of the Energy Security Board provided instructions to the Australasian Parliamentary Counsel's Committee to draft legislation for the Energy and Climate Change Ministerial Council on this matter.

A copy of the draft legislation that has been settled with the officers is attached.



Annette O'Callaghan
NSW Parliamentary Counsel
Secretary, Australasian Parliamentary Counsel's Committee

2 June 2023

Ref: pcc-609, d15

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) Act 2023*.

2 Commencement

This Act comes into operation 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’—

[s 5]

omit, insert—

section 18

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

Section 49(1), 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, ‘this Law, the Rules and the Regulations, AEMO may use information obtained by market information instrument or in any other way for any purpose connected with the exercise’—

omit, insert—

anything to the contrary in this Law, AEMO may use information obtained by a market information instrument or in any other way for any purpose connected with the performance

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)—

omit, insert—

Note—

Section 53D authorises AEMO (subject to anything to the contrary in this Law) to use information (whether obtained by a market information instrument or in any other way) for any purpose connected with the performance of any of its statutory functions.

- (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—

[s 9]

- (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 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;
 - (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;

[s 9]

- (b) detecting, investigating or addressing acts or practices detrimental to public revenue;
 - (c) detecting, investigating or addressing 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.
- (4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (1).
- (5) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (4), a relevant entity to which protected information is disclosed under subsection (1) may use the information for the data sharing purpose for which it was disclosed.
- (6) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (4), 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 which 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 which 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
 - (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 which 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—

[s 9]

- (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.

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 is authorised.

10 Insertion of new section 90EE

After section 90ED—

insert—

90EE 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

[s 10]

- (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.
- (4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
 - (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
 - (b) make the Rules publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
 - (a) the date on which the Rules commence operation; or
 - (b) if different Rules will commence operation on different dates, those dates.
- (6) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (7) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.
- (8) In this section—

data access amendments means the amendments made to this Law by the *National Energy Laws Amendment (Data Access) Act 2023*.

Part 3 Amendment of National Gas Law

11 Amendment of section 91A (AEMO's statutory functions)

Section 91A(1), after paragraph (ea)—

insert—

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

(ec) 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, 'this Law, the Rules, the Regulations and the Procedures, AEMO may use information obtained by market information instrument or in any other way for any purpose connected with the exercise'—

omit, insert—

anything to the contrary in this Law, AEMO may use information obtained by a market information instrument or in any other way for any purpose connected with the performance

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

[s 14]

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

omit.

- (3) Section 91G, note for subsection (2)—

omit, insert—

Note—

Section 91FD authorises AEMO (subject to anything to the contrary in this Law) to use information (whether obtained by a market information instrument or in any other way) for any purpose connected with the performance of any of its statutory functions.

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

omit.

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

insert—

- (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.

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)—

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.

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—

[s 15]

- (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;
 - (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 addressing 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.
- (4) AEMO may impose conditions to be complied with in relation to protected information disclosed under subsection (1).
- (5) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (4), a relevant entity to which protected information is disclosed under subsection (1) may use the information for the data sharing purpose for which it was disclosed.
- (6) Subject to the requirements of subsections (7), (8) and (10) and any conditions imposed under subsection (4), 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 which protected information is disclosed for a data sharing purpose under subsection (1) must not use the information for another purpose (a *secondary purpose*) unless—

[s 15]

- (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 which 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
 - (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 which 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.

[s 16]

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.

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 functions as an officer or employee of, or consultant to, AEMO 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 **Omission of regulation 20 (Disclosure of protected information)**

Regulation 20—

omit.

18 **Amendment of Schedule 3 (Civil penalty provisions)**

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

insert—

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