

South Australia

Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Bill 2015

A BILL FOR

An Act to amend the *National Electricity (South Australia) Act 1996* and the *National Gas (South Australia) Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act—

- 10 (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*.

Part 2—Amendment of *National Electricity Law*

15 4—Insertion of section 18A

After section 18 insert:

18A—Disclosure of information and confidentiality

- 20 (1) The AER is authorised to disclose any information given to it in, or in connection with, the performance of its functions or the exercise of its powers under this Law or the Rules.
- (2) The AER may act under subsection (1) without the consent of any person who has given information to the AER in connection with the operation of this Law or the Rules.
- 25 (3) Subsections (1) and (2) extend to information given to the AER voluntarily.
- (4) Subsections (1), (2) and (3) operate subject to the other provisions of this Law that relate to the disclosure of information given to the AER in confidence.

(5) Information is not to be regarded as being given to the AER in confidence (or to be confidential in any other respect) unless it is subject to an express claim of confidentiality that is made when the information is given to the AER.

5 (6) A claim of confidentiality must include reasons in support of the claim.

5—Amendment of section 28F—Service and making of regulatory information instruments

Section 28F(3)(d)—delete paragraph (d)

10 **6—Insertion of section 28OA**

After section 28O insert:

28OA—Confidentiality issues

15 (1) If a person wishes, in complying with a regulatory information instrument, to give information to the AER in confidence, the person must, when the information is given to the AER—

(a) make a claim of confidentiality (as envisaged by section 18A); and

(b) in providing reasons in support of the claim, include—

20 (i) information about any detriment that might be caused to the person if the information were to be disclosed by the AER; and

(ii) information—

(A) that is reasonably within the person's knowledge and capacity to give; and

25 (B) that may be relevant to the AER's consideration under section 28ZB of whether such detriment may be considered as outweighing the public benefit in disclosing the information.

30 (2) A person must, in acting under subsection (1), specifically identify the information in relation to which the claim is made.

7—Amendment of section 28V—Preparation of network service provider performance reports

(1) Section 28V—after subsection (1) insert:

35 (1a) The AER must prepare a report under this section if (and to the extent) required by the Rules.

(2) Section 28V(2)(a)(iii)—after "profitability" insert:

and efficiency

- (3) Section 28V(3)(b)—after "profitability" insert:
or efficiency

8—Substitution of section 28X

Section 28X—delete the section and substitute:

28X—Disclosure with consent

The AER is authorised to disclose information given to it in confidence if the AER has the written consent to do so of—

- (a) the person who has made an express claim of confidentiality when giving the information to the AER; or
- (b) the person from whom the person referred to in paragraph (a) received that information.

9—Insertion of section 28ZAA

After section 28ZA insert:

28ZAA—Disclosure of information in an aggregated form

The AER is authorised to disclose the information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information has been combined or arranged with other information so that it does not reveal any confidential aspects of the information.

10—Amendment of section 28ZB—Disclosure of information authorised if detriment does not outweigh public benefit

- (1) Section 28ZB(1)—delete "Despite section 28Z, 28ZA or 28ZAB but subject to this section," and substitute:

Despite sections 28X to 28ZAB (inclusive),

- (2) Section 28ZB(1)—after "in confidence" insert:

, in compliance with this Law or the Rules or voluntarily,

- (3) Section 28ZB—after subsection (1) insert:

(1a) However—

- (a) in the case of information given to the AER in order to comply with a regulatory information instrument—the AER must not disclose information under subsection (1) unless and until—

- (i) the AER has considered any reasons and information given to the AER under section 28OA(1)(b) when determining whether or not it is of the opinion required by subsection (1); and
- (ii) the AER has complied with subsections (1b), (1c) and (1d); and

- (iii) the restricted period has expired; and
- (b) in the case of other information—the AER must not disclose information under subsection (1) unless and until—
- 5 (i) the AER has complied with subsections (2) to (6) (inclusive); and
- (ii) the restricted period has expired.
- (1b) If the AER wishes to disclose information to which subsection (1a)(a) applies (after taking into account the requirements of subsections (1) and (1a)(a)) and—
- 10 (a) the AER intends to disclose the information on the basis of the AER having formed the opinion required by subsection (1)(a), the AER must give the person who gave the information and, if the AER is aware that the person who
- 15 gave the information in turn received the information from another person and is aware of that other person's identity and address, that other person—
- (i) a written notice stating—
- (A) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and
- 20 (B) that the AER is of the opinion required by subsection (1)(a); and
- (ii) the AER's decision, in writing, setting out the reasons why the AER—
- 25 (A) wishes to make the disclosure; and
- (B) is of the opinion required by subsection (1)(a); or
- (b) the AER intends to disclose the information on the basis of the AER having formed the opinion required by
- 30 subsection (1)(b), the AER must give the person who gave the information and, if the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, that other person—
- 35 (i) a written notice stating—
- (A) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and
- 40 (B) that the AER is of the opinion required by subsection (1)(b); and

(C) that the person, within the period specified in the notice (which must not be less than 5 business days after the date the notice is given to the person), may make representations to the AER solely in relation to the AER's reasons for deciding that the public benefit in disclosing the information outweighs any detriment that may be caused to the person by the disclosure; and

(ii) the AER's decision, in writing, setting out the reasons why the AER—

(A) wishes to make the disclosure; and

(B) is of the opinion required by subsection (1)(b).

(1c) The AER must consider any representation that complies with the requirements of subsection (1b)(b)(i)(C) made to it by a person given a notice under subsection (1b)(b)(i) within the time specified in the notice.

(1d) If, after considering any representation under subsection (1c), the AER wishes to disclose the information, the AER must give each person given a notice under subsection (1b)(b)(i)—

(a) a written notice stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1)(b); and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1)(b).

(1e) To avoid doubt, a person entitled to make representations under subsection (1b)(b)(i) is not entitled to make representations under that subsection in relation to the AER's assessment of the detriment that may be caused to the person by the intended disclosure of the information.

(4) Section 28ZB(2)—delete "disclosing the information" and substitute:

disclosing information to which subsection (1a)(b) applies

(5) Section 28ZB(3)—delete "who gave the information" and substitute:

who gave information to which subsection (1a)(b) applies

(6) Section 28ZB(6)—delete "the representations" and substitute:

any representation under subsection (4)

(7) Section 28ZB(7)—after "subsection" insert:

(1b),

(8) Section 28ZB—after subsection (7) insert:

(7a) Despite anything to the contrary in this Law, this section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to—

- (a) the AER's decision under subsection (1) to disclose information given in confidence to the AER including, but not limited to, such information given to the AER under section 28OA in order to comply with a regulatory information instrument; and
- (b) without limiting paragraph (a), if the AER's decision under subsection (1) is to disclose the confidential information, the AER's opinion—

- (i) that the disclosure of the information would not cause detriment to the person who gave the information or, if the person who gave the information in turn received the information from another person, that other person (as the case may be); or
- (ii) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(9) Section 28ZB(8), definition of *restricted period*—delete the definition and substitute:

restricted period means—

(a) in the case of information given to the AER in order to comply with a regulatory information instrument—a period of 5 business days after—

(i) a notice has been given under subsection (1b)(a)(i); or

(ii) —

(A) a notice has been given under subsection (1b)(b)(i);
or

(B) a notice has been given under subsection (1d)(a),
whichever is the later; or

(b) in the case of other information—a period of 5 business days after—

(i) an initial disclosure notice has been given under this section;
or

(ii) a further disclosure notice has been given under this section,
whichever is the later.

11—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 12 insert:

Part 13—Information publication**26—Information publication**

5 The release of information given to the AER in confidence before the commencement of this clause will be subject to the provisions of this Law in force immediately before that commencement.

Part 3—Amendment of *National Gas Law***12—Insertion of section 30A**

10 After section 30 insert:

30A—Disclosure of information and confidentiality

- 15 (1) The AER is authorised to disclose any information given to it in, or in connection with, the performance of its functions or the exercise of its powers under this Law or the Rules.
- (2) The AER may act under subsection (1) without the consent of any person who has given information to the AER in connection with the operation of this Law or the Rules.
- (3) Subsections (1) and (2) extend to information given to the AER voluntarily.
- 20 (4) Subsections (1), (2) and (3) operate subject to the other provisions of this Law that relate to the disclosure of information given to the AER in confidence.
- (5) Information is not to be regarded as being given to the AER in confidence (or to be confidential in any other respect) unless it is subject to an express claim of confidentiality that is made when the information is given to the AER.
- 25 (6) A claim of confidentiality must include reasons in support of the claim.

13—Amendment of section 48—Service and making of regulatory information instruments

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Section 48(3)(d)—delete paragraph (d)

14—Insertion of section 57A

After section 57 insert:

57A—Confidentiality issues

5 (1) If a person wishes, in complying with a regulatory information instrument, to give information to the AER in confidence, the person must, when the information is given to the AER—

(a) make a claim of confidentiality (as envisaged by section 30A); and

(b) in providing reasons in support of the claim, include—

10 (i) information about any detriment that might be caused to the person if the information were to be disclosed by the AER; and

(ii) information—

15 (A) that is reasonably within the person's knowledge and capacity to give; and

(B) that may be relevant to the AER's consideration under section 329 of whether such detriment may be considered as outweighing the public benefit in disclosing the information.

20 (2) A person must, in acting under subsection (1), specifically identify the information in relation to which the claim is made.

15—Amendment of section 64—Preparation of service provider performance reports

25 (1) Section 64—after subsection (1) insert:

(1a) The AER must prepare a report under this section if (and to the extent) required by the Rules.

(2) Section 64(2)(a)(iii)—after "profitability" insert:

and efficiency

30 (3) Section 64(3)(b)—after "profitability" insert:

or efficiency

16—Substitution of section 325

Section 325—delete the section and substitute:

325—Disclosure with consent

35 The AER is authorised to disclose information given to it in confidence if the AER has the written consent to do so of—

(a) the person who has made an express claim of confidentiality when giving the information to the AER; or

- (b) the person from whom the person referred to in paragraph (a) received that information.

17—Insertion of section 328B

After section 328A insert:

328B—Disclosure of information in an aggregated form

The AER is authorised to disclose the information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if the information has been combined or arranged with other information so that it does not reveal any confidential aspects of the information.

18—Amendment of section 329—Disclosure of information authorised if detriment does not outweigh public benefit

- (1) Section 329(1)—delete "Despite section 327, 328 or 328A but subject to this section," and substitute:

Despite sections 325 to 328B (inclusive),

- (2) Section 329(1)—after "in confidence" insert:

, in compliance with this Law or the Rules or voluntarily,

- (3) Section 329—after subsection (1) insert:

(1a) However—

- (a) in the case of information given to the AER in order to comply with a regulatory information instrument—the AER must not disclose information under subsection (1) unless and until—
- (i) the AER has considered any reasons and information given to the AER under section 57A(1)(b) when determining whether or not it is of the opinion required by subsection (1); and
 - (ii) the AER has complied with subsections (1b), (1c) and (1d); and
 - (iii) the restricted period has expired; and
- (b) in the case of other information—the AER must not disclose information under subsection (1) unless and until—
- (i) the AER has complied with subsections (2) to (6) (inclusive); and
 - (ii) the restricted period has expired.

(1b) If the AER wishes to disclose information to which subsection (1a)(a) applies (after taking into account the requirements of subsections (1) and (1a)(a)) and—

5 (a) the AER intends to disclose the information on the basis of the AER having formed the opinion required by subsection (1)(a), the AER must give the person who gave the information and, if the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, that other person—

10 (i) a written notice stating—

(A) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

15 (B) that the AER is of the opinion required by subsection (1)(a); and

(ii) the AER's decision, in writing, setting out the reasons why the AER—

(A) wishes to make the disclosure; and

20 (B) is of the opinion required by subsection (1)(a); or

(b) the AER intends to disclose the information on the basis of the AER having formed the opinion required by subsection (1)(b), the AER must give the person who gave the information and, if the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, that other person—

25 (i) a written notice stating—

30 (A) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(B) that the AER is of the opinion required by subsection (1)(b); and

35 (C) that the person, within the period specified in the notice (which must not be less than 5 business days after the date the notice is given to the person), may make representations to the AER solely in relation to the AER's reasons for deciding that the public benefit in disclosing the information outweighs any detriment that may be caused to the person by the disclosure; and

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(ii) the AER's decision, in writing, setting out the reasons why the AER—

(A) wishes to make the disclosure; and

(B) is of the opinion required by subsection (1)(b).

(1c) The AER must consider any representation that complies with the requirements of subsection (1b)(b)(i)(C) made to it by a person given a notice under subsection (1b)(b)(i) within the time specified in the notice.

(1d) If, after considering any representation under subsection (1c), the AER wishes to disclose the information, the AER must give each person given a notice under subsection (1b)(b)(i)—

(a) a written notice stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1)(b); and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1)(b).

(1e) To avoid doubt, a person entitled to make representations under subsection (1b)(b)(i) is not entitled to make representations under that subsection in relation to the AER's assessment of the detriment that may be caused to the person by the intended disclosure of the information.

(4) Section 329(2)—delete "disclosing the information" and substitute:

disclosing information to which subsection (1a)(b) applies

(5) Section 329(3)—delete "who gave the information" and substitute:

who gave information to which subsection (1a)(b) applies

(6) Section 329(6)—delete "the representations" and substitute:

any representation under subsection (4)

(7) Section 329(7)—after "subsection" insert:

(1b),

(8) Section 329—after subsection (7) insert:

(7a) Despite anything to the contrary in this Law, this section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to—

- 5 (a) the AER's decision under subsection (1) to disclose information given in confidence to the AER including, but not limited to, such information given to the AER under section 57A(1)(b) in order to comply with a regulatory information instrument; and
- 10 (b) without limiting paragraph (a), if the AER's decision under subsection (1) is to disclose the confidential information, the AER's opinion—
 - 15 (i) that the disclosure of the information would not cause detriment to the person who gave the information or, if the person who gave the information in turn received the information from another person, that other person (as the case may be); or
 - 20 (ii) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(9) Section 329(8), definition of *restricted period*—delete the definition and substitute:

restricted period means—

- 25 (a) in the case of information given to the AER in order to comply with a regulatory information instrument—a period of 5 business days after—
 - (i) a notice has been given under subsection (1b)(a)(i); or
 - (ii) —
 - 30 (A) a notice has been given under subsection (1b)(b)(i); or
 - (B) a notice has been given under subsection (1d)(a), whichever is the later; or
- (b) in the case of other information—a period of 5 business days after—
 - 35 (i) an initial disclosure notice has been given under this section; or
 - (ii) a further disclosure notice has been given under this section, whichever is the later.

19—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after clause 88 insert:

Part 13—Information publication

89—Information publication

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The release of information given to the AER in confidence before the commencement of this clause will be subject to the provisions of this Law in force immediately before that commencement.