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**ENDNOTES**
Energy Legislation Amendment
(Australian Energy Market Operator)
Bill 2009

A Bill for an Act to amend the National Electricity (Victoria) Act 2005, the Electricity Industry Act 2000, the National Gas (Victoria) Act 2008, the Gas Industry Act 2001 and the Gas Safety Act 1997, to make consequential amendments to various other Acts and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are to—

(a) amend the National Electricity (Victoria) Act 2005 to provide for the operation of certain provisions of the National Electricity (Victoria) Law relating to the electricity transmission system in Victoria; and
(b) amend the **National Gas (Victoria) Act 2008** to provide for the operation of certain provisions of the National Gas (Victoria) Law relating to specific transmission and distribution pipelines and the operation of the wholesale and retail gas markets in Victoria; and

(c) amend the **Gas Industry Act 2001** to abolish VENCorp and transfer all rights, responsibilities, assets and liabilities of VENCorp to the Australian Energy Market Operator; and

(d) amend the **Electricity Industry Act 2000**, the **Gas Industry Act 2001** and various other Acts to facilitate the transfer of rights, responsibilities, assets and liabilities from VENCorp to the Australian Energy Market Operator; and

(e) amend the **Electricity Industry Act 2000** to transfer the regulation of access to land and premises for the purpose of electricity transmission system augmentations from the Essential Services Commission to the Australian Energy Regulator.

2 **Commencement**

This Act comes into operation on a day or days to be proclaimed.
PART 2—ELECTRICITY INDUSTRY RELATED AMENDMENTS

Division 1—Amendments to the National Electricity (Victoria) Act 2005

3 Repeal of section 11—VENCorp's participation in the national electricity market

Section 11 of the National Electricity (Victoria) Act 2005 is repealed.

4 New Part 5 inserted

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.

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.

**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.

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 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.
Part 2—Electricity Industry Related Amendments

Division 3—Regulatory arrangements

34 Definitions

In this Division—

approved VENCorp revised pricing methodology means the pricing methodology—

(a) for the prices to be charged by VENCorp 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 VENCorp 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 VENCorp 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—

(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**

(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.

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.
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.

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.

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, 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.

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;
VENCorp negotiated transmission service criteria means the negotiating 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.

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.

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
(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.

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.
Part 2—Electricity Industry Related Amendments

(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.

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. 4

Division 5—Other matters

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.

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."
Part 2—Electricity Industry Related Amendments

Division 2—Amendments to the Electricity Industry Act 2000

5 Amendments to section 3—Definitions

(1) In section 3 of the Electricity Industry Act 2000 insert the following definition—

"AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);".

(2) In section 3 of the Electricity Industry Act 2000, the definitions of NEMMCO and VENCorp are repealed.

(3) In section 3 of the Electricity Industry Act 2000, in the definition of wholesale electricity market, for "NEMMCO" substitute "AEMO".

6 Amendment to section 8—Application of Part

In section 8 of the Electricity Industry Act 2000 omit ", VENCorp".

7 Amendment to section 16—Prohibition

After section 16(2) of the Electricity Industry Act 2000 insert—

"(3) Subsection (1) does not apply to AEMO when it is performing a function or exercising a power under the National Electricity (Victoria) Law."

8 Repeal of sections 21(h), 21(i) and 21(v)—Specific licence conditions

Sections 21(h), 21(i) and 21(v) of the Electricity Industry Act 2000 are repealed.

9 Repeal of section 26A—Guidelines about access to land

Section 26A of the Electricity Industry Act 2000 is repealed.
10 Repeal of section 26B—Commission may require licensee to enter into lease of land

Section 26B of the Electricity Industry Act 2000 is repealed.

11 New section 33A inserted

After section 33 of the Electricity Industry Act 2000 insert—

"33A Ministerial powers in relation to transmission company licences

(1) Despite anything to the contrary in this Division, the Minister, by Order published in the Government Gazette, may—

(a) revoke a condition to which a licence to transmit electricity is subject; or

(b) amend a condition to which a licence to transmit electricity is subject; or

(c) revoke a licence.

(2) The Minister, as soon as practicable after making an Order under subsection (1), must notify the Commission of the making of an Order.

12 Repeal of Part 4—Electricity transmission

Part 4 of the Electricity Industry Act 2000 is repealed.

13 Amendment to section 85—Definitions

In section 85 of the Electricity Industry Act 2000, in the definition of electricity corporation, omit "VENCorp, ".

14 Repeal of section 94(1)—Rateability of certain property

Section 94(1) of the Electricity Industry Act 2000 is repealed.
Part 2—Electricity Industry Related Amendments

15 Repeal of section 117—Liability for failure to supply electricity

Section 117 of the Electricity Industry Act 2000 is repealed.
PART 3—GAS INDUSTRY RELATED AMENDMENTS

Division 1—Amendments to the National Gas (Victoria) Act 2008

16 New definitions inserted

In section 3(1) of the National Gas (Victoria) Act 2008 insert the following definitions—

"AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);


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

MSO Rules means the rules made on 2 February 1999 under section 48N of the Gas Industry Act 1994 (and continued in effect under clause 17 of Schedule 5 to the Gas Industry (Residual Provisions) Act 1994), as in force immediately before the transition day;

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

17 New section 9A inserted

After section 9 of the National Gas (Victoria) Act 2008 insert—

"9A Designated pipelines

(1) In the National Gas (Victoria) Law, and any Rules made for the purposes of that Law, designated pipeline means a pipeline
designated by Order under subsection (2) to be a designated pipeline.

(2) The Minister, by Order published in the Government Gazette, may designate a pipeline or a part of a pipeline to be a designated pipeline.

(3) Once the Minister has made an Order designating a pipeline or a part of a pipeline to be a designated pipeline, the Minister cannot make another Order that designates any other pipeline or a part of a pipeline to be a designated pipeline.”.

18 New section 16A inserted

After section 16 of the National Gas (Victoria) Act 2008 insert—

"16A Regulations

The Governor in Council may make regulations for or with respect to prescribing a provision of the declared system provisions to be—

(a) a civil penalty provision; or

(b) a conduct provision.

Note

The terms declared system provisions, civil penalty provision and conduct provision are defined in the National Gas (Victoria) Law.”.

19 Amendment to section 17—Definitions

In section 17 of the National Gas (Victoria) Act 2008, the definition of Essential Services Commission or ESC is repealed.
20 Part 6 substituted

For Part 6 of the National Gas (Victoria) Act 2008 substitute—

"__________________

5 PART 6—DECLARED SYSTEMS AND REGULATED GAS MARKETS

Division 1—Ministerial declarations

39 Declared distribution systems and declared transmission systems

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

(a) a distribution pipeline, or a part of a distribution pipeline, situated wholly or partly in Victoria to be a declared distribution system;

(b) a transmission pipeline, or a part of a transmission pipeline, situated wholly or partly in Victoria to be a declared transmission system.

40 Declared host retailer

The Minister, by Order published in the Government Gazette, may declare a user to be a declared host retailer.

41 Declared LNG storage providers and agreements

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

(a) a person who owns, controls or operates a facility for storing liquefied natural gas in Victoria to be a declared LNG storage provider;
Part 3—Gas Industry Related Amendments

(b) a person who owns, controls or operates a facility, in Victoria, that converts natural gas into liquefied natural gas to be a declared LNG supplier;

c) an agreement relating to, among other things, the supply of liquefied natural gas for storage to be a declared LNG supply agreement.

42 Declared metering requirement

(1) The Minister, by Order published in the Government Gazette, may declare the ESC Gas Distribution System Code, or any provision of that Code, to be a declared metering requirement.

(2) The ESC Gas Distribution System Code, or the provision of that Code, that is declared by an Order under subsection (1), may be declared as modified by that Order to make any necessary or consequential amendments to the Code, or the provision of the Code, in its continuing application under the National Gas Rules.

(3) In this section—


43 Declared wholesale gas market

The Minister, by Order published in the Government Gazette, may declare a wholesale gas market that operates in Victoria to be a declared wholesale gas market.
Part 3—Gas Industry Related Amendments

Division 2—AEMO's declared system functions

44 Application of AEMO's declared system functions

Division 2 of Part 6 of Chapter 2 of the National Gas (Victoria) Law applies in this jurisdiction.

Note
See section 91B of the National Gas (Victoria) Law.

45 Certain defined terms for the purposes of the National Gas (Victoria) Law

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

*declared distribution system* means a distribution pipeline, or a part of a distribution pipeline, declared by Order under section 39 to be a declared distribution system;

*declared host retailer* means a user declared by Order under section 40 to be a declared host retailer;

*declared LNG storage provider* means a person who owns, controls or operates a facility for storing liquefied natural gas in Victoria declared by Order under section 41 to be a declared LNG storage provider, or any successor in law or assignee of that LNG storage provider;

*declared LNG supplier* means a person who owns, controls or operates a facility, in Victoria, that converts natural gas into liquefied natural gas declared by Order under section 41 to be a declared LNG supplier, or any successor in law or assignee of that LNG supplier;
declared LNG supply agreement means an agreement relating to the supply of liquefied natural gas, as amended from time to time, declared by Order under section 41 to be a declared LNG supply agreement;

declared metering requirement means the ESC Gas Distribution System Code, or the provisions of that Code, declared, or declared as modified, by Order under section 42 to be a declared metering requirement;

declared transmission system means a transmission pipeline, or a part of a transmission pipeline, declared by Order under section 39 to be a declared transmission system;

declared wholesale gas market means a wholesale gas market declared by Order under section 43 to be a declared wholesale gas market;

licensee has the same meaning as in the Gas Industry Act 2001.

Division 3—Regulatory arrangements

46 Definitions

In this Division—

current operating agreement means an agreement specified by Order under section 47 to be a current operating agreement;

current service envelope agreement means the Service Envelope Agreement entered into between VENCorp, APA GasNet Australia Pty Ltd
ACN 079 136 413, and APA GasNet Australia (Operations) Pty Ltd ACN 083 009 278, dated 20 November 2006 as amended from time to time;

specified code or guideline means a code or guideline specified, or specified as modified, under an Order under section 48;

specified VENCorp provision means a provision of a code or guideline specified, or specified as modified, under an Order under section 48.

47 Declaration of current operating agreements

The Minister, by Order published in the Government Gazette, may specify an agreement to which VENCorp is a party to be a current operating agreement.

48 Ministerial specification of ESC code or guidelines or provisions under ESC codes or guidelines

(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 confers a function or power, or imposes a duty, on VENCorp and that relates to—

(a) the provision of pipeline services provided by means of a transmission pipeline that is a declared transmission system; or

(b) a transmission pipeline that is a declared transmission system; or
(c) the operation and administration of a declared wholesale gas market—
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.

49 Current operating agreement
On the transition day, a current operating agreement is to be taken to be an operating agreement (within the meaning of section 91BG(1) of the National Gas (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.

50 Current service envelope agreement
On the transition day, the current service envelope agreement is to be taken to be a service envelope agreement (within the meaning of section 91BE(1) of the National Gas (Victoria) Law).

Note
By operation of section 238 of the Gas Industry Act 2001, AEMO replaced VENCorp as a party in every
Part 3—Gas Industry Related Amendments

agreement to which VENCorp was a party immediately before the transition day.

51 Specified code or guidelines and specified VENCorp provisions

5 (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 the AEMO unless the context otherwise requires.

Division 4—Gas emergencies

52 Definitions

In this Division—

Gas Emergency Procedures means the document entitled Emergency Procedures (Gas) dated 6 February 2008—

(a) prepared by VENCorp under clause 6.2.2(c) of the MSO Rules; and

(b) as in force immediately before the transition day;
gas emergency protocol means a protocol made by AEMO under section 53;

Gas Curtailment Guidelines means Issue 7.0 of the Gas Load Curtailment and Gas Rationing and Recovery Guidelines—

(a) published by VENCorp and dated March 2003; and

(b) as in force immediately before the transition day;

Gas Curtailment List means the emergency curtailment list prepared by VENCorp under clause 6.4.3 of the MSO Rules, as in force immediately before the transition day.

53 Gas emergency protocol

(1) Subject to this Division, AEMO must make and keep up to date a protocol (a gas emergency protocol) that—

(a) classifies gas emergencies into categories having regard to their scale, effect, or any other relevant matter or circumstance;

(b) describes the actions to be taken by AEMO, Energy Safe Victoria, Registered participants, and any other relevant party for each category of gas emergency;

(c) sets out the customers or classes of customers to be curtailed in the case of each category of gas emergency and the order of their curtailment;
(d) describes the matters or things to be taken into account in determining who will be curtailed in the case of each category of gas emergency and the order of their curtailment;

(e) sets out the order of restoration of supply of gas to customers or classes of customers;

(f) describes the matters or things to be taken into account in determining the order of restoration of supply of gas to customers or classes of customers;

(g) provides for rationing of the supply of gas and the basis on which it will be administered;

(h) provides for how gas emergencies are to be managed and by whom;

(i) provides for any other matter relating to a gas emergency.

(2) AEMO must publish a gas emergency protocol it makes on its website.

(3) Before making a gas emergency protocol, AEMO must consult with the Minister, Energy Safe Victoria and Registered participants.

(4) In making a gas emergency protocol, AEMO must have regard to the economic and social needs of the Victorian community.

54 Ministerial directions

(1) The Minister may give AEMO a written direction in relation to—

(a) what should or should not be in a gas emergency protocol made or to be made by AEMO; or
(b) the administration or operation of a gas emergency protocol made or to be made by AEMO.

(2) AEMO must comply with a direction under subsection (1).

55 Registered participants must comply with gas emergency protocol

(1) Subject to subsection (2), a Registered participant must comply with a gas emergency protocol published by AEMO.

(2) A Registered participant is not required to comply with a gas emergency protocol, or a part of a gas emergency protocol, published by AEMO that is inconsistent with a direction given to the Registered participant—

(a) by Energy Safe Victoria; or

(b) by the Minister under Part 9 of the Gas Industry Act 2001.

56 Gas emergency protocol—transitional provision

On the transition day, all of the Gas Emergency Procedures, the Gas Curtailment Guidelines and the Gas Curtailment List, are to be taken to be one gas emergency protocol made by AEMO.

Division 5—Other matters

57 Notice of change to declared LNG storage provider or declared LNG supplier

(1) If a declared LNG storage provider enters into an agreement that transfers or assigns the ownership, control or operation of the facility for storing liquefied natural gas, the
provider must provide, as soon as practicable after entering into the agreement, the required details to—

(a) the Minister; and

(b) AEMO.

(2) If a declared LNG supplier enters into an agreement that transfers or assigns the ownership, control or operation of the facility that converts natural gas into liquefied natural gas, the supplier must provide, as soon as practicable after entering into the agreement, the required details to—

(a) the Minister; and

(b) AEMO.

(3) On receipt of the required details under subsection (1) or (2), AEMO must publish those details on its website.

(4) AEMO, by publishing the required details on its website, incurs no liability for breach of contract, breach of confidence or any other civil wrong.

(5) In this section—

required details means—

(a) for the person to whom a declared LNG storage provider transfers or assigns the ownership, control or operation of the facility for storing liquefied natural gas—

(i) name;

(ii) Australian Company Number or Australian Business Number;

(iii) principal place of business;
(iv) any other information specified by the Minister by notice published in the Government Gazette;

(b) for the person to whom a declared LNG supplier transfers or assigns the ownership, control or operation of the facility that converts natural gas into liquefied natural gas—

(i) name;

(ii) Australian Company Number or Australian Business Number;

(iii) principal place of business;

(iv) any other information specified by the Minister by notice published in the Government Gazette.

58 MSO Rules procedures and guidelines—transitional provision

(1) On the transition day, MSO Rules procedures and guidelines are to be taken to be Wholesale Market Procedures.

(2) In this section—

MSO Rules procedures and guidelines means any of the following documents as in force immediately before the transition day—

(a) the system security guidelines established and updated from time to time under clause 1.2.1(c) of the MSO Rules;
(b) the gas scheduling procedures developed, documented and made available under clause 3.1.1(d) of the MSO Rules;

c) the demand forecast procedures established, modified and published under clause 3.1.3A(d) of the MSO Rules;

d) the accreditation procedures established and published under clause 3.1.6(d) of the MSO Rules;

e) the administered pricing procedure established under clause 3.2.5(a) of the MSO Rules;

(f) the compensation guidelines established and updated under clause 3.6.5A(i) of the MSO Rules;

(g) the ancillary payment procedures established and published under clause 3.6.7(aa) of the MSO Rules;

(h) the uplift payments procedures established and published under clause 3.6.8(a) of the MSO Rules;

(i) the connections guidelines established and updated from time to time under clause 4.1.7(f) of the MSO Rules;

(j) the energy content procedures established under clause 4.4.13(ea) of the MSO Rules;
(k) the metering communications procedures referred to under clause 4.4.18(c) of the MSO Rules;

(l) the data validation process established under clause 4.4.24(b) of the MSO Rules;

(m) the electronic communication procedures developed under clause 5.1.2(e) of the MSO Rules;

(n) the AMDQ credit certificates transfer procedures established and published under clause 5.3.5(b) of the MSO Rules."

Division 2—Amendments to the Gas Industry Act 2001

21 Definitions

In section 3 of the Gas Industry Act 2001—

(a) insert the following definitions—

"AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);

Registered participant has the same meaning as in the National Gas (Victoria) Law;";

(b) for the definition of gas transmission company substitute—

"gas transmission company means any person, other than AEMO, who owns, operates or provides a service by means of a transmission pipeline;";

(c) the definitions of AER, civil penalty provision, conduct provision, market participant, MSO Rules, regulatory provision and VENCorp are repealed.
22 Repeal of section 13—Connections to and adjuncts of gas distribution system

Section 13 of the Gas Industry Act 2001 is repealed.

23 Repeal of section 14—Connections to and adjuncts of gas transmission system

Section 14 of the Gas Industry Act 2001 is repealed.

24 Repeal of section 16—Sale of gas under MSO Rules

Section 16 of the Gas Industry Act 2001 is repealed.

25 Repeal of section 19—Conferral of functions on ACCC

Section 19 of the Gas Industry Act 2001 is repealed.

26 Amendment to section 24—Exemptions

For section 24(1) of the Gas Industry Act 2001 substitute—

"(1) The Governor in Council, by Order published in the Government Gazette, may exempt—

(a) a person from the requirement to obtain a licence in respect of the activity specified in the Order; or

(b) a person from the requirement to obtain registration under section 91BJ or 91LB of the National Gas (Victoria) Law.".

s. 22
27 Amendment to section 51D—Licence condition—supplier of last resort

For section 51D(5)(b) of the Gas Industry Act 2001 substitute—

"(b) the defaulting licensee's registration as a Registered participant in the capacity of a retailer is revoked under the National Gas Rules after a notice of suspension was issued to the licensee by AEMO under those Rules—".

28 Amendments to section 67A—Commission directions to AEMO in relation to supplier of last resort trigger events

(1) In the heading to section 67A of the Gas Industry Act 2001, for "VENCorp" substitute "AEMO".

(2) For section 67A(1) and (2) of the Gas Industry Act 2001 substitute—

"(1) The Commission, by written notice, may direct AEMO to do a thing specified in the notice so that a relevant customer in the retail gas market regulated under the Retail Market Procedures can be supplied gas by a supplier of last resort on the occurrence of a trigger event.

(2) Despite anything to the contrary in this Act, the Retail Market Procedures or the National Gas Rules, AEMO must comply with a notice under subsection (1)."."
Part 3—Gas Industry Related Amendments

(3) In section 67A(3) of the **Gas Industry Act 2001**—

(a) insert the following definitions—

"*National Gas Rules* has the same meaning as in the National Gas (Victoria) Law;

*retail gas market* has the same meaning as in the National Gas (Victoria) Law;

*Retail Market Procedures* has the same meaning as in the National Gas (Victoria) Law;";

(b) the definition of *VENCorp retail gas market rules* is repealed.

29 Gas market provisions

Divisions 1 and 3 of Part 4, and sections 60 to 67 of the **Gas Industry Act 2001** are repealed.

30 Repeal of Part 8—Abolition of VENCorp

Part 8 of the **Gas Industry Act 2001** is repealed.

31 Amendments to section 231—Proceedings for offences

In section 231 of the **Gas Industry Act 2001** omit "or VENCorp" (wherever occurring).

32 Amendments to section 233—Exemption from liability to transmit or convey gas

In section 233 of the **Gas Industry Act 2001**—

(a) subsection (1)(a) is **repealed**; and

(b) in subsection (2), **omit** "gas transmission company or a".

33 Repeal of sections 236(2) and 236(3)—Regulations

Sections 236(2) and 236(3) of the **Gas Industry Act 2001** are repealed.
34 New Part 11 inserted

After Part 10 of the Gas Industry Act 2001 insert—

"PART 11—ABOLITION OF VENCORP"

237 Definitions

In this Part—

current VENCorp transmission determination has the same meaning as in section 34 of the National Electricity (Victoria) Act 2005;

Dispute resolution panel has the same meaning as in the National Gas (Victoria) Law;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

specified code or specified code provision means—

(a) a specified code or guideline (within the meaning of Division 3 of Part 6 of the National Gas (Victoria) Act 2008); or
(b) a specified VENCorp provision (within the meaning of Division 3 of Part 6 of the National Gas (Victoria) Act 2008); or

(c) a specified code or guideline (within the meaning of Division 3 of Part 5 of the National Electricity (Victoria) Act 2005); or

(d) a specified VENCorp provision (within the meaning of Division 3 of Part 5 of the National Electricity (Victoria) Act 2005);

transferred employee means an employee transferred to AEMO by force of this Part;

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

tribunal includes the Dispute resolution panel;

VENCorp means the Victorian Energy Networks Corporation continued under Part 8 as in force immediately before the transition day.

238 Abolition of VENCorp

(1) On the transition day—

(a) VENCorp is abolished; and

(b) any person holding office as a director of VENCorp ceases to hold office.
(2) On the transition day—

(a) AEMO is the successor in law of VENCop; and

(b) all rights, property and assets that were vested in VENCop immediately before the transition day vest, by force of this section, in AEMO; and

(c) all debts, liabilities and obligations of VENCop become, by force of this section, debts, liabilities and obligations of AEMO; and

(d) AEMO is, by force of this section, substituted as a party to any proceedings pending in any court or tribunal to which VENCop was a party immediately before the transition day; and

(e) AEMO is, by force of this section, substituted as a party to any arrangement or contract entered into by or on behalf of VENCop as a party and in force immediately before the transition day; and

(f) any reference to VENCop in any Act or law or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed, will or other document other than a specified code or specified code provision or the current VENCop transmission determination is, so far as it relates to any period after the transition day and if not inconsistent with the context or subject matter, construed as a reference to AEMO.
239 Transferred employees

(1) A person who was an employee of VENCorp immediately before the transition day is to be regarded as—

(a) having been employed by AEMO with effect from the transition day; and

(b) having been employed by AEMO on the same terms and conditions as those that applied to the person, immediately before the transition day, as an employee of VENCorp; and

(c) having accrued an entitlement to benefits, in connection with that employment by AEMO, that is equivalent to the entitlement that the person had accrued, as an employee of VENCorp, immediately before the transition day.

(2) The service of a transferred employee as an employee of AEMO is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the transition day, as an employee of VENCorp.

(3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of VENCorp because of this Part.

(4) Nothing in this section prevents—

(a) any terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the transition day; or
(b) a transferred employee from resigning or being dismissed at any time after the transition day in accordance with the then existing terms and conditions of his or her employment by AEMO.

240 Financial reporting obligations

(1) AEMO must comply with any accountability and reporting obligations under Part 7 of the Financial Management Act 1994 in relation to VENCorp's transferred assets and liabilities for the financial year ending 30 June 2009 as if—

(a) a reference in Part 7 of that Act to a public body were a reference to AEMO; and

(b) a reference in Part 7 of that Act to an accountable officer were a reference to the chief executive officer of AEMO.

(2) AEMO, in the report required under Part 7 of the Financial Management Act 1994 because of subsection (1), must include—

(a) a copy of each direction given to VENCorp during the financial year ending 30 June 2009 under section 163 or 171 (as in force immediately before their repeal by section 30 of the Energy Legislation Amendment (Australian Energy Market Operator) Act 2009), together with a statement of VENCorp's response to each direction; and

(b) a copy of the statement of corporate intent last completed by VENCorp before the commencement of section 30 of the Energy Legislation Amendment (Australian Energy Market Operator) Act 2009.
(3) In this section—

**VENCorp's transferred assets and liabilities**

means the assets and liabilities transferred to AEMO under this Part.

241 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of VENCorp.

242 Validity of things done under this Part

(1) Nothing effected by this Part or suffered under this Part—

(a) is to be taken as placing any person in breach of contract or confidence, or as otherwise exposing the person to civil liability; or

(b) is to be taken as placing any person in breach of, or as constituting a default under, any Act or other law or any provision in any agreement, arrangement or understanding including, but not limited to, any provision prohibiting or restricting the assignment or transfer of any property or right or the disclosure of any information; or

(c) is to be taken as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of, or to terminate, any agreement or obligation; or
(d) is to be taken as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or

(e) is to be taken as causing any contract or instrument to be void or otherwise unenforceable; or

(f) is to be taken as frustrating any contract; or

(g) releases any surety or other obligor wholly or in part from any obligation.

(2) In this section Act does not include the Charter of Human Rights and Responsibilities Act 2006.

243 Corporations Act displacement

To the extent that any provision of this Part is incapable of concurrent operation with a provision of the Corporations Act (a designated Commonwealth provision), the provision of this Part is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the designated Commonwealth provision.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.
244 Savings and transitional regulations

(1) The Governor in Council may make regulations for or with respect to matters of a savings or transitional nature consequent on the enactment of this Part.

(2) Regulations made under this section may have a retrospective effect to a day on or after the transition day.

(3) This section expires on the first anniversary of the transition day.
PART 4—OTHER AMENDMENTS

35 Amendments to the Victorian Energy Efficiency Target Act 2007

(1) In section 3(1) of the Victorian Energy Efficiency Target Act 2007 insert the following definition—

"AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);".

(2) In section 3(1) of the Victorian Energy Efficiency Target Act 2007, the definitions of NEMMCO and VENCORP are repealed.

(3) In section 3(1) of the Victorian Energy Efficiency Target Act 2007, in the definition of scheme acquisition—

(a) in paragraph (a), for "NEMMCO" (wherever occurring) substitute "AEMO";

(b) for paragraph (b) substitute—

"(b) gas from a producer, storage provider or interconnected pipeline operator (within the meaning of the National Gas Rules) or from AEMO or a person or body prescribed for the purposes of this paragraph but does not include any acquisition of gas by AEMO;".

(4) In section 66 of the Victorian Energy Efficiency Target Act 2007—

(a) in paragraph (b), for "VENCORP" substitute "AEMO";

(b) paragraph (c) is repealed.

(5) In section 75(1)(c) of the Victorian Energy Efficiency Target Act 2007, for "NEMMCO or VENCORP" substitute "AEMO".

Part 4—Other Amendments

36 Amendments to the Victorian Renewable Energy Act 2006

(1) In section 3(1) of the Victorian Renewable Energy Act 2006 insert the following definition—

"AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);".

(2) In section 3(1) of the Victorian Renewable Energy Act 2006, the definition of NEMMCO is repealed.

(3) In section 54(1) of the Victorian Renewable Energy Act 2006, for "NEMMCO" substitute "AEMO".

(4) In section 56(a) of the Victorian Renewable Energy Act 2006, for "NEMMCO" substitute "AEMO".

(5) In section 58 of the Victorian Renewable Energy Act 2006, for "NEMMCO" substitute "AEMO".

(6) In section 106 of the Victorian Renewable Energy Act 2006—

(a) for paragraph (b) substitute—

"(b) AEMO; or";

(b) paragraph (c) is repealed.

37 Amendments to the Gas Safety Act 1997

(1) In section 3(1) of the Gas Safety Act 1997 insert the following definition—

"AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);".

(2) In section 3(1) of the Gas Safety Act 1997, in the definition of gas company, after paragraph (a) insert—

"(ab) AEMO; or".
(3) After section 37(7) of the **Gas Safety Act 1997**

insert—

"(8) The safety case for a facility submitted by VENCorp to Energy Safe Victoria in October 2008 and in force immediately before the commencement of section 37 of the **Energy Legislation Amendment (Australian Energy Market Operator) Act 2009** is to be taken to continue in force under this section as if the safety case were submitted by AEMO.".

38 **Amendments to the Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008**

Section 30(1) and sections 31 to 38 of the **Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008** are repealed.
PART 5—REPEAL OF AMENDING ACT

39 Repeal of Act

This Act is repealed on the first anniversary of the first day on which all of its provisions are in operation.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the Interpretation of Legislation Act 1984).
ENDNOTES