

South Australia

# **National Electricity (South Australia) (Commercial Arbitration Acts) Variation Regulations 2020**

under the *National Electricity (South Australia) Act 1996*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *National Electricity (South Australia) (Commercial Arbitration Acts) Variation Regulations 2020*.

### **2—Commencement**

These regulations come into operation on the day on which section 12 of the *Statutes Amendment (National Energy Laws) (Omnibus) Act 2020* comes into operation.

#### **Drafting note—**

Section number to be confirmed at time of settling regulations.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *National Electricity (South Australia) Regulations*

### 4—Substitution of regulation 7

Regulation 7—delete the regulation and substitute:

#### 7—Modification of procedural provisions of relevant Commercial Arbitration Act

For the purposes of section 69A(1) of the new National Electricity Law, the application of the procedural provisions of the Commercial Arbitration Act of this jurisdiction to the hearing of a Rule dispute and decision or determination of a Dispute resolution panel is modified—

- (a) as if—
  - (i) the Rules providing for a Rule dispute were an arbitration agreement within the meaning of that Act; and
  - (ii) the referral of the Rule dispute to a Dispute resolution panel in accordance with the Rules were a referral to arbitration in accordance with an arbitration agreement; and
  - (iii) a reference in those provisions to an arbitrator were a reference to the Dispute resolution panel; and
  - (iv) a reference to a party to an arbitration agreement, or in an arbitration proceeding, in those provisions were a reference to a party to the Rule dispute; and
  - (v) in those provisions for—
    - (A) "unless otherwise agreed in writing by the parties"; or
    - (B) "unless otherwise agreed by the parties", there were substituted "unless the Rules otherwise provide" (as the case requires); and
  - (vi) a reference to an award of an arbitrator in those provisions were a reference to a decision or determination of a Dispute resolution panel; and
- (b) with any other alterations and modifications that are necessary.

**7A—Procedural provisions of relevant Commercial Arbitration Act**

For the purposes of the definition of *procedural provisions of the Commercial Arbitration Act of this jurisdiction* in section 69A(2) of the new National Electricity Law, the prescribed provisions are as follows:

- (a) if the new National Electricity Law is applied as a law of the Commonwealth and a Rule dispute is heard and determined in that jurisdiction, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2017* of the Australian Capital Territory;
- (b) if the new National Electricity Law is applied as a law of the State of New South Wales and a Rule dispute is heard and determined in that State, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2010* of New South Wales;
- (c) if the new National Electricity Law is applied as a law of the State of Victoria and a Rule dispute is heard and determined in that State, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2011* of Victoria;
- (d) if the new National Electricity Law is applied as a law of the State of Queensland and a Rule dispute is heard and determined in that State, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2013* of Queensland;
- (e) if the new National Electricity Law is applied as a law of the State of South Australia and a Rule dispute is heard and determined in that State, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2011* of South Australia;
- (f) if the new National Electricity Law is applied as a law of the State of Tasmania and a Rule dispute is heard and determined in that State, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2011* of Tasmania;
- (g) if the new National Electricity Law is applied as a law of the Australian Capital Territory and a Rule dispute is heard and determined in that Territory, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration Act 2017* of the Australian Capital Territory;
- (h) if the new National Electricity Law is applied as a law of the Northern Territory and a Rule dispute is heard and determined in that Territory, Parts 4, 4A, 5 and 6 and sections 37, 38 and 39 of the *Commercial Arbitration (National Uniform Legislation) Act 2011* of the Northern Territory.

### **7B—Modification of review provisions of relevant Commercial Arbitration Act**

For the purposes of section 71(2) of the new National Electricity Law, the application of the review provisions of the Commercial Arbitration Act of this jurisdiction to a decision or determination of a Dispute resolution panel is modified—

- (a) as if—
  - (i) the Rules providing for a Rule dispute were an arbitration agreement within the meaning of that Act; and
  - (ii) a reference to an arbitration in those provisions were a reference to the hearing of the Rule dispute; and
  - (iii) a reference in those provisions to an award of an arbitrator were a reference to a decision or determination of a Dispute resolution panel; and
  - (iv) a reference to a party to an arbitration agreement, or in an arbitration proceeding, in those provisions were a reference to a party to the Rule dispute; and
- (b) with any other alterations and modifications that are necessary.

### **7C—Review provisions of relevant Commercial Arbitration Act**

For the purposes of the definition of *review provisions of the Commercial Arbitration Act of this jurisdiction* in section 71(3) of the new National Electricity Law, the prescribed provisions are as follows:

- (a) if the new National Electricity Law is applied as a law of the Commonwealth and a Rule dispute is heard and determined in that jurisdiction, Part 7 of the *Commercial Arbitration Act 2017* of the Australian Capital Territory;
- (b) if the new National Electricity Law is applied as a law of the State of New South Wales and a Rule dispute is heard and determined in that State, Part 7 of the *Commercial Arbitration Act 2010* of New South Wales;
- (c) if the new National Electricity Law is applied as a law of the State of Victoria and a Rule dispute is heard and determined in that State, Part 7 of the *Commercial Arbitration Act 2011* of Victoria;
- (d) if the new National Electricity Law is applied as a law of the State of Queensland and a Rule dispute is heard and determined in that State, Part 7 of the *Commercial Arbitration Act 2013* of Queensland;

- (e) if the new National Electricity Law is applied as a law of the State of South Australia and a Rule dispute is heard and determined in that State, Part 7 of the *Commercial Arbitration Act 2011* of South Australia;
- (f) if the new National Electricity Law is applied as a law of the State of Tasmania and a Rule dispute is heard and determined in that State, Part 7 of the *Commercial Arbitration Act 2011* of Tasmania;
- (g) if the new National Electricity Law is applied as a law of the Australian Capital Territory and a Rule dispute is heard and determined in that Territory, Part 7 of the *Commercial Arbitration Act 2017* of the Australian Capital Territory;
- (h) if the new National Electricity Law is applied as a law of the Northern Territory and a Rule dispute is heard and determined in that Territory, Part 7 of the *Commercial Arbitration (National Uniform Legislation) Act 2011* of the Northern Territory.

## 5—Variation of regulation 9—Reviewable regulatory decisions

- (1) Regulation 9(1)—delete "*reviewable regulatory decision*" in section 71A" and substitute:

*relevant regulatory decision* in section 2(1)
- (2) Regulation 9(1)—delete "reviewable" second occurring and substitute:

relevant
- (3) Regulation 9(2)—delete subregulation (2)

## Made by the Governor

on the unanimous recommendation of the Ministers of the participating jurisdictions and with the advice and consent of the Executive Council

on

No            of 2020