

South Australia

Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Bill 2020

A BILL FOR

An Act to amend the *National Electricity (South Australia) Act 1996*, the *National Energy Retail Law (South Australia) Act 2011* 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 Energy Laws) (Regulatory Sandboxing) Act 2020*.

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 Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*; and
- 15 (c) a provision in Part 4 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Electricity (South Australia) Act 1996*

4—Amendment of section 2—Definitions

- 20 (1) Section 2(1)—after the definition of *AER market liquidity obligation functions* insert:

AER trial waiver functions means the functions conferred on the AER under Part 3 Division 1D;

(2) Section 2(1)—after the definition of *initial National Electricity Rules* insert:

innovative trial principles—see section 7B;

(3) Section 2(1)—after the definition of *transmission system safety duty* insert:

trial project means a project—

(a) that—

(i) the AER is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial waiver for a trial project); or

(ii) the AEMC is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial Rule for the purposes of a trial project); and

(b) that tests an approach in relation to the supply of, or demand for, electricity;

trial Rule—see section 87;

trial waiver—see section 18ZL;

5—Insertion of section 7B

After section 7A insert:

7B—Innovative trial principles

The following principles (the *innovative trial principles*) must be taken into account in determining whether a trial project is genuinely innovative in connection with granting a trial waiver or making a trial Rule relating to a trial project:

(a) whether the trial project is focused on developing new or materially improved approaches to the supply of, or demand for, electricity;

(b) whether the trial project is likely to contribute to the achievement of the national electricity objective;

(c) whether the trial project is able to demonstrate a reasonable prospect of giving rise to materially improved services and outcomes for consumers of electricity;

(d) whether the trial project maintains adequate consumer protections, including whether the trial project may involve risks to consumers and (if so), how those risks might be mitigated;

(e) whether the trial project is unable to proceed under the existing regulatory framework;

(f) whether the trial project has moved beyond research and development stages but is not yet established, or of sufficient maturity, size or otherwise commercially ready, to attract investment;

- (g) whether the best solution to a regulatory barrier is not yet clear;
- (h) whether the trial project may negatively impact AEMO's operation of the national electricity system and national electricity market;
- (i) any other principle prescribed by the Regulations.

6—Amendment of section 15—Functions and powers of AER

(1) Section 15(1)—after paragraph (b) insert:

(ba) without limiting paragraphs (a) and (b), in relation to a person undertaking a trial project under a trial Rule or trial waiver, to monitor the conduct and outcomes of the trial project and investigate breaches or possible breaches by the person of—

- (i) this Law, the Regulations and the Rules; and
- (ii) in particular—

(A) in the case of a person undertaking a trial project under a trial Rule—the trial Rule and any requirements imposed by the AEMC under section 104C; and

(B) in the case of person undertaking a trial project under a trial waiver—the trial waiver and any conditions to which the trial waiver is subject; and

Drafting note—

As discussed, the further instruction 3 has been interpreted narrowly so only the reference to compliance has been replaced (please let me know if the investigation matter should be deleted as well.)

(2) Section 15(1)—after paragraph (f) insert:

(fa) AER trial waiver functions; and

7—Insertion of Part 3 Division 1D

Part 3—after Division 1C insert:

Division 1D—AER trial waiver functions

18ZJ—Definitions

In this Division—

proponent—see section 18ZL(1).

18ZK—Interpretative matters

- (1) The functions of the AER under this Division are the *AER trial waiver functions*.

- (2) This Division does not limit any other provision of this Law or the Rules that provides for an exemption from, or for the waiver of, compliance with this Law or the Rules.

18ZL—Trial waiver

- 5 (1) Subject to this section, the AER may, on application by a person or body that proposes to undertake a trial project (a *proponent*), make a determination to grant the proponent an exemption (a *trial waiver*) from 1 or more of the following:
- 10 (a) section 12 of this Law;
- (b) the Rules, or a provision of the Rules.
- (2) Before making a determination to grant a trial waiver, the AER must have regard to the innovative trial principles and any matter required by the Rules.
- 15 (3) An application for a trial waiver must be made in accordance with the Rules.

18ZM—Conditions of trial waiver

- (1) A trial waiver must be in writing and—
- 20 (a) must be subject to any conditions required by the Rules; and
- (b) may be subject to any conditions the AER considers appropriate.
- (2) The AER may vary or revoke a condition of a trial waiver in accordance with the Rules.

18ZN—Consultation on trial waiver

Before granting a trial waiver, the AER must—

- 25 (a) comply with any requirements specified by the Rules; and
- (b) undertake consultation (including with the proponent) in accordance with the Rules.

18ZO—Publication etc of trial waiver

30 As soon as practicable after a trial waiver is made, a copy of the trial waiver must be published on the AER's website.

18ZP—Duration of trial waiver

Subject to this Division, a trial waiver has effect from the day specified in the trial waiver and for the period (not exceeding 5 years) specified in the trial waiver.

18ZQ—Extension of trial waiver

- 35 (1) The AER may, in accordance with the Rules, extend the period for which a trial waiver granted under this Division has effect by a specified period (not exceeding 1 year).

- (2) Before granting an extension under subsection (1), the AER must have regard to the innovative trial principles.
- (3) An extension under subsection (1) must be in writing and must be published on the AER's website.

5 **18ZR—Compliance with trial waiver**

- (1) A proponent granted a trial waiver must comply with any conditions to which the trial waiver is subject.
- (2) If a proponent breaches subsection (1), the AER may—
 - (a) revoke the trial waiver; or
 - (b) vary or revoke a condition of, or impose further conditions on, the trial waiver.

10 **18ZS—Other matters**

- (1) The AER must not grant a trial waiver if the AER reasonably considers—
 - (a) that the trial project for which the trial waiver is sought is materially similar to a trial project—
 - (i) for which a trial Rule has been made; or
 - (ii) that is the subject of a request under section 91(1) for the making of a trial Rule; or
 - (b) that the trial project is unlikely to be carried out.
- (2) The AER cannot grant itself a trial waiver.

15 **8—Amendment of section 34—Rule making powers**

Section 34(1)—after paragraph (ab) insert:

- (ac) any matter or thing related to, or necessary or expedient for, the purposes of a trial Rule, trial project or trial waiver; and

20 **9—Amendment of section 87—Definitions**

(1) Section 87, definition of *market initiated proposed Rule*—after "a Rule" insert:
 , including a trial Rule,

(2) Section 87, definition of *publish*—after paragraph (c) insert:

(ca) in relation to a notice setting out requirements imposed under section 104C—publish on the AEMC's website;

(3) Section 87—after the definition of *publish* insert:

trial Rule means a Rule for the purposes of a trial project;

10—Insertion of section 88C

After section 88B insert:

88C—AEMC must take into account innovative trial principles in certain cases

5 In addition to complying with sections 88 to 88B, the AEMC must take into account the innovative trial principles in making a trial Rule.

11—Insertion of section 90DA

After section 90D insert:

90DA—South Australian Minister to make initial Rules relating to regulatory sandboxing

- 10 (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—
- 15 (a) for or with respect to—
- (i) the regulatory sandboxing amendments; and
- (ii) any other subject contemplated by, or necessary or expedient for the regulatory sandboxing amendments; and
- 20 (b) that revoke or amend a Rule as a consequence of the enactment of the regulatory sandboxing 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) As soon as practicable after making Rules under this section, the
- 25 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.
- (4) The notice referred to in subsection (3)(a) must state—
- 30 (a) the date on which the Rules commence operation; or
- (b) if different Rules will commence operation on different dates, those dates.
- (5) Rules may only be made under subsection (1) on the recommendation of the MCE.
- 35 (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section—

regulatory sandboxing amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Act 2020*.

5 **12—Amendment of section 92—Contents of requests for Rules**

Section 92(1)(a)—after "Regulations" insert:

or the Rules (or both)

13—Amendment of section 94—Initial consideration of request for Rule

(1) Section 94(1)(a)(i)—after "Regulations" insert:

10 or the Rules (or both)

Drafting note—

As discussed, please consider this approach where both ss 92 and 94 contemplate information being required under the Regulations or Rules (given the link between the 2 sections).

15 (2) Section 94(1)—after paragraph (c) insert:

; and

(d) in the case of a request for a trial Rule—the subject matter of the request appears to relate to the subject matter of—

20 (i) a trial waiver granted by the AER; or

(ii) an application for a trial waiver that has been received by the AER (but that has not been granted at the time of the request for the trial Rule).

(3) Section 94(2)—delete subsection (2) and substitute:

(2) If the AEMC considers that—

25 (a) in the case of a request for the making of any Rule—having regard to the matters set out in subsection (1), it should not take any action under this Division in respect of the request; or

30 (b) in the case of a request for the making of a trial Rule—it should not take any action under this Division in respect of the request on the basis that—

(i) the trial project to which the request relates—

(A) is unlikely to be carried out; or

35 (B) offers no reasonable prospect of leading to better services and outcomes for consumers of electricity; or

(ii) the trial Rule requested—

(A) is unnecessary to enable the trial project to be undertaken (including, for example, because the trial project could be undertaken under a trial waiver); or

(B) is unlikely to enable the trial project to be undertaken; or

(C) should be the subject of a request for a Rule other than a trial Rule,

the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.

(4) Section 94—after subsection (6) insert:

(7) The AEMC must, as soon as practicable after receiving a request for the making of a trial Rule, consult with AEMO on the matter.

14—Insertion of section 96AA

After section 96 insert:

96AA—Publication of final Rule determination for trial Rule

(1) If the AEMC considers that a request for a Rule is a request for a trial Rule, the AEMC may make the relevant Rule in accordance with this Division (except sections 98 to 101) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 10 weeks from the date of publication of the notice under section 95.

(2) Sections 96 and 96A do not apply to a request for a trial Rule.

15—Amendment of section 102—Final Rule determination

Section 102(2)(a)—after subparagraph (iii) insert:

(iiia) if the AEMC is required to take into account the innovative trial principles, the reasons of the AEMC taking those principles into account; and

16—Amendment of section 103—Making of Rule

Section 103—after subsection (4) insert:

(5) The AEMC must not make a trial Rule unless the date on which the Rule will expire (which must be no more than 5 years after the date on which the trial Rule commences operation) is specified in the Rule.

17—Insertion of sections 104A to 104C

After section 104 insert:

104A—Extension of trial Rule

- 5
- (1) Subject to this section, the AEMC may, on request, extend, by notice, the date on which a trial Rule will expire (the *expiry date*) to a later date, being a date that falls not more than 1 year after the expiry date.
- (2) Before extending the expiry date of a trial Rule, the AEMC—
- 10
- (a) must have regard to the innovative trial principles; and
- (b) must consult with the AER; and
- (c) if the AEMC considers that the trial Rule, or the trial project to which the trial Rule relates, may impact on AEMO's operation of the national electricity system and national electricity market—must consult with AEMO; and
- 15
- (d) may consult with any other person.
- (3) A request under subsection (1) must—
- (a) be made to the AEMC at least 60 days before the expiry date; and
- (b) specify the length of the extension required.
- 20
- (4) A notice under subsection (1) must—
- (a) be published; and
- (b) specify the later date referred to in subsection (1).

104B—Consideration of revocation of trial Rule on recommendation of AER

- 25
- (1) If the AER recommends that a trial Rule be revoked before the date on which the Rule will expire, the AEMC must give consideration to revoking the trial Rule.
- (2) Nothing in this section limits the power of the AEMC to revoke a trial Rule.

30 **104C—AEMC may impose requirements on proponent of trial project on making trial Rule**

- (1) The AEMC may, in connection with making a trial Rule, by notice, impose requirements on a person or body that proposes to undertake the trial project (a *proponent*) to which the trial Rule relates.
- 35
- (2) Without limiting subsection (1), the AEMC may impose a requirement that 1 or more reports be submitted to the AER in relation to the trial project.
- (3) A notice under subsection (1) must—
- (a) be published; and

- (b) comply with any other requirements prescribed by the Regulations.
- (4) A proponent to which requirements imposed under this section apply must comply with those requirements.
- 5 (5) If a proponent breaches subsection (4), the AEMC may—
- (a) revoke the trial Rule; or
- (b) vary or revoke a requirement imposed on the proponent, or impose further requirements on the proponent.
- 10 (6) Nothing in this section limits the power of the AEMC to revoke a trial Rule.

Part 3—Amendment of *National Energy Retail Law (South Australia) Act 2011*

18—Amendment of section 2—Definitions

- 15 (1) Section 2(1), definition of *AER regulatory function or power*—after paragraph (f) insert:

(g) the AER trial waiver functions under Part 5A;

- (2) Section 2(1)—after the definition of *initial National Energy Retail Rules* insert:

innovative trial principles—see section 13A;

- (3) Section 2(1)—after the definition of *this jurisdiction* insert:

trial project means a project—

(a) that—

(i) the AER is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial waiver for a trial project); or

25 (ii) the AEMC is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial Rule for the purposes of a trial project); and

(b) tests an approach in relation to customer connection services or customer retail services;

30 *trial Rule*—see section 235;

trial waiver—see section 121C;

19—Insertion of section 13A

After section 13 insert:

13A—Innovative trial principles

5 The following principles (the *innovative trial principles*) must be taken into account in determining whether a trial project is genuinely innovative in connection with granting a trial waiver or making a trial Rule relating to a trial project:

- 10 (a) whether the trial project is focused on developing new or materially improved customer connection services or customer retail services;
- (b) whether the trial project is likely to contribute to the achievement of the national energy retail objective;
- 15 (c) whether the trial project is able to demonstrate a reasonable prospect of giving rise to materially improved services and outcomes for consumers of energy;
- (d) whether the trial project maintains adequate consumer protections, including whether the trial project may involve risks to consumers and (if so), how those risks might be mitigated;
- 20 (e) whether the trial project is unable to proceed under the existing regulatory framework;
- (f) whether the trial project has moved beyond research and development stages but is not yet established, or of sufficient maturity, size or otherwise commercially ready, to attract investment;
- 25 (g) whether the best solution to a regulatory barrier is not yet clear;
- (h) whether the trial project may negatively impact on AEMO's operation of national energy systems and national energy markets or AEMO's facilitation of customer connection services and customer retail services;
- 30 (i) any other principle prescribed by the National Regulations.

20—Insertion of Part 5A

After Part 5 insert:

Part 5A—AER trial waiver functions

121A—Definitions

In this Division—

proponent—see section 121C(1).

121B—Interpretative matters

- (1) The functions of the AER under this Division are the *AER trial waiver functions*.
- (2) This Division does not limit any other provision of this Law or the Rules that provides for an exemption from, or for the waiver of, compliance with this Law or the Rules.

121C—Trial waiver

- (1) Subject to this section, the AER may, on application by a person or body that proposes to undertake a trial project (a *proponent*), make a determination to grant the proponent an exemption (a *trial waiver*) from 1 or more provisions of the Rules.
- (2) Before making a determination to grant a trial waiver, the AER must have regard to the innovative trial principles and any matter required by the Rules.
- (3) An application for a trial waiver must be made in accordance with the Rules.

121D—Conditions of trial waiver

- (1) A trial waiver must be in writing and—
 - (a) must be subject to any conditions required by the Rules; and
 - (b) may be subject to any conditions the AER considers appropriate.
- (2) The AER may vary or revoke a condition of a trial waiver in accordance with the Rules.

121E—Consultation on trial waiver

Before granting a trial waiver, the AER must—

- (a) comply with any requirements specified by the Rules; and
- (b) undertake consultation (including with the proponent) in accordance with the Rules.

121F—Publication etc of trial waiver

As soon as practicable after a trial waiver is made, a copy of the trial waiver must be published on the AER's website.

121G—Duration of trial waiver

Subject to this Part, a trial waiver has effect from the day specified in the trial waiver and for the period (not exceeding 5 years) specified in the trial waiver.

121H—Extension of trial waiver

- (1) The AER may, in accordance with the Rules, extend the period for which a trial waiver granted under this Division has effect by a specified period (not exceeding 1 year).

- (2) Before granting an extension under subsection (1), the AER must have regard to the innovative trial principles.
- (3) An extension under subsection (1) must be in writing and must be published on the AER's website.

5 **121I—Compliance with trial waiver**

- (1) A proponent granted a trial waiver must comply with any conditions to which the trial waiver is subject.
- (2) If a proponent breaches subsection (1), the AER may—
 - (a) revoke the trial waiver; or
 - (b) vary or revoke a condition of, or impose further conditions on, the trial waiver.

10 **121J—Other matters**

- (1) The AER must not grant a trial waiver if the AER reasonably considers—
 - (a) that the trial project for which the trial waiver is sought is materially similar to a trial project—
 - (i) for which a trial Rule has been made; or
 - (ii) that is the subject of a request under section 243(1) for the making of a trial Rule; or
 - (b) that the trial project is unlikely to be carried out.
- (2) The AER cannot grant itself a trial waiver.

15 **21—Amendment of section 204—Functions and powers of AER (including delegations)**

(1) Section 204(1)—after paragraph (b) insert:

- (ba) without limiting paragraphs (a) and (b), in relation to a person undertaking a trial project under a trial Rule or trial waiver, to monitor the conduct and outcomes of the trial project and investigate breaches or possible breaches by the person of—
 - (i) this Law, the National Regulations and the Rules; and
 - (ii) in particular—
 - (A) in the case of a person undertaking a trial project under a trial Rule—the trial Rule and any requirements imposed by the AEMC under section 262C; and
 - (B) in the case of person undertaking a trial project under a trial waiver—the trial waiver and any conditions to which the trial waiver is subject; and

(2) Section 204(1)—after paragraph (f) insert:

- (fa) AER trial waiver functions; and

22—Amendment of section 235—Definitions

(1) Section 235, definition of *market initiated proposed Rule*—after "a Rule" insert:

, including a trial Rule,

(2) Section 235, definition of *publish*—after paragraph (c) insert:

5 (ca) in relation to a notice setting out requirements imposed under section 262C—publish on the AEMC's website; or

(3) Section 235—after the definition of *publish* insert:

trial Rule means a Rule for the purposes of a trial project;

23—Insertion of section 236A

10 After section 236 insert:

236A—AEMC must take into account innovative trial principles in certain cases

In addition to complying with section 236, the AEMC must take into account the innovative trial principles in making a trial Rule.

15 24—Amendment of section 237—Subject matters of Rules

Section 237(1)—after paragraph (b) insert:

; and

(c) any matter or thing related to, or necessary or expedient for, the purposes of a trial Rule, trial project or trial waiver.

20 25—Insertion of section 238AA

Before section 238A insert:

238AA—South Australian Minister to make initial Rules relating to regulatory sandboxing

25 (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the *South Australian Minister*) may make Rules—

(a) for or with respect to—

(i) the regulatory sandboxing amendments; and

30 (ii) any other subject contemplated by, or necessary or expedient for the regulatory sandboxing amendments; and

(b) that revoke or amend a Rule as a consequence of the enactment of the regulatory sandboxing amendments.

35 (2) Section 237(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(3) As soon as practicable after making Rules under this section, 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.

(4) The notice referred to in subsection (3)(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.

(5) Rules may only be made under subsection (1) on the recommendation of the MCE.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section—

regulatory sandboxing amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Act 2020*.

26—Amendment of section 246—Contents of requests for Rules

Section 246(a)—after "Regulations" insert:

or the Rules (or both)

27—Amendment of section 249—Initial consideration of request for Rule

(1) Section 249(1)(a)(i)—after "Regulations" insert:

or the Rules (or both)

(2) Section 249(1)—after paragraph (c) insert:

; and

(d) in the case of an active request for a trial Rule—the subject matter of the request appears to relate to the subject matter of—

(i) a trial waiver granted by the AER; or

(ii) an application for a trial waiver that has been received by the AER (but that has not been granted at the time of the active request for the trial Rule).

(3) Section 249(2)—delete subsection (2) and substitute:

(2) If the AEMC considers that—

(a) in the case of an active request for the making of any Rule—having regard to the matters set out in subsection (1), it should not take any action under this Division in respect of the active request; or

(b) in the case of an active request for the making of a trial Rule—it should not take any action under this Division in respect of the active request on the basis that—

(i) the trial project to which the active request relates—

(A) is unlikely to be carried out; or

(B) offers no reasonable prospect of leading to better services and outcomes for consumers of energy; or

(ii) the trial Rule requested—

(A) is unnecessary to enable to the trial project to be undertaken (including, for example, because the trial project could be undertaken under a trial waiver); or

(B) is unlikely to enable the trial project to be undertaken; or

(C) should be the subject of a request for a Rule other than a trial Rule,

the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.

(4) Section 249—after subsection (6) insert:

(7) The AEMC must, as soon as practicable after receiving an active request relating to a trial Rule, consult with AEMO on the matter.

28—Insertion of section 252A

After section 252 insert:

252A—Publication of final Rule determination for trial Rule

(1) If the AEMC considers that a request for a Rule is a request for a trial Rule, the AEMC may make the relevant Rule in accordance with this Division (except sections 255 to 258) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 10 weeks from the date of publication of the notice under section 251.

(2) Sections 252 and 253 do not apply to a request for a trial Rule.

29—Amendment of section 259—Final Rule determination

Section 259(3)(a)—after subparagraph (ii) insert:

(iia) if the AEMC is required to take into account the innovative trial principles, the reasons of the AEMC taking those principles into account; and

30—Amendment of section 261—Making of Rule

Section 261—after subsection (2) insert:

- 5 (3) The AEMC must not make a trial Rule unless the date on which the Rule will expire (which must be no more than 5 years after the date on which the trial Rule commences operation) is specified in the Rule.

31—Insertion of sections 262A to 262C

After section 262 insert:

262A—Extension of trial Rule

- 10 (1) Subject to this section, the AEMC may, on request, extend, by notice, the date on which a trial Rule will expire (the *expiry date*) to a later date, being a date that falls not more than 1 year after the expiry date.
- 15 (2) Before extending the expiry date of a trial Rule, the AEMC—
- (a) must have regard to the innovative trial principles; and
 - (b) must consult with the AER; and
 - (c) if the AEMC considers that the trial Rule, or the trial project to which the trial Rule relates, may impact on AEMO's operation of national energy systems and national energy markets—must consult with AEMO; and
 - 20 (d) may consult with any other person.
- (3) A request under subsection (1) must—
- (a) be made to the AEMC at least 60 days before the expiry date; and
 - 25 (b) specify the length of the extension required.
- (4) A notice under subsection (1) must—
- (a) be published; and
 - (b) specify the later date referred to in subsection (1).

262B—Consideration of revocation of trial Rule on recommendation of AER

- 30 (1) If the AER recommends that a trial Rule be revoked before the date on which the Rule will expire, the AEMC must give consideration to revoking the trial Rule.
- 35 (2) Nothing in this section limits the power of the AEMC to revoke a trial Rule.

262C—AEMC may impose requirements on proponent of trial project on making trial Rule

- 5
- (1) The AEMC may, in connection with making a trial Rule, by notice, impose requirements on a person or body that proposes to undertake the trial project (a *proponent*) to which the trial Rule relates.
- (2) Without limiting subsection (1), the AEMC may impose a requirement that 1 or more reports be submitted to the AER in relation to the trial project.
- (3) A notice under subsection (1) must—
- 10
- (a) be published; and
- (b) comply with any other requirements prescribed by the National Regulations.
- (4) A proponent to which requirements imposed under this section apply must comply with those requirements.
- 15
- (5) If a proponent breaches subsection (4), the AEMC may—
- (a) revoke the trial Rule; or
- (b) vary or revoke a requirement imposed on the proponent, or impose further requirements on the proponent.
- 20
- (6) Nothing in this section limits the power of the AEMC to revoke a trial Rule.

Part 4—Amendment of *National Gas (South Australia) Act 2008***32—Amendment of section 2—Definitions**

- (1) Section 2(1)—after the definition of *AER market liquidity obligation functions* insert:

25 *AER trial waiver functions* means the functions conferred on the AER under Chapter 2 Part 1 Division 1B;

- (2) Section 2(1)—after the definition of *initial Operational Transportation Service Code* insert:

innovative trial principles—see section 24A;

- 30 (3) Section 2(1)—after the definition of *transportation service provider* insert:

trial project means a project—

- (a) that—
- 35 (i) the AER is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial waiver for a trial project); or
- (ii) the AEMC is satisfied is genuinely innovative taking into account the innovative trial principles (in relation to a trial Rule for the purposes of a trial project); and
- (b) tests an approach in relation to natural gas services;

trial Rule—see section 290;

trial waiver—see section 30W;

33—Insertion of Chapter 1 Part 3 Division 2A

After Chapter 1 Part 3 Division 2 insert:

Division 2A—Innovative trial principles

24A—Innovative trial principles

The following principles (the *innovative trial principles*) must be taken into account in determining whether a trial project is genuinely innovative in connection with granting a trial waiver or making a trial Rule relating to a trial project:

- (a) whether the trial project is focused on developing new or materially improved natural gas services;
- (b) whether the trial project is likely to contribute to the achievement of the national gas objective;
- (c) whether the trial project is able to demonstrate a reasonable prospect of giving rise to materially improved services and outcomes for consumers of natural gas;
- (d) whether the trial project maintains adequate consumer protections, including whether the trial project may involve risks to consumers and (if so), how those risks might be mitigated;
- (e) whether the trial project is unable to proceed under the existing regulatory framework;
- (f) whether the trial project has moved beyond research and development stages but is not yet established, or of sufficient maturity, size or otherwise commercially ready, to attract investment;
- (g) whether the best solution to a regulatory barrier is not yet clear;
- (h) whether the trial project may negatively impact AEMO's operation of systems relating to natural gas, and markets and auctions for natural gas;
- (i) any other principle prescribed by the Regulations.

34—Amendment of section 27—Functions and powers of the AER

(1) Section 27(1)—after paragraph (b) insert:

- (ba) without limiting paragraphs (a) and (b), in relation to a person undertaking a trial project under a trial Rule or trial waiver, to monitor the conduct and outcomes of the trial project and investigate breaches or possible breaches by the person of—
 - (i) this Law, the Regulations and the Rules; and

(ii) in particular—

- (A) in the case of a person undertaking a trial project under a trial Rule—the trial Rule and any requirements imposed by the AEMC under section 314C; and
- (B) in the case of a person undertaking a trial project under a trial waiver—the trial waiver and any conditions to which the trial waiver is subject; and

(2) Section 27(1)—after paragraph (ea) insert:

(eb) the AER trial waiver functions; and

35—Insertion of Chapter 2 Part 1 Division 1B

Chapter 2 Part 1—after Division 1A insert:

Division 1B—AER trial waiver functions

30U—Definitions

In this Division—

proponent—section 30W(1).

30V—Interpretative matters

- (1) The functions of the AER under this Division are the *AER trial waiver functions*.
- (2) This Division does not limit any other provision of this Law or the Rules that provides for an exemption from, or for the waiver of, compliance with this Law or the Rules.

30W—Trial waiver

- (1) Subject to this section, the AER may, on application by a person or body that proposes to undertake a trial project (a *proponent*), make a determination to grant the proponent an exemption (a *trial waiver*) from 1 or more provisions of the Rules.
- (2) Before making a determination to grant a trial waiver, the AER must have regard to the innovative trial principles and any matter required by the Rules.
- (3) An application for a trial waiver must be made in accordance with the Rules.

30X—Conditions of trial waiver

- (1) A trial waiver must be in writing and—
- (a) must be subject to any conditions required by the Rules; and
- (b) may be subject to any conditions the AER considers appropriate.

- (2) The AER may vary or revoke a condition of a trial waiver in accordance with the Rules.

30Y—Consultation on trial waiver

Before granting a trial waiver, the AER must—

- 5 (a) comply with any requirements specified by the Rules; and
(b) undertake consultation (including with the proponent) in accordance with the Rules.

30Z—Publication etc of trial waiver

10 As soon as practicable after a trial waiver is made, a copy of the trial waiver must be published on the AER's website.

30ZA—Duration of trial waiver

Subject to this Division, a trial waiver has effect from the day specified in the trial waiver and for the period (not exceeding 5 years) specified in the trial waiver.

15 **30ZB—Extension of trial waiver**

- (1) The AER may, in accordance with the Rules, extend the period for which a trial waiver granted under this Division has effect by a specified period (not exceeding 1 year).
(2) Before granting an extension under subsection (1), the AER must have regard to the innovative trial principles.
(3) An extension under subsection (1) must be in writing and must be published on the AER's website.

30ZC—Compliance with trial waiver

- 25 (1) A proponent granted a trial waiver must comply with any conditions to which the trial waiver is subject.
(2) If a proponent breaches subsection (1), the AER may—
(a) revoke the trial waiver; or
(b) vary or revoke a condition of, or impose further conditions on, the trial waiver.

30 **30ZD—Other matters**

- (1) The AER must not grant a trial waiver if the AER reasonably considers—
(a) that the trial project for which the trial waiver is sought is materially similar to a trial project—
35 (i) for which a trial Rule has been made; or
(ii) that is the subject of a request under section 295(1) for the making of a trial Rule; or
(b) that the trial project is unlikely to be carried out.

- (2) The AER cannot grant itself a trial waiver.

36—Amendment of section 74—Subject matter for National Gas Rules

Section 74(1)—after paragraph (aa) insert:

- (ab) any matter or thing related to, or necessary or expedient for, the purposes of a trial Rule, trial project or trial waiver; and

37—Amendment of section 290—Definitions

- (1) Section 290, definition of *market initiated proposed Rule*—after "a Rule" insert:

, including a trial Rule,

- (2) Section 290, definition of *publish*—after paragraph (d) insert:

- (da) in relation to a notice setting out requirements imposed under section 314C—publish on the AEMC's website;

- (3) Section 87—after the definition of *publish* insert:

trial Rule means a Rule for the purposes of a trial project;

38—Insertion of section 293A

After section 293 insert:

293A—AEMC must take into account innovative trial principles in certain cases

In addition to complying with sections 291 to 293, the AEMC must take into account the innovative trial principles in making a trial Rule.

39—Insertion of section 294EA

After section 294E insert:

294EA—South Australian Minister to make initial Rules relating to regulatory sandboxing

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the *South Australian Minister*) may make Rules—

- (a) for or with respect to—

- (i) the regulatory sandboxing amendments; and
(ii) any other subject contemplated by, or necessary or expedient for the regulatory sandboxing amendments; and

- (b) that revoke or amend a Rule as a consequence of the enactment of the regulatory sandboxing amendments.

- (2) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(3) As soon as practicable after making Rules under this section, 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.

(4) The notice referred to in subsection (3)(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.

(5) Rules may only be made under subsection (1) on the recommendation of the MCE.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) In this section—

regulatory sandboxing amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Act 2020*.

40—Amendment of section 298—Content of requests for a Rule

Section 298(a)—after "Regulations" insert:

or the Rules (or both)

41—Amendment of section 301—Initial consideration of request for Rule

(1) Section 301(1)(a)(i)—after "Regulations" insert:

or the Rules (or both)

(2) Section 301(1)—after paragraph (c) insert:

; and

(d) in the case of an active request for a trial Rule—the subject matter of the request appears to relate to the subject matter of—

(i) a trial waiver granted by the AER; or

(ii) an application for a trial waiver that has been received by the AER (but that has not been granted at the time of the active request for the trial Rule).

(3) Section 301(2)—delete subsection (2) and substitute:

(2) If the AEMC considers that—

(a) in the case of an active request for the making of any Rule—having regard to the matters set out in subsection (1), it should not take any action under this Part in respect of the active request; or

(b) in the case of an active request for the making of a trial Rule—it should not take any action under this Part in respect of the active request on the basis that—

(i) the trial project to which the active request relates—

(A) is unlikely to be carried out; or

(B) offers no reasonable prospect of leading to better services and outcomes for consumers of electricity; or

(ii) the trial Rule requested—

(A) is unnecessary to enable to the trial project to be undertaken (including, for example, because the trial project could be undertaken under a trial waiver); or

(B) is unlikely to enable the trial project to be undertaken; or

(C) should be the subject of a request for a Rule other than a trial Rule,

the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.

(4) Section 301—after subsection (6) insert:

(7) The AEMC must, as soon as practicable after receiving an active request relating to a trial Rule, consult with AEMO on the matter.

42—Insertion of section 304A

After section 304 insert:

304A—Publication of final Rule determination for trial Rule

(1) If the AEMC considers that a request for a Rule is a request for a trial Rule, the AEMC may make the relevant Rule in accordance with this Part (except sections 307 to 310) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 10 weeks from the date of publication of the notice under section 95.

(2) Sections 304 and 305 do not apply to a request for a trial Rule.

43—Amendment of section 311—Final Rule determination

Section 311(3)(a)—after subparagraph (iii) insert:

(iiia) if the AEMC is required to take into account the innovative trial principles, the reasons of the AEMC taking those principles into account; and

44—Amendment of section 313—Making of Rule

Section 313—after subsection (2) insert:

- 5 (3) The AEMC must not make a trial Rule unless the date on which the Rule will expire (which must be no more than 5 years after the date on which the trial Rule commences operation) is specified in the Rule.

45—Insertion of sections 314A to 314C

After section 314 insert:

314A—Extension of trial Rule

- 10 (1) Subject to this section, the AEMC may, on request, extend, by notice, the date on which a trial Rule will expire (the *expiry date*) to a later date, being a date that falls not more than 1 year after the expiry date.
- 15 (2) Before extending the expiry date of a trial Rule, the AEMC—
- (a) must have regard to the innovative trial principles; and
 - (b) must consult with the AER; and
 - (c) if the AEMC considers that the trial Rule, or the trial project to which the trial Rule relates, may impact on AEMO's operation of systems relating to natural gas and markets for natural gas—must consult with AEMO; and
 - 20 (d) may consult with AEMO or any other person.
- (3) A request under subsection (1) must—
- (a) be made to the AEMC at least 60 days before the expiry date; and
 - 25 (b) specify the length of the extension required.
- (4) A notice under subsection (1) must—
- (a) be published; and
 - (b) specify the later date referred to in subsection (1).

314B—Consideration of revocation of trial Rule on recommendation of AER

- 30 (1) If the AER recommends that a trial Rule be revoked before the date on which the Rule will expire, the AEMC must give consideration to revoking the trial Rule.
- 35 (2) Nothing in this section limits the power of the AEMC to revoke a trial Rule.

314C—AEMC may impose requirements on proponent of trial project on making trial Rule

- 5
- (1) The AEMC may, in connection with making a trial Rule, by notice, impose requirements on a person or body that proposes to undertake the trial project (a *proponent*) to which the trial Rule relates.
- (2) Without limiting subsection (1), the AEMC may impose a requirement that 1 or more reports be submitted to the AER in relation to the trial project.
- 10 (3) A notice under subsection (1) must—
- (a) be published; and
- (b) comply with any other requirements prescribed by the Regulations.
- (4) A proponent to which requirements imposed under this section apply must comply with those requirements.
- 15 (5) If a proponent breaches subsection (4), the AEMC may—
- (a) revoke the trial Rule; or
- (b) vary or revoke a requirement imposed on the proponent, or impose further requirements on the proponent.
- 20 (6) Nothing in this section limits the power of the AEMC to revoke a trial Rule.