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National Electricity Code

**Submission to ACCC:
Authorisation (Part VII TPA)
and
Access Undertaking (Part IIIA TPA)**

ATTACHMENTS TO THE SUBMISSION

**National Electricity Law (Attachment 2)
National Electricity Market Legislation Agreement (Attachment 3)
NEMMCO Members Agreement (Attachment 4)
NECA Members Agreement (Attachment 5)**

South Australia

**NATIONAL ELECTRICITY (SOUTH AUSTRALIA) ACT 1996**

No. 44 of 1996

SUMMARY OF PROVISIONS**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Crown to be bound
5. Extra-territorial operation

**PART 2
NATIONAL ELECTRICITY (SOUTH AUSTRALIA) LAW
AND NATIONAL ELECTRICITY (SOUTH AUSTRALIA) REGULATIONS**

6. Application in South Australia of National Electricity Law
7. Application of regulations under National Electricity Law
8. Interpretation of some expressions in National Electricity (South Australia) Law and National Electricity (South Australia) Regulations

**PART 3
ESTABLISHMENT OF NATIONAL ELECTRICITY TRIBUNAL**

9. Tribunal established

**PART 4
POWER TO MAKE REGULATIONS UNDER NATIONAL ELECTRICITY
LAW**

10. Definitions
11. General regulation making-power for National Electricity Law
12. Specific regulation-making powers
13. Civil penalties for breaches of Code

**PART 5
GENERAL**

14. Freedom of information

SCHEDULE
National Electricity Law

PART 1
PRELIMINARY

1. Citation
2. Commencement
3. Definitions
4. Interpretation generally
5. Participating jurisdictions

PART 2
NATIONAL ELECTRICITY CODE

6. National Electricity Code
7. Protected provisions of Code
8. Availability of copies of Code

PART 3
REGISTRATION WITH NEMMCO

9. Registration

PART 4
PROCEEDINGS AND CIVIL PENALTIES

10. Proceedings in respect of Code
11. NECA may demand civil penalties for breach of Code
12. Application to Tribunal where Code breached
13. Civil penalties payable to NECA
14. Enforcement of payment of civil penalty
15. Obligations under Code to make payments

PART 5
NATIONAL ELECTRICITY TRIBUNAL

16. Tribunal
17. Functions
18. Composition
19. Appointment
20. Eligibility
21. Terms and conditions of appointment
22. Resignation and termination
23. Acting chairperson
24. Disclosure of interests
25. Arrangement of business
26. Constitution of Tribunal
27. Member ceasing to be available
28. Sitting places
29. Parties to proceeding before Tribunal
30. Tribunal to determine who are interested persons
31. Representation before Tribunal

- 32. Procedure of Tribunal
- 33. Conferences
- 34. Hearings to be in public
- 35. Opportunity to make submissions
- 36. Particular powers of Tribunal
- 37. Operation and implementation of decision subject to review
- 38. Way in which questions to be decided
- 39. Power of Tribunal to dismiss claim or strike out party
- 40. General powers
- 41. Decisions of Tribunal
- 42. Reasons to be given by Tribunal
- 43. Reviewable decisions
- 44. Tribunal may make certain orders
- 45. Order for payment of civil penalty
- 46. Appeals from decisions of Tribunal
- 47. Operation and implementation of decision subject to appeal
- 48. Reference of questions of law
- 49. Costs
- 50. Protection of members, etc.
- 51. Failure of witness to attend
- 52. Refusal of witness to be sworn or answer questions, etc.
- 53. False or misleading evidence
- 54. Contempt of Tribunal
- 55. Obstructing Tribunal
- 56. Person not to contravene orders
- 57. Confidential information not to be disclosed
- 58. Allowances for witness
- 59. Management of administrative affairs of Tribunal
- 60. Staff of Tribunal
- 61. Tribunal to prepare annual budget
- 62. Funds of Tribunal
- 63. Annual report
- 64. Delegation of powers by chairperson

PART 6 STATUTORY FUNDS OF NECA AND NEMMCO

- 65. Definition
- 66. Civil penalties fund
- 67. Code funds to be established by NEMMCO
- 68. Investment
- 69. NECA and NEMMCO not trustees
- 70. Application of funds on winding up

PART 7 GENERAL

- 71. Search warrant
- 72. Announcement before entry
- 73. Details of warrant to be given to occupier
- 74. Powers under right of entry
- 75. Seizure of things not mentioned in warrant
- 76. Safety and security of electricity system
- 77. Obstruction of persons authorised to enter
- 78. Code participant not liable for failure to supply electricity
- 79. Evidence as to Code participants

- 80. Offences and breaches by corporations
- 81. Breaches of Code involving continuing failure

SCHEDULE 1
Miscellaneous Provisions Relating to Interpretation



ANNO QUADRAGESIMO QUINTO
ELIZABETHAE II REGINAE

A.D. 1996

No. 44 of 1996

An Act to make provision for the operation of a national electricity market and for other purposes.

[Assented to 20 June 1996]

The Parliament of South Australia enacts as follows:

Preamble

A National Grid Management Council was formed following decisions of Special Premiers' Conferences in October 1990 and July 1991.

The National Grid Management Council has developed plans for a co-ordinated electricity market spanning the eastern States, South Australia and the Australian Capital Territory.

The Council of Australian Governments agreed in February 1994 to recommendations for regulatory arrangements for the national electricity market consistent with reforms of competition policy.

The regulatory arrangements include regulation of certain elements of the operation of the market by way of a code of conduct that is subject to authorisation under the Trade Practices Act 1974 of the Commonwealth.

The States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory have agreed to the enactment of legislation in the several jurisdictions for the implementation of the regulatory arrangements.

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the *National Electricity (South Australia) Act 1996*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) The Governor may, by the same proclamation or by proclamations made on different days, fix different days for the commencement of different provisions of this Act or of the National Electricity Law set out in the Schedule to this Act.

Interpretation

3. (1) In this Act—
- "National Electricity (South Australia) Law" means the provisions applying because of section 6 of this Act;
- "National Electricity (South Australia) Regulations" means the provisions applying because of section 7 of this Act.
- (2) Words and expressions used in the *National Electricity (South Australia) Law* and in this Act have the same respective meanings in this Act as they have in that Law.
- (3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

Crown to be bound

4. This Act, the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations* bind the Crown, not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Extra-territorial operation

5. It is the intention of the Parliament that the operation of this Act, the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations* should, so far as possible, include operation in relation to the following:

- (a) land situated outside South Australia, whether in or outside Australia;
- (b) things situated outside South Australia, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside South Australia, whether in or outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

**PART 2
NATIONAL ELECTRICITY (SOUTH AUSTRALIA) LAW
AND NATIONAL ELECTRICITY (SOUTH AUSTRALIA) REGULATIONS**

Application in South Australia of National Electricity Law

6. The National Electricity Law set out in the Schedule to this Act, as in force for the time being—

- (a) applies as a law of South Australia; and
- (b) as so applying may be referred to as the *National Electricity (South Australia) Law*.

Application of regulations under National Electricity Law

7. The regulations in force for the time being under Part 4 of this Act—

- (a) apply as regulations in force for the purposes of the *National Electricity (South Australia) Law*; and
- (b) as so applying may be referred to as the *National Electricity (South Australia) Regulations*.

Interpretation of some expressions in National Electricity (South Australia) Law and National Electricity (South Australia) Regulations

8. In the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations*—

"the jurisdiction" or "this jurisdiction" means the State of South Australia;

"Legislature of this jurisdiction" means the Parliament of South Australia;

"the National Electricity Law" or "this Law" means the *National Electricity (South Australia) Law*;

"Supreme Court" means the Supreme Court of South Australia.

PART 3

4

National Electricity (South Australia) Act 1996

PART 3

ESTABLISHMENT OF NATIONAL ELECTRICITY TRIBUNAL

Tribunal established

9. The *National Electricity Tribunal* is established.

PART 4
POWER TO MAKE REGULATIONS UNDER NATIONAL ELECTRICITY LAW

Definitions

10. In this Part—

"National Electricity Law" means the National Electricity Law set out in the Schedule to this Act as in force for the time being.

General regulation making-power for National Electricity Law

11. (1) The Governor may make regulations for or with respect to any matter or thing necessary to be prescribed to give effect to the National Electricity Law.

(2) Except as provided in subsection (3), a regulation under this Part may be made only on the unanimous recommendation of the Ministers of the participating jurisdictions.

(3) A regulation under section 12 may be made on the recommendation of a majority of the Ministers of the participating jurisdictions.

(4) Schedule 1 to the National Electricity Law applies in relation to a regulation under this Part.

(5) Section 10 of the *Subordinate Legislation Act 1978* does not apply to a regulation under this Part.

Specific regulation-making powers

12. The regulations may make provision for or with respect to—

- (a) the person or persons required to make available copies of the Code;
- (b) the place or places at which copies of the Code are to be available for inspection by the public;
- (c) such matters as are necessary to be prescribed for the purposes of the Tribunal under Part 5 of the National Electricity Law.

Civil penalties for breaches of Code

13. (1) The regulations may prescribe—

- (a) a provision of the Code as a Class A provision; and
- (b) the civil penalty, not exceeding \$20 000, that NECA may, in accordance with the National Electricity Law, demand from a person who is in breach of that provision.

(2) The regulations may prescribe a provision of the Code as a Class B provision, being a provision for a breach of which the Tribunal may, by order, in accordance with the National Electricity Law, impose a civil penalty not exceeding \$50 000 and \$10 000 for each day that the breach continues after service by NECA of notice of the breach.

(3) The regulations may prescribe a provision of the Code as a Class C provision, being a provision for a breach of which the Tribunal may, by order, in accordance with the National Electricity Law, impose a civil penalty not exceeding \$100 000 and \$10 000 for each day that the breach continues after service by NECA of notice of the breach.

PART 5
GENERAL

Freedom of information

14. The following are exempt agencies for the purposes of the *Freedom of Information Act 1991*:

- (a) NECA;
- (b) NEMMCO;
- (c) an agent of NECA or NEMMCO with respect to functions performed under the Code.

SCHEDULE
National Electricity Law

PART 1
PRELIMINARY

Citation

1. This Law may be referred to as the *National Electricity Law*.

Commencement

2. This Law comes into operation as provided in section 2 of the *National Electricity (South Australia) Act 1996* of South Australia.

Definitions

3. In this Law—

"Code" means the code of conduct called the *National Electricity Code* approved by the Ministers of the participating jurisdictions for the time being in accordance with section 6(1) as the initial Code for the purposes of this Law and, if that code of conduct is amended in accordance with its terms and this Law, that code of conduct as so amended and in operation for the time being;

"Code participant" means—

- (a) a person who is registered at the person's request by NEMMCO in accordance with the Code as a Code participant within the meaning of the Code; or
- (b) NEMMCO;

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

"member" means member of the Tribunal;

"national electricity legislation" means—

- (a) the *National Electricity (South Australia) Act 1996* of South Australia, regulations in force under that Act and the *National Electricity (South Australia) Law*; and
- (b) the Acts of the other participating jurisdictions that apply any part of the Act and regulations referred to in paragraph (a) and the National Electricity Law set out in the Schedule to the Act referred to in paragraph (a) as applying in each of those jurisdictions;

"NECA" means National Electricity Code Administrator Limited A.C.N. 073 942 775;

"NEMMCO" means National Electricity Market Management Company Limited A.C.N. 072 010 327;

"participating jurisdiction" means a jurisdiction that is a participating jurisdiction within the meaning of section 5;

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

"Tribunal" means the National Electricity Tribunal established under Part 3 of the *National Electricity (South Australia) Act 1996* of South Australia.

Interpretation generally

4. Schedule 1 contains miscellaneous provisions relating to the interpretation of this Law.

SCHEDULE, PART 1

8

National Electricity (South Australia) Act 1996

Participating jurisdictions

5. (1) Each of the States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory is a participating jurisdiction.

(2) If—

(a) the legislature of a jurisdiction referred to in subsection (1) (other than South Australia)—

(i) does not enact a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia before the expiration of two years after the enactment of that Act; or

(ii) having enacted such a law within that period, repeals it; or

(b) such a law, having been enacted, is not in operation before the expiration of that period,

the jurisdiction ceases to be a participating jurisdiction.

(3) A State or Territory that is not a participating jurisdiction becomes a participating jurisdiction if—

(a) it is a party to the National Electricity Market Legislation Agreement dated 9 May 1996 entered into between the States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory; and

(b) there is in force in that State or Territory a law that corresponds to Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia.

(4) A State or Territory that becomes a participating State or Territory under subsection (3) ceases to be a participating jurisdiction if there ceases to be in force in that State or Territory a law of the kind referred to in that subsection.

(5) If, at any time, all participating jurisdictions agree that a specified jurisdiction will cease to be a participating jurisdiction on a specified date, the jurisdiction ceases to be a participating jurisdiction on that date.

(6) A notice must be published in the *South Australian Government Gazette* of the date on which a jurisdiction becomes, or ceases to be, a participating jurisdiction under subsection (2), (3), (4) or (5).

(7) If the legislature of a participating jurisdiction enacts a law that, in the unanimous opinion of the Ministers of the other participating jurisdictions, is inconsistent with this Law, those other participating jurisdictions may give notice to the Minister of the first-mentioned participating jurisdiction to the effect that, if the inconsistent law remains in force as an inconsistent law for more than six months after the notice is given, the other participating jurisdictions may declare that the jurisdiction has ceased to be a participating jurisdiction.

(8) A jurisdiction ceases to be a participating jurisdiction on publication in the *South Australian Government Gazette* of a declaration made by the Ministers of the other participating jurisdictions in accordance with subsection (7).

PART 2
NATIONAL ELECTRICITY CODE

National Electricity Code

6. (1) The Ministers of the participating jurisdictions for the time being may, in writing signed by each of those Ministers, approve a code of conduct called the *National Electricity Code* as the initial Code for the purposes of this Law.

(2) Notice of—

- (a) the approval of a code of conduct under subsection (1) as the initial Code; or
- (b) an amendment of the Code,

must be published in the *South Australian Government Gazette*.

(3) For the purposes of this Law, a provision of the Code, or an amendment of the Code, comes into operation on the day on which notice of the approval of the code of conduct, or of the amendment, as the case requires, is published in accordance with subsection (2) or, if the Code or amendment provides that the provision or amendment comes into operation on a later day, on that later day.

(4) A document purporting to be a copy of—

- (a) the Code;
- (b) the initial Code referred to in subsection (1); or
- (c) an amendment of that initial Code or of the Code,

endorsed with a certificate to which the seal of NECA has been duly affixed certifying that the document is such a copy, is evidence that the document is such a copy.

(5) All conditions and preliminary steps required for the making of an amendment to the Code are to be presumed to have been satisfied and performed in the absence of evidence to the contrary.

Protected provisions of Code

7. (1) A provision of the Code that, under the Code, is classified as a protected provision has effect according to its tenor despite anything to the contrary in any other provision of the Code.

(2) If a provision of the Code is inconsistent with a protected provision referred to in subsection (1), it is of no effect to the extent of the inconsistency.

(3) A provision of the Code that, under the Code, is classified as a protected provision may not be amended except with the unanimous approval of the Ministers of all participating jurisdictions.

Availability of copies of Code

8. (1) NECA must make a copy of the Code available for inspection during ordinary working hours on business days at its principal place of business in each of the participating jurisdictions.

(2) Each prescribed person must make a copy of the Code available for inspection during ordinary working hours on business days at such place or places as are prescribed.

(3) NECA must ensure that copies of the Code are available for purchase.

SCHEDULE, PART 2

10

National Electricity (South Australia) Act 1996

(4) In this section—

"Code" includes—

- (a) the Code approved under section 6(1); and
- (b) each amendment of the Code.

PART 3
REGISTRATION WITH NEMMCO

Registration

9. (1) A person must not engage in the activity of owning, controlling or operating—

- (a) a generating system that supplies electricity to a transmission or distribution system of a kind referred to in paragraph (b); or
- (b) a transmission or distribution system that—
 - (i) is used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail); and
 - (ii) is connected to another such system—

unless the person—

- (c) is registered by NEMMCO in accordance with the Code as a Code participant in relation to that activity; or
- (d) is the subject of a derogation under, or is otherwise exempt under, the Code from the requirement to be registered as a Code participant in relation to that activity.

Maximum penalty: \$100 000 and \$10 000 for each day after the day of service on the person by NECA of notice of the contravention of this subsection.

(2) A person, other than NECA or NEMMCO, must not engage in the activity of administering or operating a wholesale market for the dispatch of electricity generating units or loads unless the person is authorised, in accordance with the Code, to engage in that activity.

Maximum penalty: \$100 000 and \$10 000 for each day after the day of service on the person by NECA of notice of the contravention of this subsection.

(3) A person ("the purchaser") must not engage in the activity of purchasing electricity from a person administering or operating a wholesale market for the dispatch of electricity generating units or loads unless the purchaser—

- (a) is registered by NEMMCO in accordance with the Code as a Code participant in relation to that activity; or
- (b) is the subject of a derogation under, or is otherwise exempt under, the Code from the requirement to be registered as a Code participant in relation to that activity.

Maximum penalty: \$100 000 and \$10 000 for each day after the day of service on the person by NECA of notice of the contravention of this subsection.

**PART 4
PROCEEDINGS AND CIVIL PENALTIES**

Proceedings in respect of Code**10. (1) A person—**

- (a) may not bring proceedings against NECA; or
- (b) being a person other than NECA, may not bring proceedings against a Code participant,

in respect of an alleged contravention of the Code unless the alleged contravention is of a kind that, under the Code or this Law, is recognised as a contravention that gives rise to an obligation or liability of NECA or the Code participant to the first-mentioned person.

(2) A person (other than NECA) may not in any proceedings seek to rely on an alleged contravention of the Code by another person unless that person and the other person are Code participants.

(3) Nothing in subsection (1) or (2)—

- (a) affects the right of a person to bring proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on the Code; or
- (b) prevents the use of the Code as evidence in any proceedings of standards of conduct, practices, procedures or rules applicable in the electricity industry.

NECA may demand civil penalties for breach of Code

11. (1) If NECA considers that a Code participant is in breach of a provision of the Code that is prescribed as a Class A provision, NECA may, by notice given to the Code participant, require the Code participant to pay to NECA as a civil penalty the amount prescribed as the civil penalty that NECA may demand for a breach of that provision by a Code participant or a Code participant of that class.

(2) If the Code participant does not—

- (a) pay the amount to NECA within 28 days after receiving the notice; or
- (b) within that period apply to the Tribunal for review of the decision to require payment of the amount,

NECA may apply to the Tribunal for an order under Part 5 for the payment of the amount to NECA.

Application to Tribunal where Code breached

12. If NECA considers that a Code participant has breached a provision of the Code, NECA may apply to the Tribunal for an order under Part 5.

Civil penalties payable to NECA

13. An amount paid as a civil penalty to NECA under this Law must be paid into the civil penalties fund established by NECA under Part 6.

Enforcement of payment of civil penalty

14. (1) An order of the Tribunal for payment of a civil penalty may be registered in a court having jurisdiction for the recovery of debts up to the amount of the civil penalty.

(2) Proceedings for the enforcement of an order registered in the court may be taken as if the order were a judgment of the court.

Obligations under Code to make payments

15. If, under the Code, a Code participant is required to pay an amount to another Code participant, and the amount is not paid within 28 days after it is due in accordance with the Code, the Code participant may recover the amount in a court of competent jurisdiction as a civil debt payable by the other Code participant.

**PART 5
NATIONAL ELECTRICITY TRIBUNAL**

DIVISION 1—TRIBUNAL

Tribunal

16. (1) The Tribunal is the National Electricity Tribunal established under Part 3 of the *National Electricity (South Australia) Act 1996* of South Australia.

(2) The Tribunal has the functions and powers conferred on it under the national electricity legislation.

Functions

17. (1) The functions of the Tribunal are—

- (a) to review a decision of NECA under section 11(1) or a decision of NECA or NEMMCO that, under the national electricity legislation or the Code, is a reviewable decision;
- (b) to hear and determine an application to the Tribunal by NECA under the national electricity legislation alleging that a Code participant has breached a provision of the Code.

(2) Despite anything to the contrary in subsection (1), a decision by NECA—

- (a) not to make an application to the Tribunal alleging that a Code participant has breached an obligation or liability under a provision of the Code; or
- (b) not to bring proceedings against a Code participant in accordance with its powers under the national electricity legislation,

is not a reviewable decision.

Composition

18. The Tribunal consists of the chairperson and such number of deputy chairpersons and other members as are appointed under this Law.

Appointment

19. (1) The members of the Tribunal are to be appointed by the Governor of South Australia on the recommendation of a majority of the Ministers of the participating jurisdictions.

(2) The members of the Tribunal are appointed on a part-time basis.

(3) The *Public Sector Management Act 1995* of South Australia does not apply to a member in respect of the office of member.

Eligibility

20. A person is not eligible for appointment as chairperson or deputy chairperson of the Tribunal unless the person is a legal practitioner of the High Court or the Supreme Court of a State or Territory of not less than five years' standing.

Terms and conditions of appointment

21. (1) A member of the Tribunal is appointed for such term (not exceeding five years) as is specified in the member's instrument of appointment but is eligible for reappointment.

(2) A member holds office, subject to this Law, on such terms and conditions as are determined by a majority of the Ministers of the participating jurisdictions.

Resignation and termination

22. (1) A member of the Tribunal may resign by notice in writing signed by the member and delivered to the Governor of South Australia.

(2) The Governor of South Australia, on the recommendation of a majority of the Ministers of the participating jurisdictions, may terminate the appointment of a member of the Tribunal if the member—

- (a) is an insolvent under administration within the meaning of the *Corporations Law*; or
- (b) is convicted, whether within or outside Australia, of an offence that, if committed in a participating jurisdiction, would be punishable by imprisonment for 12 months or more; or
- (c) has failed to disclose an interest under section 24; or
- (d) is guilty of misconduct; or
- (e) is unable, by reason of physical or mental illness, to perform the duties of the office.

Acting chairperson

23. (1) The Governor of South Australia, on the recommendation of a majority of the Ministers of the participating jurisdictions, may appoint a person to act as chairperson of the Tribunal—

- (a) during a vacancy in the office of the chairperson; or
- (b) during any period, or during all periods, when the chairperson is absent or is, for any other reason, unable to perform the functions of chairperson,

but a person appointed to act during a vacancy must not continue so to act for more than six months.

(2) An acting appointment will be for the term and on the conditions determined, on the recommendation of a majority of the Ministers of the participating jurisdictions, by the Governor of South Australia.

(3) The Governor of South Australia, on the recommendation of a majority of the Ministers of the participating jurisdictions, may at any time terminate an acting appointment.

(4) A person appointed under this section has all the powers, and may perform all the functions, of the chairperson.

Disclosure of interests

24. (1) If a member of the Tribunal is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding given after deliberation of the parties in the absence of the member, the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

(2) If the chairperson of the Tribunal becomes aware that a member of the Tribunal who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding, has, in relation to the proceeding, an interest of the kind mentioned in subsection (1)—

- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding, the chairperson must direct the member accordingly; or
- (b) in any other case, the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

DIVISION 2—PROCEEDINGS BEFORE TRIBUNAL

Arrangement of business

25. (1) Subject to section 26, the chairperson of the Tribunal may give directions as to the arrangement of the business of the Tribunal and as to the member or members who are to constitute the Tribunal for the purposes of particular proceedings.

(2) If the chairperson gives a direction as to the member or members who are to constitute the Tribunal for the purposes of a particular proceeding, the chairperson may—

- (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the Tribunal constituted by three members, one of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the manner to which the proceeding relates is determined, at any time after the member ceases to be a member or to be available,

revoke the declaration and give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

Constitution of Tribunal

26. (1) Subject to section 27, the Tribunal is to be constituted for the purposes of the hearing and determination of a proceeding by—

- (a) the chairperson or a deputy chairperson; or
- (b) two or three members, at least one of whom is the chairperson or a deputy chairperson.

(2) If the Tribunal is constituted by two or three members, the presiding member is—

- (a) if the chairperson is one of the members, the chairperson; or
- (b) the member who is a deputy chairperson; or
- (c) if two or three members are deputy chairpersons, the deputy chairperson directed by the chairperson to preside.

Member ceasing to be available

27. (1) If the hearing of a proceeding has been started or completed by the Tribunal constituted by three members but, before the manner to which the proceeding relates has been determined, one of the members constituting the Tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the chairperson does not give a direction under section 25, the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining members or member; or
- (b) in any other case, the proceeding is to be reheard by the Tribunal as reconstituted under section 26.

(2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the chairperson or a deputy chairperson who, but for this subsection, is to preside, the chairperson may, in writing, appoint one of the remaining members, or the remaining member, to preside.

(3) If a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted, including any evidence taken in the proceeding.

Sitting places

28. Sitings of the Tribunal may be held from time to time as required at any place in a participating jurisdiction.

Parties to proceeding before Tribunal

29. (1) Subject to section 39, the parties to a proceeding for review of a decision or on an application are—

- (a) any person who has duly applied to the Tribunal for the review or who made the application; and
- (b) the person who made the decision or is alleged to have breached a provision of the Code; and
- (c) any other person who has been made a party to the proceeding by the Tribunal on application by the person under subsection (2).

(2) If an application has been made by a person for review of a decision, any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding and the Tribunal may, by order, make the person a party to the proceeding.

Tribunal to determine who are interested persons

30. (1) If it is necessary for the purposes of this Law to decide whether the interests of a person are affected by a decision, the matter is to be decided by the Tribunal.

(2) If the Tribunal decides that a person's interests are not affected by a decision, the Tribunal must give the person written reasons for its decision.

Representation before Tribunal

31. At the hearing of a proceeding before the Tribunal, a party to the proceeding may appear in person or be represented by some other person (whether or not the other person is a legal practitioner).

Procedure of Tribunal

32. (1) In a proceeding before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Law, within the discretion of the Tribunal; and
- (b) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the national electricity legislation and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate; and
- (d) the Tribunal must observe the rules of natural justice.

(2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be given—

- (a) if the hearing of the proceeding has not started, by the chairperson or by a deputy chairperson authorised by the chairperson to give procedural directions; and
- (b) if the hearing of the proceeding has started, by the member presiding at the hearing or by another member authorised by the member presiding to give procedural directions.

(3) A direction may be varied or revoked by a member empowered to give the direction.

(4) An authorisation by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

(5) The chairperson may vary or revoke an authorisation.

Conferences

33. (1) If an application is made to the Tribunal for review of a decision, the chairperson may direct the holding of a conference of the parties presided over by the chairperson or a deputy chairperson.

(2) If a conference is held under subsection (1) and—

- (a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Tribunal in the proceeding that would be acceptable to the parties; and
- (b) the terms of the agreement are reduced to writing, signed by the parties and given to the Tribunal; and
- (c) the Tribunal is satisfied that—
 - (i) a decision in those terms would be within the powers of the Tribunal; and
 - (ii) that it would be appropriate to make a decision in those terms,

the Tribunal may, without holding a hearing, make a decision in accordance with those terms.

(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.

(4) If—

- (a) a conference held under subsection (1) in relation to a proceeding is presided over by a member of the Tribunal; and
- (b) a party to the proceeding who was present at the conference notifies the Tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing,

the member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

Hearings to be in public

34. (1) The hearing of a proceeding before the Tribunal is to be in public.

(2) The Tribunal, if it is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, may, by order, direct that a hearing, or part of a hearing, be held in private.

(3) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order—

- (a) give directions prohibiting or restricting the publication of evidence given before the Tribunal (whether in public or private), or of matters contained in documents filed with the Tribunal or received in evidence by the Tribunal; or
- (b) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Tribunal, or of matters contained in documents filed with the Tribunal or received in evidence by the Tribunal.

(4) In considering whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted, the Tribunal is to take as the basis of its consideration the principle that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to all parties, but must pay due regard to any reasons given to the Tribunal why publication or disclosure of the evidence or matter should be prohibited or restricted.

Opportunity to make submissions

35. Subject to section 34, the Tribunal must ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

Particular powers of Tribunal

36. (1) For the purpose of a proceeding, the Tribunal may—

- (a) take evidence on oath or affirmation; or
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding, the chairperson or a deputy chairperson may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are specified in the summons.

(3) The member who presides at the hearing of a proceeding—

- (a) may require a person appearing before the Tribunal to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person appearing before the Tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(5) The Tribunal may permit a person appearing as a witness before the Tribunal to give evidence by tendering a written statement, verified, if the Tribunal directs, by oath or affirmation.

Operation and implementation of decision subject to review

37. (1) Subject to subsection (2), the making of an application to the Tribunal for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Tribunal may, on written application by a party to a proceeding, make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision to which the proceeding relates if the Tribunal—

- (a) is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review; and
- (b) considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application for review.

(3) An order under this section—

- (a) may, by order, be varied or revoked; and
- (b) is subject to such conditions as are specified in the order; and

(c) has effect until—

- (i) the end of the period of operation (if any) specified in the order; or
- (ii) the decision of the Tribunal on the application for review comes into operation,

whichever is earlier.

(4) The Tribunal must not make an order under this section unless each party to the proceeding has been given a reasonable opportunity to make submissions in relation to the matter.

Way in which questions to be decided

38. (1) A question of law arising in a proceeding before the Tribunal (including the question whether a particular question is one of law) is to be decided in accordance with the opinion of the member presiding.

(2) If a question of law arises in a proceeding before the Tribunal constituted by a member who is not the chairperson or a deputy chairperson, the member may refer the question to the chairperson and, if the member does so, the member must decide the question in accordance with the opinion of the chairperson.

(3) Subject to subsection (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion, the question is to be decided according to the opinion of the majority; or
- (b) in any other case, the question is to be decided according to the opinion of the member presiding.

Power of Tribunal to dismiss claim or strike out party

39. If a party to a proceeding before the Tribunal for review of a decision who has had reasonable notice of the proceeding fails either to appear at a conference under section 33(1) or at the hearing of the proceeding, the Tribunal may—

- (a) if the only other party to the proceeding is the person who made the decision, dismiss the application concerned; or
- (b) in any other case, direct that the person who failed to appear ceases to be a party to the proceeding.

General powers

40. For the purpose of a proceeding, the Tribunal may do all other things necessary or convenient to be done for or in connection with the hearing and determination of the proceeding.

Decisions of Tribunal

41. (1) For the purpose of performing its functions, the Tribunal may exercise all the powers that are conferred by the national electricity legislation on the Tribunal or, in the case of a reviewable decision, on the person who made the decision.

(2) The Tribunal must make a decision in writing—

- (a) in the case of a decision on a reviewable decision—
 - (i) affirming the decision under review; or
 - (ii) varying the decision under review; or

- (iii) setting aside the decision under review and either making a decision in substitution for the decision set aside or remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal;

(b) in any other case, on the matter before it.

(3) A decision of the Tribunal comes into effect when it is made or, if a later day is specified in the decision, that day.

Reasons to be given by Tribunal

42. (1) Subject to this section and to section 34, the Tribunal must give written reasons for its decision on a review.

(2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The Tribunal must cause a written copy of its reasons to be given to each party to the proceeding.

Reviewable decisions

43. (1) A person whose interests are affected by a reviewable decision may apply to the Tribunal for review of the decision.

(2) The Tribunal may review a decision for review of which an application is made under this section.

(3) An application to the Tribunal for a review of a decision must be made to the Tribunal, in writing, within 28 days after notice of the making of the decision has been received by the applicant.

(4) The Tribunal may, on written notice by a person, extend the time for the making by the person of an application to the Tribunal for a review of the decision.

(5) The time for making an application to the Tribunal for review of a decision may be extended even though the time has ended.

(6) The Tribunal must cause written notice of an application under subsection (3) or (4) in relation to a reviewable decision to be given to the person who made the decision.

Tribunal may make certain orders

44. (1) The Tribunal, on application of NECA under section 12, must, by order, declare whether or not the Code participant to which the application relates is in breach of the Code.

(2) If the order declares the Code participant to be in breach of the Code, the order may include one or more of the following:

- (a) if the breach is a breach of a provision of the Code prescribed as a Class B provision or a Class C provision, a requirement that the Code participant pay to NECA a civil penalty specified in the order not exceeding—
 - (i) in the case of a breach of a Class B provision, \$50 000 and \$10 000 for each day that the breach continued after service on the Code participant by NECA of notice of the breach;
 - (ii) in the case of a breach of a Class C provision, \$100 000 and \$10 000 for each day that the breach continued after service on the Code participant by NECA of notice of the breach;
- (b) if the breach is a breach of any other provision of the Code, a requirement that the Code participant pay to NECA a civil penalty specified in the order not exceeding \$20 000;
- (c) a requirement that the Code participant cease, within a specified period, the act, activity or practice constituting the breach;

- (d) a requirement that the Code participant take such action, or adopt such practice, as the Tribunal requires for remedying the breach or preventing a recurrence of the breach;
- (e) a requirement that the Code participant implement a specified program for compliance with the Code.

(3) If an order declares a Code participant to be in breach of the Code, the order may, in addition to, or in lieu of, imposing a requirement under subsection (2), suspend the registration of the Code participant as a Code participant for a specified period or suspend any other specified rights of the Code participant under the Code for a specified period.

Order for payment of civil penalty

45. (1) If a Code participant does not pay a civil penalty required to be paid to NECA under a notice under section 11 within 28 days after receiving the notice, the Tribunal may, on application by NECA, make an order that the amount be paid.

(2) The Tribunal must make an order referred to in subsection (1) if it is satisfied that—

- (a) NECA made the demand for payment in accordance with section 11; and
- (b) the payment has not been made; and
- (c) an application has not been made to the Tribunal for review of the decision to demand the payment,

but the Tribunal is not concerned to be satisfied that a breach of the Code occurred before the demand for payment was made.

Appeals from decisions of Tribunal

46. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in the proceeding.

(2) If—

- (a) a person has applied to the Tribunal—
 - (i) for review of a decision; or
 - (ii) to be made a party to a proceeding before the Tribunal; and
- (b) the Tribunal decides that the interests of the person are not affected by the decision,

the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal from a decision of the Tribunal must be made to the Supreme Court—

- (a) within 28 days after notice of the making of the decision is served on the person; and
- (b) in accordance with any applicable Rules of Court made by the Supreme Court and any regulations made for the purposes of this section.

(4) The Supreme Court may extend the time for instituting the appeal.

(5) The time for instituting the appeal may be extended even though the time has ended.

(6) The Supreme Court must hear and determine an appeal duly made under this section, and may make such orders as it considers appropriate.

National Electricity (South Australia) Act 1996

(7) Without limiting subsection (6), the orders that may be made by the Supreme Court on an appeal include—

- (a) an order affirming a decision of the Tribunal; and
- (b) an order setting aside a decision of the Tribunal and—
 - (i) making a decision in substitution for the decision set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions of the Supreme Court.

Operation and implementation of decision subject to appeal

47. (1) Subject to subsection (2), the institution of an appeal to the Supreme Court from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Supreme Court may make an order staying or otherwise affecting the operation or implementation of—

- (a) the whole or a part of the decision of the Tribunal; or
- (b) the whole or a part of the decision to which the proceeding before the Tribunal related,

if the Supreme Court considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) An order under this section—

- (a) may, by order, be varied or revoked; and
- (b) is subject to such conditions as are specified in the order; and
- (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the giving of the decision of the Supreme Court on the appeal,

whichever is the earlier.

Reference of questions of law

48. (1) The Tribunal may, at the request of a party or of its own initiative, refer a question of law arising in a proceeding before the Tribunal to the Supreme Court for decision.

(2) A question is not to be referred without the agreement of the member who is presiding or the chairperson of the Tribunal.

(3) If a question arising in a proceeding before the Tribunal has been referred to the Supreme Court, the Tribunal must not, in the proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the decision of the Supreme Court on the question.

Costs

49. (1) Each party to a proceeding is to bear the party's own costs of the proceeding unless the Tribunal otherwise directs.

(2) A direction under subsection (1) may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid by or under the direction.

(3) Proceedings for the enforcement of a direction under subsection (1) may be taken as if the direction were a judgment of the court in which the direction is registered.

Protection of members, etc.

50. (1) A member of the Tribunal has, in the performance of the member's duties as a member, the same protection and immunity as a Justice of the High Court.

(2) A person representing a party before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the High Court.

(3) A person summoned to attend or appearing before the Tribunal as a witness has the same protection as a witness in a proceeding in the High Court.

Failure of witness to attend

51. A person served, as prescribed, with a summons to appear as a witness before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the proceedings as required by the presiding member.

Maximum penalty: \$5 000.

Refusal of witness to be sworn or answer questions, etc.

52. (1) A person appearing as a witness at a hearing of the Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or to make an affirmation; or
- (b) fail to answer a question that the person is required to answer by the presiding member; or
- (c) fail to produce a document that the person was required to produce by a summons served on the person as prescribed.

Maximum penalty: \$5 000.

(2) It is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

(3) It is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

False or misleading evidence

53. A person appearing as a witness before the Tribunal must not knowingly give evidence that is false or misleading.

Maximum penalty: \$10 000.

Contempt of Tribunal

54. A person must not—

- (a) insult a member of the Tribunal in relation to the performance of his or her functions as a member; or
- (b) interrupt a proceeding of the Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting; or
- (d) do anything that would, if the Tribunal were a court of record, constitute a contempt of that court.

Maximum penalty: \$10 000.

Obstructing Tribunal

55. A person must not obstruct or improperly influence the conduct of a hearing of the Tribunal or attempt to do so.

Maximum penalty: \$10 000.

Person not to contravene orders

56. (1) A person must not contravene an order under section 34(3).

Maximum penalty: \$50 000.

(2) A person must not contravene any other order of the Tribunal.

Maximum penalty: \$20 000.

Confidential information not to be disclosed

57. (1) In this section—

"court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

"person to whom this section applies" means a person who is or has been—

- (a) a member of the Tribunal; or
- (b) a member of the staff of the Tribunal;

"produce" includes permit access to.

(2) A person to whom this section applies is not required to give evidence to a court relating to a matter if—

- (a) the giving of the evidence would be contrary to an order of the Tribunal in force under section 34(3); or
- (b) an application has been made to the Tribunal for an order under that subsection concerning the matter to which the evidence would relate and the Tribunal has not determined the application.

(3) A person to whom this section applies is not required to produce in court a document given to the Tribunal in connection with a proceeding if—

- (a) the production of the document would be contrary to an order of the Tribunal in force under section 34(3); or
- (b) an application has been made to the Tribunal for an order under that subsection in relation to the document and the Tribunal has not determined the application.

(4) A person to whom this section applies is not required to give evidence to a court in relation to a proceeding before the Tribunal.

Allowances for witness

58. A witness summoned to appear at a hearing of the Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed by the regulations; or
- (b) in the absence of regulations, as the chairperson of the Tribunal determines.

DIVISION 3—MISCELLANEOUS

Management of administrative affairs of Tribunal

59. Subject to section 60, the chairperson of the Tribunal is responsible for managing the administrative affairs of the Tribunal.

Staff of Tribunal

60. There is to be a Registrar and Deputy Registrar of the Tribunal in each participating jurisdiction, who will be appointed by, and employed by, NECA on such terms and conditions as NECA determines.

Tribunal to prepare annual budget

61. (1) The chairperson of the Tribunal must prepare and submit to NECA a draft budget for each financial year in such form, and at such time, as NECA directs.

(2) NECA must determine the Tribunal's budget for the financial year within two months after the draft budget is submitted to it but the budget must not differ from the draft budget without the agreement of the chairperson of the Tribunal or, in the event of a failure to agree, the approval of a majority of the Ministers of the participating jurisdictions.

(3) If NECA does not determine the Tribunal's budget for a financial year within two months after the draft budget is submitted to it, NECA is to be taken to have determined that the Tribunal's budget for that year is the draft budget submitted to it.

(4) The Tribunal must authorise expenditure only in accordance with the budget determined by NECA unless NECA otherwise directs.

Funds of Tribunal

62. NECA must provide to the Tribunal in respect of each financial year the funds for which provision is made in the Tribunal's budget for that year.

Annual report

63. The chairperson of the Tribunal must, not later than four months after the end of each financial year, prepare and give to the Minister of each participating jurisdiction a report on the operations of the Tribunal, including the costs of operating the Tribunal, during the year.

Delegation of powers by chairperson

64. The chairperson of the Tribunal may delegate his or her powers under the national electricity legislation (except this power of delegation) to a deputy chairperson or member of the Tribunal.

PART 6
STATUTORY FUNDS OF NECA AND NEMMCO

Definition

65. In this Part—

"Code fund", in relation to NEMMCO, means a fund that NEMMCO is required to establish under the Code.

Civil penalties fund

66. (1) NECA must establish, in the books of the corporation, a civil penalties fund.

(2) NECA must ensure that there is paid into the civil penalties fund—

- (a) all civil penalties received or recovered by NECA under the national electricity legislation;
- (b) income from investment of money in the fund.

(3) Money in the civil penalties fund may be applied only in payment of—

- (a) costs and expenses of the Tribunal;
- (b) costs and expenses of providing staff or services for the Tribunal;
- (c) costs and expenses of NECA incurred in carrying out its functions and powers under the national electricity legislation;
- (d) liabilities and expenses of the fund.

Code funds to be established by NEMMCO

67. (1) NEMMCO must establish, in the books of the corporation, the Code funds.

(2) NEMMCO must ensure that there is paid into each Code fund—

- (a) all amounts received by NEMMCO that, under the Code, are required to be paid into the fund; and
- (b) income from investment of money in the fund.

(3) Money of a Code fund may be applied only in payment of—

- (a) amounts that, under the Code, are required or permitted to be paid from the fund;
- (b) liabilities or expenses of the fund.

Investment

68. (1) NECA or NEMMCO may invest money standing to the credit of a fund established under section 66 or 67.

(2) NECA or NEMMCO must, in exercising a power of investment under subsection (1), exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

NECA and NEMMCO not trustees

69. For the avoidance of doubt, it is declared that nothing in this Law or the Code is intended to constitute NECA or NEMMCO, or a director of NECA or NEMMCO, a trustee or trustees of the money of a fund established under section 66 or 67.

SCHEDULE, PART 6

28

National Electricity (South Australia) Act 1996

Application of funds on winding up

70. Subject to this section, in the winding up of NECA or NEMMCO, money in a fund established under section 66 or 67 must first be applied in accordance with the *Corporations Law* in discharging debts and claims referred to in section 556(1) of the *Corporations Law* to the extent only that debts or claims are liabilities referable to the fund.

**PART 7
GENERAL**

Search warrant

71. (1) A person authorised so to do by NECA may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person believes on reasonable grounds that—

- (a) there is or has been or will be a breach of the Code; and
- (b) there is or may be a thing or things of a particular kind connected with the breach on or in that place.

(2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of a person authorised by NECA that there are reasonable grounds for suspecting that there is, or may be within the next 28 days, a thing or things of a particular kind connected with a breach of the Code on or in a place, the magistrate may issue in accordance with any relevant laws of this jurisdiction a search warrant authorising a person named in the warrant—

- (a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable; and
- (b) to search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the breach of the Code.

(3) A search warrant issued under this section must state—

- (a) the purpose for which the search is required and the nature of the suspected breach of the Code; and
- (b) any conditions to which the warrant is subject; and
- (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
- (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Act, the rules to be observed with respect to search warrants mentioned in any relevant laws of this jurisdiction extend and apply to warrants under this section.

Announcement before entry

72. (1) On executing a search warrant, the person executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the person has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.

(2) A person need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

Details of warrant to be given to occupier

73. If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person executing the warrant must—

- (a) identify himself or herself to that person; and
- (b) give to the person a copy of the warrant.

Powers under right of entry

74. The powers of a person under a search warrant under this Part include power—

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in the place;
- (c) to take extracts from, and make copies of, any documents in the place;
- (d) to take into the place such equipment and materials as the person requires for exercising the powers;
- (e) to require the occupier or any person in the place to give to the person reasonable assistance in relation to the exercise of the person's powers under this section.

Seizure of things not mentioned in warrant

75. If, in the course of executing a search warrant, the person executing the warrant finds a thing he or she believes on reasonable grounds to be—

- (a) connected with the breach of the Code although not the thing, or kind of thing, named or described in the warrant; or
- (b) connected with some other breach of the Code,

and the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the breach or the other breach, the warrant is to be taken to authorise the person to seize the thing.

Safety and security of electricity system

76. (1) If NEMMCO is satisfied that it is necessary so to do for reasons of public safety or the security of the electricity system, NEMMCO may, in accordance with the Code, authorise a person to require a Code participant to do or, subject to subsection (2), may authorise a person to do, any one or more of the following:

- (a) to switch off, or re-route, a generator;
- (b) to call equipment into service;
- (c) to take equipment out of service;
- (d) to commence operation or maintain, increase or reduce active or reactive power output;
- (e) to shut down or vary operation;
- (f) to shed or restore customer load;
- (g) to do any other act or thing necessary to be done for reasons of public safety or the security of the electricity system.

(2) A person authorised under subsection (1) must not take any action referred to in that subsection unless the person has requested the Code participant to take the action and the Code participant has failed to take the action within a reasonable period.

Obstruction of persons authorised to enter

77. A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of—

- (a) a power under a search warrant under this Part; or

(b) a power under section 76.

Maximum penalty: \$100 000.

Code participant not liable for failure to supply electricity

78. (1) A Code participant is not liable in damages to any person for any partial or total failure to supply electricity unless the failure is due to anything done or omitted to be done by the Code participant in bad faith or to the negligence of the Code participant.

(2) The Code participant may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.

Evidence as to Code participants

79. A certificate signed by a member of the board of directors of NECA certifying that a person is a Code participant is evidence that the person is a Code participant.

Offences and breaches by corporations

80. (1) If a corporation contravenes a provision of this Law or of a regulation in force for the purposes of this Law or is in breach of a provision of the Code, each officer of the corporation is to be taken to have contravened the provision or to have been in breach of the provision if the officer knowingly authorised or permitted the contravention or breach.

(2) An officer of a corporation may be proceeded against under a provision pursuant to this section whether or not the corporation has been proceeded against under the provision.

(3) Nothing in this section affects the liability of a corporation for a contravention of a provision of this Law or of a regulation in force for the purposes of this Law or for a breach of a provision of the Code.

(4) In this section—

"officer" means a director of the corporation or a person who is otherwise concerned in its management.

Breaches of Code involving continuing failure

81. For the purpose of determining the civil penalty for a breach of a provision of the Code prescribed as a Class B or Class C provision, if the breach consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

SCHEDULE 1
Miscellaneous Provisions Relating to Interpretation

PART 1
PRELIMINARY

Displacement of Schedule by contrary intention

1. The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

PART 2
GENERAL

Law to be construed not to exceed legislative power of Legislature

2. (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

Every section to be substantive enactment

3. Every section of this Law has effect as a substantive enactment without introductory words.

Material that is, and is not, part of Law

4. (1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) A heading to a section or subsection of this Law does not form part of this Law.

References to particular Acts and to enactments

5. In this Law—

(a) an Act of this jurisdiction may be cited—

- (i) by its short title; or
- (ii) in another way sufficient in an Act of this jurisdiction for the citation of such an Act; and

(b) a Commonwealth Act may be cited—

- (i) by its short title; or
- (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

- (i) by its short title; or

- (ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act, together with a reference to the jurisdiction.

References taken to be included in Act or Law citation, etc.

6. (1) A reference in this Law to an Act includes a reference to—

- (a) the Act as originally enacted, and as amended from time to time since its original enactment; and
- (b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference, the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

- (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
- (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

Interpretation best achieving Law's purpose

7. (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

Use of extrinsic material in interpretation

8. (1) In this clause—

"extrinsic material" means relevant material not forming part of this Law, including, for example—

- (a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and
- (b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Council or House of Assembly of South Australia before the provision concerned was enacted; and
- (c) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and
- (d) a treaty or other international agreement that is mentioned in this Law; and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and
- (f) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and

- (g) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and
- (h) a document that is declared by this Law to be a relevant document for the purposes of this clause;

"ordinary meaning" means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

- (a) if the provision is ambiguous or obscure, to provide an interpretation of it; or
- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or
- (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

- (a) the desirability of a provision being interpreted as having its ordinary meaning; and
- (b) the undesirability of prolonging proceedings without compensating advantage; and
- (c) other relevant matters.

Compliance with forms

9. (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

- (a) the form to be completed in a specified way; or
- (b) specified information or documents to be included in, attached to or given with the form; or
- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

PART 3 TERMS AND REFERENCES

Definitions

10. In this Law—

"Act" means an Act of the Legislature of this jurisdiction;

"affidavit", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

"amend" includes—

- (a) omit or omit and substitute; or

- (b) alter or vary; or
- (c) amend by implication;

"appoint" includes re-appoint;

"Australia" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

"breach" includes fail to comply with;

"business day" means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

"calendar month" means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;

"calendar year" means a period of 12 months beginning on 1 January;

"commencement", in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

"Commonwealth" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external territory;

"confer", in relation to a function, includes impose;

"contravene" includes fail to comply with;

"definition" means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression;

"document" includes—

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

"estate" includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

"expire" includes lapse or otherwise cease to have effect;

"fail" includes refuse;

"financial year" means a period of 12 months beginning on 1 July;

"function" includes duty;

"*Gazette*" means the Government Gazette of this jurisdiction;

"Governor" means the Governor acting with the advice and consent of the Executive Council;

"instrument" includes a statutory instrument;

"interest", in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

"internal Territory" means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

"Jervis Bay Territory" means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

"make" includes issue or grant;

"minor" means an individual who is under 18;

"modification" includes addition, omission or substitution;

"month" means a calendar month;

"named month" means one of the 12 months of the year;

"Northern Territory" means the Northern Territory of Australia;

"number" means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

"oath", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

"office" includes position;

"omit", in relation to a provision of this Law or an Act, includes repeal;

"party" includes an individual or a body politic or corporate;

"penalty" includes forfeiture or punishment;

"person" includes an individual or a body politic or corporate;

"power" includes authority;

"prescribed" means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

"printed" includes typewritten, lithographed or reproduced by any mechanical means;

"proceeding" means a legal or other action or proceeding;

"property" means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

"provision", in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or
- (c) the long title and any preamble to the Act;

"record" includes information stored or recorded by means of a computer;

"repeal" includes—

- (a) revoke or rescind; or
- (b) repeal by implication; or
- (c) abrogate or limit the effect of the law or instrument concerned; or
- (d) exclude from, or include in, the application of the law or instrument concerned any person, subject matter or circumstance;

"sign" includes the affixing of a seal or the making of a mark;

"statutory declaration" means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

"statutory instrument" means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

"swear", in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

"word" includes any symbol, figure or drawing;

"writing" includes any mode of representing or reproducing words in a visible form.

Provisions relating to defined terms and gender and number

11. (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

Meaning of may and must, etc.

12. (1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

Words and expressions used in statutory instruments

13. (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

Effect of express references to bodies corporate and individuals

14. In this Law, a reference to a person generally (whether the expression "person", "another" or "whoever" or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

References to Minister

15. (1) In this Law—

(a) a reference to a Minister is a reference to a Minister of the Crown of this jurisdiction; and

(b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this jurisdiction, who is acting for and on behalf of the Minister.

(2) In a provision of this Law, a reference to "the Minister", without specifying a particular Minister by title is a reference to—

(a) the Minister of this jurisdiction administering the provision; or

(b) if, for the time being, different Ministers of this jurisdiction administer the provision in relation to different matters—

(i) if only one Minister of this jurisdiction administers the provision in relation to the relevant matter, the Minister; or

(ii) if two or more Ministers of this jurisdiction administer the provision in relation to the relevant matter, any one of those Minister; or

- (c) if paragraph (b) does not apply and, for the time being, two or more Ministers administer the provision, any one of the Ministers.

(3) For the removal of doubt, it is declared that if—

- (a) a provision of this Law is administered by two or more Ministers of this jurisdiction; and
(b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

Production of records kept in computers, etc.

16. If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and
(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

References to this jurisdiction to be implied

17. In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and
(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

References to officers and holders of offices

18. In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

Reference to certain provisions of Law

19. If a provision of this Law refers—

- (a) to a Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or
(b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or
(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—
(i) the Division, designated by the number, of the Part in which the reference occurs; and

- (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
- (iii) the subsection, designated by the number, of the section in which the reference occurs; and
- (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
- (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
- (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and
- (vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and
- (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

PART 4 FUNCTIONS AND POWERS

Performance of statutory functions

20. (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

Power to make instrument or decision includes power to amend or repeal

21. If this Law authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Matters for which statutory instruments may make provision

22. (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

- (a) an Act or statutory instrument; or
- (b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

- (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or
- (b) apply generally to all persons, matters or things or be limited in its application to—
 - (i) particular persons, matters or things; or
 - (ii) particular classes of persons, matters or things; or
- (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

- (a) apply differently according to different specified factors; or
- (b) otherwise make different provision in relation to—
 - (i) different persons, matters or things; or
 - (ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

Presumption of validity and power to make

23. (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

Appointments may be made by name or office

24. (1) If this Law authorises or requires a person or body—

- (a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing.

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

Acting appointments

25. (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

- (a) the occasion for the appointment had not arisen; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

Powers of appointment imply certain incidental powers

26. (1) If this Law authorises or requires a person or body to appoint a person to an office—

- (a) the power may be exercised from time to time as occasion requires; and
- (b) the power includes—
 - (i) power to remove or suspend, at any time, a person appointed to the office; and
 - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
 - (iii) power to reinstate or reappoint a person removed or suspended; and
 - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
 - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

Delegation

27. (1) If this Law authorises a person to delegate a function or power, the person may, in accordance with this Law, delegate the power to—

- (a) a person by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation—

- (a) may be general or limited; and
- (b) may be made from time to time; and

(c) may be revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or if the delegator is a body corporate, by a person authorised by the body corporate for the purpose.

(4) A delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function or power, do anything that is incidental to the delegated function or power.

(6) A delegated function or power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated function or power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function or power is, under this Law, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function or power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a function or power is delegated to a particular officer or the holder of a particular office—

(a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and

(b) the function or power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A function or power that has been delegated may, despite the delegation, be exercised by the delegator.

Exercise of powers between enactment and commencement

28. (1) If a provision of this Law (the "empowering provision") that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of an Act of South Australia (the "empowering provision") that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then—

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If—

- (a) this Law has commenced and confers a power to make a statutory instrument (the "basic instrument-making power"); and
- (b) a provision of an Act of South Australia that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the "additional instrument-making power"),

then—

- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and
- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

- (a) enabling the exercise of a power mentioned in the subclause; or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

- (c) on the making of the instrument; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

- (a) an appointment is made under subclause (1) or (2); or
- (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

- (c) on the commencement of the relevant empowering provision; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

PART 5 DISTANCE AND TIME

Matters relating to distance and time

29. (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

- (a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and
- (b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

PART 6 SERVICE OF DOCUMENTS

Service of documents and meaning of service by post, etc.

30. (1) If this Law requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—

- (a) on an individual—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or
- (b) on a body corporate—

- (i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or
- (ii) by sending it by post, telex, facsimile or similar facility to its registered office.

(2) Nothing in subclause (1)—

- (a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subclause; or
- (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subclause.

Meaning of service by post, etc.

31. (1) If this Law requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—

- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
- (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Law requires or permits a document to be served by a particular postal method (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

PART 7

EFFECT OF REPEAL, AMENDMENT OR EXPIRATION

Time of Law ceasing to have effect

32. If a provision of this Law is expressed—

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day,

this provision has effect until the last moment of the specified day.

Repealed Law provisions not revived

33. If a provision of this Law is repealed or amended by an Act of South Australia or a provision of an Act of South Australia, the provision is not revived merely because the Act or the provision of the Act—

- (a) is later repealed or amended; or
- (b) later expires.

Saving of operation of repealed Law provisions

34. (1) The repeal, amendment or expiry of a provision of this Law does not—

- (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
- (d) affect a penalty incurred in relation to an offence arising under the provision; or

- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

Continuance of repealed provisions

35. If an Act of South Australia repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

Law and amending Acts to be read as one

36. This Law and all Acts of South Australia amending this Law are to be read as one.

PART 8 OFFENCES UNDER THIS LAW

Penalty at end of provision

37. In this Law, a penalty specified at the end of—

- (a) a section (whether or not the section is divided into subsections); or
- (b) a subsection (but not at the end of a section); or
- (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

Penalty other than at end of provision

38. (1) In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

(2) This clause does not apply to a penalty to which clause 37 applies.

Indictable offences and summary offences

39. (1) An offence against this Law that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Law that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.

(3) If—

- (a) a proceeding for an offence against this Law that is punishable by imprisonment is brought in a court of summary jurisdiction; and
- (b) the prosecutor requests the court to hear and determine the proceeding,

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

- (a) impose, in relation to a single offence against this Law, a period of imprisonment of more than two years; or

- (b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than five years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

Double jeopardy

40. If an act or omission constitutes an offence—

- (a) under this Law; or
- (b) under another law of this jurisdiction or a law of another jurisdiction,

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Law.

Aiding and abetting, attempts, etc.

41. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Law is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against this Law commits an offence and is punishable as if the attempted offence had been committed.

PART 9

INSTRUMENTS UNDER THIS LAW

Schedule applies to statutory instruments

42. (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

PART 10

APPLICATION TO COASTAL SEA

Application

43. This Law has effect in and in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor

Dated 9 May 1996

**NATIONAL ELECTRICITY
MARKET LEGISLATION
AGREEMENT**

**The State of New South Wales
The State of Victoria
The State of Queensland
The State of South Australia
The Australian Capital Territory**

Contents**NATIONAL ELECTRICITY MARKET LEGISLATION
AGREEMENT**

1 Preliminary	1
2 Market Objectives	3
3 Designated Ministers	3
4 Operation of Agreement	4
5 Enactment of the Co-Operative Legislation	4
6 Amending Legislation	6
7 Conflicting Legislation	6
8 Withdrawal of Parties	6
9 Notices	7

NATIONAL ELECTRICITY MARKET LEGISLATION AGREEMENT

Date: 9 May 1996

Parties:
 The State of New South Wales
 The State of Victoria
 The State of Queensland
 The State of South Australia
 The Australian Capital Territory

Recitals:

- A. The Heads of Government in Australia have agreed, as part of the microeconomic reform process, to establish a national electricity market, to be governed by a national electricity code.
- B. The Parties have agreed that, without fettering the powers of their respective future Parliaments, the national electricity code should be supported by legislation enacted co-operatively by the Parties which assures its application and effect is identical in all jurisdictions at all times.
- C. The purpose of this agreement is to reduce, to the maximum extent practicable, the exposure of persons whose interests may be affected by the national electricity code to sovereign risk resulting from a difference at any time in the effect of the national electricity code between jurisdictions.

Operative provisions:

1 Preliminary

- 1.1 This agreement may be referred to as the National Electricity Market Legislation Agreement.
- 1.2 In this agreement, unless the context otherwise requires:

"Amend" means directly amend the National Electricity Market Legislation by the insertion or omission (or both) of matter, or indirectly amend the National Electricity Market Legislation by making provisions that would significantly alter its effect, scope or operation;

"Amending Legislation" means Legislation amending, repealing or adding to any National Electricity Market Legislation already enacted by a Party;

"Application of Laws Legislation" means the Legislation referred to in clause 5.4;

"Code" means the national electricity code governing the National Electricity Market and dealing with, among other things:

- (a) trading in the wholesale electricity market;
- (b) the operation and security of the inter-connected power system;
- (c) connection and access arrangements to transmission and distribution networks;
- (d) the pricing of access to and use of components of the electricity network;
- (e) management and resolution of disputes between market participants in relation to the Code; and
- (f) a change process for the Code,

identified by declaration in writing by the Designated Minister for the Party which has passed the Initial Legislation as the Code approved by all the Designated Ministers and authorised by the Australian Competition and Consumer Commission, and includes any modification of the Code approved in accordance with its provisions and authorised if required by the Australian Competition and Consumer Commission;

"Designated Minister" in relation to a Party means the last Minister nominated by that Party under clause 3.1;

"Initial Legislation" means the proposed legislation referred to in clauses 5.1 and 5.2;

"Legislation" includes regulations made under National Electricity Market Legislation and any instrument which has the effect of modifying or providing exemption from the operation of National Electricity Market Legislation;

"National Electricity Market" means the market for wholesale trading of electricity with participants situated in different States and Territories of Australia proposed to be established in accordance with this agreement by the governments of the Australian Capital Territory, New South Wales, Queensland, South Australia and Victoria;

"National Electricity Market Legislation" includes the Initial Legislation, Application of Laws Legislation and Amending Legislation;

"Parliament" includes the Legislative Assembly of a Territory;

"Party" means a State or Territory that has become a party to this agreement by executing this agreement;

"South Australia" means the State of South Australia;

"State" means a State of Australia that is for the time being a party to this agreement;

"Transitional Legislation" means saving and transitional legislation of a Party concerning the introduction of National Electricity Market Legislation;

"Territory" means a Territory of Australia that is for the time being a party to this agreement;

"Victoria" means the State of Victoria.

1.3 In this agreement unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes all genders;
- (c) a reference to a part, clause or sub-clause is to a part, clause or sub-clause of this agreement; and
- (d) headings are for convenience of reference only and do not affect interpretation.

2 Market Objectives

2.1 The objectives for the National Electricity Market are as follows:

- (a) the market should be competitive;
- (b) customers should be able to choose which supplier (including generators, retailers and traders) they will trade with;
- (c) there should be non-discriminatory access to the interconnected transmission and distribution network;
- (d) there should be no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply; and
- (e) there should be no discriminatory legislative or regulatory barriers to the interstate and/or intrastate trading of electricity.

3 Designated Ministers

3.1 Each Party will nominate a Minister of the Crown in right of that Party as the Minister responsible for implementing the Party's obligations under this agreement by written notice to the other Parties.

3.2 A Party may change the Minister of the Crown in right of that Party responsible for implementing the Party's obligations under this agreement by written notice to the other Parties.

- 3.3 The Designated Minister of a Party may exercise the Party's rights on behalf of the Party as the Party's representative.
- 3.4 A notice under clause 3.1 or 3.2 must be signed by the Premier or Chief Minister of the Party.

4 Operation of Agreement

- 4.1 This agreement becomes effective when it has been executed by all Parties.
- 4.2 This agreement may be amended by agreement executed by all the Parties.
- 4.3 If a Party ceases to be a Party, this agreement will nevertheless continue as an agreement between all other Parties.
- 4.4 A Party ceases to be a Party if it fails within two years, or such further time as may be agreed in writing by all of the other Parties, after assent to the Initial Legislation in the relevant jurisdiction to secure the passing and proclamation (or in the case of a Territory the commencement) of National Electricity Market Legislation in accordance with this agreement.
- 4.5 A Party ceases to be a Party if:
 - (a) the Party withdraws from this agreement pursuant to clause 8;
 - (b) the National Electricity Market Legislation of the Party does not apply in a manner identical with the National Electricity Market Legislation of other Parties in respect of a particular matter ("variation") and each other Party gives notice to the Party that the variation has a material adverse effect on the effect of the Code.

5 Enactment of the Co-operative Legislation

- 5.1 South Australia will submit to its Parliament a Bill which has been approved in writing by all the Designated Ministers as Initial Legislation and which establishes the force and effect of the Code in its jurisdiction and will take all appropriate steps to secure the passage of the legislation by 31 July 1996 or such other date as is approved in writing by all the Designated Ministers.
- 5.2 South Australia will as soon as practicable after the passage of the legislation referred to in clause 5.1 take all necessary steps to make any regulations under the Initial Legislation which have been approved in writing by all the Designated Ministers.
- 5.3 South Australia must give notice to the other Parties by 24 May 1996 if it believes that it will be unable to secure the passing of approved Initial Legislation before 31 July 1996. If South Australia advises that

it will be so unable, Victoria will undertake the obligations referred to in clauses 5.1 and 5.2.

- 5.4 As soon as practicable after the Initial Legislation has been passed but not later than any deadline agreed by all the Designated Ministers, each Party other than a Party which has passed Initial Legislation will, for the purpose of establishing the force and effect of the Code in its jurisdiction in a manner identical to the Initial Legislation, submit to the Parliament of that Party, as its National Electricity Market Legislation, Application of Laws Legislation which has been approved in writing by all the Designated Ministers and will take all appropriate steps to secure the passing of that Legislation.
- 5.5 The Party which has passed the Initial Legislation will take all necessary steps to bring the Initial Legislation into force in accordance with a timetable agreed by a majority of the Parties which have passed National Electricity Market Legislation, and each other Party which has passed National Electricity Market Legislation will take all necessary steps to bring its National Electricity Market Legislation into force in accordance with that timetable.
- 5.6 The National Electricity Market Legislation of each Party must at all times apply in the jurisdiction of that Party without need for further enactment in a manner identical with the application of the Initial Legislation and any Amending Legislation approved in accordance with this agreement and in force from time to time in the jurisdiction of the Party which has made that Amending Legislation, and must preserve to the fullest extent practicable the language of that Amending Legislation in its application in the jurisdiction of the Party except to the extent necessary for:
- (a) the alteration of a provision that refers to another law, so as to reflect differences in the jurisdiction in the law so referred to, or the omission of such a provision if the law referred to is not relevant in the jurisdiction;
 - (b) the alteration of "State" or "Territory" where appropriate and alterations necessarily consequential on such an alteration;
 - (c) amendments because of different procedures within a jurisdiction for the commencement of any Initial Legislation and Amending Legislation; and
 - (d) such other amendments as are approved in writing by all the Designated Ministers.
- 5.7 Any additional Legislation required within a Party's jurisdiction to give effect to its National Electricity Market Legislation must not modify the effect of the National Electricity Market Legislation except in a way approved by all Parties.

6 Amending Legislation

- 6.1 Amending Legislation must not be introduced by a Party unless the Legislation has been approved in writing by all the Designated Ministers in relation to Parties which have passed National Electricity Market Legislation.
- 6.2 South Australia will submit to its Parliament a Bill which has been approved in writing by all the Designated Ministers as Amending Legislation and will take all appropriate steps to secure the passage of Amending Legislation and bring it into force in accordance with a timetable agreed by all Designated Ministers.

7 Conflicting Legislation

- 7.1 Each Party will, not later than the time that its National Electricity Market Legislation commences, take all necessary action to repeal amend or modify any other legislation so that it is consistent with the National Electricity Market Legislation, but any Transitional Legislation for that purpose which affects the operation of the National Electricity Market Legislation must be approved in accordance with clause 5.
- 7.2 The National Electricity Market Legislation of a Party made in accordance with clause 5 may in accordance with the approval of the Parties be expressed to apply subject to an existing enactment of the Party.
- 7.3 A Party will not submit a Bill to its Parliament or take other action to Amend, or to bring into force any legislation which would be inconsistent with, the National Electricity Market Legislation approved in accordance with this agreement.

8 Withdrawal of Parties

- 8.1 A Party may at any time before the commencement of any National Electricity Market Legislation of that Party by notice in writing to the other Parties withdraw from this agreement and cease to be a Party with effect from the date of the notice.
- 8.2 A Party may withdraw from this agreement by giving notice in writing to the other Parties of its intention to do so, and all Parties shall then negotiate in good faith in relation to the terms of withdrawal of the Party which has given notice including the date upon which the Party will cease to be a Party, and changes to legislation and other arrangements with respect to the National Electricity Market necessary as a consequence of the withdrawal.

9 Notices

- 9.1 A notice may be given to a Party under this agreement by sending it to the Designated Minister.

EXECUTED as an agreement

Execution page

The Honourable Michael Rueben Egan)
MLC, Minister for Energy for New)
South Wales on the 9th day of May 1996)
)

The Honourable Alan Robert Stockale)
MLA, Treasurer for Victoria on the 9th)
day of May 1996)
)

The Honourable Thomas John George)
Gilmore MLA, Minister for Mines and)
Energy for Queensland on the 9th day of)
May 1996.)

The Honourable John Wayne Olsen)
MLC, Minister for Infrastructure for)
South Australia on the 9th day of May)
1996)

The Honourable Anthony Joseph De)
Domenico MLA, Minister for Urban)
Services for the Australian Capital)
Territory on the 9th day of May 1996)

Dated 9 May 1996

**NEMMCO MEMBERS
AGREEMENT**

**The State of New South Wales
("NSW")**

**The State of Victoria
("Victoria")**

**The State of Queensland
("Queensland")**

**The State of South Australia
("South Australia")**

**The Australian Capital Territory
("ACT")**

Contents**NEMMCO Members Agreement**

1 Definitions and Interpretation	1
Definitions	1
Interpretation	3
2 Company's Business	4
Description	4
NEMMCO and the National Electricity Code	4
3 Membership	5
Parties as Members	5
Equal Voting Rights	5
Incorporation of NEMMCO	5
Designated Ministers, etc	5
4 Board Appointments and Proceedings	5
Appointment of Directors by Members	5
Chairperson	5
Consultation and Term of Appointment	5
Additional Directors	6
Remuneration of Directors	6
5 Management of the Company	6
Board Responsibility	6
Chief Executive Officer	6
Decisions of Board requiring Members' approval	7
6 Working Capital and Funding Policy	7
NEMMCO to be self funding	7
No Dividends	7
Initial Capital Contributions	8
Contribution on Winding Up	8
7 Annual Statement of Corporate Intent and Budget	9
Annual Statement of Corporate Intent	9
Statement of Corporate Intent: Contents	9
Annual Budget	10
Compliance with Statement of Corporate Intent and Budget	10
8 Reports to Members	10
Quarterly and Annual Reports	10
Audit	11
9 Joint Venture Assets/Liabilities	11
Transfer of Joint Venture Assets	11
Benefit of Transfer	12
10 State Control Centres	12
11 Member's Obligations	12

12 Membership	13
NEMMCO to be Bound	13
Members to be States or Territories	13
New Members	14
Applications to become New Member	14
Consequences of New Member	14
Termination of Membership	15
Retiring Parties	15
13 General	15
Notices	15
Majority of Members	15
Addresses	16
Receipt of Notices	16
Exercise of rights	16
Waiver and variation	16
Approvals and consents	16
Remedies cumulative	16
Further assurances	17
Sovereign immunity	17
Severability	17
Entire agreement	17
Governing law, jurisdiction and service of process	17
Inconsistency	17
Consumer Price Index	18
Attachment A Memorandum and Articles of Association of National Electricity Market Management Company Limited	20
Attachment B Sale Agreement	21

NEMMCO Members Agreement

Date: 9 May 1996

Parties: The State of New South Wales ("NSW");
The State of Victoria ("Victoria");
The State of Queensland ("Queensland");
The State of South Australia ("South Australia"); and
The Australian Capital Territory ("ACT").

Recitals:

- A. The Governments of the Commonwealth of Australia, NSW, Victoria, Queensland, South Australia and ACT have agreed to establish the National Electricity Market.
- B. The parties have agreed to establish a company limited by guarantee to conduct the National Electricity Market and to carry out other functions as specified in the National Electricity Code.

THE PARTIES AGREE, in consideration of, among other things, to the mutual promises contained in this agreement:

Operative provisions:

1 Definitions and Interpretation

1.1 Definitions

In this agreement:

"Articles" means the articles of association to be adopted for NEMMCO, the initial articles of association shall be those articles of association set out in Attachment A;

"Board" means the board of directors of NEMMCO;

"Budget" means the budget adopted under clause 7.3(c);

"CEO" means the chief executive officer of NEMMCO appointed under clause 5.2 and includes any replacement appointment under that clause;

"Chairperson" means the chairperson of the Board appointed under clause 4.2 and includes any replacement appointed under that clause;

"CPI Ratio", for a particular Financial Year, is:

-
- (a) the Consumer Price Index: All Groups Index Number (weighted average for the 8 capital cities) published by the Australian Bureau of Statistics for the March Quarter immediately preceding the start of the relevant Financial Year

divided by

- (b) the Consumer Price Index: All Groups Index Number (weighted average for the 8 capital cities) published by the Australian Bureau of Statistics for the March 1996 Quarter.

"Designated Minister" in relation to a party means the last Minister nominated by that party under clause 3.4(a);

"Director" means a director of NEMMCO;

"Dollars", "AUD", "\$" and "\$A" means the lawful currency of Australia;

"Financial Year" means a period of 12 calendar months commencing on 1 July each year, except the first Financial Year which commences on the incorporation of NEMMCO and ends at the conclusion of 30 June immediately following the date of incorporation;

"Joint Venture" means the joint venture established by NSW and Victoria to undertake the National Electricity Market Systems Development Project on behalf of NGMC, pending the establishment of the National Electricity Market by NEMMCO;

"Members" means the members of NEMMCO;

"Memorandum" means the memorandum of association to be adopted for NEMMCO, the initial memorandum of association shall be that memorandum set out in Attachment A;

"National Electricity Code" means the National Electricity Code authorised by the Australian Competition and Consumer Commission governing the National Electricity Market;

"National Electricity Market" means the market for wholesale trading of electricity with participants situated in different States and Territories of Australia proposed to be established by an appropriate legislative scheme between the governments of certain States and/or Territories of Australia;

"NEMMCO" means National Electricity Market Management Company Limited, the company established under clause 3.3;

"NGMC" means the National Grid Management Council;

"Statement of Corporate Intent" means, at any particular time, the completed written statement delivered under clause 7.1(c), with any modifications or deletions made in accordance with clause 7.1;

"Transgrid" means the Electricity Transmission Authority constituted under the Electricity Transmission Act 1994 (NSW); and

"VPX" means the Victorian Power Exchange constituted under the Electricity Industry Act 1993 (Vic).

1.2 Interpretation

In this agreement, headings and underlinings are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) where a word or phrase is defined in this agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (e) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any annexure, exhibit and schedule;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) a covenant or agreement on the part of two or more persons binds them severally;

-
- (k) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
 - (l) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
 - (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
 - (n) a reference to a month is a reference to a calendar month; and
 - (o) a reference to a body (including, without limitation, an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2 Company's Business

2.1 Description

The objectives of NEMMCO are:

- (a) to establish and conduct the National Electricity Market efficiently in accordance with the National Electricity Code, and the Statement of Corporate Intent, on a self funding/break even basis in accordance with the Budget;
- (b) to promote the ongoing development of, and changes to, the National Electricity Market with the objective of continually improving its efficiency; and
- (c) to undertake responsibility for co-ordination of global system planning in relation to the National Electricity Market as specified in the National Electricity Code.

2.2 NEMMCO and the National Electricity Code

NEMMCO must comply with the National Electricity Code.

3 Membership

3.1 Parties as Members

Each party agrees to become and, subject to clauses 12.6 and 12.7, remain a Member.

3.2 Equal Voting Rights

The Members will have equal voting rights.

3.3 Incorporation of NEMMCO

Each party must execute all necessary documentation to effect the incorporation of NEMMCO and become a member of NEMMCO.

3.4 Designated Ministers, etc

- (a) Each Member must nominate a Minister of the Crown in right of that party as the Minister responsible for implementing the party's obligations under this agreement by written notice to the other parties;
- (b) A Member may change the Minister of the Crown in right of the party responsible for implementing the party's obligations under this agreement by written notice to the other parties;
- (c) The Designated Minister of a Member may exercise the party's rights on behalf of the party as the party's representative; and
- (d) A notice under clause 3.4(a) or 3.4(b) must be signed by the Premier or Chief Minister of the relevant party.

4 Board Appointments and Proceedings

4.1 Appointment of Directors by Members

Each Member by written notice to the other Members may nominate one person to be appointed as a Director in accordance with the Articles.

4.2 Chairperson

As soon as practicable after execution of this agreement and thereafter as the need arises, the parties must nominate a person for appointment as the Chairperson of the Board in accordance with the Articles.

4.3 Consultation and Term of Appointment

Before any nomination is made under clause 4.1 or clause 4.2, the parties must consult together with a view to achieving an appropriate mix of skills and of experience among the Directors in the areas of

electricity supply, financial services, commodity trading, information technology and law and a staggering of their terms of appointment (in any case not to exceed 3 years) to effect orderly rotation of appointments.

4.4 Additional Directors

The Board may nominate a person for appointment as a Director in accordance with the Articles (but so that the total number of Directors so nominated must not at any time exceed 2) if it thinks it desirable to add to the experience and background of the Board.

4.5 Remuneration of Directors

The Members will determine, by resolution of a general meeting, appropriate remuneration for each of the Directors.

5 Management of the Company

5.1 Board Responsibility

Subject to this agreement, the Board is responsible for managing the business and affairs of NEMMCO in order to achieve the objectives set out in clause 2.1, including:

- (a) establishing NEMMCO's general policies;
- (b) determining matters of a major or unusual nature which are not in the ordinary course of NEMMCO's business;
- (c) developing NEMMCO's Statement of Corporate Intent, Budget and business plan for each Financial Year; and
- (d) ensuring that NEMMCO performs its functions under the National Electricity Code.

5.2 Chief Executive Officer

- (a) The Board must appoint a person to be chief executive officer on such terms and for such period as it sees fit. The CEO may be appointed a Director in accordance with the Articles, but need not be.
- (b) The CEO is responsible for administering NEMMCO on a day to day basis in accordance with the objectives set out in clause 2.1, the Statement of Corporate Intent, the Budget, any applicable business plan approved by the Board, the general policies set by the Board and any other decisions of the Board.
- (c) If the CEO is not a Director, then the CEO is entitled to attend Board meetings except in relation to a matter relating to the CEO's terms and conditions of employment.

-
- (d) The Board may delegate to the CEO any of its functions and powers which it is capable of delegating to the CEO.

5.3 Decisions of Board requiring Members' approval

- (a) Decisions concerning amendments to the National Electricity Code with respect to the functions of NEMMCO are subject to the prior written approval of three quarters in number of the Members.
- (b) The Board and NEMMCO must not without the approval of three quarters in number of the Members:
- (i) dispose of an existing business or amalgamate an existing business with any other business;
 - (ii) form or participate in the formation of a company;
 - (iii) participate in a partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
 - (iv) acquire a major shareholding in a company;
 - (v) undertake a significant new business activity;
 - (vi) make a significant change in the nature or extent of its interest in a company, partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
 - (vii) appoint or revoke the appointment of any auditor; or
 - (viii) guarantee the payment of any money or performance of any obligations.

6 Working Capital and Funding Policy

6.1 NEMMCO to be self funding

The parties intend that NEMMCO will be self funding and that NEMMCO will seek to price its services to participants in the National Electricity Market on a fully attributed, cost recovery basis.

6.2 No Dividends

Consistently with the non-profit making nature of NEMMCO as the operator of the National Electricity Market, the parties agree that NEMMCO will not pay any dividends out of any profits that may emerge in any Financial Year and that any such profits may be retained to cover future expenses or returned to participants in the National Electricity Market by way of equitable fee adjustments in future periods.

6.3 Initial Capital Contributions

Subject to clause 9.2, the parties must contribute the amounts next to their names in the following table by way of seed grant to NEMMCO for capital purposes:

- | | | |
|-----|-----------------|-------------|
| (a) | NSW | \$2,780,000 |
| (b) | Victoria | \$1,870,000 |
| (c) | Queensland | \$1,400,000 |
| (d) | South Australia | \$490,000 |
| (e) | ACT | \$130,000 |

6.4 Contribution on Winding Up

If NEMMCO is wound up, then:

- (a) each Member must contribute an amount calculated in accordance with clause 6.4(b) to meet NEMMCO's debts and liabilities and the costs, charges and expenses of winding NEMMCO up;
- (b) subject to clause 6.4(c), the amount payable by a Member under clause 6.4(a) is equal to the total amount of NEMMCO's debts and liabilities plus the costs, charges and expenses of winding NEMMCO up which cannot be met from the assets of NEMMCO multiplied by the proportion shown opposite the Member's name in the column headed "Proportion" in the chart set out in clause 6.4(c);
- (c) the maximum amount payable by a Member under clause 6.4(a) is the amount shown opposite that Member's name in the column headed "Cap" in the chart set out below multiplied by the CPI Ratio for the Financial Year in which the amount is payable.

Chart		
Member	Proportion	Cap
NSW	42.2%	\$8,440,000
Victoria	27.5%	\$5,500,000
Queensland	20.9%	\$4,180,000
South Australia	7.5%	\$1,500,000
ACT	1.9%	\$380,000

- (d) The amount payable by a Member under this clause 6.4 is in addition to any amount payable by that Member under the Memorandum.

7 Annual Statement of Corporate Intent and Budget

7.1 Annual Statement of Corporate Intent

- (a) The Board must prepare and submit to the Members a draft written Statement of Corporate Intent not later than 1 month before the commencement of each Financial Year;
- (b) The Board must consider any comments on the draft Statement of Corporate Intent that are made to it by written notice from any of the Members within 1 month after the commencement of the Financial Year;
- (c) Following communication to it of any comments under clause 7.1(b), the Board must deliver the completed written statement (which must be agreed to by three quarters in number of the Members) to the Members within 3 months after the commencement of the Financial Year; and
- (d) A Statement of Corporate Intent may be modified at any time by written agreement of three quarters in number of the Members.

7.2 Statement of Corporate Intent: Contents

Each Statement of Corporate Intent is required to specify in respect of the Financial Year to which it relates and each of the 2 following Financial Years, the following information:

- (a) the objectives of NEMMCO;
- (b) the main undertakings of NEMMCO;
- (c) the nature and scope of the activities to be undertaken by NEMMCO;
- (d) the accounting policies to be applied in the accounts by NEMMCO including, but not limited to, those relating to:
 - (1) capitalisation of expenditure;
 - (2) depreciation and asset lives;
 - (3) employee entitlements;
 - (4) intangible assets; and
 - (5) provisions;
- (e) the performance targets and other measures by which the performance of NEMMCO may be judged in relation to its stated objectives;

-
- (f) the kind of information to be provided to the Members by NEMMCO during the course of those Financial Years, including the information to be included in each report to be provided to the Members under clause 8.1;
 - (g) the risk management strategies to be undertaken by NEMMCO;
 - (h) the prudential requirements and practices to be followed and applied by NEMMCO in pursuing the activities to be undertaken by it, including in particular in relation to any trading activities to be undertaken by NEMMCO in conducting or facilitating the National Electricity Market; and
 - (i) such other matters as may, from time to time, be specified in a written notice from three quarters in number of the Members.

7.3 Annual Budget

- (a) The Board must prepare and submit to the Members a draft budget setting out, among other things, the projected income and expenses of NEMMCO, and cash flow projections, together with a projected closing balance sheet, not later than one month before the commencement of each Financial Year in respect of that Financial Year. One of the primary objectives of each budget should be cost efficiency;
- (b) The Board must consider any comments on the draft budget that are made to it by written notice from any of the Members within 1 month after the commencement of the Financial Year;
- (c) The Board must adopt the budget within 3 months after the commencement of the Financial Year, and
- (d) The Board may amend the Budget from time to time.

7.4 Compliance with Statement of Corporate Intent and Budget

In carrying out its activities during a Financial Year, NEMMCO must use reasonable endeavours to comply with the Statement of Corporate Intent and the Budget for the Financial Year.

8 Reports to Members

8.1 Quarterly and Annual Reports

The Board must cause to be provided to the Members:

- (a) as soon as practicable after the end of each quarter during each Financial Year:

-
- (1) an unaudited profit and loss statement and monthly cash flow statement (with projections for the following 12 months) for the quarter and for the current Financial Year to date; and
 - (2) an unaudited balance sheet as at the end of the quarter,
each prepared in accordance with generally accepted accounting principles consistently applied, together with:
 - (3) a brief report on the operations of NEMMCO during the quarter and for the current Financial Year to date; and
 - (4) a comparison of NEMMCO's performance for the current Financial Year to date as against the Budget for the Financial Year; and
- (b) as soon as practicable following the end of each Financial Year, an audited profit and loss statement and balance sheet for that Financial Year, together with:
- (1) a report on the operations of NEMMCO during the Financial Year (which report must disclose the income received by the Directors during the Financial Year from NEMMCO or any related body corporate in accordance with the applicable accounting standards (as defined in the Corporations Law Financial Year). If the CEO is not a Director, then for the purposes of the report, he or she must be treated as if he or she was a Director); and
 - (2) a comparison of NEMMCO's performance during the Financial Year as against the Budget for the Financial Year.

8.2 Audit

The Board must ensure that the accounts of NEMMCO are audited annually. The Board must ensure that as well as instituting appropriate audit arrangements it establishes an audit committee.

9 Joint Venture Assets/Liabilities

9.1 Transfer of Joint Venture Assets

As soon as practicable after NEMMCO is incorporated:

- (a) the parties must procure NEMMCO to enter into an agreement with Transgrid and VPX substantially to the effect of the provisions contained in Attachment B; and

-
- (b) NSW and Victoria must, respectively, procure Transgrid and VPX to enter into an agreement with NEMMCO substantially to the effect of the provisions contained in Attachment B.

9.2 Benefit of Transfer

The parties acknowledge that the amounts referred to in clause 6.3(a) and (b) will be taken to have been contributed to NEMMCO by NSW and Victoria respectively by the transfer to NEMMCO of the benefit of the Establishment Funds as a result of the transfer to be effected pursuant to the agreement referred to in clause 9.1.

10 State Control Centres

As soon as practicable after NEMMCO is established:

- (a) the parties must procure NEMMCO to enter into agreements whereby NEMMCO will have access to the services provided by each state control centre forming part of the National Electricity Grid on fair and reasonable terms for the purposes of enabling NEMMCO to conduct the National Electricity Market efficiently;
- (b) the parties must procure that the services provided by each such State Control Centre are made available to NEMMCO on fair and reasonable terms; and
- (c) any Member may require NEMMCO to grant to it a non-exclusive, royalty free licence to use the software components of the Joint Venture transferred to NEMMCO for the purpose of conducting the wholesale electricity market in the relevant state for the period from the date of such transfer until the date of commencement of the National Electricity Market.

11 Member's Obligations

Each Member agrees to take all steps which are within its powers and are necessary to ensure that:

- (a) its voting rights as a member of NEMMCO are exercised in a manner, and that it otherwise acts, so as to ensure that NEMMCO acts in conformity with this agreement;
- (b) no alteration is made to the Memorandum, the Articles or the name of NEMMCO without the approval of all Members;
- (c) no person other than a party to this agreement becomes a Member and that at all times the Members are parties to this agreement;

-
- (d) no alteration is made to the rights attached to membership of NEMMCO without the approval of all Members;
 - (e) NEMMCO does not without the approval of three quarters in number of the Members:
 - (1) dispose of an existing business or amalgamate an existing business with any other business;
 - (2) form or participate in the formation of a company;
 - (3) participate in a partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
 - (4) acquire a major share holding in a company;
 - (5) undertake a significant new business activity;
 - (6) make a significant change in the nature or extent of its interest in a company, partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
 - (7) appoint or revoke the appointment of any auditor; or
 - (8) guarantee the payment of any money or performance of any obligation.
 - (f) NEMMCO does not lend money to any person unless approved by a majority of Members;
 - (g) NEMMCO does not borrow money unless it is in the normal course of business and is approved by the Board; and
 - (h) no party, nor any director, officer or employee of a party contracts with NEMMCO unless the contractual relationship is on an arm's length basis.

12 Membership

12.1 NEMMCO to be Bound

Each of the Members agrees to take all steps which are within its power to ensure that NEMMCO becomes a party to this agreement or otherwise bound by it.

12.2 Members to be States or Territories

Only States or Territories of the Commonwealth of Australia are entitled to become Members of NEMMCO.

12.3 New Members

A State or Territory of the Commonwealth of Australia which is not a Member may apply to become a Member of NEMMCO by written notice to NEMMCO.

12.4 Applications to become New Member

If NEMMCO receives an application under clause 12.3, then it must forward a copy of the application to each of the Members within 14 days, requesting each Member to notify NEMMCO as to whether or not the Member agrees to the admission of the applicant as a Member. If a Member does not advise NEMMCO within 30 days of the date of receipt of a copy of the application from NEMMCO, then that Member will be deemed to have agreed to the admission of the applicant as a Member.

12.5 Consequences of New Member

If:

- (a) NEMMCO forwards a copy of an application to each of the Members under clause 12.4;
- (b) a majority of the Members notify NEMMCO that they agree to or are deemed to have agreed to the admission of the applicant as a Member; and
- (c) the applicant executes and delivers to NEMMCO a deed of assumption in favour of the parties to this agreement agreeing to be bound by this agreement from the date of its admission as a Member,

then:

- (d) the parties must negotiate in good faith concerning an appropriate contribution to be made by the new Member and upon agreement, that contribution is to be distributed to the existing Members in accordance with the proportions specified in the chart in clause 6.4(c);
- (e) the parties must negotiate in good faith concerning the figures which should be specified in the chart in clause 6.4(c) in relation to the applicant;
- (f) upon the chart in clause 6.4(c) of this agreement being amended to specify the figures agreed under clause 12.5(e) in relation to the applicant, NEMMCO must admit the applicant as a Member in accordance with the procedure provided in the Articles; and

-
- (g) upon such admission, the applicant will be entitled to nominate a person for appointment as a Director in accordance with the Articles.

12.6 Termination of Membership

A party wishing to resign or otherwise terminate its membership of NEMMCO must give each other party at least 12 months written notice of its intention to resign or otherwise terminate its membership of NEMMCO.

12.7 Retiring Parties

If a party (called the "Retiring Party") notifies the other parties that it wishes to resign or otherwise terminate its membership in NEMMCO, then:

- (a) the parties must negotiate in good faith the terms on which the Retiring Party will be released from its obligations under this agreement (particularly under clause 6.4(a));
- (b) the parties (other than the Retiring Party) must negotiate in good faith concerning the figures which should be specified in the chart in clause 6.4(c) in relation to each of the continuing parties; and
- (c) the person nominated by the party under clause 4.1 or clause 12.5(g) must forthwith resign as a Director.

13 General

13.1 Notices

A notice, approval, consent or other communication in connection with this agreement:

- (a) must be in writing; and
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in clause 13.3 or if the addressee notifies another address or facsimile number then to that address or facsimile number.

13.2 Majority of Members

Where this agreement requires that NEMMCO consider or act on a matter agreed by a majority of the Members, the agreement of the Members may be conveyed by:

- (a) a single document signed by a majority of the Members; or by

-
- (b) separate documents signed by each Member of a majority of Members with otherwise identical wording.

13.3 Addresses

The address and facsimile number of each of the initial parties will be the address and facsimile number which the addressee notifies from time to time.

13.4 Receipt of Notices

A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

13.5 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

13.6 Waiver and variation

A provision of or a right created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

13.7 Approvals and consents

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

13.8 Remedies cumulative

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

13.9 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

13.10 Sovereign immunity

Each party:

- (a) warrants that it:
 - (1) enters into this agreement as a public or governmental act; and
 - (2) is not entitled to claim immunity from legal proceedings on the grounds of sovereignty or otherwise under a law or in a jurisdiction where an action may be brought for the enforcement of any of the obligations under this agreement; and
- (b) irrevocably waives to the fullest extent permitted by the laws of any jurisdiction any right to immunity from set-off, legal proceedings, attachment prior to judgement, other attachment or execution of judgement on the grounds of sovereignty or otherwise in respect of its obligations under this agreement.

13.11 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

13.12 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

13.13 Governing law, jurisdiction and service of process

This agreement and the transactions contemplated by this agreement are governed by the law in force in the Australian Capital Territory.

13.14 Inconsistency

This agreement applies to and regulates the affairs and proceedings of NEMMCO and the Directors:

-
- (a) to the exclusion of the Articles to the extent that there is an inconsistency between this agreement and the Articles; and
 - (b) as supplementary to the Articles to the extent that there is no such inconsistency.

13.15 Consumer Price Index

If either:

- (a) the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities ceases to be published quarterly; or
- (b) the method of calculation of the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities substantially alters,

then the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities is to be replaced by the nearest equivalent index and any necessary consequential amendments to this agreement are to be made. That index and those amendments are to be determined as follows:

- (c) by agreement between the parties; or
- (d) if the parties do not agree, by the Australian Statistician or his nominee, whose decision is binding and conclusive.

EXECUTED as an agreement

Execution page

The Honourable Michael Rueben Egan)
MLC, Minister for Energy for New)
South Wales on the 9th day of May 1996)
)

The Honourable Alan Robert Stockale)
MLA, Treasurer for Victoria on the 9th)
day of May 1996)
)

The Honourable Thomas John George)
Gilmore MLA, Minister for Mines and)
Energy for Queensland on the 9th day of)
May 1996)

The Honourable John Wayne Olsen)
MLC, Minister for Infrastructure for)
South Australia on the 9th day of May)
1996)

The Honourable Anthony Joseph De)
Domenico MLA, Minister for Urban)
Services for the Australian Capital)
Territory on the 9th day of May 1996)

Attachment A

**Memorandum and Articles of Association of
National Electricity Market Management Company**

National Electricity Market Management Company Limited

A Company Limited by Guarantee

MEMORANDUM AND ARTICLES OF ASSOCIATION

National Electricity Market Management Company Limited

A Company Limited by Guarantee

MEMORANDUM OF ASSOCIATION

1. Name of company

The name of the company is **National Electricity Market Management Company Limited**.

2. Liability of members

The liability of the members is limited.

3. Contribution by members

Each member undertakes to contribute to the company's property if the company is wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for payment of the company's debts and liabilities contracted before he, she or it ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$1.00.

WE the subscribers listed below wish to form a company pursuant to this memorandum of association.

Names of subscribers	Signature of authorised representative	Name and title of authorised representative	Signature of witness	Name and title of witness	Address of witness	Date of signature
State of New South Wales		The Honourable Michael Rueben Egan MLC, Minister for Energy for New South Wales		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996
State of Victoria		The Honourable Alan Robert Stockdale MLA, Treasurer for Victoria		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996

State of Queensland	The Honourable Thomas John George Gilmore MLA, Minister for Mines and Energy for Queensland	John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996
State of South Australia	The Honourable John Wayne Olsen MLC, Minister for Infrastructure for South Australia	John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996
Australian Capital Territory	The Honourable Anthony Joseph De Domenico MLA, Minister for Urban Services for the Australian Capital Territory	John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996

National Electricity Market Management Company Limited

A Company Limited by Guarantee

Articles of Association

These articles of association were
adopted by the company as its articles
of association on 19

Contents

1 Preliminary	1
Definitions and interpretation	1
Application of the Corporations Law	2
Exercise of powers	2
2 Membership	4
Initial Members	4
Admission of Members	4
Power to decline admission of members	4
Power to suspend admission of members	4
Cessation of membership	4
Expulsion of members	5
Membership not transferable	5
3 General meetings	5
Convening of general meetings	5
Notice of general meetings	5
Telephone Meetings	6
Quorum at general meetings	7
Chairperson of general meetings	8
Conduct of general meetings	8
Decisions at general meetings	8
Voting rights	9
Representation at general meetings	10
4 Directors	12
Appointment and removal of directors	12
Vacation of office	13
Remuneration of directors	13
Membership qualification	14
Interested directors	14
Powers and duties of directors	16
Proceedings of directors	17
Convening of meetings of directors	17
Notice of meetings of directors	17
Quorum at meetings of directors	18
Chairperson of directors	19
Decisions of directors	20
Written resolutions	20
Committees of directors	22
Delegation to individual directors	22
Validity of acts	22
Alternate Directors	23
5 Executive officers	24
Chief executive officer	24
Secretaries	24
Provisions applicable to all executive officers	24

6 Seals	25
Safe custody of seal	25
Use of seal	25
Seal register	25
Official seal	26
7 Income and Reserves	26
Profits	26
Reserves	26
Distributions	26
8 Winding up	27
Division and distribution of property	27
9 Minutes and records	28
Minutes	28
Signing of minutes	28
Minutes as evidence	28
Inspection of records	28
10 Notices	28
Notices by the company to members	28
Notices by the company to directors	29
Notices by members or directors to the company	29
Notices posted to addresses outside the Commonwealth	29
Time of service	29
Other communications and documents	30
Notices in writing	30
11 Indemnity and insurance	30
Officer	30
Indemnity	30
Insurance	31
12 General	31
Submission to jurisdiction	31
Prohibition and enforceability	31

Articles of Association
of
National Electricity Market Management Company Limited
A Company Limited by Guarantee

1 Preliminary

1.1 Definitions and interpretation

(a) In these articles:

"Commonwealth" means the Commonwealth of Australia and its external territories;

"member" means the subscribers to the memorandum of association of the company and any other State or Territory of the Commonwealth admitted as a member under article 2.2; and

"seal" means any common seal or official seal of the company.

(b) A member is to be taken to be present at a general meeting if the member is present in person or by proxy or attorney.

(c) Where a provision of these articles establishes an office of chairperson, the chairperson may be referred to as chairman or chairwoman, as the case requires.

(d) A reference in an article in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.

(e) Unless the contrary intention appears, in these articles:

(1) headings and underlining are for convenience only and do not affect the interpretation of these articles;

(2) words importing the singular include the plural and vice versa;

(3) words importing a gender include every other gender;

(4) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture,

association, board, group or other body (whether or not the body is incorporated);

- (5) a reference to a person includes that person's successors and legal personal representatives;
- (6) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (7) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.2 Application of the Corporations Law

- (a) These articles are to be interpreted subject to the Corporations Law.
- (b) Unless the contrary intention appears, an expression in an article that deals with a matter dealt with by a provision of the Corporations Law has the same meaning as in that provision of the Corporations Law.
- (c) Subject to article 1.2(b), unless the contrary intention appears, an expression in an article that is defined in section 9 of the Corporations Law has the same meaning as in that section.

1.3 Exercise of powers

- (a) The company may exercise in any manner permitted by the Corporations Law any power which under the Corporations Law a company limited by guarantee may exercise if authorised by these articles of association.
- (b) Where these articles provide that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where these articles confer a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where these articles confer a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do

that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

- (e) Where these articles confer a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (2) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where these articles confer a power or impose a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where these articles confer a power or impose a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where these articles confer power on a person or body to delegate a function or power:
 - (1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (4) the delegation may include the power to delegate;
 - (5) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by

the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and

- (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2 Membership

2.1 Initial Members

The States of New South Wales, Queensland, South Australia and Victoria and the Australian Capital Territory are the first members.

2.2 Admission of Members

The company may by way of resolution at a general meeting:

- (a) admit as a member of the company any State or Territory of the Commonwealth, which is not already a member, on such conditions and at such times, as the general meeting thinks fit; and
- (b) require any such State or Territory to execute such form of undertaking as the resolution may stipulate as a condition of admitting that State or Territory as a member of the company.

2.3 Power to decline admission of members

The company may by way of resolution at a general meeting decline to admit any State or Territory as a member of the company.

2.4 Power to suspend admission of members

The company may by way of special resolution at a general meeting suspend the admission of members at such times and for such periods as it thinks fit.

2.5 Cessation of membership

A member ceases to be a member:

- (a) if the member resigns from membership by notice in writing to the company;
- (b) if the member is expelled under article 2.6; or
- (c) in any other circumstances prescribed in the terms of membership applicable to the member or in any undertaking given by the member upon his or her admission to membership.

2.6 Expulsion of members

The company may by way of special resolution at a general meeting expel a member who fails to comply with:

- (a) the memorandum of association of the company;
- (b) these articles; or
- (c) any undertaking given by the member upon admission to membership,

and by subsequently giving notice in writing of that expulsion to the member.

2.7 Membership not transferable

Unless otherwise provided by the terms of membership of a class of members, membership of the company is not transferable.

3 General meetings

3.1 Convening of general meetings

- (a) The directors may, whenever they think fit, convene a general meeting.
- (b) A general meeting may be convened only as provided by this article 3.1 or as provided by section 246 of the Corporations Law.
- (c) The directors may postpone, cancel or change the venue for a general meeting, but a general meeting convened under section 246 of the Corporations Law may not be postponed beyond the date by which section 246 requires it to be held and may not be cancelled without the consent of the requisitioning member or members. The directors may at their discretion give notice of cancellation and not giving notice does not affect the validity of the cancellation.

3.2 Notice of general meetings

- (a) Subject to these articles, notice of a general meeting must be given within the time limits prescribed by the Corporations Law and in the manner authorised by article 10.1 to each person who is at the date of the notice:
 - (1) a member;
 - (2) a director; or

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- (3) an auditor of the company.
- (b) A notice of a general meeting must specify the time and place of the meeting and, except as provided in article 3.2(c), state the general nature of the business to be transacted at the meeting.
- (c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the directors and auditor, the appointment and fixing of the remuneration of the auditor of the company or any other business which under the Corporations Law ought to be transacted at the annual general meeting.
- (d) A person may waive notice of any general meeting by notice in writing to the company.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this article 3.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if before or after the meeting, the person:
- (A) has waived or waives notice of that meeting under article 3.2(d); or
 - (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.
- (f) A person's attendance at a general meeting:
- (1) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (2) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in article 3.2(c), unless the person objects to considering the matter when it is presented.

3.3 Telephone Meetings

- (a) The contemporaneous linking together by telephone or other method of audio or audio visual communication of persons eligible to attend a general meeting, sufficient to constitute a quorum, constitutes a general meeting of those persons and all

the provisions in these articles relating to general meetings apply, so far as they can and with such changes as are necessary, to general meetings by telephone or audio or audio visual communication, subject to any contrary requirement in the Corporations Law.

- (b) A person participating in a general meeting by telephone or audio or audio visual communication is to be taken to be present in person at the general meeting.
- (c) A general meeting by telephone or audio or audio visual communication is to be taken to be held at the place determined by the chairperson of the general meeting provided that at least one of the directors and/or one of the members involved was at that place for the duration of the meeting.

3.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business. If a quorum is present at the beginning of a meeting, then it is to be taken to be present throughout the meeting unless the chairperson of the meeting on the chairperson's own motion or at the request of a member, proxy or attorney who is present otherwise declares.
- (b) A quorum consists of:
 - (1) if the number of members entitled to vote is 2 or more - a majority of those members; or
 - (2) if only one member is entitled to vote - that member, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (1) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
 - (2) in any other case:
 - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time

appointed for the meeting, the meeting must be dissolved.

3.5 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
 - (1) there is no chairperson of directors;
 - (2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,the members present must elect as chairperson of the meeting:
 - (4) another director who is present and willing to act; or
 - (5) if no other director willing to act is present at the meeting, a member who is present and willing to act.

3.6 Conduct of general meetings

- (a) Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

3.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution:

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- (1) the chairperson of the meeting does not have a second or casting vote in addition to any vote he or she has as a proxy or attorney of a member; and
 - (2) the majority required in article 3.7(a) will be taken to be not satisfied.
 - (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before or immediately after the declaration of the result of the show of hands:
 - (1) by the chairperson of the meeting; or
 - (2) by any member present and having the right to vote at the meeting.
 - (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
 - (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
 - (f) If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
 - (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
 - (h) The demand for a poll may be withdrawn.

3.8 Voting rights

- (a) Subject to these articles and to any rights or restrictions attached to any class of membership, at a general meeting every member present has one vote.
- (b) A proxy or attorney is entitled to a separate vote for each member the person represents.

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- (c) A member is not entitled to vote at a general meeting unless all sums of money presently payable by that member to the company have been paid.
 - (d) An objection to the qualification of a person to vote at a general meeting:
 - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) must be referred to the chairperson of the meeting, whose decision is final.
 - (e) A vote not disallowed by the chairperson of a meeting under article 3.8(d) is valid for all purposes.

3.9 Representation at general meetings

- (a) Subject to these articles, each member entitled to vote at a meeting of members may vote:
 - (1) by proxy; or
 - (2) by attorney.
- (b) A proxy or attorney may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (c) Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:
 - (1) to agree to a meeting being convened by shorter notice than is required by the Corporations Law or by these articles;
 - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given;
 - (3) to speak to any proposed resolution on which the proxy or attorney may vote;
 - (4) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote;
 - (5) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the

proposed resolutions not be put or any similar motion;

- (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
- (6) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (d) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (e) Subject to article 3.9(g), an instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, and signed by an authorised representative of the member.
- (f) Subject to article 3.9(g), a proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the original or an attested copy of the power of attorney or other authority (if any) under which the instrument is signed, are:
 - (1) deposited at the registered office of the company or at such other place specified for that purpose in the notice convening the meeting before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);
 - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (3) in the case of a poll, produced when the poll is taken.
- (g) The directors may waive all or any of the requirements of articles 3.9(e) and (f) and in particular may, upon the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, accept:
 - (1) an oral appointment of a proxy or attorney;

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- (2) an appointment of a proxy or attorney which is not signed or executed in the manner required by article 3.9(e); and
 - (3) the deposit, tabling or production of a copy (including a copy sent by facsimile) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.
- (h) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under article 3.9(f).
- (i) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

4 Directors

4.1 Appointment and removal of directors

- (a) There must be:
 - (1) not less than 3 directors; and
 - (2) subject to article 4.1(d), not more than 9 directors.
- (b) The company may appoint a person as a director by:
 - (1) resolution of a general meeting; or
 - (2) written instrument signed by the authorised representatives of a majority of the members.
- (c) A resolution or an instrument appointing a director under article 4.1(b) must specify:
 - (1) the time the appointment takes effect; and
 - (2) the term of office of the director (which must not exceed 3 years from the time the appointment takes effect).
- (d) The company may by resolution of a general meeting:

(1) increase or reduce the maximum number of directors;
and

(2) remove a director.

(e) The company may:

(1) by written instrument signed on behalf of all the
members; and

(2) by resolution of a general meeting,

appoint additional directors provided at any time, there cannot
be more than 2 additional directors. A person appointed as an
additional director holds office for such period (not exceeding 3
years) and commencing at each time as is determined by the
directors prior to his or her appointment.

(f) Subject to article 4.2 a director holds office until the earlier of:

(1) the expiration of his or her term of office;

(2) the director dies; or

(3) the director is removed from office pursuant to article
4.1(d)(2).

4.2 Vacation of office

The office of a director becomes vacant:

(a) in the circumstances prescribed by the Corporations Law;

(b) if the director becomes of unsound mind or a person who is, or
whose estate is, liable to be dealt with in any way under the law
relating to mental health; or

(c) if the director resigns by notice in writing to the company.

4.3 Remuneration of directors

(a) Each director is entitled to such remuneration out of the funds
of the company as the directors determine, but if the company
in general meeting has fixed a limit on the amount of
remuneration payable to the directors, the aggregate
remuneration of the directors under this article 4.3(a) must not
exceed that limit.

(b) The remuneration of directors:

(1) may be a stated salary or a fixed sum for attendance at
each meeting of directors or both; or

- (2) may be a share of a fixed sum determined by the company in general meeting to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,

and if it is a stated salary under article 4.3(b)(1) or a share of a fixed sum under article 4.3(b)(2), will be taken to accrue from day to day.

- (c) In addition to their remuneration under article 4.3(a), the directors are entitled to be paid all travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- (d) If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under article 4.3(a).
- (e) Nothing in article 4.3(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under article 4.3(a).

4.4 Membership qualification

- (a) A director is not required to be a member of the company to qualify for appointment.
- (b) A director who is not a member of the company is nevertheless entitled to attend and speak at general meetings.

4.5 Interested directors *Interests*

- (a) A director may hold any other office or place of profit (other than auditor) in any body corporate related to the company in conjunction with his or her directorship and may be appointed to that office or placed upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director may not hold any office or place of profit in the company other than as chief executive officer.
- (c) A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate

or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.

- (d) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.

(e) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation being employed by the company as chief executive officer or acting in any professional capacity (other than auditor) on behalf of the company and may participate in any association, institution, fund, trust or scheme for past or present employees or directors of the company or their dependants or persons connected with them.

- (f) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (g) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (h) A director who is in any way interested in any contract or arrangement or proposed contract or arrangement may not:
- (1) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement; and

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- (2) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the seal is affixed.

- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate and any regulations made under this article will bind all directors.

4.6 Powers and duties of directors

- (a) Subject to article 4.6(c), the directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Corporations Law or by these articles, to be exercised by the company in general meeting.
- (b) Without limiting the generality of article 4.6(a), but subject to article 4.6(c), the directors may exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) All decisions relating to the management of the business and affairs and the operation of the company are to be made by or under the authority of the directors.
- (d) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- (e) The directors may:
- (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
 - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss

any officer, agent or attorney of the company at any time, with or without cause.

- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

4.7 Proceedings of directors

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in these articles relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or audio or audio visual communication.
- (c) A director participating in a meeting by telephone or audio or audio visual communication is to be taken to be present in person at the meeting.
- (d) A meeting by telephone or audio or audio visual communication is to be taken to be held at the place determined by the chairperson of the meeting provided that at least one of the directors involved was at that place for the duration of the meeting.

4.8 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

4.9 Notice of meetings of directors

- (a) Subject to these articles, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;

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- (3) may be given immediately before the meeting;
 - (4) may be given in person or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication; and
 - (5) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director may waive notice of any meeting of directors by notifying the company to that effect in person or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication.

The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:

- (1) before or after the meeting, the director:
 - (A) has waived or waives notice of that meeting under article 4.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication; or
 - (2) the director attended the meeting.
- (d) Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

4.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
 - (1) if the directors have fixed a number for the quorum, that number of directors; and
 - (2) in any other case, 2 directors,present at the meeting of directors.

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- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the company.

4.11 Chairperson of directors

- (a) The company may appoint a person as chairperson of directors by:
- (1) resolution of a general meeting in respect of which all the members have voted in favour; or
 - (2) written instrument signed by the authorised representative of all the members.
- (b) An instrument under article 4.11(a) must specify:
- (1) the time the appointment takes effect; and
 - (2) the term of office of the chairperson of directors (which must not exceed 3 years from the time the appointment takes effect).
- (c) A person appointed as chairperson of directors under article 4.11(a) who is not a director at the time of his or her appointment as chairperson of directors takes effect becomes a director at that time.
- (d) The company may by resolution of a general meeting remove the chairperson of directors.
- (e) A person ceases to be chairperson of directors:
- (1) upon the expiration of the chairperson's term of office as chairperson;
 - (2) if the chairperson ceases to be a director under article 4.2;
 - (3) if the chairperson is removed under article 4.11(d); or
 - (4) if the chairperson resigns by notice in writing to the company.
- (f) The office of chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of article 4.3(d).

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- (g) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
 - (h) If at a meeting of directors:
 - (1) there is no chairperson of directors;
 - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,the directors present must elect one of themselves to be chairperson of the meeting.

4.12 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under these articles.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a determination of the directors.
- (c) In the case of an equality of votes upon any proposed resolution:
 - (1) the chairperson of the meeting will not have a second or casting vote; and
 - (2) the proposed resolution is to be taken as having been lost.

4.13 Written resolutions

- (a) If:
 - (1) all of the directors, other than:
 - (A) any director on leave of absence approved by the directors;
 - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or

she is not entitled at law to do so or has a conflict of interest; and

- (C) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

- (b) For the purposes of article 4.13(a):

- (1) the meeting is to be taken as having been held:

- (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
- (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;

- (2) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and

- (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication.

- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

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- (d) Where a document is assented to in accordance with article 4.13(a), the document is to be taken as a minute of a meeting of directors.

4.14 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of these articles applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of article 4.3(d).

4.15 Delegation to individual directors

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of article 4.3(d).

4.16 Validity of acts

An act done by a person acting as a director or chairperson of directors or by a meeting of directors or a committee of directors attended by a person acting as a director or chairperson of directors is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director or chairperson of directors;
- (b) the person being disqualified to be a director or chairperson of directors or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

4.17 Alternate Directors

(a) Subject to the Corporations Law, a director (called "appointor") may by writing under the appointor's hand or by telex, facsimile transmission or other form of visible communication, appoint a person approved by a majority of the other directors to act as an alternate director in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.

(b) An alternate director:

(1) may be removed or suspended from office by writing under the appointor's hand or by notice in writing from the appointor;

(2) subject to these Articles, is entitled to receive notice of meetings of the directors and to attend and vote if the appointor is not present and, if also a director in the alternate director's own right or alternate director for another director as well, to have a separate vote on behalf of the appointor in addition to the alternate director's own or that other director's vote;

(3) may exercise all the powers except the power to appoint an alternate director and, subject to the Corporations Law, perform all the duties of the appointor in so far as the appointor has not exercised or performed them;

(4) automatically ceases to be an alternate director if the appointor ceases to be a director;

(5) whilst acting as a director is responsible to the company for the alternate director's own acts and defaults and the appointor is not responsible for them;

(6) may not receive any remuneration from the company as a director except for any special services which in the opinion of the directors are outside the scope of the ordinary duties of a director; and

(7) may not be taken into account separately from the appointor in determining the number of directors.

(c) If the appointor retires but is re-appointed, the appointment of the alternate director continues to operate as if the appointor had not retired.

5 Executive officers

5.1 Chief executive officer

- (a) The directors may appoint a person to be the chief executive officer of the company. The person appointed as chief executive officer may be a director, but need not be.
- (b) If a chief executive officer is a director, then his or her appointment as a director automatically terminates if he or she ceases to be chief executive officer.

5.2 Secretaries

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The directors may appoint one or more assistant secretaries.

5.3 Provisions applicable to all executive officers

- (a) A reference in this article 5.3 to an executive officer is a reference to a chief executive officer, secretary or assistant secretary appointed under this part 5.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, any executive officer of the company may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
 - (1) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to be a member of the company to qualify for appointment.

-
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
- (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

6 Seals

6.1 Safe custody of seal

The directors must provide for the safe custody of the seal.

6.2 Use of seal

- (a) The seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the seal.
- (b) The authority to use the seal may be given before or after the seal is used.
- (c) Until the directors otherwise determine, every document to which the seal is affixed must be signed by a director and countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

6.3 Seal register

- (a) The company must keep a seal register and, upon the affixing of the seal to any document (other than a certificate for securities of the company), must enter in the register particulars of the document, giving in each case the date of the document, the names of the parties to the document, a short description of the document and the names of the persons signing and countersigning the document under article 6.2(c).
- (b) The register must be produced at meetings of directors for confirmation of the use of the seal since confirmation was last given under this article 6.3.
- (c) Failure to comply with article 6.3(a) or (b) does not invalidate any document to which the seal is properly affixed.

6.4 Official seal

- (a) The company may have for use in place of its common seal outside the state or territory where its common seal is kept one or more official seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the name of the place where it is to be used.
- (b) A document sealed with an official seal is to be taken as having been sealed with the common seal of the company.

7 Income and Reserves

7.1 Profits

Subject to article 7.2(a), so far as practicable, the directors must manage the business of the company so that it operates on a non-profit basis by seeking, over time, to match its income with its operating and other expenses.

7.2 Reserves

- (a) Subject to these articles, the directors may set aside out of the income of the company such reserves or provisions for such purposes as they think fit.
- (b) The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- (c) The setting aside of any amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the company or prevent the amount being used in the business of the company or being invested in such investments as the directors think fit.

7.3 Distributions

No part of the profit or income of the company shall be paid or transferred directly or indirectly by way of profit or gain to the members provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or employees of the company or to any member or other person in return for services rendered to the company nor prevent the payment of interest at a commercial rate on money lent or the payment of reasonable or proper rent for premises demised or let by any member or the payment to members of amounts payable to them by virtue of a scheme of arrangement sanctioned by a Supreme Court of a State or Territory of Australia.

8 Winding up

8.1 Division and distribution of property

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
 - (1) divide among the members the whole or any part of the property of the company; and
 - (2) determine how the division is to be carried out as between the members or different classes of members.
- (b) Subject to these articles and to the rights or restrictions attached to any class of membership, if the company is wound up and the property of the company available for distribution among the members is more than sufficient to pay all of the debts and liabilities of the company and the costs, charges and expenses of the winding up, the excess must be distributed among the members in the proportions in which they have contributed funds to the company.
- (c) Any division under article 8.1(a) may be otherwise than in accordance with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (d) Where a division under article 8.1(a) is otherwise than in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Law.
- (e) If any of the property to be divided under article 8.1(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that article, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (f) Nothing in this article 8.1 derogates from or affects any right to exercise any statutory or other power which would have existed if this article were omitted.
- (g) Article 7.2 applies, so far as it can and with such changes as are necessary, to a division by a liquidator under article 8.1(a) as if references in article 7.2 to the directors and to a distribution were references to the liquidator and to the division under article 8.1(a) respectively.

9 Minutes and records

9.1 Minutes

The directors must cause minutes of all proceedings of general meetings and of meetings of the directors and of committees of the directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose.

9.2 Signing of minutes

Except in the case of documents which are taken to be minutes under article 4.13(d), those minutes must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

9.3 Minutes as evidence

Any minutes of a meeting purporting to be signed by the chairperson of the meeting or of the next succeeding meeting are (in the absence of proof to the contrary) sufficient evidence of:

- (a) the matters stated in the minutes of the meeting;
- (b) the meeting having been duly convened and held; and
- (c) the validity of all proceedings at the meeting.

9.4 Inspection of records

- (a) The directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members.
- (b) A member does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.

10 Notices

10.1 Notices by the company to members

- (a) A notice may be given by the company to a member:
 - (1) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or such other address, or by telex or facsimile transmission to such telex or facsimile number, as the member has supplied to the company for the giving of notices; or

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- (2) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
 - (b) The fact that a person has supplied a telex or facsimile number for the giving of notices does not require the company to give any notice to that person by telex or facsimile.
 - (c) A signature to any notice given by the company to a member under this article 10.1 may be in writing or a facsimile printed or affixed by some mechanical or other means.
 - (d) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with these articles is conclusive evidence of that fact.

10.2 Notices by the company to directors

Subject to these articles, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or such other address, or by telex or facsimile transmission to such telex or facsimile number, as the director has supplied to the company for the giving of notices.

10.3 Notices by members or directors to the company

Subject to these articles, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by telex or facsimile transmission to the principal telex or facsimile number at the registered office of the company.

10.4 Notices posted to addresses outside the Commonwealth

A notice sent by post to an address outside the Commonwealth must be sent by airmail.

10.5 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

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- (b) Where a notice is sent by telex, service of the notice is to be taken to be effected if the correct answer back code appears at the commencement and the end of the telex message and to have been effected at the time the telex is sent.
 - (c) Where a notice is sent by facsimile transmission, service of the notice is to be taken to be effected if the correct facsimile number appears on the facsimile transmission report generated by the sender's facsimile machine and to have been effected at the time the facsimile transmission is sent.
 - (d) Where the company gives a notice under article 10.1(a)(2) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

10.6 Other communications and documents

Articles 10.1 to 10.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

10.7 Notices in writing

A reference in these articles to a notice in writing includes a notice given by telex or facsimile transmission or any other form of written communication.

11 Indemnity and insurance

11.1 Officer

In this Part 11 "officer" has the meaning given to that word in connection with the provisions governing indemnification of officers in the Corporations Law.

11.2 Indemnity

- (a) Every person who is or has been an officer, auditor or agent of the company is indemnified to the maximum extent permitted by law out of the property of the company against any liability (other than liability for costs and expenses) to another person (other than the company or its related bodies corporate) as such an officer, auditor or agent unless the liability arises out of conduct involving a lack of good faith.
- (b) Every person who is or has been an officer, auditor or agent of the company is indemnified to the maximum extent permitted by law out of the property of the company against any liability for cost and expenses the officer, auditor or agent may incur to another person (other than the company or its related bodies

corporate) as such an officer, auditor or agent, unless the liability arises out of conduct involving a lack of good faith.

- (c) Every person who is or has been an officer, auditor or agent of the company is indemnified out of the property of the company against liability for costs and expenses incurred as such an officer, auditor or agent:
- (1) in defending any proceedings, whether civil or criminal, in which judgement is given in his or her favour or in which he or she is acquitted; or
 - (2) in connection with any application in relation to any proceedings, whether civil or criminal, in which relief under the Corporations Law is granted to him or her by the Court.

11.3 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person who is or has been an officer, auditor or agent of the company or of a related body corporate against any liability incurred by the person as an officer or auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

12 General

12.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

12.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, these articles which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, these articles which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that

provision in any other place or of the remaining provisions in that or any other place.

WE the subscribers to the memorandum of association of the company prescribe the above articles of association as regulations for the company in accordance with section 125 of the Corporations Law.

Signatures of Subscribers

Name	Signature of authorised representative/Witness	Name of authorised representative/Witness	Address of authorised representative/Witness	Date signed
State of New South Wales	Authorised representative:	Authorised representative: The Honourable Michael Rueben Egan MLC, Minister for Energy for New South Wales	Authorised representative: C/- Parliament House (NSW)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	
State of Victoria	Authorised representative:	Authorised representative: The Honourable Alan Robert Stockdale MLA, Treasurer for Victoria	Authorised representative: C/- Parliament House (Vic)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	
State of Queensland	Authorised representative:	Authorised representative: The Honourable Thomas John Gilmore MLA, Minister for Mines and Energy for Queensland	Authorised representative: C/- Parliament House (Qld)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	

State of South Australia	Authorised representative:	Authorised representative:	Authorised representative:	9/5/96
		The Honourable John Wayne Olsen MLC, Minister for Infrastructure for South Australia	C/- Parliament House (SA)	
	Witness:	Witness:	Witness:	
		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	
Australian Capital Territory	Authorised representative:	Authorised representative:	Authorised representative:	9/5/96
		The Honourable Anthony Joseph De Domenico MLA, Minister for Urbane Services for the Australian Capital Territory	C/- Parliament House (ACT)	
	Witness:	Witness:	Witness:	
		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	

Attachment B Sale Agreement

Dated 9 May 1996

SALE AGREEMENT

MELBOURNE/RMILLIN/0085142.01

Contents

SALE AGREEMENT

1 Definitions and interpretation	1
Definitions	1
Interpretation	3
Business Day	4
2 Acquisition of Joint Venture Assets by NEMMCO	4
Transfer of Assets	4
Exceptions	4
Licence	4
Reimbursement of Called Sums	5
3 Further Assurances and Novation	5
Transfer to NEMMCO	5
Licences to Participants	6
4 Assignment	6
Prohibition	6
5 Confidentiality	6
Keep Confidential	6
Third parties	7
Obligations continue	7
6 Governing law and jurisdiction	7
Laws of Victoria	7
7 Miscellaneous	7
Costs	7
Effective date; counterparts	7
Participants obligations	7
8 Notices	8
Notices	8

SALE AGREEMENT

Date: 9 May 1996

Parties: National Electricity Market Management Company Limited ("NEMMCO");
Electricity Transmission Authority, a body corporate constituted by the Electricity Transmission Authority Act 1994 (New South Wales) ("TransGrid"); and
Victorian Power Exchange, a body corporate established under the Electricity Industry Act 1993 (Victoria) ("VPX")

Recitals:

- A. VPX and TransGrid together hold assets in a joint venture set up to develop specifications for the information and communication systems required for the proposed National Electricity Market.
- B. NEMMCO agrees to acquire the assets, rights, liabilities and obligations of VPX and TransGrid in connection with the Joint Venture and VPX and TransGrid agree to transfer those assets, rights, liabilities and obligations to NEMMCO.

THE PARTIES AGREE, in consideration of, among other things, the mutual promises contained in this agreement:

Operative provisions:

1 Definitions and interpretation

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears.

"Business Day" means a day on which banks are open for banking business in Melbourne and Sydney, not being a Saturday or a Sunday.

"Called Sum" means any amount contributed to the Joint Venture by the Participants in excess of Establishment Funds.

"Confidential Information" means the information described in clause 5.1.

"\$" means the lawful currency of the Commonwealth of Australia;

"Establishment Funds" means the initial funding contributions made by the Participants to the Joint Venture as follows:

VPX	\$1.87million;
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TransGrid \$2.78million.

"Interest Rate" means:

- (a) in the case of VPX, the Treasury Corporation of Victoria June 1997 Bond rate; and
- (b) in the case of TransGrid, the TCORP April 1997 Bond rate.

"Joint Venture" means the joint venture set up by the Participants to carry out the Project.

"Joint Venture Assets" means all property, whether real or personal, which is owned, leased, held, developed, constructed, produced or acquired for the Project by or on behalf of the Participants including the following which are to be used in connection with the Project:

- (a) intellectual and industrial property developed by or on behalf of the Participants which is used or to be used in connection with the Project; and
- (a) all rights (including contractual rights) exercisable by the Joint Venture, or individual Participants on behalf of the Joint Venture.

"NEM Systems" means the information and communications systems (including without limitation software and hardware) required for the proposed National Electricity Market including the proposed NEM Systems tabulated in the NGMC Project Structure Arrangements but not including the development of regional systems or interfaces (whether hardware and/or software) to be provided locally to support regional requirements.

"New South Wales" means the State of New South Wales.

"NGMC" means the National Grid Management Council.

"NGMC Market Implementation Steering Committee" means the committee established by the NGMC to co-ordinate the implementation of a national wholesale electricity market.

"NGMC Project Structure Arrangements" means the document entitled "NGMC Project Structure Arrangements" Document ID GMPJ0011 Version Number 1.0 6/10/95 (Annexure "A") adopted by the NGMC.

"Participants" means VPX and TransGrid and Participant is a reference to any one of them.

"Program" means the program and budget for the Project approved from time to time by the NGMC Market Implementation Steering Committee.

"Project" means the project to develop specifications for the NEM Systems to undertake contracting for the developing of the NEM Systems and to manage the delivery of the NEM Systems in preparation for a national electricity market, and all related or incidental activities.

"Security Interest" means any mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or compliance with any other obligation.

"Share" means the individual interest of a Participant with respect to the Project and the Joint Venture Assets, which interest is expressed as a percentage.

"Victoria" means the State of Victoria.

1.2 Interpretation

In this agreement, headings and underlinings are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (d) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (e) a reference to a part, clause or party is a reference to a part, clause of, and a party to, this agreement;
- (f) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) a reference to an agreement other than this agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (i) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits; and

- (j) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

2 Acquisition of Joint Venture Assets by NEMMCO

2.1 Transfer of Assets

Subject to clauses 2.2 and 2.3, as soon as practicable after execution of this agreement and in any event no later than six months after the execution of this agreement:

- (a) the Participants must transfer the Joint Venture Assets to NEMMCO; and
- (b) NEMMCO must assume the obligations and liabilities of each Participant in connection with the Joint Venture and the NEM Systems.

2.2 Exceptions

Notwithstanding clause 2.1, if the Participants enter into an agreement in connection with the Joint Venture which agreement:

- (a) is not contemplated by the Program or otherwise approved by the NGMC Market Implementation Steering Committee; or
- (b) includes specifications which have not been approved in accordance with the NGMC Project Structure Arrangements,

then, unless NEMMCO otherwise agrees:

- (c) the rights of the Participants under the agreement will not be transferred to NEMMCO;
- (d) NEMMCO is not required to assume the obligations and liabilities of the Participants under that agreement; and
- (e) the amount payable under clause 2.4 will be reduced by the extent of any payments made by the Participants under that agreement.

2.3 Licence

NEMMCO hereby grants to each of the Participants a non-exclusive, royalty free licence to use, copy and modify the software components and supporting documentation of the Joint Venture Assets transferred

to NEMMCO for the purpose of conducting the wholesale electricity market in each of Victoria and New South Wales as the case may be for the period from the date of such transfer until the date of commencement of a national wholesale electricity market.

2.4 Reimbursement of Called Sums

Subject to paragraph 2.2(e):

- (a) upon transfer of each of the Joint Venture Assets to NEMMCO pursuant to this agreement NEMMCO must reimburse each Participant the aggregate of Called Sums (including capitalised interest under clause 2.4(c)) contributed by each Participant in relation to each Joint Venture Asset up to the date of transfer of the Joint Venture Asset to NEMMCO; and
- (b) upon the earlier of the:
 - (1) transfer of the last of the Joint Venture Assets to NEMMCO to be transferred pursuant to this agreement; or
 - (2) the date six months after the date of this agreement,NEMMCO must reimburse the Participants the aggregate of Called Sums (including capitalised interest under clause 2.4(c)) contributed by each Participant in relation to that Joint Venture Asset and the outstanding balance of Called Sums (that relate to other outgoings, liabilities or expenses of the Joint Venture);
- (c) NEMMCO must pay each Participant interest at the Interest Rate on the aggregate outstanding Called Sums, calculated and capitalised monthly from the date each Participant contributed Called Sums until each Participant is reimbursed in full.

3 Further Assurances and Novation

3.1 Transfer to NEMMCO

The Participants must execute such documents as may be necessary or desirable to effect the transfer of all rights (including without limitation all industrial and intellectual property rights) to NEMMCO as specified in clause 2.1 including:

- (a) by procuring third party suppliers to consent to the assignment of those rights to NEMMCO or grant appropriate licences to NEMMCO in respect of those rights, as the case may be; and
- (b) by novating all contracts and associated rights relating to such property to NEMMCO.

3.2 Licences to Participants

The Participants and NEMMCO must execute such documents as may be necessary or desirable to effect the licensing of software components and supporting documentation to the Participants under clause 2.3, including procuring third party Suppliers to consent to the licenses to the Participants, for the purpose of conducting the wholesale electricity market in each of Victoria and New South Wales as the case may be for the period from the date of such transfer until the date of commencement of a national wholesale electricity market.

4 Assignment

4.1 Prohibition

Each Participant warrants that it has not, without the prior consent of the other Participant and the NGMC Market Implementation Steering Committee sold or otherwise disposed of, or leased or subleased or created or allowed to exist a Security Interest or a trust over or in respect of the whole or any part of its Share.

5 Confidentiality

5.1 Keep Confidential

Each Participant is to keep confidential the terms of reports, records, data and studies made in the course of the Joint Venture, decisions regarding the management of the Joint Venture, and any other information obtained in the course of the Joint Venture or during the negotiations preceding this agreement, and is not to disclose it to any person except:

- (a) to employees, legal advisers, auditors and other consultants requiring the information for the purposes of NEMMCO's operations or of the Joint Venture or of conducting the wholesale electricity market in each of Victoria and New South Wales (as the case may be) as contemplated by clause 2.3;
- (b) to another Participant or the employees, legal advisers, auditors or other consultants of another Participant requiring the information for the purposes of the Joint Venture;
- (c) to the Commonwealth, Victoria, New South Wales or the NGMC Market Implementation Steering Committee and their respective members, advisers and other consultants;
- (d) with the consent of the other Participant and NEMMCO;
- (e) if the information is, at the date of this agreement, lawfully in the possession of the recipient of the information through sources other than the other Participant;

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- (f) if required by law or a stock exchange;
 - (g) if strictly and necessarily required in connection with legal proceedings relating to this agreement; or
 - (h) if the information is generally and publicly available other than as a result of a breach of confidence.

5.2 Third parties

A Participant disclosing Confidential Information must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 5.1.

5.3 Obligations continue

The obligations under this Part 5 are continuing obligations, separate and independent from the other obligations of the Participants and survive termination of this agreement.

6 Governing law and jurisdiction

6.1 Laws of Victoria

- (a) This agreement is governed by the laws of Victoria.
- (b) Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of Victoria.

7 Miscellaneous

7.1 Costs

The parties agree to bear their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and of other related documentation.

7.2 Effective date; counterparts

This agreement takes effect as of the date of this agreement when one or more counterparts has been executed by each of the parties and those executed counterparts have been delivered by each of the parties to the others of them. Each counterpart is to be taken to be an original but all of them constitute one and the same instrument.

7.3 Participants obligations

The rights, obligations and liabilities of each Participant under this agreement and in respect of the Joint Venture are several in their respective Shares and not joint or joint and several.

8 Notices

8.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this agreement:

- (1) must be in legible writing and in English addressed as shown below:

- (A) if to NEMMCO:

Address: []

Attention: []

Facsimile: []; and

- (B) if to VPX:

Address: 452 Flinders Street
Melbourne VIC 3000

Attention: G Dillon, Chief Executive Officer

Facsimile: (03) 9679 4100,

- (C) if to TransGrid:

Address: Park and Elizabeth Sts,
Sydney NSW 2000

Attention: D Croft, Chief Executive Officer

Facsimile: (02) 284 3434,

or as specified to the sender by any party by notice;

- (2) where the sender is a company, must be signed by an officer of the company or under the common seal of the sender;

- (3) is regarded as being given by the sender and received by the addressee:

- (A) if by delivery in person, when delivered to the addressee;

- (B) if by post, 3 Business Days from and including the date of postage; or

-
- (C) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received under clause 8.1(a)(3)(C) and informs the sender that it is not legible.
- (c) In this clause 8.1, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

EXECUTED as an agreement

Execution page

THE COMMON SEAL of NATIONAL)
ELECTRICITY MARKET)
MANAGEMENT COMPANY)
LIMITED was affixed to this document)
in the presence of:

.....
Secretary

.....
Director

.....
Name (please print)

.....
Name (please print)

SIGNED for)
VICTORIAN POWER EXCHANGE)
by its representative in the presence of:)
)

.....
Witness

.....
Representative

.....
Name (please print)

.....
Name (please print)

SIGNED for)
ELECTRICITY TRANSMISSION)
AUTHORITY by its representative in the)
presence of:)

.....
Witness

.....
Representative

.....
Name (please print)

.....
Name (please print)

Dated 9 May 1996

NECA Members Agreement

**The State of New South Wales
("NSW")**

**The State of Victoria
("Victoria")**

**The State of Queensland
("Queensland")**

**The State of South Australia
("South Australia")**

**The Australian Capital Territory
("ACT")**

Contents**NECA Members Agreement**

1 Interpretation	1
2 NECA's business	4
NECA's objectives	4
NECA and the National Electricity Code	4
3 Designated Ministers	4
4 Membership and incorporation of NECA	5
States as members	5
Incorporation of NECA	5
5 Funding	5
NECA to be self funding	5
On-going funding arrangements	5
Establishment contributions	5
Contribution on winding up	6
6 Board of directors of NECA	6
Appointment	6
Term of office	8
Remuneration	8
7 Management of NECA	8
Role of Board	8
Chief Executive Officer	9
Reports	9
Financial	10
Decisions requiring a special majority	10
Decisions requiring approval of Members	10
8 Statement of Corporate Intent and Budget	11
Statement of Corporate Intent: Contents	11
Preparation of Statement of Corporate Intent	12
Annual budget	12
Compliance with Statement of Corporate Intent and Budget	13
9 Member obligations	13
10 Membership	14
NECA	14
New Members	14
Ceasing to be a member	15
11 Notices	15

12 General**16**

Exercise of rights 16

Waiver and variation 16

Approvals and consents 17

Remedies cumulative 17

Further assurances 17

Severability 17

Entire agreement 17

Governing law 17

Inconsistency 17

Consumer Price Index 18

**Attachment A Memorandum and Articles of Association of
National Electricity Code Administrator Limited****20**

NECA Members Agreement

Date: 9 May 1996

Parties: The State of New South Wales ("NSW")
The State of Victoria ("Victoria")
The State of Queensland ("Queensland")
The State of South Australia ("South Australia")
The Australian Capital Territory ("ACT")

Recitals:

- A. The governments of the Commonwealth of Australia, NSW, Victoria, Queensland, South Australia and ACT have agreed to establish the National Electricity Market.
- B. The operation of the National Electricity Market will be governed by the National Electricity Code.
- C. The parties have agreed to establish a company limited by guarantee to administer the National Electricity Code and carry out the other functions of the code administrator contemplated by the National Electricity Code.

Operative provisions:

1 Interpretation

- 1.1 The following words have these meanings in this agreement unless the contrary intention appears.

Articles means the articles of association to be adopted for NECA, the initial articles of association shall be those articles of association set out in Attachment A.

Board means the board of directors of NECA.

Budget in respect of a Financial Year, means the budget delivered to the members under clause 8.9 in respect of that Financial Year, as modified in accordance with clause 8.10.

CEO means the chief executive officer of NECA appointed under clause 7.2 and includes any replacement appointed under that clause.

CPI Ratio for a particular Financial Year is:

- (a) the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities published by the Australian Bureau of Statistics for the March Quarter immediately preceding the start of the relevant Financial Year

divided by

- (b) the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities published by the Australian Bureau of Statistics for the March 1996 Quarter.

Customer means a participant in the National Electricity Market who buys electricity through the market (including, without limitation, a participant who on-sells that electricity to retail customers).

Designated Minister in relation to a party means the last Minister nominated by that party under clause 3.

Director means a director of NECA.

Dollars, AUD, \$, A\$ and \$A means the lawful currency of Australia.

Financial Year means a period of 12 calendar months commencing on 1 July each year, except the first Financial Year which commences on the incorporation of NECA and ends at the conclusion of 30 June immediately following the date of incorporation.

Market Objectives are the objectives for the National Electricity Market determined from time to time pursuant to the National Electricity Market Legislation Code Agreement between the parties to this agreement.

Members means the members of NECA.

Memorandum means the memorandum of association to be adopted for NECA, the initial memorandum of association shall be that memorandum set out in Attachment A.

National Electricity Code means the national electricity code authorised by the Australian Competition and Consumer Commission governing the National Electricity Market.

National Electricity Market means the market for wholesale trading of electricity with participants situated in different States and Territories of Australia proposed to be established by an appropriate legislative scheme between the governments of certain States and/or Territories of Australia.

NECA means National Electricity Code Administrator Limited, the company incorporated under clause 4.3.

NGMC means the National Grid Management Council.

Statement of Corporate Intent in respect of a Financial Year, means the statement delivered to the Members under clause 8.4 in respect of that Financial Year, as modified in accordance with clause 8.5.

1.2 In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of either of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) an expression importing a natural person includes a jurisdiction, firm, a body corporate, partnership, joint venture, an unincorporated association or an authority;
- (e) a reference to time is a reference to Australian Eastern Standard Time (that is, the mean time of the 150th meridian of longitude east of Greenwich in England);
- (f) a reference to a "Quarter" preceded by the name of a month, is a reference to the three months ending on the last day of the month referred to. For example, a reference to the March Quarter preceding a Financial Year is a reference to the period of three months ending on 31 March immediately preceding the beginning of that Financial Year;
- (g) if a word or phrase is specifically defined in this agreement, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taken by novation) and permitted assigns; and
- (i) a reference to a body (including, without limitation, an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) the powers or functions of which are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

- 1.3 Headings are inserted for convenience and do not affect the interpretation of this agreement.

2 NECA's business

NECA's objectives

- 2.1 The objectives of NECA are, subject to any contrary requirement of the National Electricity Code, to:
- (a) supervise, administer and enforce the National Electricity Code;
 - (b) institute and ensure through the administration and enforcement of the National Electricity Code the effective and efficient implementation of the rules and standards in the National Electricity Code;
 - (c) collect information and statistics, publish reports and disseminate information relating to the performance, administration, enforcement and adequacy of the National Electricity Code and the performance of the National Electricity Market;
 - (d) administer the ongoing development of, and changes to, the National Electricity Code to achieve the Market Objectives;
 - (e) perform any other objectives or functions conferred on it by the National Electricity Code; and
 - (f) liaise effectively with other bodies having regulatory functions with respect to the National Electricity Market such as the Australian Consumer and Competition Commission and State regulatory authorities in order to ensure consistent and effective development and application of the National Electricity Code.

NECA and the National Electricity Code

- 2.2 NECA must comply with the National Electricity Code.

3 Designated Ministers

- 3.1 Each Member must nominate a Minister of the Crown in right of that party as the Minister responsible for implementing the party's obligations under this agreement by written notice to the other parties.
- 3.2 A Member may change the Minister of the Crown in right of that party responsible for implementing the party's obligations under this agreement by written notice to the other parties.
- 3.3 The Designated Minister of a Member may exercise the party's rights on behalf of the party as the party's representative.

- 3.4 A notice under clause 3.1 or 3.2 must be signed by the Premier or Chief Minister of the relevant party.

4 Membership and incorporation of NECA

States as members

- 4.1 Each of NSW, Victoria, Queensland, South Australia and ACT agrees to become and, subject to clauses 10.6 and 10.7, remain a Member.
- 4.2 The Members will have equal voting rights.

Incorporation of NECA

- 4.3 Each party must execute all necessary documentation to effect the incorporation of a company limited by guarantee to be called National Electricity Code Administrator Limited and become a Member.

5 Funding

NECA to be self funding

- 5.1 The parties intend that NECA will be self funding and that NECA will seek to set the fees payable by, and price its services to, participants in the National Electricity Market on a fully attributed, cost recovery basis. *

On-going funding arrangements

- 5.2 It is intended that:
- (a) NECA will operate to generate sufficient income in order to meet its obligations and not pay a dividend to members; and
 - (b) any profits earned by NECA may be retained to cover future expenses or returned to participants in the National Electricity Market by way of equitable fee or price adjustments in future periods.

Establishment contributions

- 5.3 Each party must contribute the amount set out next to its name in the following table, less an amount agreed by all the parties relating to pre-establishment expenses incurred by them on behalf of NECA, by way of seed grant to NECA for capital purposes:

TABLE	
Party	Amount
NSW	\$524,262.00
Victoria	\$342,838.00
Queensland	\$260,130.00
South Australia	\$93,380.00
ACT	\$24,102.00

- 5.4 It is acknowledged that the Commonwealth will also be contributing \$670,000.00 by way of seed grant to NECA for capital purposes.

Contribution on winding up

5.5

- (a) If NECA is wound up, then each Member must contribute an amount calculated in accordance with paragraph (b) to meet NECA's debts and liabilities and the costs, charges and expenses of winding NECA up.
- (b) Subject to paragraph (c), the amount payable by a Member under paragraph (a) is equal to the total amount of NECA's debts and liabilities plus the costs, charges and expenses of winding NECA up which cannot be met from the assets of NECA multiplied by the proportion shown opposite the Member's name in the column headed "Proportion" in the chart set out below.
- (c) The maximum amount payable by a Member under paragraph (a) is the amount shown opposite that Member's name in the column headed "Cap" in the chart set out below multiplied by the CPI Ratio for the Financial Year in which the amount is payable.

Chart		
Member	Proportion	Cap
NSW	.421	\$1,965,000
Victoria	.276	\$1,285,000
Queensland	.209	\$975,000
South Australia	.075	\$350,000
ACT	.019	\$90,000
	1.000	\$4,665,000

- (d) The amount payable by a party under this clause 5.5 is in addition to any amount payable by that party under the Memorandum.

6 Board of directors of NECA

Appointment

- 6.1 The Board will comprise in total a maximum of 9 Directors (including a chairperson) selected in accordance with the procedures set out in this clause 6.
- 6.2 Each Member may nominate one person to be appointed as a Director by written notice to the other Members.
- 6.3 A notice under clause 6.2 or clause 6.9 must specify the time at which the nominee's proposed term of office commences. If a person has

already been appointed as a Director (called "earlier Director") as a result of a nomination under clause 6.2 or clause 6.9 by the Member giving the notice, then the notice under clause 6.2 or clause 6.9 cannot specify a time which is prior to the earlier Director ceasing to be a Director.

- 6.4 The Board may, from time to time, nominate a person to be appointed as a Director by written notice to the Members where the Board believes that the appointment will add to the collective skills and experience of the Board.
- 6.5 A notice under clause 6.4 must specify the time at which the nominee's proposed term of office commences. If persons have already been appointed as a Director (called "Additional Director") following a nomination under clause 6.4, then the notice under clause 6.4 cannot specify a time which is prior to one or both of the Additional Directors ceasing to be a Director.
- 6.6 Within 21 days of receiving a notice under clause 6.2 or clause 6.4, each Member must notify each of the other Members whether the Member approves of the appointment of the person nominated in the notice.
- 6.7 If a Member has not notified each of the other Members whether the Member approves of the appointment of the person nominated in a notice under clause 6.2 or clause 6.4 within 21 days of receiving the notice, then the Member will be taken to approve of the appointment of that person.
- 6.8 Each Member must take all steps that are within its power to ensure that a person nominated to be appointed as a Director by a notice under clause 6.2 or clause 6.4 whose appointment is approved by a majority of the Members (including the Member nominating that person) becomes a Director in accordance with the procedure provided for in the Articles.
- 6.9 If a Member nominates a person to be appointed as a Director under clause 6.2, but the appointment of that person is not approved by a majority of the Members (including the Member nominating the person), then that Member may nominate another person to be appointed as a Director by written notice to the other Members. Clauses 6.3, 6.6, 6.7 and 6.8 and this clause 6.9 apply in relation to a notice given under this clause 6.9 as if it were given under clause 6.2.
- 6.10 The Members must ensure that, at any time:
 - (a) the Board has an appropriate mix of skills and experience in all aspects of the electricity supply industry and other matters relevant to the proper performance of NECA's functions under

the National Electricity Code (including, without limitation, finance, dispute resolution, regulation and law);

- (b) not less than 3 Directors (including the Chairperson) are independent of the electricity supply industry; and
- (c) there are not more than 2 Directors who were appointed as a result of a nomination under clause 6.4.

- 6.11 The Chairperson of the Board is appointed by written instrument signed by all the Members. Each Member must take all steps that are within its power to ensure that a person appointed Chairperson under this clause 6.11 who is not already a Director becomes a Director and Chairperson on his or her appointment as Chairperson taking effect.

Term of office

- 6.12 Subject to the agreement contemplated by clause 6.13, the term of office of each Director is 3 years from the date of his or her appointment.
- 6.13 The parties must agree on a staggering of the terms of appointment of the initial Directors to achieve an orderly rotation of appointments in the future.
- 6.14 The term of office of the Chairperson ends on the first to occur of:
- (a) the expiration of 3 years from the date of his or her appointment; and
 - (b) the Chairperson ceasing to be a Director.
- 6.15 If the Chairperson or another Director (called the "Retiring Officer") dies, resigns, is removed or otherwise vacates office before the expiration of his or her term of office, then a replacement Chairperson or Director is to be appointed in accordance with the same procedure by which the Retiring Officer was appointed for the remainder of the term of office of the Retiring Officer. A replacement Chairperson or Director appointed under this clause 6.15 is eligible for re-appointment following the expiration of the term of the relevant Retiring Officer.

Remuneration

- 6.16 The Members must determine, by resolution of a general meeting, appropriate remuneration for each Director.

7 Management of NECA

Role of Board

- 7.1 Subject to this agreement, the Board is responsible for managing the business and affairs of NECA in order to achieve the objectives set out in clause 2.1, including:

-
- (a) establishing NECA's general policies;
 - (b) determining matters of a major or unusual nature which are not in the ordinary course of NECA's business;
 - (c) developing NECA's Statement of Corporate Intent, business plan and Budget for each Financial Year in accordance with clause 8; and
 - (d) ensuring that NECA performs its functions under the National Electricity Code.

Chief Executive Officer

- 7.2 The Board must appoint a person to be chief executive officer of NECA on such terms and for such period as it thinks fit. The CEO may be a Director, but need not be.
- 7.3 If the CEO is not a Director, then the CEO is still entitled to attend Board meetings (except in relation to a matter relating to the CEO's terms and conditions of employment or performance).
- 7.4 The CEO is responsible for administering NECA on a day to day basis in accordance with the objectives set out in clause 2.1, the Statement of Corporate Intent, the Budget, any applicable business plan approved by the Board, the general policies set by the Board and any other decisions of the Board.
- 7.5 The Board may delegate to the CEO any of its functions and powers which it is capable of delegating to the CEO.

Reports

- 7.6 The Board must cause to be provided to the Members:
 - (a) as soon as practicable after the end of the September Quarter, December Quarter, March Quarter and June Quarter during each Financial Year:
 - (i) an unaudited profit and loss statement and monthly cash flow statement for the quarter and for the current Financial Year to date (with projections for the following 12 months); and
 - (ii) an unaudited balance sheet as at the end of the quarter,

each prepared in accordance with generally accepted accounting principles consistently applied, together with:

 - (iii) a brief report on the operations of NECA during the quarter and for the current Financial Year to date; and

- (iv) a comparison of NECA's performance for the current Financial Year to date as against the Budget for the Financial Year; and
- (b) as soon as practicable after the end of each Financial Year, an audited profit and loss statement and balance sheet for the Financial Year, together with:
 - (i) a report on the operations of NECA during the Financial Year (which report must disclose the income received by the Directors during the Financial Year from NECA or any related body corporate in accordance with the applicable accounting standards (as defined in the Corporations Law). If the CEO is not a Director, then, for the purposes of the report, he or she must be treated as if he or she was a Director); and
 - (ii) a comparison of NECA's performance during the Financial Year as against the Budget for the Financial Year.

Financial

- 7.7 The Board must ensure that the accounts of NECA are audited annually. The Board must ensure that as well as instituting appropriate audit arrangements it establishes an audit committee.

Decisions requiring a special majority

- 7.8 Subject to clause 7.9, decisions concerning amendments to the National Electricity Code must be:
- (a) made by the Board and may not be delegated to any other person; and
 - (b) approved by not less than three quarters of the Directors present at the Board meeting at which the proposed amendment is discussed provided that not less than 5 Directors are present at that meeting.

Decisions requiring approval of Members

- 7.9 Decisions concerning amendments to the National Electricity Code, other than those provisions referred to in clause 7.10, with respect to the functions of NECA under and in respect of the National Electricity Code must be made by the Board consistent with clause 7.8 and subject to the prior written approval of three quarters in number of the Members.
- 7.10 A provision of the National Electricity Code that, under the National Electricity Code, is classified as a protected provision may only be amended with the unanimous approval of the Members.

7.11 The Board and NECA must not without the approval of three quarters in number of the Members:

- (a) dispose of an existing business or amalgamate an existing business with any other business;
- (b) form or participate in the formation of a company;
- (c) participate in a partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
- (d) acquire a major shareholding in a company;
- (e) undertake a significant new business activity;
- (f) make a significant change in the nature or extent of its interest in a company, partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
- (g) appoint or revoke the appointment of any auditor; or
- (h) guarantee the payment of any money or performance of any obligations.

8 Statement of Corporate Intent and Budget

Statement of Corporate Intent: Contents

8.1 A Statement of Corporate Intent must specify in respect of the Financial Year to which it relates and each of the 2 following Financial Years, the following information:

- (a) the objectives of NECA;
- (b) the main undertakings of NECA;
- (c) the nature and scope of the activities to be undertaken by NECA;
- (d) the accounting policies to be applied in the accounts of NECA including, but not limited to, those relating to:
 - (i) capitalisation of expenditure;
 - (ii) depreciation and asset lives;
 - (iii) employee entitlements;
 - (iv) intangible assets; and
 - (v) provisions;

- (e) the performance targets and other measures by which the performance of NECA may be judged in relation to its stated objectives;
- (f) the kind of information to be provided to the Members by NECA, including the information to be included in each report to be provided to the Members under clause 7.6;
- (g) the risk management strategies to be undertaken by NECA; and
- (h) such other matters as may, from time to time, be specified in a written notice from three quarters in number of the Members.

Preparation of Statement of Corporate Intent

- 8.2 The Board must prepare and submit to each of the Members a draft Statement of Corporate Intent for NECA for a Financial Year not later than 1 month before the commencement of the Financial Year.
- 8.3 The Board must consider any comments on the draft Statement of Corporate Intent for a Financial Year submitted under clause 8.2 that are made to it by written notice from any of the Members within 1 month after the commencement of the Financial Year.
- 8.4 The Board must deliver the completed Statement of Corporate Intent for a Financial Year (which must be agreed to by three quarters in number of the Members) to the Members, within 3 months after the commencement of the Financial Year to which it relates.
- 8.5 A Statement of Corporate Intent may be modified at any time by written agreement of three quarters in number of the Members.

Annual budget

- 8.6 The Budget for NECA for a Financial Year must include, amongst other things, the projected income and expenses of NECA and cash flow projections, together with a projected closing balance sheet, for the Financial Year to which it relates. One of the primary objectives of each Budget should be cost efficiency.
- 8.7 The Board must prepare and submit to the Members a draft Budget for each Financial Year not later than one month before the commencement of the Financial Year.
- 8.8 The Board must consider any comments on a draft Budget submitted under clause 8.7 that are made to it by written notice from any of the Members within 1 month after the commencement of the Financial Year.
- 8.9 The Board must adopt the completed Budget for a Financial Year and deliver a copy of it to each of the Members within 3 months after the commencement of the Financial Year to which it relates.

8.10 A Budget may be modified at any time by the Board.

Compliance with Statement of Corporate Intent and Budget

8.11 In carrying out its activities during a Financial Year, NECA must use reasonable endeavours to comply with the Statement of Corporate Intent and the Budget for the Financial Year.

9 Member obligations

9.1 Each Member agrees to take all steps which are within its powers and are necessary to ensure that:

- (a) its voting rights as a Member are exercised in a manner, and that it otherwise acts, so as to ensure that NECA acts in conformity with this agreement;
- (b) no alteration is made to the Memorandum, the Articles or the name of NECA without the approval of all Members;
- (c) no person other than a party to this agreement becomes a Member and that at all times the Members are parties to this agreement;
- (d) no alteration is made to the rights attached to membership of NECA without the approval of all Members;
- (e) NECA does not without the approval of three quarters in number of the Members:
 - (i) dispose of an existing business or amalgamate an existing business with any other business;
 - (ii) form or participate in the formation of a company;
 - (iii) participate in a partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
 - (iv) acquire a major shareholding in a company;
 - (v) undertake a significant new business activity;
 - (vi) make a significant change in the nature or extent of its interest in a company, partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
 - (vii) appoint or revoke the appointment of any auditor; or
 - (viii) guarantee the payment of any money or performance of any obligations;

- (f) NECA does not borrow any money otherwise than in the normal course of its business and with the approval of the Board; and
- (g) no party, nor any director, officer or employee of a party contracts with NECA unless the contractual relationship is on an arm's length basis.

9.2 The Members agree that the proportions for the purposes of article 9.1 of NECA's Articles are those set out in the column headed "Proportion" in the chart set out in clause 5.5.

10 Membership

NECA

- 10.1 Each of the Members agrees to take all steps which are within its power to ensure that NECA becomes a party to this agreement or otherwise bound by it.
- 10.2 Only States or Territories of Australia are entitled to be Members.

New Members

- 10.3 A State or Territory of Australia which is not then a Member may apply to become a Member by written notice to NECA.
- 10.4 If NECA receives an application under clause 10.3, then it must forward a copy of the application to each of the Members within 14 days, requesting each Member to notify NECA as to whether or not the Member agrees to the admission of the applicant as a Member. If a Member does not advise NECA within 30 days of the date of receipt of a copy of the application from NECA, then that Member will be deemed to have agreed to the admission of the applicant as a Member.
- 10.5 If:
 - (a) NECA forwards a copy of an application to each of the Members under clause 10.4;
 - (b) a majority of the Members notify NECA that they agree to or are deemed to have agreed to the admission of the applicant as a Member; and
 - (c) the applicant executes and delivers to NECA a deed of assumption in favour of the parties to this agreement agreeing to be bound by this agreement from the date of its admission as a Member,

then:

- (d) the parties must negotiate in good faith concerning the figures which should be specified in the chart in clause 5.5 in relation to the applicant;
- (e) the parties must negotiate in good faith an amount to be paid by the applicant to each of the existing Members by way of reimbursement of an appropriate share of the seed grant made by that existing Member under clause 5.3 or the amounts paid by that existing Member under this clause 10.5(e) (as applicable); and
- (f) upon:
 - (i) the chart in clause 5.5 of this agreement being amended to specify the figures agreed under paragraph (d) in relation to the applicant; and
 - (ii) the applicant paying the reimbursement amount agreed under paragraph (e) to each of the existing Members,

NECA must admit the applicant as a Member in accordance with the procedure provided for in the Articles.

Ceasing to be a member

- 10.6 A party wishing to resign or otherwise terminate its membership in NECA must give each of the other parties at least 12 months' written notice of its intention to do so.
- 10.7 If a party (called the "Retiring Party") notifies the other parties that it wishes to resign or otherwise terminate its membership in NECA, then:
 - (a) the parties must negotiate in good faith the terms on which the Retiring Party will be released from its obligations under this agreement (particularly under clause 5.5); and
 - (b) the parties (other than the Retiring Party) must negotiate in good faith concerning the figures which should be specified in the chart in clause 5.5 in relation to each of the continuing parties; and
 - (c) the Retiring Party must procure that the person serving as Director as a result of a nomination by the Retiring Party under clause 6.2 forthwith resigns as a Director.

11 Notices

- 11.1 A notice, approval, consent or other communication in connection with this agreement:
 - (a) must be in writing; and

- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which the addressee notifies from time to time.
- 11.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 11.3 A letter or facsimile is taken to be received:
 - (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
 - (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 11.4 Where this agreement requires that NECA consider or act on a matter agreed by a majority of the Members, the agreement of the Members may be conveyed by:
 - (a) a single document signed by the authorised representatives of a majority of the Members; or
 - (b) separate documents signed by the authorised representative of each Member of a majority of Members with otherwise identical wording.

12 General

Exercise of rights

- 12.1 A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Waiver and variation

- 12.2 A provision of or a right created under this agreement may not be:
 - (a) waived except in writing signed by the party granting the waiver; or
 - (b) subject to clause 12.10(d), varied except in writing signed by the parties.

Approvals and consents

- 12.3 A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

Remedies cumulative

- 12.4 The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

Further assurances

- 12.5 Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

Severability

- 12.6 If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

Entire agreement

- 12.7 This agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

Governing law

- 12.8 This agreement and the transactions contemplated by this agreement are governed by the law in force in the ACT.

Inconsistency

- 12.9 This agreement applies to and regulates the affairs and proceedings of NECA and the Directors:
- (a) to the exclusion of the Articles to the extent that there is an inconsistency between this agreement and the Articles; and
 - (b) as supplementary to the Articles to the extent that there is no such inconsistency.

Consumer Price Index

- 12.10 If either:
- (a) the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities ceases to be published quarterly; or

-
- (b) the method of calculation of the Consumer Price Index : All Groups Index Number weighted average for the 8 capital cities substantially alters,

then the Consumer Price Index: All Groups Index Number weighted average for the 8 capital cities is to be replaced by the nearest equivalent index and any necessary consequential amendments to this agreement are to be made. That index and those amendments are to be determined as follows:

- (c) by agreement between the parties; or
- (d) if the parties do not agree, by the Australian Statistician or his nominee, whose decision is binding and conclusive.

EXECUTED as a deed.

Execution page

The Honourable Michael Rueben Egan)
MLC, Minister for Energy for New)
South Wales on the 9th day of May 1996)
)

The Honourable Alan Robert Stockale)
MLA, Treasurer for Victoria on the 9th)
day of May 1996)
)

The Honourable Thomas John George)
Gilmore MLA, Minister for Mines and)
Energy for Queensland on the 9th day of)
May 1996)

The Honourable John Wayne Olsen)
MLC, Minister for Infrastructure for)
South Australia on the 9th day of May)
1996)

The Honourable Anthony Joseph De)
Domenico MLA, Minister for Urban)
Services for the Australian Capital)
Territory on the 9th day of May 1996)

Attachment A

**Memorandum and Articles of Association of
National Electricity Code Administrator Limited**

National Electricity Code Administrator Limited

A Company Limited by Guarantee

MEMORANDUM AND ARTICLES OF ASSOCIATION

National Electricity Code Administrator Limited

A Company Limited by Guarantee

MEMORANDUM OF ASSOCIATION

1 Name of company

The name of the company is **National Electricity Code Administrator Limited.**

2 Liability of members

The liability of the members of the company is limited.

3 Contribution by members

Each member undertakes to contribute to the company's property if the company is wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for payment of the company's debts and liabilities contracted before he, she or it ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$1.00.

WE the subscribers listed below wish to form a company pursuant to this memorandum of association.

Names of subscribers	Signature of authorised representative	Name and title of authorised representative	Signature of witness	Name and title of witness	Address of witness	Date of signature
State of New South Wales		The Honourable Michael Rueben Egan MLC, Minister for Energy for New South Wales		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996
State of Victoria		The Honourable Alan Robert Stockdale MLA, Treasurer for Victoria		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996
State of Queensland		The Honourable Thomas John George Gilmore MLA, Minister for Mines and Energy for Queensland		John Archibald Landels A.O.	Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	9 May 1996

State of South
Australia

The Honourable
John Wayne Olsen
MLC, Minister for
Infrastructure for
South Australia

John
Archibald
Landels A.O.

Level 40
Governor Phillip
Tower
1 Farrer Place
Sydney NSW 2000

9 May 1996

Australian Capital
Territory

The Honourable
Anthony Joseph
De Domenico
MLA, Minister for
Urban Services for
the Australian
Capital Territory

John
Archibald
Landels A.O.

Level 40
Governor Phillip
Tower
1 Farrer Place
Sydney NSW 2000

9 May 1996

National Electricity Code Administrator Limited**A Company Limited by Guarantee****Articles of Association**

These articles of association were
adopted by the company as its articles
of association on 19

Contents

1 Preliminary	1
Definitions	1
Attendance at meeting	1
Chairperson: title	1
Office holders	1
Interpretation	1
Application of the Corporations Law	2
Exercise of powers	2
2 Membership	4
Admission of members	4
Power to decline admission of members	4
Power to suspend admission of members	4
Cessation of membership	4
Expulsion of members	4
Membership not transferable	5
3 General meetings	5
Convening of general meetings	5
Notice of general meetings	5
Telephone meetings	6
Quorum at general meetings	6
Chairperson of general meetings	7
Conduct of general meetings	8
Decisions at general meetings	8
Voting rights	9
Representation at general meetings	9
4 Directors	11
Appointment of directors	11
Role of general meeting	12
No membership qualification	12
Vacation of office	12
Chairperson of directors	12
Remuneration of directors	13
Attendance at general meetings	14
Interested directors	14
Powers and duties of directors	15
5 Proceedings of directors	16
Meetings of directors	16
Telephone meetings	16
Convening of meetings of directors	16
Notice of meetings of directors	16
Quorum at meetings of directors	17
Chair	17
Decisions of directors	18
Written resolutions	18
Committees of directors	19

Delegation to individual directors	20
Validity of acts	20
Alternate directors	20
6 Executive officers	21
Chief executive officer	21
Secretaries	21
Provisions applicable to all executive officers	21
7 Seals	22
Safe custody of seal	22
Use of seal	22
Seal register	22
Official seal	23
8 Income and Reserves	23
Profits	23
Reserves	23
Distribution	23
9 Winding up	24
10 Minutes and records	24
Minutes	24
Signing of minutes	24
Minutes as evidence	24
Inspection of records	24
11 Notices	25
Notices by the company to members	25
Notices by the company to directors	25
Notices by members or directors to the company	25
Notices posted to addresses outside the Commonwealth	25
Time of service	25
Other communications and documents	26
Notices in writing	26
12 Indemnity: officers, auditors and agents	26
Officer	26
Indemnities	26
Insurance	27
13 General	27
Submission to jurisdiction	27
Prohibition and enforceability	27

Articles of Association
of
National Electricity Code Administrator Limited
A Company Limited by Guarantee

1 Preliminary

Definitions

- 1.1 In these articles:

Commonwealth means the Commonwealth of Australia and its external territories.

members means the subscribers to the memorandum of association of the company and the other States or Territories of the Commonwealth admitted as members under article 2.2.

seal means any common seal or official seal of the company.

special resolution has the meaning given by section 253 of the Corporations Law of New South Wales.

Attendance at meeting

- 1.2 A member is to be taken to be present at a general meeting if the member is present in person or by proxy or attorney.

Chairperson: title

- 1.3 Where a provision of these articles establishes an office of chairperson, the chairperson may be referred to as chairman or chairwoman, as the case requires.

Office holders

- 1.4 A reference in an article in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.

Interpretation

- 1.5 Unless the contrary intention appears, in these articles:
- (a) headings and underlining are for convenience only and do not affect the interpretation of these articles;
 - (b) words importing the singular include the plural and vice versa;
 - (c) words importing a gender include every other gender;

- (d) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (e) a reference to a person includes that person's successors and legal personal representatives;
- (f) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (g) where a word or phrase is given a particular meaning, then another part of speech and grammatical form of that word or phrase has a corresponding meaning.

Application of the Corporations Law

- 1.6 These articles are to be interpreted subject to the Corporations Law of New South Wales.
- 1.7 Unless the contrary intention appears, an expression in an article that deals with a matter dealt with by a provision of the Corporations Law has the same meaning as in that provision of the Corporations Law.
- 1.8 Subject to article 1.7, unless the contrary intention appears, an expression in an article that is defined in section 9 of the Corporations Law has the same meaning as it is given in that section.

Exercise of powers

- 1.9 The company may exercise in any manner permitted by the Corporations Law any power which under the Corporations Law a company limited by guarantee may exercise if authorised by these articles of association.
- 1.10 Where these articles provide that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- 1.11 Where these articles confer a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- 1.12 Where these articles confer a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different

provision with respect to different matters or different classes of matters.

- 1.13 Where these articles confer a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
- (a) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (b) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (c) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- 1.14 Where these articles confer a power or impose a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- 1.15 Where these articles confer a power or impose a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- 1.16 Where these articles confer power on a person or body to delegate a function or power:
- (a) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (b) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (c) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position or the members from time to time of a committee;
 - (d) the delegation may include the power to delegate;
 - (e) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and

- (f) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2 Membership

Admission of members

- 2.1 The States of New South Wales, Queensland, South Australia, Victoria and the Australian Capital Territory are the first members.
- 2.2 The company may by resolution at a general meeting:
 - (a) admit as a member of the company any State or Territory of the Commonwealth which is not already a member, on such conditions and at such time, as the general meeting thinks fit; and
 - (b) require any such State or Territory to execute such form of undertaking as the resolution may stipulate as a condition of admitting that State or Territory as a member of the company.

Power to decline admission of members

- 2.3 The company may, by resolution at a general meeting, in its absolute discretion, decline to admit any State or Territory as a member of the company.

Power to suspend admission of members

- 2.4 The company may, by special resolution at a general meeting, suspend the admission of members at such times and for such periods as it thinks fit.

Cessation of membership

- 2.5 A member ceases to be a member:
 - (a) if the member resigns from membership by notice in writing to the company;
 - (b) if the member is expelled by the company under article 2.6; or
 - (c) in any circumstances prescribed in the terms of membership applicable to the member or in any undertaking given by the member upon his or her admission to membership.

Expulsion of members

- 2.6 The company may, by special resolution at a general meeting, expel a member who fails to comply with:
 - (a) the memorandum of association of the company or these articles; or

- (b) the terms of membership applicable to the member or any undertaking given by the member upon admission to membership.

The company must give notice in writing of that expulsion to the member.

Membership not transferable

- 2.7 Unless otherwise provided by the terms of membership of a class of members, membership of the company is not transferable.

3 General meetings

Convening of general meetings

- 3.1 The directors may, whenever they think fit, convene a general meeting.
- 3.2 A general meeting may be convened only as provided by article 3.1 or as provided by section 246 of the Corporations Law.
- 3.3 The directors may postpone, cancel or change the venue for a general meeting, but a general meeting convened under section 246 of the Corporations Law may not be postponed beyond the date by which section 246 requires it to be held and may not be cancelled without the consent of the requisitioning member or members. The directors may at their discretion give notice of cancellation and not giving notice does not affect the validity of the cancellation.

Notice of general meetings

- 3.4 Subject to these articles, notice of a general meeting must be given within the time limits prescribed by the Corporations Law and in the manner authorised by article 11 to each person who is at the date of the notice:
 - (a) a member;
 - (b) a director; or
 - (c) an auditor of the company.
- 3.5 A notice of a general meeting must specify the time and place of the meeting and, except as provided in article 3.6, state the general nature of the business to be transacted at the meeting.
- 3.6 It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the directors and auditor, the appointment and fixing of the remuneration of the auditor of the company or any other business which under the Corporations Law ought to be transacted at the annual general meeting.
- 3.7 A person may waive notice of any general meeting by notice in writing to the company.

3.8 The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under article 3.4 does not invalidate any act, matter or thing done or resolution passed at the general meeting if before or after the meeting, the person:

- (a) has waived or waives notice of that meeting under article 3.7; or
- (b) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.

3.9 A person's attendance at a general meeting:

- (a) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
- (b) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in article 3.6, unless the person objects to considering the matter when it is presented.

Telephone meetings

3.10 Subject to any contrary requirement of the Corporations Law, the contemporaneous linking together by telephone or other method of audio or audio visual communication of persons eligible to attend a general meeting, sufficient to constitute a quorum, constitutes a general meeting of those persons and all the provisions in these articles relating to general meetings apply, so far as they can and with such changes as are necessary, to general meetings by telephone or audio or audio visual communication.

3.11 A person participating in a general meeting by telephone or audio or audio visual communication is to be taken to be present in person at the general meeting.

3.12 A general meeting by telephone or audio or audio visual communication is to be taken to be held at the place determined by the chairperson of the general meeting provided that at least one of the members involved was at that place for the duration of the meeting.

Quorum at general meetings

3.13 No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business. If a quorum is present at the beginning of a meeting, then it is to be taken to be present throughout the meeting unless the chairperson of

the meeting on the chairperson's own motion or at the request of a member, proxy or attorney who is present otherwise declares.

3.14 A quorum consists of:

- (a) if the number of members entitled to vote is 2 or more, then a majority of those members; or
- (b) if only one member is entitled to vote, then that member, present at the meeting.

3.15 If a quorum is not present within 30 minutes after the time appointed for a general meeting, then:

- (a) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
- (b) in any other case:
 - (i) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, then to the same day in the next week at the same time and place; and
 - (ii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, then the meeting must be dissolved.

Chairperson of general meetings

3.16 The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.

3.17 If at a general meeting:

- (a) there is no chairperson of directors;
- (b) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
- (c) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then the members present must elect as chairperson of the meeting:

- (d) another director who is present and willing to act; or
- (e) if no other director willing to act is present at the meeting, then a member or proxy or attorney of a member who is present and willing to act.

Conduct of general meetings

- 3.18 Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- 3.19 The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 3.20 It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Decisions at general meetings

- 3.21 Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.
- 3.22 In the case of an equality of votes upon any proposed resolution:
 - (a) the chairperson of the meeting does not have a second or casting vote in addition to any vote he or she has as a proxy or attorney of a member; and
 - (b) the proposed resolution is to be taken as having been lost.
- 3.23 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before or immediately after the declaration of the result of the show of hands:
 - (a) by the chairperson of the meeting; or
 - (b) by any member present and having the right to vote at the meeting.
- 3.24 A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- 3.25 Unless a poll is duly demanded, a declaration by the person of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 3.26 If a poll is duly demanded at a general meeting, then it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of

the poll will be the resolution of the meeting at which the poll was demanded.

3.27 A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.

3.28 The demand for a poll may be withdrawn.

Voting rights

3.29 Subject to these articles and to any rights or restrictions attached to any class of membership, at a general meeting every member present has one vote.

3.30 A proxy or attorney is entitled to a separate vote for each member the person represents.

3.31 If a member has voted in relation to a question arising at a general meeting, then a proxy or attorney appointed by that member cannot also vote on that question.

3.32 A member is not entitled to vote at a general meeting unless all sums of money due and payable by that member to the company have been paid.

3.33 An objection to the qualification of a person to vote at a general meeting:

(a) must be raised before or at the meeting at which the vote objected to is given or tendered; and

(b) must be referred to the chairperson of the meeting, whose decision is final.

3.34 A vote not disallowed by the chairperson of a meeting under article 3.33 is valid for all purposes.

Representation at general meetings

3.35 Subject to these articles, each member entitled to vote at a meeting of members may vote:

(a) by proxy; or

(b) by attorney.

3.36 A proxy or attorney may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

3.37 Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:

(a) to agree to a meeting being convened by shorter notice than is required by the Corporations Law or by these articles;

- (b) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given;
 - (c) to speak to any proposed resolution on which the proxy or attorney may vote;
 - (d) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote;
 - (e) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (iii) to act generally at the meeting; and
 - (f) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is postponed or adjourned to another time or changed to another venue, to attend and vote at the postponed or adjourned meeting or at the new venue.
- 3.38 An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- 3.39 Subject to article 3.41, an instrument appointing a proxy or attorney need not be in any particular form provided it is in writing and signed by an authorised representative of the relevant member.
- 3.40 Subject to article 3.41, a proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the original or an attested copy of the power of attorney or other authority (if any) under which the instrument is signed, are:
- (a) deposited at the registered office of the company or at such other place specified for that purpose in the notice convening the meeting before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);

- (b) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (c) in the case of a poll, produced when the poll is taken.
- 3.41 The directors may waive all or any of the requirements of articles 3.39 and 3.40 and, in particular, may, upon the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, accept:
 - (a) an oral appointment of a proxy or attorney;
 - (b) an appointment of a proxy or attorney which is not signed or executed in the manner required by article 3.39; and
 - (c) the deposit, tabling or production of a copy (including a copy sent by facsimile) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed which is not deposited, tabled or produced in the manner or at the time required by article 3.40.
- 3.42 A vote made in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under article 3.40.
- 3.43 The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting.

4 Directors

Appointment of directors

- 4.1 There must be:
 - (a) not less than 3 directors; and
 - (b) subject to article 4.4(a), not more than 9 directors.
- 4.2 The company may appoint a person as a director by:
 - (a) resolution of a general meeting; or
 - (b) written instrument signed by the authorised representatives of a majority of the members.
- 4.3 A resolution or an instrument appointing a director under article 4.2 must specify:

- (a) the time the appointment takes effect; and
- (b) the term of office of the director (which must not exceed 3 years from the time the appointment takes effect).

Role of general meeting

4.4 The company may by resolution of a general meeting:

- (a) increase or reduce the maximum number of directors; and
- (b) remove a director.

No membership qualification

4.5 A person is not required to be a member of the company to qualify for appointment as a director.

Vacation of office

4.6 A person ceases to be a director:

- (a) upon the expiration of the director's term of office as a director;
- (b) if the director dies;
- (c) in the circumstances prescribed by the Corporations Law;
- (d) if the director is removed under article 4.4(b);
- (e) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (f) if the director resigns by notice in writing to the company.

Chairperson of directors

4.7 The company may appoint a person as chairperson of directors by:

- (a) resolution of a general meeting in respect of which all the members have voted in favour; or
- (b) written instrument signed by the authorised representative of all the members.

4.8 A resolution or instrument appointing a chairperson of directors under article 4.7 must specify:

- (a) the time the appointment takes effect; and
- (b) the term of office of the chairperson of directors (which must not exceed 3 years from the time the appointment takes effect).

4.9 A person appointed as chairperson of directors under article 4.7 who is not a director at the time his or her appointment as chairperson of directors takes effect becomes a director at that time.

- 4.10 The company may by resolution of a general meeting remove the chairperson of directors.
- 4.11 A person ceases to be chairperson of directors:
- (a) upon the expiration of the chairperson's term of office as chairperson;
 - (b) if the person ceases to be a director under article 4.6;
 - (c) if the chairperson is removed under article 4.10; or
 - (d) if the chairperson resigns by notice in writing to the company.

Remuneration of directors

- 4.12 Each director is entitled to such remuneration out of the funds of the company as the directors determine, but if the company by resolution of a general meeting has fixed a limit on the amount of remuneration payable to the directors, then the aggregate remuneration of the directors under this article 4.12 must not exceed that limit.
- 4.13 The remuneration of directors.
- (a) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
 - (b) may be a share of a fixed sum determined by resolution of a general meeting of the company to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,
- and if it is a stated salary under article 4.13(a) or a share of a fixed sum under article 4.13(b), will be taken to accrue from day to day.
- 4.14 In addition to their remuneration under article 4.12, each director is entitled to be paid all travelling and other expenses properly incurred by him or her in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- 4.15 If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the company, then the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under article 4.12. The office of chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the person holding that office for the purposes of this article 4.15.
- 4.16 Nothing in article 4.12 restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in

addition to or in substitution for that director's remuneration under article 4.12.

Attendance at general meetings

- 4.17 A director who is not a member of the company is nevertheless entitled to attend and speak at general meetings.

Interested directors

- 4.18 A director may hold any other office or place of profit (other than auditor) in any related body corporate of the company in conjunction with his or her directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- 4.19 A director (other than the chief executive officer) may not hold any other office or place of profit in the company.
- 4.20 A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.
- 4.21 The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officer of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- 4.22 A director is not disqualified merely because of being a director from contracting with the company in any respect including without limitation being employed by the company as chief executive officer or acting in any professional capacity (other than auditor) on behalf of the company and may participate in any association, institution, fund, trust or scheme for past or present employees or directors of the company or their dependants or persons connected with them.
- 4.23 No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- 4.24 No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any

profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.

- 4.25 A director who is in any way interested in any contract or arrangement or proposed contract or arrangement may not:
- (a) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement; and
 - (b) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the seal is affixed.
- 4.26 The directors may make rules requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate and any rules made under this article will bind all directors.

Powers and duties of directors

- 4.27 The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Corporations Law or by these articles, to be exercised by the company in general meeting.
- 4.28 Without limiting the generality of article 4.27, the directors may exercise the powers of the company to borrow or otherwise raise money, to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- 4.29 The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- 4.30 The directors may:
- (a) delegate any of the powers of the directors;
 - (b) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
 - (c) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and

- (d) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

- 4.31 A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

5 Proceedings of directors

Meetings of directors

- 5.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

Telephone meetings

- 5.2 The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in these articles relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or audio or audio visual communication.
- 5.3 A director participating in a meeting by telephone or audio or audio visual communication is to be taken to be present in person at the meeting.
- 5.4 A meeting by telephone or audio or audio visual communication is to be taken to be held at the place determined by the chairperson of the meeting provided that at least one of the directors involved was at that place for the duration of the meeting.

Convening of meetings of directors

- 5.5 A director may, whenever the director thinks fit, convene a meeting of the directors.
- 5.6 A secretary must, at the request of a director, convene a meeting of the directors.

Notice of meetings of directors

- 5.7 Subject to these articles, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors.
- 5.8 A notice of a meeting of directors:
- (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting;
 - (c) may be given immediately before the meeting; and

- (d) may be given in person or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication.

5.9 A director may waive notice of any meeting of directors by notifying the company to that effect in person or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication.

5.10 The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if before or after the meeting, the director:

- (a) has waived or waives notice of that meeting under article 5.9; or
- (b) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication; or
- (c) the director attended the meeting.

5.11 Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

Quorum at meetings of directors

5.12 No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.

5.13 A quorum consists of:

- (a) if the directors have fixed a number for the quorum, then that number of directors; and
- (b) in any other case, 2 directors,

present at the meeting of directors.

5.14 If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, then the remaining director or directors may act only in an emergency.

Chair

5.15 The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.

5.16 If, at a meeting of directors:

- (a) there is no chairperson of directors;

- (b) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
- (c) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then the directors present must elect one of themselves to be chairperson of the meeting.

Decisions of directors

- 5.17 A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under these articles.
- 5.18 At a meeting of directors:
 - (a) subject to article 5.33(b), each director present has one vote;
 - (b) questions arising are to be decided by a majority of votes cast; and
 - (c) any such decision is for all purposes a decision of the directors.
- 5.19 In the case of an equality of votes upon any proposed resolution:
 - (a) the chairperson of the meeting does not have a second or casting vote in addition to any vote he or she has as a director; and
 - (b) the proposed resolution is to be taken as having been lost.

Written resolutions

- 5.20 If:
 - (a) all of the directors, other than:
 - (i) any director on leave of absence approved by the directors;
 - (ii) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (iii) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (b) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

5.21 For the purposes of article 5.20:

- (a) the meeting is to be taken as having been held:
 - (i) if the directors assented to the document on the same day, then on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (ii) if the directors assented to the document on different days, then on the day on which, and at the time at which, the document was last assented to by a director;
- (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
- (c) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication.

5.22 Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

5.23 Where a document is assented to in accordance with article 5.20, the document is to be taken as a minute of a meeting of directors.

Committees of directors

5.24 The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.

5.25 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

5.26 Subject to article 5.25, the provisions of these articles applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.

- 5.27 Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purpose of article 4.15.

Delegation to individual directors

- 5.28 The directors may delegate any of their powers to one director.
- 5.29 A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- 5.30 Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of article 4.15.

Validity of acts

- 5.31 An act done by a person acting as a director or chairperson of directors or by a meeting of directors or a committee of directors attended by a person acting as a director or chairperson of directors is not invalidated by reason only of:
- (a) a defect in the appointment of the person as a director or chairperson of directors;
 - (b) the person being disqualified to be a director or chairperson of directors or having vacated office; or
 - (c) the person not being entitled to vote,
- if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

Alternate directors

- 5.32 Subject to the Corporations Law, a director (called "appointor") may by writing under the appointor's hand or by telex, facsimile transmission or other form of visible communication, appoint a person approved by a majority of the other directors to act as an alternate director in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.
- 5.33 An alternate director:
- (a) may be removed or suspended from office by writing under the appointor's hand or by notice in writing from the appointor;
 - (b) subject to these Articles, is entitled to receive notice of meetings of the directors and to attend and vote if the appointor is not present and, if also a director in the alternate director's own right or alternate director for another director as well, to have a separate vote on behalf of the appointor in addition to the alternate director's own or that other director's vote;
 - (c) may exercise all the powers except the power to appoint an alternate director and, subject to the Corporations Law,

perform all the duties of the appointor in so far as the appointor has not exercised or performed them;

- (d) automatically ceases to be an alternate director if the appointor ceases to be a director;
- (e) whilst acting as a director is responsible to the company for the alternate director's own acts and defaults and the appointor is not responsible for them;
- (f) may not receive any remuneration from the company as a director except for any special services which in the opinion of the directors are outside the scope of the ordinary duties of a director; and
- (g) may not be taken into account separately from the appointor in determining the number of directors.

- 5.34 If the appointor retires but is re-appointed, the appointment of the alternate director continues to operate as if the appointor had not retired.

6 Executive officers

Chief executive officer

- 6.1 The directors may appoint a person to be the chief executive officer of the company. The person appointed as chief executive officer may be a director, but need not be.
- 6.2 If a chief executive officer is a director, then his or her appointment as chief executive officer automatically terminates if he or she ceases to be a director.

Secretaries

- 6.3 The directors must appoint at least one secretary and may appoint additional secretaries.
- 6.4 The directors may appoint one or more assistant secretaries.

Provisions applicable to all executive officers

- 6.5 A reference in the following provisions of this article 6 to an executive officer is a reference to a chief executive officer, secretary or assistant secretary appointed under this article 6.
- 6.6 The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- 6.7 Subject to any contract between the company and the relevant executive officer, any executive officer of the company may be removed or dismissed by the directors at any time, with or without cause.

- 6.8 The directors may:
- (a) confer on an executive officer such powers, discretions and duties vested in or exercisable by the directors as they think fit;
 - (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (c) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- 6.9 An executive officer is not required to be a member of the company to qualify for appointment.
- 6.10 An act done by a person acting as an executive officer is not invalidated by reason only of:
- (a) a defect in the person's appointment as an executive officer; or
 - (b) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

7 Seals

Safe custody of seal

- 7.1 The directors must provide for the safe custody of the seal.

Use of seal

- 7.2 The seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the seal.
- 7.3 The authority to use the seal may be given before or after the seal is used.
- 7.4 Until the directors otherwise determine, every document to which the seal is affixed must be signed by a director and countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

Seal register

- 7.5 The company must keep a seal register and, upon the affixing of the seal to any document (other than a certificate for securities of the company), must enter in the register particulars of the document, giving in each case the date of the document, the names of the parties to the document, a short description of the document and the names of the persons signing and countersigning the document under article 7.4.

- 7.6 Failure to comply with article 7.5 does not invalidate any document to which the seal is properly affixed.

Official seal

- 7.7 The company may have for use in place of its common seal outside the state or territory where its common seal is kept one or more official seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the name of the place where it is to be used.
- 7.8 A document sealed with an official seal is to be taken as having been sealed with the common seal of the company.

8 Income and Reserves

Profits

- 8.1 Subject to article 8.2, so far as practicable, the directors must manage the business of the company so that it operates on a non-profit basis by seeking, over time, to match its income with its operating and other expenses.

Reserves

- 8.2 Subject to these articles, the directors may set aside out of the income of the company such reserves or provisions for such purposes as they think fit.
- 8.3 The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- 8.4 The setting aside of any amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the company or prevent the amount being used in the business of the company or being invested in such investments as the directors think fit.

Distribution

- 8.5 Subject to article 8.6, the profit or income of the company must not be paid or transferred directly or indirectly by way of profit or gain to the members.
- 8.6 Nothing in article 8.5 prevents:
- (a) the payment in good faith of remuneration to any officers or employees of the company or to any member or other person in return for services rendered to the company;
 - (b) the payment of interest at a commercial rate on money lent;
 - (c) the payment of reasonable or proper rent for premises demised or let by any member; or

- (d) the payment to members of amounts payable to them by virtue of a scheme of arrangement sanctioned by a Supreme Court of a State or Territory of Australia.

9 Winding up

- 9.1 If the company is wound up and the property of the company is more than sufficient to pay all of the debts and liabilities of the company and the costs, charges and expenses of the winding up, then the excess must be distributed among the members in the proportions in which they have contributed funds to the company.
- 9.2 Nothing in this article 9 derogates from or affects any right to exercise any statutory or other power which would have existed if this article were omitted.

10 Minutes and records

Minutes

- 10.1 The directors must cause minutes of all proceedings of general meetings and of meetings of the directors and of committees of the directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose.

Signing of minutes

- 10.2 Except in the case of documents which are taken to be minutes under article 5.23, those minutes must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

Minutes as evidence

- 10.3 Any minutes of a meeting purporting to be signed by the chairperson of the meeting or of the next succeeding meeting are (in the absence of proof to the contrary) sufficient evidence of:
- (a) the matters stated in the minutes of the meeting;
 - (b) the meeting having been duly convened and held; and
 - (c) the validity of all proceedings at the meeting.

Inspection of records

- 10.4 The directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members.
- 10.5 A member does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.

11 Notices

Notices by the company to members

- 11.1 A notice may be given by the company to a member:
- (a) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or such other address, or by telex or facsimile transmission to such telex or facsimile number, as the member has supplied to the company for the giving of notices; or
 - (b) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- 11.2 The fact that a person has supplied a telex or facsimile number for the giving of notices does not require the company to give any notice to that person by telex or facsimile.
- 11.3 A signature to any notice given by the company to a member under this article 11 may be in writing or a facsimile printed or affixed by some mechanical or other means.
- 11.4 A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with these articles is conclusive evidence of that fact.

Notices by the company to directors

- 11.5 Subject to these articles, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or such other address, or by telex or facsimile transmission to such telex or facsimile number, as the director has supplied to the company for the giving of notices.

Notices by members or directors to the company

- 11.6 Subject to these articles, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by telex or facsimile transmission to the principal telex or facsimile number at the registered office of the company.

Notices posted to addresses outside the Commonwealth

- 11.7 A notice sent by post to an address outside the Commonwealth must be sent by airmail.

Time of service

- 11.8 Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected on the day after the date of its posting.

- 11.9 Where a notice is sent by telex, service of the notice is to be taken to be effected if the correct answer back code appears at the commencement and the end of the telex message and to have been effected at the time the telex is sent.
- 11.10 Where a notice is sent by facsimile transmission, service of the notice is to be taken to be effected if the correct facsimile number appears on the facsimile transmission report generated by the sender's facsimile machine and to have been effected at the time the facsimile transmission is sent.
- 11.11 Where the company gives a notice under article 11.1(b) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

Other communications and documents

- 11.12 Articles 11.1 to 11.11 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

Notices in writing

- 11.13 A reference in these articles to a notice in writing includes a notice given by telex or facsimile transmission or any other form of written communication.

12 Indemnity: officers, auditors and agents

Officer

- 12.1 In this article "officer" has the meaning given to that word in connection with the provisions governing indemnification of officers in the Corporations Law.

Indemnities

- 12.2 Every person who is or has been an officer, auditor or agent of the company is indemnified to the maximum extent permitted by law out of the property of the company against any liability (other than liability for costs and expenses) to another person (other than the company or its related bodies corporate) as such an officer, auditor or agent unless the liability arises out of conduct involving a lack of good faith.
- 12.3 Every person who is or has been an officer, auditor or agent of the company is indemnified to the maximum extent permitted by law out of the property of the company against any liability for cost and expenses the officer, auditor or agent may incur to another person (other than the company or its related bodies corporate) as such an officer, auditor or agent, unless the liability arises out of conduct involving a lack of good faith.
- 12.4 Every person who is or has been an officer, auditor or agent of the company is indemnified out of the property of the company against liability for costs and expenses incurred as such an officer, auditor or agent:

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted; or
- (b) in connection with any application in relation to any proceedings, whether civil or criminal, in which relief under the Corporations Law is granted to him or her by the Court.

Insurance

12.5 The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person who is or has been an officer, auditor or agent of the company or of a related body corporate against any liability incurred by the person as such an officer, auditor or agent (including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome).

13 General

Submission to jurisdiction

- 13.1 Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Prohibition and enforceability

- 13.2 Any provision of, or the application of any provision of, these articles which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- 13.3 Any provision of, or the application of any provision of, these articles which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

WE the subscribers to the memorandum of association of the company prescribe the above articles of association as regulations for the company in accordance with section 125 of the Corporations Law.

Signatures of Subscribers

Name	Signature of authorised representative/Witness	Name of authorised representative/Witness	Address of authorised representative/Witness	Date signed
State of New South Wales	Authorised representative:	Authorised representative: The Honourable Michael Rueben Egan MLC, Minister for Energy for New South Wales	Authorised representative: C/- Parliament House (NSW)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	
State of Victoria	Authorised representative:	Authorised representative: The Honourable Alan Robert Stockdale MLA, Treasurer for Victoria	Authorised representative: C/- Parliament House (Vic)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	
State of Queensland	Authorised representative:	Authorised representative: The Honourable Thomas John Gilmore MLA, Minister for Mines and Energy for Queensland	Authorised representative: C/- Parliament House (Qld)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	
State of South Australia	Authorised representative:	Authorised representative: The Honourable John Wayne Olsen MLC, Minister for Infrastructure for South Australia	Authorised representative: C/- Parliament House (SA)	9/5/96
	Witness:	Witness: John Archibald Landels A.O.	Witness: Level 40 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000	

Australian Capital
Territory

Authorised representative:

Authorised representative:
The Honourable Anthony
Joseph De Domenico
MLA, Minister for Urbane
Services for the Australian
Capital Territory

Authorised representative:

C/- Parliament House
(ACT)

9/5/96

Witness:

Witness:

John Archibald Landels
A.O.

Witness:

Level 40
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000