

NORTHERN TERRITORY OF AUSTRALIA

ELECTRICITY LEGISLATION AMENDMENT ACT 2016

Act No. 22 of 2016

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
Part 2	Amendment of Electricity Networks (Third Party Access) Act	
3	Act amended	2
4	Section 2A amended	2
5	Section 53 amended.....	2
6	Section 57A inserted	2
	57A Modified operation of network pricing determination	
Part 3	Amendment of National Electricity (Northern Territory) (National Uniform Legislation) Act	
Division 1	Act amended	
7	Act amended	3
Division 2	Amendments commencing on 1 July 2016	
8	Section 6 amended.....	4
9	Section 7 amended.....	4
10	Section 8 amended.....	4
11	Section 9A inserted	5
	9A Minister to notify AEMC of making of modification instrument	
12	Section 12 amended.....	5
13	Sections 12A and 12B inserted	6
	12A Validation of instruments and decisions made by AER	
	12B Authorisation of preparatory steps taken by AER	
14	Section 13 amended.....	7
15	Schedule 1, clause 3 amended	8
16	Schedule 1, clause 4 replaced.....	9

	4	Section 2EA inserted	
	4A	Section 8 modified	
17		Schedule 1, clauses 9A to 9C inserted	10
	9A	Section 32A inserted	
	9B	Section 34 modified	
	9C	Section 46 modified	
18		Schedule 1, clause 10 amended	12
19		Schedule 1, clause 12A inserted	13
	12A	Section 71A modified	
20		Schedule 1, clause 14 replaced.....	13
	14	Section 87 modified	
	14A	Section 88 modified	
	14B	Section 88AA inserted	
	14C	Section 88A modified	
	14D	Section 88B modified	
	14E	Section 89 modified	
	14F	Section 91 modified	
	14G	Section 91A modified	
	14H	Section 95A inserted	
	14J	Section 99 modified	
	14K	Section 102 modified	
21		Schedule 1, clause 17 replaced.....	18
	17	Schedule 1 modified	

Division 3 Amendments commencing on day to be fixed

22		Schedule 1, clause 3 amended	18
23		Schedule 1, clause 12 replaced.....	19
	12	Section 62 modified	
24		Schedule 1, clause 14 amended	19
25		Schedule 1, clause 17 amended	19

Part 4 Expiry of Act

26		Expiry of Act	19
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NORTHERN TERRITORY OF AUSTRALIA

Act No. 22 of 2016

An Act to amend the *Electricity Networks (Third Party Access) Act* and
National Electricity (Northern Territory) (National Uniform Legislation) Act

[Assented to 9 June 2016]
[Second reading 21 April 2016]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Electricity Legislation Amendment Act 2016*.

2 Commencement

- (1) This Act, except Part 3, Division 3, commences on 1 July 2016.
- (2) Part 3, Division 3 commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 **Amendment of Electricity Networks (Third Party Access) Act**

3 Act amended

This Part amends the *Electricity Networks (Third Party Access) Act*.

4 Section 2A amended

- (1) Section 2A(1), definitions ***National Electricity Law***, ***National Electricity Regulations*** and ***National Electricity Rules***

omit

- (2) Section 2A(1)

insert (in alphabetical order)

National Electricity Law means the National Electricity (NT) Law as defined in section 3(1) of the *National Electricity (Northern Territory) (National Uniform Legislation) Act*.

National Electricity Rules means the National Electricity (NT) Rules as defined in section 3(1) of the *National Electricity (Northern Territory) (National Uniform Legislation) Act*.

5 Section 53 amended

Section 53(3)

omit

all words from "set out" to "(SA)"

6 Section 57A inserted

After section 57

insert

57A Modified operation of network pricing determination

- (1) On and from 1 July 2016, the operation of the 2014 NT Network Price Determination, Part B is modified as follows:
- (a) clause 2.15 has no effect;
 - (b) a reference in clause 3.1 to a *regulatory year* includes a reference to a regulatory year of a national regulatory control period;

- (c) in Schedule 1, clause 1.1, the definitions **Post 2019 Network Price Determination** and **Post 2019 regulatory control period** are taken to be as follows:

Post 2019 Network Price Determination	The distribution determination made under the National Electricity Rules for PWC for the national regulatory control period from 1 July 2019 to 30 June 2024, as amended, varied or substituted from time to time.
Post 2019 regulatory control period	The national regulatory control period from 1 July 2019 to 30 June 2024.

- (2) In this section:

2014 NT Network Price Determination means the "2014 Network Price Determination" made by the Utilities Commission under the *Utilities Commission Act*, *Electricity Reform Act* and Chapter 6 of the Network Access Code that:

- (a) applies from 1 July 2014 to 30 June 2019; and
- (b) because of section 57 is a network pricing determination made under section 6A(1);

as amended, varied or substituted from time to time.

national regulatory control period means a regulatory control period under the National Electricity Rules.

PWC means the Power and Water Corporation established under section 4 of the *Power and Water Corporation Act*.

Part 3 Amendment of National Electricity (Northern Territory) (National Uniform Legislation) Act

Division 1 Act amended

7 Act amended

This Part amends the *National Electricity (Northern Territory) (National Uniform Legislation) Act*.

Division 2 Amendments commencing on 1 July 2016

8 Section 6 amended

Section 6

omit

for the time being

insert

from time to time

9 Section 7 amended

Section 7

omit

for the time being

insert

from time to time

10 Section 8 amended

(1) Section 8(1), definition ***the National Electricity Law*** or ***this Law***

omit

(2) Section 8(1)

insert (in alphabetical order)

the National Electricity Law or ***this Law*** means:

(a) the National Electricity (NT) Law; or

(b) if the context indicates or requires – the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA), as in force from time to time.

(3) Section 8(2)

omit, insert

- (2) The *Acts Interpretation Act 1915* (SA) and other Acts of South Australia do not apply to the National Electricity (NT) Law or the National Electricity (NT) Regulations.

11 Section 9A inserted

After section 9

insert

9A Minister to notify AEMC of making of modification instrument

- (1) As soon as practicable after a modification instrument is made, the Minister must notify the AEMC of its making.
- (2) The Minister may delegate the Minister's function under subsection (1).
- (3) In this section:

modification instrument means a regulation made under section 13(2)(c), or an amendment to this Act, that provides for a modification to the operation of the National Electricity Rules for the purpose of their having the force of law in this jurisdiction.

National Electricity Rules means the National Electricity Rules as defined in section 2(1) of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA), as in force from time to time.

12 Section 12 amended

Section 12(1)(b)(i), after "time"

insert

or on the occurrence of a future event

13 Sections 12A and 12B inserted

After section 12

insert

12A Validation of instruments and decisions made by AER

- (1) This section applies in relation to an instrument or decision made by the AER if:
- (a) the instrument or decision was made:
 - (i) after this Act was enacted; but
 - (ii) before the day (the **operation day**) on which a provision (the **authorising provision**) of the NT national electricity legislation commenced operation as a law of the Territory; and
 - (b) had the authorising provision commenced operation as a law of the Territory, the making of the instrument or decision would have been authorised by or under the provision; and
 - (c) for the making of the instrument or decision that would be so authorised subject to the satisfaction of any conditions or other requirements – the AER has done everything that would, if the authorising provision had commenced operation as a law of the Territory, be required under the NT national electricity legislation for the instrument or decision to be so authorised.

Examples of instruments and decisions to which this section may apply

1 *Guidelines.*

2 *Appointments, determinations and approvals.*

- (2) Without limiting section 8 of the *Interpretation Act*, for the purposes of the authorising provision:
- (a) the instrument or decision is taken to be valid; and
 - (b) the instrument or decision has effect from the operation day:
 - (i) as varied by any other instrument or decision to which this section applies, unless the other instrument has been revoked; and
 - (ii) subject to the NT national electricity legislation.

(3) In this section:

NT national electricity legislation means any of the following:

- (a) the National Electricity (NT) Law;
- (b) the National Electricity (NT) Regulations;
- (c) the National Electricity (NT) Rules;
- (d) this Act.

12B Authorisation of preparatory steps taken by AER

(1) This section applies if:

- (a) the AER is required to do something (a ***preparatory step***) before making a decision or making an instrument under a provision (the ***authorising provision***) of one of the following:
 - (i) the National Electricity (NT) Law;
 - (ii) the National Electricity (NT) Regulations;
 - (iii) the National Electricity (NT) Rules;
 - (iv) this Act; and
- (b) the AER takes the preparatory step:
 - (i) after this Act was enacted; but
 - (ii) before the day on which the authorising provision commenced operation as a law of the Territory.

(2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

14 Section 13 amended

(1) Section 13(2)(b)

omit

for the time being

insert

from time to time

(2) After section 13(3)

insert

(4) Regulations made under this section may apply, adopt or incorporate (with or without changes) a matter contained in another document or instrument as in force or existing at a particular time or from time to time.

(5) In this section:

National Electricity Rules means the National Electricity Rules as defined in section 2(1) of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA), as in force from time to time.

15 Schedule 1, clause 3 amended

(1) Schedule 1, clause 3(1)

omit

all words from "**network**" to "**participant**"

insert

National Electricity Rules or **Rules**, **network service provider**, **Registered participant** and **Regulations**

(2) Schedule 1, clause 3(2), after definition **local electricity system**

insert

National Electricity Rules or **Rules** mean each of the following, as modified by the application Act of this jurisdiction or a regulation made under that Act—

- (a) the initial National Electricity Rules; and
- (ab) additional Minister initiated Rules; and
- (b) Rules made by the AEMC under this Law, including Rules that amend or revoke—
 - (i) the initial National Electricity Rules or additional Minister initiated Rules; or
 - (ii) Rules made by it,

or, if the context indicates or requires, the Rules referred to in paragraphs (a), (ab) and (b).

(3) Schedule 1, clause 3(2), after definition **Registered participant**

insert

Regulations means:

- (a) the regulations made under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia that apply as a law of this jurisdiction, as modified by the application Act of this jurisdiction or a regulation made under that Act; or
- (b) if the context indicates or requires—the regulations made under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia.

16 Schedule 1, clause 4 replaced

Schedule 1, clause 4

omit, insert

4 Section 2EA inserted

After section 2E

insert

2EA—References to Rules made under this Law

A reference in the definition of **additional Minister initiated Rules**, **initial National Electricity Rules** or **National Electricity Rules** or **Rules** to Rules made under this Law or a provision of this Law—

- (a) includes a reference to Rules made before the day on which Part 2 of the application Act of this jurisdiction commenced; and
- (b) is, in relation to Rules made before that day, a reference to Rules made under, or made under the corresponding provision of, the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as applied as a law of South Australia.

4A Section 8 modified

After section 8(2)

insert

- (2a) For the purposes of subsection (2), the MCE must regard the reference in the national electricity objective to the national electricity system as a reference to whichever of the following the MCE considers appropriate in the circumstances—
- (a) the national electricity system;
 - (b) one or more, or all, of the local electricity systems;
 - (c) all the electricity systems referred to in paragraphs (a) and (b).

17 Schedule 1, clauses 9A to 9C inserted

Schedule 1, after clause 9

insert

9A Section 32A inserted

After section 32

insert

32A—Manner in which AEMC has regard to national electricity objective

Subject to section 88(2a), for the purposes of this Law, the AEMC must regard the reference in the national electricity objective to the national electricity system as a reference to whichever of the following the AEMC considers appropriate in the circumstances—

- (a) the national electricity system;
- (b) one or more, or all, of the local electricity systems;
- (c) all the electricity systems referred to in paragraphs (a) and (b).

9B Section 34 modified

(1) Section 34(1)(a)(iii)

omit, insert

(iia) the operation of a local electricity system for the purposes of the safety, security and reliability of that system;

(iii) the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system or a local electricity system;

(2) After section 34(3)(b)

insert

(ba) vary in their terms as between—

(i) the national electricity system; and

(ii) one or more, or all, of the local electricity systems;

(bb) have no effect with respect to one or more of the systems referred to in paragraph (ba);

9C Section 46 modified

(1) Section 46

omit

The

insert

(1) Subject to subsection (2), the

(2) Section 46, at the end

insert

(2) The AEMC must update the copies of the National Electricity Rules published and made available under subsection (1) to reflect each rule modification provided for by a modification instrument—

- (a) if notified of the making of the modification instrument at least 10 business days before the rule modification commences—on the day the rule modification commences; or
- (b) otherwise—within 10 business days of being notified of the making of the modification instrument.

(3) In this section—

modification instrument means a regulation made under section 13(2)(c) of the application Act of this jurisdiction, or an amendment to that Act, that provides for a rule modification;

notified means notified by the Minister of this participating jurisdiction;

rule modification means a modification to the operation of the National Electricity Rules, as defined in section 9A(3) of the application Act of this jurisdiction, for the purpose of their having the force of law in this jurisdiction.

18 Schedule 1, clause 10 amended

Schedule 1, clause 10

omit

Before Part 5, Division 1

insert

After Part 5, heading

19 Schedule 1, clause 12A inserted

Schedule 1, after clause 12

insert

12A Section 71A modified

Section 71A, definition **reviewable regulatory decision**, paragraph (a)

omit, insert

(a) subject to the Regulations, a network revenue or pricing determination that sets a regulatory period; or

20 Schedule 1, clause 14 replaced

Schedule 1, clause 14

omit, insert

14 Section 87 modified

(1) Section 87, definition **urgent Rule**

omit

(2) Section 87

insert (in alphabetical order)

differential Rule means a Rule that:

(a) varies in its terms as between—

(i) the national electricity system; and

(ii) one or more, or all, of the local electricity systems; or

(b) does not have effect with respect to one or more of those systems,

but is not a jurisdictional derogation, participant derogation or Rule that has effect with respect to an adoptive jurisdiction for the purpose of section 91(8);

uniform Rule means a Rule that:

- (a) does not vary in its terms as between—
 - (i) the national electricity system; and
 - (ii) one or more, or all, of the local electricity systems; and
- (b) has effect with respect to all of those systems;

urgent Rule means a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- (a) the effective operation or administration of the wholesale exchange operated and administered by AEMO in the other participating jurisdictions; or
- (b) the safety, security or reliability of:
 - (i) the national electricity system; or
 - (ii) a local electricity system.

14A Section 88 modified

After section 88(2)

insert

- (2a) For the purposes of this Part, the AEMC must regard the reference in the national electricity objective to the national electricity system as a reference to whichever of the following the AEMC considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed Rule—
 - (a) the national electricity system;
 - (b) one or more, or all, of the local electricity systems;
 - (c) all the electricity systems referred to in paragraphs (a) and (b).

14B Section 88AA inserted

After section 88

insert

88AA—AEMC may only make differential Rule in certain cases

- (1) In addition to complying with sections 88, 88A and 88B, the AEMC may only make a Rule if it is satisfied that it is a uniform Rule.
- (2) Despite subsection (1), the AEMC may make a differential Rule if the AEMC is satisfied that, having regard to any relevant MCE statement of policy principles, the differential Rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform Rule.
- (3) This section does not apply in relation to—
 - (a) a jurisdictional derogation requested under section 91(3); or
 - (b) a participant derogation requested under section 91(5) or (6);
or
 - (c) a Rule that has effect with respect to an adoptive jurisdiction for the purpose of section 91(8).

14C Section 88A modified

Section 88A, after "sections 88"

insert

, 88AA

14D Section 88B modified

Section 88B, after "sections 88"

insert

, 88AA

14E Section 89 modified

Section 89(c)

omit

the national electricity system

insert

a local electricity system

14F Section 91 modified

After section 91(1)

insert

- (1a) A request under subsection (1) may request the AEMC to make a differential Rule.

14G Section 91A modified

- (1) Section 91A, before "The"

insert

(1)

- (2) Section 91A, at the end

insert

- (2) To avoid doubt, the AEMC may, in accordance with section 88AA, make a more preferable Rule that is a differential Rule, whether or not the market initiated proposed Rule (to which the more preferable Rule relates) proposed the making of a differential Rule.

14H Section 95A inserted

After section 95

insert

95A—Notice to Minister of proposed Rule

- (1) This section applies if—

- (a) the AEMC considers that it should take action under this Division in respect of a request for the making of a Rule; and

- (b) the request included a request that the AEMC make a differential Rule.
- (2) In addition to the requirements of section 95, the AEMC must give the Minister of this participating jurisdiction—
- (a) a copy of the notice published under section 95(1a)(a); and
 - (b) a draft of the proposed Rule; and
 - (c) any other document prescribed by the Regulations.

14J Section 99 modified

- (1) After section 99(1b)
- insert*
- (1c) In the case of a proposed Rule that is a differential Rule, the AEMC must also, as soon as practicable after publishing a notice under subsection (1a)(b) or (1b), give the Minister of this participating jurisdiction the draft Rule determination and a copy of the notice.
- (2) After section 99(2)(a)(ii)
- insert*
- (iia) in the case where the proposed Rule is a differential Rule, the reasons of the AEMC as to whether it is satisfied the proposed Rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform Rule; and

14K Section 102 modified

- (1) After section 102(1a)
- insert*
- (1b) If the Rule to be made is a differential Rule, the AEMC must also, as soon as practicable after publishing a notice under subsection (1a)(b), give the Minister of this participating jurisdiction—
- (a) the final Rule determination; and
 - (b) a copy of the notice.

(2) After section 102(2)(a)(ii)

insert

(iia) in the case where the Rule to be made is a differential Rule, the reasons of the AEMC as to whether it is satisfied the Rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform Rule; and

21 Schedule 1, clause 17 replaced

Schedule 1, clause 17

omit, insert

17 Schedule 1 modified

(1) Schedule 1, items 4, 7, 9 and 34(a), after "AEMO"

insert

in the other participating jurisdictions

(2) Schedule 1, item 32, after "system,"

insert

or a local electricity system,

Division 3 Amendments commencing on day to be fixed

22 Schedule 1, clause 3 amended

(1) Schedule 1, clause 3(2), modified section 2(1), definition ***interconnected national electricity system***, after "the other participating jurisdictions"

insert

(other than Western Australia)

(2) Schedule 1, clause 3(3)

omit, insert

-
- (3) Section 2(1), definition ***national electricity market***, paragraph (a)
omit
under this Law and the Rules
insert
in the other participating jurisdictions (other than Western Australia)

23 Schedule 1, clause 12 replaced

Schedule 1, clause 12

omit, insert

12 **Section 62 modified**

Section 62(b), after "AEMO"

insert

in the other participating jurisdictions (other than Western Australia)

24 Schedule 1, clause 14 amended

Schedule 1, clause 14(2), modified section 87, definition ***urgent Rule***, paragraph (a), after "participating jurisdictions"

insert

(other than Western Australia)

25 Schedule 1, clause 17 amended

Schedule 1, clause 17(1)

omit, insert

- (1) Schedule 1, items 4, 7, 9 and 34(a), after "AEMO"

insert

in the other participating jurisdictions (other than Western Australia)

Part 4 **Expiry of Act**

26 **Expiry of Act**

This Act expires on the day after it commences.