

**AUSTRALASIAN PARLIAMENTARY COUNSEL'S COMMITTEE**

**ENERGY AND CLIMATE CHANGE MINISTERIAL COUNCIL**

**National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023**

**REPORT OF THE AUSTRALASIAN PARLIAMENTARY COUNSEL'S COMMITTEE**

On 6 February 2023, officers of the Commonwealth Department of Climate Change, Energy, the Environment and Water provided instructions to the Australasian Parliamentary Counsel's Committee to draft legislation for the Energy and Climate Change Ministerial Council on this matter.

A copy of the draft legislation that has been settled with the officers is attached.



Annette O'Callaghan  
NSW Parliamentary Counsel  
Secretary, Australasian Parliamentary Counsel's Committee

12 July 2023

Ref: pcc-610, d20

# National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023

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National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023

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**1 Name of Act**

This Act is the *National Energy Laws Amendment (Wholesale Market Monitoring) Act 2023*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of National Electricity Law

### [1] Section 2—Definitions

Insert in alphabetical order in section 2(1)—

- effective competition*, for Part 3, Division 1A—see section 18B;
- electricity contract*, for Part 3, Division 1A—see section 18A;
- financial risk management product*, for Part 3, Division 1A—see section 18A;
- market monitoring information notice*, for Part 3, Division 1A, Subdivision 3—see section 18EC;
- market monitoring information order*, for Part 3, Division 1A, Subdivision 3—see section 18EC;
- monitored market*, for Part 3, Division 1A—see section 18A;
- relevant agreement*, for Part 3, Division 1A—see section 18A;

### [2] Part 3, Division 1A—Wholesale electricity markets—AER monitoring and reporting functions

Insert before section 18A—

#### Subdivision 1 Preliminary

### [3] Section 18A—Definitions

Omit section 18A(1). Insert instead—

In this Division—

- effective competition*—see section 18B;
- electricity contract* means an agreement, entered into by a Registered participant, however described and whether coming into existence before or after the commencement of this section, that relates to a wholesale electricity market and includes an agreement—
  - (a) to supply electricity; or
  - (b) to purchase electricity; or
  - (c) for the transmission, distribution or storage of electricity; or
  - (d) relating to fuel and other inputs used in the generation of electricity; or
  - (e) relating to emissions produced or avoided in the generation of electricity; or
  - (f) to supply a wholesale demand response service;
- financial risk management product* means a contract or other arrangement, entered into by a Registered participant, to manage financial risk including, without limitation, risks associated with the following—
  - (a) price volatility in a wholesale electricity market;
  - (b) volatility in supply and demand in a wholesale electricity market;
  - (c) volatility in the price of fuels and other inputs used in the generation of electricity;
- monitored market* means—
  - (a) a wholesale electricity market; and
  - (b) a market for financial risk management products; and
  - (c) a market prescribed by the Regulations;

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*relevant agreement* means—

- (a) an electricity contract; and
- (b) a financial risk management product;

**[4] Section 18B—Meaning of effective competition**

Omit “wholesale electricity market”. Insert instead “monitored market”.

**[5] Section 18C—AER wholesale market monitoring and reporting functions**

Omit section 18C(1)(a). Insert instead—

- (a) to, in accordance with this Law and the Rules, regularly and systematically monitor and review the performance of monitored markets;

**[6] Section 18C(1)(b) and (3)**

Omit “wholesale electricity market” wherever occurring. Insert instead “monitored market”.

**[7] Section 18C(1)(b)(iii)**

Insert at the end of the paragraph—

and

- (iv) there are features of the market that may be impacting detrimentally on the achievement of the national electricity objective;

**[8] Section 18C(1)(c)**

Omit the paragraph. Insert instead—

- (c) other monitoring or analysing functions, conferred on the AER by the Rules, relating to the following matters within a monitored market—
  - (i) offers;
  - (ii) prices, including forecast and actual prices and bidding.

**[9] Section 18C(2)(b)(i)**

Omit “wholesale electricity market monitored”. Insert instead “monitored market”.

**[10] Section 18C(5)**

Insert after section 18C(4)—

- (5) Before publishing a report prepared under subsection (2)(a) the AER must consult with relevant stakeholders.

**[11] Sections 18D and 18E**

Omit the sections. Insert instead—

**18D Information to be treated as confidential**

Information obtained by the AER under this Division is taken to have been given to the AER in confidence, whether or not a claim of confidentiality is made.

## **18E Redaction of information**

- (1) When obtaining a relevant agreement or information about a relevant agreement for the purposes of a function under this Division, the AER must consider a request to omit information that would identify a party to the agreement who is not a Registered participant.
- (2) The AER must grant the request unless satisfied that omitting the information is likely to materially affect the AER's ability to undertake 1 or more functions under this Division.

## **Subdivision 2 Use of general information gathering powers**

### **18EA Limits on use of section 28 information gathering powers**

- (1) In undertaking a function under this Division the AER must not use the powers under section 28 in respect of a relevant agreement that ceased to have effect more than 5 years before the commencement of this section.
- (2) The Regulations or the Rules may provide that the powers under section 28 must not be used for a function under this Division for 1 or more classes of relevant agreement.

### **18EB Matters to be considered before using section 28 information gathering powers**

Before using the powers under section 28 for a function under this Division, the AER must—

- (a) be satisfied the information is reasonably required for the AER to carry out the function; and
- (b) consider whether the information—
  - (i) is publicly available; or
  - (ii) can be obtained by the AER in another way.

## **Subdivision 3 Market monitoring information notices and market monitoring information orders**

### **18EC Definitions**

In this Subdivision—

***market monitoring information notice*** means a notice prepared and served by the AER in accordance with this Subdivision requiring the person named in the notice to do 1 or more of the following—

- (a) give the AER the information or a relevant agreement specified in the notice;
- (b) prepare, maintain and keep information specified in the notice in a manner and form specified in the notice;

***market monitoring information order*** means an order made by the AER in accordance with this Subdivision requiring each person of a class specified in the order to do 1 or more of the following—

- (a) give the AER the information or a relevant agreement specified in the order;
- (b) prepare, maintain and keep information specified in the order in a manner and form specified in the order.

## **18ED Urgent notices and urgent orders**

The AER may specify a market monitoring information notice or a market monitoring information order as urgent if the AER reasonably believes that access to the relevant information is time critical.

## **18EE Content of notices and orders**

- (1) A market monitoring information notice or a market monitoring information order must specify the following—
  - (a) the information that must be prepared, maintained and kept;
  - (b) the information or agreement that must be given to the AER;
  - (c) if the notice or order requires information to be prepared, maintained and kept—the AER's reasons for requiring information to be prepared, maintained and kept;
  - (d) if the notice or order requires information or an agreement to be given to the AER—
    - (i) the reasons the AER requires the information or agreement; and
    - (ii) the date by which the information or agreement must be given to the AER;
  - (e) the period in which the notice or order operates.
- (2) A market monitoring information notice or a market monitoring information order may specify the following—
  - (a) the form in which information or an agreement is to be given to the AER;
  - (b) the way the information or agreement is to be given to the AER.

## **18EF Notices and orders may be made for both past and future information**

- (1) A market monitoring information notice or a market monitoring information order may apply to 1 or more of the following—
  - (a) a period before the notice was served or the order was made;
  - (b) a period after the notice was served or the order was made.
- (2) A market monitoring information notice or a market monitoring information order must not be used to obtain a relevant agreement, or information about a relevant agreement, that ceased to have effect more than 5 years before the commencement of this section.

## **18EG Making and serving notices and orders**

- (1) The AER may, if it considers it reasonably necessary for the performance of its functions under this Division—
  - (a) serve a market monitoring information notice on a person named in the notice; and
  - (b) make a market monitoring information order.
- (2) The AER must, when considering if it is reasonably necessary to serve a market monitoring information notice or make a market monitoring information order—
  - (a) be satisfied the AER requires the information or agreement to carry out a wholesale market monitoring function; and
  - (b) consider the costs that are likely to be incurred by a person responding to the notice or order; and

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- (c) consider whether the information—
  - (i) is publicly available; or
  - (ii) can be obtained by the AER in another way.
- (3) A market monitoring information notice or a market monitoring information order must not be used for the purpose of—
  - (a) investigating a breach or possible breach of this Law, the Regulations or the Rules; or
  - (b) commencing or conducting proceedings for a breach or possible breach of this Law, the Regulations or the Rules; or
  - (c) commencing or conducting an appeal from a decision in proceedings for a breach or possible breach of this Law, the Regulations or the Rules; or
  - (d) responding to an application for review of a decision of the AER under Division 3A of Part 6.
- (4) A market monitoring information order must be made in accordance with the Rules.
- (5) The Regulations or the Rules may provide that a market monitoring information notice or a market monitoring information order must not be used to obtain the following—
  - (a) 1 or more classes of relevant agreement;
  - (b) information about 1 or more classes of relevant agreement.

## **18EH AER must consult before making order**

- (1) Before making a market monitoring information order, the AER must consult the public.
- (2) Consultation must be undertaken in accordance with the Rules.

## **18EI Publication of orders**

The AER must publish a market monitoring information order on the AER's website as soon as practicable after the order is made.

## **18EJ Opportunity to be heard before notice served**

- (1) Before serving a market monitoring information notice, the AER must give the person on whom the AER intends to serve the notice a draft of the notice and an opportunity to make a submission on the draft notice.
- (2) A draft notice must state—
  - (a) whether the notice is to be issued as a standard notice or an urgent notice; and
  - (b) for an urgent notice—the reasons the AER believes access to the relevant information is time critical.
- (3) A submission must be made—
  - (a) for a standard notice—within the longer of the following—
    - (i) 20 business days after the draft notice is given to the person;
    - (ii) the period stated in the notice; or
  - (b) for an urgent notice—within the period stated in the draft notice, being at least 5 business days and not more than 10 business days after the draft notice is given to the person.



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- (4) A submission made within the time periods provided for in subsection (3) must be considered by the AER before serving a market monitoring information notice on a person.

## **18EK Compliance with notice**

- (1) A person who is named in and served with a market monitoring information notice must comply with the notice.  
**Note—** This section is a civil penalty provision.
- (2) If a market monitoring information notice names 2 or more related bodies corporate, a notice served on the holding company is taken to have been served on each of the named related bodies corporate.

## **18EL Compliance with order**

- (1) A person who is a member of a class of persons specified in a market monitoring information order must comply with the order.  
**Note—** This section is a civil penalty provision.
- (2) The AER may, by written notice, exempt a person from compliance with an order—
- (a) in whole or part; and
  - (b) conditionally or unconditionally.

## **18EM Certification of compliance by statutory declaration**

- (1) The AER may direct the recipient of a market monitoring information notice or market monitoring information order to verify that the recipient's response to the notice or order is accurate and comprehensive by way of a statutory declaration.
- (2) A direction may require the statutory declaration to be given by a named officer of the recipient or the holder of a specified office for the recipient.
- (3) A direction must be given in the relevant market monitoring information notice or market monitoring information order.
- (4) A failure to comply with a direction given under this section is taken to be a failure to comply with the relevant market monitoring information notice or market monitoring information order.

## **18EN Subdivision does not limit powers under Division 3**

This Subdivision does not limit the operation of Division 3.

## **Subdivision 4 Miscellaneous**

### **18EO Wholesale market monitoring guidelines**

- (1) The AER must prepare guidelines (*wholesale market monitoring guidelines*) about the following—
- (a) the scope of the AER wholesale market monitoring functions;
  - (b) the collection of information for the purposes of this Division;
  - (c) the publication and reporting of information under this Division.
- (2) Without limiting what may be included in wholesale market monitoring guidelines, the guidelines must include the following—
- (a) information about the things the AER proposes to consider in assessing—

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- (i) competition in markets; and
    - (ii) the effective functioning of markets;
  - (b) a summary of the compliance obligations of persons who hold information;
  - (c) the processes the AER proposes to adopt in requesting information, including processes designed to minimise the time and resources Registered participants will devote to responding to a request;
  - (d) the type of information the AER expects to routinely request and how frequently it will request that information;
  - (e) the type of information the AER does not expect to request;
  - (f) classes of relevant agreements the AER does not expect to request;
  - (g) the formats in which the AER expects information to be submitted;
  - (h) a general outline of the way the AER will ensure that commercially sensitive information obtained for wholesale market monitoring functions is kept securely;
  - (i) other matters prescribed by the Regulations or the Rules.
- (3) Before making wholesale market monitoring guidelines the AER must consult in accordance with the Rules.
- (4) Wholesale market monitoring guidelines must be—
- (a) made in accordance with the Rules; and
  - (b) published on the AER website within 6 months after commencement of this section.

## **18EP Review of wholesale market monitoring powers**

The MCE is to review the operation of this Division as soon as possible after the period of 4 years and 6 months after the commencement of this section.

## **[12] Section 28—Power to obtain information and documents in relation to performance and exercise of functions and powers**

Insert before section 28(17)(a)—

- (aa) the number of notices given under this section for the purposes of a function under Division 1A;

## **[13] Section 90EF**

Insert after section 90EE—

### **90EF South Australian Minister to make initial Rules relating to wholesale market monitoring matters**

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Electricity (South Australia) Act 1996* of South Australia (the **South Australian Minister**) may make Rules for the following—
  - (a) the making of—
    - (i) market monitoring information orders; and
    - (ii) wholesale market monitoring guidelines;
  - (b) the way the AER consults—
    - (i) on the wholesale market monitoring guidelines under section 18EO(3); and

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- (ii) the public, under section 18EH, before making a market monitoring information order.
- (2) Section 34(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (3) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
  - (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
  - (b) make the Rules publicly available.
- (4) The notice referred to in subsection (3)(a) must state—
  - (a) the date on which the Rules commence operation; or
  - (b) if different Rules will commence operation on different dates, those dates.
- (5) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

## Schedule 2 Amendment of National Gas Law

### [1] Section 2—Definitions

Insert in alphabetical order in section 2(1)—

*AER wholesale market monitoring functions*—the AER wholesale market monitoring functions are set out in section 30AC(1);

*AER wholesale market reporting functions*—the AER wholesale market reporting functions are set out in section 30AC(2);

*bilateral trading agreement*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

*effective competition*, for Chapter 2, Part 1, Division 1AA—see section 30AB;

*financial risk management product*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

*gas contract*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

*relevant agreement*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

*wholesale gas market*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

*wholesale gas market participant*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

*wholesale market monitoring guidelines*, for Chapter 2, Part 1, Division 1AA—see section 30AA;

### [2] Section 27—Functions and powers of AER

Insert after section 27(1)(g)—

- (ga) AER wholesale market monitoring functions and AER wholesale market reporting functions; and

### [3] Chapter 2, Part 1, Division 1AA

Insert after section 30—

#### Division 1AA Wholesale gas markets—AER monitoring and reporting functions

##### Subdivision 1 Preliminary

##### 30AA Definitions

In this Division—

*bilateral trading agreement* means an agreement, entered into outside a wholesale gas market, to supply covered gas—

- (a) to a wholesale gas market participant; or

- (b) to an end user—

- (i) other than by a retailer; or

- (ii) by a retailer in a quantity exceeding the amount prescribed by the wholesale market monitoring guidelines;

*effective competition* has the meaning given by section 30AB;

*financial risk management product* means a contract or other arrangement, entered into by a wholesale gas market participant, to manage financial risk including, without limitation, risks associated with the following—

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- (a) volatility in the price for 1 or more covered gases in a wholesale gas market;
- (b) volatility in supply and demand in a wholesale gas market;
- (c) volatility in the price of services involved in the extraction, refinement or processing, transportation or storage of 1 or more covered gases;

**gas contract** means an agreement, entered into by a wholesale gas market participant, however described and whether coming into existence before or after the commencement of this section that relates to 1 or more of the following—

- (a) the supply of covered gas;
- (b) the purchase of covered gas;
- (c) the transportation of covered gas;
- (d) the storage of covered gas;
- (e) the refining or processing, including compression and blending, of covered gas;
- (f) relating to emissions produced or avoided in the extraction, refining or processing, supply or use of covered gas;
- (g) a function or process prescribed by the Regulations or the Rules;

**relevant agreement** means the following—

- (a) a bilateral trading agreement;
- (b) a financial risk management product;
- (c) a gas contract;

**wholesale gas market** means—

- (a) a wholesale market for covered gas, regulated under this Law and the Rules, including the following—
  - (i) a declared wholesale gas market;
  - (ii) a short term trading market;
  - (iii) a gas trading exchange; or
- (b) a wholesale market for the transportation or storage of covered gas including a capacity auction; or
- (c) a wholesale market prescribed by the Regulations;

**wholesale gas market participant** means a person who is 1 or more of the following—

- (a) a person who is registered on the Gas Bulletin Board;
- (b) a person who supplies covered gas to or withdraws covered gas from a gas trading exchange administered by AEMO;
- (c) a Registered participant;
- (d) a member of a class of persons prescribed by the Regulations or the Rules;

**wholesale market monitoring guidelines** means the guidelines prepared under section 30AT.

## **30AB Meaning of effective competition**

For the purposes of this Division, the AER must, in assessing whether there is effective competition within a wholesale gas market, have regard to—

- (a) whether—

- (i) there are active competitors in the market and whether those competitors hold a reasonably sustainable position in the market; or
- (ii) there is merely the threat of competition in the market; and
- (b) whether prices are determined on a long term basis by underlying costs rather than the existence of market power, even though a wholesale gas market participant may hold a substantial degree of market power from time to time; and
- (c) whether barriers to entry into the market are sufficiently low so that a substantial degree of market power may only be held by a wholesale gas market participant on a temporary basis; and
- (d) whether there is independent rivalry in all dimensions of the price, product or service offered in the market; and
- (e) other matters the AER considers relevant.

### **30AC AER wholesale market monitoring and reporting functions**

- (1) The AER wholesale market monitoring functions are as follows—
  - (a) to, in accordance with this Law and the Rules, regularly and systematically monitor and review—
    - (i) the performance of wholesale gas markets; and
    - (ii) the operation and effect on wholesale gas markets of financial risk management products; and
    - (iii) whether the availability of financial risk management products has an effect on competition within, and the efficient functioning of, wholesale gas markets; and
    - (iv) bilateral trading agreements, including their effect on wholesale gas markets;
  - (b) in connection with paragraph (a)—to identify and analyse whether, for a particular wholesale gas market—
    - (i) there is effective competition within the market; and
    - (ii) there are features of the market that may be detrimental to effective competition within the market; and
    - (iii) there are features of the market that may be impacting detrimentally on the efficient functioning of the market and, if so, the extent of the inefficiency; and
    - (iv) there are features of the market that may be impacting detrimentally on the achievement of the national gas objective; and
    - (v) bilateral trading agreements have an impact on the efficient functioning of the market;
  - (c) other monitoring or analysing functions, conferred on the AER by the Rules, relating to the following matters within a wholesale gas market—
    - (i) offers;
    - (ii) prices, including forecast and actual prices and bidding.
- (2) The AER wholesale market reporting functions are as follows—
  - (a) to prepare, at least once every 2 years, a report on the performance of the AER wholesale market monitoring functions (a *monitoring report*);

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- (b) to provide, as the AER thinks fit, advice to the MCE on the results of the performance of the AER wholesale market monitoring functions, including advice as to—
    - (i) whether the results identify a need for a legislative, regulatory or other response to address systemic or other features of a wholesale gas market that may—
      - (A) be detrimental to effective competition within the market; or
      - (B) detrimentally impact on the efficient functioning of the market; and
    - (ii) limitations on the AER's ability to communicate with relevant persons about the performance of the AER wholesale market monitoring functions;
  - (c) other reporting requirements, conferred on the AER by the Rules, relating to the AER wholesale market monitoring functions.
- (3) A monitoring report must, for a wholesale gas market monitored during the period to which the report relates—
- (a) be for a monitoring period of at least 5 years; and
  - (b) contain a discussion and analysis of—
    - (i) the results of the performance of the AER wholesale market monitoring functions for the relevant period; and
    - (ii) features of the market with a detrimental impact on the efficient functioning of the market and the achievement of the national gas objective, including, but not limited to, significant barriers to entry; and
    - (iii) the effect of bilateral trading agreements on the efficient functioning of the market; and
    - (iv) structural features of the covered gas industry that generate concerns that there may not be effective competition within the market; and
    - (v) inefficiencies in the market, their causes and whether conditions in the market are such that the inefficiencies are likely to impact detrimentally, in the long term, on the efficient functioning of the market; and
    - (vi) the monitoring methodology applied and the results of indicators, tests and calculations performed; and
    - (vii) other matters of a long term nature relevant to effective competition within the market, including, for example—
      - (A) observations relating to planned increases in pipeline capacity; and
      - (B) trends in demand for covered gases; and
      - (C) trends in the uptake of alternative sources of energy.
- (4) The AER must publish a monitoring report on its website.
- (5) Before publishing a monitoring report the AER must consult with relevant stakeholders.
- (6) Despite subsection (3)(a), a report prepared within the 5 years after the commencement of this section must relate to the period commencing on the day this section commences.

## **30AD Information to be treated as confidential**

Information obtained by the AER under this Division is taken to have been given to the AER in confidence, whether or not a claim of confidentiality is made.

## **30AE Redaction of information**

- (1) When obtaining a relevant agreement or information about a relevant agreement for the purposes of a function under this Division, the AER must consider a request to omit information that would identify a party to the agreement who is not a wholesale gas market participant.
- (2) The AER must grant the request unless satisfied that omitting the information is likely to materially affect the AER's ability to undertake 1 or more functions under this Division.

## **Subdivision 2 Use of general information gathering powers**

### **30AF Limits on use of section 42 information gathering powers**

- (1) In undertaking a function under this Division the AER must not use the powers under section 42 in respect of a relevant agreement that ceased to have effect more than 5 years before the commencement of this section.
- (2) The Regulations or the Rules may provide that the powers under section 42 must not be used for a function under this Division for 1 or more classes of relevant agreement.

### **30AG Matters to be considered before using section 42 information gathering powers**

Before using the powers under section 42 for a function under this Division, the AER must—

- (a) be satisfied the information is reasonably required for the AER to carry out the function; and
- (b) consider whether the information—
  - (i) is publicly available; or
  - (ii) can be obtained by the AER in another way.

## **Subdivision 3 Market monitoring information notices and market monitoring information orders**

### **30AH Definitions**

In this Subdivision—

***market monitoring information notice*** means a notice prepared and served by the AER in accordance with this Subdivision requiring the person named in the notice to do 1 or more of the following—

- (a) give the AER the information or a relevant agreement specified in the notice;
- (b) prepare, maintain and keep information specified in the notice in a manner and form specified in the notice;

***market monitoring information order*** means an order made by the AER in accordance with this Subdivision requiring each person of a class specified in the order to do 1 or more of the following—



- (a) give the AER the information or a relevant agreement specified in the order;
- (b) prepare, maintain and keep information specified in the order in a manner and form specified in the order.

### **30AI Urgent notices and urgent orders**

The AER may specify a market monitoring information notice or a market monitoring information order as urgent if the AER reasonably believes that access to the relevant information is time critical.

### **30AJ Content of notices and orders**

- (1) A market monitoring information notice or a market monitoring information order must specify the following—
  - (a) the information that must be prepared, maintained and kept;
  - (b) the information that must be given to the AER;
  - (c) if the notice or order requires information to be prepared, maintained and kept—the AER's reasons for requiring the information to be prepared, maintained and kept;
  - (d) if the notice or order requires information or an agreement to be given to the AER—
    - (i) the reasons the AER requires the information or agreement; and
    - (ii) the date by which the information or agreement must be given to the AER;
  - (e) the period in which the notice or order operates.
- (2) A market monitoring information notice or a market monitoring information order may specify the following—
  - (a) the form in which information is to be given to the AER;
  - (b) the way the information is to be given to the AER.

### **30AK Notices and orders may be made for both past and future information**

- (1) A market monitoring information notice or a market monitoring information order may apply to 1 or more of the following—
  - (a) a period before the notice was served or the order was made;
  - (b) a period after the notice was served or the order was made.
- (2) A market monitoring information notice or a market monitoring information order must not be used to obtain a relevant agreement, or information about a relevant agreement, that ceased to have effect more than 5 years before the commencement of this section.

### **30AL Making and serving notices and orders**

- (1) The AER may, if it considers it reasonably necessary for the performance of its functions under this Division—
  - (a) serve a market monitoring information notice on a person named in the notice; and
  - (b) make a market monitoring information order.
- (2) The AER must, when considering if it is reasonably necessary to serve a market monitoring information notice or make a market monitoring information order—

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- (a) be satisfied the AER requires the information or agreement to carry out a wholesale market monitoring function; and
  - (b) consider the costs that are likely to be incurred by a person responding to the notice or order; and
  - (c) consider whether the information—
    - (i) is publicly available; or
    - (ii) can be obtained by the AER in another way.
- (3) A market monitoring information notice or a market monitoring information order must not be used for the purpose of—
- (a) investigating a breach or possible breach of this Law, the Regulations or the Rules; or
  - (b) commencing or conducting proceedings for a breach or possible breach of this Law, the Regulations or the Rules; or
  - (c) commencing or conducting an appeal from a decision in proceedings for a breach or possible breach of this Law, the Regulations or the Rules; or
  - (d) responding to an application for review of a decision of the AER under Part 5 of Chapter 8.
- (4) A market monitoring information order must be made in accordance with the Rules.
- (5) The Regulations and Rules may provide that a market monitoring information notice or a market monitoring information order must not be used to obtain the following—
- (a) 1 or more classes of relevant agreement;
  - (b) information about 1 or more classes of relevant agreement.

**30AM AER must consult before making order**

- (1) Before making a market monitoring information order, the AER must consult the public.
- (2) Consultation must be undertaken in accordance with the Rules.

**30AN Publication of orders**

The AER must publish a market monitoring information order on the AER's website as soon as practicable after the order is made.

**30AO Opportunity to be heard before notice served**

- (1) Before serving a market monitoring information notice, the AER must give the person on whom the AER intends to serve the notice a draft of the notice and an opportunity to make a submission on the draft notice.
- (2) A draft notice must state—
  - (a) whether the notice is to be issued as a standard notice or an urgent notice; and
  - (b) for an urgent notice—the reasons the AER believes access to the relevant information is time critical.
- (3) A submission must be made—
  - (a) for a standard notice—within the longer of the following—
    - (i) 20 business days after the draft notice is given to the person;
    - (ii) the period stated in the notice; or

- (b) for an urgent notice—within the period stated in the draft notice, being at least 5 business days and not more than 10 business days after the draft notice is given to the person.
- (4) A submission made within the time periods provided for in subsection (3) must be considered by the AER before serving a market monitoring information notice on a person.

### **30AP Compliance with notice**

- (1) A person who is named in and served with a market monitoring information notice must comply with the notice.  
**Note—** This section is a civil penalty provision.
- (2) If a market monitoring information notice names 2 or more related bodies corporate, a notice served on the holding company is taken to have been served on each of the named related bodies corporate.

### **30AQ Compliance with order**

- (1) A person who is a member of a class of persons specified in a market monitoring information order must comply with the order.  
**Note—** This section is a civil penalty provision.
- (2) The AER may, by written notice, exempt a person from compliance with an order—
  - (a) in whole or part; and
  - (b) conditionally or unconditionally.

### **30AR Certification of compliance by statutory declaration**

- (1) The AER may direct the recipient of a market monitoring information notice or market monitoring information order to verify that the recipient's response to the notice or order is accurate and comprehensive by way of a statutory declaration.
- (2) A direction may require the statutory declaration to be given by a named officer of the recipient or the holder of a specified office for the recipient.
- (3) A direction must be given in the relevant market monitoring information notice or market monitoring information order.
- (4) A failure to comply with a direction given under this section is taken to be a failure to comply with the relevant market monitoring information notice or market monitoring information order.

### **30AS Subdivision does not limit powers under Division 3**

This Subdivision does not limit the operation of Division 3.

## **Subdivision 4 Miscellaneous**

### **30AT Wholesale market monitoring guidelines**

- (1) The AER must prepare guidelines about the following—
  - (a) the scope of the AER wholesale market monitoring functions;
  - (b) the collection of information for the purposes of this Division;
  - (c) the publication and reporting of information under this Division.

- (2) Without limiting what may be included in wholesale market monitoring guidelines, the guidelines must include the following—
  - (a) information about the things the AER proposes to consider in assessing—
    - (i) effective competition in wholesale gas markets; and
    - (ii) the effective functioning of wholesale gas markets;
  - (b) a summary of the compliance obligations of persons who hold information;
  - (c) the processes the AER proposes to adopt in requesting information, including processes designed to minimise the time and resources wholesale gas market participants will devote to responding to a request;
  - (d) the type of information the AER expects to routinely request and how frequently it will request that information;
  - (e) the type of information the AER does not expect to request;
  - (f) classes of relevant agreements the AER does not expect to request;
  - (g) the formats in which the AER expects information to be submitted;
  - (h) a general outline of the way the AER will ensure that commercially sensitive information obtained for wholesale market monitoring functions is kept securely;
  - (i) other matters prescribed by the Regulations or the Rules.
- (3) Before making wholesale market monitoring guidelines the AER must consult in accordance with the Rules.
- (4) Wholesale market monitoring guidelines must be—
  - (a) made in accordance with the Rules; and
  - (b) published on the AER website within 6 months after commencement of this section.

### **30AU Review of wholesale market monitoring powers**

The MCE is to review the operation of this Division as soon as possible after the period of 4 years and 6 months after the commencement of this section.

### **[4] Section 42—Power to obtain information and documents in relation to performance and exercise of functions and powers**

Insert before section 42(17)(a)—

- (aa) the number of notices given under this section for the purposes of a function under Division 1AA;

### **[5] Section 294FD**

Insert after section 294FC—

### **294FD South Australian Minister to make initial Rules relating to wholesale market monitoring matters**

- (1) The South Australian Minister may make rules for the following—
  - (a) the making of—
    - (i) market monitoring information orders; and
    - (ii) wholesale market monitoring guidelines;
  - (b) the way the AER consults—

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- (i) on the wholesale market monitoring guidelines under section 30AT(3); and
  - (ii) the public, under section 30AM, before making a market monitoring information order.
- (2) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
- (3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
  - (a) publish notice of the making of the Rules in the South Australian Government Gazette; and
  - (b) make the Rules publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
  - (a) the date on which the Rules commence operation; or
  - (b) if different Rules will commence operation on different dates, those dates.
- (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.