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ATTACHMENT B

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LEGISLATIVE ASSEMBLY OF THE  
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CLERK: 

TREASURER

**NATIONAL ELECTRICITY (NORTHERN TERRITORY)  
(NATIONAL UNIFORM LEGISLATION) AMENDMENT BILL  
2017  
SERIAL NO. xxx**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The purpose of the legislation is to amend the *National Electricity (Northern Territory) (National Uniform Legislation) Act* to ensure the National Electricity Law continues to be legally and practically applied in the Northern Territory in a manner that is fit-for-purpose and reflects policy decisions made as part of the Territory's progressive adoption of the National Electricity Rules.

The National Electricity Law, Rules and Regulations form part of a co-operative scheme for the regulation of electricity networks in the National Electricity Market (of which electricity systems in all jurisdictions except for the Territory and Western Australia form a part). The lead legislation is the *National Electricity (South Australia) Act 1996* (SA).

**NOTES ON CLAUSES**

**Clause 1. Short Title**

This is a formal clause which provides for the citation of the Act. The Bill when passed may be cited as the *National Electricity (Northern Territory) (National Uniform Legislation) Amendment Act 2017*.

**Clause 2. Commencement**

This clause provides for the commencement of the Act.

The Act commences on 1 July 2017.

**Clause 3. Act amended**

This clause provides that this Act amends the *National Electricity (Northern Territory) (National Uniform Legislation) Act*.

**Clause 4. Section 3 amended**

This clause inserts into section 3(1) a new definition of *SA Act* which means the *National Electricity (South Australia) Act 1996 (SA)*.

**Clause 5. Section 6 amended**

This clause omits from section 6 the words from '*National Electricity (South Australia) Act 1996 (SA)*' and replaces them with '*SA Act*'.

**Clause 6. Section 7 amended**

This clause omits from section 7 the words from '*National Electricity (South Australia) Act 1996 (SA)*' and replaces them with '*SA Act*'.

**Clause 7. Section 8 amended**

This clause omits from the definition of the *National Electricity Law* or *this Law* in section 8(1)(b) the words 'indicates or requires – the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996 (SA)*' and replaces them with 'or subject matter otherwise indicates or requires – the National Electricity Law set out in the Schedule to the *SA Act*', so that the definition will provide that *National Electricity Law* or *this Law* means:

- the National Electricity (NT Law); or
- if the context or subject matter otherwise indicates or requires – the National Electricity Law set out in the Schedule to the *SA Act*.

This amendment will ensure consistency in the drafting approach. However, it will not reflect a change in policy or a change in the effect of this definition in the National Electricity Law.

**Clause 8. Section 9 amended**

This clause omits section 9 and replaces it with a new section 9.

The new section 9 replaces references to 'local distribution systems' and 'distribution systems' with references to 'local electricity systems' and 'electricity systems'.

This amendment reflects that some network assets that perform a transmission function will be treated as such, for some purposes under the National Electricity Rules.

This amendment is consistent with amendments to Schedule 2(1) which, for example, replaces the definition of *local distribution systems* with *local electricity system*.

**Clause 9. Section 9A amended**

This clause omits from the definition of the *National Electricity Rules* in section 9A(3) the words '*National Electricity (South Australia) Act 1996 (SA)*' and replaces them with 'SA Act'.

**Clause 10. Section 12A amended**

This clause inserts in Section 12A(2)(b)(i) after 'the other instrument' the words 'or decision'.

This amendment is necessary to correct a minor drafting error. However, it will not significantly impact the effect of section 12A, which ensures that instruments (such as guidelines) and decisions (such as approvals) made by the Australian Energy Regulator under provisions of the *NT national electricity legislation* (as defined in section 12A) that have yet to commence can, in certain circumstances, be taken to be valid and effective.

**Clause 11. Section 12B amended**

This clause omits from section 12B(2) the word 'law' and replaces it with 'provision'.

This amendment is necessary to correct a minor drafting error. However, it will not significantly impact the effect of section 12B, which ensures that if the Australian Energy Regulator is required to take preparatory steps (such as undertaking consultation before making an instrument or a decision) under a provision of the National Electricity (NT) Law, the National Electricity (NT) Regulations, the National Electricity (NT) Rules, or this Act that has yet to commence, it is taken to have complied with the requirement to take the preparatory steps.

**Clause 12. Section 13 amended**

This clause omits section 13(2) and replaces it with a new section 13(2).

The new section 13(2) provides the regulations that may be made by the Administrator under the Act, may do any of the following:

- amend Schedule 1, including amending it to provide for matters of transitional nature to facilitate the transition to the application and operation of the National Electricity (NT) Law;
- prescribe modifications to the regulations in force from time to time under Part 4 of the SA Act for the purposes of section 7(a), including modifications that provide for matters of a transitional nature to facilitate the transition to the application and operation of those regulations; or
- provide modifications to the operation of the National Electricity Rules for the purpose of their having the force of law in this jurisdiction under section 9 of the National Electricity (NT) Law, including modifications that provide for matters of a transitional nature to facilitate the transition to the application and operation of those Rules.

These amendments expressly provide that modifications to the National Electricity Law, National Electricity Rules, and National Electricity Regulations made under the National Electricity (Northern Territory) (National Uniform Legislation) Act can extend to matters of a transitional nature.

This clause also omits from the definition of the *National Electricity Rules* in section 13(5) the words '*National Electricity (South Australia) Act 1996 (SA)*' and replaces them with 'SA Act'.

#### **Clause 13. Part 4, Division 2 repealed**

This clause repeals Part 4, Division 2. Division 2 was reserved for transitional provisions to be inserted by regulations under section 14(1). Section 14 has been repealed. Division 2 of Part 4 is no longer needed.

#### **Clause 14. Schedule 1 amended**

This clause omits Schedule 1, Parts 2 to 4 and replaces them with new Parts 2 to 4. The new Parts 2 to 4 are unchanged from the omitted versions, except for the following changes.

#### Part 2

Both the omitted and new Part 2 make continuing modifications to the National Electricity Law.

The following amendments are made to definitions by the new Part 2:

- The definition of *distribution system* is amended (to revert to original form)
- The definition of *local distribution system* is omitted, and the term is omitted wherever it appeared and replaced with *local electricity system*
- The definition of *local electricity system* is amended to mean:
  - an electricity system declared by the application Act of this jurisdiction to be a local electricity system; and
  - the generating systems and other facilities owned, controlled or operated in this jurisdiction connected to that electricity system.
- The word 'distribution' is omitted from the definitions of *distribution determination*, *distribution reliability standard* and *distribution service standard* and replaces with 'a local electricity' (so that these terms refer to 'a local electricity system' rather than 'a distribution system').
- The words 'distribution system' is omitted from the definition of *regulated distribution system operator* and replaced with 'local electricity system'.

These amendments reflect that some network assets that perform a transmission function will be treated as such, for some purposes under the National Electricity Rules.

- The definition of *Territory electricity market* is omitted
- A definition of *local instrument* is inserted, which means:
  - a regulation made under the application Act of this jurisdiction
- The definition of *network service provider* is amended to mean:
  - a Registered participant who:
    - under section 11 (3aa) is deemed to be registered for the purposes of section 11(2); and
    - owns, controls or operates a transmission system or distribution system that forms part of a local electricity system.
- The definition of *Registered participant* is amended to mean:
  - a person who, under Part 3 of the *Electricity Reform Act* of the Northern Territory, holds a licence authorising the carrying on of operations in the electricity supply industry in connection with a local electricity system, other than a person who is prescribed by local instrument not to be a Registered participant in relation to those operations

These amendments are required to specify requirements in relation to registration of participants that reflect arrangements in the Territory relating to the local electricity systems.

- The definition of *Regulations* is amended to mean:
  - 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
  - if the context or subject matter otherwise indicates or requires – the regulations made under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia

This amendment will ensure consistency in the drafting approach. However, it will not reflect a change in policy or a change in the effect of these definitions in the National Electricity Law.

- The definition of *retailer* which is amended to mean:
  - a person who under Part 3 of the *Electricity Reform Act* of the Northern Territory, holds a licence authorising selling of electricity.

This amendment ensures consistency with the definition of 'retailer' to be included in the National Electricity (NT) Rules and reflects that the National Energy Customer Framework does not have effect in the Territory.

- The definition of *Utilities Commission* inserted, which means:
  - the Utilities Commission of the Northern Territory established by section 5 of the *Utilities Commission Act* of the Northern Territory

This new Part 2 also modifies section 8 of the National Electricity Law by inserting the word 'of' between 'all' and 'the' at 8(2)(2a)(c). This corrects a minor drafting error.

This new Part 2 further modifies the following provisions in the National Electricity Law:

- It omits the heading of Part 2, 'National Electricity Market' and replaces it with 'Northern Territory local electricity systems'
- It makes a minor modification to the heading of section 11
- It inserts before section 11(1) a new section (1aa) which provides that subsections (3) and (4) (which require that a person, other than the Australian Energy Market Operator, must not engage in operating a wholesale exchange for electricity in this jurisdiction, and set out registration requirements in relation to purchasing electricity through a wholesale exchange) have no effect in this jurisdiction. A note is included that the application of subsections (3) and (4) may be revisited as part of the phased implementation of the National Electricity Rules in the Northern Territory
- It modifies section 11(1) to require that a person must not engage in the activity of owning controlling or operating, in this jurisdiction, a generating system connected to a local electricity system unless –
  - the person is a Registered participant in relation to that activity and that local electricity system; or
  - the person is the subject of a derogation that exempts the person from the requirement to be a Registered participant in relation to that activity and that local electricity system under this Law and the Rules; or
  - the person is prescribed by local instrument not to be a Registered participant in relation to that activity and that local electricity system
- It makes a change to the modification made to section 11(2) to require that a person must not engage in the activity of owning controlling or operating, in this jurisdiction, a transmission system or distribution system that forms part of a local electricity system unless –
  - the person is a Registered participant in relation to that activity and that local electricity system; or

- the person is the subject of a derogation that exempts the person, or is otherwise exempted by the Australian Energy Regulator, from the requirement to be a Registered participant in relation to that activity and that local electricity system under this Law and the Rules; or
- the person is prescribed by local instrument not to be a Registered participant in relation to that activity and that local electricity system
- It also inserts a new subsection (3aa) after section 11(2) which states that a Registered participant who holds a licence authorising the carrying on of operations that correspond to any activity and a local electricity system mentioned in subsection (1) or (2) is deemed to be a Registered participant in relation to that activity and that local electricity system for the purposes of that subsection or those subsections, as the case requires
- It inserts new subsections 12(1aa), 13(1aa) and 14(1aa) before subsections 12(1), 13(1) and 14(1), to provide that sections 12, 13 and 14 have no effect. These sections relate to registration and exemptions in the national electricity market. A note is included in each instance that the application of these sections may be revisited as part of the phased implementation of the National Electricity Rules in the Northern Territory

The new Part 2 omits a change made by the previous Part 2, which provided that Part 5 of the National Electricity Law had no effect in this jurisdiction. Part 5 now will have effect, subject to certain modifications.

The new Part 2 modifies section 49 of the National Electricity Law (within Part 5), to insert a new subsection (1aa), which provides that:

- certain of AEMO's statutory functions (which are not relevant to the Territory's circumstances) have no effect in the Territory: specifically, the functions at paragraphs 49(1)(a)-(f)
- the notes at subsection (1) have no effect in the Territory
- the functions that AEMO has as National Transmission Planner (subsection 49(2)) have no effect in the Territory

This new Part 2 also inserts, after the heading to Part 5, Division 5 of the National Electricity Law, a new section 53AA which provides that Division 5 has no effect. Division 5 relates to the Australian Energy Market Operator's information gathering powers.

This new Part 2 also modifies section 54C of the National Electricity Law to authorise disclosure of protected information to the Utilities Commission.

This new Part 2 inserts after the heading to Part 5, Division 7 of the National Electricity Law, a new section 55AA which provides that Division 7 has no effect. Division 7 relates to the Australian Energy Market Operator's statutory funds.

The above amendments are required to specify requirements in relation to registration of participants that reflect arrangements in the Territory's local electricity systems. They reflect that the Australian Energy Market Operator, which performs a registration role in the interconnected national electricity system, will have a very limited role in the Territory, and will not have a registration or any operational role in the Territory's local electricity systems.

This new Part 2 also modifies section 88 of the National Electricity Law by inserting the word 'of' between 'all' and 'the' at 88(2)(2a)(c). This corrects a minor drafting error.

This new Part 2 inserts after the Part 8 heading of the National Electricity Law, a new section 109AA which provides that Part 8 has no effect. Part 8 relates to the safety and security of the National Electricity System, and is not relevant to the Territory's local electricity system. This amendment involves renumbering a provision that was already included to this effect by the previous Part 2. (Section 108B is renumbered as section 109AA, to comply with current drafting practice.)

This new Part 2 modifies section 122 of the National Electricity Law, by inserting before subsection 122(1) a new subsection 122(1aa) that provides that section 122 has no effect. Section 122 relates to immunity from personal liability of the Reliability Panel but is not required in the Territory as the Reliability Panel will not have a role in the Territory.

This new Part 2 inserts, after the heading to Part 10, Division 1 of the National Electricity Law, a new section 123AA which provides that Part 10 has no effect. Part 10 relates access disputes. A note is included that the application of this Part may be revisited as part of the phased implementation of the National Electricity Rules in the Territory. Previously, a modification was made under Part 3 to the effect that Part 10 would have no effect in this jurisdiction until 1 July 2019.

This new Part 2 inserts a new Part 1AA into Schedule 3 that provides that Parts 1 to 12 of Schedule 3 will have no effect in the Territory, on the basis that none of the Parts (including Part 12) are relevant to the Territory's circumstances.

### Part 3

Both the omitted and new Part 3 make modifications that will expire on 1 July 2019.

The new Part 3 omits amendments, which had been included by the previous Part 3, to the definition of *regulated distribution system operator* in section 2(1) of the National Electricity Rules.

The new Part 3 also omits an amendment made to Part 10, to provide that the Part has no effect in this jurisdiction. A change is made to this effect by Part 2, on an ongoing basis, by the inclusion of new section 123AA (see above).

#### Part 4

Both the omitted and new Part 4, make modifications that will expire on application of the National Energy Retail Law.

The new Part 4 omits the words ‘, and includes a retail customer’ from the modifications previously made to the definition of *end user* in section 2(1) of the National Electricity Law by the omitted Part 4. This amendment effectively allows for the definition of *end user* to revert to its original form.

The new Part 4 omits section 2A which had been included by the omitted Part 4, and defined an access dispute. This section has been repealed as dispute arrangements under the National Electricity Law and the National Electricity Rules are to be considered holistically as part of the Territory’s progressive adoption of the National Electricity Rules.

The new Part 4 omits the repeal of section 6A, effected by the previous Part 4, and inserts before section 6A(1) a new section (1aa) which provides that section 6A has no effect in the Territory until the National Energy Retail Law is applied as a law of the Territory. This amendment will ensure consistency in the drafting approach. However, it will not reflect a change in policy or a change in the practical effect of this section of the National Electricity Law.

The new Part 4 inserts before section 10A(1) a new section (1aa) which provides that section 10A has no effect in the Territory until the National Energy Retail Law is applied as a law of the Territory.

#### **Clause 15.                      Schedule 2 amended**

Clause 15 amends Schedule 2. It omits from the Schedule 2 heading, and the headings of items 1 to 4, the word ‘distribution’ and replaces it with ‘electricity’. In items 1 to 4, it also omits the words ‘distribution system’ and replaces them with the words ‘electricity system (being the apparatus, electricity lines, equipment, plan and buildings used to convey or control the conveyance of electricity)’.

These amendments reflect that some network assets that perform a transmission function will be treated as such, for some purposes under the National Electricity Rules, and as such, transmission systems may be prescribed as local electricity systems in the Territory, as well as distribution systems.

#### **Clause 16.                      Expiry of Act**

This clause provides that the Act expires on the day after it commences.