

# NATIONAL ELECTRICITY MARKET MEMORANDUM OF UNDERSTANDING ON THE USE OF EMERGENCY POWERS

**Date:** 24 November 1998

**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”)**  
**National Electricity Market Management Company Limited**  
**(ACN 072 010 327) (“NEMMCO”)**

**Recitals:**

- A. The Heads of Government in Australia have agreed, as part of the micro-economic reform process, to establish the National Electricity Market.
- B. The National Electricity Market will be governed by the National Electricity Law and the National Electricity Code.
- C. Under the National Electricity Code, NEMMCO is the operator of the National Electricity Market.
- D. Under the National Electricity Law and the National Electricity Code, NEMMCO’s responsibilities include directing Code participants in certain circumstances and co-ordinating and directing any rotation of widespread interruption of demand in the event of a major supply shortfall or disruption.
- E. Each Jurisdiction has legislation which confers Emergency Powers which may be exercised in emergency situations.
- F. The Jurisdictions recognise that the rules for the operation of the National Electricity Market provide for procedures to manage major electricity shortages. Consequently, the Jurisdictions acknowledge that as far as practicable those procedures should be allowed to operate to deal with major electricity supply shortages before the exercise of Emergency Powers is considered.
- G. The National Electricity Code requires NEMMCO to liaise with participating Jurisdictions if the management of an extensive disruption requires the use of Emergency Powers in those participating Jurisdictions.
- H. The Parties have agreed that it is in the interests of the effective operation of the National Electricity Market that an understanding be reached on the procedures which will be followed by the Jurisdictions when they are considering the exercise of Emergency Powers.
- I. The Parties have further agreed that the understanding referred to in Recital H, should also extend to the procedures which will be followed

by a Jurisdiction if NEMMCO advises the Jurisdiction that in its opinion the exercise of Emergency Powers is required.

- J. The Parties intend to abide by the objectives and principles set out in this Memorandum of Understanding although this Memorandum of Understanding is not legally binding.

## Operative provisions:

### 1 Interpretation

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**The Parties agree as follows:**

#### **Definitions**

- 1.1 The following words have these meanings in this memorandum unless the contrary intention appears.

**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

**Designated Officer** in relation to a Party, means the last person nominated by that Party as the Designated Officer under clauses 3.7 or 3.8.

**Designated Minister** in relation to a Jurisdiction means the last Minister nominated by that Jurisdiction under Part 2.

**Electricity Supply Shortage** means a situation where the available supply of electricity in or to a Jurisdiction, is, or is likely to become, less than is sufficient for the reasonable requirements of customers taking electricity in the Jurisdiction.

**Emergency Power** means a power conferred by a Law specified in Attachment 1, (including any replacement or additional Law which confers a similar power, that should be the subject of a notification to the Parties under clause 2.5) on a Relevant Official of a Jurisdiction, which enables that official to do any act or thing, or to direct any person, in response to an Electricity Supply Shortage or in relation to any one or more of generation, transmission, supply, sale and consumption of electricity, but does not include a power conferred upon NEMMCO under the National Electricity Law or the National Electricity Code.

**Jurisdictions** means New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory and any other State or Territory that becomes a Party to this memorandum.

**Law** means an Act passed by the Parliament of the Commonwealth of Australia or of a Jurisdiction or a regulation, by-law, ordinance, code or other instrument made under an Act passed by the Parliament of the Commonwealth of Australia or of a Jurisdiction.

**Market Commencement** means the date declared as such by NEMMCO, on which trading in the Spot Market under the National Electricity Code commences.

**National Electricity Code or Code** has the same meaning as the “Code” in the National Electricity Law.

(**Note:** The National Electricity Law defines the “Code” as: “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.”)

**National Electricity Law** means the National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 of South Australia (which will apply as a law of South Australia because of that Act and as a law of each of the other Jurisdictions because of an Act of that other Jurisdiction).

**National Grid** has the same meaning as it has in the National Electricity Code and means the sum of all connected transmission systems and distribution systems within the participating jurisdictions.

**National Electricity Market** means the market for wholesale trading of electricity with participants situated in different States and Territories of Australia established by the National Electricity Law and National Electricity Code.

**Protocol** means the protocol contemplated by clause 3.6, as developed and amended in accordance with Part 3.

**Relevant Official** in respect of:

- (a) a Jurisdiction other than the ACT, means the Governor-in-Council of that Jurisdiction, a Minister of the Crown in right of that Jurisdiction, a statutory authority of that Jurisdiction or an officer or employee of a department, agency or statutory authority of that Jurisdiction; and
- (b) the ACT, means the Australian Capital Territory Executive, the Chief Minister of the ACT, a Minister of the ACT, a statutory authority of the ACT or an officer or employee of a department, agency or authority of the ACT.

**Responsible Officer** in relation to any Party, means the last person nominated by that Party as the Responsible Officer under clauses 3.10 or 3.11.

**Spot Market:** means the spot market established and operated by NEMMCO in accordance with the National Electricity Code.

### **Rules of Interpretation**

1.2 In this memorandum unless the contrary intention appears:

- (a) a reference to this memorandum or another instrument includes any variation or replacement of either of them;
- (b) a reference to a Law or other law includes consolidations of, amendments to, re-enactments of or replacements of that Law or law;

- (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) if a word or phrase is specifically defined in this memorandum, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) 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
- (g) 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.

### Headings

- 1.3 Headings are inserted for convenience and do not affect the interpretation of this memorandum.

## 2 Nature of Memorandum and Preliminary Matters

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### Memorandum not binding

- 2.1 This memorandum sets out the objectives and principles concerning the use of Emergency Powers in connection with the National Electricity Market.
- 2.2 This memorandum:
  - (a) is not legally binding; and
  - (b) takes effect as a record of the Parties' intentions to abide by the objectives and principles set out in this memorandum with effect from the date when it has been executed by all Parties or, if that execution occurs before Market Commencement, upon Market Commencement.

### Changes to memorandum

- 2.3 This memorandum may be amended by a further memorandum executed by all the Parties.

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- 2.4 Attachment 1 to this memorandum may also be amended in the manner set out in clauses 2.5 - 2.9.
- 2.5 If:
- (a) a law of a Jurisdiction referred to in Attachment 1 to this memorandum is amended, repealed or replaced; or
  - (b) a law of a Jurisdiction is made that confers a similar power to a law of the Jurisdiction referred to in Attachment 1,

then the Designated Officer of that Jurisdiction must, as soon as practicable provide a notice (“Initial Notice”) to the Designated Officer of each other Party. The Initial Notice must specify the amendments which are proposed to be made to Attachment 1.

2.6 If within 14 days of the Initial Notice being provided, no objection is notified by any Party to the Designated Officer who provided the Initial Notice, then that Designated Officer must, as soon as practicable, provide each other Designated Officer with a notice (“Final Notice”) setting out the changes which are to be made to Attachment 1. The amendments to Attachment 1 set out in a Final Notice must be identical to those set out in the relevant Initial Notice.

2.7 If within 14 days of an Initial Notice being provided, an objection is notified by a Party to the Designated Officer who provided the Initial Notice, then the Designated Officers of the Parties will, as soon as practicable, consult and liaise in good faith, to attempt to agree on the appropriate amendments (if any) to Attachment 1.

2.8 Following consultation and liaison under clause 2.7:

- (a) if the Designated Officers agree on the appropriate amendments to Attachment 1, then the Designated Officer who issued the relevant Initial Notice must issue another Initial Notice, incorporating the agreed amendments; and
- (b) if any Designated Officer considers that the Designated Officers will not agree on the appropriate amendments to Attachment 1, then the Designated Officer may initiate a process to amend this memorandum under clause 2.3.

2.9 Upon receipt of a Final Notice from the Designated Officer of a Jurisdiction other than South Australia, or in the case of South Australia, where a final notice has been issued by that Jurisdiction’s Designated Officer, the Designated Officer of South Australia will as soon as practicable provide to each Party an updated version of Attachment 1 incorporating the changes described in the Final Notice.

**Jurisdiction ceasing to be a Party**

2.10 If a Jurisdiction ceases to be a Party, this memorandum will nevertheless continue as an agreement between all other Jurisdictions.

2.11 A Party ceases to be a Party to this memorandum if:

- (a) it ceases to be a Party to the National Electricity Market Legislation Agreement dated 9 May 1996; or
- (b) the Party gives written notice to each of the other Parties stating that the Party ceases to be a Party to this memorandum.

### **New Parties**

- 2.12 If a State or Territory which is not a Party to this memorandum becomes a Party to the National Electricity Market Legislation Agreement referred to clause 2.11(a), the Parties to this memorandum will enter into a new memorandum in substantially the same terms as this memorandum but with that new Jurisdiction included as a Party.

### **Designated Ministers**

- 2.13 Each Jurisdiction will nominate a Minister of the Crown in right of that Jurisdiction (or in the case of the Australian Capital Territory, a Minister of that Territory) as the Minister responsible for implementing this memorandum on behalf of the Jurisdiction by written notice to the other Parties.
- 2.14 A Jurisdiction may change the Minister responsible for implementing this memorandum on behalf of the Jurisdiction by written notice to the other Parties.
- 2.15 The Designated Minister of a Jurisdiction is the Jurisdiction's representative for the purposes of implementing this memorandum.
- 2.16 A notice under clauses 2.13 or 2.14 must be signed by the Premier or Chief Minister of the relevant Jurisdiction.

## **3 Invoking Emergency Powers**

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### **Jurisdiction initiating use of Emergency Powers**

- 3.1 Each jurisdiction will use its best endeavours to ensure that, where a Relevant Official of the Jurisdiction proposes to exercise an Emergency Power:
- (a) NEMMCO and each other Jurisdiction is notified of the proposal;
  - (b) NEMMCO and each other Jurisdiction has a reasonable opportunity to provide advice to the Jurisdiction as to:
    - (i) whether other action could be taken by NEMMCO to manage the situation, either in accordance with NEMMCO's powers under the National Electricity Law or the National Electricity Code or by that Jurisdiction authorising NEMMCO to exercise an Emergency Power of the Jurisdiction; and

- (ii) the likely impacts of the exercise of the Emergency Power on the National Electricity Market, the National Grid and the electricity industry generally; and
- (c) the Relevant Official gives consideration to NEMMCO's advice and any advice provided by another Jurisdiction before proceeding to exercise the Emergency Power.

### **NEMMCO requesting use of Emergency Powers**

- 3.2 Where NEMMCO forms the opinion that the exercise of an Emergency Power by one or more Jurisdictions is required, NEMMCO will notify the relevant Jurisdictions (and if practicable in the circumstances, all other Jurisdictions) and may request each of the relevant Jurisdictions to authorise NEMMCO to exercise an Emergency Power of that Jurisdiction. Each of those Jurisdictions will use its best endeavours to ensure that the Relevant Officials concerned have due regard to NEMMCO's request.
- 3.3 When a Jurisdiction authorises NEMMCO to exercise an Emergency Power, whether by way of a delegation or otherwise, the Jurisdiction will give consideration to whether any conditions need to be imposed in relation to the following matters:
  - (a) consultation with the Designated Minister during the period when the Emergency Power is being exercised; and
  - (b) providing ongoing information to the Designated Minister on the circumstances which have given rise to the exercise of the Emergency Power with a view to ensuring that the period during which the power is exercised is kept to a minimum.

### **Continuing consultation during use of emergency powers**

- 3.4 If a Relevant official of a Jurisdiction is exercising an Emergency Power, then the Jurisdiction will use its best endeavours to ensure that the Relevant Official continues to consult with NEMMCO concerning the exercise of that Emergency Power.
- 3.5 If NEMMCO is exercising an Emergency Power on behalf of a Jurisdiction, then NEMMCO must consult with any person nominated by the Jurisdiction in relation to the exercise of the emergency power.

### **Development of Protocol**

- 3.6 The Parties will jointly develop and agree upon a protocol to deal with the detailed implementation of the objectives and principles set out in clauses 3.1- 3.5
- 3.7 Each Party will nominate a Designated Officer as the person responsible for developing the Protocol on behalf of that Party by written notice to the other Parties.
- 3.8 A Party may change the Designated Officer by written notice to the other Parties.

- 3.9 Each Party authorises its Designated Officer to agree to the terms of the Protocol and amendments to the Protocol on behalf of the Party.

**Implementation of Protocol**

- 3.10 Each Party will nominate a person as responsible for fulfilling the obligations of the Responsible Officer under the Protocol on behalf of that Party by written notice to the other Parties.
- 3.11 A Party may change the Responsible Officer by written notice to the other Parties.

**Compliance with the Protocol**

- 3.12 Each Party will use its best endeavours to comply with the Protocol and each Jurisdiction will use its best endeavours to ensure that its Relevant Officials, Designated Officers and Responsible Officers comply with the Protocol.

## **4 General**

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**Counterparts**

- 4.1 This memorandum may be signed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

**SIGNED** as a Memorandum of Understanding

**New South Wales**

Energy Administration Act 1987 (Sections 24-27)  
Essential Services Act 1988 (Part 2)

State Emergency and Rescue Management Act 1989 (Part 2, Division 4)

**Victoria**

Essential Services Act 1958 (Sections 3-11)  
Vital State Industries (Works and Services) Act 1992 (Sections 5-9)  
Electricity Industry Act 1993 Part 3A)

Emergency Management Act 1986 (Part 5)  
Public Safety Preservation Act 1958 (Sections 3-6)

**Queensland**

Electricity Act 1994 (Chapter 5, Part 2)  
State Transport Act 1938  
State Counter Disaster Organisation Act 1975 (Part 3)

**South Australia**

Essential Services Act 1981 (Sections 3-10)  
State Disaster Act 1980 (Part 4)

**Australian Capital Territory**

Energy and Water Act 1988 (Part 7, Division 3)

**Execution page**

Mr Brendan Smyth MLA )  
 Minister for Urban Services for the Australian )  
 Capital Territory ) (Sgd) Brendan Smyth  
 on the 16 day of November 1998 )

The Honourable Robert Debus MLA )  
 Minister for Energy for the State of New South )  
 Wales ) (Sgd) Robert Debus  
 on the 22 day of October 1998 )

The Honourable Tony McGrady, MP )  
 Minister for Mines and Energy and Minister )  
 assisting the Deputy )  
 Premier on Regional Development for the State ) (Sgd) Tony McGrady  
 of Queensland )  
 on the 24 day of November 1998 )

The Honourable Rob Lucas MLC )  
 Treasurer for the State of South Australia ) (Sgd) Rob Lucas  
 on the 18 day of October 1998 )

The Honourable Alan Robert Stockdale MLA )  
 Treasurer for the State of Victoria ) (Sgd) Alan Stockdale  
 on the 4 day of November 1998 )

**THE COMMON SEAL of** )  
**NATIONAL ELECTRICITY MARKET** )  
**MANAGEMENT COMPANY LIMITED is** ) L.S.  
 affixed in accordance with its articles of )  
 association in the presence of )

(Sgd) Gordon Sutherland

(Sgd) Walter S van der Mye

\_\_\_\_\_  
 Signature of authorised person  
 Company Secretary

\_\_\_\_\_  
 Signature of authorised person  
 Managing Director

\_\_\_\_\_  
 Office held  
 Gordon Sutherland

\_\_\_\_\_  
 Office held  
 Walter S van der Mye

\_\_\_\_\_  
 Name of authorised person (block letters)

\_\_\_\_\_  
 Name of authorised person (block letters)

**NATIONAL ELECTRICITY MARKET  
MEMORANDUM OF UNDERSTANDING  
ON THE USE OF  
EMERGENCY POWERS**

**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")**

**National Electricity Market  
Management Company Limited  
("NEMMCO")**

**Mallesons Stephen Jaques**  
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