

# Proposed Amendments to the *Emergency Management Act 2004*

## Explanatory Memorandum, October 2020

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Enhancing power system security and reliability for  
South Australians

Energy and Technical Regulation  
Department for Energy and Mining

## Acronyms

DER	Distributed Energy Resources
AEMO	Australian Energy Market Operator
MW	Megawatt
SAPN	SA Power Networks
OTR	Office of the Technical Regulator
ESCOSA	Essential Services Commission of South Australia

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## Purpose of this document

The purpose of this paper is to provide details of the proposed amendments to the *Emergency Management Act 2004* (Emergency Management Act).

Currently, an electricity supply emergency may need to be managed through powers under two legislative instruments:

- *Emergency Management Act 2004* (Emergency Management Act)
- *Essential Services Act 1981* (Essential Services Act)

The proposed amendments will provide for more efficient emergency response as the Minister for Energy and Mining (Minister) will be able to respond to all electricity supply emergencies using the powers set out in the Emergency Management Act.

The proposed amendments also ensure that the party that is more capable of efficiently responding to a direction is the party that can be directed in an electricity supply emergency.

These amendments will ensure timely and efficient response in an electricity supply emergency, to minimise the impact of an electricity supply emergency on the users of this essential service.

## Current framework

### *Essential Services Act 1981*

The *Essential Services Act 1981* (Essential Services Act) provides an emergency power framework to manage all types of electricity supply emergency. Currently, under the Essential Services Act, it is possible for His Excellency the Governor in Executive Council to declare a period of emergency under section 3. The Attorney-General has broad powers to give or revoke directions to any person in relation to any proclaimed essential service during the declaration.

Section 10 of the Essential Services Act provides that the direction power can be delegated to any person and section 7A provides that the Authorised Officers can enforce directions (where the *Electricity Act 1996* is declared by regulation to be a “prescribed Act” for the purposes of the Essential Services Act).

The administrative process to implement directions under the Essential Services Act are not well suited for responding to an electricity supply emergency where there may be limited time to act before the electricity supply is disrupted. The powers in the Essential Services Act are also of more generic application than the specific electricity supply emergency powers in the Emergency Management Act.

### *Emergency Management Act 2004*

Part 4, Division 6 of the Emergency Management Act deals with an electricity supply emergency. Section 27B of the Emergency Management Act provides powers to the Minister to declare an

electricity supply emergency if it appears that the supply of electricity to all or part of the South Australian community may be disrupted, or there is a real risk that it will be disrupted to a significant degree.

The Emergency Management Act provides powers to the Minister to direct market participants which are defined under section 27A as the Australian Energy Market Operator (AEMO), any person who engages in the generation of the electricity and any person who engages in the retailing of electricity.

While AEMO, generators and retailers can be directed under the Emergency Management Act, other electricity market participants including electricity users, network businesses, metering coordinators and third party energy service providers that control distributed energy resources or smart appliances on behalf of the electricity user cannot be directed.

The administrative process to follow before giving directions under the Emergency Management Act is more streamlined than that of the Essential Services Act and allows the Minister to declare an electricity supply emergency and issue directions to relevant parties in a timely manner that would more likely lead to better system-wide outcomes. The Emergency Management Act is therefore the preferred legislation framework to respond to an electricity supply emergency.

## **Proposed Amendments to the *Emergency Management Act 2004***

*The Emergency Management Act (Electricity Supply Emergencies) Amendment Bill 2020* (Bill) amends the Emergency Management Act to provide the Minister responsible for energy with sufficient power to respond to all electricity supply emergencies.

### ***Market Participants***

The limited market participants that can be directed under the Emergency Management Act restricts the emergency response activities that can occur under this Act. In order to respond to all electricity supply emergencies, the Bill proposes to provide powers to direct all electricity demand and supply participants.

As previously noted, the Emergency Management Act currently defines the market participants that can be directed as AEMO, generators and retailers. The Bill proposes to add electricity users, transmission or distribution network businesses, metering coordinators and third party electricity service providers to the market participants list.

The term third party electricity service providers capture new parties which are becoming involved in electricity demand and supply through the control of devices that use or generate electricity. Examples include virtual power plant operators and aggregators. These providers will often have visibility of the demand or supply of the devices they manage, may be able to make incremental changes to demand or supply and can usually control the devices in a timely manner.

### ***Directions to coordinate response activities by other persons***

When determining a response to an electricity supply emergency, key stakeholders with a role in power system security are engaged with to determine whether a proposed response will assist in addressing an electricity supply emergency and not have unintended consequences.

In some circumstances, it may be more efficient to direct a market participant to coordinate emergency response activities by other persons, rather than the Minister managing that coordination in the issuance of directions. For example, emergency response activities by electricity users and grid connected generators may need to be coordinated by AEMO to effectively address an electricity supply emergency.

The Bill further clarifies that in an electricity supply emergency the Minister may require a market participant give a direction to a person or exercise authority over a person where it has lawful authority. A market participant may have this lawful authority due to a regulatory power or contract provision.

### ***Nature of directions***

As noted above, emergency response activities may be best implemented directly by a market participant or alternatively coordinated by a market participant and implemented by a third party.

The Bill therefore clarifies what kinds of directions the Minister may give in an electricity supply emergency to cover these circumstances

- Performance of acts or omissions
- Exercise of powers of functions.

The Minister may determine that a particular outcome needs to be achieved to address an electricity supply emergency. Rather than the Minister determine what actions need to be taken to achieve the outcome, a market participant may be better to do this. The Bill therefore also clarifies that a direction may be for the achievement of an outcome or performance standard.

### ***Satisfying a direction***

As noted above, the nature of directions can range from requiring a specific act to be performed to requiring the achievement of an outcome. In practice, a market participant may therefore have some discretion in how they achieve a direction. A market participant may have the ability to directly implement an action or may consider it more efficient to require other persons to perform actions to fulfil the direction.

The Bill clarifies this point, making it clear that a market participant can exercise its authority over another person whether or not the direction expressly tells them to do so.

### ***Expiry of temporary amendments***

The COVID-19 Emergency Response Act 2020, in paragraphs (fa) to (fc) of Schedule 2 Part 1 clause 1, implements temporary changes to the Emergency Management Act.

The temporary changes provide for persons who engage in the transmission and distribution of electricity to be market participants, and accordingly directable in an electricity supply emergency. The changes also clarify directions to coordinate response activities by other persons and the nature of directions.

To ensure there is no inconsistency or overlap should the temporary changes still be in operation when this Bill is commenced, the Bill expires the provisions if they have not already expired.

## Submissions

The Department for Energy and Mining is now inviting all interested parties to provide feedback on the draft *Emergency Management Act (Electricity Supply Emergencies) Amendment Bill 2020* (attached).

All stakeholders are invited to provide written submissions to the Department for Energy and Mining by emailing [ETRConsultations@sa.gov.au](mailto:ETRConsultations@sa.gov.au) before 5pm (AEST) on 25 November 2020.

## Next Steps

Once the consultation is closed, the Department for Energy and Mining will review all submissions and responses from stakeholders.

## Contact

For all enquiries regarding the proposed Act amendments, please email us at [ETRConsultations@sa.gov.au](mailto:ETRConsultations@sa.gov.au)

## Attachment

Draft *Emergency Management Act (Electricity Supply Emergencies) Amendment Bill 2020*