



ELECTRICITY SUPPLY EMERGENCY

Discussion Paper



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Executive Summary

The *Emergency Management Act 2004* (the EM Act) establishes the legislative framework and principles for coordinating activities before, during and after emergencies. A dedicated division within the EM Act (Division 6) introduced in 2017 assigns powers to the South Australian Minister for Energy and Mining to declare, make directions and take certain actions in relation to a potential or actual electricity supply emergency.

This Discussion Paper has been prepared with a view to ensuring that Part 4 Division 6 of the EM Act and related provisions are appropriate and effective and is required by the EM Act. The Reviewers are also reviewing the EM Act in its entirety, refer here for details: www.yoursay.sa.gov.au/emergency-management-act-review

Management of electricity supply emergencies in Australia

In Australia, State and Territory governments have primary responsibility to protect life, property and the environment in their jurisdiction and to control most energy emergency functions. Energy businesses are responsible for ensuring the safety and security of their assets and operations. The Australian Energy Market Operator (AEMO) has an extensive role and established processes for managing electricity supply operations and emergencies including when it comes to energy supply emergencies that are large or multi-jurisdictional. The federal Department of Climate Change, Energy, the Environment and Water supports responses by governments and AEMO for emergencies with national or international consequences, particularly with regard to gas and liquid fuels.¹

In South Australia, the Minister for Energy and Mining (the Minister) can respond to all electricity supply emergencies using the powers set out in Part 4 Division 6 of the EM Act. The Department for Energy and Mining is the control agency for *fuel, gas and electricity shortages under the State Emergency Management Plan (SEMP)*² and the South Australian Police (SAPOL) is the control agency for a Black System event.

1 Department of Climate Change, Energy, Environment and Water – Energy supply emergency management across Australia: www.energy.gov.au/government-priorities/energy-security/energy-emergency-management-forums/energy-supply-emergency

2 State Emergency Management Plan: www.dpc.sa.gov.au/responsibilities/security-emergency-and-recovery-management/state-emergency-management-plan/State-Emergency-Management-Plan-2022.pdf

Responding to this Discussion Paper

Views are sought on amendments introduced to the *Emergency Management Act 2004* (the EM Act) via the **Emergency Management (Electricity Supply Emergencies) Amendment Act 2017**. These amendments are required to be reviewed in accordance with that Act. In 2021 the EM Act was further amended by the **Emergency Management (Electricity Supply Emergencies) Amendment Act 2021**.

This paper is focused on who can be directed by the Minister, the powers of the Minister, and the declaration process in relation to electricity supply emergencies. Submissions are also welcomed on any other aspect of the EM Act.

This is not a review of actions previously taken under the EM Act or other emergency documents, such as the State Emergency Management Plan.

Where possible, submissions should provide reasoning for the position that is advocated and examples or evidence that supports this position.

Feedback can be provided via email to:

electricitysupplyemergencies@sa.gov.au

Submissions are due by **Tuesday 30 January 2024**.

Your submission or its contents may be made publicly available. Submissions may be subject to Freedom of Information and other laws. If you would like your submission to remain confidential, please clearly state this in the submission and provide a reason.

The Reviewers are also reviewing the EM Act in its entirety, refer here for details:

www.yoursay.sa.gov.au/emergency-management-act-review

Discussion Questions

The questions posed in the Paper are a guide only. You do not need to respond to every question. You can provide a comment which does not relate to a specific question. If you are responding to a specific question or section in the EM Act, please include the reference to enable easy identification of responses.

- Should there be any change to the electricity supply emergency declaration period or the extension arrangements?
- Are the powers of direction appropriate to manage an electricity supply emergency?
- Are the powers to require documents or information fit for purpose?
- Is the coverage of designated persons appropriate and does the scope adequately future proof the EM Act?
- Are there any other matters relevant to the EM Act and electricity supply emergencies that the Review should consider?

Glossary of Terms and Acronyms

Term/Acronym	Definition
AEMO	Australian Energy Market Operator
Burns Review	Independent Review of the Extreme Weather Event South Australia 28 September – 5 October 2016 , undertaken by former South Australia Police Commissioner, Mr Gary Burns
COAG	Council of Australian Governments
declaration / Declaration	A declaration of an identified major incident, a major emergency or a disaster made under Division 3 of the EM Act
EM Act	<i>Emergency Management Act 2004</i>
electricity supply emergency	An event where the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree (Section 27B of the EM Act)
end user	Means a person who acquires electricity for consumption purposes, and includes a retail customer (<i>National Electricity Legislation (SA) Act 1996</i>)
ESCOSA	Essential Services Commission of South Australia
major emergency	An emergency that has occurred, is occurring or is about to occur and is declared to be a major emergency by the State Co-ordinator (section 23 of the EM Act)
Minister	Means the Minister responsible for the administration of the <i>Electricity Act 1996</i> – currently the Minister for Energy and Mining
NEM	National Electricity Market
OTR	Office of the Technical Regulator
SAPN	SA Power Networks
SEMP	State Emergency Management Plan, ensures the state has effective arrangements in place to enhance the safety and security of the South Australian community
Third-party servicer provider	Means a person or body that controls 1 or more devices that use or generate electricity on behalf of the owner of the device (section 27A of the EM Act)

Context

The integral nature of electricity in modern society is discussed in the Burns Review:

Today's modern, digital and highly technical society involves complex networks, communications and infrastructure, which are often linked and interdependent. Electricity is, with few exceptions, integral to all our systems, needs and requirements as a modern society. The loss of power quickly impacts upon essential services, critical infrastructure and the very fabric of our society. Electrical power is often taken for granted but modern society (at all levels) is heavily reliant and dependent on it.³

South Australia, along with Queensland, New South Wales (including the Australian Capital Territory), Victoria and Tasmania, is part of the National Electricity Market (NEM). The NEM operates the interconnected power system that reaches from Port Douglas in Queensland to Port Lincoln in South Australia and across the Bass Strait to Tasmania.⁴ The Australian Energy Market Operator (AEMO), established by the Council of Australian Governments (COAG) in 2009, manages the NEM in the eastern and southern states, with the goal of ensuring Australians have access to affordable, secure, and reliable energy.

State and Territory governments control most energy emergency functions within their jurisdiction. In South Australia, for electricity supply emergencies, this is via the EM Act.

The EM Act is the foundation for the framework and principles for coordinating activities before, during and after emergencies in South Australia. Part 4 Division 6 of the EM Act deals with an electricity supply emergency. The key operative sections are section 27B which 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. Section 27C sets out the Minister's power under a declaration to give directions that the Minister thinks are reasonably necessary to respond to the electricity supply emergency. Section 27D sets out the Minister's power to require information or documents in relation to an electricity supply emergency.

This Discussion Paper is focused on who can be directed by the Minister, the powers of the Minister, and the declaration process in relation to electricity supply emergencies. Comments are also welcomed on any other aspect of the EM Act.

3 Burns Review: www.dpc.sa.gov.au/_data/assets/pdf_file/0003/15195/Independent-Review-of-Extreme-Weather-complete.pdf

4 AEMO National Electricity Market Fact Sheet: <https://aemo.com.au/-/media/files/electricity/nem/national-electricity-market-fact-sheet.pdf>

Background

In 2017, EM Act amendments introduced special provisions for the management of electricity supply emergencies following the South Australian statewide blackout in 2016. These amendments were introduced to enhance the ability of the Government to gain information about a potential electricity supply emergency, to declare an electricity supply emergency, and to minimise the impact of a declared electricity supply emergency via direction of designated persons. Amendments in 2021 broadened the group of designated persons that could be directed under the EM Act and streamlined the process through which the Minister could declare an electricity supply emergency.

Section 27B defines an electricity supply emergency as an event where *the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree.*

Since the amendments to the EM Act in 2017, the Minister has declared an electricity supply emergency and made a direction (see below) only once. To date, the Minister has not utilised powers in the EM Act to seek information in the context of an electricity supply emergency.

Table 1: Summary of declared electricity supply emergencies in South Australia under the EM Act

Duration	Type	Event	Extension
24 January 2019 (declared for 14 days, revoked on 25 January 2019 after weather conditions became favourable and further action was not required)	AEMO directed to take action to reduce total demand	Declared electricity supply emergency in the context of a heatwave event	Nil

2017 Amendments to the *Emergency Management Act 2004*

The ***Emergency Management (Electricity Supply Emergencies) Amendment Act 2017*** amended the EM Act to include powers, considerations and actions for electricity supply emergencies in South Australia. With these amendments, new powers were afforded to the Minister responsible for the *Electricity Act 1996* (SA), currently the South Australian Minister for Energy and Mining.

The 2017 amendments to the EM Act are outlined below:

- Inclusion of the making provision for declarations relating to electricity supply emergencies as an object of the EM Act (Part 1)
- Inclusion of 'electricity supply emergency' in the interpretation list (Part 1)
- Broadening of the application of the EM Act, stating the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament (Part 1 (4) (1))
- That the Minister may make a declaration in relation to the electricity supply emergency in line with Division 6 of the EM Act
- Inserting the new Division 6 – Electricity Supply Emergencies into the EM Act, which:
 - Defines the interpretation of key terms related directly to an electricity supply emergency (section 27A)
 - Sets out how and when the Minister can declare an electricity supply emergency (section 27B)

- Sets and how and when the Minister can give directions deemed reasonable and necessary to respond to an electricity supply emergency (section 27C)
- Sets out how and when the Minister can request information or documents from specified parties (e.g., electricity market participants) when the Minister deems there is or there is likely to be an electricity supply emergency (section 27D)
- Provides that the Minister must preserve the confidentiality of any information gained in this Division of the EM Act (section 27E)
- Sets out how a direction must be given (section 27F)
- Sets out to whom and how the Minister may delegate any functions in Division 6 (section 27G)
- Provides that after the declaration of an electricity supply emergency, the Minister can refer any matter related to the emergency to the Essential Services Commission as per the *Essential Services Commission Act 2002 (SA)*, or to the Office of the Technical Regulator established under the *Electricity Act 1996 (SA)* (section 27F)
- Sets out penalties in relation to the failure to respond to comply with a direction or produce information (section 28A)
- Amended section 32 to extend liability protections to acts taken in line with the new Part 4 Division 6 of the EM Act.

2021 Amendments to the *Emergency Management Act 2004*

In 2021, the *Emergency Management (Electricity Supply Emergencies) Amendment Act 2021* further amended the EM Act for the purpose of enabling the Minister for Energy and Mining (as the Minister responsible for the *Electricity Act 1996 (SA)*) to respond to all electricity supply emergencies using the powers set out in the EM Act.

Prior to this amendment, electricity supply emergencies were managed under two legislative instruments:

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

The challenges with this were:

- a. The breadth of market participants that the Minister could direct under the EM Act was narrower than that of the Governor in his capacity to declare an emergency under the Essential Services Act, and further, was no longer deemed sufficient; and
- b. The administrative process for the Governor to declare an emergency was more cumbersome than that prescribed in the EM Act. An expedient process is favourable in an emergency situation.

The 2021 amendments to the EM Act:

- Broadened the designated persons definition in the EM Act that a Minister can direct or request information from in the context of an electricity supply emergency, making the EM Act the primary legislative tool through which an electricity supply emergency is managed (section 27A)
- Enabled the Minister to direct others best placed to more efficiently coordinate the response (e.g. direct AEMO to coordinate a response including electricity users and grid connected generators) (section 27C)

- Articulated what kind of direction the Minister may give, and provided that the Minister can direct a designated person to coordinate action toward an outcome, rather than the Minister determining which actions need to be taken to achieve that same outcome (section 27C)
- Making it clear that a designated person, directed by the Minister, can exercise their authority over another person to act, whether the Minister's direction clearly states this or not (section 27C)
- Temporary changes to the EM Act via the **COVID-19 Emergency Response Act 2020** ceased via this amendment.

Part 4: Division 6 – Electricity Supply Emergencies

Declaring an Electricity Supply Emergency

27B – Minister may declare electricity supply emergency

Section 27B of the EM Act provides that when it appears to the Minister, on reasonable grounds, that the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree, the Minister may declare an electricity supply emergency.

Period of Emergency

For an electricity supply emergency, section 27B allows the Minister, on reasonable grounds, to declare an electricity supply emergency for a period that cannot exceed 14 days. Prior to the expiration of the declaration, with the approval of the Governor an extension can be granted which must not exceed 14 days. However, this extension can only occur *once*, and there may be no multiple extensions.

Conversely, in the case of a major emergency as defined in the EM Act, the State Co-ordinator can declare an emergency remains in force for the period specified in the declaration (which must not exceed 14 days) and for such further periods (which may be of any length) as may be approved by the Governor. There can be multiple extensions sought.

In comparison to other jurisdictions, the declaration period in South Australia is quite restricted. In New South Wales and Queensland for example, the declaration period is not limited by legislation. Considering the state and individuals' critical reliance on electricity and increased potential threats from climate and cyber risks, a future proofing amendment to allow multiple extensions may increase the flexibility available to the Minister and align an electricity supply emergency extension arrangement to be on par with the major emergency arrangements.

Question: Should there be any change to the electricity supply emergency declaration period or its extension arrangements?

Scope of Minister's powers

27C – Minister's power to give directions

Section 27C of the EM Act provides the Minister with powers to give directions to designated persons when the Minister believes it reasonably necessary to respond to a declared electricity supply emergency. Specifically, section 27C (1) states that:

On the declaration of an electricity supply emergency, and while that declaration remains in force, the Minister may give directions to any designated persons, or class of designated persons (or both), that the Minister thinks are reasonably necessary to respond to the electricity supply emergency.

Further, section 27C (2) stipulates the nature of a direction:

(2) Without limiting subsection (1), directions may, for example—

- (a) require AEMO to restrict electricity flow on an interconnector in accordance with requirements specified in the direction;
- (b) require a designated person to give any directions of a kind that the designated person may lawfully give (which may include, for example, requiring a designated person to give directions to, or to exercise authority over, another person or body, whether or not that other person or body is also a designated person);
- (c) require AEMO to suspend the spot market in South Australia;
- (d) require any specified persons who engage in generation of electricity, or any class of such persons, to generate electricity in accordance with requirements specified in the direction.

(2a) A direction to a designated person may—

- (a) require the performance of specific acts or omissions; or
- (b) require the exercise of specific powers or functions; or
- (c) require specific outcomes or performance standards.

In giving a direction, the Minister must, to the extent that is reasonably practicable to do so, consult with the designated person and avoid unduly interfering with the operation of the national electricity market, its Rules and Law.

In 2021, following consultation, amendments made were to broaden the scope of powers to:

- Enable the Minister to direct others best placed to more efficiently coordinate the response (e.g. direct AEMO to coordinate a response including electricity users and grid connected generators). 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, rather than the Minister managing that coordination in the issuance of directions
- Articulate what kind of direction the Minister may give, and provide that the Minister can direct a designated person to coordinate action toward an outcome, rather than the Minister determining which actions need to be taken to achieve that same outcome
- Make it clear that a designated person, directed by the Minister, can exercise their authority over another person to act, whether the Minister's direction clearly states this or not.

Whilst the nature of directions the Minister may give in South Australia are broadly similar to that of other jurisdictions, the explicit inclusion of power in the EM Act for the Minister to direct toward an outcome and direct others best place to act, is unique.

In New South Wales, the legislation explicitly includes a cyber security incident targeted at a person that supplies a form of energy to the State that could disrupt to a significant degree or is at risk of disrupting to a significant degree energy supply to the State. The EM Act applies an all hazards approach and therefore does not currently explicitly describe cyber security incidents as a threat to electricity supply.

Question: Are the powers of direction appropriate to manage an electricity supply emergency?

27D – Minister's power to require information or documents

In addition to the power to give directions, under section 27D of the EM Act the Minister has the power to require designated persons to provide information or documents. The Minister does not have to declare an electricity supply emergency to exercise this power, meaning that the Minister can also require a

designated person to provide the Minister with information or documents when the Minister considers it likely there will be an electricity supply emergency.

(1) The Minister may require a person—

- (a) to give the Minister within a specified time, or at specified times, specified information; or
- (b) to produce to the Minister within a specified time, or at specified times, specified documents,

that the Minister reasonably requires—

- (c) to determine whether there is, or is likely to be, an electricity supply emergency; or
- (d) to plan for the future exercise of powers under this Division; or
- (e) to otherwise administer or enforce this Division.

Question: Are the powers to require documents or information fit for purpose?

Scope of designated persons the Minister can direct

Scope of designated persons (Section 27A – Interpretation)

The scope of who could be directed as a designated person was expanded in 2021 from AEMO, generators and retailers, to include electricity users, transmission or distribution network businesses, metering coordinators and third party electricity service providers.

The introduction of the term *third party electricity service provider* was intended to capture new parties 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 and may be able to make incremental changes to demand or supply and can usually control the devices in a timely manner.

Following the 2021 amendments, the EM Act's definition of designated persons now includes:

Section 27A – Interpretation

designated person means—

- (a) AEMO;
- (b) any person who engages in generation of electricity;
- (c) any person who engages in retailing of electricity;
- (d) any person who engages in transmission or distribution of electricity;
- (e) a third party energy service provider;
- (f) a metering coordinator;
- (g) an end user;

The list of designated persons in the EM Act is more detailed than that of other jurisdictions, where it is stated that a *person* or *body* can be directed. The approach in the EM Act provides clarity on designated persons the Minister would expect to direct in an electricity supply emergency, however given the evolving nature of the energy market, this could also result in a person or body being excluded.

Question: Is the coverage of designated persons appropriate and does the scope adequately future proof the EM Act?

Other Matters

This part of the EM Act was introduced via the **Emergency Management (Electricity Supply Emergencies) Amendment Act 2017**. Section 11 of that Act requires that the amendments are reviewed within five years of their commencement and that is the purpose of this review.

The Review is seeking any feedback in relation to the EM Act that may be relevant to electricity supply emergencies. It would particularly welcome views on the 2017 amendments and views on how the EM Act may be future proofed against emerging threats.

Question: Are there any other matters relevant to the EM Act and electricity supply emergencies that the Review should consider?

Annexure 1: Jurisdictional Comparison

All jurisdictions in the NEM have legislative electricity supply emergency provisions. The table shows the approach in several jurisdictions and highlights differences in who can declare the emergency, the duration of a declaration and specificity of who can be directed and the form a direction can take.

	SA <u><i>Emergency Management Act 2004</i></u>	VIC <u><i>Electricity Industry Act 2000</i></u>	NSW <u><i>Energy and Utilities Administration Act 1987</i></u>	QLD <u><i>Electricity Act 1994</i></u>
Who can declare an emergency	Minister that administers the <i>Electricity Act 1996</i> (currently Minister for Energy and Mining)	Governor by Proclamation (<i>Minister then has power to direct</i>)	Premier (<i>Minister then has power to direct</i>)	Minister
When can an emergency be declared	When the Minister reasonably believes that the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree	(a) When an event has occurred, or is about to occur, which may endanger an undertaking of a distribution company, a transmission company or a generation company or a person who supplies electricity to another person or materially affect the safe, economical or effective supply of electricity; or (b) the available supply of electricity is, or is likely to become, less than is sufficient for the reasonable requirements of the community	Premier is satisfied that: (a) the supply of a form of energy or energy resources to the State or part of the State is disrupted to a significant degree, or (b) the supply of a form of energy or energy resources to the State or part of the State is at risk of disruption to a significant degree, or (c) due to a cyber security incident the operations of a person that supplies a form of energy within the State— i) are disrupted to a significant degree, or ii) are at risk of disruption to a significant degree	The Minister may make an emergency rationing order, when satisfied that: (a) because of an emergency, an electricity entity can not supply the electricity needed by its customers; and (b) the making of the order is necessary to enable continued supply of electricity by restricting electricity use to the level of available supply The order must outline the nature of the emergency

	SA <u><i>Emergency Management Act 2004</i></u>	VIC <u><i>Electricity Industry Act 2000</i></u>	NSW <u><i>Energy and Utilities Administration Act 1987</i></u>	QLD <u><i>Electricity Act 1994</i></u>
Who can be directed	Designated persons: (a) AEMO; (b) any person who engages in generation of electricity; (c) any person who engages in retailing of electricity; (d) any person who engages in transmission or distribution of electricity; (e) a third party energy service provider; (f) a metering coordinator; (g) an end user;	May be addressed and directed to people and bodies generally	Any person	Any person

	SA <u><i>Emergency Management Act 2004</i></u>	VIC <u><i>Electricity Industry Act 2000</i></u>	NSW <u><i>Energy and Utilities Administration Act 1987</i></u>	QLD <u><i>Electricity Act 1994</i></u>
Types of directions	(a) require AEMO to restrict electricity flow on an interconnector in accordance with requirements specified in the direction; (b) require a designated person to give any directions of a kind that the designated person may lawfully give (which may include, for example, requiring a designated person to give directions to, or to exercise authority over, another person or body, whether or not that other person or body is also a designated person); (c) require AEMO to suspend the spot market in South Australia; (d) require any specified persons who engage in generation of electricity, or any class of such persons, to generate electricity in accordance with requirements specified in the direction A direction to a designated person may— (a) require the performance of specific acts or omissions; or (b) require the exercise of specific powers or functions; or (c) require specific outcomes or performance standards	May give directions to (a) protect any electricity undertaking, ensure safe, (b) economical of effective (c) supply of electricity; ensure electricity is fairly distributed to the community; increase the available supply of electricity or regulated the use of available supply of electricity	May give directions: (a) to control, direct, restrict or prohibit the supply or use of a declared form of energy, whether generally or for a purpose specified in the direction (b) to direct a person who supplies a declared form of energy to supply it to a person specified in the direction (c) to direct a person to comply with the terms and conditions determined by the Minister for the supply of a declared form of energy (d) to direct a person to whom a declared form of energy is supplied to accept the declared form of energy (e) other matters the Minister considers necessary to give effect to— (i) the declaration, or (ii) a recommendation made by a qualified person under section 28 (person required to implement a necessary function)	An emergency rationing order may regulate the use or supply of electricity in the way the Minister considers necessary to enable the continued supply of electricity in the emergency

	SA <u><i>Emergency Management Act 2004</i></u>	VIC <u><i>Electricity Industry Act 2000</i></u>	NSW <u><i>Energy and Utilities Administration Act 1987</i></u>	QLD <u><i>Electricity Act 1994</i></u>
Duration/extension of declaration	14 days, one extension only of another 14 days	Not specified, until the proclamation is revoked	Duration may be specified in the order, ends on specified date or until revoked by the Premier	One month unless earlier repealed, can then make a new order
Information gathering powers	Yes	No	Yes	No



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