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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Electricity Capacity Regulations 2014**

**PART 13**

Miscellaneous

**Restricted liability in damages**

**85.**—(1) Paragraph (2) applies to—

- (a) the national system operator;
- (b) any director of the national system operator; and
- (c) any employee, officer or agent of the national system operator.

(2) Subject to paragraph (3), a person to whom this paragraph applies is not liable in damages for anything done or omitted to be done in the exercise or purported exercise of the national system operator's functions under—

- (a) these Regulations; or
- (b) capacity market rules.

(3) The exclusion of liability in paragraph (2) does not—

- (a) apply where the act or omission occurs in bad faith, including where the act or omission—
  - (i) constitutes a tort which involved a wilful act or omission calculated to cause harm or loss to another person; or
  - (ii) is fraudulent;
- (b) prevent an award of damages in respect of an act or omission which is—
  - (i) unlawful by virtue of section 6(1) of the Human Rights Act 1998<sup>(1)</sup>;
  - (ii) a breach of a duty owed by virtue of section 27(4) of EA 1989;
  - (iii) a criminal offence;
  - (iv) an infringement of a person's intellectual property rights;
  - (v) a breach of confidentiality, whether statutory or at common law; or
  - (vi) a breach of contract.

**Documents**

**86.** Schedule 2 (documents) has effect.