

**ELECTRICITY COMMISSION (AMENDMENT) ACT
1994 No. 22**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Electricity Commission Act 1950 No. 22

SCHEDULE 1—AMENDMENTS

**ELECTRICITY COMMISSION (AMENDMENT) ACT
1994 No. 22**

NEW SOUTH WALES



Act No. 22, 1994

An Act to amend the Electricity Commission Act 1950 to provide for the establishment of subsidiary companies by the Electricity Commission.
[Assented to 30 May 1994]

Electricity Commission (Amendment) Act 1994 No. 22

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Electricity Commission (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Electricity Commission Act 1950 No. 22

3. The Electricity Commission Act 1950 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3(1), insert in alphabetical order:

“Subsidiary company” means a company in which the Commission has a controlling interest (as referred to in Division 2A of Part 3).

(2) Section 5B (**Delegation**):

(a) From section 5B (1) (d), omit "or" where lastly occurring.

(b) At the end of section 5B (1) (e), insert:

; or.

(f) a subsidiary company,

(3) Part 3, Division 2A:

After Division 2, insert:

Division 2A—Subsidiary companies

Definitions

8A. In this Division:

“company” means a company incorporated or taken to be incorporated under the Corporations Law of New South Wales;

SCHEDULE 1—AMENDMENTS— *continued*

“exercise” a function includes perform a duty;

“function” includes a power, authority or duty.

Subsidiary companies

8B. (1) Any function of the Commission may be exercised by a company in which the Commission has a controlling interest. Such a company is referred to in this Act as a **“subsidiary company”**.

(2) For that purpose, the Commission may, with the approval of the Minister:

- (a) form, or participate in the formation of, a subsidiary company; or
- (b) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company.

(3) The Commission must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.

(4) A subsidiary company represents the Crown to the same extent (if any) as the Commission. However, a subsidiary company formed for a commercial purpose in connection with functions under Division 4A is not and does not represent the Crown.

Delegations

8C. (1) A function of the Commission may not be exercised by a subsidiary company unless it is duly delegated to the company under this Act. Such a delegation is automatically revoked if the company ceases to be a subsidiary company.

(2) A function so delegated may be exercised in the name of the subsidiary company.

(3) The subsidiary company may subdelegate any functions delegated to it, unless this is forbidden in the instrument of delegation to the company.

SCHEDULE 1—AMENDMENTS— *continued*

(4) The Minister may direct the Commission to delegate to one or more subsidiary companies all or any of its functions (other than its power of delegation, and as indicated in the direction) or to revoke or vary any such delegation. Nothing in this subsection limits the power of the Minister to give directions to the Commission under section 7.

(5) While the memorandum or articles of association of a subsidiary company do not provide that one of the directors of the company is to be a member of the staff of the company and elected by staff of the company in accordance with regulations under this Act:

- (a) any existing delegation to the company under this section is automatically revoked; and
- (b) no delegation may be made to the company under this section.

For the purposes of this subsection, staff of a subsidiary company include staff employed by the company or staff of the Commission seconded to the company. Regulations may be made for the purposes of elections referred to in this subsection.

Stamp duty

8D. Stamp duty is not payable in relation to:

- (a) the formation of, or the acquisition of shares in, a company that is or is anticipated to be a subsidiary company; or
- (b) the registration of such a company; or
- (c) the issue or transfer of shares in such a company; or
- (d) a document or instrument evidencing any delegation to such a company under this Act.

Application of certain provisions to subsidiary companies

8E. (1) Except as provided by the regulations, a reference to the Commission in:

- (a) section 14, 77, 78, 79, 80, 81, 82, 83, 84, 85 or 86 of this Act; or

SCHEDULE 1—AMENDMENTS—*continued*

(b) section 14A, 27, 27AA or 27AC of the Electricity Act 1945; or

(c) the prescribed provisions of those or any other Acts, includes a reference to a subsidiary company.

(2) Except as provided by the regulations, the following provisions apply to a subsidiary company in the same way and to the same extent (only) as they apply to the Commission:

(a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962;

(b) the Freedom of Information Act 1988;

(c) Chapter 7 of the Local Government Act 1993;

(d) the prescribed provisions of those or any other Acts.

(3) For the purposes of sections 88 and 88A of the Conveyancing Act 1919, a subsidiary company is taken to be a public authority constituted by Act of Parliament.

(4) For the purposes of:

(a) the Public Sector Management Act 1988; and

(b) the Independent Commission Against Corruption Act 1988; and

(c) the prescribed provisions of any other Acts,

a subsidiary company is taken to be a public authority.

(5) A subsidiary company is taken to be a public authority for the purposes of the Environmental Planning and Assessment Act 1979 and a prescribed person for the purposes of section 91A of that Act.

(6) For the purposes of an instrument under the Environmental Planning and Assessment Act 1979:

(a) a subsidiary company is taken to be a public authority; and

(b) the carrying on by a subsidiary company of an undertaking for the supply of electricity is taken to be a public utility undertaking, and a reference to the person carrying on that undertaking is to be construed as a reference to the subsidiary company.

SCHEDULE 1—AMENDMENTS— *continued*

(7) The reference to the Commission in Schedule 1 to the Government Pricing Tribunal Act 1992 includes a reference to a subsidiary company, but only in relation to the transmission and supply of electricity.

Transfer of staff

8F. (1) The Minister may by order transfer the employment of specified staff of the Commission to a subsidiary company.

(2) The staff remain staff of the Commission, and are merely seconded to the subsidiary company.

(4) Section 13A (**Definitions**):

(a) In section 13A (1), omit the definition of “affiliate”.

(b) Insert in section 13A (1) in alphabetical order:

“**subsidiary company**” includes a corporation with which the Commission has made an arrangement under section 34C and in which the Commission retains a controlling interest.

(5) Section 13C (**Subsidiary companies, partnerships, joint ventures etc.**):

Omit “an affiliate” wherever occurring, insert instead “a subsidiary company”.

(6) Section 13D (**Acquisition of shares by the Commission**):

Omit the section.

(7) Section 13E (**Guarantee by the Commission**):

From section 13E (a), omit “an affiliate”, insert instead “a subsidiary company”.

(8) Section 78 (**Assignment of certain easements**):

(a) In section 78 (1), after “assign to”, insert “a subsidiary company,”.

(b) In section 78 (3), after “Commission,”, insert “the subsidiary company,”.

SCHEDULE 1—AMENDMENTS— *continued*(9) Section 87 (**Regulations**):

At the end of section 87, insert:

(2) The regulations may contain provisions of a savings or transitional nature consequential on a company becoming or ceasing to be a subsidiary company or on the delegation or the revocation or variation of a delegation of functions to a subsidiary company.

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from a date that is earlier than the date of publication of the provision in the Gazette.

(4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a subsidiary company), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State, an authority of the State or a subsidiary company) in respect of anything done or omitted to be done before the date of its publication.
-

*[Minister's second reading speech made in—
Legislative Assembly on 21 April 1994
Legislative Council on 5 May 1994]*