



New South Wales

Electricity Supply Amendment Act 1997 No 36

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Electricity Supply Amendment Act 1997 No 36

Act No 36, 1997

An Act to amend the *Electricity Supply Act 1995* to provide for the imposition of a levy on electricity distributors and with respect to the pricing of electricity services supplied to electricity customers; and for other purposes. [Assented to 25 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Electricity Supply Amendment Act 1997*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Electricity Supply Act 1995 No 94

The *Electricity Supply Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Part 3, Division 5

Insert after Division 4 of Part 3:

Division 5 Levy

32A Definitions

In this Division:

licensee means the holder of an electricity distributor's licence.

network income of a licensee means the income derived by the licensee from the use of the distribution system of the licensee in the provision of electricity network services, but does not include the income derived by the licensee from the supply component of the price of electricity supplied by the licensee.

supply component of the price of electricity supplied by a licensee means so much of that price as is referable to the supply of electricity under a customer supply contract.

32B Electricity distributor's levy

- (1) A licensee must pay to the Treasurer, in respect of each financial year during which the licensee holds an electricity distributor's licence, the levy determined in respect of that year by order of the Governor, on the recommendation of the Treasurer, applying to the licensee and published in the Gazette.
- (2) The Treasurer, in recommending the amount of a levy for a financial year payable by a licensee, must be satisfied that the amount reasonably represents the amount by which the network income (as estimated by

the Treasurer) of the licensee in that year is likely to exceed the sum of the amounts (as estimated by the Treasurer) to be:

- (a) the costs of deriving the income, and
- (b) the taxes payable in deriving that income, and
- (c) a reasonable return on the capital of the licensee used in deriving that income,

having regard to:

- (d) the likely consumption of electricity in that financial year by eligible customers who are connected to the licensee's distribution system, and
 - (e) such other matters as the Treasurer determines after consultation with the licensee.
- (3) The levy is payable for the financial year commencing on 1 July 1997 and later financial years.

32C Variation of levy

- (1) The amount of a levy payable by a licensee in respect of a financial year may be varied by order of the Governor applying to the licensee and published in the Gazette.
- (2) Such an order may be made before or during the financial year concerned or during the following financial year, but not later.
- (3) The Treasurer, in recommending a variation of a levy for a financial year payable by a licensee, must be satisfied of the matters referred to in section 32B (2).

32D Becoming a licensee during a year

- (1) If a person becomes a licensee during a financial year, a levy may be determined under this Division for the licensee in respect of the remaining part of that financial year.
- (2) The other sections of this Division apply to the licensee in respect of that financial year as if references in those sections to a financial year were references to the remaining part of that financial year.

32E Ceasing to be a licensee during a year

- (1) If a person ceases to be a licensee during a financial year, the amount of levy payable by the licensee may be adjusted by order of the Governor, applying to the licensee and published in the Gazette, having regard to the length of the portion of that financial year that the electricity distributor's licence was in force.
- (2) Such a person is entitled to a refund of any money paid in excess of the amount of the levy as so adjusted.
- (3) However, a person does not, by ceasing to be a licensee, cease to be liable to a levy, or to a variation of a levy under section 32C, in respect of any period during which the person was a licensee.
- (4) Accordingly, a reference in this Division to a licensee includes a reference to a former licensee, but without making the former licensee liable to a levy in respect of any period after the person ceased to be the holder of an electricity distributor's licence.
- (5) The other sections of this Division apply for the purpose of calculating an adjustment referred to in subsection (1) or a variation referred to in subsection (3) as if references in those sections to a financial year were references to the portion of the financial year during which the electricity distributor's licence was in force.

32F Payment and recovery of levy

- (1) The levy in respect of a financial year is payable at such times (whether during or after that year) and in such manner as are:
 - (a) determined in the order imposing, varying or adjusting it (subject to any agreement referred to in paragraph (b)), or
 - (b) agreed on between the Treasurer and the licensee under section 99B.
- (2) A levy under this Division is recoverable as a debt due to the Crown in any court of competent jurisdiction.

32G Operation of Division

- (1) It is a condition of an electricity distributor's licence that the licensee must pay the levy in accordance with this Division.
- (2) Nothing in this Division affects the operation of section 59B of the *Public Finance and Audit Act 1983*.

[2] Part 4, Division 4

Insert after Division 3 of Part 4:

Division 4 Pricing of electricity

43A Definitions

In this Division:

IPART electricity network pricing determination means a determination of the Independent Pricing and Regulatory Tribunal under the *Independent Pricing and Regulatory Tribunal Act 1992* to the extent that it relates to:

- (a) the determination of the maximum price for the provision of electricity network services by a licensed electricity distributor, or
- (b) the determination of the methodology for fixing the maximum price for the provision of electricity network services by a licensed electricity distributor.

licensee means the holder of an electricity distributor's licence.

supply component of the price of electricity supplied by a licensee means so much of that price as is referable to the supply of electricity under a customer supply contract.

43B Pricing of electricity for eligible customers

- (1) The maximum price for electricity network services that are the subject of an IPART electricity network pricing determination and that are provided by a licensee with respect to the supply of electricity to eligible customers is increased by an amount equal to 0.550 cents per kilowatt hour of the electricity supplied.

- (2) An IPART electricity network pricing determination has effect under the *Independent Pricing and Regulatory Tribunal Act 1992* (without limitation including section 18, but excluding sections 16 and 17 and any prescribed provisions of that Act) as if it contained provisions for the increase effected by subsection (1).

43C Pricing of electricity for other customers

A licensee must ensure that the supply component of the price of electricity supplied by the licensee to a franchise customer (other than an eligible customer) is not set at a level that subsidises (or is intended to subsidise), wholly or partly, the increase effected by section 43B (1).

43D Returns

- (1) A licensee is, within such periods as are specified or described from time to time by the Treasurer by notice to the licensee or by notice published in the Gazette, required to furnish to the Treasurer a return setting out:
- (a) such information relating to forecast and actual consumption of electricity by eligible customers as is specified or described in such a notice, and
 - (b) such other information as is specified or described in such a notice, being information that is relevant to the licensee's obligations under this Division.
- (2) The information in such a return is to be furnished in such manner and form as is specified or described in such a notice.
- (3) The Treasurer may, by notice to the licensee or by notice published in the Gazette, require supplementary or further information from the licensee at any time.

43E Operation of Division

- (1) It is a condition of an electricity distributor's licence that the licensee must comply with the requirements of this Division.

- (2) This Division applies to eligible customers provided with electricity network services under any contract.
- (3) The regulations may make provision for or with respect to phasing in the increase effected by section 43B in relation to any class or classes of eligible customers, in cases where it is not practicable to ascertain the exact amount of electricity supplied for any period commencing with the commencement of this section.
- (4) This Division does not apply to electricity network services provided to an eligible customer under a contract that:
 - (a) was entered into before 6 May 1997, and
 - (b) contains a provision in force before that date that expressly precludes payment of additional charges for electricity network services provided under it.
- (5) This Division does not apply in relation to electricity network services provided during any period specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette.
- (6) This Division does not apply in relation to electricity network services provided to eligible customers of a class specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette.
- (7) Nothing in this Division gives rise to any rights that are justiciable by a customer of a licensee or to any grounds that constitute a defence to proceedings for the recovery of any amount from a customer of a licensee.

[3] Section 87 Functions of Board

Insert after section 87 (2):

- (3) This section does not apply to a condition referred to in section 32G or 43E.

[4] Sections 99A, 99B

Insert after section 99:

99A IPART determinations

IPART electricity network pricing determinations are to be made under the *Independent Pricing and Regulatory Tribunal Act 1992* as if Division 5 of Part 3 and Division 4 of Part 4 of this Act had not been enacted.

99B Agreement with licensed electricity distributors

The Treasurer, on behalf of the Government, may enter into an agreement in writing with one or more of the licensed electricity distributors relating to electricity distributors' levies and such other matters as the Treasurer determines.

[5] Dictionary

Insert in alphabetical order:

electricity network services means services (relating to the transmission and distribution of electricity) declared to be government monopoly services by clause 2 (b) of the *Government Pricing Tribunal (Electricity Services) Order 1993* published in Gazette No 124 of 12 November 1993 at page 6795 (or by the corresponding provision of any order replacing that order). A reference in this definition to an order extends to any amendments made to the order from time to time.

eligible customer means:

- (a) a non-franchise customer, or

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- (b) a franchise customer who satisfies the criteria specified or described in an order under section 92 for being or becoming a non-franchise customer, but who is not a non-franchise customer by reason only that the order (or the declaration in the order) has not yet taken effect in respect of the customer.

financial year means a period of 12 months commencing on 1 July.

[Minister's second reading speech made in—
Legislative Assembly on 6 May 1997
Legislative Council on 17 June 1997]