



New South Wales

Electricity Supply Amendment Act 2000 No 109

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New South Wales

Electricity Supply Amendment Act 2000 No 109

Act No 109, 2000

An Act to amend the *Electricity Supply Act 1995* with respect to changes to licences, functions and obligations of distribution network service providers and retail suppliers of electricity, the rights and liabilities of customers and other matters related to the introduction of full retail competition in New South Wales; to make provision with respect to regulated retail tariffs and charges, including constituting the Electricity Tariff Equalisation Fund and the Electricity Tariff Equalisation Ministerial Corporation; to provide for regulation of aspects of market operations and electricity marketing; to amend the *Independent Pricing and Regulatory Tribunal Act 1992* to confer electricity-related functions on the Tribunal; and for other purposes. [Assented to 20 December 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Electricity Supply Amendment Act 2000*.

2 Commencement

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

3 Amendment of Electricity Supply Act 1995 No 94

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

4 Amendment of other Acts and Regulations

Each Act or Regulation specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Electricity Supply Act 1995

(Section 3)

[1] The whole Act (except in Schedules 5 and 6 and provisions omitted, inserted or amended by this Act)

Omit “An electricity distributor”, “an electricity distributor”, “an electricity distributor’s”, “electricity distributors”, “the electricity distributor”, “the electricity distributor’s”, “or electricity distributor”, “each electricity distributor’s”, “its electricity distributor’s”, “by electricity distributors” and “which electricity distributors” wherever occurring.

Insert instead “A distribution network service provider”, “a distribution network service provider”, “a distribution network service provider’s”, “distribution network service providers”, “the distribution network service provider”, “the distribution network service provider’s”, “or distribution network service provider”, “each distribution network service provider’s”, “its distribution network service provider’s”, “by distribution network service providers” and “which distribution network service providers”, respectively.

[2] Section 4 Definitions and notes

Insert at the end of the section:

(2) Notes included in this Act do not form part of this Act.

[3] Section 14 Licences

Omit “electricity distributors” wherever occurring.

Insert instead “distribution network service providers”.

[4] Section 17 Electricity distributors to hold retail suppliers’ licences

Omit the section.

[5] Section 18

Omit the section. Insert instead:

18 Distribution network service providers to connect premises under customer connection contracts

It is a condition of a distribution network service provider's licence that the distribution network service provider must not provide customer connection services otherwise than under a customer connection contract.

[6] Section 25 Contributions to augmentation of distribution system

Omit section 25 (3). Insert instead:

(3) A distribution network service provider must comply with any determination of the Tribunal in force under the *Independent Pricing and Regulatory Tribunal Act 1992* relating to the proportion of contributions that may be required from customers under this section or the repayment of existing customers under this section.

(3A) It is a condition of a distribution network service provider's licence that the distribution network service provider must comply with this section.

[7] Section 32A Definitions

Omit “, but does not include the income derived by the licensee from the supply component of the price of electricity supplied by the licensee” from the definition of *network income*.

[8] Section 32A, definition of “supply component”

Omit the definition.

[9] Section 32B Distribution network service provider's levy

Omit “non-franchise customers” from section 32B (2) (d).

Insert instead “customers (other than customers who are specified or described in an order made under section 43E (6))”.

[10] Part 4, Divisions 1–3

Omit the Divisions. Insert instead:

Division 1 Licences

33 Licences

- (1) The Minister may grant retail suppliers' licences for the purposes of this Act.
- (2) Schedule 2 has effect with respect to the granting, variation, transfer and cancellation of retail suppliers' licences.

33A Endorsements on retail suppliers' licences

- (1) One or more of the following endorsements may be attached to a retail supplier's licence:
 - (a) a standard retail supplier's endorsement,
 - (b) such other categories of endorsements as the Minister determines.
 - (2) A standard retail supplier's endorsement consists of:
 - (a) a condition that designates the endorsement as a standard retail supplier's endorsement in respect of a supply district as referred to in section 33C, and
 - (b) conditions of the kind referred to in sections 34 (7), 36, 39 (1) and (2), 43EF (3), 43ER and 87D, and
 - (c) any other condition imposed by the Minister or the regulations.
 - (3) Other categories of endorsements have such designations and are subject to such conditions as the Minister thinks fit or as are imposed by the regulations.
 - (4) A retail supplier's licence may have no endorsements, or one or more endorsements, attached to it.
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33B Transfer of endorsements

- (1) Subject to the regulations, the provisions of this Act that apply to the transfer of licences extend to the transfer of endorsements referred to in section 33A.
- (2) The regulations may make provision for or with respect to the transfer of endorsements between holders of retail suppliers' licences.
- (3) When approving the transfer of an endorsement, or of a licence together with an endorsement:
 - (a) the Minister may impose such additional conditions on the licence as the Minister considers appropriate, including conditions imposed for the purpose of ensuring that the transferee will comply with the conditions comprised in the endorsement, and
 - (b) the Minister may impose a condition transferring specified customers or classes of customers, and
 - (c) the Minister may amend a condition describing the supply district of a standard retail supplier by varying the supply district, whether by way of reducing or increasing its size, or may revoke such a condition.
- (4) Without limitation, the supply district of a standard retail supplier may be varied by the addition of the whole or a part of the supply district of another standard retail supplier or former standard retail supplier.
- (5) The regulations may make provision for or with respect to the conditions that may be imposed by the Minister under subsection (3).

33C Supply district of standard retail supplier

The supply district of a standard retail supplier is to be described in a condition of the retail supplier's licence, and may cover either or both of the following:

- (a) one or more distribution districts,
- (b) one or more parts of one or more distribution districts.

Division 1A Electricity supply

34 Right to supply of electricity from standard retail supplier for all customers

- (1) All persons who own or occupy premises that are within a standard retail supplier's supply district, and that are connected or have a right under section 15 to apply to be connected to a distribution system, may apply to the standard retail supplier to be supplied with electricity at those premises under a negotiated customer supply contract.
- (2) Such of those persons as are small retail customers have a right to elect to be supplied with electricity at those premises by the standard retail supplier under a standard form customer supply contract instead of under a negotiated customer supply contract.
- (3) An application or election may be made by any other person on behalf of the person entitled to make the application or election.
- (4) If a person who has a right under this section to do so makes an application to a standard retail supplier, the standard retail supplier is under an obligation:
 - (a) to supply electricity to the applicant's premises under a negotiated customer supply contract or to ensure that electricity is so supplied, or
 - (b) in the case of any customer who is a small retail customer and who elects under this section to be supplied under a standard form customer supply contract, to supply electricity to the customer's premises under such a contract or to ensure that electricity is so supplied.
- (5) If a small retail customer who has a right under this section to do so makes an application to a standard retail supplier, the standard retail supplier is under an obligation to arrange, on behalf of the customer, for customer connection services to be provided to the premises concerned.
- (6) The right that a person has under this section to be supplied electricity to premises is subject to:
 - (a) any provision of this Act or the regulations that authorises the refusal, suspension or discontinuance of the supply of electricity, and

(b) the maximum capacity of the connection of the premises to the distribution system.

- (7) It is a condition of a licence held by a standard retail supplier that the retail supplier must fulfil the obligations imposed on the retail supplier by this section.
- (8) The regulations may make provision for or with respect to elections referred to in this section, including provisions for or with respect to circumstances in which an election is or may be taken to have occurred.

35 Discrimination prohibited

- (1) It is unlawful for a retail supplier:
- (a) to refuse to supply electricity to any person, or
 - (b) to supply electricity to any person on terms that are less advantageous than those on which the retail supplier supplies electricity to other persons,
- on the basis that the person uses or supplies alternative forms of energy, uses or supplies energy from alternative sources, or uses or supplies products, processes, designs or services that reduce the demand for energy.
- (2) It is a condition of a retail supplier's licence that the retail supplier must not contravene this section.

36 Supply of electricity under standard form customer supply contracts (tariffs and charges)

It is a condition of a licence held by a standard retail supplier that the retail supplier, in imposing tariffs and charges for or in relation to supplying electricity under a standard form customer supply contract, must impose them in accordance with any relevant determination of the Tribunal in force under Division 5.

37 Supply of electricity by retail suppliers

- (1) A retail supplier may, but is not required to, supply electricity to the premises of any customer.
- (2) Without limitation, a standard retail supplier may, but is not required to, supply electricity to the premises of any customer within or outside the standard retail supplier's supply district.

- (3) However, this section does not affect any obligation that a retail supplier has as the holder of an endorsement under section 33A (including, for example, the obligations of a standard retail supplier under section 34).

38 Retail suppliers to supply electricity under customer supply contracts

It is a condition of a retail supplier's licence that the retail supplier must not supply electricity to the premises of a retail customer otherwise than under a customer supply contract.

Division 2 Negotiated customer supply contracts

38A Negotiated customer supply contracts

- (1) This section applies to arrangements for the supply of electricity by a retail supplier to the premises of retail customers, other than the supply of electricity under standard form customer supply contracts.
- (2) An arrangement to which this section applies (a *negotiated customer supply contract*) may contain such terms as the retail supplier and the customer agree, and the contract is enforceable accordingly.
- (3) A negotiated customer supply contract must comply with any conditions imposed on the retail supplier by its retail supplier's licence, but is not unenforceable merely because of any failure to do so.
- (4) A negotiated customer supply contract must not be inconsistent with the provisions of this Act or the regulations, and is unenforceable to the extent of any such inconsistency, except as provided by subsections (3) and (5).
- (5) A negotiated customer supply contract with a small retail customer must comply with any requirements prescribed by the regulations for the purposes of this subsection, but is not unenforceable merely because of any failure to do so.
- (6) It is a condition of a retail supplier's licence that any negotiated customer supply contract with a small retail customer must comply with any requirements prescribed for the purposes of subsection (5).

Division 3 Standard form customer supply contracts

39 Procedure for making standard form customer supply contracts

- (1) It is a condition of a licence held by a standard retail supplier that the standard retail supplier must prepare a standard form customer supply contract to establish the conditions on which it will supply electricity to the premises of small retail customers who elect to be supplied with electricity under standard form customer supply contracts.
- (2) It is a condition of a licence held by a standard retail supplier that the standard retail supplier must notify any relevant customer consultative group, and must have due regard to its comments, before completing its preparation of a standard form customer supply contract.
- (3) Different forms of standard form customer supply contracts may be prepared for different classes of small retail customers.
- (4) Notice of the terms of a standard form customer supply contract must be published in a newspaper circulating throughout the State or in a newspaper circulating throughout the relevant supply district.
- (5) The particulars to be set out in a notice under this section:
 - (a) must specify the date on or after which the standard form customer supply contract is to take effect, not being a date that is earlier than the first date the notice is published, and
 - (b) must include such other particulars as may be prescribed by the regulations.
- (6) A notice under this section may be of general application or be limited in its application by reference to specified exceptions or factors.

40 Matters for which standard form customer supply contracts must provide

- (1) A standard form customer supply contract must make provision for the following matters:
 - (a) the basis on which charges for or in relation to the supply of electricity to customers are to be calculated or imposed,

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- (b) any security to be provided by customers for payment of any such charges,
 - (c) the standard of service to be provided to customers by the retail supplier,
 - (d) the circumstances under which the supply of electricity to customers may be discontinued,
 - (e) the procedures established by the retail supplier for handling enquiries and complaints made by customers, and resolving disputes with customers, in relation to matters arising under the contract,
 - (f) the estimation of electricity supplied otherwise than through an electricity meter or in circumstances in which an electricity meter fails to operate or fails to operate correctly,
 - (g) the rate at which electricity is taken to have been supplied between consecutive meter readings,
 - (h) such other matters as may be prescribed by the regulations.
- (2) A standard form customer supply contract:
- (a) must indicate that this Act and the regulations confer powers, duties, rights and obligations on the retail supplier and the customer, and
 - (b) must briefly describe the nature of those powers, duties, rights and obligations,
- but is not unenforceable merely because of any failure to do so.
- (3) A standard form customer supply contract must comply with:
- (a) any conditions imposed on the retail supplier by its retail supplier's licence, and
 - (b) any relevant determination of the Tribunal in force under Division 5,
- but is not unenforceable merely because of any failure to do so.
- (4) A standard form customer supply contract must not be inconsistent with the provisions of this Act or the regulations, and is unenforceable to the extent of any such inconsistency, except as provided by subsections (2) and (3).

41 Effect of standard form customer supply contracts

- (1) Except to the extent to which the regulations otherwise provide, a standard form customer supply contract takes effect:
 - (a) on the first day on which notice of its terms is published in a newspaper under section 39, or
 - (b) on such later day as may be specified for the purpose in the notice.
- (2) A standard form customer supply contract does not have any effect in respect of any period before the date specified in the relevant notice as the date on or after which the contract is to take effect.
- (3) On the day on which a customer applies to a standard retail supplier for the supply of electricity under a standard form customer supply contract, the customer and the retail supplier are taken to have entered into an agreement for the provision of electricity on the conditions set out in the relevant standard form customer supply contract, and the contract is enforceable accordingly.

42 Amendment of standard form customer supply contracts

- (1) From time to time a standard retail supplier may amend a standard form customer supply contract so as to vary the conditions on which it supplies electricity to small retail customers.
- (2) This Division applies to and in respect of an amendment of a standard form customer supply contract in the same way as it applies to a standard form customer supply contract.

[11] Section 43A Definitions

Omit “licensed electricity distributor” from the definition of *electricity network pricing determination*.

Insert instead “licensee”.

[12] Section 43A, definition of “supply component”

Omit the definition.

[13] Section 43B Pricing of electricity for customers other than exempt customers

Omit “the supply of electricity to non-franchise customers” from section 43B (1).

Insert instead “customers (other than customers who are specified or described in an order made under section 43E (6))”.

[14] Section 43C Pricing of electricity for other customers

Omit the section.

[15] Section 43D Returns

Omit “non-franchise customers” from section 43D (1) (a).

Insert instead “customers (other than customers who are specified or described in an order made under section 43E (6))”.

[16] Section 43E Operation of Division

Omit “non-franchise” wherever occurring in section 43E (2), (3), (4) and (6).

[17] Part 4, Divisions 5 and 6

Insert after Division 4:

Division 5 Regulated retail tariffs and regulated retail charges

43EA Referrals for determinations

- (1) The Minister may refer to the Tribunal, for investigation and report, the determination of regulated retail tariffs or regulated retail charges, or both.
- (2) The Tribunal may request the Minister to refer to it, for investigation and report, the determination of regulated retail tariffs or regulated retail charges, or both, under subsection (1).
- (3) The reference may specify a period within which the Tribunal is to submit a report to the Minister and may require the Tribunal to consider specified matters when making its determination.

- (4) The Tribunal is to conduct an investigation and make a determination in a report to the Minister in accordance with this Division.
- (5) If the Minister has given a reference to the Tribunal, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.
- (6) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.

43EB Tribunal to determine regulated retail tariffs and regulated retail charges

- (1) The Tribunal may in a report to the Minister determine regulated retail tariffs or the regulated retail charges, or both, if a referral is made under section 43EA.
- (2) Before determining regulated retail tariffs or the regulated retail charges, the Tribunal must have regard:
 - (a) to any matter it is required by the reference to consider, and
 - (b) to the effect of the determination on competition in the retail electricity market.
- (3) A determination of regulated retail tariffs or regulated retail charges may:
 - (a) specify the tariff or charges, or
 - (b) specify the methodology for determining the tariffs or charges.
- (4) A determination may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

Note. Under section 36, it is a condition of a licence held by a standard retail supplier that the standard retail supplier supply electricity to small retail customers in accordance with any determination in force under this Division.

43EC Publication of regulated retail tariffs and regulated retail charges

- (1) A determination of the Tribunal determining regulated retail tariffs or regulated retail charges is to be published in the Gazette by the Minister and takes effect on the day it is so published or on a later day specified in the determination for that purpose.
- (2) A determination may specify different days for the commencement of different parts of the determination.
- (3) The determination must be published in the Gazette as soon as practicable after the Minister receives a report from the Tribunal under this Division.

43ED Public inspection of Tribunal reports

- (1) As soon as practicable after the Minister receives a report from the Tribunal under this Division, the Minister is to arrange for copies of the report to be made available for public inspection.
- (2) However, the Minister is not required to release any part of the report that, in the opinion of the Minister or the Tribunal, contains confidential information.

43EE Powers of Tribunal and conduct of investigations

- (1) In an investigation, the Tribunal:
 - (a) is to act with as little formality as possible, and
 - (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
 - (c) may receive information or submissions in the form of oral or written statements, and
 - (d) may consult with such persons as it thinks fit.
- (2) The Tribunal may, but is not required to, hold hearings or public seminars, conduct workshops and establish working groups and task forces for the purposes of an investigation.
- (3) The Tribunal must consult with standard retail suppliers in an investigation.
- (4) If the Tribunal holds hearings, it must give reasonable notice, by advertisement published in a newspaper circulating in the State, of the hearings.

- (5) The Tribunal may call for written submissions and may specify a time and date by which those submissions must be made. The Tribunal may extend the time for the making of submissions.
- (6) A hearing may be held in public or in private, at the discretion of the Tribunal, and may be conducted as determined by the Tribunal.

43EF Provision of information, documents and evidence

- (1) For the purposes of an investigation and report, the Chairperson of the Tribunal may, by notice in writing served on an officer of a standard retail supplier or any other person, require the officer or person to do any one or more of the following:
 - (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,
 - (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,
 - (c) to attend a meeting or hearing of the Tribunal to give evidence.
- (2) If documents are given to the Tribunal under this section, the Tribunal:
 - (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate, and
 - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.
- (3) It is a condition of a licence held by a standard retail supplier that the standard retail supplier must comply with a requirement made by the Tribunal under this section.

43EG Confidential information

- (1) If a person provides information (*protected information*) to the Tribunal for the purposes of an investigation on the understanding that the information is confidential and will not be divulged, the Tribunal is required to ensure that the information is not divulged by it to any person, except:
 - (a) with the consent of the person who provided the information, or
 - (b) to the extent that the Tribunal is satisfied that the information is not confidential in nature, or
 - (c) to a member or officer of the Tribunal.
- (2) If the Tribunal is satisfied that protected information provided to the Tribunal by a person needs to be divulged for the purposes of its report, and the exceptions in subsection (1) (a)–(c) are not applicable, the Tribunal may notify the person that the Tribunal proposes to divulge the information in its report after a specified period.
- (3) After the specified period, and despite subsection (1), the Tribunal may divulge the information in its report.
- (4) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any information provided to it in connection with its functions under this Division, it may give directions prohibiting or restricting the divulging of the information.
- (5) A person must not contravene a direction given under subsection (4).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (6) A reference in this section to information includes information given at a meeting or hearing of the Tribunal and information contained in any documents given to the Tribunal.

43EH Offences

- (1) A person must not, without reasonable excuse:
 - (a) refuse or fail to comply with a notice served under this Division, or

- (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting or hearing before the Tribunal under this Division.
 - (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
 - (3) A person must not:
 - (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or
 - (b) at a meeting of or hearing before the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
 - (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of this Division as Chairperson or other member.
 - (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.
- Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

43E1 Cabinet documents and proceedings

- (1) This Division does not enable the Tribunal:
 - (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
 - (b) to require any person to produce a Cabinet document, or
 - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.

(3) In this section:

Cabinet includes a committee of Cabinet or a subcommittee of such a committee.

Cabinet document means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the *Freedom of Information Act 1989*.

43EJ Division to cease to have effect

- (1) This Division ceases to have effect on 30 June 2004 or on such earlier or later day as may be prescribed by the regulations.
- (2) Regulations containing provisions of a savings or transitional nature may be made consequent on the operation of subsection (1).

Division 6 Regulated retail tariffs equalisation

43EK Objects of Division

The objects of this Division are to provide for the establishment, operation and management of a fund, to be known as the Electricity Tariff Equalisation Fund, so as:

- (a) to maintain the ability of standard retail suppliers to supply electricity at regulated retail tariffs, and
- (b) to be transparent in its operation, and
- (c) to manage the wholesale purchase cost risk borne by standard retail suppliers required to supply electricity at regulated retail tariffs, and
- (d) to minimise any competitive advantage or disadvantage to those standard retail suppliers resulting from the requirement to supply electricity at regulated retail tariffs.

43EL Definitions

In this Division:

electricity generator means a corporation whose corporate name is listed in Part 1 of Schedule 1 to the *Energy Services Corporations Act 1995*.

Fund means the Electricity Tariff Equalisation Fund established under section 43EN.

Ministerial Corporation means the Electricity Tariff Equalisation Ministerial Corporation constituted by section 43EM.

rule means a rule approved under section 43EO.

Snowy Hydro Limited means the Snowy Hydro Limited, as referred to in section 4 of the *Snowy Hydro Corporatisation Act 1997*.

43EM Electricity Tariff Equalisation Ministerial Corporation

- (1) There is constituted by this section a corporation with the corporate name of the Electricity Tariff Equalisation Ministerial Corporation.
- (2) The Ministerial Corporation has the following functions:
 - (a) the function of administering and controlling the Fund,
 - (b) without limiting paragraph (a), the function of administering the rules,
 - (c) the function of requiring the provision of information under sections 43EP and 43EQ,
 - (d) such other functions as are conferred on it by or under this or any other Act.
- (3) The affairs of the Ministerial Corporation are to be managed by the Treasurer.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Treasurer, or with the authority of the Treasurer, is taken to have been done by the Corporation.
- (5) The Ministerial Corporation may not enter into a contract or arrangement that enables any of the following persons to carry out any of its functions relating to the Fund:
 - (a) the holder of a retail supplier's licence,
 - (b) an electricity generator,
 - (c) the holder of a distribution network service provider's licence,

- (d) a person or class of persons prescribed by the regulations.
- (6) The Ministerial Corporation is, for the purposes of any Act, a statutory body representing the Crown.
- (7) The Ministerial Corporation may arrange for the use of the services of any staff or facilities of any government department or public or local authority.

43EN Electricity Tariff Equalisation Fund

- (1) There is established by this section an Electricity Tariff Equalisation Fund.
- (2) There is payable into the Fund:
 - (a) all money payable to the Fund under the rules, and
 - (b) all interest received in respect of the investment of the Fund, and
 - (c) all money required or permitted to be paid into the Fund by or under this or any other Act.
- (3) There is payable from the Fund:
 - (a) all money payable from the Fund under the rules, and
 - (b) all money required to meet administrative expenses related to the Fund or the Ministerial Corporation, and
 - (c) all money required or permitted to be paid from the Fund by or under this or any other Act.
- (4) Despite the *Public Authorities (Financial Arrangements) Act 1987*, the Fund may not be used to effect a financial adjustment (within the meaning of that Act) related to electricity or the electricity industry.

43EO Rules for payments to and from Fund

- (1) The Treasurer, after consulting with the Minister, may approve rules for or with respect to payments to and from the Fund.
- (2) The rules may make provision for or with respect to the following matters:
 - (a) payments to the Fund by standard retail suppliers,
 - (b) payments to standard retail suppliers from the Fund,

- (c) payments to the Fund by electricity generators,
 - (d) payments to the Fund by Snowy Hydro Limited,
 - (e) payments to electricity generators from the Fund,
 - (f) payments to the Consolidated Fund from the Fund,
 - (g) payments to standard retail suppliers for reimbursement of costs payable by them under section 87A for audits by the Tribunal under section 87 (1A),
 - (h) the times at which, and manner in which, payments are to be made,
 - (i) the determination of payment amounts,
 - (j) the circumstances in which payments to or from the Fund are to be made by or to standard retail suppliers, electricity generators or the Consolidated Fund, having regard to the following matters:
 - (i) the wholesale costs of electricity to standard retail suppliers,
 - (ii) the level of regulated retail tariffs payable by small retail customers in comparison with those wholesale costs,
 - (iii) the general level of the Fund,
 - (k) matters ancillary to or consequential on the matters set out in paragraphs (a)–(j).
- (3) For the purposes of the determination of payment amounts and other matters related to the administration of the rules, the rules may require a standard retail supplier or an electricity generator to provide to the Ministerial Corporation information, or access to information.
- (4) A rule with respect to the payment to the Fund of amounts by Snowy Hydro Limited may provide for the payment of an annual amount, to be deducted from the dividend payable to the eligible Ministers who hold Snowy Hydro Limited shares for and on behalf of the State of New South Wales, before the payment of that dividend to the Consolidated Fund.
- (5) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.

- (6) A rule may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (7) The Treasurer, after consulting with the Minister, may from time to time approve amendments to the rules or the revocation of rules.
- (8) If a rule, or a rule amending or revoking a rule, is approved by the Treasurer:
 - (a) written notice of the approval of the rule must be published in the Gazette, and
 - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
 - (c) the Ministerial Corporation must give a copy of the rule to each standard retail supplier and electricity generator.
- (9) A copy of the rules approved under this section, as in force for the time being, is to be published on the Government's Internet web page.

43EP Obligations of standard retail suppliers

- (1) A standard retail supplier must, in accordance with the rules, make payments to the Fund.
- (2) A standard retail supplier must, in accordance with the rules, provide such information, or access to such information, as is required by the rules.
- (3) A standard retail supplier must provide such information as is requested by the Ministerial Corporation for the purposes of the administration of the Fund and the rules.
- (4) A standard retail supplier that refuses or fails to comply with subsection (1), (2) or (3) is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (5) A standard retail supplier must not:
- (a) give information for the purposes of the rules knowing that it is false or misleading in a material particular, or
 - (b) give to the Ministerial Corporation information knowing that it is false or misleading in a material particular.

Maximum penalty: 1,000 penalty units.

- (6) This section has effect despite the provisions of any other Act or instrument.

43EQ Obligations of electricity generators

- (1) An electricity generator must, in accordance with the rules, make payments to the Fund.
- (2) An electricity generator must, in accordance with the rules, provide such information, or access to such information, as is required by the rules.
- (3) An electricity generator must provide such information as is requested by the Ministerial Corporation for the purposes of the administration of the Fund and the rules.

- (4) An electricity generator that refuses or fails to comply with subsection (1), (2) or (3) is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (5) An electricity generator must not:
- (a) give information for the purposes of the rules knowing that it is false or misleading in a material particular, or
 - (b) give to the Ministerial Corporation information knowing that it is false or misleading in a material particular.

Maximum penalty: 1,000 penalty units.

- (6) This section has effect despite the provisions of any other Act or instrument.

43ER Licence conditions relating to Fund

It is a condition of a licence held by a standard retail supplier that:

- (a) the standard retail supplier must make payments to the Fund in accordance with the rules, and
- (b) the standard retail supplier must provide information, or access to information, in accordance with the rules, and
- (c) the standard retail supplier must provide such information as is requested by the Ministerial Corporation for the purposes of the administration of the Fund and the rules applying to payments to and from that Fund.

43ES Division to cease to have effect

- (1) This Division ceases to have effect on 30 June 2004 or on such earlier or later day as may be prescribed by the regulations.
- (2) Regulations containing provisions of a savings or transitional nature may be made consequent on the operation of subsection (1).

[18] Part 5, heading

Omit the heading. Insert instead:

Part 5 Powers and duties of network operators and retail suppliers

[19] Section 51 Ownership of electricity works

Insert “or retail supplier” after “network operator” wherever occurring.

[20] Section 51 (2)

Insert “or retail supplier’s” after “network operator’s”.

[21] Section 52 Interruption to electricity supply for maintenance

Insert “or retail supplier” after “network operator” wherever occurring.

[22] Section 54 Powers of entry

Insert “of a network operator” after “authorised officer” in section 54 (1).

[23] Section 54 (1A) and (2)

Omit section 54 (2). Insert instead:

- (1A) An authorised officer of a retail supplier may enter the premises of a customer for the following purposes in respect of electricity works prescribed by the regulations:
- (a) carrying out preliminary investigations in connection with the proposed installation or extension of electricity works,
 - (b) installing, extending, maintaining, repairing or removing electricity works,
 - (c) reading electricity meters,
 - (d) checking if the retail supplier’s conditions relating to tariffs and the use of electricity are being complied with,
 - (e) ascertaining whether an offence against this Act or the regulations has been committed.
- (2) Except in emergencies, a power of entry may be exercised only during daylight hours.

[24] Section 55 Notice of entry

Insert “of a network operator or retail supplier” after “authorised officer” in section 55 (1).

[25] Section 55 (1)

Insert “or retail supplier concerned” after “the network operator”.

[26] Section 56 Use of force

Insert “or retail supplier concerned” after “network operator” in section 56 (1).

[27] Section 57 Notification of use of force or urgent entry

Insert “or retail supplier concerned” after “network operator” in section 57 (1).

[28] Section 57 (2)

Insert “or retail supplier” after “network operator” wherever occurring.

[29] Section 58 Care to be taken

Insert “or retail supplier concerned” after “network operator” in section 58 (4).

[30] Section 59 Recovery of cost of entry and inspection

Insert “or retail supplier concerned” after “network operator” where firstly occurring.

[31] Section 59

Insert “or retail supplier” after “network operator” where secondly occurring.

[32] Section 60 Compensation

Insert “or retail supplier concerned” after “network operator”.

[33] Section 61 Certificates of authority to enter land

Insert “or retail supplier concerned” after “network operator” in section 61 (1) (a).

[34] Section 61 (2) (f)

Insert “or retail supplier” after “network operator” wherever occurring.

[35] Section 63 Warrants of entry

Insert “or retail supplier” after “network operator” in section 63 (1).

[36] Section 63A Other powers of entry unaffected

Insert “or customer supply contract” after “customer connection contract”.

[37] Parts 5A and 5B

Insert after Part 5:

Part 5A Market operations

63B Definition

In this Part:

market operations rule means a rule approved under section 63C.

63C Market operations rules

- (1) The Minister may approve rules for or with respect to the following matters:
 - (a) obligations to enter into, and the form and content of, agreements between distribution network service providers and retail suppliers for the use by retail suppliers of the distribution network service providers' distribution systems,
 - (b) procedures for measuring electricity consumption of customers,
 - (c) procedures for processing customers' electricity consumption data for the purposes of the National Electricity Code,
 - (d) provision of services and equipment relating to the measurement and control of customers' electricity consumption and persons who may or may not provide such services,
 - (e) requirements for equipment used to measure and control customers' electricity consumption,
 - (f) the circumstances in which ownership of any such equipment may be transferred and the procedures for the transfer,
 - (g) the making of arrangements on behalf of customers for the provision of customer connection services,

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- (h) the circumstances in which customers may be transferred between retail suppliers and the procedures for the transfer, including procedures relating to consent of and notice to customers and determination of time of transfer and costs as at transfer,
 - (i) any other matter prescribed by the regulations,
 - (j) matters ancillary to or consequential on the matters set out in paragraphs (a)–(i).
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (3) A rule may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or the revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
- (a) written notice of the approval of the rule must be published in the Gazette, and
 - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
 - (c) the Minister must make available a copy of the rule to each retail supplier or distribution network service provider.
- (6) A rule must be consistent with this Act and the regulations. A rule is unenforceable to the extent of any such inconsistency.

63D Obligations under rules

- (1) A person must not contravene the market operations rules.
Maximum penalty: 200 penalty units.
- (2) It is a condition of a retail supplier's licence that the retail supplier must comply with the market operations rules.
- (3) It is a condition of a distribution network service provider's licence that the distribution network service provider must comply with the market operations rules.
- (4) Subsection (1) does not apply to a person in the person's capacity as a customer of a retail supplier.

63E Metrology co-ordinator

The regulations may make provision for or with respect to the following matters:

- (a) the appointment by the Minister of a metrology co-ordinator for the purposes of this Act, the market operations rules and the National Electricity (NSW) Law,
- (b) the functions of the metrology co-ordinator,
- (c) the terms and conditions of appointment of the metrology co-ordinator,
- (d) the termination of the appointment of the metrology co-ordinator.

Part 5B Marketing of electricity

63F Definitions

In this Part:

electricity marketer means any of the following persons:

- (a) a person who is a retail supplier,
- (b) a person who acts as agent of a retail supplier for the purposes of obtaining new customers, or retaining existing customers, for the retail supplier,
- (c) a person who acts as agent of one or more customers in respect of the retail supply of electricity,

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- (d) a person who acts as an intermediary in any other capacity between one or more customers and a retail supplier in respect of the retail supply of electricity,
 - (e) a person who engages in or carries on any other activity relating to electricity or the electricity industry prescribed by the regulations for the purposes of this definition.

Marketing Code of Conduct means the code of conduct approved by the Minister under section 63G.

63G Marketing Code of Conduct

- (1) The Minister may approve a code of conduct as the Marketing Code of Conduct for the purposes of this Part.
- (2) An approval may be revoked.
- (3) If a Marketing Code of Conduct is approved by the Minister:
 - (a) the Code must be published in the Gazette, and
 - (b) the Code takes effect on the day on which it is so published or, if a later day is specified in the Code for commencement, on the later day so specified.

63H Obligations under Marketing Code of Conduct

An electricity marketer that contravenes a requirement of the Marketing Code of Conduct in relation to a small retail customer is guilty of an offence.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

63I Licence conditions relating to marketing activities relating to small retail customers

It is a condition of a retail supplier's licence that:

- (a) the retail supplier must comply with the Marketing Code of Conduct, and
- (b) before entering into a negotiated customer supply contract with a small retail customer introduced to the retail supplier by an electricity marketer, or that is arranged or facilitated by an electricity marketer, the retail supplier must be satisfied that the electricity

marketer has complied with the Marketing Code of Conduct (including any requirements relating to the customer's consent).

63J Non-licensed electricity marketers to provide statements

- (1) An electricity marketer (other than the holder of a retail supplier's licence) must, if the marketer introduces a small retail customer to a retail supplier, or arranges or facilitates a customer supply contract between any such customer and a retail supplier, give to the retail supplier a written statement to the effect that the electricity marketer has complied with the Marketing Code of Conduct with respect to the customer (including any requirements relating to the customer's consent).
- (2) An electricity marketer must not give to a retail supplier a statement under this section knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

[38] Section 65 Interference with electricity works

Insert "or retail supplier's" after "network operator's".

[39] Section 65

Insert "or retail supplier concerned" after "network operator".

[40] Section 72 Charges for the use of electricity prohibited

Insert after section 72 (4):

- (4A) The regulations may, either unconditionally or subject to conditions, exempt:
 - (a) any specified person or class of persons, or
 - (b) any specified matter or class of matters,from the operation of subsection (1).

[41] Section 72 (6)

Omit "local electricity distributor" from paragraph (b) of the definition of *maximum allowable amount*.

Insert instead "relevant standard retail supplier".

[42] Section 83 Distribution districts of distribution network service providers

Omit “Each electricity distributor” from section 83 (1).
Insert instead “Each distribution network service provider”.

[43] Section 84 Variation of distribution districts

Omit “electricity distributor’s” from section 84 (1) (a).
Insert instead “distribution network service provider’s”.

[44] Section 84 (1) (b)

Omit “electricity distributor”.
Insert instead “distribution network service provider”.

[45] Section 85 Transfer of staff, assets, rights and liabilities

Omit “other electricity distributor” from section 85 (1).
Insert instead “other distribution network service provider”.

[46] Section 87 Licence auditing functions of Tribunal

Insert after section 87 (1):

(1A) Without limiting subsection (1), the Tribunal must, if requested by the Treasurer, monitor and report to the Minister and the Treasurer on the extent to which standard retail suppliers or a specified standard retail supplier comply, or fail to comply, with the conditions set out in section 43ER.

(1B) The Tribunal must prepare and forward to the Treasurer and the Minister a report requested under subsection (1A) within the period specified in the request.

[47] Sections 87B–87D

Insert after section 87A:

87B Provision of information, documents and evidence

(1) For the purposes of monitoring and reporting under section 87 (1A) and (1B), the Chairperson of the Tribunal may, by notice in writing served on an officer of a standard retail supplier or

any other person, require the officer or person to do any one or more of the following:

- (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,
 - (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,
 - (c) to attend a meeting of the Tribunal to give evidence.
- (2) If documents are given to the Tribunal under this section, the Tribunal:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for those purposes, and
 - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.

87C Offences

- (1) A person must not, without reasonable excuse:
 - (a) refuse or fail to comply with a notice served under section 87B, or
 - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting of the Tribunal under section 87B.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
 - (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or

- (b) at a meeting of the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of section 87 (1A) or (1B) or 87B as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

87D Licence condition

It is a condition of a licence held by a standard retail supplier that the standard retail supplier must comply with section 87C.

[48] Section 89 Appointment of customer consultative groups

Omit “, in accordance with any guidelines in force under this section,” from section 89 (1).

[49] Section 89 (2) and (3)

Omit the subsections. Insert instead:

- (2) A standard retail supplier must appoint at least one customer consultative group to act as a forum for consultation between the retail supplier and its customers.

[50] Section 90 Constitution of customer consultative groups

Omit section 90 (3). Insert instead:

- (3) In all other respects, the constitution and procedure of a customer consultative group are to be as determined by the distribution network service provider or standard retail supplier, as the case requires.

[51] Section 91 Functions of customer consultative groups

Omit section 91 (2). Insert instead:

- (2) Except to the extent to which the regulations otherwise provide, the function of a customer consultative group appointed by a distribution network service provider is to provide information and advice on the following matters to the service provider:
 - (a) the form and content of the service provider's standard form customer connection contracts, and any amendments to those contracts,
 - (b) the effect on retail customers within its distribution district of any proposed changes in the way in which the service provider operates,
 - (c) any improvements in the way in which the service provider operates that the customer consultative group believes would benefit retail customers within its distribution district,
 - (d) such other matters as the service provider and the customer consultative group agree should be the subject of such advice.
- (3) Except to the extent to which the regulations otherwise provide, the function of a customer consultative group appointed by a standard retail supplier is to provide information and advice on the following matters to the retail supplier:
 - (a) the form and content of the retail supplier's standard form customer supply contracts, and any amendments to those contracts,
 - (b) the effect on retail customers within its supply district of any proposed changes in the way in which the retail supplier operates,
 - (c) any improvements in the way in which the retail supplier operates that the customer consultative group believes would benefit retail customers within its supply district,
 - (d) such other matters as the retail supplier and the customer consultative group agree should be the subject of such advice.

[52] Section 92

Omit the section. Insert instead:

92 Small retail customers

- (1) For the purposes of this Act, a small retail customer is:
 - (a) a person who consumes or is expected to consume electricity at premises at a rate that is less than the prescribed rate, determined in accordance with any relevant provisions of the regulations, or
 - (b) a person who consumes or is expected to consume electricity at premises used for a purpose prescribed by the regulations, or
 - (c) a person who is treated in accordance with any relevant provisions of the regulations as a small retail customer, even though the person is not a person described in paragraph (a) or (b).
- (2) The regulations may make provision for or with respect to determining whether or not a person consumes or is expected to consume electricity at a rate that is less than the prescribed rate for the purposes of subsection (1) (a).
- (3) The regulations may make provision for or with respect to:
 - (a) treating a person who consumes or may consume electricity at a rate that is the prescribed rate per year or more, or
 - (b) treating a person who consumes or may consume electricity at prescribed premises for the purposes of subsection (1) (b),as a small retail customer.
- (4) Subject to the regulations, this section applies separately in relation to each premises at which a person consumes or is expected to consume electricity.
- (5) Without limiting any other provision of this section, a regulation made for the purposes of this section may apply to a person only in respect of the consumption of electricity at certain premises (in which case the regulation does not apply

to that person in respect of the person's consumption of electricity at other premises).

- (6) In this Act, a reference to a small retail customer extends only to the supply of electricity to premises in relation to which the person is such a customer and does not extend to the supply of electricity to any other premises for which the person is not a small retail customer.
- (7) In this section:
prescribed rate means the rate, expressed as a number of megawatt hours (MWh) per year or in any other manner, specified in the regulations.

[53] Section 94 Authorised officers

Insert "or retail supplier" after "network operator" in section 94 (1).

[54] Section 94 (2)

Insert "appointed by a network operator" after "officer".

[55] Section 94 (3B)

Insert after section 94 (3A):

- (3B) An authorised officer appointed by a retail supplier:
- (a) has the functions of an authorised officer under this Act specified in the authorised officer's instrument of appointment, and
 - (b) may exercise those functions only with respect to the premises of customers of the retail supplier.

[56] Sections 96–96D

Omit section 96. Insert instead:

96 Internal review of certain decisions disputed by customers

- (1) A small retail customer may apply to a retail supplier for a review of a decision of the supplier in relation to any matter arising under the customer supply contract or any other matter prescribed by the regulations for the purposes of this subsection.

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- (2) A small retail customer may apply to a distribution network service provider for a review of a decision of the service provider in relation to any matter arising under the customer connection contract or any other matter prescribed by the regulations.
 - (3) Without limiting subsection (1), a person may apply to a licence holder for a review of a decision of the licence holder to classify the person as being or as not being a small retail customer.
 - (4) The regulations may make provision for or with respect to the following matters:
 - (a) the procedures for making an application and for dealing with an application that are to be contained in standard form customer supply contracts,
 - (b) imposing conditions on retail suppliers' licences and distribution network service providers' licences relating to the provision and implementation of procedures for dealing with an application.
 - (5) The regulations may treat a failure to make a decision within a specified period as a decision of a particular kind.
 - (6) An application made and dealt with under this section is to be free of charge to the applicant.

96A Review of certain decisions under electricity industry ombudsman scheme

- (1) A small retail customer, and any other person of a class prescribed by the regulations, may apply to an electricity industry ombudsman under an approved electricity industry ombudsman scheme for review of a decision in a dispute or complaint to which the scheme relates.
- (2) Except as provided by the scheme or by the regulations, a person does not have a right of review under this section in respect of a decision for which a review may be sought under section 96 unless the decision has been the subject of review under that section.
- (3) A review under this section is to be free of charge to small retail customers and to other persons of such classes as are prescribed by the regulations.

- (4) This section does not affect any jurisdiction that the Fair Trading Tribunal has under the *Consumer Claims Act 1998* or the Residential Tribunal has under the *Residential Tribunal Act 1998*.
- (5) The electricity industry ombudsman may decline to deal with a matter if it has been, is being or should be dealt with by another person or tribunal or there are, in the ombudsman's opinion, not sufficient grounds for further investigation.
- (6) Without limiting subsection (5), the electricity industry ombudsman may deal with a matter by making arrangements for it to be referred to another person or tribunal.

96B Electricity industry ombudsman scheme

- (1) The Minister may approve an electricity industry ombudsman scheme for the purposes of this Act, being a scheme that provides for the appointment of an electricity industry ombudsman to deal with:
 - (a) disputes and complaints under customer connection contracts and customer supply contracts entered into with small retail customers, and
 - (b) disputes between small retail customers and electricity marketers (within the meaning of Part 5B) and complaints by small retail customers about electricity marketers, and
 - (c) any other disputes and complaints of such classes (whether or not under contracts referred to in paragraph (a)) as are prescribed by the regulations.
- (2) Before approving such a scheme, the Minister must be satisfied that the scheme meets the following objectives:
 - (a) that all licence holders are members of the scheme, have agreed to be bound by decisions of the electricity industry ombudsman under the scheme and, as members, are so bound,
 - (b) that the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in subsection (1),

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- (c) that the electricity industry ombudsman will be able to operate independently of all licence holders in exercising functions under the scheme,
 - (d) that the scheme will be accessible to small retail customers and other customers prescribed by the regulations,
 - (e) that membership of the scheme will be accessible to all potential members and will provide appropriate representation for all members in relation to the scheme's governing body,
 - (f) that, without limiting any other application of the scheme, the scheme will apply to all disputes and complaints arising under customer connection contracts and customer supply contracts relating to small retail customers,
 - (g) that the scheme will operate expeditiously and without cost to customers,
 - (h) that the scheme will allow customers to choose whether or not they wish to be bound by determinations under the scheme,
 - (i) that the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations,
 - (j) that the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Minister,
 - (k) that the scheme will maintain the capacity of the electricity industry ombudsman, where appropriate, to refer disputes or complaints to other forums,
 - (l) that the scheme will require the electricity industry ombudsman to inform the Minister of substantial breaches of licence conditions, the Marketing Code of Conduct (within the meaning of Part 5B) or of the Act of which the ombudsman becomes aware,
 - (m) such other objectives as are prescribed by the regulations.

- (3) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (4) The Minister may at any time revoke an approval under this section.
- (5) If a dispute or complaint involving an electricity marketer (within the meaning of Part 5B) or person other than the holder of the licence is prescribed as a dispute or complaint to which an approved scheme may apply, the regulations may make it an offence for the electricity marketer or person to fail to comply with a decision of the electricity industry ombudsman under the scheme.
- (6) Notice of any approval given by the Minister under this section, and of the revocation of any such approval, is to be published in the Gazette.

96C Licence conditions relating to approved electricity industry ombudsman schemes

It is a condition of a distribution network service provider's licence and a retail supplier's licence under which a retail supplier supplies electricity to small retail customers that:

- (a) the licence holder must be a member of an approved electricity industry ombudsman scheme, and
- (b) the licence holder is bound by, and must comply with, any decision of the electricity industry ombudsman under the scheme relating to a dispute or complaint involving the licence holder and a small retail customer.

96D Other kinds of review

Nothing in this Act prevents provision being made in negotiated customer connection contracts and negotiated customer supply contracts for the resolution of disputes with persons not covered by either or both of sections 96 and 96A.

[57] Section 99B Agreement with licensed distribution network service providers

Omit "electricity distributors".

Insert instead "distribution network service providers".

[58] Section 99B

Omit “electricity distributors”.

Insert instead “distribution network service providers”.

[59] Section 100 Delegation of Minister’s and Electricity Tariff Equalisation Ministerial Corporation’s functions

Insert after section 100 (1):

- (1A) The Electricity Tariff Equalisation Ministerial Corporation may delegate to any person the exercise of any of its functions, other than this power of delegation.

[60] Section 106 Regulations

Insert after section 106 (1) (c1):

- (c2) requirements for customer connection contracts,
- (c3) the obligations of persons who obtain or receive information about customers or prospective customers with respect to the collection, keeping, disclosure or other use of that information and the inclusion of such obligations in customer connection contracts and customer supply contracts,

[61] Section 106 (1) (f) and (f1)

Omit section 106 (1) (f). Insert instead:

- (f) the obligations of an electricity industry ombudsman under an approved electricity industry ombudsman scheme to provide copies of reports to the Minister and to report to the Minister on the operation of the scheme,
- (f1) facilitating the Government’s social programs for electricity, including:
 - (i) the giving, and enforcement, of directions by the Minister, or agreements, with respect to implementation of any such program in relation to a specified class or specified classes of customers,

- (ii) the payment and assessment of the costs of giving effect to any such directions,
- (iii) the publication of directions and agreements,

[62] Section 106 (2)

Omit “, 17”.

[63] Section 110 Review of Act

Omit “this Act” from section 110 (2).

Insert instead “the *Electricity Supply Amendment Act 2000*”.

[64] Schedule 6 Savings, transitional and other provisions

Insert “*Electricity Supply Amendment Act 2000*” at the end of clause 1 (1).

[65] Schedule 6, Part 4

Insert at the end of Schedule 6:

Part 4 Provisions consequent on enactment of Electricity Supply Amendment Act 2000

21 Definitions

In this Part:

amending Act means the *Electricity Supply Amendment Act 2000*.

instrument means any other Act or statutory instrument.

22 Change of nomenclature: electricity distributor

- (1) A reference in any instrument (other than this Act) to an electricity distributor (in its capacity as the operator of a distribution system) is to be construed as a reference to a distribution network service provider.
- (2) A reference in any instrument (other than this Act) to an electricity distributor’s licence is to be construed as a reference to a distribution network service provider’s licence.

- (3) An electricity distributor's licence is taken to be a distribution network service provider's licence and the provisions of this Act as amended by the amending Act apply accordingly.

23 Distribution network service provider holding retail supplier's licence

- (1) This clause applies to a distribution network service provider that held a retail supplier's licence immediately before the commencement of Schedule 1 [4] to the amending Act.
- (2) The Minister may impose a condition on the licence of a distribution network service provider requiring the distribution network service provider to take all such steps as are necessary to effect the transfer of a retail supplier's licence held by the distribution network service provider.
- (3) The Minister may impose such conditions on the licence of the person to whom the licence is transferred as the Minister thinks fit.
- (4) It is a condition of the distribution network service provider's licence or the licence of a person to whom a licence is transferred under this clause that the holder of the licence must comply with a condition imposed under this clause.
- (5) Nothing in this clause affects the generality of any provision of Schedule 2.

24 Retail suppliers' licences

- (1) A retail supplier's licence held by a distribution network service provider immediately before the commencement of Schedule 1 [10] to the amending Act is taken to be a licence held by a standard retail supplier and the provisions of this Act as amended by the amending Act apply accordingly.
- (2) The supply district of such a standard retail supplier is, until altered in accordance with this Act, taken to be the distribution district of the distribution network service provider immediately before the commencement of Schedule 1 [10] to the amending Act.
- (3) A retail supplier's licence (other than a licence referred to in subclause (1)) in force immediately before the commencement of Schedule 1 [10] to the amending Act is taken to have been

granted under this Act as amended and the provisions of this Act, as so amended, apply accordingly.

25 Franchise customers

- (1) For the purposes of this Part, a customer who would be a franchise customer but for the amending Act is taken to be a transitional retail customer.
- (2) However, a person who, immediately before the repeal of section 43 by the amending Act, was supplied electricity under an arrangement made under section 43 (1) (b) is not taken to be a transitional retail customer.
- (3) Subject to this Part, this Act applies to a transitional retail customer in the same way as it applies to a small retail customer who has elected to be supplied with electricity under a standard form customer supply contract.
- (4) A retail supplier must not supply electricity to a transitional retail customer under a negotiated customer supply contract.
- (5) A customer ceases to be a transitional retail customer if the customer becomes the subject of an order under clause 26 or makes an election under subclause (6).
- (6) A transitional retail customer who was the subject of an order in force under section 92 (as in force immediately before its substitution by the amending Act) enabling the customer to elect to become a non-franchise customer may elect to cease to be a transitional retail customer.
- (7) The election is to be made in the same manner as an election under the order to become a non-franchise customer.
- (8) This clause ceases to have effect when there are no transitional retail customers.

26 Orders relating to transitional retail customers

- (1) The Minister may, by order published in the Gazette, declare that any specified person, or any specified class of persons, ceases to be a transitional retail customer.
- (2) An order under this clause may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or

- (b) apply differently according to different factors of a specified kind.
- (3) In particular, an order under this clause may apply to a person only in respect of the consumption of electricity at certain premises (in which case the order does not apply to that person in respect of the person's consumption of electricity at other premises).
- (4) An order under this clause takes effect on the day on which it is published in the Gazette or on such later day as is specified in the order.
- (5) Subject to the regulations, the Minister may not make an order under this clause unless:
 - (a) notice of the proposal to make the order has been published in a daily newspaper circulating throughout New South Wales, and
 - (b) a report on any submissions received with respect to the proposed order has been prepared.
- (6) The notice referred to in subclause (5) (a) must indicate:
 - (a) the nature of the proposed order, and
 - (b) where submissions on the proposed order should be lodged, and
 - (c) the time (being not less than 21 days from the date on which the notice is published) within which any such submission should be lodged, and
 - (d) such other matters as may be prescribed by the regulations.
- (7) The report referred to in subclause (5) (b):
 - (a) must summarise the substance of the submissions received by the Minister in connection with the proposed order, and
 - (b) must contain such other information as may be prescribed by the regulations, and
 - (c) must be kept available at the head office of the Ministry of Energy for inspection by members of the public, free of charge, during normal office hours.

27 Election to take supply under standard form customer supply contract

- (1) This clause applies to a person who ceases to be a transitional retail customer and who, on so ceasing, becomes a small retail customer.
- (2) The person is, unless the person applies to a retail supplier to be supplied under a negotiated customer supply contract, taken to have elected to be supplied with electricity under a standard form customer supply contract.
- (3) Nothing in this clause prevents the person from subsequently applying to a retail supplier to be supplied under a negotiated customer supply contract.

28 Supply of electricity to franchise customers

- (1) It is a condition of a retail supplier's licence that the retail supplier must not supply electricity to the premises of a transitional retail customer otherwise than:
 - (a) in the case of a standard retail supplier, for the purpose of supplying electricity to the customer under the obligation imposed on the retail supplier by section 34, or
 - (b) in the case of any other retail supplier, for the purpose of providing electricity to the customer on behalf of a standard retail supplier under the obligation imposed on the retail supplier by section 34.
- (2) This clause does not affect any arrangements approved by the Minister under which standard retail suppliers with adjoining supply districts supply electricity to transitional retail customers in each others' supply districts.

29 Standard form customer supply contracts

- (1) Any standard form customer supply contract prepared under section 39 before the substitution of that section by the amending Act is taken to have been prepared under and in accordance with that section as substituted, for a period of 3 months after that substitution or for a longer or shorter period determined by the Minister by order published in the Gazette.

- (2) Except where expressly provided, nothing in the amending Act affects any agreement (in force immediately before the commencement of Schedule 1 [10] to the amending Act) taken to have been entered into under section 41 (5) for the provision of electricity on the conditions set out in a standard form customer supply contract, for a period of 3 months after that commencement or for a longer or shorter period determined by the Minister by order published in the Gazette. Any such agreement is taken to continue in force for that period.
- (3) Despite subclause (2), the regulations may provide for the application of provisions of this Act, as amended by the amending Act, to any such standard form customer supply contract.
- (4) Subclause (2) does not prevent a customer from entering into a new customer supply contract at any time after that commencement.
- (5) Anything done under or for the purposes of Division 2 of Part 4 before its repeal by the amending Act is taken to have been done under or for the purposes of Division 3 of that Part as inserted by the amending Act.

30 Negotiated customer supply contracts

- (1) Except where expressly provided, nothing in the amending Act affects a negotiated customer supply contract in force immediately before the commencement of Schedule 1 [10] to the amending Act.
- (2) Despite subclause (1), the regulations may provide for the application of provisions of this Act, as amended by the amending Act, to any such negotiated customer supply contract.

31 Appeals

- (1) Any person may appeal against the decision of a retail supplier (made before the commencement of Schedule 1 [56] to the amending Act) as to:
 - (a) the supplier's classification of the person as a franchise or non-franchise customer, or

(b) a charge payable by the person under a standard form customer supply contract.

- (2) Subject to any regulations expressed to be made for the purposes of this subclause, the regulations in force under section 96 (2) and (3) immediately before the commencement of Schedule 1 [56] to the amending Act apply to such an appeal, despite the repeal of section 96 by the amending Act.
- (3) Anything done under or for the purposes of section 96 before its repeal by the amending Act and in connection with such an appeal or an appeal made but not determined before that repeal is taken to have been done under or for the purposes of this clause and in connection with an appeal under this clause. However, this subclause does not confer any additional right to appeal in circumstances where an appeal was finally determined before that repeal.

32 Reviews relating to transitional retail customers

- (1) A person may apply to a licence holder for a review of the decision of the licence holder as to the licence holder's classification of the person as a transitional retail customer or as not being such a customer.
- (2) Section 96, as inserted by the amending Act, and the regulations, apply to any such review in the same way as they apply to a review under section 96 (3) as so substituted.

33 Reviews (see former clause 39A of Electricity Supply (General) Regulation 1996)

- (1) Subject to any regulations expressed to be made for the purposes of this subclause, clause 39A of the *Electricity Supply (General) Regulation 1996* as in force immediately before the commencement of Schedule 1 [56] to the amending Act continues to apply to any matter pending under the electricity industry ombudsman scheme referred to in that clause immediately before that commencement.
- (2) Subclause (1) ceases to have effect at the end of the period of 3 months after the commencement of Schedule 1 [56] to the amending Act.

34 Customer consultative groups

A customer consultative group appointed by an electricity distributor and in existence immediately before the commencement of the amendment of section 89 by the amending Act is taken to be:

- (a) a customer consultative group appointed to act as a forum for consultation between the distribution network service provider (in its capacity as such a provider) and its customers, and
- (b) a customer consultative group appointed to act as a forum for consultation between the distribution network service provider (in its capacity as a retail supplier) and its customers.

35 Requirements to pay contributions

- (1) Section 25, as in force immediately before its amendment by the amending Act, continues to apply in respect of customer connection services provided, or agreed to be provided:
 - (a) before the commencement of the amendment, or
 - (b) on or after that commencement and before a determination by the Tribunal, as referred to in section 25 as so amended, is in force for the purposes of that section.
- (2) For the purposes of making its initial determination under section 11 (3) of the *Independent Pricing and Regulatory Tribunal Act 1992*, the Tribunal is not required to comply with section 21 of that Act.

36 Distribution network service provider's levy and price determinations

- (1) Division 5 of Part 3, as in force immediately before the amendment of section 32B by the amending Act, continues to apply to or in respect of the remainder of the financial year to which the levy in force under section 32B immediately before that amendment is applicable.
- (2) Division 4 of Part 4, as in force immediately before the amendment of section 43B by the amending Act, continues to apply in to or in respect of the pricing of electricity network

services and electricity in relation to the financial year referred to in subclause (1).

37 Initial determination of regulated retail tariffs and regulated retail charges

For the purposes of the initial determination of regulated retail tariffs and regulated retail charges under section 43EB, a recommendation contained in a final report of the Tribunal under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* under an arrangement entered into between the Premier and the Tribunal on 14 July 2000 is taken to be a determination under section 43EB.

38 Initial payments to Electricity Tariff Equalisation Fund

- (1) The Electricity Tariff Equalisation Ministerial Corporation may obtain financial accommodation for the purposes of an initial amount or amounts to be paid to the Electricity Tariff Equalisation Fund.
- (2) The initial amount or amounts are to be paid to the Electricity Tariff Equalisation Fund and may be used for the purposes of that Fund.
- (3) Amounts may be paid from that Fund for the purposes of repayments and payments of interest payable in respect of the financial accommodation.
- (4) The financial accommodation is to be obtained under, and in accordance with, any other Act applying to the obtaining of financial accommodation by the Electricity Tariff Equalisation Ministerial Corporation.
- (5) In this clause:
financial accommodation has the same meaning as it has in the *Public Authorities (Financial Arrangements) Act 1987*.

39 Initial operation of Divisions 5 and 6 of Part 4 and Parts 5A and 5B

- (1) The regulations may, for the purposes of the commencement or initial operation of Division 5 or 6 of Part 4, or Part 5A or 5B, impose conditions on licences and provide for the transitional application of provisions of those Divisions or Parts.

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- (2) Nothing in this clause limits the operation of any other provision of this Act.

[66] Dictionary

Insert in alphabetical order:

approved electricity industry ombudsman scheme means a scheme approved under section 96B.

distribution network service provider means a person who owns or controls a distribution system.

distribution network service provider's licence means a licence referred to in section 14.

Electricity Tariff Equalisation Fund means the Fund constituted under section 43EN.

Electricity Tariff Equalisation Ministerial Corporation means the Corporation of that name constituted under section 43EM.

regulated retail charge means a security deposit, late payment fee or fee for a dishonoured bank cheque of an amount specified in a determination in force under Division 5 of Part 4.

regulated retail tariff means a tariff for or in relation to the supply of electricity required to be charged to a small retail customer under a standard form customer supply contract, being a tariff specified in a determination in force under Division 5 of Part 4.

small retail customer—see section 92.

standard retail supplier means a retail supplier to whose retail supplier's licence is attached a standard retail supplier's endorsement as referred to in section 33A.

supply district of a standard retail supplier means the supply district described in a condition of the standard retail supplier's licence.

[67] Dictionary

Omit the definition of *customer connection service*. Insert instead:

customer connection services means any of the following services:

- (a) the connection of any premises to a distribution network service provider's distribution system,
- (b) an increase in the maximum capacity of any premises' existing connection to a distribution network service provider's distribution system,
- (c) the maintenance of the capability for electricity to be supplied to any premises from a distribution network service provider's distribution system,

and includes services of a kind prescribed by the regulations as being within this definition, but does not include services of a kind prescribed by the regulations as not being within this definition.

[68] Dictionary

Omit "the distributor" from the definition of *distribution district*.

Insert instead "the service provider".

[69] Dictionary

Omit the definitions of *electricity distributor*, *electricity distributor's licence*, *franchise customer* and *non-franchise customer*.

[70] Dictionary

Omit "Division 3" from the definition of *negotiated customer supply contract*.

Insert instead "Division 2".

[71] Dictionary

Omit "Division 2" from the definition of *standard form customer supply contract*.

Insert instead "Division 3".

Schedule 2 Amendment of other Acts and Regulations

(Section 4)

2.1 Electricity (Pacific Power) Act 1950 No 22

Section 3 Definitions

Omit paragraph (b) of the definition of *Electricity supply authority* from section 3 (1).

Insert instead:

- (b) a distribution network service provider within the meaning of the *Electricity Supply Act 1995*, or

2.2 Electricity Safety Act 1945 (1946 No 13)

[1] Section 4 Definitions

Omit “an electricity distributor” from the definition of *Distribution district*.
Insert instead “a distribution network service provider”.

[2] Section 4 (1)

Omit the definition of *Electricity distributor* from section 4 (1).
Insert instead in alphabetical order:

Distribution network service provider means a distribution network service provider within the meaning of the *Electricity Supply Act 1995*.

[3] Section 4 (1)

Omit “an electricity distributor” from paragraph (b) of the definition of *Electricity supply authority*.
Insert instead “a distribution network service provider”.

[4] Section 4 (1)

Omit “an electricity distributor’s” from the definition of *Reticulation*.
Insert instead “a distribution network service provider’s”.

[5] Section 4 (1)

Omit “the distributor’s” from the definition of *Reticulation*.
Insert instead “the provider’s”.

[6] Section 4 (2)

Omit “an electricity distributor”.
Insert instead “a distribution network service provider”.

[7] Section 4 (2)

Omit “the distributor”. Insert instead “the service provider”.

[8] Section 15 Electricity Development Fund

Omit “electricity distributor” from section 15 (2) (a).
Insert instead “distribution network service provider”.

[9] Section 15 (2A)

Omit “An electricity distributor”.
Insert instead “A distribution network service provider”.

[10] Section 19F Definitions

Omit “an electricity distributor” from the definition of *electricity structure*.
Insert instead “a distribution network service provider”.

[11] Section 19G Director may direct distribution network service provider to remove structure

Omit “an electricity distributor” from section 19G (1).
Insert instead “a distribution network service provider”.

[12] Section 19G (1)

Omit “the distributor”. Insert instead “the service provider”.

[13] Section 19G (2)

Omit “An electricity distributor”.
Insert instead “A distribution network service provider”.

[14] Section 26 Safety

Insert “or retail supplier (within the meaning of the *Electricity Supply Act 1995*)” after “electricity supply authority” in section 26 (1).

[15] Section 26 (3)

Insert “or retail supplier (within the meaning of the *Electricity Supply Act 1995*)” after “electricity supply authority” where firstly occurring.

[16] Section 26 (3)

Insert “or retail supplier” after “electricity supply authority” where secondly occurring.

[17] Section 37 Regulations

Insert “or retail suppliers (within the meaning of the *Electricity Supply Act 1995*)” after “electricity supply authorities” in section 37 (2) (m).

[18] Section 37 (2) (qq)

Omit “an electricity distributor”.
Insert instead “a distribution network service provider”.

2.3 Independent Pricing and Regulatory Tribunal Act 1992 No 39

[1] Part 3, Division 1, heading

Insert “and electricity costs determinations” after “Pricing”.

[2] Section 11 Investigations and reports by Tribunal—standing reference

Insert after section 11 (2):

- (3) The Tribunal is to conduct investigations and make reports to the Minister on:
 - (a) the proportion of the costs of a distribution network service provider, as referred to in section 25 (1) of the *Electricity Supply Act 1995*, that the distribution network service provider may require new customers to contribute, and
 - (b) the proportion of the costs of a distribution network service provider, as referred to in section 25 (2) of that Act, that the distribution network service provider may require further new customers to contribute, and
 - (c) the repayment, from any such contributions, to existing customers who have previously contributed to such costs, as referred to in section 25 (3) of that Act.

[3] Part 3, Division 5, heading

Insert “**and electricity costs determinations**” after “**determinations**”.

[4] Section 14B

Insert after section 14A:

14B Determinations of electricity costs contributions and related matters

- (1) In making a determination of the proportion of costs that a distribution network service provider may require new customers or further new customers to contribute, the Tribunal may fix the maximum proportion of the costs or set the methodology for fixing the maximum proportion of the costs.
- (2) A determination of the Tribunal of the maximum proportion of costs may fix that proportion in any manner the Tribunal considers appropriate.

- (3) In making a determination as to the repayments from such contributions to existing customers, the Tribunal may set the methodology for determining the repayments.
- (4) A determination of the Tribunal of the methodology for fixing the maximum proportion of costs or for determining repayments may be made in any manner the Tribunal considers appropriate.

[5] Section 15 Matters to be considered by Tribunal under this Act

Insert after section 15 (3):

- (4) This section does not apply to the Tribunal in the exercise of any of its functions under section 11 (3).

[6] Section 17 Gazettal of determinations

Insert “or for the purposes of section 11 (3)” after “service” in section 17 (1).

2.4 Land Tax Management Act 1956 No 26

Section 10 Land exempted from tax

Omit “an electricity distributor” from section 10 (1) (n).
Insert instead “a distribution network service provider”.

2.5 Public Authorities (Financial Arrangements) Regulation 2000

Schedule 2 Authorities having Part 3 investment powers

Insert in appropriate order:

Electricity Tariff Equalisation Ministerial Corporation

2.6 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in appropriate order:

Electricity Tariff Equalisation Ministerial Corporation

2.7 Transport Administration Act 1988 No 109

[1] Section 45E Interpretation

Omit “electricity distributor” from the definition of *distribution district* in section 45E (1).

Insert instead “electricity distribution network service provider”.

[2] Section 45E (1), definition of “distribution district”

Omit “the electricity distributor’s”. Insert instead “the provider’s”.

[3] Section 45E (1)

Omit the definition of *electricity distributor*. Insert instead:

electricity distribution network service provider means a distribution network service provider within the meaning of the *Electricity Supply Act 1995*.

[4] Section 45E (1), definition of “electricity structure”

Omit “electricity distributor”.

Insert instead “electricity distribution network service provider”.

[5] Section 80C Payments of subsidies to electricity distribution network service providers for removal or relocation of electricity structures

Omit “electricity distributor” wherever occurring.

Insert instead “electricity distribution network service provider”.

[6] Section 80C (1)

Omit “the distributor”. Insert instead “the provider”.

[7] Schedule 7 Savings, transitional and other provisions

Omit “electricity distributor” where secondly occurring in clause 81 (2).
Insert instead “electricity distribution network service provider”.

[Minister's second reading speech made in—
Legislative Assembly on 16 November 2000
Legislative Council on 5 December 2000]