

Passed by both Houses



New South Wales

Pacific Power (Dissolution) Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Pacific Power (Dissolution) Bill 2003

Act No , 2003

An Act to dissolve Pacific Power and to constitute the Residual Business Management Corporation to manage the residual assets, rights and liabilities of Pacific Power; to provide for other consequential matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Pacific Power (Dissolution) Bill 2003

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Pacific Power (Dissolution) Act 2003*.

2 Commencement

This Act commences or is taken to have commenced on 1 July 2003.

3 Definitions

(1) In this Act:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

Corporation means the Residual Business Management Corporation constituted by this Act.

exercise a function includes perform a duty.

function includes a power, authority or duty.

liabilities means any liabilities, debts and obligations (whether present or future and vested or contingent).

Pacific Power means the corporation established by section 5 of the *Electricity (Pacific Power) Act 1950*.

public sector service has the same meaning as it has in the *Public Sector Employment and Management Act 2002*.

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

Part 2 Dissolution of Pacific Power

4 Dissolution of Pacific Power

Pacific Power is dissolved.

Part 3 Constitution and functions of Residual Business Management Corporation

Division 1 Constitution and management of Corporation

5 Constitution of Residual Business Management Corporation

- (1) There is constituted by this Act a corporation with the corporate name “Residual Business Management Corporation”.
- (2) The Corporation is, for the purposes of any Act, a statutory body representing the Crown.

6 Objectives of Corporation

The objectives of the Corporation are as follows:

- (a) to manage its assets, rights and liabilities effectively and responsibly,
- (b) to operate at least as efficiently as any comparable business,
- (c) to minimise the risk exposure of the State arising from its activities,
- (d) to achieve the efficient and timely winding up of residual business activities.

7 General Manager of Corporation

- (1) The Minister may appoint a General Manager of the Corporation.
- (2) The employment of the General Manager is not subject to Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (3) The Minister may, from time to time, appoint a person to act in the office of the General Manager during the absence or illness of the General Manager (or during a vacancy in the office of the General Manager) and the person, while so acting, has all the functions of the General Manager and is taken to be the General Manager.
- (4) The Minister may, at any time for any or no reason and without notice, remove a person from office as General Manager or acting General Manager.
- (5) The Minister is to determine the salary and conditions of employment of the General Manager.

- (6) Nothing in this section or any other Act or law prevents the Minister from appointing a person who already holds a position in a public sector service as General Manager, in addition to any other position held by the person.

8 General Manager to manage and control affairs of Corporation

- (1) The affairs of the Corporation are to be managed and controlled by the General Manager of the Corporation.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the General Manager is taken to have been done by the Corporation.
- (3) The General Manager is, in the exercise of the General Manager's functions, subject to the direction and control of the Minister.

9 Staff of Corporation

- (1) The Corporation may employ such staff as it requires to exercise its functions.
- (2) The Corporation may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) The Corporation may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or any other public or local authority.
- (4) Any staff of whose services the Corporation makes use is taken to be staff of the Corporation for the purposes of this Act and any other Act that confers functions on the Corporation.

10 Transfer of staff of Corporation

- (1) The Minister may direct, by order in writing, that any specified staff members of the Corporation be transferred to a public sector service, or a State owned corporation, specified in the order.
- (2) Sections 87 (3) (a) and 89 and Division 2 of Part 3.2 of the *Public Sector Employment and Management Act 2002* apply to a transfer under this section from the Corporation to a public sector service in the same way that they apply to a transfer under section 87 of that Act from the service of a public sector agency to another public sector agency.

Note. The provisions referred to in subsection (2) provide for the retention of existing remuneration and leave entitlements for transferred officers.

- (3) A member of staff transferred to a State owned corporation under this section is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the staff member had the staff member not been transferred but remained a staff member of the Corporation.

Division 2 Functions of Corporation

11 Functions of Corporation

- (1) The Corporation has the following functions:
- (a) to hold on behalf of the State, retain, transfer or dispose of assets, rights and liabilities transferred to it by or under this or any other Act,
 - (b) to carry on any business or activity that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, rights or liabilities,
 - (c) to develop and manage land transferred to it under this Act or otherwise acquired by it,
 - (d) for the purpose of exercising its functions, to enter into any contracts or arrangements for the carrying out of any works or the performance of services or the supply of goods or materials,
 - (e) to do any other thing that is supplemental or incidental to the exercise of its functions,
 - (f) any other functions conferred or imposed on it by or under this or any other Act.
- (2) The Corporation may exercise its functions within or outside New South Wales.

12 Delegation of functions

The Corporation may, with the approval of the Minister, delegate to any person the exercise of its functions, other than this power of delegation.

13 Business plan of Corporation

- (1) The Corporation must prepare and submit to the Minister a business plan not later than 3 months after the commencement of each financial year of the Corporation.

- (2) The business plan must specify:
- (a) the strategy that the Corporation intends to adopt to further its objectives, and
 - (b) the nature and scope of the activities proposed to be undertaken by the Corporation, and
 - (c) any other matters required by the Minister.

Part 4 Property of Corporation

14 Property of Pacific Power to become property of Corporation

- (1) On the dissolution of Pacific Power, the assets, rights and liabilities of Pacific Power immediately before that dissolution become the assets, rights and liabilities of the Corporation.
- (2) This section does not apply to or in respect of a guarantee taken to have been entered into by the Treasurer under clause 6 of Schedule 4.

15 Transfer of assets, rights and liabilities of Corporation

- (1) The Minister may, by order in writing, transfer to a State owned corporation, a subsidiary of the Corporation, the Crown, a local authority or any other person or body acting on behalf of the Crown specified in the order any assets, rights or liabilities of the Corporation.
- (2) The Minister may, by further order under this section, further transfer any assets, rights or liabilities previously transferred under this section.
- (3) An order under this section may be subject to specified terms and conditions.
- (4) Schedule 1 applies to the transfer of assets, rights and liabilities under this section.

Part 5 Miscellaneous

16 Provisions of Parts 3 and 4 are Corporations legislation displacement provisions

The provisions of Parts 3 and 4 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation generally.

Note. Section 5G (11) of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State legislation would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

17 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

18 Repeals

The Acts and Regulation specified in Schedule 2 are repealed.

19 Consequential amendment of other Acts and regulations

Each Act and regulation specified in Schedule 3 is amended as set out in that Schedule.

20 Savings and transitional provisions

Schedule 4 has effect.

21 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Transfer of assets, rights and liabilities

(Section 15)

1 Definitions

In this Schedule:

registration authority means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

transfer order means an order made under section 15.

transferee means the person or body to whom any assets, rights or liabilities are transferred under a transfer order.

transferor means the person or body from whom any assets, rights or liabilities are transferred under a transfer order.

2 Vesting of assets, rights and liabilities in transferee

When any assets, rights or liabilities are transferred under a transfer order, the following provisions have effect (subject to the transfer order):

- (a) the assets vest in the transferee by virtue of this clause without the need for any conveyance, transfer, assignment or assurance,
- (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
- (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any other Act, in any instrument made under any other Act or in any document of any kind to the transferor or predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.

3 Consideration for vesting

A transfer order may specify the consideration for which a transfer to which it applies is made and the value or values at which the assets, rights or liabilities are transferred.

4 Date of vesting

A transfer order takes effect on the date it is made or on such other date as may be specified in the order.

5 Transfer of interests in land

- (1) A transfer order may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Act.

6 Confirmation of vesting

- (1) The Minister may by order in writing confirm a transfer of assets, rights or liabilities by operation of Part 4.
- (2) Such an order is evidence of the transfer.

7 Certification to registration authorities

- (1) The Minister, or a transferee under a transfer order, may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration authority to enable the registration authority to exercise any function of the authority arising in connection with the transfer of any asset, right or liability pursuant to the transfer order.
- (2) The certificate is to be accepted and acted on by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (3) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the transfer of an asset, right or liability by operation of Part 4.

8 Evidence of orders and certificates

A document purporting to be a transfer order or an order or certificate given under a provision of this Act is, unless the contrary is established, taken to be such an order or certificate and to have been properly made.

9 Exemption from duty

Duty under the *Duties Act 1997* is not chargeable in respect of:

- (a) a transfer of assets, rights or liabilities by operation of Part 4, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

10 Operation of section 15 and Schedule

- (1) The operation of section 15 and this Schedule is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of section 15 and this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.

Schedule 2 Repeals

(Section 18)

Electricity Commission (Amendment) Act 1982 No 63

Electricity Commission (Amendment) Act 1987 No 105

Electricity Commission (Amendment) Act 1989 No 3

*Electricity Commission (Appeal Tribunal) Amendment Act 1980
No 43*

*Electricity Commission (Balmain Electric Light Company
Purchase) Act 1950 No 40*

Electricity Commission (State Coal Mines) Act 1973 No 37

*Electricity Commission (Transfer of Reticulation Works) Act 1957
No 43*

Electricity (Pacific Power) Act 1950 No 22

*Electricity (Pacific Power) (Savings and Transitional)
Regulation 1995*

Schedule 3 Amendments

(Section 19)

3.1 Anti-Discrimination Act 1977 No 48

Section 49ZU Application of Part

Omit section 49ZU (1) (c). Insert instead:

- (c) 1 January 1993—persons who are employed in the public sector in fire fighting or fire prevention,

3.2 Attachment of Wages Limitation Act 1957 No 28

Schedule

Omit “Pacific Power”.

3.3 Dams Safety Act 1978 No 96

[1] Section 8 Members

Omit “8” from section 8 (1). Insert instead “9”.

[2] Section 8 (2) (a) and (a1)

Omit section 8 (2) (a). Insert instead:

- (a) a person nominated by Snowy Hydro Limited,
- (a1) a person nominated by the portfolio Minister under the *State Owned Corporations Act 1989* for the electricity generators that are State owned corporations under that Act,

3.4 Electricity Safety Act 1945 (1946 No 13)

[1] Section 4 Definitions

Omit paragraph (a) of the definition of *Electricity supply authority* in section 4 (1).

[2] Section 4 (1), definition of “Pacific Power”

Omit the definition.

[3] Section 14A Application of Part

Omit “Pacific Power or” wherever occurring.

[4] Section 15 Electricity Development Fund

Omit “, Pacific Power” from section 15 (2) (a).

[5] Section 37 Regulations

Omit “(other than by Pacific Power)” from section 37 (2) (dd).

3.5 Energy Services Corporations Act 1995 No 95

[1] Schedule 3 Transfer of staff, assets, rights and liabilities

Omit “3,” from clause 1 (1).

[2] Schedule 5 Savings, transitional and other provisions

Omit Division 1 of Part 2.

[3] Schedule 5, clause 16

Omit “Pacific Power,” from clause 16 (3).

3.6 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit “Pacific Power”.

Insert instead “Residual Business Management Corporation”.

3.7 Freedom of Information Regulation 2000

Schedule 1 Principal offices

Omit the matter relating to Pacific Power.

Insert in appropriate order:

Residual Business Management Corporation General Manager

3.8 Government and Related Employees Appeal Tribunal Act 1980 No 39

Schedule 4 Employing authorities

Omit “Pacific Power.”.

**3.9 Public Authorities (Financial Arrangements)
Regulation 2000**

[1] Schedule 2 Authorities having Part 3 investment powers

Omit “Pacific Power”.

[2] Schedule 3 Authorities having Part 4 investment powers

Insert in appropriate order “Residual Business Management Corporation”.

[3] Schedule 4 Authorities specifically included

Omit “Pacific Power (Subsidiary No. 1) Pty Ltd.”.

3.10 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Pacific Power”.

Insert in appropriate order “Residual Business Management Corporation”.

3.11 Public Sector Employment and Management Act 2002 No 43

[1] Section 133 Declared authorities to which Part applies

Omit “Pacific Power” from the Table to the section.

[2] Schedule 2 Executive positions (other than non-statutory SES positions)

Omit “Chief Executive of Pacific Power” from Part 2.

**3.12 State Authorities Non-contributory Superannuation
Act 1987 No 212**

Schedule 1 Employers

Omit “Pacific Power” from Part 1.

Insert instead “Residual Business Management Corporation”.

3.13 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit “Pacific Power” from Part 1.

Insert instead “Residual Business Management Corporation”.

3.14 Superannuation Act 1916 No 28

[1] Schedule 3 List of employers

Omit “Pacific Power” from Part 1.

Insert instead “Residual Business Management Corporation”.

[2] Schedule 26

Omit “Pacific Power” from Part 1.

Schedule 4 Savings and transitional provisions

(Section 20)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to, or commencement of, the Act concerned (whichever is earlier) or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Corporation same legal entity as Pacific Power

- (1) The Corporation is taken for all purposes (including the rules of private international law) to be a continuation of and the same legal entity as Pacific Power.
- (2) Despite subclause (1), the Treasurer is taken to be the successor of Pacific Power for all purposes (including the rules of private international law) in respect of the rights and liabilities under guarantees entered into by Pacific Power and referred to in clause 6.

3 Directors and senior executives of Pacific Power

A person who, immediately before the dissolution of Pacific Power, held office as a director of Pacific Power:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

4 Staff of Pacific Power

- (1) A member of staff of Pacific Power immediately before the dissolution of Pacific Power is (until other provision is duly made under any Act or law) to be employed as a member of staff of the Corporation in accordance with any relevant statutory provisions, awards, agreements and determinations that applied to the member of staff immediately before the dissolution.
- (2) A person who becomes a member of staff of the Corporation under this clause:
 - (a) retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the dissolution of Pacific Power, and
 - (b) is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy compensation) merely because of the dissolution of Pacific Power.
- (3) Section 64 (2) of the *Electricity (Pacific Power) Act 1950*, as in force immediately before the commencement of this Act, continues to apply to or in respect of a person who becomes a member of staff of the Corporation under this clause and so applies:
 - (a) as if a reference in that subsection to an employee of the Commission was a reference to any such person, and
 - (b) as if a reference in that subsection to the Commission was a reference to the Corporation.
- (4) Nothing in this Act affects any declaration that staff members were excess or surplus that applied to any members of staff of Pacific Power immediately before the dissolution of Pacific Power.
- (5) Nothing in this Act affects a secondment of a person to a wholly owned subsidiary of Pacific Power that was in force before the commencement of this Act. Any such person remains a staff member of the Corporation and is taken to have merely been seconded to that subsidiary by the Corporation.

5 References to Pacific Power

A reference in any other Act or instrument made under any other Act or in any other instrument of any kind to Pacific Power is, except as provided by clause 6 and the regulations, taken to be a reference to the Corporation.

6 Guarantees by Treasurer under former Pacific Power contracts

- (1) The Treasurer may guarantee the performance of obligations of a former subsidiary of Pacific Power, that is wholly owned by the Corporation, under a contract entered into by that subsidiary and in force immediately before the dissolution of Pacific Power.
- (2) Any such guarantee entered into by the Treasurer before the commencement of this Act is taken to have been validly entered into and given.
- (3) Any guarantee entered into by Pacific Power before the dissolution of Pacific Power in relation to a contract entered into by a wholly owned subsidiary of Pacific Power is, while the guarantee is in force, taken to have been entered into by the Treasurer.
- (4) Part 2C of the *Public Authorities (Financial Arrangements) Act 1987* applies to a guarantee entered into, or taken to have been entered into, by the Treasurer under this clause in the same way that it applies to a guarantee given under section 22B of that Act.
- (5) Nothing in this Act affects any guarantee entered into before the commencement of this Act under Part 2C of the *Public Authorities (Financial Arrangements) Act 1987* in relation to the performance of obligations of a former subsidiary of Pacific Power and any such guarantee continues to have effect under that Part.

7 Annual report after dissolution

- (1) A report relating to the operations of Pacific Power for the financial year ending 30 June 2003 is, subject to this clause, to be prepared under the *Annual Reports (Statutory Bodies) Act 1984*.
- (2) The report is to be submitted to the Treasurer with a letter signed by 2 persons who were directors of Pacific Power immediately before the dissolution of Pacific Power.
- (3) The report is not required to contain any information related to any future period.

8 Financial statements

For the purposes of section 43A of the *Public Finance and Audit Act 1983*, 2 or more persons who were directors of Pacific Power immediately before the dissolution of Pacific Power may prepare and submit financial statements for Pacific Power.

9 Previous transfers of assets, rights and liabilities of Pacific Power

- (1) Nothing in this Act affects the transfer, before the dissolution of Pacific Power, of any assets, rights or liabilities of Pacific Power under the *Energy Services Corporations Act 1995* and Schedule 3 to that Act continues to apply to or in respect of any such transfer.
- (2) Any such transfer is taken to have been validly done in connection with, or for purposes related to, the dissolution of Pacific Power.

10 Acts or omissions before assent to Act

Any act or thing done or omitted to be done on or after 1 July 2003 and before the date of assent to this Act is valid, and is taken to have always been valid, if the act or thing would have been valid if it had been done or omitted when this Act was in force.