

[Act 2000 No 109]



New South Wales

## Electricity Supply Amendment Bill 2000

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

#### Overview of Bill

The object of this Bill is to amend the *Electricity Supply Act 1995* (the *Principal Act*) and other Acts so as to provide the necessary framework in the electricity industry for the introduction of full retail competition and to make other consequential amendments. Full retail competition in the retail electricity market, that is, the extension of the right to choose an electricity retail supplier, is to be phased in for customers who do not currently have this right for the period from 1 January 2001 to 1 January 2002. At the moment “non-franchise customers” under the Principal Act are able to choose a retail supplier of electricity but “franchise customers” are not. The Bill:

- (a) extends the right to enter into negotiated contracts with retail suppliers to all customers (by removing the current distinctions between franchise customers and non-franchise customers) but makes savings and transitional provisions enabling the phasing in of full retail competition, and

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\* Amended in committee—see table at end of volume.

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- (b) separates the roles of providers of electricity distribution network services (*distribution network service providers*) and retail suppliers of electricity (*retail suppliers*) by imposing separate licensing obligations, and conditions applicable to the functions of each, on licences and removing the current obligation of some electricity distributors to hold retail suppliers' licences, and
- (c) recognises small customers of retail suppliers (*small retail customers*) and confers on them rights and protections, including rights to connection services, rights to apply to be supplied with electricity, rights to protections under contracts of connection and supply, rights to have electricity supplied at a regulated retail tariff, rights relating to transfers to different retail suppliers and rights relating to resolution of disputes, and
- (d) establishes the Electricity Tariff Equalisation Fund and the Electricity Tariff Equalisation Ministerial Corporation to equalise the effect of variable electricity purchase costs on retail suppliers who obtain electricity from the wholesale market (the price of which is subject to market fluctuations) but are required to supply electricity to small retail customers at the regulated retail tariff, and
- (e) provides a mechanism for the setting of regulated retail tariffs for electricity and regulated retail charges by the Independent Pricing and Regulatory Tribunal (the *Tribunal*), and
- (f) confers powers with respect to electricity works on retail suppliers, and
- (g) provides for marketers of electricity (including licensed retail suppliers, as well as other persons) to be subject to rules adopting a Marketing Code of Conduct, and
- (h) extends the operation and application of the electricity industry ombudsman scheme, and
- (i) enables the making of market operations rules by the Minister relating to network use of systems agreements, settlement of payments for electricity purchases by retail suppliers, the transfer of customers between retail suppliers and metering procedures and equipment, and
- (j) enables regulations to be made with respect to the appointment of a metrology co-ordinator for the purposes of meeting national electricity market obligations, and
- (k) gives the Tribunal a standing reference to determine the proportion of connection costs that a distribution network service provider may pass on to new customers and related matters, and

- (l) contains transitional arrangements for the staged implementation of full retail competition and contains other provisions of a savings and transitional nature, and
- (m) makes other amendments of a consequential and ancillary nature.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Electricity Supply Act 1995* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to other Acts and Regulations set out in Schedule 2.

### **Full retail competition—functions and licensing of distribution network service providers and retail suppliers and rights of small retail customers**

Currently, the Principal Act requires certain electricity distributors to also exercise the functions of retail suppliers as dual licence holders. The Principal Act also distinguishes between franchise and non-franchise customers with respect to rights to contract with electricity distributors and other retail suppliers. The amendments separate out functions attached to both licences, re-enact existing licence provisions and remove distinctions relating to franchise customers and non-franchise customers. At the same time, protections and rights are conferred on small retail customers. In particular, the following changes are made:

- (a) section 17, which currently requires electricity distributors to hold retail suppliers' licences, is repealed. The Minister will be able to impose a condition on a distribution network service provider's licence requiring the provider to transfer its retail supplier's licence (**Schedule 1 [4]** and **[65]** (proposed clause 23 of Schedule 6)),
- (b) proposed section 33A provides for categories of retail suppliers' licences by providing for endorsements for standard retail suppliers and other endorsements. A standard retail supplier's endorsement attaches conditions to the licence, including the requirement to use of standard form customer supply contracts for small retail customers (containing rights and protections), the

requirement to supply customers within the retail supplier's supply district in accordance with the Principal Act, the requirement to charge regulated retail tariffs and regulated retail charges under standard form customer supply contracts, the requirement to comply with certain rules and to provide information and requirements relating to the preparation of standard form customer supply contracts (**Schedule 1 [10]**),

- (c) proposed section 33B sets out requirements related to the transfer of endorsements on licences (**Schedule 1 [10]**),
- (d) proposed section 33C defines the supply district of a standard retail supplier (**Schedule 1 [10]**),
- (e) proposed section 34 gives a right to apply to be supplied with electricity, by the standard retail supplier for a supply district, to persons within the supply district who own or occupy premises connected to a distribution system or have a right to apply to be so connected. Any such person who is a small retail customer may elect to be supplied with electricity under a standard form customer supply contract. Any other such person may negotiate to be supplied with electricity under a negotiated customer supply contract. The retail supplier must ensure that electricity is supplied in accordance with the proposed section. The proposed section replaces the current obligation placed on electricity distributors to provide supply or to arrange supply services within their distribution district (**Schedule 1 [10]**),
- (f) proposed section 36 makes it a condition of a licence held by a standard retail supplier that charges for electricity under a standard form customer supply contract be in accordance with any determination by the Tribunal of the regulated retail tariff or regulated retail charges (**Schedule 1 [10]**),
- (g) proposed section 37 makes it clear (subject to any other obligations, such as those attached to a licence held by a standard retail supplier) that a retail supplier may, but is not required to, supply electricity to any customer (**Schedule 1 [10]**),
- (h) proposed section 38 makes it a condition of a retail supplier's licence that electricity must be supplied to retail customers under a customer supply contract (**Schedule 1 [10]**),
- (i) provision is made for negotiated customer supply contracts between customers and retail suppliers (**Schedule 1 [10]** (proposed section 38A)),
- (j) provision is made for standard form customer supply contracts between standard retail suppliers and small retail customers (**Schedule 1 [10]** (proposed section 39)),

- (k) additional matters are to be included in standard form customer supply contracts, including matters related to metering of electricity and regulated retail tariffs and regulated retail charges (**Schedule 1 [10]** (proposed section 40)),
- (l) consequential amendments are made to provisions relating to the levy payable by the holder of a distribution network service provider's licence as a result of the repeal of the distinction between franchise and non-franchise customers. The provisions relating to the levy are to continue in their current form for the period to which the levy currently applies (**Schedule 1 [7]–[9]** and **[65]** (proposed clause 36 of Schedule 6)),
- (m) consequential amendments are made to provisions relating to the price increase relating to the determination for electricity network services as a result of amendments made by the proposed Act. The provisions relating to the price increase are to continue in their current form for the period to which the increase currently applies (**Schedule 1 [11]–[16]** and **[65]** (proposed clause 36 of Schedule 6)),
- (n) provisions relating to guidelines for the appointment of customer consultative groups are omitted (**Schedule 1 [48]** and **[49]**),
- (o) standard retail suppliers are required to appoint at least one customer consultative group to act as a forum between retail suppliers and customers with the function of providing information and advice as to standard form customer supply contracts, operational changes, proposed improvements and other matters (**Schedule 1 [49]–[51]**),
- (p) the provision enabling the Minister to declare persons to be non-franchise customers is repealed and replaced by proposed section 92 which defines a small retail customer for the purposes of the Principal Act (**Schedule 1 [52]**),
- (q) the right of a person to appeal against certain decisions of electricity distributors is replaced by proposed sections 96–96D which enable small retail customers and other persons of a class prescribed by the regulations to apply for a review of certain decisions by retail suppliers and also enable a person to apply for a review of a decision to classify the person as being or not being a small retail customer. The provisions also set out the right of a person to apply to an electricity industry ombudsman for a review of a decision (this is currently contained in the regulations) and limit that right to decisions that are subject to the ombudsman scheme concerned. The approved scheme will also cover disputes and complaints relating to small retail customers' dealings with electricity marketers. It will be a licence condition that distribution network service providers, and retail suppliers supplying to small retail customers, be members of an approved scheme and agree to be

bound by, and to comply with, the electricity industry ombudsman's decision. The Minister's capacity to approve such a scheme is contained in proposed section 96B. The provisions do not prevent provision for dispute resolution from being made in negotiated contracts. (**Schedule 1 [56]**).

### **Phasing in of full retail competition**

Currently, franchise customers are not able to choose their own retail supplier of electricity but have the rights and protections conferred by standard form customer supply contracts and other rights and protections. Proposed Part 4 of Schedule 6 makes the following savings and transitional provisions relating to franchise customers and other matters, in the light of the move to full retail competition:

- (a) current franchise customers are to be transitional retail customers and as such are to be treated as small retail customers until such time as an order is made by the Minister or, in the case of certain customers subject to existing orders, the customers elect to cease to be transitional retail customers, effectively continuing the current regime applicable to such customers (**Schedule 1 [65]** (proposed clauses 25–27 of Schedule 6)),
- (b) conditions of retail suppliers' licences relating to the obligation to supply electricity to small retail customers are also to apply in respect of transitional retail customers (**Schedule 1 [65]** (proposed clause 28 of Schedule 6)),
- (c) a right to review is provided where there is a dispute as to whether a person should be treated by a licence holder as a transitional retail customer (**Schedule 1 [65]** (proposed clause 32 of Schedule 6)),
- (d) existing standard form customer supply contracts are continued in force for a period of 3 months, or such longer or shorter period as may be determined by order of the Minister, while existing negotiated customer supply contracts are unaffected (**Schedule 1 [65]** (proposed clauses 29 and 30 of Schedule 6)).

The proposed Part also contains savings and transitional provisions converting references to electricity distributors, continuing the application of previous provisions to existing appeals and matters and continuing existing customer consultative groups, as well as providing for the initial operation of certain provisions (**Schedule 1 [65]** (proposed clauses 22, 31, 33, 34 and 39 of Schedule 6)).

### **Contributions to connection costs**

Currently, an electricity distributor may require a new customer to contribute to the costs of providing customer connection services to the customer. Such costs may also be contributed to by further new customers in limited circumstances.

**Schedule 1 [6]** requires the costs that may be payable by a new customer and further new customers, and any subsequent repayment of contributions, to be in accordance with any determination of the Tribunal.

**Schedule 1 [65]** continues existing requirements to contribute to customer connection costs and waives certain requirements in relation to the initial determination of the Tribunal (proposed clause 35 of Schedule 6).

**Schedule 2.3** amends the *Independent Pricing and Regulatory Tribunal Act 1992* to confer on the Tribunal a standing reference to make such a determination and provides for the kind of determination that may be made as well as its publication.

### **Regulated retail tariffs and regulated retail charges**

**Schedule 1 [17]** inserts proposed Division 5 of Part 4 (proposed sections 43EA–43EJ) which contains a scheme for the determination by the Tribunal of regulated retail tariffs and regulated retail charges. These are to be payable by small retail customers under standard form customer supply contracts. The scheme for determination of the tariffs and charges is as follows:

- (a) the Minister may give a reference as to the matter of a determination to the Tribunal, or the Tribunal may request a referral, and the Tribunal is to investigate and report in accordance with the reference (proposed section 43EA),
- (b) the Tribunal may determine, in its report, the regulated retail tariffs and regulated retail charges but must have regard to any matter that it is required by the reference to consider and the effect of the determination on competition in the retail electricity market (proposed section 43EB),
- (c) determinations of the Tribunal are to be published in the Gazette and take effect on publication or on a later specified day (proposed section 43EC),
- (d) the Minister must arrange for copies of the Tribunal's reports to be available for public inspection (proposed section 43ED),
- (e) the Tribunal is given powers in relation to investigations, including powers to hold hearings and to require the provision of information, documents and evidence (proposed sections 43EE and 43EF),
- (f) limitations are placed on the divulging of confidential information given to the Tribunal but information may be divulged in a report after notice is given. The Tribunal may also give directions prohibiting or restricting the divulging of information (proposed section 43EG),

- (g) it will be an offence to refuse or fail to comply with a notice, or to refuse or fail to answer a question, of the Tribunal or to give information or evidence knowing that it is false or misleading in a material particular. It will also be an offence to hinder, obstruct or interfere with the Tribunal in the exercise of its functions under the proposed Division or to take action that detrimentally affects the employment of a person because the person assists the Tribunal (proposed section 43EH),
- (h) the confidentiality of Cabinet documents and Cabinet proceedings is protected (proposed section 43EI),
- (i) the scheme is to cease to have effect on 30 June 2004 or on such earlier or later day as may be prescribed by the regulations (proposed section 43EJ).

**Schedule 1 [65]** (proposed clauses 37, 38 and 39 of Schedule 6) inserts transitional provisions providing for the initial determination of the regulated retail tariff and regulated retail charges and the imposition of conditions on licences.

### **Electricity tariff equalisation**

**Schedule 1 [17]** inserts proposed Division 6 of Part 4 (proposed sections 43EK–43ES) which establishes the Electricity Tariff Equalisation Fund (the *Fund*) and constitutes the Electricity Tariff Equalisation Ministerial Corporation (the *Ministerial Corporation*). The Fund is to be used as a mechanism to manage the wholesale purchase risk borne by standard retail suppliers who are subject to competition in the wholesale electricity markets but who have to retail electricity obtained in that market at regulated retail tariffs to small retail customers. This also meets the objective of supporting and implementing the policy of providing pricing protection for small retail customers. The proposed Division contains the following provisions as to the use of the Fund for these purposes:

- (a) the Ministerial Corporation, which is to be managed by the Treasurer, is constituted with functions including administering and controlling the Fund and administering the rules as to payments to and from the Fund (proposed section 43EM),
- (b) the Fund is established and provision is made for amounts to be payable to and from the Fund under the rules for payment (proposed section 43EN),
- (c) the Treasurer, after consulting with the Minister for Energy, is to approve rules as to payment, including payments to the Fund by standard retail suppliers, electricity generators and Snowy Hydro Limited and payments from the Fund to those bodies and the Consolidated Fund. The circumstances when payments are required by the rules to be made to or from the Fund are to be determined having regard to the wholesale costs of electricity, the level of the regulated retail tariff in comparison with those costs and the general level of



the Fund. The rules may also provide for information or access to information to be provided for the purposes of determining payments and administering the rules. Payments may also be made under the rules to reimburse certain audit costs paid to the Tribunal by standard retail suppliers (proposed section 43EO),

- (d) standard retail suppliers and electricity generators are required to make payments to the Fund in accordance with the rules and to provide information under the rules or if required by the Ministerial Corporation. A failure or refusal to comply will be an offence, as will the giving of false or misleading information (proposed sections 43EP and 43EQ),
- (e) it is to be a condition of a licence held by a standard retail supplier that the standard retail supplier must make payments in accordance with the rules and must provide information under the rules or if required by the Ministerial Corporation (proposed section 43ER),
- (f) the proposed Division is to cease to have effect on 30 June 2004 or on such earlier or later day as may be prescribed by the regulations (proposed section 43ES).

The compliance of standard retail suppliers with respect to licence conditions relating to the Fund and provision of information are to be monitored and reported on by the Tribunal, if requested by the Treasurer (**Schedule 1 [46]**). The Tribunal is given powers to require the provision of information, documents and evidence to do so (**Schedule 1 [47]** (proposed section 87B)). It will be an offence to refuse or fail to comply with a notice, or to refuse or fail to answer a question, of the Tribunal or to give information or evidence knowing that it is false or misleading in a material particular. It will also be an offence to hinder, obstruct or interfere with the Tribunal in the exercise of its functions under the proposed provisions or to take action that detrimentally affects the employment of a person because the person assists the Tribunal (**Schedule 1 [47]** (proposed section 87C)).

**Schedule 1 [59]** enables the Ministerial Corporation to delegate its powers.

**Schedule 1 [65]** inserts a transitional provision providing for the Ministerial Corporation to obtain financial accommodation for the initial amount in the Fund (proposed clause 38 of Schedule 6).

### **Retail suppliers' powers**

Currently, powers in relation to entry onto premises for the repair and installation of electricity works (such as meters) are conferred only on network operators (who have the functions of electricity distributors and retail suppliers). With the separate exercise of these functions that is to result from full retail competition, amendments

are being made by the Bill to make it clear that retail suppliers can own electricity works and that their authorised officers can enter onto premises for the purposes of carrying out certain functions with respect to prescribed electricity works. The amendments also apply the existing provisions relating to the exercise of the power of entry to those officers and retail suppliers and enable retail suppliers to appoint authorised officers for those purposes (**Schedule 1 [18]–[36], [38], [39] and [53]–[55]**).

### **Market operations**

**Schedule 1 [37]** inserts proposed Part 5A (proposed sections 63B–63E) which enables the Minister to approve market operations rules. The rules will relate to a number of matters arising out of the national electricity market (which involves distribution network service providers) and the measurement of electricity consumption for costing and transfer purposes, as well as regulate the transfer of customers between retail suppliers. In particular, rules may be made for or with respect to agreements between distribution network service providers and retail suppliers, procedures and equipment to measure electricity consumption, provision of connection services by retail suppliers and the transfer of customers between retail suppliers (proposed section 63C). A contravention of the rules will be an offence and it is to be a condition of a retail supplier's licence and a distribution network service provider's licence that the licence holder must comply with the rules (proposed section 63D). Provision is also made for regulations to be made for or with respect to the appointment of a metrology co-ordinator (proposed section 63E).

### **Electricity marketers**

**Schedule 1 [37]** inserts proposed Part 5B (proposed sections 63F–63J) which provides for the regulation of electricity marketers through the adoption of a Marketing Code of Conduct and its enforcement. Electricity marketers include retail suppliers and persons who act as agents or intermediaries between customers and retail suppliers (proposed section 63F). The Code is to be approved by the Minister and published in the Gazette (proposed section 63G). A contravention of the Code will be an offence and it is to be a condition of a retail supplier's licence that the retail supplier must comply with the Code (proposed sections 63H and 63I). Electricity marketers who are not licensed retail suppliers must provide a written statement to retail suppliers in respect of compliance with the Code when introducing a customer or arranging or facilitating a negotiated customer supply contract and must not give a statement knowing that it is false or misleading in a material particular (proposed section 63J).

### **Other minor amendments**

**Schedule 1 [1], [3], [42]–[45], [57] and [58]** change references to electricity distributor, and related references, to references to distribution network service provider, and related references.

**Schedule 1 [2]** provides that notes included in the Principal Act do not form part of the Act.

**Schedule 1 [5] and [62]** make consequential amendments.

**Schedule 1 [40]** enables regulations to be made exempting persons or matters or classes of persons or matters from restrictions relating to charges for the use of electricity.

**Schedule 1 [41]** changes a reference to electricity distributor to a reference to a standard retail supplier.

**Schedule 1 [60]** enables regulations to be made for or with respect to requirements for customer connection contracts. It also enables regulations to be made for or with respect to the collection, keeping, disclosure or other use of information about customers or prospective customers and the inclusion of such obligations in customer connection contracts and customer supply contracts.

**Schedule 1 [61]** enables regulations to be made for or with respect to the electricity industry ombudsman's obligations to provide copies of reports and to report to the Minister, as well as to facilitate social programs for electricity.

**Schedule 1 [63]** provides for the Principal Act to be reviewed 5 years after the date of assent to the proposed Act.

**Schedule 1 [64]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [66]–[71]** amend and repeal definitions and insert definitions of expressions and new terms used in the proposed Act.

### **Amendment of other Acts and Regulations—Schedule 2**

**Schedule 2.1** makes a consequential amendment to a reference to electricity distributors in the *Electricity (Pacific Power) Act 1950*.

**Schedule 2.2** makes consequential amendments to references to electricity distributors in the *Electricity Safety Act 1945*.

**Schedule 2.4** makes a consequential amendment to a reference to electricity distributors in the *Land Tax Management Act 1956*.

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**Schedule 2.5** confers investment powers under the *Public Authorities (Financial Arrangements) Act 1987* on the Ministerial Corporation by amending the *Public Authorities (Financial Arrangements) Regulation 2000*.

**Schedule 2.6** makes the Ministerial Corporation subject to the requirements of the *Public Finance and Audit Act 1983*.

**Schedule 2.7** makes consequential amendments to references to electricity distributors in the *Transport Administration Act 1988*.