

NEW SOUTH WALES

DRAFT GOVERNMENT BILL

Gas and Electricity (Consumer Safety)
Bill 2016

Explanatory note

Overview of Bill

The *Electricity (Consumer Safety) Act 2004* (the **2004 Act**) and the *Gas Supply (Consumer Safety) Regulation 2012* (the **2012 Regulation**) provide the main framework for regulation of consumer safety in relation to gas appliances and electrical articles, and gas and electrical installations and related work.

The objects of this Bill are as follows:

- (a) to repeal the 2004 Act and 2012 Regulation and to consolidate the provisions of the Act and the primary provisions of the Regulation into one piece of legislation,
- (b) to provide for a consistent compliance and enforcement regime for both energy sources (including by extending certain compliance mechanisms currently available for electricity safety, to gas safety),
- (c) to align the maximum penalties for offences relating to gas safety with those relating to electricity safety,
- (d) to enable authorised officers to prohibit the misuse of electrical articles, gas appliances or electrical or gas installations if the misuse presents a significant risk of death or injury to any person or significant damage to property,
- (e) to enable certain rechargeable battery articles that are declared by the Secretary to be high risk battery articles to be regulated as electrical articles under the proposed Act,
- (f) to make consequential amendments to various other Acts and Regulations,
- (g) to provide for other minor, consequential and ancillary matters,
- (h) to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Outline of provisions

Part 1 Preliminary

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 defines certain words and expressions and interprets certain references in the proposed Act and contains other matters of interpretation. In particular, the extended definition of *sell* that applies to electrical articles under the 2004 Act is re-enacted to apply to both electrical articles and gas appliances under the proposed Act.

Clause 4 provides that the proposed Act binds the Crown.

Clause 5 re-enacts clause 4 of the 2012 Regulation to disapply the proposed Act in relation to certain gas and autogas installations and gas appliances regulated under other legislation.

Clause 6 enables rechargeable batteries and associated items that are declared by the Secretary to be high risk battery articles, to be regulated under the proposed Act as electrical articles.

Part 2 Electrical articles

Division 1 Restrictions on sale of electrical articles

Clause 7 re-enacts section 16 of the 2004 Act to make it an offence for a person to sell an electrical article if (in the case of a declared electrical article) the article is not of a class, model or description that has relevant approval from the Secretary or another recognised authority or (in the case of any electrical article) the article does not comply with relevant specifications or requirements or is not marked in accordance with the regulations.

The maximum penalties for the offence are unchanged, being:

- (a) for an individual—500 penalty units (\$55,000) for a first offence or 750 penalty units (\$82,500) or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) for a corporation—5,000 penalty units (\$550,000) for a first offence or 7,500 penalty units (\$825,000) or imprisonment for 2 years, or both, for a second or subsequent offence.

The Secretary may exempt persons or classes of persons from the operation of any or all of the provisions of the proposed section.

An offence against proposed section 7 committed by a corporation is an executive liability offence under proposed section 64.

Clause 8 provides that an electrical article that is displayed for advertising or in connection with the sale of other electrical articles of the same model is to be treated as being displayed for sale. The proposed section re-enacts section 6 of the 2004 Act but extends to any electrical article (whether declared or not).

Clauses 9–11 provide for acquisition guarantees and substantially re-enact sections 17–20 of the 2004 Act.

Clause 9 defines an *acquisition guarantee* as, essentially, a written guarantee given by a person (an *acquisition guarantor*) in respect of an electrical article to the effect that, at the time it was given, the model of electrical article had relevant approval and the article complied with any relevant specifications or requirements and was marked as prescribed by the regulations.

Proposed section 9 provides for a defence to a prosecution for an offence against proposed section 7 if the defendant proves that the person from whom the defendant obtained the electrical article concerned gave the defendant an acquisition guarantee in respect of the article and the defendant had no reason to believe that, at the time of the alleged offence, the article did not comply with the requirements of proposed section 7.

The defendant must notify the prosecutor and acquisition guarantor in writing of the defendant's intention to rely on the guarantee, and provide the prosecutor with a copy of the guarantee, within 7 days after being served with the process commencing the criminal proceedings.

Clause 10 provides that an acquisition guarantor may be convicted of an offence against proposed section 7 instead of a defendant who succeeds in establishing the defence under proposed section 9 unless the guarantor proves that the guarantor had reasonable grounds for believing the guarantee was correct.

Clause 11 makes it an offence for a person to make a false statement or give a false description in relation to an electrical article or model of electrical article in any acquisition guarantee, or purported acquisition guarantee, given by the person.

The maximum penalty for the offence is unchanged, being 500 penalty units (\$55,000) in the case of a corporation and 150 penalty units (\$16,500) for an individual.

An offence against proposed section 11 committed by a corporation is an executive liability offence under proposed section 64.

Division 2 Declared electrical articles and specifications for electrical articles

Clause 12 re-enacts section 5 of the 2004 Act to enable the Secretary, by order published in the Gazette, to declare electrical articles of a specified class to be declared electrical articles for the purposes of the proposed Act and declare the specifications that are to apply to that class of electrical article. A *specification* is defined in proposed section 3 (1) to include a standard, code, rule, testing requirement or other specification that is approved, recommended, adopted or published by Standards Australia or that is prescribed by the regulations.

Clause 13 re-enacts section 7 of the 2004 Act to define a *class specification* for a declared electrical article as being a specification declared by an order under proposed section 12 to apply to articles of the class to which the article belongs.

Clause 14 re-enacts section 9 of the 2004 Act to provide that if a class specification or model specification requires an electrical article or part of an electrical article to be tested, then an article or part is to be treated as complying with that requirement even if it is not tested, if it would have so complied if it had actually been tested.

Clause 15 re-enacts section 10 of the 2004 Act to require the Secretary to publish details of the current classes of declared electrical articles and the current class specifications for such articles on an internet website or by other appropriate means.

Division 3 Model approvals for electrical articles

Clause 16 substantially re-enacts section 11 of the 2004 Act to enable the Secretary, on application, to approve a model of electrical article (a *model approval*). The proposed section includes provisions in relation to the notification of approvals and refusal of approvals.

Clause 17 substantially re-enacts section 12 of the 2004 Act to provide for the duration of model approvals. The proposed section also makes it clear that a model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.

Clause 18 substantially re-enacts section 13 of the 2004 Act to provide for the suspension and cancellation of model approvals by the Secretary.

Clause 19 re-enacts section 14 of the 2004 Act to enable a person whose application for a model approval has been refused, or whose model approval has been suspended or cancelled, to apply to the Civil and Administrative Tribunal for a review of the Secretary's decision.

Division 4 Recognised external approval schemes

Clause 20 re-enacts section 15 of the 2004 Act to enable the Minister, by order published in the Gazette, to declare any scheme for the approval or certification of models of electrical articles to

be a recognised external approval scheme for the purposes of the proposed Act. The proposed section enables the regulations to make provision with respect to the declaration of schemes.

Part 3 Gas appliances

Division 1 Restrictions on sale of gas appliances

Clause 21 substantially re-enacts clause 5 of the 2012 Regulation (but with increased maximum penalties) to make it an offence to sell a gas appliance or type of gas appliance unless it is certified by the holder of a certification authority under the proposed Act and labelled in accordance with the regulations.

The maximum penalties for the offence are the same as those referred to above for proposed section 7. The maximum penalties under clause 5 of the 2012 Regulation for the corresponding offence are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 21 committed by a corporation is an executive liability offence under proposed section 64.

Clause 22 provides that a gas appliance that is displayed for advertising or in connection with the sale of other gas appliances of the same type is to be treated as being displayed for sale.

Division 2 Certification of gas appliances

Clause 23 re-enacts clause 7 of the 2012 Regulation (but with increased maximum penalties) to make it an offence for a person to certify a gas appliance or type of gas appliance unless the person is the holder of a certification authority under the proposed Act or authorised to certify gas appliances on behalf of the holder.

The maximum penalties for the offence are 500 penalty units (\$55,000) for a corporation or 250 penalty units (\$27,500) for an individual. The maximum penalties under clause 7 of the 2012 Regulation for the corresponding offence are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

Clause 24 substantially re-enacts clause 8 of the 2012 Regulation to enable the Secretary, on application, to grant an authority to certify a gas appliance or type of gas appliance (a *certification authority*) or to refuse to grant an authority. The proposed section also provides for the form of a certification authority.

Clause 25 substantially re-enacts clause 9 of the 2012 Regulation (but with increased maximum penalties) to provide that a certification authority is subject to any conditions prescribed by the regulations or imposed by the Secretary in accordance with the regulations and to make it an offence not to comply with any condition to which a certification authority is subject.

The maximum penalties for the offence are 2,500 penalty units (\$275,000) for a corporation or 500 penalty units (\$55,000) for an individual. The maximum penalties under clause 9 of the 2012 Regulation for the corresponding offence are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

Clause 26 re-enacts clause 10 of the 2012 Regulation to provide for the duration of a certification authority.

Clause 27 substantially re-enacts clauses 11 and 12 of the 2012 Regulation to provide for the suspension and cancellation of certification authorities by the Secretary.

Part 4 Unsafe electrical articles and gas appliances

This Part substantially re-enacts Division 8 of Part 2 (sections 21–25) of the 2004 Act but extends its provisions to gas appliances and types of gas appliances. Similar provision is made in clauses 15–18 of the 2012 Regulation in relation to gas appliances. The maximum penalties for offences under the proposed Part are the same as those for the corresponding offences under the

2004 Act relating to electrical articles, but are higher than those for similar offences relating to gas appliances under the 2012 Regulation.

Clause 28 is an interpretative provision that provides that references in the proposed Part to electrical articles include a reference to a model of electrical article and references to gas appliances include a reference to a type of gas appliance.

Clause 29 enables the Secretary, by notice published in the Gazette, to prohibit the sale generally of a specified electrical article or gas appliance if the Secretary believes on reasonable grounds that the article or appliance is or may become unsafe to use and that the prohibition is warranted because of the risk of death, injury or property damage. The Secretary may also prohibit a particular person from selling an electrical article or a gas appliance by notice served on the person on the same grounds.

Clause 30 enables the Secretary, by notice served on the seller of electrical articles or gas appliances, to require that person to take specified remedial action to make an electrical article or gas appliance safe to use if the Secretary believes on reasonable grounds that the article or appliance is or may become unsafe to use and that such action is necessary to make it safe to use.

Clause 31 enables the Secretary, by notice served on the seller of electrical articles or gas appliances, to require that person to carry out specified safety testing or provide other evidence of the safety of an electrical article or gas appliance that the person sells if the Secretary believes on reasonable grounds that the article or appliance is or may become unsafe to use. There is no similar provision in the 2012 Regulation.

Clause 32 makes it an offence for a person:

- (a) to sell an electrical article or gas appliance if its sale by the person is prohibited by a notice under proposed section 29, or
- (b) not to comply with any requirement to take action in respect of an article or appliance made of the person under a notice under proposed section 30, or
- (c) not to comply with any requirement to test or provide evidence in respect of an article or appliance under a notice under proposed section 31.

The maximum penalties for these offences are the same as those for the corresponding offences under section 24 of the 2004 Act (being the same as those referred to above for proposed section 7). The maximum penalties for similar offences under clause 18 of the 2012 Regulation relating to gas appliances are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 32 committed by a corporation is an executive liability offence under proposed section 64.

Clause 33 provides that the proposed Part operates in addition to, and not in derogation of, the provisions of the *Fair Trading Act 1987* or the regulations made under that Act

Part 5 Installations—electrical, gas and autogas

Division 1 Electrical installation work, gasfitting work and autogas work

Clause 34 substantially re-enacts clauses 21 and 23 of the 2012 Regulation (but with increased maximum penalties) to make it an offence for a person to carry out gasfitting work or autogas work, or to employ any other person to carry out that work, unless the person who carries out the work does so under the authority of an appropriate certificate or under the supervision of the holder of an appropriate certificate.

The maximum penalties for an offence against proposed section 34 are 1,000 penalty units (\$110,000) for a corporation or 200 penalty units (\$22,000) for an individual. The maximum penalties for corresponding offences under clauses 21 and 23 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

Clause 35 substantially re-enacts section 31 of the 2004 Act and clauses 22 and 24 of the 2012 Regulation (but with increased maximum penalties in relation to the latter) to make it an offence for a person to carry out electrical installation work, gasfitting work, or autogas work on an autogas installation, otherwise than in accordance with the standards or requirements prescribed by the regulations.

The maximum penalties for an offence against proposed section 35 are the same as those for a corresponding offence under section 31 of the 2004 Act relating to electrical installation work (being the same as those referred to above for proposed section 7). The maximum penalties for corresponding offences relating to gasfitting work or autogas work in clauses 22 and 24 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual).

An offence against proposed section 35 committed by a corporation is an executive liability offence under proposed section 64.

Division 2 Electrical, gas and autogas installations

Clause 36 substantially re-enacts section 32 of the 2004 Act and clause 50 of the 2012 Regulation (but with increased maximum penalties in relation to the latter) to make it an offence for a person responsible for a gas or electrical installation (being the occupier or owner of the place where the installation is located) to fail to ensure that any parts of the installation that are prescribed by the regulations are maintained in accordance with the regulations while the installation remains connected to its source of supply of electricity or gas.

Proposed section 36 also makes it an offence for a person responsible for an electrical installation to connect it to a source of supply of electricity if the installation has been lawfully disconnected for safety reasons.

The maximum penalties for an offence against proposed section 36 are 500 penalty units (\$55,000) for a corporation or 150 penalty units (\$16,500) for an individual. Section 32 of the 2004 Act provides for the same maximum penalties for corresponding offences relating to electrical installations. The maximum penalties for the corresponding offence in clause 50 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual).

Clause 37 makes it an offence for a person who carries out work for fee or reward at or near an electrical, gas or autogas installation to fail to ensure that the work does not interfere with the installation in a way that adversely affects its safety. Proposed section 37 also makes it an offence for a person carrying out work at or near an installation, without fee or reward, in a way that adversely affects the safety of the installation to fail to take reasonable steps to make the installation safe after becoming aware that it has been adversely affected. The maximum penalties for the offences are 500 penalty units (\$55,000) for a corporation or 200 penalty units (\$22,000) for an individual.

Clause 38 of the *Electricity (Consumer Safety) Regulation 2015* contains corresponding offences with the same penalties in relation to electrical installations. There are no similar offences in the 2012 Regulation.

Clause 38 substantially re-enacts (but with increased maximum penalties) clauses 6 and 37 of the 2012 Regulation. Proposed section 38 makes it an offence for a person to connect a gas appliance to, or modify a gas appliance connected to, a gas installation to which gas is supplied from a gas network, unless the appliance or appliance as modified is a certified gas appliance under the proposed Act. Proposed section 38 also makes it an offence for a person to connect a gas appliance to any other gas installation (other than in the course of gasfitting work or certain testing) unless the appliance is a certified gas appliance that is labelled in accordance with the regulations and is suitable and safe for use with the gas with which it is designed to be used.

The maximum penalties for the offences are 500 penalty units (\$55,000) for a corporation or 250 penalty units (\$27,500) for an individual. The maximum penalties for the corresponding offences under clauses 6 and 37 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual).

Clause 39 provides for specific regulation-making powers for or with respect to electrical, gas or autogas installations.

Part 6 Accident reporting and investigations

Clause 40 substantially re-enacts section 33 of the 2004 Act and clause 53 of the 2012 Regulation (but with increased maximum penalties in relation to the latter) to require the occupier of a place in which a *serious electrical accident* or a *serious gas accident* occurs (or any other person prescribed by the regulations) to notify the Secretary of the accident within 7 days after the accident. A failure to notify the Secretary is an offence, the maximum penalty for which is 5 penalty units (\$550) if the accident occurred in residential premises and 100 penalty units (\$11,000) in any other case. Section 33 of the 2004 Act provides for the same maximum penalties for the corresponding offence relating to serious electrical accidents. The maximum penalties for the corresponding offence in clause 53 of the 2012 Regulation is 2 penalty units (\$220).

Clause 41 enables the Secretary to arrange for an authorised officer to investigate and report to the Secretary concerning a serious electrical accident or a serious gas accident. Section 34 of the 2004 Act is a corresponding provision relating to serious electrical accidents.

Clause 42 makes it an offence for a person to disturb or interfere with the site of a serious electrical accident or a serious gas accident before it has been inspected by an authorised officer, except to make it safe or with the permission of an authorised officer or as provided by the regulations. The maximum penalties for the offence are 500 penalty units (\$55,000) for a corporation or 250 penalty units (\$27,500) for an individual.

Section 36 of the 2004 Act contains a corresponding offence with the same penalties in relation to serious electrical accidents. There is no similar offence in the 2012 Regulation.

Clause 43 enables the Secretary to publish the details of serious electrical accidents or serious gas accidents that the Secretary considers necessary in the interests of public information and safety. Section 37 of the 2004 Act is a corresponding provision relating to serious electrical accidents.

Clause 44 enables the Secretary, SafeWork NSW and the Secretary of the Department of Industry, Skills and Regional Development to enter into arrangements concerning the exercise of their respective functions in relation to the investigation of accidents and other incidents involving electricity and gas. Section 38 of the 2004 Act is a corresponding provision relating to accidents and incidents involving electricity.

Part 7 Enforcement

Division 1 Authorised officers

Clause 45 enables the Secretary to appoint any person (other than an investigator under the *Fair Trading Act 1987*) to be an authorised officer for the purposes of any or all of the provisions of the proposed Act or the regulations. (Proposed section 3 (1) defines *authorised officer* to include investigators under the *Fair Trading Act 1987*.) Section 39 of the 2004 Act is a corresponding provision.

Clause 46 provides that the powers conferred by the proposed Act or the regulations on persons who are authorised officers by reason of being investigators are in addition to, and not in derogation of, the powers conferred on investigators by Division 1 of Part 2A of the *Fair Trading Act 1987*. Section 41 of the 2004 Act is a corresponding provision.

Division 2 Offences and associated provisions relating to investigations and inspections

Clause 47 makes it an offence to refuse or fail to comply with a requirement made, or to answer a question asked by, an authorised officer, or wilfully to delay, hinder, or obstruct an authorised officer or falsely to represent oneself to be an authorised officer. The maximum penalty for an offence against proposed section 47 is 500 penalty units (\$55,000) for a corporation or 150 penalty

units (\$16,500) for an individual. Section 40 of the 2004 Act is a corresponding provision with the same maximum penalties.

Clause 48 provides for a person to be warned that a failure to answer a question or provide documents or information is an offence and makes other provision with respect to removing the right to claim self-incrimination as an excuse not to comply with a requirement. Section 44 of the 2004 Act contains a similar provision.

Division 3 Investigation and inspection powers

Clause 49 defines *possession* as including custody or control in the proposed Division.

Clause 50 provides that the powers of entry and inspection conferred by the proposed Act cannot be exercised in relation to a part of any premises being used for residential purposes except with the permission of the occupier of that part of the premises or under the authority of a search warrant. Sections 26, 30 and 35 of the 2004 Act contain corresponding provisions.

Clause 51 enables an authorised officer (with the written authority of the Secretary) to enter any place and inspect and copy documents in the place if the Secretary believes on reasonable grounds that there are in that place documents evidencing conduct in connection with an electrical article or gas appliance, an electrical or gas installation or a serious electrical or gas accident, in contravention of the proposed Act or the regulations. Sections 26, 30 and 35 of the 2004 Act contain corresponding provisions.

Clause 52 substantially re-enacts section 26 of the 2004 Act and extends it to gas appliances. Proposed section 52 enables an authorised officer, at any reasonable time, to enter any place that the officer suspects on reasonable grounds to be a place in which the manufacture or sale of electrical articles or gas appliances is being, or may be, carried on. It also confers certain search and investigation powers while in the place. These include the power to seize, detain or remove an electrical article or gas appliance (or any container or package containing an electrical article or gas appliance) if the officer has reasonable cause to believe that an offence has been committed against the proposed Act or the regulations in respect of the article or appliance, or the article or appliance is or is likely to be unsafe.

Clause 53 substantially re-enacts section 27 of the 2004 Act and extends it to gas appliances. Clauses 14 and 18 of the 2012 Regulation make similar provision, but with lower maximum penalties, in relation to gas appliances. Proposed section 53 enables an authorised officer who believes on reasonable grounds that an electrical article or more than one electrical article of a particular model, or a gas appliance or more than one gas appliance of a particular type, is or may become unsafe:

- (a) to prohibit a person who has possession of the electrical article or gas appliance or articles or appliances of that model or type from selling it or them, and
- (b) to affix a label on an electrical article or a gas appliance (or container or package containing an article or appliance) indicating that it is to be considered dangerous and must not be sold or used until specified repairs necessary to it safe to use have been carried out.

The proposed section makes it an offence for a person to sell an electrical article or a gas appliance in contravention of a notice or to remove or alter a label affixed to an article or appliance or a container or package under the proposed section unless directed to do so by an authorised officer.

The maximum penalties for these offences are the same as those for the corresponding offences under section 27 of the 2004 Act (being the same as those referred to above for proposed section 7). The maximum penalties for similar offences under clause 18 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 53 committed by a corporation is an executive liability offence under proposed section 64.

Clause 54 is a new power to enable an authorised officer, at any reasonable time, to enter any place that the officer suspects on reasonable grounds to be a place in which an electrical article or a gas appliance, or an electrical installation or a gas installation, is being, or is likely to be, used in a manner that presents a significant risk of the death of, or injury to, any person, or significant damage to any property. Proposed section 54 also confers certain search and investigation powers

while in the place, and a power to disconnect an electrical article or gas appliance, or take appropriate measures to have an electrical or a gas installation disconnected, if the officer has reasonable cause to believe it is being or is likely to be used in that manner.

Clause 55 is a new power to enable an authorised officer who believes on reasonable grounds that an electrical article or a gas appliance, or an electrical installation or a gas installation, is being, or is likely to be, used in a manner that presents a significant risk of the death of, or injury to, any person, or significant damage to any property, to prohibit the use of the article, appliance or installation in such a manner.

Proposed section 55 makes it an offence for a person to use an electrical article or a gas appliance, or an electrical installation or a gas installation, in contravention of a notice under the proposed section.

The maximum penalties for the offence are:

- (a) for an individual—100 penalty units (\$11,000) for a first offence or 150 penalty units (\$16,500) for a second or subsequent offence, or
- (b) for a corporation—1,000 penalty units (\$110,000) for a first offence or 1,500 penalty units (\$165,000) for a second or subsequent offence.

An offence against proposed section 55 committed by a corporation is an executive liability offence under proposed section 64.

Clause 56 substantially re-enacts section 35 of the 2004 Act and extends it to serious gas accidents. Proposed section 56 enables an authorised officer to enter any place where a serious electrical or gas accident has or may reasonably be expected to have occurred and to exercise certain investigative powers in that place.

Clause 57 substantially re-enacts section 30 (1) and (2) of the 2004 Act and extends the provisions to gas installations. Proposed section 57 enables an authorised officer to enter any place at any reasonable time for the purpose of inspecting any electrical or gas installation in the place. On entering such a place, the authorised officer may require a person carrying out electrical wiring work or gasfitting work to produce evidence of the person's authority to carry out such work under the *Home Building Act 1989* or the proposed Act, respectively.

Clause 58 re-enacts section 30A of the 2004 Act to make it clear that an authorised officer may inspect an electrical installation that includes the installation of an electricity meter to ensure compliance with the applicable standards and requirements.

Division 4 Seizure and forfeiture of electrical articles and gas appliances

Clause 59 defines an expression used in the proposed Division.

Clause 60 substantially re-enacts (with modifications) section 28 of the 2004 Act and extends it to gas appliances seized under proposed section 52 (d). Proposed section 60 requires the Secretary to return an electrical article or gas appliance seized under proposed section 52 (d) no later than 12 months (or other period prescribed by the regulations) after seizure unless, within that period, the Secretary determines that the article or appliance is unsafe and applies for its forfeiture under proposed section 61 or proceedings for an offence involving that article or appliance are brought. (The period by which the Secretary is to return a seized item under section 28 of the 2004 Act is no later than 60 days or such greater period as the regulations may prescribe.)

The Secretary is to provide compensation for returned seized articles or appliances in accordance with the regulations.

If proceedings for an offence are commenced within the relevant period, the Secretary may retain the article or appliance until the proceedings are finally determined.

Clause 61 substantially re-enacts section 29 of the 2004 Act, and extends it to gas appliances, to enable the Secretary to apply to the Local Court for the forfeiture of an electrical article or gas appliance if a court has found a person guilty of an offence against the proposed Act or the regulations in connection with the article or appliance or if the article or appliance was seized under section 52 (d) and the Secretary determines that it is unsafe.

Division 5 Search warrants

Clause 62 substantially re-enacts section 42 of the 2004 Act, and extends it to gas installations and serious gas accidents, to enable an authorised officer to apply for a search warrant for a place if the officer has reasonable grounds for believing that an unsafe electrical or gas installation is in the place, or a serious electrical or gas accident has occurred in the place or a provision of the proposed Act or the regulations has been or is being contravened in the place.

Division 6 Undertakings

Clause 63 provides that section 218 of the *Australian Consumer Law (NSW)* applies in connection with a matter in relation to which the Secretary has a function under the proposed Act as if the function were a function under that Law. Section 218 enables the Secretary to accept a written undertaking given by a person in connection with a matter in relation to which the Secretary has a function under that Law. Any such undertaking is enforceable by the Supreme Court. Costs incurred by the Secretary in taking action under section 218 are recoverable from the person who gave the undertaking, as a debt due to the Crown, in a court of competent jurisdiction. Section 43 of the 2004 Act contains a corresponding provision relating to functions of the Secretary under that Act.

Division 7 Proceedings for offences

Clause 64 establishes an offence against proposed section 7 (1), 11 (1), 21, 32 (1)–(3), 35, 53 (4) or 55 (4) as an *executive liability offence* for directors and managers of corporations. An executive liability offence is an offence where the onus is on the prosecution to prove that the director or manager knows or ought reasonably to know that the offence (or an offence of the same type) would be or is being committed and fails to take all reasonable steps to prevent or stop the commission of that offence.

Clause 65 provides that for other offences committed by a corporation, the onus is on the prosecution to prove that the director or manager aids, abets, counsels or procures the commission of the corporate offence, or induces, whether by threats or promises or otherwise, the commission of the corporate offence, or conspires with others to effect the commission of the corporate offence, or is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Sections 45 and 45A of the 2004 Act are provisions corresponding with proposed sections 64 and 65. Section 80 of the *Gas Supply Act 1996* makes similar provision in relation to offences against the 2012 Regulation.

Clause 66 re-enacts section 46 of the 2004 Act to enable the Secretary (or a departmental employee authorised by the Secretary) to certify certain matters relating to electrical articles. A certificate is admissible in any proceedings and is evidence of the matters certified.

Clause 67 enables authorised officers to issue penalty notices for alleged offences against the proposed Act or the regulations that are prescribed by the regulations as penalty notice offences. Section 47 of the 2004 Act contains a corresponding provision but no power exists for the issue of penalty notices for offences against the 2012 Regulation.

Clause 68 provides that proceedings for an offence against the proposed Act or the regulations may be dealt with summarily by the Local Court or the Supreme Court. However, if dealt with by the Local Court, the maximum monetary penalty that the Local Court may impose is 200 penalty units (\$22,000). Section 48 of the 2004 Act contains a corresponding provision. Section 81 of the *Gas Supply Act 1996* provides that the maximum monetary penalty that the Local Court may impose for an offence against the 2012 Regulation is the lesser of the maximum monetary penalty provided for in the Regulation, or 100 penalty units (\$11,000) for a corporation and 50 penalty units (\$5,500) for an individual.

Clause 69 requires proceedings for an offence against the proposed Act or the regulations to be commenced within 2 years after the date on which the offence is alleged to have been committed. Proposed section 69 also provides that proceedings may be commenced within 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer.

However, this will not enable proceedings to be commenced if more than 5 years has elapsed since the date on which the offence is alleged to have been committed. Section 49 of the 2004 Act is a corresponding provision. Section 81 of the *Gas Supply Act 1996* requires offences against the 2012 Regulation to be commenced within 2 years after the commission of the offence.

Part 8 Miscellaneous

Clause 70 provides for registers that are to be kept under the proposed Act. The registers correspond with those that are kept under the 2004 Act and the 2012 Regulation.

Clause 71 makes it an offence for a person to disclose certain information relating to any manufacturing or commercial secrets or working processes obtained by the person in connection with the administration or execution of the proposed Act. The maximum penalty for the offence is 100 penalty units (\$11,000). Section 50 of the 2004 Act contains a corresponding offence with the same maximum penalty relating to information obtained in connection with the administration or execution of that Act. There is no similar offence in the 2012 Regulation.

Clause 72 excludes the Minister, the Secretary, an authorised officer or a person acting under direction from the Minister or Secretary from any personal civil liability for any act done, or omitted to be done, in good faith for the purpose of executing the proposed Act. However, any such liability attaches instead to the Crown. Section 51 of the 2004 Act is a corresponding provision.

Clause 73 provides for how documents may be served on, or given to, a person for the purposes of the proposed Act. Section 52 of the 2004 Act is a corresponding provision.

Clause 74 provides for how documents may be served on, given to, or lodged with, the Secretary for the purposes of the proposed Act. Section 53 of the 2004 Act is a corresponding provision.

Clause 75 enables the Minister and the Secretary to delegate the exercise of certain of their functions under the proposed Act or the regulations. Section 54 of the 2004 Act is a corresponding provision.

Clause 76 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 77 repeals the 2004 Act, the Regulation made under that Act and the 2012 Regulation.

Clause 78 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts and Regulations

Schedule 2 makes consequential amendments to the Acts and Regulations specified in the Schedule.

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Gas and Electricity (Consumer Safety)
Bill 2016**

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Gas and Electricity (Consumer Safety)
Bill 2016**

No. , 2016

A Bill for

An Act to make provision with respect to electricity and gas safety, to repeal the *Electricity (Consumer Safety) Act 2004*, the *Electricity (Consumer Safety) Regulation 2015* and the *Gas Supply (Consumer Safety) Regulation 2012* and to make consequential amendments to the *Gas Supply Act 1996* and other legislation; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Gas and Electricity (Consumer Safety) Act 2016*.

2 Commencement

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

3 Definitions

(1) In this Act:

acquisition guarantee—see section 9 (2).

acquisition guarantor means the person who gives an acquisition guarantee.

authorised electrician means a person who is authorised under the *Home Building Act 1989* to do electrical wiring work.

authorised gasfitter means a person who is authorised under this Act to carry out gas fitting work.

authorised officer means:

- (a) any investigator, or
- (b) any other person appointed under section 45 by the Secretary as an authorised officer for the purposes of the provision in which the expression is used.

autogas installation means a system of pipes and associated equipment that forms part of a vehicle, vessel or machine and that is designed to convey liquefied petroleum gas or natural gas to an internal combustion engine that is installed in, or forms part of, the vehicle, vessel or machine.

autogas work means work involved in:

- (a) the installation, alteration, extension or repair of an autogas installation, or
- (b) the connection of a gas cylinder to, or the disconnection of a gas cylinder from, an autogas installation.

certification authority—see section 24.

certified gas appliance means a gas appliance or type of gas appliance in respect of which a certification by the holder of a certification authority (or by a person authorised by a holder under this Act to certify on the holder's behalf) is in force.

class specification for an electrical article—see section 13.

conduct includes any act or omission.

declared electrical article—see section 12 (1).

Department means the Department of Finance, Services and Innovation.

electrical article means any appliance, wire, fitting, cable, conduit, meter, insulator, apparatus, material or other electrical equipment intended or designed for use in, or for the purposes of, or for connection to, any electrical installation.

Note. A reference in this Act to an **electrical article** includes a reference to a **high risk battery article** unless otherwise provided in this Act or by the regulations—see section 6.

electrical installation means any fixed appliances, wires, fittings, meters, apparatus or other electrical equipment used for (or for purposes incidental to) the conveyance,

measuring, control and use of electricity in a particular place, but does not include any of the following:

- (a) subject to any regulation made under subsection (3)—any electrical equipment (other than a meter) used, or intended for use, in the generation, transmission or distribution of electricity that is:
 - (i) owned or used by an electricity supply authority, or
 - (ii) located in a place that is owned or occupied by such an authority,
- (b) any electrical article connected to, and extending or situated beyond, any electrical outlet socket,
- (c) any electrical equipment in or about a mine,
- (d) any electrical equipment operating at not more than 50 volts alternating current or 120 volts ripple-free direct current,
- (e) any other electrical equipment, or class of electrical equipment, prescribed by the regulations.

electrical installation work means the work of installing, adding to, altering, disconnecting, reconnecting or replacing an electrical installation.

electrical wiring work means the physical work of installing, repairing, altering, removing or adding to an electrical installation or the supervising of that work.

electricity supply authority means a person or body engaged in the distribution of electricity to the public or in the generation of electricity for supply, directly or indirectly, to the public whether by statute, franchise agreement or otherwise and includes:

- (a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*, and
- (b) an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*, and
- (c) Rail Corporation New South Wales, and
- (d) Transport for NSW, and
- (e) the Water Administration Ministerial Corporation constituted by the *Water Management Act 2000*.

exercise a function includes perform a duty.

flue means any system of pipes and associated fittings designed to convey exhaust gases away from a gas appliance.

function includes power, authority or duty.

gas means:

- (a) natural gas, or
- (b) liquefied petroleum gas, or
- (c) any other substance that the regulations declare to be a gas for the purposes of this Act.

gas appliance means any gas burning or gas using appliance that is manufactured, adapted or designed for connection to a gas installation, whether by means of a gas outlet socket or otherwise, and includes any liquefied petroleum gas dispenser, catalytic burner or vaporiser, but does not include an internal combustion engine that is installed in, or forms part of, a vehicle, vessel or machine.

gas component means the following:

- (a) a gas regulator,
- (b) any other item prescribed by the regulations for the purposes of this definition.

gas container includes a gas cylinder, a gas cartridge, a pressure vessel and a gas tank.

gas installation means:

- (a) any pipe or system of pipes used to convey or control gas, and any associated fittings and equipment, that are downstream of the gas supply point, but does not include anything beyond the gas installation end point, and
- (b) any flue that is downstream of the gas supply point, but does not include an autogas installation.

gas installation end point means:

- (a) in the case of a gas installation to which gas is supplied from a gas network—the gas outlet socket, or
- (b) in any other case—the control valve or other connection point of a gas appliance or of another gas container.

gas supply point means:

- (a) in the case of a gas installation to which gas is supplied from a gas network—the outlet of the gas meter at which the gas is supplied, or
- (b) in any other case—the control valve or other connection point of a gas container.

gasfitting work means any work involved in:

- (a) the installation, alteration, extension or repair of a gas installation, or
- (b) the installation, alteration, extension, removal or repair of a flue, or
- (c) the connection of a gas installation to, or the disconnection of a gas installation from, a gas supply point, or
- (d) the connection of a gas appliance to, or the disconnection of a gas appliance from, a gas installation (otherwise than where the point of connection is a gas outlet socket), or
- (e) the connection of a gas container, gas regulator or gas appliance to, or the disconnection of a gas container, gas regulator or gas appliance from, a gas installation (otherwise than where it is designed to be readily detachable from the installation whether by the use of a tool, mechanical force or otherwise).

health care professional means a person registered under the Health Practitioner Regulation National Law.

high risk battery article—see section 6.

holder of a model approval means the person to whom a model approval has been given.

investigator means a person appointed as an investigator under section 18 of the *Fair Trading Act 1987*.

liquefied petroleum gas means a liquid or gaseous substance containing a mixture of hydrocarbons, basically consisting of butane or butene or propane or propene, or any mixture of them.

mark includes label.

model approval means an approval for a model of electrical article given by the Secretary under section 16.

model specification for an electrical article—see section 16 (1) (c).

natural gas has the same meaning as it has in the *National Gas (NSW) Law*.

place includes land (whether or not covered with water), premises, buildings and other structures.

process commencing proceedings for an offence includes:

- (a) in the case of proceedings for an offence commenced in the Local Court—a court attendance notice issued under the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence, and
- (b) in the case of proceedings for an offence commenced in the Supreme Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

recognised external approval scheme means any scheme for the approval or certification of models of electrical articles that is declared under section 20 to be a recognised external approval scheme for the purposes of Part 2.

relevant authority, in relation to another State or a Territory, means the authority prescribed by the regulations as the relevant authority for the other State or the Territory.

Secretary means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department.

sell includes:

- (a) auction or exchange, and
- (b) offer, agree or attempt to sell, and
- (c) advertise, expose, send, forward or deliver for sale, and
- (d) cause or permit to be sold or offered for sale, and
- (e) hire or cause to be hired, and
- (f) display for sale or hire.

serious electrical accident means an accident:

- (a) involving an electrical article or electrical installation that was used for (or for purposes incidental to) the conveyance, control and use of electricity at the time of the accident, and
- (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time,

but does not include an accident in which only electricity works (within the meaning of the *Electricity Supply Act 1995*) are involved.

serious gas accident means an accident:

- (a) caused by the use of a gas appliance, gas installation or autogas installation to supply gas or by work carried out on a gas appliance, gas installation or autogas installation, and
- (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time.

specification includes (but is not limited to):

- (a) a standard, code, rule, testing requirement or other specification approved, recommended, adopted or published by Standards Australia, and
- (b) a standard, code, rule, testing requirement or other specification described in, or prescribed by, the regulations.

- (2) In this Act:
- (a) a reference to a **gas appliance** includes a reference to a gas component, and
 - (b) a reference to a **type of gas appliance** is a reference to each gas appliance of the same design constructed to identical specifications, and
 - (c) a reference to a **model of electrical article** is a reference to each electrical article of the same design, material and construction, and
 - (d) a reference to a person or thing **in a place** is a reference to a person or thing located in, on, over or under the place.
- (3) The regulations may make provision for when electrical equipment (or any part of electrical equipment) of the kind referred to in paragraph (a) of the definition of **electrical installation** in subsection (1) is taken to form part of an electrical installation in a place for the purposes of that definition.
- (4) Notes included in this Act do not form part of this Act.
- Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

4 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

5 Act not to apply to certain gas installations, autogas installations and appliances

This Act does not apply to or in respect of:

- (a) a gas installation or autogas installation with a carrying capacity greater than 200 kilopascals, or
- (b) a gas appliance with an inlet pressure greater than 200 kilopascals, that is located partially or wholly within a workplace within the meaning of the *Work Health and Safety Act 2011*.

6 High risk battery articles subject to Act

- (1) The Secretary may, by order published in the Gazette, declare a battery article, or a battery article of a class, specified or described in the order to be a **high risk battery article** for the purposes of this section.
- (2) Except as otherwise provided by this Act or the regulations:
- (a) this Act applies to a high risk battery article in the same way that it applies to an electrical article, and
 - (b) accordingly, a reference in this Act to an electrical article is taken to include a reference to a high risk battery article.
- (3) The Secretary may combine an order under this section with an order under section 12 that relates to the same article.
- (4) In this section:
- battery article** means:
- (a) a rechargeable battery or any of its components, or
 - (b) an article that incorporates a rechargeable battery as a power source for the article.

Part 2 Electrical articles

Division 1 Restrictions on sale of electrical articles

7 Electrical articles must meet certain standards before they can be sold

- (1) A person must not sell an electrical article if:
- (a) in the case of a declared electrical article—the article is not of:
 - (i) a model of electrical article that has a model approval, or
 - (ii) a class, description or model that has been approved or registered by the relevant authority for another State or a Territory, or
 - (iii) a model of electrical article that has been approved or certified under a recognised external approval scheme (being an approval or certification that is evidenced by marking on the article), or
 - (b) the article is not marked in accordance with the regulations, or
 - (c) the article does not comply with any one or more of the following:
 - (i) the class specifications (if any) for the article,
 - (ii) the model specifications (if any) for the article,
 - (iii) any other specifications prescribed by the regulations for the article,
 - (iv) any other requirements (including standards) prescribed by the regulations for the article.

Maximum penalty:

- (a) in the case of an individual:
 - (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 5,000 penalty units for a first offence, or
 - (ii) 7,500 penalty units for a second or subsequent offence.

Note. An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

- (2) The Secretary may, by order in writing and subject to any conditions that may be specified in the order, exempt a person or persons of a specified class from the operation of any or all of the provisions of subsection (1).

8 Electrical articles displayed for advertising to be treated as being displayed for sale

For the purposes of this Act, an electrical article (whether or not a declared electrical article) that is displayed for the purpose of advertising, or otherwise in connection with, the sale of other electrical articles of the same model, is to be treated as being displayed for sale.

9 Acquisition guarantee may be defence to certain offences

- (1) It is a defence to a prosecution of an offence against section 7 (1) if the defendant proves that:
- (a) the defendant received an acquisition guarantee in respect of the electrical article to which the offence relates from the person from whom the defendant obtained the electrical article, and
 - (b) the defendant had no reason to believe that, at the time of the alleged offence, the electrical article did not comply with the requirements of section 7 (1).

- (2) A guarantee is an **acquisition guarantee** in respect of an electrical article for the purposes of the prosecution of an offence only if:
- (a) the guarantee is in writing, and
 - (b) the matters guaranteed are that, when the guarantee is given:
 - (i) if the electrical article is a declared electrical article—the model of the article has a model approval or has been approved or certified under a recognised external approval scheme or the article is of a class, description or model approved or registered by a relevant authority for another State or a Territory, and
 - (ii) the electrical article complies with the class specifications (if any), the model specifications (if any) and any other specifications or requirements for the article prescribed by the regulations, and
 - (iii) the electrical article is marked as prescribed by the regulations, and
 - (c) the guarantor is:
 - (i) an individual who resides in Australia, or
 - (ii) a corporation that has a place of business within Australia, and
 - (d) the guarantee specifies the name of the guarantor and:
 - (i) in the case of a guarantor who is an individual and who resides within Australia—the address of the guarantor and of the place of business of the guarantor, or
 - (ii) in the case of a guarantor that is a corporation—an address of a place of business of the guarantor within Australia, and
 - (e) the guarantee applies:
 - (i) generally to electrical articles of the particular model to which the prosecution relates, or
 - (ii) to the specific electrical article to which the prosecution relates and refers to a sale note, bill of sale, invoice, bill of lading or other document describing the electrical article sold and the marking on it, and
 - (f) the guarantee complies with any other requirements prescribed by the regulations.
- (3) Subsection (1) does not apply unless, not later than 7 days after service on the defendant of the process commencing proceedings for the offence:
- (a) the defendant gives a written notice to the prosecutor of the defendant's intention to rely on an acquisition guarantee and the notice specifies the following:
 - (i) the name of the person who gave the acquisition guarantee (the **acquisition guarantor**),
 - (ii) any name under which the acquisition guarantor trades,
 - (iii) the address referred to in subsection (2) (d) in relation to the acquisition guarantor, and
 - (b) the defendant gives a written notice to the acquisition guarantor of the defendant's intention to rely on the guarantee, and
 - (c) the defendant gives the prosecutor a copy of the guarantee.
- (4) An acquisition guarantor given notice under subsection (3) is entitled to offer evidence at the hearing of the proceedings to which the notice relates and the court may, if it thinks fit, adjourn the hearing to enable the guarantor to do so.

10 Acquisition guarantor may be convicted of offence if acquisition guarantee defence upheld

- (1) If an offence is proved under section 7 (1) but the defence under section 9 is upheld, the acquisition guarantor is liable to the same penalty as could have been imposed if the offence to which the proceedings relate had been committed by the guarantor.
- (2) Subsection (1) does not apply if the acquisition guarantor proves that, when the acquisition guarantee was given, the guarantor had reasonable grounds for believing that the statements and descriptions contained in the acquisition guarantee were true.
- (3) Nothing in this section affects the liability of an acquisition guarantor to be prosecuted for an offence against section 11.

11 Person must not give false acquisition guarantee

- (1) A person must not make a false statement or give a false description in relation to an electrical article or model of electrical article in any acquisition guarantee, or purported acquisition guarantee, given by the person.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in the case of an individual).

Note. An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

- (2) It is a defence to the prosecution of an offence against subsection (1) if the defendant proves that, when the defendant gave the guarantee, the defendant had reasonable grounds for believing that the statements and descriptions contained in the guarantee were true.

Division 2 Declared electrical articles and specifications for electrical articles

12 Declared electrical articles

- (1) A *declared electrical article* is an electrical article that belongs to a class of electrical articles that is the subject of an order under this section.
- (2) The Secretary may, by order published in the Gazette, declare:
 - (a) electrical articles of a class described in the order to be, on and from a date specified in the order, declared electrical articles for the purposes of this Part, and
 - (b) the specifications that are applicable to electrical articles of that class.
- (3) An order under this section may declare a specification modified as stated in the order to be applicable to electrical articles of the class to which the order relates.

13 Class specifications for electrical articles

A *class specification* for an electrical article is:

- (a) a specification for the time being declared by an order under section 12 to be applicable to articles of the class to which the article belongs, or
- (b) if any such specification is declared by the order to be modified in its application to those articles, the specification as so modified,

except so much, if any, of the specification, or of the specification as so modified, as is inconsistent with a model specification for the article.

14 Compliance with class and model specifications

If a class specification or a model specification for an electrical article requires the article or any part of the article:

- (a) to have been submitted to a specified test, and
- (b) to have complied with a standard relating to the test,

the article is, for the purposes of this Part (other than section 16 (1) (b) or (c)), to be treated as complying with the requirement if the article or part would comply with the standard if it were to be submitted to the test.

15 Publication of information concerning declared electrical articles and specifications

- (1) The Secretary is to publish details of the following matters on an internet website or by any other printed or electronic means that the Secretary considers appropriate:
 - (a) the classes of electrical articles that are currently declared under section 12 (2),
 - (b) any class specifications for electrical articles that are currently in force.
- (2) A failure to comply with subsection (1) does not invalidate any order made under this Part.

Division 3 Model approvals for electrical articles

16 Approval of model of electrical article

- (1) The Secretary may, by order in writing, approve any model of electrical article (whether or not a declared electrical article) if:
 - (a) an application for the approval is made in accordance with the regulations, and
 - (b) in the case of a model of electrical article that is a declared electrical article—the Secretary is satisfied that an article of that model complies with any class specification for that article, and
 - (c) the Secretary is satisfied that the model of electrical article complies with any other specification (a *model specification*) that the Secretary has determined should be applicable, or applicable in a modified form, to that model of electrical article.

Note. If the Secretary determines a model specification under paragraph (c), section 13 provides that a class specification for an electrical article of that particular model will be taken not to include anything that is inconsistent with that model specification.
- (2) The Secretary may refuse to approve a model of electrical article unless an electrical article of that model has been lodged with the Secretary for testing or inspection.
- (3) The Secretary may approve a model of electrical article subject to it complying with a model specification.
- (4) If the Secretary approves a model of electrical article, the Secretary must, as soon as practicable afterwards, give the applicant for the approval written notice of the approval containing:
 - (a) the particulars prescribed by the regulations, and
 - (b) any other particulars that the Secretary considers appropriate.
- (5) If the Secretary refuses to approve a model of electrical article, the Secretary must, within 21 days of the refusal, notify the applicant for the approval in writing:
 - (a) that the Secretary has refused the application for approval, and
 - (b) of the reasons for refusing the application.

17 Duration of model approvals

- (1) A model approval takes effect on the date of the approval and remains in force for the period (not exceeding 5 years) specified in the approval, subject to any cancellation or suspension of the approval, or any extension or renewal of the approval in accordance with the regulations.
- (2) A model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.
- (3) Nothing in subsection (2) requires the Secretary to approve, or renew or extend a model approval for, a model of electrical article that does not comply with a relevant class or model specification as in force at the time the approval is sought.

18 Suspension or cancellation of model approval

- (1) The Secretary may, by written notice given to the holder of a model approval:
 - (a) suspend the model approval for a period not exceeding 90 days, or
 - (b) cancel the model approval.
- (2) The Secretary may suspend or cancel a model approval only on one or more of the following grounds:
 - (a) an electrical article of the model is found by the Secretary not to comply with any one or more of the following:
 - (i) the class specifications for an electrical article of that model,
 - (ii) the model specifications for electrical articles of that model,
 - (iii) any specifications or requirements prescribed by the regulations for the purposes of section 7 (1) (c) (iii) or (iv) for an electrical article of that model,
 - (b) electrical articles of the model are unsafe because of their design or construction,
 - (c) the holder of the model approval gives the Secretary a written request for the suspension or cancellation,
 - (d) any other ground that may be prescribed by the regulations.
- (3) A written notice suspending or cancelling a model approval must set out:
 - (a) the matters prescribed by the regulations, and
 - (b) any other matters that the Secretary considers appropriate.

19 Administrative review of certain model approval decisions by Civil and Administrative Tribunal

- (1) A person whose application for a model approval has been refused by the Secretary may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of that refusal.
- (2) A holder of a model approval may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision of the Secretary suspending or cancelling the model approval given to the holder.
- (3) For the purposes of an application under subsection (1), an application for a model approval is taken to have been refused if it is not determined by the Secretary:
 - (a) except as provided by paragraph (b)—within 60 days after the date on which the application was lodged with the Secretary, or

- (b) if the applicant and the Secretary agree on a longer period—within the longer agreed period after the date on which the application was lodged with the Secretary.

Division 4 Recognised external approval schemes

20 Recognised external approval schemes

- (1) The Minister may, by order published in the Gazette, declare any scheme for the approval or certification of models of electrical articles to be a recognised external approval scheme for the purposes of this Part.
- (2) The regulations may make provision with respect to the declaration of schemes for the purposes of subsection (1).

Part 3 Gas appliances

Division 1 Restrictions on sale of gas appliances

21 Restrictions on sale of gas appliances

A person must not sell a gas appliance or type of gas appliance unless it is:

- (a) a certified gas appliance, and
- (b) labelled in accordance with the regulations.

Maximum penalty:

- (a) in the case of an individual:
 - (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 5,000 penalty units for a first offence, or
 - (ii) 7,500 penalty units for a second or subsequent offence.

Note. An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

22 Gas appliances displayed for advertising to be treated as being displayed for sale

For the purposes of this Act, a gas appliance that is displayed for the purpose of advertising, or otherwise in connection with, the sale of other gas appliances of the same type, is to be treated as being displayed for sale.

Division 2 Certification of gas appliances

23 Certification of gas appliances

A person must not certify a gas appliance or type of gas appliance unless the person:

- (a) is the holder of a certification authority, or
- (b) is a person authorised by the holder of a certification authority to certify gas appliances on the holder's behalf.

Maximum penalty: 500 penalty units (in the case of a corporation) and 250 penalty units (in the case of an individual).

24 Authority to certify gas appliances or types of gas appliances

- (1) A person, or person on behalf of an organisation, may make an application in accordance with the regulations for an authority to certify a gas appliance or type of gas appliance (a *certification authority*).
- (2) The Secretary may determine an application for a certification authority by granting or refusing the application.
- (3) A certification authority is to be in the form of an order in writing by the Secretary authorising the person or organisation to certify individual gas appliances or types of gas appliances.

25 Conditions of certification authority

- (1) A certification authority is subject to:
 - (a) any conditions that are prescribed by the regulations, and

- (b) any other conditions that may be imposed by the Secretary in accordance with the regulations.
- (2) The holder of a certification authority must comply with any conditions to which the authority is subject.
Maximum penalty: 2,500 penalty units (in the case of a corporation) and 500 penalty units (in the case of an individual).

26 Duration of certification authority

A certification authority takes effect on the day on which it is granted or on a later day specified in the authority and remains in force for the period specified in the authority, subject to any cancellation or suspension of the authority.

27 Suspension or cancellation of certification authority

- (1) The Secretary may:
 - (a) suspend a certification authority if of the opinion that there are grounds for cancelling the authority, by serving a show cause notice on the holder of the authority, or
 - (b) cancel a certification authority at any time and for any reason (including failure to comply with a show cause notice), by serving a written notice on the holder of the authority.
- (2) A **show cause notice** is a notice requiring the holder of the certification authority to show cause why the authority should not be cancelled on the grounds specified in the notice.
- (3) Without limiting the grounds that may be specified in a show cause notice, grounds include that the holder of the certification authority has failed to comply with a condition of the authority.
- (4) A show cause notice is to be in writing and is to specify a period of not less than 21 days after service of the notice as the period:
 - (a) during which the certification authority is suspended, and
 - (b) within which the holder must show cause as required by the notice.
- (5) The holder on whom a show cause notice is served may, within the period allowed by the notice, make written submissions to the Secretary in respect of the matters to which the notice relates.

Part 4 Unsafe electrical articles and gas appliances

28 Interpretation

In this Part:

- (a) a reference to an *electrical article* includes a reference to a model of electrical article, and
- (b) a reference to a *gas appliance* includes a reference to a type of gas appliance.

29 Prohibition of sale of unsafe electrical articles and gas appliances

- (1) The Secretary may, by a notice published in the Gazette, prohibit the sale of an electrical article or a gas appliance from the day the notice is published in the Gazette or on a later day specified in the notice.
- (2) The Secretary may, by written notice served on any person, prohibit the person from selling an electrical article or a gas appliance from the day the notice is so served or any later day that may be specified in the notice.
- (3) The Secretary may issue a notice under this section only if the Secretary believes on reasonable grounds that:
 - (a) the electrical article or gas appliance is, or is likely to become, because of its design or construction, unsafe to use, and
 - (b) prohibiting the sale of the electrical article or gas appliance is warranted due to the risk of death or injury to any person or damage to any property arising out of the use of the electrical article or gas appliance.
- (4) A notice issued under this section may be revoked or amended by the Minister or Secretary:
 - (a) in the case of a notice issued under subsection (1)—by notice published in the Gazette, or
 - (b) in the case of a notice issued under subsection (2)—by notice served on the person or persons to whom the original notice was directed.
- (5) The Secretary must publish copies of any notice issued under subsection (1), or any notice of revocation or amendment issued under subsection (4) (a), in such newspapers as may be prescribed by the regulations.
- (6) A failure to comply with subsection (5) does not invalidate any notice or revocation or amendment of a notice under this section.

30 Requiring action to be taken by seller of unsafe electrical articles or gas appliances

- (1) The Secretary may, by written notice served on any person who is a seller of electrical articles or gas appliances, require the seller to take the action specified in the notice within the time so specified, if the Secretary believes on reasonable grounds that:
 - (a) the electrical article or gas appliance is, or is likely to become, because of its design or construction, unsafe to use, and
 - (b) specific action is necessary to make the electrical article or gas appliance safe to use or to render safe the use of that electrical article or gas appliance.
- (2) Action that may be specified for the purposes of the notice may consist of or include:
 - (a) sending a written request to a person to whom the electrical article or gas appliance was sold by the seller to return the article or appliance to the place at which it was sold, and

- (b) making the electrical article or gas appliance safe to use or rendering safe the use of the electrical article or gas appliance, in the manner specified in the notice.
- (3) If a seller is required to take action in a notice issued under this section, the Secretary or the Minister may (whether or not on application of the seller) alter the requirements of the notice or revoke the notice by further written notice served on the seller.
- (4) In this section:
seller of electrical articles or gas appliances means any person whose business is or includes the sale of electrical articles or gas appliances and who has sold an electrical article or a gas appliance.

31 Requiring evidence of safety of electrical articles and gas appliances

If the Secretary believes on reasonable grounds that an electrical article or a gas appliance is, or is likely to become, because of its design or construction, unsafe to use, the Secretary may, by written notice served on any person who sells such electrical articles or gas appliances, require the person:

- (a) to carry out the testing of the safety of the electrical article or gas appliance specified in the notice, and
- (b) to provide any other evidence concerning the safety of the electrical article or gas appliance that may be specified in the notice.

32 Persons must comply with notices issued under this Part

- (1) A person must not sell an electrical article or a gas appliance if the sale of that electrical article or gas appliance is prohibited by a notice in force under section 29.

Maximum penalty:

- (a) in the case of an individual:
 - (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 5,000 penalty units for a first offence, or
 - (ii) 7,500 penalty units for a second or subsequent offence.

- (2) A person must comply with any requirement to take action in respect of an electrical article or a gas appliance made of the person under a notice in force under section 30.

Maximum penalty:

- (a) in the case of an individual:
 - (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 5,000 penalty units for a first offence, or
 - (ii) 7,500 penalty units for a second or subsequent offence.

- (3) A person must comply with any requirement to test or provide evidence in respect of an electrical article or a gas appliance under a notice in force under section 31.

Maximum penalty:

- (a) in the case of an individual:
- (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
- (i) 5,000 penalty units for a first offence, or
 - (ii) 7,500 penalty units for a second or subsequent offence.
- (4) A person is not guilty of an offence against this section if the person satisfies the court that the person had reasonable grounds for breaching or failing to comply with the prohibition or requirement to which the alleged offence relates.

Note. An offence against subsection (1), (2) or (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

33 Effect of Part on Fair Trading Act 1987

The provisions of this Part are in addition to, and not in derogation of, any provision of the *Fair Trading Act 1987* or any regulation made under that Act.

Part 5 Installations—electrical, gas and autogas

Division 1 Electrical installation work, gasfitting work and autogas work

34 Work to be carried out by qualified persons

- (1) A person must not carry out gasfitting work, or employ any other person to carry out gasfitting work, unless the person by whom the work is carried out does so:
- (a) under the authority of an appropriate supervisor certificate, or
 - (b) under the authority of an appropriate tradesperson certificate and under the general supervision of the holder of an appropriate supervisor certificate, or
 - (c) under the immediate supervision of the holder of an appropriate supervisor certificate.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) A person must not carry out autogas work, or employ any other person to carry out autogas work, unless the person by whom the work is carried out does so:
- (a) under the authority of an appropriate trade certificate, or
 - (b) in the course of an apprenticeship or traineeship and under the supervision of the holder of an appropriate tradesperson's certificate, or
 - (c) under the immediate supervision of the holder of an appropriate trade certificate.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (3) In this section:

supervisor certificate, in relation to a particular kind of gasfitting work, means a supervisor certificate in force under the *Home Building Act 1989* authorising the holder to carry out, and to supervise, that kind of work, and includes a licence endorsed under that Act to show that it is the equivalent of such a certificate.

trade certificate means:

- (a) in relation to autogas work carried out on an autogas installation that is designed for use with liquefied petroleum gas (LP Gas), a tradesperson's certificate granted under the *Motor Dealers and Repairers Act 2013* in respect of a class of repair work that includes work of a liquefied petroleum gas mechanic, or
- (b) in relation to autogas work carried out on an installation that is designed for use with compressed natural gas (CN Gas), a tradesperson's certificate granted under the *Motor Dealers and Repairers Act 2013* in respect of a class of repair work that includes work of a compressed natural gas mechanic.

tradesperson certificate, in relation to a particular kind of gasfitting work, means a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to carry out that kind of work under general supervision.

35 Work to comply with regulations

A person must not carry out:

- (a) electrical installation work, or
- (b) gasfitting work, or

(c) autogas work on an autogas installation, otherwise than in accordance with any standards or requirements that may be prescribed by the regulations.

Maximum penalty:

- (a) in the case of an individual:
- (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
- (i) 5,000 penalty units for a first offence, or
 - (ii) 7,500 penalty units for a second or subsequent offence.

Note. An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

Division 2 Electrical, gas and autogas installations

36 Responsibilities of persons concerning the safety of electrical or gas installations

- (1) A person responsible for an electrical installation or a gas installation in a place must, to the best of the person's ability and knowledge, ensure that any parts of the installation that are prescribed by the regulations for the purposes of this section are maintained in accordance with the regulations while the installation remains connected to the source of the supply of electricity or gas.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in the case of an individual).

- (2) A person responsible for an electrical installation in a place must not, if the installation has been lawfully disconnected for reasons of safety:

- (a) connect the electrical installation or any part of it, or
 - (b) cause the installation or any part of it to be connected,
- to the source of supply of electricity until the installation has been made safe.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in the case of an individual).

- (3) In this section:

person responsible for an electrical installation or a gas installation in a place means:

- (a) the occupier of the place, or
- (b) if there is no occupier, any owner of the place.

37 Offence of interfering with electrical, gas or autogas installations

- (1) A person who carries out any type of work for fee or reward at or near a place where an electrical installation, a gas installation or an autogas installation is located must ensure that the carrying out of the work, and the work, do not interfere with the installation in a way that adversely affects the safety of the installation.

Maximum penalty: 500 penalty units (in the case of a corporation) and 200 penalty units (in the case of an individual).

- (2) A person who:

- (a) carries out any type of work without fee or reward at or near a place where an electrical installation, a gas installation or an autogas installation is located, and

(b) carries out the work in a way that adversely affects the safety of the installation, and

(c) knows, or ought to have known, that the installation has been adversely affected,

must as soon as is reasonably practicable after becoming aware that the installation has been adversely affected take reasonable steps to make the installation safe.

Maximum penalty: 500 penalty units (in the case of a corporation) and 200 penalty units (in the case of an individual).

38 Restrictions on connection of gas appliances to certain gas installations

(1) A person must not connect a gas appliance to, or modify a gas appliance connected to, a gas installation to which gas is supplied from a gas network unless the appliance, or appliance as modified, is a certified gas appliance.

Maximum penalty: 500 penalty units (in the case of a corporation) and 250 penalty units (in the case of an individual).

(2) A person must not connect a gas appliance to any other gas installation unless the appliance:

(a) is a certified gas appliance that is labelled in accordance with the regulations, and

(b) is suitable and safe for use with the gas with which it is designed to be used.

Maximum penalty: 500 penalty units (in the case of a corporation) and 250 penalty units (in the case of an individual).

(3) Subsection (2) does not apply to:

(a) anything that is done in the course of the carrying out of gasfitting work, or

(b) anything that is done in the course of the testing of a gas installation by a person by whom gasfitting work is being carried out or by the holder of an appropriate supervisor certificate (within the meaning of section 34 (3)).

39 Regulation of installations

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

(a) testing, inspection and compliance requirements that must be carried out on completion of gasfitting work on a gas installation or autogas work on an autogas installation by the person responsible for carrying out the work,

(b) the sale of electrical or gas installations, or gas cylinders for autogas installations,

(c) the use of electrical, gas or autogas installations,

(d) the supply of gas for use in gas or autogas installations,

(e) the connection of electrical articles to electrical installations, of gas containers, gas regulators or gas appliances to gas installations, or of gas cylinders to autogas installations.

Part 6 Accident reporting and investigations

40 Notification of serious electrical and gas accidents

- (1) The occupier of the place at which a serious electrical accident or a serious gas accident occurs (or any other person that the regulations may prescribe) must notify the Secretary of the accident:

- (a) within 7 days after the accident, and
- (b) in the manner (if any) prescribed by the regulations.

Maximum penalty: 5 penalty units (if the place at which the accident occurred is residential premises) and 100 penalty units (in any other case).

- (2) The regulations may exclude a person, or a person belonging to a class of persons, prescribed by the regulations from any requirement under this section to notify the Secretary of a serious electrical accident or a serious gas accident.

41 Secretary may arrange investigation of serious electrical or gas accident

The Secretary may arrange for an authorised officer to investigate and report to the Secretary concerning a serious electrical accident or a serious gas accident, whether or not notice of the accident is given to the Secretary.

42 Interference with site of serious electrical or gas accident

A person must not disturb or interfere with the site of a serious electrical accident or a serious gas accident before it has been inspected by an authorised officer except:

- (a) to make it safe, or
- (b) with the permission of an authorised officer, or
- (c) as provided by the regulations.

Maximum penalty: 500 penalty units (in the case of a corporation) and 250 penalty units (in the case of an individual).

43 Secretary may publish details of serious electrical or gas accident

The Secretary may publish any details of a serious electrical accident or a serious gas accident that the Secretary considers necessary in the interests of public information and safety.

44 Arrangements with other public authorities regarding investigable electrical or gas incidents

- (1) The Secretary, SafeWork NSW and the Energy Secretary may enter into arrangements regarding any one or more of the following:

- (a) the referral of investigable electrical or gas incidents:
 - (i) by the Secretary or the Energy Secretary to SafeWork NSW for investigation or other action under the *Work Health and Safety Act 2011*, or
 - (ii) by the Energy Secretary or SafeWork NSW to the Secretary for investigation or other action under this Act, or
 - (iii) by SafeWork NSW or the Secretary to the Energy Secretary for investigation or other action under the *Electricity Supply Act 1995* or the *Gas Supply Act 1996*,

- (b) matters concerning an investigable electrical or gas incident that is the subject of investigation or other action by more than one of the following at the same time:
 - (i) the Secretary,
 - (ii) SafeWork NSW,
 - (iii) the Energy Secretary,
 - (c) the co-operative exercise of the respective functions of the Secretary, SafeWork NSW and the Energy Secretary in respect of investigable electrical or gas incidents.
- (2) The Secretary, SafeWork NSW and the Energy Secretary are jointly to cause notice of any arrangements entered into under this section to be published in the Gazette as soon as is practicable after they are entered into. However, a failure to publish any such arrangements does not affect their validity.
- (3) A party to an arrangement entered into under this section:
- (a) may decline, discontinue or defer an investigation or other action in relation to an investigable electrical or gas incident to give effect to the arrangement, and
 - (b) may disclose any information concerning a matter involving an investigable electrical or gas incident that was duly obtained by that party to another party to the arrangement to which the matter is referred so as to give effect to the arrangement.
- (4) A party to which a matter is referred under an arrangement entered into under this section may investigate or deal with information obtained in respect of the matter referred in order to give effect to the arrangement.
- (5) In this section:
- Energy Secretary*** means the Secretary of the Department of Industry, Skills and Regional Development.
- investigable electrical or gas incident*** means an accident or other incident:
- (a) in which electricity or gas is involved, and
 - (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time.
- SafeWork NSW*** means SafeWork NSW as referred to in clause 1 of Schedule 2 to the *Work Health and Safety Act 2011*.

Part 7 Enforcement

Division 1 Authorised officers

45 Appointment and identification of authorised officers

- (1) The Secretary may appoint any person (other than an investigator) as an authorised officer for the purposes of any or all of the provisions of this Act or the regulations.
Note. Any investigator under the *Fair Trading Act 1987* is an authorised officer for the purposes of this Act without further need for appointment under this section because of paragraph (a) of the definition of **authorised officer** in section 3 (1).
- (2) The Secretary may at any time and for any reason revoke a person's appointment under subsection (1).
- (3) An authorised officer is to be provided by the Secretary with a certificate of identification.
- (4) An authorised officer must, when exercising in any place any function of the authorised officer under this Act or the regulations, produce the officer's certificate of identification to any person apparently in charge of the place who requests its production.

46 Powers of authorised officers who are investigators under Fair Trading Act 1987 not limited

The powers conferred by this Act or the regulations on persons who are authorised officers because they are investigators are in addition to, and not in derogation of, the powers conferred on investigators by Division 1 of Part 2A of the *Fair Trading Act 1987*.

Division 2 Offences and associated provisions relating to investigations and inspections

47 Offences relating to investigations and inspections

- (1) A person must not:
 - (a) without reasonable excuse, refuse or fail to comply with any requirement made, or to answer any question asked, by an authorised officer under this Act or the regulations, or
 - (b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer under this Act or the regulations knowing the information or evidence to be false or misleading in a material particular, or
 - (c) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer's functions under this Act or the regulations, or
 - (d) falsely represent himself or herself to be an authorised officer.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in the case of an individual).

Note. Sections 53 and 55 contain specific offences relating to notices issued and labels affixed by authorised officers under those sections.

- (2) If an authorised officer makes a requirement under section 57 (2) (b), of a person who appears to the officer to be doing electrical wiring work or gasfitting work, that person is not guilty of the offence of failing to comply with that requirement if it is proved that the person was not actually doing the electrical wiring work or gasfitting work.

- (3) It is a sufficient defence to a prosecution for an offence arising under subsection (1) (a) because of the failure of a defendant to answer a question asked by an authorised officer under a power conferred by this Act or the regulations if the defendant satisfies the court that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (4) A person cannot be prosecuted for both an offence against this section and an offence against section 23 (Obstruction etc of employees) of the *Fair Trading Act 1987* in relation to the same act or omission.

48 Provisions relating to requirements to provide documents or information or answer questions

(1) **Warning to be given on each occasion**

A person is not guilty of an offence of failing to comply with a requirement under this Act to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) **Self-incrimination not an excuse**

A person is not excused from a requirement under this Act to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.

(3) **Information or answer not admissible if objection made**

However, any information provided or answer given by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against section 47 (1), 53 (4) or 55 (4)) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

(4) **Documents admissible**

Any document provided by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

(5) **Further information**

Further information obtained as a result of a document or information provided or of an answer given in compliance with a requirement under this Act is not inadmissible on the ground:

- (a) that the document or information had to be provided or the answer had to be given, or
- (b) that the document or information provided or answer given might incriminate the person.

Division 3 Investigation and inspection powers

49 Meaning of “possession”

In this Division:

possession includes custody or control.

50 Restrictions on power of entry to residential premises

The powers of entry and inspection conferred by this Act are not exercisable in relation to any premises or part of premises that are being used for residential purposes except:

- (a) with the permission of the occupier of the premises or that part of the premises, or
- (b) under the authority conferred by a search warrant.

Note. Section 62 enables authorised officers to obtain search warrants to search residential premises in certain circumstances.

51 Inspection of documents evidencing prohibited conduct

If the Secretary believes on reasonable grounds that there are in any place documents evidencing conduct in connection with:

- (a) an electrical article or a gas appliance, or
- (b) an electrical installation or a gas installation, or
- (c) a serious electrical accident or a serious gas accident,

in contravention of this Act or the regulations, an authorised officer may, with the written authority of the Secretary, enter the place, inspect any documents and make copies of them or take extracts from them.

52 Investigations relating to manufacture or sale of electrical articles or gas appliances

An authorised officer may, at any reasonable time, enter any place that the officer suspects on reasonable grounds to be a place in which the manufacture or sale of electrical articles or gas appliances, is being, or may be, carried on and may do any one or more of the following:

- (a) inspect and test any electrical article or gas appliance or prototype of an electrical article or a gas appliance,
- (b) inspect any manufacturing assembly or testing plant or equipment used in respect of any electrical article or gas appliance,
- (c) open any container or package which the authorised officer has reasonable grounds to believe contains any electrical article or gas appliance or require the person having possession of the container or package to open it,
- (d) seize, detain or remove, for the purpose of examination or testing, any electrical article or gas appliance or any container or package in which an electrical article or a gas appliance is contained or has been contained, if the authorised officer has reasonable cause to believe that:
 - (i) an offence has been committed against this Act or the regulations in respect of the electrical article or gas appliance, or
 - (ii) the electrical article or gas appliance is or is likely to become unsafe,
- (e) require any person in the place to produce any accounts, records, books or other documents in the possession of that person relating to the manufacture or sale of any electrical article or gas appliance in the place,
- (f) take copies of, or extracts or notes from, any such accounts, records, books or other documents,
- (g) require any person in the place to answer questions or otherwise furnish information relating to the manufacture or sale of electrical articles or gas appliances in the place where the articles or appliances are in the possession of that person,

- (h) require the owner or occupier of the place to provide the authorised officer with any assistance and facilities that are reasonably necessary to enable the authorised officer to exercise the functions of the authorised officer.

53 Prohibition of sale of certain electrical articles and gas appliances and labelling of such articles and appliances

- (1) An authorised officer who believes on reasonable grounds that an electrical article or more than one electrical article of a particular model, or a gas appliance or more than one gas appliance of a particular type, is, or is likely to become, unsafe, may:
 - (a) by written notice served on the person:
 - (i) having possession of the electrical article or electrical articles of that model, prohibit the sale by that person of the electrical article or of all electrical articles of that model, or
 - (ii) having possession of the gas appliance or gas appliances of that type, prohibit the sale by that person of the gas appliance or of all gas appliances of that type, and
 - (b) affix in some conspicuous position:
 - (i) on the electrical article or each of the electrical articles or the gas appliance or each of the gas appliances, or
 - (ii) on any container or package that contains an electrical article or gas appliance,
a label indicating that the electrical article or gas appliance is to be considered dangerous and must not be sold or used until specified repairs necessary to make it safe to use have been effected by the person having possession of the article or appliance.
- (2) A notice issued under this section ceases to have effect 2 weeks after the day on which it is served unless within that period the Secretary has:
 - (a) confirmed or varied the terms of the notice, or
 - (b) revoked the notice,
in accordance with subsection (3).
- (3) The Secretary may, by a further written notice served on the person to whom a notice under subsection (1) was originally issued, confirm or vary the terms of, or revoke, the original notice.
- (4) A person must not:
 - (a) sell an electrical article or a gas appliance in contravention of a notice in force under this section, or
 - (b) remove or alter a label affixed to an electrical article or a gas appliance or a container or package under this section unless directed to do so by an authorised officer.

Maximum penalty (subsection (4)):

- (a) in the case of an individual:
 - (i) 500 penalty units for a first offence, or
 - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 5,000 penalty units for a first offence, or

- (ii) 7,500 penalty units for a second or subsequent offence.

Note. An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

54 Investigation of unsafe use of electrical articles, gas appliances or electrical or gas installations

An authorised officer may, at any reasonable time, enter any place that the officer suspects on reasonable grounds to be a place in which an electrical article or a gas appliance, or an electrical installation or a gas installation, is being, or is likely to be, used in a manner that presents a significant risk of the death of, or injury to, any person, or significant damage to any property, and may do any one or more of the following:

- (a) inspect any electrical article or gas appliance, or electrical or gas installation, or equipment used in respect of any such article, appliance or installation,
- (b) if the authorised officer has reasonable cause to believe that the electrical article or gas appliance, or electrical or gas installation, is being, or is likely to be, used in a manner that presents a significant risk of the death of, or injury to, any person, or significant damage to any property:
 - (i) disconnect the article or appliance concerned from an installation, or
 - (ii) take appropriate measures to have the installation concerned disconnected from its supply of electricity or gas,
- (c) require any person in the place who has possession of the electrical article or gas appliance, or the electrical or gas installation, to answer questions or otherwise furnish information relating to the use of the electrical article or gas appliance, or the electrical or gas installation,
- (d) require the owner or occupier of the place to provide the authorised officer with any assistance and facilities that are reasonably necessary to enable the authorised officer to exercise the functions of the authorised officer.

55 Prohibition of unsafe use of electrical articles, gas appliances or electrical or gas installations

- (1) An authorised officer who believes on reasonable grounds that an electrical article or a gas appliance, or an electrical installation or a gas installation, is being used in a manner that presents a significant risk of:
 - (a) the death of, or injury to, any person, or
 - (b) significant damage to any property,may, by written notice served on the person having possession of the electrical article or gas appliance, or the electrical or gas installation, prohibit its use in such a manner.
- (2) A notice issued under this section ceases to have effect 2 weeks after the day on which it is issued unless within that period the Secretary has:
 - (a) confirmed or varied the terms of the notice, or
 - (b) revoked the notice,in accordance with subsection (3).
- (3) The Secretary may, by a further written notice served on the person to whom a notice under subsection (1) was originally issued, confirm or vary the terms of, or revoke, the original notice.

- (4) A person must not use an electrical article or a gas appliance, or an electrical installation or a gas installation, in contravention of a notice in force under this section.

Maximum penalty (subsection (4)):

- (a) in the case of an individual:
- (i) 100 penalty units for a first offence, or
 - (ii) 150 penalty units for a second or subsequent offence, or
- (b) in the case of a corporation:
- (i) 1,000 penalty units for a first offence, or
 - (ii) 1,500 penalty units for a second or subsequent offence.

Note. An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64.

56 Investigation of serious electrical or gas accidents

An authorised officer who is investigating an accident under Part 6 may, in any place where a serious electrical accident or a serious gas accident has or may reasonably be expected to have occurred, do any one or more of the following:

- (a) enter and inspect the place,
- (b) examine and test (in the case of an electrical accident) any electrical article, electrical installation or other electrical equipment or (in the case of a gas accident) any gas appliance, gas installation or autogas installation,
- (c) take photographs,
- (d) take for analysis a sample of any substance or thing that in the authorised officer's opinion may relate to the accident,
- (e) require any person in the place to produce any record that may be of relevance to the occurrence of the accident,
- (f) take copies of, or extracts or notes from, any such record,
- (g) require any person in the place to answer questions or otherwise furnish information relating to the accident,
- (h) require the owner or occupier of the place to provide the authorised officer with any assistance and facilities that are reasonably necessary to enable the authorised officer to exercise the authorised officer's functions under this section.

57 Inspection of electrical and gas installations

- (1) An authorised officer may enter any place at any reasonable time for the purpose of inspecting any electrical installation or gas installation in the place.
- (2) The authorised officer may require:
 - (a) any person who claims to be an authorised electrician or authorised gasfitter to produce for inspection by the authorised officer, within such time as the authorised officer specifies, the person's licence or other authority to do electrical wiring work or gasfitting work, or
 - (b) any person who appears to the authorised officer to be doing electrical wiring work or gasfitting work to satisfy the authorised officer, within such time as the authorised officer specifies, that the person is not prohibited under the *Home Building Act 1989* from doing that electrical wiring work, or under this Act from doing that gasfitting work (as the case may be).

58 Inspection of electricity meters

- (1) Without limiting section 57, an authorised officer may inspect an electrical installation that includes the installation of an electricity meter to ensure that the installation complies with this Act and any standards or requirements imposed by the regulations.
- (2) The regulations may prescribe a fee for or in connection with the inspection by an authorised officer of an electrical installation that includes the installation of an electricity meter.

Division 4 Seizure and forfeiture of electrical articles and gas appliances

59 Meaning of “seized article or appliance”

In this Division:

seized article or appliance means an electrical article or a gas appliance that is seized under section 52 (d).

60 Return of seized electrical articles and gas appliances

- (1) The Secretary must, within the prescribed period, return a seized article or appliance to the person from whom it was seized.
- (2) Subsection (1) does not apply if, within the prescribed period:
 - (a) the Secretary has determined that the article or appliance is unsafe and applied under section 61 for the forfeiture of the article or appliance, or
 - (b) proceedings are brought against the person or any other person in connection with the article or appliance for an offence against this Act or the regulations.
- (3) The Secretary must provide compensation for the seized article or appliance if, within the prescribed period:
 - (a) the Secretary does not find the article or appliance to be unsafe or apply for the forfeiture of the article or appliance, or
 - (b) proceedings for an offence against this Act or the regulations are not brought against a person in connection with the article or appliance.
- (4) If proceedings are brought within the prescribed period against a person in connection with a seized article or appliance for an offence against this Act or the regulations:
 - (a) the Secretary may retain the article or appliance until the proceedings are finally determined, and
 - (b) the Secretary must immediately return the article or appliance to the person from whom it was seized if the defendant in the proceedings is acquitted of the offence.
- (5) Compensation provided under this section is to be determined in accordance with the regulations.
- (6) In this section:

prescribed period means no later than 12 months after the seizure or, if the regulations prescribe a different period, the period so prescribed.

61 Forfeiture of certain electrical articles and gas appliances

- (1) The Secretary may apply to the Local Court for the forfeiture of an electrical article or a gas appliance to the Crown if:
 - (a) a court has found a person guilty of an offence against this Act or the regulations in connection with the electrical article or gas appliance, or
 - (b) the Secretary determines that a seized article or appliance is unsafe.
- (2) The Secretary is to make the application in the manner prescribed by the regulations.
- (3) On the making of an order by the Local Court for the forfeiture of an electrical article or a gas appliance, the electrical article or gas appliance is forfeited to the Crown.
- (4) Any electrical article or gas appliance forfeited to the Crown may be disposed of as the Secretary directs.

Division 5 Search warrants

62 Search warrants

- (1) An authorised officer may apply to an authorised warrants officer for a search warrant in respect of a place if the authorised officer has reasonable grounds for believing that:
 - (a) an unsafe electrical installation or gas installation is in the place, or
 - (b) a serious electrical accident or a serious gas accident has occurred in the place, or
 - (c) a provision of this Act or the regulations has been or is being contravened in the place.
- (2) An authorised warrants officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant:
 - (a) to enter the place concerned, and
 - (b) to search the place for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:
authorised warrants officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Division 6 Undertakings

63 Application of section 218 of the Australian Consumer Law (NSW) to undertakings given for purposes of this Act

- (1) Section 218 (Regulator may accept undertakings) of the *Australian Consumer Law (NSW)* applies in connection with a matter in relation to which the Secretary has a function under this Act as if the function were a function under that Law.
Note. Section 218 of the *Australian Consumer Law (NSW)* enables the Secretary to accept a written undertaking given by a person in connection with a matter in relation to which the Secretary has a function under that Law. Any such undertaking is enforceable by the Supreme Court.
- (2) The costs incurred by the Secretary in taking action under section 218 of the *Australian Consumer Law (NSW)* to enforce an undertaking are recoverable from the

person who gave the undertaking, as a debt due to the Crown, in a court of competent jurisdiction.

Division 7 Proceedings for offences

64 Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
 - (a) section 7 (1) or 21,
 - (b) section 11 (1),
 - (c) section 32 (1)–(3),
 - (d) section 35,
 - (e) section 53 (4),
 - (f) section 55 (4).
- (2) A person commits an offence against this section if:
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person:
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

director has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
 - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
 - (i) the plant, equipment and other resources, and
 - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

65 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 64.
- (2) A person commits an offence against this section if:
 - (a) a corporation commits a corporate offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person:
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.

- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

66 Evidentiary provisions relating to electrical articles

A certificate purporting to be signed by the Secretary (or any person employed in the Department authorised in writing by the Secretary) to the effect that at any time, or during any period, specified in the certificate:

- (a) an electrical article was a declared electrical article, or
- (b) a standard, code, rule, testing requirement or other specification specified or described in the certificate (whether with or without modifications so specified or described) was a class specification or a model specification for a specified model of electrical article, or
- (c) an electrical article described in the certificate was or was not of a particular model that had a model approval or of a class, description or model approved or registered by a relevant authority for another State or a Territory, or
- (d) a scheme for the approval or certification of models of electrical articles was a recognised external approval scheme,

is admissible in any proceedings and is evidence of the matters certified.

67 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and

- (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of penalty prescribed under this section for an offence may not exceed:
 - (a) an amount equivalent in value to \$10,000, or
 - (b) the maximum amount of penalty that could be imposed for the offence by a court,whichever is the lesser.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

68 Nature of proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
 - (a) summarily before the Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

69 Commencement of proceedings

- (1) Proceedings for an offence against this Act or the regulations may be commenced at any time within the period of 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within the period of 2 years after the date evidence of the offence that is alleged to have been committed first came to the attention of an authorised officer.
- (3) However, nothing in subsection (2) permits the commencement of proceedings if a period of 5 years or more has elapsed after the date on which the offence is alleged to have been committed.
- (4) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the process commencing proceedings for the offence must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the process commencing proceedings for the offence, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section:
 - authorised officer** means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.
 - evidence** of an offence means evidence of any act or omission constituting the offence.

Part 8 Miscellaneous

70 Registers

- (1) The Secretary is to cause the following registers to be maintained:
 - (a) a register of model approvals granted under Part 2,
 - (b) a register of persons or organisations granted a certification authority under Part 3.
- (2) The regulations may make provision for or with respect to the form in which a register is to be kept and the particulars that are to be recorded in a register.

71 Disclosure of information

- (1) A person must not disclose any information relating to any manufacturing or commercial secrets or working processes obtained by the person in connection with the administration or execution of this Act, unless the disclosure of information is:
 - (a) made in connection with the administration or execution of this Act, or
 - (b) made with the prior permission of the Minister, or
 - (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

Maximum penalty: 100 penalty units.

- (2) The Minister may grant the permission referred to in subsection (1) (b) only if the Minister is satisfied that to do so would be in the public interest.
- (3) Despite subsection (1), a person employed in the Department may, with the consent of the Secretary, communicate any matter that comes to the knowledge of the employee in the exercise of the functions of the employee under this Act to an officer or body engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to electrical articles or electrical installations or gas appliances, gas installations or autogas installations.

72 Exclusion of personal liability

- (1) Anything done or omitted to be done by:
 - (a) the Minister, or a person acting under the direction of the Minister, or
 - (b) the Secretary, or a person acting under the direction of the Secretary, or
 - (c) an authorised officer,does not subject the Minister, Secretary, person or authorised officer personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.
- (2) However, any such liability attaches instead to the Crown.

73 Service or giving of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on, or given to, any person may be served or given by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

- (iii) sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

74 Provision of documents to Secretary

- (1) A document may be served on, or given to, or lodged with, the Secretary by leaving it at, or by sending it by post to:
 - (a) the office of the Secretary, or
 - (b) if the Secretary has more than one office, any one of the Secretary's offices.
- (2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Secretary in a manner not provided for by subsection (1).

75 Delegation of functions

- (1) The Minister may delegate to an authorised person any of the functions of the Minister under this Act or the regulations, other than this power of delegation.
- (2) The Secretary may delegate to any other authorised person any of the functions of the Secretary under this Act or the regulations, other than this power of delegation.
- (3) A delegate may sub-delegate to an authorised person any function delegated by the Minister or the Secretary if the delegate is authorised in writing to do so by the Minister or Secretary (as the case may be).
- (4) In this section:
authorised person means:
 - (a) a public authority or local authority or a member of staff of a public authority or local authority, or
 - (b) a person employed in the Public Service, or
 - (c) a person of a class prescribed by the regulations.

76 Regulations

- (1) 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.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to any of the following matters:
 - (a) the provision of reports, information, particulars, returns and statistics for the purposes of this Act and the time and mode of furnishing and the manner of verification,

- (b) the constitution, functions and procedures of a committee to advise the Secretary in relation to any matters relating to the approval or sale of electrical articles or gas appliances that may be referred to it by the Secretary,
 - (c) the making of applications for the purposes of this Act,
 - (d) fees or charges for the purposes of this Act (including the waiver, reduction, postponement or refund of fees or charges),
 - (e) the exemption, unconditionally or subject to conditions, of persons or things or classes of persons or things from any or all of the provisions of this Act,
 - (f) standards for electrical articles or gas appliances and for the materials used in their manufacture,
 - (g) the design and construction of electrical articles or gas appliances,
 - (h) the testing and inspection of electrical articles or gas appliances,
 - (i) the approval, and the withholding and withdrawal of approval, of electrical articles or gas appliances (including of models or types) and the renewal of an approval,
 - (j) the marking or labelling of electrical articles or gas appliances and the improper use of marks or labels,
 - (k) guarantees to be given with respect to electrical articles or gas appliances,
 - (l) the connection, alteration, maintenance, repair, replacement and operation of electrical articles or gas appliances,
 - (m) the disposal, whether by way of sale or otherwise, of electrical articles or gas appliances (including the imposition of conditions on their sale to ensure their safe use) and the display of electrical articles or gas appliances in connection with their disposal,
 - (n) electrical installations, gas installations or autogas installations, or associated fittings or equipment,
 - (o) the carrying out of electrical installation work, gasfitting work or autogas work.
- (3) The regulations may create offences punishable by a penalty not exceeding 500 penalty units (in the case of corporations) and 250 penalty units (in the case of an individual).
- (4) The regulations may apply, adopt or incorporate (with or without modification) any publication as in force at a particular time or from time to time.
- (5) The regulations prevail over regulations made under the *Local Government Act 1993*, to the extent of any inconsistency.

77 Repeals

The following are repealed:

- (a) *Electricity (Consumer Safety) Act 2004*,
- (b) *Electricity (Consumer Safety) Regulation 2015*,
- (c) *Gas Supply (Consumer Safety) Regulation 2012*.

78 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.

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- (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 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned 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 on the NSW legislation website, 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.
- (4) Regulations made as referred to in subclause (1) may have effect despite the terms of any savings or transitional provisions contained in this Schedule, if the regulations so provide.

Part 2 Provisions arising from enactment of this Act

Division 1 General provisions

2 Definition

In this Part:

former legislation means:

- (a) in Division 2, the *Electricity (Consumer Safety) Act 2004*, and
- (b) in Division 3, the *Gas Supply (Consumer Safety) Regulation 2012*, and
- (c) in this Division, both of the above.

3 General savings provision

- (1) Anything done or omitted to be done or commenced to be done under or in relation to a provision of the former legislation is taken to have been done or omitted or commenced to be done under or in relation to the corresponding provision of this Act.
- (2) This clause does not apply:
 - (a) to the extent that its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
 - (b) to the extent that its application would be inappropriate in a particular case.

4 Construction of references

- (1) Subject to the regulations, in any Act or instrument:
 - (a) a reference to the former legislation extends to this Act, and

- (b) a reference to a provision of the former legislation for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and
 - (c) a reference to any act, matter or thing referred to in a provision of the former legislation for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.
- (2) Subclause (1) does not apply to section 135 (b) of the *Home Building Act 1989*.

5 Commencement and nature of proceedings for offences

- (1) Sections 68 and 69 of this Act extend to offences or alleged offences against the former legislation for which no proceedings had been commenced before the commencement of those sections.
- (2) Despite subclause (1), section 69 (2) of this Act does not extend to offences or alleged offences under the *Gas Supply (Consumer Safety) Regulation 2012* for which no proceedings had been commenced before that commencement.

6 Registers

A register kept under the former legislation immediately before the commencement of section 70 of this Act is taken to be the corresponding register required to be kept under that section.

Division 2 Further provisions consequent on repeal of Electricity (Consumer Safety) Act 2004

7 Declared electrical articles

An order in force under section 5 of the former legislation immediately before the commencement of section 12 of this Act is taken to be an order under section 12 of this Act.

8 Model approvals for electrical articles

- (1) An application for a model approval made under section 11 of the former legislation but not finally determined immediately before the commencement of section 16 of this Act is taken to be made, and may be determined, under section 16 of this Act.
- (2) A model approval in force under section 11 of the former legislation immediately before the commencement of section 16 of this Act is taken to be a model approval in force on the same terms under section 16 of this Act.
- (3) A suspension of a model approval under section 13 of the former legislation that had effect immediately before the commencement of section 18 of this Act is taken to be a suspension for the same period in force under section 18 of this Act.
- (4) An application to the Civil and Administrative Tribunal under section 14 of the former legislation but not finally determined immediately before the commencement of section 19 of this Act is taken to be made under section 19 of this Act.
- (5) For the purposes of section 19 (3) of this Act, the date on which an application for a model approval to which subclause (2) applies was lodged is the date on which it was actually lodged.

9 Recognised external approval schemes

A scheme for the approval or certification of models of electrical articles that was a declared recognised external approval scheme under section 15 of the former

legislation immediately before the commencement of section 20 of this Act is taken to be a recognised external approval scheme declared under section 20 of this Act.

10 Exemptions from restrictions on sale of electrical articles

An order in force under section 16 (2) of the former legislation immediately before the commencement of section 7 (2) of this Act is taken to be an order made under section 7 (2) of this Act on the same terms and subject to the same conditions.

11 Notices issued by Secretary relating to unsafe electrical articles

A notice issued by the Secretary under section 21, 22 or 23 of the former legislation that had effect immediately before the commencement of section 29, 30 and 31 of this Act, is taken to be a notice issued under section 29, 30 or 31, respectively, of this Act.

12 Notices issued by authorised officers relating to unsafe electrical articles

- (1) A notice issued, or a label affixed, by an authorised officer under section 27 of the former legislation that had effect immediately before the commencement of section 53 of this Act is taken to be a notice issued or a label affixed under section 53 of this Act.
- (2) For the purposes of section 53 (2) of this Act, the date on which a notice to which subclause (1) applies was issued is the date on which it was actually issued.

13 Arrangements with public authorities regarding investigable electrical incidents

An arrangement entered into under section 38 of the former legislation that had effect immediately before the commencement of section 44 of this Act is taken to be an arrangement under section 44 of this Act.

14 Authorised officers

A person whose appointment as an authorised officer under section 39 of the former legislation was in force immediately before the commencement date is taken to be appointed under section 45 of this Act.

15 Search warrants

A search warrant under section 42 of the former legislation that was in force immediately before the commencement of section 62 of this Act is taken to be a search warrant under section 62 of this Act.

16 Evidentiary certificates

Any evidentiary certificate under section 46 of the former legislation is taken to be an evidentiary certificate under section 66 of this Act.

17 Disclosure of information

Any information obtained by a person in connection with the administration or execution of the former legislation is taken to have been obtained by the person in connection with the administration or execution of this Act.

18 Delegations

Any delegation of a function made under section 54 of the former legislation and in force immediately before the commencement of section 75 of this Act is taken to be a delegation under section 75 of this Act.

Division 3 Further provisions consequent on repeal of Gas (Consumer Safety) Regulation 2012

19 Certified gas appliances

A gas appliance that was a certified gas appliance immediately before the commencement of section 24 of this Act is taken to be a certified gas appliance under this Act.

20 Certification authority

- (1) An application for a certification authority made under clause 8 of the former legislation but not finally determined immediately before the commencement of section 24 of this Act is taken to be made, and may be determined, under section 24 of this Act.
- (2) A certification authority in force under clause 8 of the former legislation immediately before the commencement of section 24 of this Act is taken to be a certification authority under section 24 of this Act on the same terms.
- (3) Any condition to which a certification authority referred to in subclause (1) was subject immediately before the commencement of section 25 of this Act is taken to be imposed on the certification authority under section 25 of this Act.
- (4) A show cause notice given under clause 12 of the former legislation that had effect immediately before the commencement of section 27 of this Act, is taken to be a show cause notice on the same terms under section 27 of this Act.
- (5) A suspension of a certification authority under clause 12 the former legislation that had effect immediately before the commencement of section 27 of this Act is taken to be a suspension for the same period in force under section 27 of this Act.

Schedule 2 Amendment of Acts and Regulations

2.1 Criminal Procedure Regulation 2010

[1] Schedule 2A NSW Government agencies and statutory bodies required to pay court fees

Omit paragraph (l).

[2] Schedule 2A

Omit paragraph (p). Insert instead:

(p) *Gas and Electricity (Consumer Safety) Act 2016*,

2.2 Electricity Supply Act 1995 No 94

Dictionary

Omit “*Electricity (Consumer Safety) Act 2004*” wherever occurring in the definitions of *authorised electrician* and *electrical wiring work*.

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016*”.

2.3 Electricity Supply (General) Regulation 2014

Clause 19 Conditions on exemptions for certain residential premises relating to disconnection from distribution system

Omit “*Electricity (Consumer Safety) Act 2004*” from clause 19 (8).

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016*”.

2.4 Electricity Supply (Safety and Network Management) Regulation 2014

Clause 22 Suspension or cancellation of accreditation

Omit “or the *Electricity (Consumer Safety) Act 2004*” from clause 22 (1) (h).

Insert “or the *Gas and Electricity (Consumer Safety) Act 2016* or any regulations under the Act (to the extent the Act or the regulations relate to electricity),” after “Acts”.

2.5 Energy and Utilities Administration Act 1987 No 103

Section 3 Definitions

Omit “*Electricity (Consumer Safety) Act 2004*” from the definition of *electricity supply authority* in section 3 (1).

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016*”.

2.6 Eraring Power Station Act 1981 No 107

Section 13 Certain electricity legislation not to apply

Omit “*Electricity (Consumer Safety) Act 2004*” from paragraph (a) of the definition of *relevant electricity legislation* in section 13 (2).

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016* (to the extent it relates to electricity)”.

2.7 Fair Trading Act 1987 No 68

Schedule 1 Paramount legislation

Omit “*Electricity (Consumer Safety) Act 2004*”.

Insert in alphabetical order “*Gas and Electricity (Consumer Safety) Act 2016*”.

2.8 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit “*Electricity (Consumer Safety) Act 2004*, section 47”.

2.9 Gas Supply Act 1996 No 38

[1] Section 55 Powers of entry

Omit section 55 (2A).

[2] Section 77 Inspectors

Omit the note to the section.

[3] Section 83A Regulations as to gas appliances, gas and autogas installations, gasfitting and autogas work and gas meters

Omit the section.

2.10 Home Building Act 1989 No 147

[1] Section 135 Proceedings for certain offences under other Acts

Insert after section 135 (b):

(b1) the *Gas and Electricity (Consumer Safety) Act 2016*, or

[2] Schedule 1 Definitions and other interpretative provisions

Omit “*Electricity (Consumer Safety) Act 2004*” from the definition of *electrical wiring work* in clause 1 (1).

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016*”.

2.11 Home Building Regulation 2014

Clause 3 (1) definition of “electricity supply authority” and clause 4 (3) definition of “electrical installation”

Omit “*Electricity (Consumer Safety) Act 2004*” wherever occurring.

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016*”.

2.12 Law Enforcement (Powers and Responsibilities) Act 2002 No103

Schedule 2 Search warrants under other Acts

Omit “*Electricity (Consumer Safety) Act 2004*, section 42”.

Insert in alphabetical order:

Gas and Electricity (Consumer Safety) Act 2016, section 62

2.13 Work Health and Safety Regulation 2011

Clause 164, note 2 and clause 166, note

Omit “*Electricity (Consumer Safety) Act 2004*” wherever occurring.

Insert instead “*Gas and Electricity (Consumer Safety) Act 2016*”.