



New South Wales

# Electricity Retained Interest Corporations Bill 2015

## Explanatory note

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

This Bill is cognate with the *Electricity Network Assets (Authorised Transactions) Bill 2015*.

## Overview of Bill

The object of this Bill is to provide for the effective stewardship and oversight of the interest in electricity network assets of the State that the State will retain following the proposed transfer of assets authorised by the proposed *Electricity Network Assets (Authorised Transactions) Act 2015*. This **retained interest** is the interest of the State in a lease of assets comprising or including network infrastructure assets (other than the interests of the State as lessor under such a lease) and the interest of the State as a lessee under such a lease.

The Bill provides for this by:

- (a) constituting a separate Corporation for each separate part of the retained interest (each part being referable to the distribution system previously controlled and operated by a particular electricity network SOC), and
- (b) providing for each of those Corporations to hold the part of the retained interest for which it is responsible on behalf of the State, and
- (c) requiring each of those Corporations to provide effective stewardship and oversight of the relevant part of the retained interest for the purpose of protecting the value to the State of that part of the retained interest and seeking to maximise returns to the State from that part of the retained interest, and
- (d) providing that each Corporation has power to invest in the business of a transacted distribution system or transacted transmission system, and

- (e) making provisions for the governance of each Corporation, including the duties of members of the Board of Governors and officers, financial arrangements and obligations relating to the administration and audit of finances and to annual reporting.

## 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 used in the proposed Act.

**Clause 4** defines *retained interest* to mean the interests of the State in a lease of assets comprising or including network infrastructure assets (other than the interests of the State as lessor under such a lease) or the interests of the State as a lessee under such a lease. For the purposes of the proposed Act, the retained interest is considered to be made up of separate parts that are referable to the distribution system or transmission system previously controlled and operated by a particular electricity network SOC constituting a separate part of the retained interest. (Accordingly, the part of the retained interest that is referable to Ausgrid's distribution system is considered to be separate from the part of the retained interest that is referable to Endeavour Energy's distribution system.)

### Part 2 The Corporations

**Clause 5** constitutes a separate corporation for each separate part of the retained interest and provides that all decisions relating to the operation of a Corporation are to be made by or under the authority of the Board of Governors of the Corporation (*the Board*).

**Clause 6** provides that the part of the retained interest for which a Corporation is constituted is to be held by the Corporation (either directly or through one or more interposed entities) and is to be held for and on behalf of the State.

**Clause 7** provides that the functions of a Corporation, which can be exercised by the Corporation or its subsidiary, are to provide effective stewardship and oversight of the part of the retained interest for which it is responsible for the purpose of protecting the value to the State of that part of the retained interest and seeking to maximise returns to the State from that part of the retained interest. Each Corporation may do all things necessary or convenient to be done for or in connection with the exercise of its functions and each Corporation has power to invest money in connection with the exercise of its functions, including by investing in the business of a transacted distribution system or transacted transmission system.

**Clause 8** provides that a Corporation is not subject to the control or direction of the Government or any Minister on behalf of the Government in the exercise of the Corporation's functions. In particular, the Treasurer is not authorised by or under the proposed *Electricity Network Assets (Authorised Transactions) Act 2015* to act for or on behalf of a Corporation or a subsidiary of a Corporation or to give directions to, or to a member of the Board of, a Corporation or subsidiary of a Corporation.

**Clause 9** provides that the Board of a Corporation may, after consulting the Treasurer, appoint a General Manager of the Corporation to be responsible for the day-to-day management of the operation of the Corporation in accordance with the general policies and specific directions of the Board.

**Clause 10** provides for the Treasurer to give directions to a Corporation imposing accountability and reporting requirements on the Corporation, including requirements for the corporate planning to be undertaken, for reporting on the operation and performance of the Corporation and the disclosure of matters that may have a material effect on the value of that part of the retained interest for which the Corporation is responsible.

**Clause 11** gives a Corporation the power to form, participate in the formation of or acquire subsidiaries.

**Clause 12** requires the Treasurer to ensure that a Corporation and any of its subsidiaries are provided with administrative support, including staff and facilities.

### **Part 3 Board of Governors**

**Clause 13** provides that each Corporation is to have a Board of Governors consisting of 3 members appointed by the Treasurer as either part-time or full-time members.

**Clause 14** specifies the qualifications of Board members (that is, having substantial experience or expertise, and professional credibility and significant standing, in at least one of the fields of the management of investments in financial assets, corporate governance and the management or operation of regulated public utility assets or infrastructure assets). The provision also disqualifies the holders of full-time offices under a law of the State, public servants and certain other persons employed by bodies exercising public functions from membership of a Board.

**Clause 15** provides that the Treasurer is to determine the term of office of members of a Board (which is not to exceed 4 years).

**Clause 16** provides that a Board may delegate the exercise of any of its functions to a member or committee of the Board.

**Clause 17** specifies when a vacancy in the office of a member of a Board arises.

**Clause 18** provides that the Treasurer may remove a member of a Board from office if satisfied that the performance of the Board member has been unsatisfactory for a significant period, or on the recommendation of the Board.

**Clause 19** provides for a Board to determine the procedure for the calling of meetings of the Board and for the conduct of business at those meetings.

**Clause 20** provides for the transaction of business outside meetings of the Board.

**Clause 21** provides for the remuneration of Board members.

**Clause 22** requires each Board to have a Chairperson and provides for the appointment, term of office and vacation of office of the Chairperson.

### **Part 4 Duties of Board members and officers**

**Clause 23** provides that the Treasurer may determine and notify to a Board corporate governance guidelines containing recommendations designed to assist the Board to minimise risks concerning governance and to optimise performance and accountability of the Board.

**Clause 24** requires a member of a Board who has a material personal interest in a matter being considered, or about to be considered, by the Board to disclose the nature of the interest to a meeting of the Board as soon as practicable after the relevant facts come to the member's knowledge.

**Clause 25** prevents a member of a Board who has a material personal interest in a matter being considered by the Board from taking part in any decision of the Board on the matter, including voting on the matter, voting on a proposed resolution in relation to the matter, being present while the matter, or a related resolution, is being considered by the Board or otherwise taking part in any decision of the Board in relation to the matter or a related resolution.

**Clause 26** requires an officer of a Corporation to act honestly in the exercise of functions as an officer of the Corporation, to exercise the degree of care and diligence in the exercise of functions that a reasonable person in a like position would exercise, not to make improper use of information acquired because of his or her position and not to make improper use of his or her position as an officer of the Corporation.

**Clause 27** prevents a Corporation from indemnifying a person who is or has been an officer of the Corporation against a liability incurred as an officer and prevents a Corporation from exempting a person who is or has been an officer of the Corporation from liability incurred as an officer.

**Clause 28** prevents a Corporation from paying insurance premiums for certain liabilities of officers (those incurred by the person as an officer and arising out of conduct involving a wilful breach of duty in relation to the Corporation, making improper use of information acquired because of his or her position as an officer of the Corporation or making improper use of his or her position as an officer of the Corporation).

**Clause 29** provides that a Corporation may enter into an agreement that confers a right of access to documents held by the Corporation in connection with any claim, investigation or other proceedings relating to a person's term of office as an officer of the Corporation.

**Clause 30** provides that reliance by a Board member on the advice of others is taken to be reasonable for the purposes of proceedings brought to determine whether the Board member has performed a duty under the proposed Part or an equivalent general law duty.

**Clause 31** provides that a court may grant relief from liability for negligence, default, breach of trust or breach of duty as an officer or member of staff of a Corporation.

## **Part 5 Financial provisions**

**Clause 32** provides for the establishment, in the Special Deposits Account, of a Fund for each Corporation and makes each Corporation responsible for the administration of the Fund established for it.

**Clause 33** specifies the amounts that are payable into the Fund established for a Corporation, including all financial returns (including dividend income, return of capital and any other financial distribution) derived by the Corporation or any subsidiary of the Corporation from that part of the retained interest for which the Corporation is responsible.

**Clause 34** specifies the amounts that are payable from the Fund established for a Corporation, including such amounts as the Treasurer directs for payment into the Consolidated Fund.

**Clause 35** requires a Corporation to produce an annual report on the Fund established for the Corporation, detailing the payments made to and from the Fund.

**Clause 36** allows a Corporation to invest money in the Fund established for the Corporation in such manner as may be authorised by the Treasurer.

## **Part 6 Miscellaneous**

**Clause 37** makes provision for proceedings for offences under the proposed Act.

**Clause 38** enables the Governor to make regulations for the purposes of the proposed Act.

## **Schedule 1 Amendment of Acts**

**Schedule 1.1** inserts Corporations constituted by the proposed Act in the list of statutory bodies that are subject to the requirements of the *Public Finance and Audit Act 1983* relating to the administration and audit of public finances.

**Schedule 1.2** includes the full-time or part-time members of the Board of Governors of a Corporation constituted by the proposed Act in the list of public office holders in relation to whose remuneration the Statutory and Other Offices Remuneration Tribunal may make determinations.



New South Wales

# Electricity Retained Interest Corporations Bill 2015

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Interpretation	2
4 Retained interest	2
<b>Part 2 The Corporations</b>	
5 Establishment and operation	3
6 Retained interest to be held by Corporations	3
7 Functions	3
8 Status	3
9 General Manager	4
10 Accountability and reporting	4
11 Subsidiaries	5
12 Administrative support and staff	5
<b>Part 3 Board of Governors</b>	
13 Establishment of Board for a Corporation	6
14 Qualifications of Board members	6
15 Term of office	7
16 Delegation	7

---

	Page	
17	Vacancy in office of Board member	7
18	Removal of Board member	7
19	Board meetings	7
20	Transaction of business outside meetings	8
21	Remuneration of Board members	8
22	Chairperson	8
<b>Part 4</b>	<b>Duties of Board members and officers</b>	
23	Corporate governance guidelines	10
24	Disclosure of interests	10
25	Voting by interested Board member	10
26	Duty and liability of officers	11
27	Indemnification of officers	12
28	Payment of premiums for certain liabilities of officers	13
29	Arrangements for access to documents	13
30	Reliance on advice of others	13
31	Power to grant relief from liability	14
<b>Part 5</b>	<b>Financial provisions</b>	
32	Establishment of Fund for each Corporation	15
33	Payments into Fund	15
34	Payments from Fund	15
35	Reporting on Fund	15
36	Investment of Fund	15
<b>Part 6</b>	<b>Miscellaneous</b>	
37	Proceedings for offences	16
38	Regulations	16
<b>Schedule 1</b>	<b>Amendment of Acts</b>	17



New South Wales

# Electricity Retained Interest Corporations Bill 2015

No. , 2015

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## **A Bill for**

An Act to provide for the effective stewardship and oversight of the retained interest of the State in electricity network assets under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>Part 1 Preliminary</b>	2
<b>1 Name of Act</b>	3
This Act is the <i>Electricity Retained Interest Corporations Act 2015</i> .	4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6
<b>3 Interpretation</b>	7
(1) In this Act:	8
<b>Board</b> of a Corporation means the Board of Governors of the Corporation.	9
<b>Corporation</b> means a corporation constituted by this Act.	10
<b>Fund</b> means a Fund established by this Act for a Corporation.	11
<b>General Manager</b> of a Corporation means the General Manager of the Corporation.	12
<b>officer</b> of a Corporation means:	13
(a) a member of the Board of the Corporation, or	14
(b) the General Manager of the Corporation.	15
<b>retained interest</b> —see section 4.	16
<b>Transactions Act</b> means the <i>Electricity Network Assets (Authorised Transactions) Act 2015</i> .	17
(2) This Act is to be construed with and as if it formed part of the Transactions Act.	19
(3) Notes included in this Act do not form part of this Act.	20
<b>4 Retained interest</b>	21
(1) In this Act, <b>retained interest</b> means the interests of the State in:	22
(a) a lease of assets comprising or including network infrastructure assets (other than the interests of the State as the lessor of a transacted distribution system or transacted transmission system), or	23
(b) a public sector agency that is a lessee of such a lease or that is a partner in a partnership that is a lessee of such a lease.	26
(2) For the purposes of this Act, the retained interest is considered to be made up of separate parts with the part of the retained interest that is referable to the distribution system or transmission system previously controlled and operated by a particular electricity network SOC constituting a separate part of the retained interest.	28
<b>Note.</b> The part of the retained interest that is referable to Ausgrid's distribution system is considered to be separate from the part of the retained interest that is referable to Endeavour Energy's distribution system.	32
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<b>Part 2</b>	<b>The Corporations</b>	1
<b>5</b>	<b>Establishment and operation</b>	2
(1)	A separate corporation is constituted by this Act for each separate part of the retained interest.	3 4
(2)	The corporate name of a Corporation is Electricity Retained Interest Corporation together with such additions to that name as the Treasurer determines by order published in the Gazette to distinguish between the corporations constituted by this Act.	5 6 7 8
(3)	All decisions relating to the operation of a Corporation are to be made by or under the authority of the Board of the Corporation.	9 10
(4)	If a Corporation has a General Manager, the General Manager is responsible for the day-to-day management of the affairs of the Corporation, subject to the policies and directions of the Board.	11 12 13
(5)	Any act, matter or thing done in the name of, or on behalf of, a Corporation by or under the authority of the Board or the General Manager is taken to have been done by the Corporation.	14 15 16
<b>6</b>	<b>Retained interest to be held by Corporations</b>	17
(1)	The part of the retained interest for which a Corporation is constituted is to be held by the Corporation (either directly or through one or more interposed entities) and is the part of the retained interest for which the Corporation is responsible for the purposes of this Act.	18 19 20 21
(2)	A Corporation holds the part of the retained interest for which it is responsible for and on behalf of the State. <b>Note.</b> Section 7 of the Transactions Act restricts the transfer of the retained interest.	22 23 24
<b>7</b>	<b>Functions</b>	25
(1)	A Corporation is to provide effective stewardship and oversight of the part of the retained interest for which it is responsible for the purpose of protecting the value to the State of that part of the retained interest and seeking to maximise returns to the State from that part of the retained interest.	26 27 28 29
(2)	A Corporation may do all things necessary or convenient to be done for or in connection with the exercise of its functions.	30 31
(3)	A Corporation has power to invest money in connection with the exercise of its functions, including by investing in the business of a transacted distribution system or transacted transmission system. <b>Note.</b> Investment by a Corporation is subject to section 2B (Exclusive operation of Act) of the <i>Public Authorities (Financial Arrangements) Act 1987</i> .	32 33 34 35 36
(4)	The functions of a Corporation may be exercised by the Corporation itself or by a subsidiary of the Corporation.	37 38
<b>8</b>	<b>Status</b>	39
(1)	A Corporation is not subject to the control or direction of the Government or a Minister on behalf of the Government in the exercise of the Corporation's functions. <b>Note.</b> A Corporation is an authority for the purposes of the <i>Public Authorities (Financial Arrangements) Act 1987</i> and remains subject to that Act, including the requirements of that Act as to borrowing and investment by an authority.	40 41 42 43 44
(2)	A Corporation is a public sector agency for the purposes of the Transactions Act and is a NSW Government agency for the purposes of any Act.	45 46

(3)	The Treasurer is not authorised by or under the Transactions Act:	1
(a)	to act for or on behalf of a Corporation or a subsidiary of a Corporation, or	2
(b)	to give directions to, or to a member of the Board of, a Corporation or subsidiary of a Corporation.	3 4
(4)	A direction issued under section 9 of the <i>Public Finance and Audit Act 1983</i> does not apply to or in respect of a Corporation or subsidiary of a Corporation.	5 6
(5)	A Corporation or subsidiary of a Corporation is not an agency for the purposes of the <i>Government Information (Public Access) Act 2009</i> .	7 8
<b>9</b>	<b>General Manager</b>	9
(1)	The Board of a Corporation may (but is not required to) appoint a General Manager of the Corporation, to be responsible for the day-to-day management of the operation of the Corporation in accordance with the general policies and specific directions of the Board.	10 11 12 13
(2)	The Board of a Corporation is to consult with the Treasurer before appointing a General Manager.	14 15
(3)	The appointment of a General Manager may be on a full-time or part-time basis.	16
(4)	The terms and conditions of employment of a person appointed as General Manager (including as to remuneration) are to be fixed by the Board of the Corporation (to the extent that they are not fixed by or under any other Act or law) and are to be fixed having regard to any guidelines as to those terms and conditions notified to the Board by the Treasurer.	17 18 19 20 21
(5)	The functions of General Manager of a Corporation (other than this power of delegation) may be delegated by the General Manager to any member of staff of the Corporation, subject to any directions of the Board.	22 23 24
(6)	The Board may remove the General Manager from office at any time for any or no reason and without notice.	25 26
<b>10</b>	<b>Accountability and reporting</b>	27
	<b>Note.</b> A Corporation is subject to Division 3 of Part 3 of the <i>Public Finance and Audit Act 1983</i> and the <i>Annual Reports (Statutory Bodies) Act 1984</i> .	28 29
(1)	The Treasurer may give directions to a Corporation imposing requirements on the Corporation ( <b><i>accountability and reporting requirements</i></b> ) for or with respect to any one or more of the following:	30 31 32
(a)	requirements for the corporate planning to be undertaken by the Corporation, including requirements for the establishment of an annual Statement of Business Intent that is agreed between the Corporation and the Treasurer and that sets out the financial objectives and targets of the Corporation,	33 34 35 36
(b)	requirements for reporting by the Corporation to the Treasurer on the operation and performance of the Corporation,	37 38
(c)	requirements for disclosure by the Corporation to the Treasurer of matters that may have a material effect on the value of that part of the retained interest for which the Corporation is responsible or the level of financial returns derived by the Corporation from that part of the retained interest.	39 40 41 42
(2)	A Corporation must comply with any accountability and reporting requirements imposed on the Corporation under this section.	43 44

- (3) The accountability and reporting requirements to which a Corporation is subject under this section do not limit or otherwise affect any obligation of the Corporation under the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984*. 1  
2  
3  
4
- 11 Subsidiaries** 5
- A Corporation may form, participate in the formation of or acquire subsidiaries. 6
- 12 Administrative support and staff** 7
- (1) The Treasurer must ensure that a Corporation and any subsidiary of a Corporation is provided with such administrative support, including staff and facilities, as is reasonably necessary for the Corporation, any subsidiary and the Board of the Corporation or subsidiary to exercise their functions. 8  
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10  
11
- (2) A Corporation and any subsidiary of a Corporation may employ its own staff with the approval of the Treasurer. The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to staff employed by a Corporation or a subsidiary. 12  
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14  
15
- (3) A reference in this Act to staff of a Corporation or subsidiary is a reference to staff provided by way of administrative support or employed under this section. 16  
17

## **Part 3 Board of Governors**

### **13 Establishment of Board for a Corporation**

- (1) Each Corporation is to have a Board of Governors consisting of 3 members appointed by the Treasurer as either part-time or full-time members.
- (2) If the office of a member of a Board becomes vacant, the Treasurer is to appoint a person recommended by the Board to fill the vacancy. If the Board's recommendation of a person includes a recommendation as to whether the appointment be part-time or full-time, the appointment is to give effect to that recommendation.
- (3) The Treasurer may on reasonable grounds reject a recommendation of the Board for the filling of a vacancy and if the Treasurer rejects 2 recommendations of the Board for the filling of the vacancy, the Treasurer may appoint a person of the Treasurer's own choosing to fill the vacancy.
- (4) If a Board fails to recommend a person for appointment to fill a vacancy within such reasonable time as the Treasurer may direct, the Treasurer may appoint a person of the Treasurer's own choosing to fill the vacancy.
- (5) Statutory provisions relating to the employment of Public Service employees do not apply to the appointment or office of a member of a Board.

### **14 Qualifications of Board members**

- (1) The members of a Board are to be persons who in the opinion of the Treasurer (or of the Board when the Board recommends a person for appointment) have substantial experience or expertise, and professional credibility and significant standing, in at least one of the following fields:
  - (a) the management of investments in financial assets,
  - (b) corporate governance,
  - (c) the management or operation of regulated public utility assets (such as regulated energy transmission or distribution assets) or infrastructure assets (such as transport infrastructure assets).
- (2) A person is not eligible for appointment as a member of a Board if the person is the holder of a full-time office under a law of the State or is employed in:
  - (a) the Public Service, or
  - (b) the Teaching Service, or
  - (c) the NSW Police Force, or
  - (d) the NSW Health Service, or
  - (e) the Transport Service of New South Wales, or
  - (f) a State owned corporation, or
  - (g) any other service of the Crown (including the service of any NSW Government agency), or
  - (h) the service of any other person or body constituted by or under an Act or exercising public functions.
- (3) A person is not eligible to be a member of the Board of more than one Corporation under this Act at the same time.

<b>15</b>	<b>Term of office</b>	1
(1)	The Treasurer is to determine the term of office of the first members of a Board and the Board is to determine the term of office of a member appointed to fill a vacancy on the Board.	2 3 4
(2)	The term of office of a member of a Board is not to exceed 4 years but a member is eligible for reappointment.	5 6
(3)	A Board member's term of office is to be specified in the member's instrument of appointment.	7 8
<b>16</b>	<b>Delegation</b>	9
	A Board may delegate the exercise of any of its functions (other than this power of delegation) to a member or committee of the Board.	10 11
<b>17</b>	<b>Vacancy in office of Board member</b>	12
	The office of a member of a Board becomes vacant if the member:	13
(a)	dies, or	14
(b)	completes a term of office and is not reappointed, or	15
(c)	resigns the office by letter addressed to the Board, or	16
(d)	is removed from office by the Treasurer under section 18, or	17
(e)	is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the end of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or	18 19 20 21 22
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	23 24 25
(g)	becomes a mentally incapacitated person, or	26
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	27 28 29 30
<b>18</b>	<b>Removal of Board member</b>	31
	The Treasurer may remove a member of a Board from office:	32
(a)	if satisfied that the performance of the Board member has been unsatisfactory for a significant period, or	33 34
(b)	on the recommendation of the Board.	35
<b>19</b>	<b>Board meetings</b>	36
(1)	The procedure for the calling of meetings of a Board and for the conduct of business at those meetings is to be as determined by the Board. The Treasurer is to call the first meeting of a Board in such manner as the Treasurer thinks fit.	37 38 39
(2)	The quorum for a meeting of a Board is 2 members.	40
(3)	The Chairperson of a Board or (in the absence of the Chairperson) a person elected by the members of a Board who are present at a meeting of the Board is to preside at a meeting of the Board.	41 42 43

(4)	A decision supported by a majority of the votes cast at a meeting of a Board at which a quorum is present is the decision of the Board.	1 2
(5)	A Board must cause full and accurate minutes to be kept of the proceedings of each of its meetings.	3 4
<b>20</b>	<b>Transaction of business outside meetings</b>	5
(1)	A Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.	6 7 8 9
(2)	A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	10 11 12 13
(3)	For the purposes of:	14
(a)	the approval of a resolution under subsection (1), or	15
(b)	a meeting held in accordance with subsection (2),	16
	the members have the same voting rights as they have at an ordinary meeting of the Board.	17 18
(4)	A resolution approved under subsection (1) is to be recorded in the minutes of the meetings of the Board.	19 20
(5)	Papers may be circulated among the members for the purposes of subsection (1) by facsimile, email or other transmission of the information in the papers concerned.	21 22
<b>21</b>	<b>Remuneration of Board members</b>	23
(1)	A full-time or part-time member of a Board is entitled to be paid:	24
(a)	remuneration in accordance with the <i>Statutory and Other Offices Remuneration Act 1975</i> , and	25 26
(b)	such travelling and subsistence allowances as the Treasurer may from time to time determine in respect of the member in consultation with the Board.	27 28
(2)	In making a determination of the remuneration to be paid to a member of a Board, the Tribunal under the <i>Statutory and Other Offices Remuneration Act 1975</i> is to have regard to levels of remuneration paid to non-executive directors of entities that have interests in energy utility assets comparable to those of a Corporation.	29 30 31 32
<b>22</b>	<b>Chairperson</b>	33
(1)	A Board is to have a Chairperson.	34
(2)	The Treasurer is to appoint the first Chairperson of a Board from among the members of the Board.	35 36
(3)	A Board is to appoint a Chairperson of the Board from among the members of the Board to fill a vacancy in the office of Chairperson.	37 38
(4)	The Chairperson is to hold office for a term of 2 years and is eligible (if otherwise qualified) for reappointment.	39 40
(5)	A person vacates office as Chairperson of a Board if the person:	41
(a)	completes a term of office as Chairperson and is not reappointed, or	42
(b)	is removed from that office by the Board, or	43

- (c) resigns that office by letter addressed to the Board, or 1
- (d) ceases to be a member of the Board. 2
- (6) A Board may remove its Chairperson from office at any time for any or no reason 3  
and without notice. 4

<b>Part 4</b>	<b>Duties of Board members and officers</b>	1
<b>23</b>	<b>Corporate governance guidelines</b>	2
(1)	The Treasurer may determine and notify to a Board guidelines ( <i>corporate governance guidelines</i> ) containing recommendations designed to assist the Board to minimise risks concerning corporate governance and to optimise performance and accountability of the Board.	3 4 5 6
(2)	Without limitation, corporate governance guidelines may include recommendations as to the duties of Board members in connection with the following aspects of corporate governance, performance and accountability:	7 8 9
(a)	requirements for a Board Charter and Code of Conduct,	10
(b)	the need for and role of committees of the Board,	11
(c)	independence and conflicts of interest of Board members,	12
(d)	provision of information to Board members,	13
(e)	evaluation of the performance of the Board and Board members.	14
(3)	The members of the Board are to have regard to any corporate governance guidelines under this section in the exercise of their functions.	15 16
(4)	This section does not limit the other requirements of this Part.	17
<b>24</b>	<b>Disclosure of interests</b>	18
(1)	If a member of a Board has a material personal interest in a matter being considered, or about to be considered, by the Board, the member must disclose the nature of the interest to a meeting of the Board as soon as practicable after the relevant facts come to the member's knowledge. Maximum penalty: 100 penalty units.	19 20 21 22 23
(2)	The disclosure must be recorded in the Board's minutes.	24
<b>25</b>	<b>Voting by interested Board member</b>	25
(1)	A member of a Board who has a material personal interest in a matter that is being considered by the Board is prevented from taking part in any decision of the Board on the matter.	26 27 28
(2)	A member of a Board who is prevented from taking part in any decision of the Board on a matter must not:	29 30
(a)	vote on the matter, or	31
(b)	vote on a proposed resolution (a <i>related resolution</i> ) under subsection (3) in relation to the matter (whether in relation to the member or another member of the Board), or	32 33 34
(c)	be present while the matter, or a related resolution, is being considered by the Board, or	35 36
(d)	otherwise take part in any decision of the Board in relation to the matter or a related resolution. Maximum penalty: 100 penalty units.	37 38 39
(3)	A member is not prevented from taking part in any decision of the Board on a matter if the Board has at any time passed a resolution that:	40 41
(a)	specifies the member, the interest and the matter, and	42



- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from taking part in any decision of the Board on the matter. 1  
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- (4) In determining whether a quorum is present at a meeting of the Board during a consideration of such a matter by the Board, only those members are regarded as present who are entitled to vote on any motion that may be moved in relation to the matter. 4  
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- (5) If the number of Board members entitled to vote on any motion that may be moved in relation to a matter is less than a quorum for a meeting of the Board, the quorum at a meeting of the Board during consideration of such a matter is reduced to the number of Board members entitled to vote on the motion. 8  
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- (6) The Treasurer may, in any case in which the Treasurer considers it appropriate to do so, by order in writing direct that a member of a Board who has a material personal interest in a matter that is being considered by the Board is not prevented from taking part in any decision of the Board on the matter, and such a direction has effect accordingly for the purposes of this section. 12  
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- 26 Duty and liability of officers** 17
- (1) An officer of a Corporation must act honestly in the exercise of functions as an officer of the Corporation. 18  
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Maximum penalty: 20  
(a) if the contravention is committed with intent to deceive or defraud the Corporation or the State or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or 21  
22  
23  
(b) in any other case—100 penalty units. 24
- (2) In the exercise of functions, an officer of a Corporation must exercise the degree of care and diligence that a reasonable person in a like position would exercise in the circumstances. 25  
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Maximum penalty: 100 penalty units. 28
- (3) An officer of a Corporation, or a person who has been an officer of a Corporation, must not make improper use of information acquired because of his or her position as an officer of the Corporation: 29  
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(a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or 32  
33  
(b) to cause detriment to the Corporation or the State. 34  
Maximum penalty: 500 penalty units or imprisonment for 5 years. 35
- (4) An officer of a Corporation must not make improper use of his or her position as an officer of the Corporation: 36  
37  
(a) to gain, directly or indirectly, an advantage for himself or herself or another person, or 38  
39  
(b) to cause detriment to the Corporation or the State. 40  
Maximum penalty: 500 penalty units or imprisonment for 5 years. 41
- (5) If a person contravenes this section, the State may recover from the person as a debt due to the Crown: 42  
43  
(a) if the person or another person made a profit because of the contravention— an amount equal to the profit, and 44  
45  
(b) if the Corporation or the State suffered loss or damage because of the contravention—an amount equal to the loss or damage. 46  
47

- (6) An amount may be recovered from a person pursuant to the State's right of recovery under this section whether or not the person has been convicted of an offence in relation to the contravention. 1  
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- (7) The State's right of recovery against a person under this section is in addition to, and does not limit, the *Confiscation of Proceeds of Crime Act 1989*. 4  
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- (8) In determining for the purposes of this section the degree of care and diligence that a reasonable person in a like position would exercise in the circumstances concerned (but without limiting the matters to which regard may be had for that purpose) regard must be had to: 6  
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9
- (a) the fact that the person is an officer of the Corporation, and 10
- (b) the application of this Act to the Corporation, and 11
- (c) relevant matters required or permitted to be done under this Act in relation to the Corporation, 12  
13
- including, for example, any relevant directions, notifications or approvals given to the Corporation or Board by the Treasurer. 14  
15
- (9) This section: 16
- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation, and 17  
18  
19
- (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability. 20  
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**27 Indemnification of officers** 22

- (1) A Corporation must not: 23
- (a) indemnify a person who is or has been an officer of the Corporation against a liability incurred as an officer, or 24  
25
- (b) exempt a person who is or has been an officer of the Corporation from a liability incurred as an officer. 26  
27
- (2) An instrument is void so far as it provides for a Corporation to do something that subsection (1) prohibits. 28  
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- (3) Subsection (1) does not prevent a Corporation from indemnifying a person against civil liability (other than a liability to the Corporation or a subsidiary of the Corporation) unless the liability arises out of conduct involving a lack of good faith. 30  
31  
32
- (4) Subsection (1) does not prevent a Corporation from indemnifying a person against a liability for costs and expenses incurred by the person: 33  
34
- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or 35  
36
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court. 37  
38
- (5) A Corporation may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of the Treasurer. 39  
40
- (6) In this section: 41  
*indemnify* includes indemnify indirectly through one or more interposed entities. 42

<b>28</b>	<b>Payment of premiums for certain liabilities of officers</b>	1
(1)	A Corporation must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the Corporation against a liability incurred by the person as an officer and arising out of:	2
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		4
	(a) conduct involving a wilful breach of duty in relation to the Corporation, or	5
	(b) without limiting paragraph (a), a contravention of section 26 (3) or (4).	6
(2)	Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.	7
		8
		9
(3)	An instrument is void so far as it insures a person against a liability in contravention of subsection (1).	10
		11
(4)	In this section:	12
	<i>pay</i> includes pay indirectly through one or more interposed entities.	13
<b>29</b>	<b>Arrangements for access to documents</b>	14
(1)	A Corporation may enter into a document access agreement with a person who is or has been an officer of the Corporation but may do so only with the written approval of the Treasurer.	15
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(2)	A <i>document access agreement</i> is an agreement or other arrangement (whether made by deed or otherwise) that confers on the person with whom it is made a right of access to documents held by the Corporation, in any specified circumstances, in connection with any claim, investigation or other proceedings relating to the person's term of office as an officer of the Corporation.	18
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(3)	The approval of the Treasurer under this section:	23
	(a) may be given generally or may be limited to a particular case or class of cases, and	24
		25
	(b) is subject to such conditions (if any) as are specified in the approval.	26
<b>30</b>	<b>Reliance on advice of others</b>	27
(1)	Reliance by a Board member on the advice of others is, unless the contrary is proved, taken to be reasonable for the purposes of proceedings brought to determine whether the Board member has performed a duty under this Part or an equivalent general law duty, but only if:	28
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	(a) the advice is from a trustworthy source as provided by this section, and	32
	(b) the reliance was made in good faith, and	33
	(c) the reliance was made after making an independent assessment of the advice, having regard to the Board member's knowledge of the Corporation concerned and the complexity of the structure and operations of the Corporation.	34
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(2)	Advice is from a trustworthy source for the purposes of this section only if it is the advice of:	38
		39
	(a) a member of the staff of the Corporation concerned whom the Board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned, or	40
		41
		42
	(b) a professional adviser or expert in relation to matters that the Board member believes on reasonable grounds to be within the person's professional or expert competence, or	43
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		45

- (c) another Board member in relation to matters within the Board member's authority, or 1  
2
  - (d) a committee of Board members on which the Board member did not serve in relation to matters within the committee's authority. 3  
4
- (3) In this section, a reference to the advice of others is a reference to information, or professional or expert advice, given or prepared by others. 5  
6
- 31 Power to grant relief from liability** 7
- (1) This section applies to an officer or member of staff of a Corporation. 8
- (2) If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in the person's capacity as a person to whom this section applies, it appears to the court that: 9  
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11
  - (a) the person is or may be liable for the negligence, default or breach, but 12
  - (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach, 13  
14  
15the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate. 16  
17
- (3) If a person to whom this section applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or the District Court for relief. 18  
19  
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- (4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach. 22  
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- (5) If a proceeding mentioned in subsection (2) is being tried by a Judge with a jury, the Judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate if the Judge is satisfied, after hearing the evidence, that the defendant ought under that subsection be relieved (in whole or part) from the liability sought to be enforced against the person. 24  
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<b>Part 5</b>	<b>Financial provisions</b>	1
<b>32</b>	<b>Establishment of Fund for each Corporation</b>	2
(1)	A Fund is to be established for each Corporation in the Special Deposits Account.	3
(2)	A Corporation is responsible for the administration of the Fund established for the Corporation.	4 5
<b>33</b>	<b>Payments into Fund</b>	6
	There is payable into the Fund established for a Corporation:	7
(a)	all financial returns (including dividend income, return of capital and any other financial distribution) derived by the Corporation or any subsidiary of the Corporation from that part of the retained interest for which the Corporation is responsible, and	8 9 10 11
(b)	the proceeds of investment of the Fund, and	12
(c)	such money as may be advanced by the Treasurer for payment into the Fund, and	13 14
(d)	such money as may be appropriated by Parliament for payment into the Fund, and	15 16
(e)	any money borrowed by the Corporation or a subsidiary of the Corporation.	17
<b>34</b>	<b>Payments from Fund</b>	18
	There is payable from the Fund established for a Corporation:	19
(a)	such amounts as the Treasurer directs for payment into the Consolidated Fund, and	20 21
(b)	such amounts (if any) as the Corporation is required to pay to the Treasurer under Part 4A (Payment of tax-equivalents) of the <i>Public Finance and Audit Act 1983</i> , and	22 23 24
(c)	such amounts as the Treasurer authorises for expenditure by the Corporation or a subsidiary of the Corporation in the exercise of the functions of the Corporation, and	25 26 27
(d)	such amounts as the Treasurer directs for payment of the costs of operation of the Corporation and any subsidiary of the Corporation, including remuneration, allowances, accommodation and other associated costs of the Board, General Manager and staff of the Corporation or a subsidiary of the Corporation.	28 29 30 31 32
<b>35</b>	<b>Reporting on Fund</b>	33
(1)	A Corporation is to produce an annual report on the Fund established for the Corporation detailing the payments made to and from the Fund.	34 35
(2)	The annual report on a Fund is to include an audit of the Fund by the Auditor-General (including a report of the Auditor-General on whether the payments from the Fund have been made in accordance with this Act) and the report is to be tabled in each House of Parliament within 6 months after the end of the financial year to which it relates.	36 37 38 39 40
<b>36</b>	<b>Investment of Fund</b>	41
	A Corporation may invest money in the Fund established for the Corporation in such manner as may be authorised by the Treasurer.	42 43
	<b>Note.</b> Investment by a Corporation is subject to section 2B (Exclusive operation of Act) of the <i>Public Authorities (Financial Arrangements) Act 1987</i> .	44 45

<b>Part 6</b>	<b>Miscellaneous</b>	1
<b>37</b>	<b>Proceedings for offences</b>	2
(1)	Proceedings for an offence under this Act may be instituted at any time before the end of 3 years after the alleged commission of the offence.	3 4
(2)	Proceedings for an offence under this Act are to be dealt with summarily before:	5
(a)	the Local Court, or	6
(b)	the Supreme Court in its summary jurisdiction.	7
(3)	The maximum penalty that may be imposed by the Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.	8 9
<b>38</b>	<b>Regulations</b>	10
	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.	11 12 13 14

<b>Schedule 1</b>	<b>Amendment of Acts</b>	1
<b>1.1</b>	<b>Public Finance and Audit Act 1983 No 152</b>	2
	<b>Schedule 2 Statutory bodies</b>	3
	Insert in appropriate order:	4
	A Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	5 6
<b>1.2</b>	<b>Statutory and Other Offices Remuneration Act 1975 (1976 No 4)</b>	7
	<b>Schedule 2 Public offices</b>	8
	Insert in appropriate order in Part 1:	9
	Full-time or part-time member of the Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	10 11