



New South Wales

# Electricity Supply Amendment (Emergency Management) Bill 2017

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Electricity Supply Act 1995* (the *principal Act*) to provide for streamlined emergency management powers in the event of an electricity supply emergency in the State. Under the scheme provided by the proposed Act:

- (a) the Premier will be able to declare an electricity supply emergency if satisfied that the supply of electricity to all or any part of the State is significantly disrupted or that there is a real risk that electricity supply may be significantly disrupted, and
- (b) the Minister administering the principal Act (the *Minister*) will, while the declaration by the Premier of an electricity supply emergency is in force, be able to give directions that are reasonably necessary to respond to the emergency (including restricting electricity use and shutting down plant or equipment), and
- (c) the Minister will also be able to require information to be provided in connection with an electricity supply emergency (whether or not a declared emergency), including for the purposes of determining whether the supply of electricity has been or is likely to be disrupted and for preparing and planning responses to any future electricity supply emergency, and
- (d) authorised officers appointed by the Minister will have power to enter premises and carry out investigations to determine whether a direction by the Minister has been complied with.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

## **Schedule 1      Amendment of Electricity Supply Act 1995**

**Schedule 1 [1] and [2]** ensure that the long title of the principal Act and its objects reflect the amendments made by the proposed Act by referring to the management of electricity supply emergencies.

**Schedule 1 [3]** inserts proposed Part 7A into the principal Act as follows:

**Proposed section 94A** authorises the Premier, by order in writing, to declare an electricity supply emergency if satisfied that the supply of electricity to all or any part of the State is significantly disrupted or that there is a real risk that electricity supply may be significantly disrupted. The declaration of an electricity supply emergency remains in force for the period specified in the declaration or until such time as the declaration is revoked by the Premier. Any such declaration or revocation must be made public and published in the Gazette or on the NSW legislation website.

**Proposed section 94B** authorises the Minister, while the declaration of an electricity supply emergency is in force, to give directions that are reasonably necessary to respond to the emergency. The directions that may be given include restricting electricity use and requiring large users of electricity to shut down any plant or equipment. In giving a direction, the Minister is to endeavour to act in a way that complements, and is not inconsistent with, the operation and administration of the national electricity market within the meaning of the *National Electricity (NSW) Law*.

**Proposed section 94C** makes it an offence to fail to comply with an electricity supply emergency direction given under proposed section 94B. The requirement to comply with such a direction has effect despite any other Act or law.

**Proposed section 94D** enables the Minister, by notice in writing given to a person, to require the person to provide information in connection with electricity supply emergencies (whether or not an emergency has been declared by the Premier). The information required to be provided may include information about the location and operational status of electricity infrastructure (such as poles and wires and transmission substations) and non-electricity infrastructure (such as gas pipelines, data storage or server facilities and telecommunications towers) as well as any information about works or facilities that may be relevant to the supply of electricity in an emergency. It will be an offence to fail to comply with a notice to provide information.

**Proposed section 94E** authorises the Minister to divulge to certain persons information that has been provided to the Minister in accordance with a notice under proposed section 94D. The proposed section also enables the Minister to prohibit or restrict the disclosure of confidential information that has been divulged by the Minister.

**Proposed section 94F** provides that a person is not excused from the requirement to provide information under proposed section 94D on the ground that the information might incriminate the person.

**Proposed section 94G** provides for the appointment by the Minister of authorised officers for the purposes of the proposed Part.

**Proposed section 94H** confers powers on authorised officers, which include the power to enter premises for the purposes of determining whether there has been a failure to comply with a direction by the Minister under proposed section 94B and power to carry out inspections on those premises. It will be an offence to prevent an authorised officer from exercising his or her functions or to hinder or obstruct an authorised officer.

**Proposed section 94I** excludes the Minister, an authorised officer or any person acting under the direction of the Minister from personal liability for anything done under proposed Part 7A.

**Schedule 1 [4]** provides that compensation is not payable by the State in connection with the enactment, making or operation of proposed Part 7A.

**Schedule 1 [5]** provides that the Minister is not authorised to delegate the power to give directions under proposed section 94B.

**Schedule 1 [6]** enables the Minister to delegate other functions of the Minister under the principal Act to any Public Service employee.

**Schedule 1 [7]** provides that the definition of *authorised officer* for the purposes of the principal Act does not apply to authorised officers appointed by the Minister under proposed Part 7A.

## **Schedule 2      Amendment of Energy and Utilities Administration Act 1987**

**Schedule 2** provides that the emergency provisions under the *Energy and Utilities Administration Act 1987* (including the making of regulations to control, restrict or prohibit the sale, supply, use or consumption of forms of energy) do not apply in respect of electricity.



New South Wales

# Electricity Supply Amendment (Emergency Management) Bill 2017

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New South Wales

# Electricity Supply Amendment (Emergency Management) Bill 2017

No. , 2017

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## A Bill for

An Act to amend the *Electricity Supply Act 1995* to make provision with respect to the management of electricity supply emergencies; and for other purposes.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Electricity Supply Amendment (Emergency Management) Act 2017*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

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| <b>Schedule 1</b>                                      | <b>Amendment of Electricity Supply Act 1995 No 94</b>   | 1                    |
| <b>[1] Long title</b>                                  |   | 2                    |
|  | Insert “to make provision with respect to the management of electricity supply emergencies;” after “supply of electricity;”.  | 3<br>4               |
| <b>[2] Section 3 Objects</b>                           |   | 5                    |
|  | Insert at the end of section 3 (d):   | 6                    |
|  | , and   | 7                    |
|  | (e) to ensure that any significant disruption to the supply of electricity in an emergency is managed effectively.  | 8<br>9               |
| <b>[3] Part 7A</b>                                     |   | 10                   |
|  | Insert after Part 7:  | 11                   |
|  | <b>Part 7A Management of electricity supply emergencies</b>   | 12                   |
| <b>94A Declaration of electricity supply emergency</b> |   | 13                   |
| (1)  | The Premier may, by order in writing, declare an electricity supply emergency if the Premier is satisfied:  | 14<br>15             |
| (a)  | that the supply of electricity to all or any part of the State is disrupted to a significant degree, or   | 16<br>17             |
| (b)  | that there is a real risk that the supply of electricity to all or any part of the State may be disrupted to a significant degree.  | 18<br>19             |
| (2)  | An order declaring an electricity supply emergency has effect immediately on the making of the order.   | 20<br>21             |
| (3)  | The declaration of an electricity supply emergency remains in force:  | 22                   |
| (a)  | for the period (if any) specified in the declaration, or  | 23                   |
| (b)  | until such time as the declaration is revoked by the Premier by order in writing.   | 24<br>25             |
| (4)  | As soon as practicable after making or revoking a declaration of an electricity supply emergency, the Premier must:   | 26<br>27             |
| (a)  | cause notice of the declaration or revocation to be made public in such manner as the Premier considers appropriate, and  | 28<br>29             |
| (b)  | cause a copy of the relevant order to be published in the Gazette or on the NSW legislation website.  | 30<br>31             |
| <b>94B Electricity supply emergency directions</b>     |   | 32                   |
| (1)  | While the declaration of an electricity supply emergency is in force, the Minister may give directions (referred to in this Part as <i>electricity supply emergency directions</i> ) that the Minister considers are reasonably necessary to respond to the electricity supply emergency. | 33<br>34<br>35<br>36 |
| (2)  | Without limiting subsection (1), electricity supply emergency directions may be given for any of the following purposes:  | 37<br>38             |
| (a)  | to restrict the use of electricity in order to reduce demand,   | 39                   |
| (b)  | to require large users of electricity to wholly or partly turn off or shut down any plant or equipment for a specified period of time,  | 40<br>41             |

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|------------|--|----------------------------|
| (c)        | to impose requirements relating to the carrying out of activities that may affect the production or supply of electricity,   | 1<br>2                     |
| (d)        | to impose other requirements that relate directly to the production, use or supply of electricity.   | 3<br>4                     |
| (3)        | An electricity supply emergency direction that is to apply to the general public or a specified sector of the community is to be given by means of a notice published in the Gazette.  | 5<br>6<br>7                |
| (4)        | An electricity supply emergency direction that is to apply to a particular person is to be given to the person verbally or by instrument in writing. If the direction is given verbally it must be confirmed by instrument in writing given to the person as soon as it is practicable to do so.                                   | 8<br>9<br>10<br>11         |
| (5)        | The Minister must, as soon as practicable after giving an electricity supply emergency direction that applies to a particular person, cause the direction to be published in the Gazette.  | 12<br>13<br>14             |
| (6)        | An electricity supply emergency direction:   | 15                         |
| (a)        | operates for such period as is specified in the direction (but only while the declaration of the electricity supply emergency is in force), and  | 16<br>17                   |
| (b)        | may be varied or revoked by a subsequent direction under this section.   | 18                         |
| (7)        | In giving an electricity supply emergency direction, the Minister is to endeavour to act, so far as is reasonably practicable, in a way that is complementary to, and not inconsistent with, the operation and administration of the national electricity market within the meaning of the <i>National Electricity (NSW) Law</i> . | 19<br>20<br>21<br>22<br>23 |
| <b>94C</b> | <b>Requirement to comply with electricity supply emergency directions</b>  | 24                         |
| (1)        | A person who fails to comply with an electricity supply emergency direction applying to the person is guilty of an offence.<br>Maximum penalty: 2,000 penalty units in the case of a corporation or 100 penalty units in the case of an individual.  | 25<br>26<br>27<br>28       |
| (2)        | The requirement to comply with an electricity supply emergency direction has effect despite any other Act or law.  | 29<br>30                   |
| <b>94D</b> | <b>Requirement to provide information in connection with electricity supply emergency</b>  | 31<br>32                   |
| (1)        | The Minister may, by notice in writing given to a person (referred to in this Part as an <i>information notice</i> ), require the person to provide such information as the Minister requires for any one or more of the following purposes:   | 33<br>34<br>35             |
| (a)        | to determine whether the supply of electricity to all or any part of the State has been, or is likely to be, disrupted to a significant degree,  | 36<br>37                   |
| (b)        | to plan and prepare for the exercise of powers under this Part in the event that the supply of electricity is disrupted to a significant degree,   | 38<br>39                   |
| (c)        | to otherwise administer or enforce this Part.  | 40                         |
| (2)        | Without limiting the information that an information notice may require to be provided, the information so required may include the following:   | 41<br>42                   |
| (a)        | information (including location and operational status) about electricity structures, electricity works and other electricity infrastructure such as transmission substations,   | 43<br>44<br>45             |

- (b) information (including location and operational status) about non-electricity infrastructure such as gas pipelines, data storage or server facilities and telecommunications towers, 1  
2  
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- (c) information that may be relevant to the supply of electricity in an emergency, including information about the location and availability of the following: 4  
5  
6
  - (i) coal supplies and stockpiles, 7
  - (ii) gas and liquid fuel stocks, 8
  - (iii) water storage reserves, 9
  - (iv) any relevant infrastructure or facilities with back-up power generation. 10  
11
- (3) An information notice must specify: 12
  - (a) the manner in which the information required by the notice is to be provided to the Minister, and 13  
14
  - (b) a reasonable time by which the information is to be provided. 15
- (4) For the avoidance of doubt, an information notice may be given whether or not the declaration of an electricity supply emergency is in force. 16  
17
- (5) A person must not: 18
  - (a) without lawful excuse fail to comply with an information notice given to the person, or 19  
20
  - (b) provide any information in purported compliance with an information notice that is false or misleading in a material respect. 21  
22Maximum penalty: 2,000 penalty units in the case of a corporation or 100 penalty units in the case of an individual. 23  
24
- (6) An information notice may be given to a person by any of the following methods: 25  
26
  - (a) in the case of an individual—by personal delivery to the person, 27
  - (b) by post to the address specified by the person for the giving of information notices, 28  
29
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the Minister, 30  
31  
32
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years, 33  
34  
35
  - (e) by email to an email address specified by the person for the giving of information notices, 36  
37
  - (f) by any other method authorised by the regulations for the giving of information notices. 38  
39
- 94E Disclosure of information provided to Minister 40**
  - (1) Any information provided to the Minister in accordance with an information notice may be divulged by the Minister: 41  
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    - (a) to any person with the consent of the person who provided the information, or 43  
44
    - (b) to any person if the Minister is satisfied that the information is not confidential in nature, or 45  
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| (c)        | to any person who is engaged in the administration of this Part, or  | 1                     |
| (d)        | to AEMO, or  | 2                     |
| (e)        | in accordance with a requirement under any Act or other law.   | 3                     |
| (2)        | If the Minister divulges any information to a person that has been provided to the Minister in accordance with an information notice, the Minister may give the person a direction prohibiting or restricting the person from divulging the information if the Minister is satisfied that it is appropriate to give the direction because of the confidential nature of the information. | 4<br>5<br>6<br>7<br>8 |
| (3)        | A person who contravenes a direction under subsection (2) is guilty of an offence.<br>Maximum penalty: 100 penalty units.  | 9<br>10<br>11         |
| <b>94F</b> | <b>Provisions relating to requirement to provide information</b>   | 12                    |
| (1)        | A person is not guilty of an offence of failing to comply with an information notice unless the person was warned on that occasion that a failure to comply is an offence.   | 13<br>14<br>15        |
| (2)        | A person is not excused from the requirement under an information notice to provide information on the ground that the information might incriminate the person or make the person liable to a penalty.  | 16<br>17<br>18        |
| (3)        | However, any information provided by a natural person in compliance with an information notice is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:  | 19<br>20<br>21        |
| (a)        | the person objected at the time to doing so on the ground that it might incriminate the person, or   | 22<br>23              |
| (b)        | the person was not warned on that occasion that the person may object to providing the information on the ground that it might incriminate the person.   | 24<br>25<br>26        |
| <b>94G</b> | <b>Appointment of authorised officers</b>  | 27                    |
| (1)        | The Minister may appoint any person (referred to in this Part as an <i>authorised officer</i> ) as an authorised officer for the purposes of this Part.  | 28<br>29              |
| (2)        | An authorised officer is, in exercising the functions of an authorised officer, subject to the control and direction of the Minister.  | 30<br>31              |
| (3)        | The Minister is to cause each authorised officer to be issued with a means of identification in the form approved by the Minister.   | 32<br>33              |
| <b>94H</b> | <b>Powers of authorised officers</b>   | 34                    |
| (1)        | An authorised officer may enter any premises at any reasonable time for the purposes of determining whether there has been a failure to comply with an electricity supply emergency direction.   | 35<br>36<br>37        |
| (2)        | However, an authorised officer is not empowered to enter any part of premises used only for residential purposes without the permission of the occupier of the premises.   | 38<br>39<br>40        |
| (3)        | An authorised officer may, at any premises lawfully entered, do anything that, in the opinion of the authorised officer, is necessary to be done for the purposes of determining whether there has been a failure to comply with an electricity supply emergency direction.  | 41<br>42<br>43<br>44  |

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| (4)        | Without limiting subsection (3), the authorised officer may:   | 1                          |
| (a)        | carry out such inspections on those premises as the authorised officer considers necessary, and  | 2<br>3                     |
| (b)        | examine and test any plant or equipment on the premises, and   | 4                          |
| (c)        | take such photographs, films, audio, video and other recordings as the authorised officer considers necessary.   | 5<br>6                     |
| (5)        | A person must not:   | 7                          |
| (a)        | prevent an authorised officer from exercising any function conferred or imposed on the authorised officer under this section, or   | 8<br>9                     |
| (b)        | hinder or obstruct an authorised officer in the exercise of any such function.   | 10<br>11                   |
|            | Maximum penalty: 200 penalty units in the case of a corporation or 50 penalty units in the case of an individual.  | 12<br>13                   |
| (6)        | A person is not guilty of an offence under subsection (5) because of any act of hindrance or obstruction unless it is established that the authorised officer identified himself or herself as an authorised officer.  | 14<br>15<br>16             |
| <b>94I</b> | <b>Exclusion of personal liability</b>   | 17                         |
|            | Any matter or thing done or omitted to be done by the Minister, an authorised officer or a person acting under the direction of the Minister does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Part, subject the Minister, authorised officer or person so acting personally to any action, liability, claim or demand. | 18<br>19<br>20<br>21<br>22 |
| <b>[4]</b> | <b>Section 179A Compensation not payable</b>   | 23                         |
|            | Insert after section 179A (1A):  | 24                         |
| (1B)       | Compensation is not payable by or on behalf of the State:  | 25                         |
| (a)        | because of the enactment, making or operation of Part 7A (including the giving of an electricity supply emergency direction under that Part), or   | 26<br>27                   |
| (b)        | because of any consequence of any such enactment, making or operation, or  | 28<br>29                   |
| (c)        | because of any statement or conduct relating to any such enactment, making or operation.   | 30<br>31                   |
| <b>[5]</b> | <b>Section 183 Delegation of Minister's functions</b>  | 32                         |
|            | Insert "or functions under section 94B" after "delegation" in section 183 (1).   | 33                         |
| <b>[6]</b> | <b>Section 183 (2) (a1)</b>  | 34                         |
|            | Insert after section 183 (2) (a):  | 35                         |
| (a1)       | any Public Service employee, or  | 36                         |
| <b>[7]</b> | <b>Dictionary</b>  | 37                         |
|            | Insert "(except in Part 7A)" after " <i>authorised officer</i> ".  | 38                         |

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|--|---|----|
| <b>Schedule 2</b>  | <b>Amendment of Energy and Utilities Administration Act 1987 No 103</b> | 1  |
|  |   | 2  |
| <b>[1] Section 24 Proclamation in respect of forms of energy other than electricity</b>  |   | 3  |
| Insert before section 24 (1):  |   | 4  |
| (1A) This section applies in respect of a form of energy or energy resources other than electricity.                                     |   | 5  |
| <b>Note.</b> See Part 7A of the <i>Electricity Supply Act 1995</i> for the declaration and management of electricity supply emergencies. |   | 6  |
|  |   | 7  |
|  |   | 8  |
| <b>[2] Section 24 (1)</b>  |   | 9  |
| Omit “any form of energy or energy resources”.   |   | 10 |
| Insert instead “a form of energy or energy resources to which this section applies”.   |   | 11 |