



New South Wales

State Energy and Water Utilities Protection (Referendum) Bill 2014

Explanatory note

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

Overview of Bill

The object of this Bill is to prevent the assets or business undertakings of certain State energy or water utilities (namely, Essential Energy, Ausgrid, Endeavour Energy, TransGrid, Sydney Water Corporation and Hunter Water Corporation) from being transferred unless the transfer is approved by a referendum.

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 to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act, including *transfer* which means sell, lease or dispose of.

Clause 4 provides that certain transactions may not be entered into unless a question in relation to the transaction is submitted in a referendum and the majority of persons voting in the referendum have answered the question in the affirmative. The transactions required to be approved by a referendum involve the transfer of the assets or business undertaking of a State energy or water utility (including its facilities or, in the case of an energy distributor or energy transmission operator, any electricity distribution or transmission network). The requirement for a referendum does not apply to the transfer of assets to a subsidiary of the State energy or water utility or the transfer of any assets that total less than \$1 billion (so long as those assets do not include any part of the main business undertaking carried on by the utility).

Clause 5 provides that a referendum required under the proposed Act is to be held on the date appointed by the Governor and provides that the persons entitled to vote at a referendum are those qualified to vote in a general election.

Clause 6 provides that the vote of the electors at a referendum under the proposed Act is to be taken in accordance with the *Constitution Further Amendment (Referendum) Act 1930* which makes general provision for the conduct of referendums.

Clause 7 enables regulations to be made under the proposed Act.



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New South Wales

State Energy and Water Utilities Protection (Referendum) Bill 2014

No. , 2014

A Bill for

An Act to prevent the privatisation of certain State energy and water utilities without the approval of a referendum.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>State Energy and Water Utilities Protection (Referendum) Act 2014</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Definitions	6
(1) In this Act:	7
<i>assets</i> means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.	8 9 10 11
<i>energy distributor</i> means a statutory State owned corporation constituted by the <i>Energy Services Corporations Act 1995</i> that is an energy distributor within the meaning of that Act.	12 13 14
Note. The energy distributors currently listed are Essential Energy, Ausgrid and Endeavour Energy.	15 16
<i>energy transmission operator</i> means a statutory State owned corporation constituted by the <i>Energy Services Corporations Act 1995</i> that is an energy transmission operator within the meaning of that Act.	17 18 19
Note. TransGrid is currently listed as an energy transmission operator.	20
<i>referendum</i> means a referendum required to be held under this Act.	21
<i>State energy or water utility</i> means any of the following:	22
(a) Sydney Water Corporation,	23
(b) Hunter Water Corporation,	24
(c) an energy distributor,	25
(d) an energy transmission operator.	26
<i>transfer</i> means sell, lease or dispose of.	27
(2) Notes included in this Act do not form part of this Act.	28
4 Certain transactions may not be entered into without approval of referendum	29
(1) A transaction to which this section applies may not be entered into unless:	30
(a) the question referred to in subsection (2) is submitted in a referendum to the persons entitled to vote at the referendum, and	31 32
(b) the majority of the persons voting in the referendum have answered the question in the affirmative.	33 34
(2) The question is as follows:	35
Are you in favour of privatising [<i>specify the whole or relevant percentage</i>] of [<i>specify name of State energy or water utility</i>]?	36 37
(3) The transactions to which this section applies are as follows:	38
(a) the transfer of any of the assets or the business undertaking of a State energy or water utility or subsidiary of a State energy or water utility,	39 40
(b) the transfer of any of the facilities of a State energy or water utility or subsidiary of a State energy or water utility,	41 42

(c)	the transfer of any electricity distribution or transmission network of an energy distributor or energy transmission operator or subsidiary of an energy distributor or energy transmission operator,	1 2 3
(d)	the disposal of any right or liability of a State energy or water utility or subsidiary of a State energy or water utility,	4 5
(e)	the transfer of any shares in a State energy or water utility.	6
(4)	For the purposes of subsection (3):	7
(a)	the business undertaking of an energy transmission operator or its subsidiaries includes the establishment, maintenance and operation of facilities for the transmission of electricity and other forms of energy and the provision of services for the transmission of electricity and other forms of energy, and	8 9 10 11
(b)	the assets of an energy distributor or energy transmission operator or any of its subsidiaries include any electricity power lines and associated equipment and electricity structures or other assets that form part of a transmission or distribution system within the meaning of the <i>Electricity Supply Act 1995</i> .	12 13 14 15
(5)	This section does not apply in relation to any of the following transactions:	16
(a)	the transfer of assets by a State energy or water utility to one of its subsidiaries,	17
(b)	the transfer of assets by a subsidiary of a State energy or water utility to the State energy or water utility,	18 19
(c)	the transfer of assets of a State energy or water utility that have a total market value of less than \$1 billion and that do not include any part of the main business undertaking carried on by the utility,	20 21 22
(d)	the transfer of assets or the business undertaking of a State energy or water utility to a public authority, an entity owned by a public authority or any other entity owned by the State.	23 24 25
(6)	In this section:	26
	<i>liabilities</i> means all liabilities, debts and obligations (whether present or future, whether vested or contingent and whether personal or assignable).	27 28
	<i>public authority</i> means any of the following:	29
(a)	a public authority constituted by or under an Act,	30
(b)	a statutory body representing the Crown,	31
(c)	a State owned corporation.	32
	<i>rights</i> means all rights, powers, privileges and immunities (whether present or future, whether vested or contingent and whether personal or assignable).	33 34
5	Date of referendum and persons entitled to vote	35
(1)	A referendum is to be held on the day appointed by the Governor.	36
(2)	A date may not be appointed for a referendum within the 12-month period following the 2015 general election.	37 38
(3)	If a referendum is to be held the Governor is to issue a writ for the referendum.	39
(4)	The persons entitled to vote at a referendum are the electors qualified to vote at a general election of Members of the Legislative Assembly.	40 41
6	Taking of votes	42
(1)	The vote at a referendum is to be taken under and in accordance with the Referendum Act.	43 44

- (2) For the purposes of the application of the Referendum Act to a referendum: 1
- (a) a reference to the submission of a Bill to a referendum is to be construed as a 2
reference to the submission of the question referred to in the referendum, and 3
 - (b) the Governor is not required to attach any material to the writ for the 4
referendum, and 5
 - (c) the provisions of the Referendum Act apply with such modifications as are 6
necessary to enable the referendum to be held (including modifications to the 7
forms set out in the Second Schedule to the Referendum Act), and 8
 - (d) any other modifications prescribed by the regulations have effect. 9
- (3) In this section, **Referendum Act** means the *Constitution Further Amendment 10
(Referendum) Act 1930*. 11

7 Regulations 12

The Governor may make regulations, not inconsistent with this Act, for or with 13
respect to any matter that by this Act is required or permitted to be prescribed or that 14
is necessary or convenient to be prescribed for carrying out or giving effect to this 15
Act. 16