

Electricity (Pacific Power) Act 1950 No 22

[1950-22]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Electricity Commission Act 1950
- **Does not include amendments by**
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
[Miscellaneous Acts Amendment \(Relationships\) Act 2002 No 73](#) (not commenced)

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New South Wales

Contents

Long title	7
Part 1 Preliminary	7
1 Name of Act and commencement	7
2 (Repealed)	7
3 Definitions	7
4 Application of Act to electricity generators.....	9
Part 2 Constitution of Pacific Power	9
5 Constitution of Pacific Power.....	9
5A Principal objectives of Pacific Power	9
5B Establishment of board of directors for Pacific Power.....	10
5C Board to determine policies and strategic plans	10
5D Appointment of Chief Executive.....	11
5E Appointment of acting Chief Executive.....	11
5F Chief Executive to manage affairs of Pacific Power	11
5G Delegation of functions	11
6–6B (Repealed)	12
Part 3 Powers, authorities, duties and functions of Pacific Power	12
Division 1 Control by the Minister	12
7 Control and direction of Minister.....	12
Division 1A Transfer of transmission functions	12

7A Commission not to exercise transmission functions	12
Division 2 Interim powers	12
8 Particular powers in certain cases	12
Division 2A Subsidiary companies	13
8A Definitions	14
8B Subsidiary companies	14
8C Delegations	14
8D Stamp duty	15
8E Application of certain provisions to subsidiary companies	15
8F Transfer of staff.....	16
Division 3 Construction etc of works and supply of electricity	16
9 Principal functions of Pacific Power.....	16
10 Public Works Act 1912—Part 3 excluded.....	17
11 Contracts.....	17
12 (Repealed).....	17
Division 4 Development	18
13 Development.....	18
Division 4A Coal mining	18
13A Definitions	18
13B Additional functions of Commission with respect to coal mining.....	19
13C Affiliates, partnerships, joint ventures etc.....	19
13D (Repealed).....	19
13E Guarantee by the Commission	19
13F Coal lease etc	20
13G Necessary and incidental powers etc.....	20
Division 5 Acquisition of land	20
14 Acquisition of land	20
15 Other adjoining land	21
16 (Repealed)	21
17 Land not to be sold etc without Minister’s approval	21

Division 6 (Repealed)	21
Part 4 (Repealed)	21
Part 4A Acquisition of coal mining undertakings	21
34A Definitions	21
34B Transfer of State coal mines	22
34C Management of Commission’s coal mines	24
34D Grant of leases for mining and mining purposes.....	24
Part 5 Finance	25
Division 1 Loan liability of the Commission to the Treasurer	25
35 Loan liability to the Treasurer	25
36 Committee of Review	25
37 Payment of interest and sinking fund charges.....	26
Division 2 (Repealed)	26
Division 3 Accounts, audit and annual reports	26
53 Financial year	27
54–56 (Repealed)	27
Part 6 Employees of the Commission	27
Division 1 (Repealed)	27
Division 2 Appointment of employees	27
64 Employees.....	27
65 Regulations re employees	27
66 Employees guilty of misconduct.....	27
67 (Repealed).....	28
Division 3 (Repealed)	28
Division 4 Superannuation	28

Subdivision 1 Superannuation Act 1916	28
72A Definitions	28
72B Operation of Subdivision	30
72C Procedure where prescribed person applies to become contributor to State Superannuation Fund	30
72D (Repealed).....	31
72E Procedure in case of prescribed person to whom Act No 96, 1967 applies	31
72F Procedure in case of prescribed person to whom Part 9 of Act No 30, 1912 applies	32
72G Procedure in case of prescribed person to whom certain regulations apply	32
72H Procedure in case of prescribed person who is party to certain deed	32
72I Procedure where prescribed person and Commission contribute towards policy of assurance	32
72J Certain prescribed persons to be contributors to State Superannuation Fund	33
72K Commission to make certain payment to State Superannuation Fund	34
72L Qualifying service under certain provisions of Act No 28, 1916.....	34
Subdivision 2 New South Wales Retirement Benefits Act 1972	34
72M Definitions.....	34
72N Operation of Subdivision	35
72O Election to contribute to New South Wales Retirement Fund	35
72OA Application of the New South Wales Retirement Benefits Act 1972	36
72P Procedure where election made by person to whom Act No 35, 1927 applies	37
72Q Commission to make certain payments	38
72R Operation of certain proclamations	38
Subdivision 3 Commission scheme	39
73 Superannuation scheme	39
Division 5 Miscellaneous provisions	39
73A Payments in respect of long service leave on death of employee.....	39
73B Public sector executives	40
Part 7 (Repealed)	40
Part 8 Miscellaneous and general	40

Division 1 (Repealed)	40
Division 2 Regulations	40
87 Regulations.....	40
88 (Repealed).....	41
89 Penalty for breach of regulations.....	41
90 Application of regulations.....	41
Division 3 Miscellaneous	41
91 Judicial notice of seal of the Commission	41
92 Service of notice of proceedings on the Commission	42
93 Documents, how authenticated.....	42
93A Custody and use of seal	42
93B Personal liability	42
94 Penalties	42
95 Recovery of penalties	42
96 Recovery of charges	43
97 (Repealed).....	43
98 Disputes between Commission and public authority or council.....	43
99 Savings, transitional and other provisions.....	43
100 (Repealed).....	43
Schedule 1	43
Schedule 1A	47
Schedule 2	48
Schedule 3	49
Schedule 4	50
Schedule 5	51
Schedule 6 Provisions relating to constitution and procedure of Board ..	54
Schedule 7 Savings, transitional and other provisions	58

Electricity (Pacific Power) Act 1950 No 22



New South Wales

An Act to provide for the constitution of the Electricity Commission of New South Wales and to define its powers authorities duties and functions; to amend the *Gas and Electricity Act 1935-1949* and certain other Acts in certain respects; to repeal the *Southern Electricity (Administration) Act 1942*; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Electricity (Pacific Power) Act 1950*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) (Repealed)

2 (Repealed)

3 Definitions

- (1) In this Act unless the context or subject matter otherwise indicates or requires:

Arbitration means arbitration conducted in accordance with the provisions of the *Arbitration Act 1902* and, for the purposes of reference to arbitration under that Act, this Act shall be deemed to be a submission between the parties within the meaning of the same.

Area has the same meaning as it has in the *Local Government Act 1993*.

Board means the board of directors for Pacific Power appointed under section 5B.

Chief Executive means the Chief Executive of Pacific Power appointed under section 5D.

Corporation means the Energy Corporation of New South Wales constituted under the *Energy Administration Act 1987*.

Electricity supply authority means a person or body engaged in the supply 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) the Commission, or
- (b) a distribution network service provider within the meaning of the *Electricity Supply Act 1995*, or
- (c), (d) (Repealed)
- (e) the Water Administration Ministerial Corporation.

Generating plant means any plant equipment or apparatus and appliances used or capable of being used for the purpose of generating electricity.

Pacific Power means the corporation established by section 5.

Part means Part of this Act.

Public Authority includes the Governor, any Minister of the Crown and any statutory body representing the Crown.

Regulations means regulations made under this Act.

Statutory body or **Statutory body representing the Crown** includes the Commissioner for Main Roads, the Commissioner for Road Transport and Tramways, the Water Administration Ministerial Corporation and any public body which the Governor may by proclamation published in the Gazette under this Act declare to be a statutory body representing the Crown.

Subsidiary company means a company in which the Commission has a controlling interest (as referred to in Division 2A of Part 3).

Works means plant and equipment (fixed or mobile), structures, buildings, lines, cables, meters and conveniences and appurtenances for and in connection with the generation, transmission and supply of electricity.

- (2) In Part 2 and Schedules 6 and 7, a reference to:
 - (a) a function includes a reference to a power, authority and duty, and
 - (b) the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.
- (3) In a Schedule to this Act, a reference to a subclause is, unless a contrary intention appears, a reference to a subclause of the clause in which the reference occurs.
- (4) In this or any other Act or in any statutory instrument or in any other document,

whether of the same or a different kind, a reference to a servant of the Commission shall, on and after the day appointed and notified under section 2 (2) of the *Electricity Commission (Amendment) Act 1982*, be read and construed as a reference to an employee of the Commission.

- (5) In this Act, a reference to the area of a council includes, in the case of Sydney Electricity, a reference to the Sydney Electricity District within the meaning of the *Sydney Electricity Act 1990*.
- (6) In this Act (except for Part 2 of Schedule 7):
- (a) a reference to the Commission includes a reference to Pacific Power, and
 - (b) a reference to a commissioner includes a reference to a director of the Board, and
 - (c) a reference to the general manager includes a reference to the Chief Executive.

4 Application of Act to electricity generators

An electricity generator within the meaning of the *Energy Services Corporations Act 1995*, for the purpose only of enabling it to exercise its functions under that Act, may exercise the functions conferred or imposed on Pacific Power by this Act (except section 8B) and, for that purpose, a reference in this Act to Pacific Power extends to an electricity generator within the meaning of that Act.

Part 2 Constitution of Pacific Power

5 Constitution of Pacific Power

- (1) There is established by this Act a corporation under the name of Pacific Power.
- (2) Pacific Power is, for the purposes of any Act, a statutory body representing the Crown.
- (3) Pacific Power has such functions as are conferred or imposed on it by or under this or any other Act or law.

5A Principal objectives of Pacific Power

- (1) The principal objectives of Pacific Power are:
 - (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in it, and
 - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (c) where its activities affect the environment, to conduct its operations in compliance

with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

(2) Each of the principal objectives of Pacific Power is of equal importance.

5B Establishment of board of directors for Pacific Power

(1) There is to be a board of directors for Pacific Power.

(2) The Board is to consist of the following:

(a) the Chief Executive,

(b) at least 3, but no more than 5, part-time directors appointed by the Governor on the recommendation of the Minister,

(c) one part-time director appointed by the Governor on the recommendation of a selection committee comprising:

(i) 2 persons nominated by the Minister, and

(ii) 2 persons nominated by the Labor Council of New South Wales,

being a person selected by the committee from a panel of 3 persons nominated by the Labor Council.

(3) The part-time directors referred to in subsection (2) (b) must each have managerial, commercial, financial, legal or other similar qualifications and, in making a recommendation under that paragraph, the Minister must have regard to the environment and the interests of consumers of electricity.

(4) The procedures for constituting the selection committee, for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the Minister.

(5) The Minister is to appoint one of the directors referred to in subsection (2) (b) as Chairperson of the Board and another of those directors as Deputy Chairperson of the Board.

(6) Schedule 6 has effect in relation to the constitution and procedure of the Board.

5C Board to determine policies and strategic plans

(1) The Board has the function of determining the policies and strategic plans of Pacific Power.

(2) In exercising that function, the Board:

(a) must have regard to the need for the structural reform of the electricity industry,
and

- (b) must, as far as practicable, ensure that the activities of Pacific Power are carried out properly and efficiently.

5D Appointment of Chief Executive

- (1) The Governor may appoint a Chief Executive of Pacific Power on the recommendation of the Minister.
- (2) Before a person is appointed as Chief Executive, the Minister must give the Board the opportunity to recommend any one or more persons for appointment.
- (3) The employment of the Chief Executive is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

5E Appointment of acting Chief Executive

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.
- (2) The Minister may, at any time, remove a person from office as acting Chief Executive.
- (3) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

5F Chief Executive to manage affairs of Pacific Power

- (1) The affairs of Pacific Power are to be managed and controlled by the Chief Executive in accordance with the policies and strategic plans determined by the Board, but subject to any directions of the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, Pacific Power by, or with the authority of, the Chief Executive is taken to have been done by Pacific Power.

5G Delegation of functions

- (1) Pacific Power may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by Pacific Power if the delegate is authorised in writing to do so by Pacific Power.
- (3) In this section, **authorised person** means:
 - (a) a member of staff of Pacific Power or any other person of whose services Pacific Power makes use, or

- (b) a subsidiary company, or
- (c) a person of a class prescribed by the regulations.

6-6B (Repealed)

Part 3 Powers, authorities, duties and functions of Pacific Power

Division 1 Control by the Minister

7 Control and direction of Minister

In the exercise and discharge of its powers, authorities, duties and functions the Commission shall be subject in all respects to the control and direction of the Minister.

Division 1A Transfer of transmission functions

7A Commission not to exercise transmission functions

The Commission is not to exercise a function that is for the time being a function of TransGrid (or any other energy transmission operator under the [Energy Services Corporations Act 1995](#)) except to the extent (if any) that the regulations otherwise provide. A determination of the Minister as to whether or not a particular function is a function of TransGrid (or any other energy transmission operator under the [Energy Services Corporations Act 1995](#)) is conclusive for the purposes of this section.

Division 2 Interim powers

8 Particular powers in certain cases

(1) Without prejudice to the generality of any other provision of this Act, the Commission may, in relation to each of the following electricity supply authorities, that is to say, Sydney Electricity, and the Administrator of the Southern Electricity Supply of New South Wales, exercise all or any of the powers set out in subsection (2).

(2)

- (a) Where in the opinion of the Commission the existence of any circumstance relating to or affecting the electricity supply authority, or the performance or non-performance of any act by the electricity supply authority would at any time:
 - (i) prejudice the supply of electricity to the public, or
 - (ii) provide a better supply of electricity to the public, or
 - (iii) delay the construction of any works by or on behalf of the electricity supply authority,

the Commission may give such directions as it may consider appropriate to the

electricity supply authority.

- (b) The Commission may direct the electricity supply authority, on such terms as the Commission may specify, to make available on loan any officers, servants or employees, employed by the said authority in the design, construction or operation of power stations or transmission lines to any other electricity supply authority.

Any person so directed to be transferred on loan shall retain all the rights and privileges appertaining to his or her office, service or employment before such a transfer, as if he or she had not been so transferred on loan.

- (c) The Commission may direct the electricity supply authority to interchange electricity between its power stations and the power stations of any other electricity supply authority (including the Commission) and may give directions in relation to the use of plant and equipment requisite for such interchange.

Such interchange of electricity shall be made upon such terms as may be mutually agreed upon by the electricity supply authorities concerned, and in default of such agreement within the time specified in such direction, upon such terms as the Minister may direct.

- (3) The powers conferred on the Commission by this section to issue directions to an electricity supply authority shall include the power to issue any such direction to the Chief Executive of Sydney Electricity.
- (4) If any direction issued by the Commission pursuant to the provisions of this section to an electricity supply authority (including the Chief Executive of Sydney Electricity) involves the said authority in any expenses or additional costs which would not otherwise have been incurred, or in any loss in revenue, the Commission shall pay the amount of such expenses or additional costs to such electricity supply authority or reimburse such authority such loss of revenue, as the case may require. In the event of the Commission and the electricity supply authority concerned failing to agree as to the amount which should be paid or reimbursed by the Commission, such amount shall be determined by the Minister.
- (5) Any person refusing or failing to comply with any direction issued by the Commission pursuant to the provisions of this section, within the time specified in such direction for compliance therewith, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding 10 penalty units and to a further penalty not exceeding 1 penalty unit for each day on which the offence is continued after the expiration of the time indicated in such direction for compliance therewith.

Division 2A Subsidiary companies

8A Definitions

In this Division:

company means a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.

exercise a function includes perform a duty.

function includes a power, authority or duty.

8B Subsidiary companies

- (1) Any function of the Commission may be exercised by a company in which the Commission has a controlling interest. Such a company is referred to in this Act as a **subsidiary company**.
- (2) For that purpose, the Commission may, with the approval of the Minister:
 - (a) form, or participate in the formation of, a subsidiary company, or
 - (b) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company.
- (3) The Commission must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.
- (4) A subsidiary company represents the Crown to the same extent (if any) as the Commission. However, a subsidiary company formed for a commercial purpose in connection with functions under Division 4A is not and does not represent the Crown.

8C Delegations

- (1) A function of the Commission may not be exercised by a subsidiary company unless it is duly delegated to the company under this Act. Such a delegation is automatically revoked if the company ceases to be a subsidiary company.
- (2) A function so delegated may be exercised in the name of the subsidiary company.
- (3) The subsidiary company may subdelegate any functions delegated to it, unless this is forbidden in the instrument of delegation to the company.
- (4) The Minister may direct the Commission to delegate to one or more subsidiary companies all or any of its functions (other than its power of delegation, and as indicated in the direction) or to revoke or vary any such delegation. Nothing in this subsection limits the power of the Minister to give directions to the Commission under section 7.

(5) While the memorandum or articles of association of a subsidiary company do not provide that one of the directors of the company is to be a member of the staff of the company and elected by staff of the company in accordance with regulations under this Act:

- (a) any existing delegation to the company under this section is automatically revoked, and
- (b) no delegation may be made to the company under this section.

For the purposes of this subsection, staff of a subsidiary company include staff employed by the company or staff of the Commission seconded to the company. Regulations may be made for the purposes of elections referred to in this subsection.

8D Stamp duty

Stamp duty is not payable in relation to:

- (a) the formation of, or the acquisition of shares in, a company that is or is anticipated to be a subsidiary company, or
- (b) the registration of such a company, or
- (c) the issue or transfer of shares in such a company, or
- (d) a document or instrument evidencing any delegation to such a company under this Act.

8E Application of certain provisions to subsidiary companies

- (1) Except as provided by the regulations, a reference to the Commission in:
 - (a) section 14, 77, 78, 79, 80, 81, 82, 83, 84, 85 or 86 of this Act, or
 - (b) section 14A, 27, 27AA or 27AC of the *Electricity Act 1945*, or
 - (c) the prescribed provisions of those or any other Acts, includes a reference to a subsidiary company.
- (2) Except as provided by the regulations, the following provisions apply to a subsidiary company in the same way and to the same extent (only) as they apply to the Commission:
 - (a) (Repealed)
 - (b) the *Freedom of Information Act 1988*,
 - (c) Chapter 7 of the *Local Government Act 1993*,
 - (d) the prescribed provisions of those or any other Acts.

- (3) For the purposes of sections 88 and 88A of the *Conveyancing Act 1919*, a subsidiary company is taken to be a public authority constituted by Act of Parliament.
- (4) For the purposes of:
 - (a) the *Public Sector Management Act 1988*, and
 - (b) the *Independent Commission Against Corruption Act 1988*, and
 - (c) the prescribed provisions of any other Acts,a subsidiary company is taken to be a public authority.
- (5) A subsidiary company is taken to be a public authority for the purposes of the *Environmental Planning and Assessment Act 1979* and a prescribed person for the purposes of section 91A of that Act.
- (6) For the purposes of an instrument under the *Environmental Planning and Assessment Act 1979*:
 - (a) a subsidiary company is taken to be a public authority, and
 - (b) the carrying on by a subsidiary company of an undertaking for the supply of electricity is taken to be a public utility undertaking, and a reference to the person carrying on that undertaking is to be construed as a reference to the subsidiary company.
- (7) The reference to the Commission in Schedule 1 to the *Government Pricing Tribunal Act 1992* includes a reference to a subsidiary company, but only in relation to the transmission and supply of electricity.

8F Transfer of staff

- (1) The Minister may by order transfer the employment of specified staff of the Commission to a subsidiary company.
- (2) The staff remain staff of the Commission, and are merely seconded to the subsidiary company.

Division 3 Construction etc of works and supply of electricity

9 Principal functions of Pacific Power

- (1) The Commission may, subject to this Act:
 - (a) maintain and operate and where necessary improve and extend all works for or in relation to the generation and supply of electricity for the time being vested in it, and construct any new, additional or supplementary works or acquire any works or property for or in relation to the generation and supply of electricity,

- (b) supply electricity to any person within or outside the State on such terms as may be agreed upon between the parties,
 - (c) with the approval of the Minister conduct any business arising out of or ancillary to the generation and supply of electricity and construct any works or acquire any works or property and maintain and operate the same for the purposes of conducting any such business, and
 - (d) purchase electricity from any person within or outside the State.
 - (e) (Repealed)
- (2) Pacific Power may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.

10 Public Works Act 1912—Part 3 excluded

The provisions of Part 3 of the *Public Works Act 1912*, as amended by subsequent Acts, shall not extend to any works (including works under Division 4A) constructed or proposed to be constructed by the Commission.

11 Contracts

- (1) The Commission may make and enter into contracts or agreements with any person for the performance of services, or for the supply of goods, machinery, or material, in connection with the exercise or discharge by the Commission of its powers, authorities, duties and functions.
- (2) All persons contracting with the Commission shall be deemed for the purposes of the *Constitution Act 1902* to be public contractors.
- (3) Any contract or agreement authorised by this or any other section of this Act shall be in the name of the Commission and may be made as follows, that is to say:
 - with respect to any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith or in writing and under seal the Commission may make such contract in writing and under their common seal and in the same manner may vary or discharge the same,
 - with respect to any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing the Chief Executive may make such contract by parol only without writing and in the same manner may vary or discharge the same.
- (4) (Repealed)

12 (Repealed)

Division 4 Development

13 Development

Subject to this Act the Commission shall have power:

- (a) to promote and encourage the development and use of the natural resources of the State in connection with the generation of electricity and without limiting the generality of the foregoing provisions of this paragraph to carry out all necessary investigations, surveys, borings and gauging of streams to ascertain the existence nature and extent of water power suitable for use in connection with the generation of electricity and to make and conclude any agreements with the Water Administration Ministerial Corporation the Snowy Mountains Hydro-electric Authority the River Murray Commission or any statutory body representing the Crown relating to the use of water for hydro-electric generation,
- (b) to promote and encourage the use of electricity and especially the use thereof for industrial and manufacturing purposes and for the purposes of primary production, and
- (c) to advise any person engaged in the generation, transmission, supply, distribution or use of electricity upon any matter concerning the generation, transmission, supply, distribution or use of electricity.

Division 4A Coal mining

13A Definitions

- (1) In this Division, unless the context or subject-matter otherwise indicates or requires:

coal includes oil shale.

coal mining operations includes operations undertaken for the purposes of:

- (a) prospecting for or mining coal,
- (b) washing, crushing or otherwise treating coal,
- (c) transporting coal, and
- (d) research with respect to coal.

functions includes powers, authorities and duties.

subsidiary company includes a corporation with which the Commission has made an arrangement under section 34C and in which the Commission retains a controlling interest.

- (2) A reference in this Division to the exercise of a function includes, where the function is

a duty, a reference to the performance of the duty.

13B Additional functions of Commission with respect to coal mining

- (1) The Commission may, subject to this Act and to any directions of the Minister:
 - (a) undertake coal mining operations, and
 - (b) use, sell or otherwise dispose of coal won from any such operations:
 - (i) in connection with the generation of electricity, or
 - (ii) exclusively, principally or partly with a view to profit.
- (2) The Commission shall, in exercising its functions under this Division, have the following objectives:
 - (a) to reduce the cost of the generation and supply of electricity by utilising alternative sources of income,
 - (b) to facilitate the generation of electricity,
 - (c) to promote and encourage research into, and development of, the coal resources of the State, and
 - (d) with the approval of the Minister, to assist any development by or on behalf of the Government of the State.

13C Affiliates, partnerships, joint ventures etc

Any of the functions of the Commission under this Division may be exercised:

- (a) by the Commission itself,
- (b) with the approval of the Minister—by a subsidiary company, or
- (c) with the approval of the Minister—by the Commission or a subsidiary company, or both, in a partnership, joint venture or other association with other persons or bodies.

13D (Repealed)

13E Guarantee by the Commission

For the purpose of the exercise of the Commission's functions pursuant to section 13C (b) or (c), the Commission may, with the approval of the Minister, guarantee the due performance of any covenants, promises, obligations or liabilities (including the repayment of loans, bank overdrafts or other financial accommodation and the payment of interest thereon) undertaken by or imposed upon:

- (a) a subsidiary company, or

- (b) any person or body acting for or on behalf of a partnership, joint venture or other association referred to in section 13C (c).

13F Coal lease etc

- (1) In this section, **mining authority** means an authorisation, exploration permit, lease or other concession or authority under the *Coal Mining Act 1973* or the *Mining Act 1973*.
- (2) For the purpose of undertaking coal mining operations:
 - (a) the Commission may, with the approval of the Minister, apply for a mining authority, and
 - (b) the Commission may do all things authorised or required to be done under any mining authority granted to it or any law regulating coal mining operations.
- (3) The Commission may, with the approval of the Minister and in accordance with the provisions of the *Coal Mining Act 1973* and the *Mining Act 1973*:
 - (a) transfer a mining authority granted to it, or
 - (b) create, assign or otherwise deal with a legal or equitable interest in a mining authority granted to it.

13G Necessary and incidental powers etc

- (1) The Commission may, for the purpose of undertaking coal mining operations, do all things not expressly authorised by this Act that are necessary or convenient for, or incidental to, that purpose.
- (2) Nothing in this Division restricts any function that the Commission has or would have apart from this Division.

Division 5 Acquisition of land

14 Acquisition of land

- (1) The Commission may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* but only as provided by this Division.
- (2) The Commission may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.
- (3) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the Commission is, in relation to that authorised work, taken to be the Constructing Authority.

- (4) The Commission may, despite anything contained in any other Act but subject to section 17, sell, lease, exchange or otherwise deal with or dispose of land acquired by the Commission under this section.

15 Other adjoining land

Where the Commission proposes to acquire land for any purpose it may also acquire other land adjoining or in the vicinity of such land.

16 (Repealed)

17 Land not to be sold etc without Minister's approval

The Commission shall not sell, lease, exchange or otherwise deal with or dispose of land acquired by it under this Division, or vested in it by or under the provisions of this Act, except with the approval of the Minister, and subject to such terms and conditions as the Minister may attach to that approval: Provided that the approval of the Minister shall not be required to a lease of any such land by the Commission for a term which is less than three years.

Division 6

17A-17F (Repealed)

Part 4

18-34 (Repealed)

Part 4A Acquisition of coal mining undertakings

34A Definitions

In this Part, except in so far as the context or subject matter otherwise indicates or requires:

appointed day means 1 July 1973.

authority means The State Mines Control Authority constituted under the [State Coal Mines Act 1912](#).

prescribed moneys means any moneys payable to or received by the authority in respect of:

- (a) any permissive occupancy granted under section 12A of the [State Coal Mines Act 1912](#), and
- (b) any sale or any lease or other agreement in respect of any prescribed property.

prescribed property means:

- (a) the lands contained in Certificate of Title Register Volume 3425 Folio 98 kept by the Registrar-General pursuant to the *Real Property Act 1900*, and
- (b) the lands described as Lot 1 in Deposited Plan No 242977 deposited in the office of the Registrar-General, Sydney.

34B Transfer of State coal mines

- (1) On and from the appointed day:
 - (a) the control of the lands described in Schedules 2, 3, 4 and 5 shall be vested in the Commission subject to this Act,
 - (b) all real property and all right and interest therein that, immediately before that day, belonged to the authority (other than prescribed property) shall vest in and belong to the Commission,
 - (c) all personal property, other than money, and all right and interest therein that, immediately before that day, belonged to or was under the control of the authority shall be the absolute property of the Commission,
 - (d) all moneys (other than prescribed moneys) and liquidated and unliquidated claims that, immediately before that day, were payable to or recoverable by the authority (including any moneys to the credit, immediately before that day, of the State Coal Mines Working Account kept pursuant to section 15A of the *State Coal Mines Act 1912*, other than moneys referred to in subsection (2) of section 3 of the *Electricity Commission (State Coal Mines) Act 1973*) shall be moneys and liquidated claims payable to or recoverable by the Commission,
 - (e) all proceedings (other than those relating to prescribed moneys or prescribed property) commenced before that day by the authority and pending immediately before that day shall be deemed to be proceedings pending on that day by the Commission and all proceedings so commenced by any person against the authority and pending immediately before that day shall be deemed to be proceedings pending on that day by that person against the Commission,
 - (f) all contracts, agreements, arrangements and undertakings (other than those relating to prescribed property or in respect of any permissive occupancy granted under section 12A of the *State Coal Mines Act 1912*) entered into with the authority and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with the Commission,
 - (g) the Commission may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of moneys and claims referred to in this subsection (other than prescribed moneys, claims relating to prescribed property or claims in respect of

any permissive occupancy referred to in paragraph (f)) and for the prosecution of proceedings referred to in paragraph (e) as the authority might have done but for the enactment of this Act,

- (h) the Commission may enforce and realise any security or charge existing immediately before that day in favour of the authority (other than securities and charges relating to prescribed property) and may exercise any powers thereby conferred on the authority as if the security or charge were a security or charge in favour of the Commission,
 - (i) all debts, moneys and claims, liquidated and unliquidated (other than those relating to prescribed moneys or prescribed property) that, immediately before that day, were due or payable by, or recoverable against, the authority shall be debts due by, moneys payable by and claims recoverable against, the Commission, and
 - (j) all liquidated and unliquidated claims (other than those relating to prescribed moneys or prescribed property) for which the authority would, but for the enactment of this Act, have been liable shall be liquidated and unliquidated claims for which the Commission shall be liable.
- (2) Where before the appointed day the authority has made application for a lease under the *Mining Act 1906* or such a lease has been granted and is in force immediately before that day, or any consent relating to an application for such a lease has been granted to the authority under subsection (1) of section 28, subsection (5) of section 57 or subsection (5) of section 60 of that Act and is in force immediately before that day, that application, that lease or that consent shall be deemed to have been made by or granted to the Commission, as the case may be.
- (3) Subject to this Act, any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of the authority shall, to the extent that but for the enactment of this section that act, matter or thing would on or after that day have had any force or effect or been in operation but not in so far as the act, matter or thing related to prescribed moneys or prescribed property, be deemed to have been done or omitted to be done by, to or in respect of the Commission.
- (4) On the appointed day any person who, immediately before that day, is a person appointed by the authority pursuant to subsection (3) of section 15 of the *State Coal Mines Act 1912* and whose appointment has not been terminated by the authority, shall be transferred to and become an employee of the corporation with which the Commission has made an arrangement under section 34C upon terms and conditions not less favourable than the terms and conditions on which the person was employed immediately before that day.
- (5) The period of service with the authority of any person who, under subsection (4), is transferred to a corporation shall be deemed to be service with that corporation for

the purposes of any law relating to annual leave, sick leave or long service leave and any award made under or industrial agreement within the meaning of the *Industrial Arbitration Act 1940*.

- (6) A person is not entitled to claim benefits under subsection (5) in respect of any period of service for which the person has received corresponding benefits in respect of his or her service with the authority.
- (7) No attornment to the Commission by a lessee from the authority shall be required.

34C Management of Commission's coal mines

- (1) The Commission shall, before 1 July 1973, enter into an arrangement with a corporation within the meaning of the *Companies Act 1961* in respect of which the Commission has a controlling interest by virtue of its shareholding in the capital of that corporation, with respect to the management and operation of any lands or other property of which the Commission has control or owns by virtue of this Part.
- (2) Any arrangement referred to in subsection (1):
 - (a) may, subject to this Act, provide for the vesting absolutely or by lease, sublease or hire of any lands or other property the Commission owns by virtue of this Part, and
 - (b) shall make provision in the event of the arrangement being cancelled or suspended with respect to the re-employment by the Commission of the persons who are employees of the corporation by virtue of subsection (4) of section 34B on terms and conditions not less favourable than the terms and conditions on which they were employed immediately before the appointed day.
- (3) The Commission may amend or vary an arrangement referred to in subsection (1) or may, for any reason it deems fit, cancel or suspend the arrangement.
- (4) Any document or instrument evidencing an arrangement under subsection (1) shall not be liable to the provisions of the *Stamp Duties Act 1920*.

34D Grant of leases for mining and mining purposes

- (1) For the purpose of the carrying on by the Commission or by a corporation with which the Commission has made an arrangement under section 34C of mining operations on any lands referred to in subsection (1) of section 34C the *Mining Act 1906* shall be deemed to be amended to the extent necessary:
 - (a) to authorise the granting of a lease thereunder to the Commission or corporation in respect of those lands notwithstanding that the provisions of that Act relating to applications for leases have not been complied with, and
 - (b) to give full force and effect to every provision, stipulation, covenant, term and condition of any lease so granted.

- (2) Any proclamation, notification or order made before or after the commencement of section 8 of the *Electricity Commission (State Coal Mines) Act 1973* that, but for this subsection, would preclude the granting of a lease referred to in subsection (1) shall, to the extent necessary to authorise the granting of the lease, be deemed to have been revoked, cancelled, varied or amended, as the case may require, immediately before the granting of the lease.
- (3) Until a lease referred to in subsection (1) is granted, the Governor may, upon such terms and conditions as he or she deems fit, authorise the Commission or a corporation with which the Commission has made an arrangement under section 34C to commence and continue coal and shale mining operations on any of the lands in respect of which the lease is applied for.

Part 5 Finance

Division 1 Loan liability of the Commission to the Treasurer

35 Loan liability to the Treasurer

For the purposes of this Act, the loan liability of the Commission to the Treasurer on behalf of the State (in this Act referred to as ***the loan liability to the Treasurer***) shall comprise:

- (a) any loan moneys provided from time to time by the Treasurer for the Commission,
- (b) any liability to the Treasurer assumed by the Commission pursuant to section 28, and
- (c) any liability to the Treasurer assumed by the Commission pursuant to section 32.

36 Committee of Review

- (1)
 - (a) There shall be constituted a committee (in this Act referred to as ***the Committee of Review***) which shall have the functions and the duties prescribed by this Act.
 - (b) The Committee of Review shall consist of the persons for the time being holding the following offices, that is to say, the Auditor-General, the Chief Executive and the Under Secretary to the Treasury, each of whom may appoint in writing a representative to act on his or her behalf.
 - (c) The Auditor-General (or his or her representative so appointed) shall be the chairperson of the Committee of Review.
 - (d) The regulations may prescribe the procedure to be followed by the Committee of Review.
- (2) The functions of the Committee of Review shall be:

- (a) to determine the amount of the liability to be assumed by the Commission pursuant to section 32,
- (b) to determine how the expense of meeting payments on account of leave or upon retirement or death of an officer or employee of the Public Service transferred to the service of the Commission should be apportioned between the Treasurer and the Commission,
- (c) to certify to the Governor, as soon as practicable after the close of each financial year:
 - (i) the amount of the loan liability to the Treasurer at the close of such financial year, having regard to loan moneys provided for the Commission during that financial year, the amount of any liability assumed by the Commission pursuant to section 28 or section 32 during that financial year and to any repayment by the Commission during that financial year in respect of the loan liability to the Treasurer,
 - (ii) the amount (if any) which should be added to or deducted from that part of the loan liability to the Treasurer which does not bear interest.

37 Payment of interest and sinking fund charges

- (1) In respect of the loan liability of the Commission to the Treasurer as determined in accordance with section 36 the Commission shall pay to the Colonial Treasurer such amounts for interest, exchange, sinking fund contributions and other charges as the Colonial Treasurer may from time to time determine:

Provided that the amounts so determined in any year shall, unless the Colonial Treasurer otherwise directs, be the amounts chargeable in that year.

- (2) The amounts determined by the Colonial Treasurer under subsection (1) shall not exceed the amounts which the Colonial Treasurer calculates as being as nearly as practicable sufficient to recoup the State for interest, exchange, sinking fund contributions and other charges payable by the State in respect of the loan liability of the Commission to the Treasurer.
- (3) Payments by the Commission in accordance with the provisions of subsection (1) shall be made in such amounts and at such times as the Colonial Treasurer may from time to time direct.

Division 2

38-52 (Repealed)

Division 3 Accounts, audit and annual reports

53 Financial year

(1)-(7) (Repealed)

(8) The financial year of the Commission shall be the year commencing on 1 July.

54-56 (Repealed)

Part 6 Employees of the Commission

Division 1

57-63 (Repealed)

Division 2 Appointment of employees

64 Employees

- (1) The Commission shall appoint and employ such employees as may be necessary for carrying out the provisions of this Act.
- (2) Subject to the provisions of this Act, every employee of the Commission shall continue in the service of the Commission at the will of the Commission only.
- (3) All employees of the Commission shall be subject to the sole control and governance of the Commission which may fix wages and conditions of employment where such wages and conditions are not fixed in accordance with the provisions of any other Act.

65 Regulations re employees

The regulations may make provision:

- (a) for and in relation to the control and governance of employees by the Commission, and
- (b) for and in relation to any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency in the service of the Commission.

66 Employees guilty of misconduct

- (1) Where an employee of the Commission is guilty of misconduct or of contravening any regulation made under this Act, or any rule or direction of the Commission, the employee may in accordance with the regulations:
 - (a) be dismissed or suspended,
 - (b) be fined a sum not exceeding 0.1 penalty unit,
 - (c) be reduced in rank, position, or grade and pay,but every such employee so dealt with shall be notified in writing of the nature of the

misconduct charged or of the breach of regulation, rule or direction alleged to have been committed.

(2) (Repealed)

67 (Repealed)

Division 3

68-72 (Repealed)

Division 4 Superannuation

Subdivision 1 Superannuation Act 1916

72A Definitions

In this Subdivision and in Schedule 1, except to the extent that the context or subject-matter otherwise indicates or requires:

prescribed notification in relation to a person means:

- (a) a notification by the State Superannuation Board in respect of that person pursuant to paragraph (a) of subsection (2) of section 72C, or
- (b) a notification by that person pursuant to paragraph (d) of subsection (1) of section 72J that he or she confirms his or her application to become a contributor to the State Superannuation Fund.

prescribed period in relation to a prescribed person means the period of three months that next succeeds:

- (a) a day appointed by the State Superannuation Board for the purposes of this paragraph and notified in the Gazette, or
- (b) the confirmation of the appointment of the prescribed person as a salaried officer, whichever is the later.

prescribed person means:

- (a) a salaried officer who became a servant of the Commission pursuant to:
 - (i) paragraph (a) of subsection (1) of section 59,
 - (ii) paragraph (a) of subsection (2) of section 59,
 - (iii) paragraph (a) of subsection (3) of section 59,
 - (iv) subsection (4) of section 59,

- (v) an agreement under section 34 approved by the Governor,
- (b) a salaried officer who became a servant of the Commission pursuant to the *Electricity Commission (Balmain Electric Light Company Purchase) Act 1950* and is one of the parties of the fourth part to the Staff Pension Trust Deed referred to in section 12 of that Act,
- (c) a salaried officer who is a servant of the Commission referred to in regulation 2 of the regulations made under this Act and published in Government Gazette Number 144 of 15 November 1957,
- (d) a salaried officer who was a wages employee immediately before his or her appointment as a salaried officer, where his or her appointment as a salaried officer has been confirmed and he or she had not reached the age of sixty years at the time of that confirmation,
- (e) a salaried officer whom the State Superannuation Board had, before the commencement of the *Superannuation (Amendment) Act 1960*, refused to accept as a contributor in accordance with subsection (2) of section 11A of the *Superannuation Act 1916*, as enacted before that commencement,

being, in each case, a salaried officer who is not a contributor to the State Superannuation Fund and who would, if he or she continued as a servant of the Commission until he or she reached the age of sixty-five years, complete not less than ten years of continuous service as such a servant (including service as a wages employee and service before the commencement of the *Electricity Commission (Superannuation) Amendment Act 1973*).

prescribed superannuation scheme means a scheme of superannuation or retirement benefits in force at the commencement of the *Electricity Commission (Superannuation) Amendment Act 1973* and established by or pursuant to:

- (a) (Repealed)
- (b) the *Transport Employees Retirement Benefits Act 1967*,
- (c) Part 9 of the *Government Railways Act 1912*,
- (d) the regulations made under this Act and published in Government Gazette Number 144 of 15 November 1957,
- (e) the industrial awards and industrial agreements specified in the Schedule to the *Industrial Arbitration (Amendment) Act 1955* and any industrial award or industrial agreement amending them or in substitution therefor,
- (f) the Staff Pension Trust Deed referred to in section 12 of the *Electricity Commission (Balmain Electric Light Company Purchase) Act 1950*,
- (g) an endowment assurance policy for the benefit of a servant of the Commission to

which the Commission and the servant contribute.

New South Wales Retirement Board means the body corporate constituted by section 35 of the *New South Wales Retirement Benefits Act 1972*.

salaried officer means a servant of the Commission who is within the jurisdiction of the Electricity Commission (Professional Staff) Conciliation Committee established pursuant to the *Industrial Arbitration Act 1940* or of the Electricity Commission (Salaried, other than Professional, Staff) Conciliation Committee so established.

State Superannuation Board means the body corporate constituted by section 70 of the *Superannuation Act 1916*.

State Superannuation Fund means the fund established pursuant to section 4 of the *Superannuation Act 1916*.

Transport Retirement Fund means the fund established pursuant to section 4 of the *Transport Employees Retirement Benefits Act 1967*.

wages employee means a servant of the Commission other than a salaried officer.

72B Operation of Subdivision

This Subdivision has effect notwithstanding any other provision of this Act or any provision of another Act or of any regulation, ordinance, by-law, rule, order or proclamation made under an Act and notwithstanding any industrial award or agreement or any other agreement.

72C Procedure where prescribed person applies to become contributor to State Superannuation Fund

(1) Where a prescribed person:

- (a) applies in writing to the State Superannuation Board before the expiration of the prescribed period (or, where the State Superannuation Board allows an extended period, before the expiration of the extended period) for acceptance as a contributor to the State Superannuation Fund, and
- (b) as soon as practicable thereafter submits himself or herself to medical examination by the Government Medical Officer as if he or she were an employee referred to in subsection (1) of section 11A of the *Superannuation Act 1916*,

the Government Medical Officer shall report to the State Superannuation Board whether or not, in his or her opinion, that person is suffering from any physical or mental defect that is likely to affect his or her health or longevity or his or her capacity to continue his or her employment with the Commission.

(2) After receipt of a report referred to in subsection (1), the State Superannuation Board

shall notify the Commission and the prescribed person to whom the report relates:

- (a) that it will accept that person as a contributor to the State Superannuation Fund,
- (b) that it will accept that person as a contributor to the State Superannuation Fund for limited benefits, or
- (c) that it will not accept that person as a contributor to the State Superannuation Fund.

(3) Where:

- (a) the State Superannuation Board notifies a prescribed person as provided by paragraph (b) of subsection (2) and that person fails within one month thereafter, or within such further period as that Board may allow, to notify the Commission and that Board in writing that he or she confirms his or her application to become a contributor to the State Superannuation Fund, or
- (b) the State Superannuation Board notifies a prescribed person as provided by paragraph (c) of subsection (2),

that person ceases to be a prescribed person and ceases to be entitled to become a contributor to the State Superannuation Fund as provided by this Subdivision.

72D (Repealed)

72E Procedure in case of prescribed person to whom Act No 96, 1967 applies

- (1) Where the Commission receives a prescribed notification in respect of a person to whom the *Transport Employees Retirement Benefits Act 1967* applies, it shall notify the New South Wales Retirement Board accordingly.
- (2) Where the New South Wales Retirement Board is notified as provided by subsection (1), there shall be paid to the Commission from the Transport Retirement Fund an amount equal to the sum of:
 - (a) the amount of any initial credit (within the meaning of the *Transport Employees Retirement Benefits Act 1967*) of the person to whom the notification relates,
 - (b) an amount equal to the total amount of the contributions paid by or on behalf of that person to that Fund before the date determined in respect of the person pursuant to subsection (1) of section 72J reduced by:
 - (i) the difference between that total amount and the total amount of contributions that would have been paid by the person or on his or her behalf to that Fund before the date so determined had they been made in accordance with Scale 2 of Schedule 2 to that Act, and
 - (ii) where any amounts have been paid to the person from that Fund—an amount

determined by that Board, and

(c) an amount of interest on the sum of the amounts referred to in paragraphs (a) and (b) compounded at the prescribed rate for each financial year during the period for which that person contributed to that Fund before the date so determined.

(3) For the purpose of paragraph (c) of subsection (2) the prescribed rate of interest in respect of a financial year is the rate determined in respect of that financial year by the New South Wales Retirement Board in accordance with subsection (4) of section 3 of the *New South Wales Retirement Benefits Act 1972*.

72F Procedure in case of prescribed person to whom Part 9 of Act No 30, 1912 applies

Where the Commission receives a prescribed notification in respect of a person to whom Part 9 of the *Government Railways Act 1912* applies it shall notify the board constituted under that Part of that Act accordingly.

72G Procedure in case of prescribed person to whom certain regulations apply

Where the Commission receives a prescribed notification in respect of a person to whom the regulations made pursuant to this Act and published in Gazette Number 144 of 15 November 1957 apply, there shall be paid to the Commission from the Superannuation Fund established pursuant to those regulations an amount equal to the amount that would be payable from that Fund to the person to whom the notification relates if the person ceased to be employed by the Commission immediately before the person becomes, by the operation of subsection (1) of section 72], an employee within the meaning of the *Superannuation Act 1916*.

72H Procedure in case of prescribed person who is party to certain deed

- (1) Where the Commission receives a prescribed notification in respect of a person who is a party of the fourth part referred to in the Staff Pension Trust Deed referred to in section 12 of the *Electricity Commission (Balmain Electric Light Company Purchase) Act 1950*, it shall notify the trustees holding office pursuant to that deed accordingly.
- (2) Where the trustees referred to in subsection (1) are notified as provided by that subsection, they shall, subject to subsection (2) of section 72], arrange to cancel any policy of assurance to which the Staff Pension Trust Deed so referred to relates, in so far as the policy relates to that person.
- (3) Where a policy of assurance is cancelled pursuant to subsection (2) in so far as it relates to a prescribed person, any moneys payable under the policy upon that cancellation are, after deduction therefrom of any amounts authorised by the Staff Pension Trust Deed referred to in subsection (1) to be retained by the trustees under that deed, payable by those trustees to the Commission.

72I Procedure where prescribed person and Commission contribute towards policy of

assurance

Where the Commission receives a prescribed notification in respect of a person who is a beneficiary under a policy of endowment assurance towards which that person and the Commission contribute, the Commission shall, subject to subsection (2) of section 72J, arrange to cancel that policy of assurance in so far as it relates to that person, and any moneys payable under the policy upon that cancellation are payable to the Commission.

72J Certain prescribed persons to be contributors to State Superannuation Fund

(1) Where a prescribed person:

(a) is, pursuant to this Division, notified by the State Superannuation Board:

(i) that he or she will be accepted as a contributor to the State Superannuation Fund, or

(ii) that he or she will be accepted as a contributor to the State Superannuation Fund for limited benefits,

(b) is, by the terms of his or her employment, required to give his or her whole time to the duties of his or her employment,

(c) is not paid at hourly, daily, weekly or fortnightly rates, or by piece-work, and

(d) has, where he or she has been notified as provided by subparagraph (ii) of paragraph (a), notified the State Superannuation Board in writing within one month after being notified as so provided that he or she confirms his or her application to become a contributor to the State Superannuation Fund,

he or she becomes an employee within the meaning of the [Superannuation Act 1916](#) on and from a date determined by the State Superannuation Board and, on and from that date, he or she ceases to be entitled to any rights, benefits or privileges that, but for this subsection, would have accrued to him or her under a prescribed superannuation scheme.

(2) Where, for the purpose of making a payment to the Commission pursuant to this Act a policy of assurance is to be cancelled, it shall be cancelled so that the effective date of the cancellation is the date determined by the State Superannuation Board under subsection (1).

(3) The State Superannuation Board may defer for such period as it thinks fit the payment of the contribution to be made under section 72K in respect of a prescribed person but the prescribed person shall not on that account alone be deemed to have failed to become a contributor to the State Superannuation Fund.

72K Commission to make certain payment to State Superannuation Fund

- (1) Where the Commission receives a prescribed notification from a person referred to in section 72E, 72F, 72G, 72H or 72I, it shall, in its books and as soon as practicable, credit the person to whom the notification relates with an amount calculated according to the Table specified in Schedule 1 that is applicable to the person's case.
- (2) An amount credited to a servant of the Commission pursuant to subsection (1) shall, for the purposes of Part 3A of the *Superannuation Act 1916*, be deemed to be an amount refunded to him or her from a Public Service Superannuation Fund within the meaning of that Part of that Act and he or she shall be deemed, for those purposes:
 - (a) to have duly elected to take the benefit of section 20C of that Act, and
 - (b) to have directed the Commission to pay that amount, or such part thereof as may be required, to the State Superannuation Fund for the purpose of that Part of that Act.
- (3) The Commission shall, within one month after the date determined by the State Superannuation Board under subsection (1) of section 72J, pay to the State Superannuation Fund the amount it is deemed by subsection (2) to have been directed by a prescribed person so to pay and shall pay to the prescribed person any balance of the amount credited to him or her pursuant to subsection (1).
- (4) Interest accrues on an amount due and payable under subsection (3) as if it were an amount referred to in subsection (2) of section 91A of the *Superannuation Act 1916*.

72L Qualifying service under certain provisions of Act No 28, 1916

- (1) Where, pursuant to section 72J a prescribed person becomes an employee within the meaning of the *Superannuation Act 1916*, any service with an employer during which that person was required or entitled to be a participant in a prescribed superannuation scheme shall be deemed to be service for the purposes of subsection (1) of section 21, and of section 23, of that Act, but not for the purposes of subsection (1B) of section 21, or of section 28B, of that Act.
- (2) Service referred to in subsection (1) is, in the case of a person who is retrenched but not otherwise, contributory service for the purposes of section 38A of the *Superannuation Act 1916*.

Subdivision 2 New South Wales Retirement Benefits Act 1972

72M Definitions

In this Subdivision and in Schedule 1A, except to the extent that the context or subject-matter otherwise indicates or requires:

election date means the date declared by the Minister in an order published under

section 72O (1) to be the election date for the purposes of this Subdivision.

Local Government Superannuation Board means the body corporate constituted by section 16 of the *Local Government and Other Authorities (Superannuation) Act 1927*.

New South Wales Retirement Board means the body corporate constituted by section 35 of the *New South Wales Retirement Benefits Act 1972*.

prescribed person means a wages employee of the Commission who is a participant in a prescribed superannuation scheme.

prescribed superannuation scheme means a scheme of superannuation or retirement benefits established by, or pursuant to:

- (a) the *Local Government and Other Authorities (Superannuation) Act 1927*, or
- (b) clause 18 of the Sydney County Council (Wages Division: General Conditions) Award.

wages employee in relation to the Commission means a servant of the Commission who is within the jurisdiction of the Electricity Commission (Wages Staff) Conciliation Committee established under the *Industrial Arbitration Act 1940*.

72N Operation of Subdivision

This Subdivision has effect notwithstanding any other provision of this Act or any provision of another Act or of any regulation, ordinance, by-law, rule, order or proclamation made under an Act and notwithstanding any industrial award or agreement or any other agreement.

72O Election to contribute to New South Wales Retirement Fund

- (1) The Minister may, by order published in the Gazette, declare that a specified date that is not earlier than 3 months later than the publication of the order is the election date for the purposes of this Subdivision.
- (2) A prescribed person may, by notice in writing given to the New South Wales Retirement Board on or before the election date, elect to become a contributor to the New South Wales Retirement Fund established under the *New South Wales Retirement Benefits Act 1972*.
- (3) Where the New South Wales Retirement Board receives an election under subsection (2), it shall forthwith notify the Local Government Superannuation Board and the Commission accordingly.
- (4) Where a prescribed person makes an election under subsection (2):
 - (a) he or she ceases to participate in the prescribed superannuation scheme by reason of which he or she is a prescribed person, and

(b) he or she becomes a contributor under the *New South Wales Retirement Benefits Act 1972*,

on the election date and he or she shall commence to contribute under that Act on and from a later date determined by the New South Wales Retirement Board and notified to the Commission.

- (5) A person who becomes a contributor pursuant to subsection (4) ceases to be entitled to any rights, benefits or privileges that, but for this section, would have accrued to the person under or in connection with the superannuation scheme in which, pursuant to that subsection, the person ceases to participate, except to the extent that the person benefits under this subdivision.

720A Application of the *New South Wales Retirement Benefits Act 1972*

- (1) For the purposes of calculating the duration of the period of service of an employee under the *New South Wales Retirement Benefits Act 1972*:
- (a) where a prescribed person becomes such an employee by reason of his or her having made an election under section 720—any period during which, by the operation of paragraph (c) of the definition of **employee** in section 3 (1) of that Act, he or she was not such an employee shall be reckoned as if he or she had been an employee during that period, and
- (b) where a prescribed person becomes such an employee by reason of his or her having made an election under section 720 and, at any time before making that election, he or she ceased to be employed by an employer within the meaning of that Act and, not having attained the age of 60 years, he or she was, on or before the expiration of the next succeeding period of 3 months, employed by the same or another such employer—he or she shall be deemed not to have ceased to be employed by such an employer if he or she complies with such terms and conditions as the New South Wales Retirement Board may determine in relation to him or her.
- (2) The provisions of section 26 of the *New South Wales Retirement Benefits Act 1972* apply to and in respect of a contributor referred to in those provisions who became such a contributor by reason of his or her having made an election under section 720 (2):
- (a) as if, notwithstanding section 720 (4), he or she had become such a contributor on:
- (i) 1 August 1979, or
- (ii) the date on which he or she became a prescribed person,
- whichever is the later, and

(b) as if a reference to his or her election date under section 12 of that Act were a reference to:

(i) 1 August 1979, or

(ii) the date on which he or she became a prescribed person,

whichever is the later.

(3) The provisions of section 66 of the *New South Wales Retirement Benefits Act 1972* apply to and in respect of the right to make an election under section 720 in the same way as they apply to and in respect of a right to make an election under that Act.

72P Procedure where election made by person to whom Act No 35, 1927 applies

(1) Where a prescribed person to whom Part 2 of the *Local Government and Other Authorities (Superannuation) Act 1927* applies makes the election referred to in section 720 (2), the provisions of section 4 (4) (f) of that Act apply to and in respect of that person as if:

(a) immediately before the election date he or she had ceased to be employed as referred to in those provisions,

(b) he or she had advised the Local Government Superannuation Board that he or she did not wish to take over or to continue any policy on his or her life effected under that Act, and

(c) any money that would, but for this paragraph, be payable to him or her pursuant to those provisions were payable instead to the Commission.

(2) Where a prescribed person to whom Part 3 of the *Local Government and Other Authorities (Superannuation) Act 1927* applies makes the election referred to in section 720 (2), the provisions of section 15 of that Act apply to and in respect of that person as if:

(a) immediately before the election date he or she had ceased to be employed as referred to in those provisions, and

(b) any money that would, but for this paragraph, be payable to him or her pursuant to those provisions were payable instead to the Commission.

(3) Where a prescribed person to whom Part 3B of the *Local Government and Other Authorities (Superannuation) Act 1927* applies makes the election referred to in section 720 (2), the provisions of section 15V of that Act apply to and in respect of that person as if:

(a) immediately before the election date he or she had ceased to be employed as referred to in those provisions, and

- (b) any money that would, but for this paragraph, be payable to him or her pursuant to those provisions were payable instead to the Commission.
- (4) Where a prescribed person to whom Part 3D of the *Local Government and Other Authorities (Superannuation) Act 1927* applies makes the election referred to in section 72O (2), the Local Government Superannuation Board shall, on a day agreed upon between the Local Government Superannuation Board, the Commission and the New South Wales Retirement Board, pay to the Commission:
- (a) from the general reserve account in the Pension Fund established under that Act—an amount equal to the amount that would be transferred in respect of that person under section 15BC of that Act if section 15AW (1) (b) of that Act had not been enacted and if that person were, within the meaning of that Part, a servant of a general employer who, on the election date, became a servant of a special employer, and
- (b) from that person's servant's account maintained under section 15BB of that Act in that Pension Fund—the amount standing to the credit of that account immediately before the election date.
- (5) Where, for the purpose of making a payment pursuant to this section, a policy of assurance is to be cancelled, it shall be cancelled so that the effective date of the cancellation is the election date.

72Q Commission to make certain payments

- (1) Where a prescribed person makes the election referred to in section 72O (2), the Commission shall, on the day agreed upon under section 72P (4) pay to the New South Wales Retirement Board in respect of that person an amount calculated according to the Table specified in Schedule 1A that is applicable to his or her case.
- (2) Money payable under subsection (1) shall be deemed to be money referred to in section 53 of the *New South Wales Retirement Benefits Act 1972* and interest shall accrue thereon as provided by section 53 (6) (a) of that Act.
- (3) The *New South Wales Retirement Benefits Act 1972* applies to and in respect of an amount of money paid under this section in respect of a person as if that person were entitled under that Act to an initial credit of that amount.

72R Operation of certain proclamations

- (1) On and from the election date, the proclamation of the Governor dated 27 May 1953 and published in the Gazette on 5 June 1953 and the proclamation of the Governor dated 5 December 1956 and published in the Gazette on 14 December 1956, being proclamations with respect to the application to servants of the Commission of the provisions of the *Local Government and Other Authorities (Superannuation) Act 1927*, cease to have any force or effect except in relation to prescribed persons who fail to

make the election referred to in section 720 (2).

Subdivision 3 Commission scheme

73 Superannuation scheme

- (1) The Commission may, under and in accordance with the regulations, establish a superannuation scheme with the object of providing allowances, pensions, gratuities or annuities, for the benefit of employees of the Commission, or in the case of the death of any employee for the benefit of such person or persons as the regulations may prescribe.
- (2) The Commission may contribute to any such superannuation scheme in such amounts or at such rates as the regulations may prescribe, and may, if authorised by the regulations so to do, deduct from the salary or wages of any of its employees the sum, or a specified portion thereof, payable by the employee by way of contribution to the scheme.
- (3) Nothing in this section shall affect any of the provisions of the *Local Government and Other Authorities (Superannuation) Act 1927* or of the *Superannuation Act 1916* or of the *New South Wales Retirement Benefits Act 1972*.

Division 5 Miscellaneous provisions

73A Payments in respect of long service leave on death of employee

- (1) Where an employee of the Commission has acquired a right to leave with pay in respect of long service or extended leave and dies before entering upon it, or after entering upon it dies before its termination, the widow or widower of the employee, or if there is no such widow or widower the children of the employee, or if there is no such widow, widower or children such person who in the opinion of the Commission was, at the time of the death of the employee, a dependent relative of the employee, shall be entitled to receive the money value of the leave not taken or not completed, computed at the rate of salary or wages the employee received at the time of his or her death less any amount paid to the employee in respect of the leave not taken, or not completed.
- (2) Where there is a guardian of any children entitled under subsection (1), the payment to which such children are entitled may be made to such guardian for their maintenance, education and advancement.
- (3) Where there is no person entitled under subsection (1) to receive the money value of any leave not taken or not completed by an employee of the Commission as aforesaid payment in respect thereof shall be made to the personal representatives of the employee.
- (4) Where payment of the money value of leave has been made under this section no

action may be brought against the Commission for payment of any amount in respect of such leave.

73B Public sector executives

This Part and any regulations are subject to Part 2A of the *Public Sector Management Act 1988*.

Part 7

74, 75 (Repealed)

Part 8 Miscellaneous and general

Division 1

76-86 (Repealed)

Division 2 Regulations

87 Regulations

- (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed by regulations and in particular in relation to the following matters:
 - (a) any of the powers conferred on or duties imposed on the Governor or the Minister,
 - (b) the governance of the employees of the Commission, the regulation of their conditions of employment, and for their guidance in the execution of their duties,
 - (c) prescribing all matters relating to any superannuation scheme for employees of the Commission.
 - (d) (Repealed)
- (2) The regulations may contain provisions of a savings or transitional nature consequential on a company becoming or ceasing to be a subsidiary company or on the delegation or the revocation or variation of a delegation of functions to a subsidiary company.
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect from a date that is earlier than the date of publication of the provision in the Gazette.
- (4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a subsidiary company), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State, an authority of the State or a subsidiary company) in respect of anything done or omitted to be done before the date of its publication.

88 (Repealed)

89 Penalty for breach of regulations

A regulation may:

- (a) impose a penalty for breach thereof and also distinct penalties in case of successive breaches thereof but no such penalty shall exceed 1 penalty unit,
- (b) impose also a daily penalty for any continuing breach thereof not exceeding 0.1 penalty unit per day,
- (c) fix a minimum as well as a maximum penalty.

90 Application of regulations

- (1) (Repealed)
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

Division 3 Miscellaneous

91 Judicial notice of seal of the Commission

All courts and persons having by law or consent of parties authority to hear receive and examine evidence:

- (a) shall take judicial notice of the seal of the Commission affixed to any documents, and
- (b) shall until the contrary be proved presume that such seal was properly affixed thereto.

92 Service of notice of proceedings on the Commission

Any notice summons writ or other proceeding required to be served on the Commission may be served by being left at the office of the Commission, or, in the case of a notice, by post.

93 Documents, how authenticated

Every summons, process, demand, order, notice statement, direction or document requiring authentication by the Commission may be sufficiently authenticated without the seal of the Commission if signed by the Chief Executive.

93A Custody and use of seal

The seal of Pacific Power must be kept by the Chief Executive, or by a member of staff of Pacific Power authorised in that behalf by the Chief Executive, and must be affixed to a document only:

- (a) in the presence of the Chief Executive or that member of staff, and
- (b) with an attestation by the signature of the Chief Executive or that member of staff of the fact of the affixing of the seal.

93B Personal liability

A matter or thing done or omitted by Pacific Power, the Chief Executive, any director of the Board or any person acting under the direction of Pacific Power or the Board does not subject the Chief Executive, director or person so acting to any action, liability, claim or demand if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act.

94 Penalties

- (1) Every person guilty of an offence against this Act shall for every such offence be liable to the penalty expressly provided therefor and if no penalty is provided to a penalty not exceeding 1 penalty unit and to a further daily penalty not exceeding 0.1 penalty unit.
- (2) A body corporate shall be liable for any offence against this Act as if it were a private person and shall be subject to the same penalties as if it were a private person, and if any chairperson, member of the governing body, director, manager, secretary or officer of such body corporate knowingly authorises or permits the commission of any offence he or she shall also be liable therefor.

95 Recovery of penalties

- (1) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a Local Court.

- (2) Where the penalty is a daily penalty it may be recovered either under a separate information or complaint for each day or under an information or complaint for the sum of the daily penalties.
- (3) Division 3 of Part 2 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 76 or 81.

96 Recovery of charges

Any charge, fee or money due to the Commission under the provisions of this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction.

97 (Repealed)

98 Disputes between Commission and public authority or council

- (1) When any dispute arises between the Commission and another Public Authority or a council and subject to any provision of this Act not providing another course of action, either party may refer the dispute to the Minister for settlement by the Governor.
- (2) The Minister may appoint any person a commissioner to hold an inquiry and to report to the Minister as to any matter arising in or relating to the dispute.
- (3) The provisions of the *Royal Commissions Act 1923-1934* (other than Division 2 of Part 2 of that Act) and the provisions of section 152 of the *Justices Act 1902* shall mutatis mutandis apply to any commissioner appointed under this section.
- (4) The Governor may make such order in the public interest and in the circumstances of the case as may seem just and equitable. Any such order shall be final and conclusive and shall be given effect to by the Commission and by the Public Authority or the Council as the case may be.

99 Savings, transitional and other provisions

Schedule 7 has effect.

100 (Repealed)

Schedule 1

Tables 1-4

(Repealed)

Table 5

(Sections 72E, 72K)

Amount to be credited to prescribed person who is a contributor to the Transport

Retirement Fund

The amount that, by the operation of section 72E, is payable to the Commission from the Transport Retirement Fund in respect of the prescribed person.

Table 6

(Sections 72F, 72K)

Amount to be credited to prescribed person to whom Part 9 of the [Government Railways Act 1912](#) applies

The total of:

- (a) an amount equal to the total of the contributions of the prescribed person to the Government Railways Superannuation Account, and
- (b) such percentage of the amount referred to in paragraph (a) as is specified in the Second Column hereunder opposite the number of years specified in the First Column hereunder that is equal to the number of complete years for which the prescribed person contributed to the Government Railways Superannuation Account.

First Column	Second Column
Number of complete years during which the prescribed person contributed to the Account	Percentage
45 years and over	100.0 per centum
44 years	96.0 " "
43 "	92.0 " "
42 "	88.0 " "
41 "	84.0 " "
40 "	80.0 " "
39 "	76.0 " "
38 "	73.0 " "
37 "	70.0 " "
36 "	67.0 " "
35 "	65.0 " "
34 "	63.0 " "
33 "	61.0 " "
32 "	59.0 " "
31 "	57.0 " "

30 "	55.0 " "
29 "	53.0 " "
28 "	51.0 " "
27 "	49.0 " "
26 "	47.0 " "
25 "	45.0 " "
24 "	43.0 " "
23 "	41.1 " "
22 "	39.2 " "
21 "	37.3 " "
20 "	35.4 " "
19 "	33.5 " "
18 "	31.6 " "
17 "	29.8 " "
16 "	28.0 " "
15 "	26.2 " "
14 "	24.4 " "
13 "	22.6 " "
12 "	20.8 " "
11 "	19.0 " "
10 "	17.3 " "
9 "	15.6 " "
8 "	13.9 " "
7 "	12.2 " "
6 "	10.5 " "
5 "	8.8 " "
4 "	7.1 " "
3 "	5.4 " "
2 "	3.7 " "
1 year	2.0 " "

Table 7

(Sections 72G, 72K)

Amount to be credited to prescribed person who is a participant in the superannuation scheme established pursuant to the regulations made under this Act and published in the Gazette on 15 November 1957

The total of:

- (a) the amount of the contributions made by the prescribed person pursuant to regulation 4 of those regulations,
- (b) the amount received by the Commission from the prescribed person as the amount received by him or her pursuant to the *Superannuation Act 1922* of the Parliament of the Commonwealth, as subsequently amended, upon his or her ceasing to be a contributor under that Act, and
- (c) interest earned by the Superannuation Fund established pursuant to those regulations that is attributable to the contributions referred to in paragraphs (a) and (b), the interest being compounded annually at the end of each year computed from the date of the first of those contributions to and including the date on which liability to make those contributions ceased.

Table 8

(Sections 72H, 72K)

Amount to be credited to prescribed person who is a party to the Staff Pension Trust Deed referred to in section 72H

The amount calculated in accordance with the formula

$$\frac{A}{B} \times C$$

where:

A represents the total of the premiums paid by the prescribed person in respect of policies of assurance that are to be cancelled pursuant to section 72H in so far as they relate to him or her.

B represents the total of all premiums paid in respect of those policies of assurance in so far as they relate to the prescribed person.

C represents the amount that, by the operation of section 72H is payable to the Commission in respect of the prescribed person.

Table 9

(Sections 72I, 72K)

Amount to be credited to prescribed person who, together with the Commission, contributes towards endowment policy of assurance for his or her benefit

The amount calculated in accordance with the formula

$$\frac{A}{B} \times C$$

where:

A represents the total of the premiums paid by the prescribed person in respect of policies of assurance that are to be cancelled pursuant to section 72I in so far as they relate to him or her.

B represents the total of all premiums paid in respect of those policies of assurance in so far as they relate to the prescribed person.

C represents the amount that, by the operation of section 72I, is payable to the Commission upon the cancellation of those policies of assurance.

Schedule 1A

(Section 72Q)

Table 1 Amount to be paid to New South Wales Retirement Board in respect of prescribed person to whom Part 2 of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) applies

The amount calculated in accordance with the formula

$$\frac{A}{B} \times C$$

where:

A represents the total of the premiums paid by the prescribed person in respect of policies of assurance that are to be cancelled pursuant to section 72P (1) in so far as they relate to the person.

B represents the total of all premiums paid in respect of those policies of assurance in so far as they relate to the prescribed person.

C represents the amount that, by the operation of section 72P (1), is payable to the Commission by the Local Government Superannuation Board.

Table 2 Amount to be paid to New South Wales Retirement Board in respect of prescribed person to whom Part 3 of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) applies

One-half of the amount that, by the operation of section 72P (2), is payable to the Commission by the

Local Government Superannuation Board.

Table 3 Amount to be paid to New South Wales Retirement Board in respect of prescribed person to whom Parts 2 and 3 of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) applies

The total of the amounts calculated in relation to the prescribed person under Table 1 and Table 2.

Table 4 Amount to be paid to New South Wales Retirement Board in respect of prescribed person to whom Part 3B of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) applies

The total of:

- (a) one-half of the amount transferred in respect of the prescribed person pursuant to section 15K (3) (c) of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) or section 15L (9) (a) of that Act,
- (b) such part of the proceeds of the surrender or cancellation of the insurance policies referred to in sections 15K (3) and 15L (9) of that Act as would be payable if Table 1 applied,
- (c) the amount of interest credited to the account of the prescribed person in the Benefits Fund under that Act that is attributable to the amounts referred to in paragraphs (a) and (b) of this Table,
- (d) two-fifths of the amount of the contributions received or receivable by the Local Government Superannuation Board in respect of the prescribed person pursuant to Part 3B of that Act in respect of the prescribed person, and
- (e) two-fifths of the amount of any interest credited to the account of the prescribed person in the Benefits Fund under that Act that is attributable to the contributions referred to in paragraph (d) of this Table,

reduced by an amount equal to two-fifths of the amounts debited to the account of the prescribed person pursuant to section 15U (2) (a) and (b) of that Act.

Table 5 Amount to be paid to New South Wales Retirement Board in respect of prescribed person to whom Part 3D of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) applies

An amount equal to the amount referred to in section 72P (4) (b) in relation to the prescribed person.

Schedule 2

(Section 34B)

All that piece or parcel of Crown land and private land, below a depth of 50 feet from the surface,

containing 8350 acres or thereabouts situated in the County of Northumberland, parishes of Wallarah and Morrisset: Commencing at the south-western corner of portion 19 parish of Morrisset thence southerly by a line to the north-western corner of portion ML9 parish of Wallarah, thence by the western boundary of that portion to its south-western corner, thence generally south easterly by the mean high water mark of Chain Valley Bay in Lake Macquarie to a point on that mean high water mark bearing 68°(magnetic) from the south-eastern corner of portion 71 parish of Wallarah, thence south easterly by a line to the north-western corner of portion ML70, thence by part of the south-western boundary of that portion to its intersection with a line from a point about 12 chains due north from the north-western corner of portion 76 to a point about 5 chains south from the most westerly north-western corner of portion 322 parish of Morrisset on a line from the north-western corner of portion 325 parish of Morrisset to the north-western corner of portion 18 parish of Munmorah, thence north-westerly by the former line to the aforesaid point about 5 chains south from the most westerly north-western corner of portion 322 parish of Morrisset, thence northerly to the north-western corner of portion 325 by part of the aforesaid line from that corner to the north-western corner of portion 18 parish of Munmorah, thence northerly by a line to the south-eastern corner of portion 402 parish of Morrisset, thence easterly by a line to the point of commencement, but excluding:

- (a) land having an area of 1 rood 23¹/₄ perches appropriated by the Commonwealth of Australia for postal services by notification in the Commonwealth Gazette of 21 September 1961, and
- (b) portion 22 (of 39 acres excluding road), portion 29A (of 8 acres 3 roods 11 perches excluding road), portion 23 (of 23 acres) and portion 38 (of 40 acres) plans catalogued N.257—1501, N.751A—1501, N.348—1501 and N.772—1501 respectively in the Department of Lands and portions 44 and 43 (of 89 acres and 63 acres respectively) plan catalogued N.472—1501 in the Department of Lands all in the parish of Morrisset County of Northumberland.

Schedule 3

(Section 34B)

All that piece or parcel of Crown land and private land, below a depth of 50 feet from the surface, containing 6600 acres or thereabouts situated in the County of Northumberland, parishes of Tuggerah, Wallarah, Munmorah and Morrisset: Commencing at the north-western corner of portion 76 parish of Wallarah thence by part of the western boundary of that portion to the north-eastern corner of portion 68 parish of Munmorah, thence by the south-eastern, eastern and part of the southern boundaries of the area set apart for coal mining operations by Proclamation under section 2 (1) of the *State Coal Mines Act 1912*, published in the Government Gazette of 4 March 1970, folio 729, to the mean high water mark on the generally western shore of Tuggerah Lake, thence generally northerly and easterly by the mean high water mark of that Lake to the south-western boundary of portion 16 parish of Munmorah, thence by the south-western and north-western boundaries of that portion to the aforesaid mean high water mark of Tuggerah Lake, thence generally northerly by that mean high water mark and generally westerly and south westerly by the mean high water mark on the southern bank of Wallarah Creek to the point where the said mean high water mark of Wallarah Creek intersects a line from the north-western corner of portion 18 parish of Munmorah to the north-western corner of portion 325 parish of Morrisset, thence northerly by part of that line to a point about 5 chains south from the most westerly north-western corner of portion 322 parish of Morrisset, thence south-easterly by part of a line to a point about 12 chains due north from the aforesaid north-western corner of portion 76 to the point where that line intersects the south-western boundary of portion ML70 parish of Wallarah, thence south-easterly by part of the south-western boundary of portion ML70 and the south-easterly prolongation of same to the point of commencement, and including the land which is above 50 feet

below the surface of portions ML94 parish of Wallarah and 85 and 89 parish of Munmorah.

Schedule 4

(Section 34B)

All that piece or parcel of Crown land and private land, below a depth of 50 feet from the surface, containing 4900 acres or thereabouts situated in the County of Durham, parishes of Liddell and Ravensworth: Commencing at the north-eastern corner of portion 169 of 640 acres, parish of Ravensworth, thence by the northern boundary of that portion westerly to its north-western corner thence by a line generally north-westerly to the south-eastern corner of portion 74, thence by the eastern boundaries of portions 74, 75, a line, the eastern and northern boundaries of portion 31, a line, part of the eastern, the northern and part of the western boundaries of portion 29 to the point where that western boundary intersects the easterly prolongation of the northern boundary of portion 70, thence by that easterly prolongation and northern boundary of portion 70 and part of the western boundary of the said portion to its intersection with the easterly prolongation of the northern boundary of portion 76, thence by that prolongation and part of the northern boundary of portion 76 to the south-eastern corner of portion 28, thence by the eastern and northern boundaries of portion 28, a line the northern boundary of portion 78 and part of the northern boundary of portion 37 to its intersection with the southerly prolongation of the eastern boundary of portion 82, thence by that prolongation and the eastern and part of the north-eastern boundaries of portion 82 to the point where the latter boundary intersects the southerly prolongation of the eastern boundary of portion 55, thence by the said prolongation and eastern boundary of portion 55, a line and the eastern and part of the northern boundaries of portion 38 to the point where the latter boundary intersects the southerly prolongation of the eastern boundary of portion 58, thence by that prolongation, the eastern boundaries of portions 58 and 57, parish of Ravensworth, a line, the eastern and northern boundaries of portion 20 parish of Liddell, part of the eastern boundary of portion 20 parish of Savoy and a line to the south-western corner of portion 89 of 2560 acres parish of Liddell, thence by the southern boundary of said portion 89 and part of the southern boundary of portion 1 to the north-western corner of portion 45 same parish, thence by the generally western and southern boundaries of portion 45, the southern boundary of portion 181, and a line to the north-western corner of portion 185, thence southerly by the western boundaries of portions 185, 186, 187, 188, 189, a line to the north-western corner of portion 63, the western boundaries of portions 63, 64, 65 and part of the western boundary of portion 66 to the north-eastern corner of portion 67, thence by the northern, western and southern boundaries of portion 67, the southern boundary of aforesaid portion 66 and a line to the north-western corner of portion 101 parish of Ravensworth, thence by the western boundaries of portions 101, 102, 103, 104, 105, a line, the western boundary of portion 106 and the western, southern and generally south-eastern boundaries of portion 107 parish of Ravensworth to the western boundary of portion 1 Rem. parish of Vane, thence southerly by part of the western boundary of portion 1 Rem. parish of Vane and the southerly prolongation of that boundary to the northern boundary of portion 7 parish of Ravensworth, thence by part of the northern boundary of said portion 7, to the most easterly north-eastern corner of portion 91, thence by the eastern boundary of that portion and an eastern and northern boundaries of portion 92 to the most easterly north-eastern corner of the latter portion, thence again by an eastern boundary of portion 92 and the southerly prolongation of same to the northern boundary of portion 14, thence westerly by part of the northern boundary of the latter portion and a line to the point of commencement.

Schedule 5

(Section 34B)

All that piece or parcel of Crown land and private land containing 8300 acres or thereabouts situated in the County of Northumberland, parishes of Awaba and Coorumbung: Commencing at the most southerly south-western corner of portion 150 parish of Awaba thence by the generally south-eastern and south-western boundaries of that portion and the generally south-eastern and south-western boundaries of portions 151 and 152 to the point where a south-eastern boundary of portion 152 intersects the westerly prolongation of the southern boundary of portion 156, thence by that prolongation, the southern boundaries of said portion 156, part of the western boundary of portion 160, the southern boundaries of portions 157 and 158, a line, the southern boundaries of portions 162, 163 and 164, the south-eastern boundary of portion 165, a line, the north-eastern boundaries of portions 170, 171, a line, the north-eastern boundary of portion 177, a line, the north-eastern, northern and part of the eastern boundary of portion 231 to the point where the last mentioned boundary intersects a line from the third most southerly south-eastern corner of portion 152 aforementioned to the north-eastern corner of portion 219, thence generally south-easterly by part of that line to the said north-eastern corner of portion 219, thence north-easterly by a line to the most westerly south-western corner of portion 116, thence by the south-western boundary of that portion, a line, a north-eastern, northern and the western boundaries of portion 99 and the western boundary of portion 100 to the southern most corner of said portion 100, thence by the south-eastern, eastern and generally south-western boundaries of portion 101 and the generally south-western boundaries of portion 103 to the point of intersection with a line from the aforesaid north-eastern corner of portion 219 to the south-western corner of portion 109, thence by part of that line generally south-westerly to the said south-western corner of portion 109, thence by the south-eastern boundaries of that portion, the south-eastern boundaries of portions 108 and 107, the south-western boundary of said portion 107, a line, the south-western and south-eastern boundaries of portion 111 and a south-eastern and part of a south-western boundary of Reserve 70838 from sale for access to water notified in the Government Gazette of 26 February 1943 to the western boundary of portion ML78 (plan catalogued M17878 in the Department of Mines), thence southerly by part of the western boundary of portion ML78 to the northern boundary of an area of 48 acres 3 roods 2½ perches shown on plan catalogued Ms6015 Md. R. in the Department of Lands, thence by part of the northern, the western and part of the southern boundaries of that area to the aforesaid western boundary of portion ML78, again by part of the western boundary of portion ML78 to the northern boundary of portion ML80 (plan catalogued M17893 in the Department of Mines), thence by part of the northern and by the most western boundaries of the latter portion to the northern boundary of portion 74, thence by part of the northern and by the western boundaries of portion 74, the northern and western boundaries of portion 45 and the southerly prolongation of the said western boundary of portion 45 to the foreshores of Lake Macquarie, thence generally north-westerly and south-westerly by the said foreshores to the northern boundary of portion 86 parish of Coorumbung, thence by part of the northern and western boundaries of portion 86 to the point where the latter boundary intersects the easterly prolongation of the northern boundary of portion 70 same parish thence by that easterly prolongation, the northern boundaries of portions 70 and 111 and part of the western boundary of said portion 111 to its intersection with the easterly prolongation of the northern boundary of portion 109, thence by that prolongation, the northern boundary of portion 109 and part of the western boundary of said portion to a point due east of the second most northerly north-eastern corner of portion 107, thence by a line, the most northerly north-eastern and the northern boundaries of portion 107, the northern boundaries of portions 106, 105 and 50 and the westerly prolongation of the northern boundary of portion 50 to the eastern boundary of portion 1, thence by part of that eastern boundary, the generally south-eastern boundaries of portions

73, 74 and 75, the generally south-eastern, eastern and north-eastern boundaries of portion 33 and the south-eastern boundary of portion 34 to the southern boundary of portion 7, thence easterly by part of that southern boundary to the generally eastern side of a closed road of part 12 acres 3 roods 10 perches, thence generally northerly by that side of that closed road, a line and again by that side of said closed road to the north-eastern corner of portion 15 and being a point on the generally eastern side of public road from Gosford to Wallsend, thence generally northerly by that side of that road to the point of commencement but excluding:

- (a) portion 14 (of 42 acres excluding road), portion 15 (of 45 acres 3 roods) and portions 16, 17 and 18 (all of 32 acres 2 roods), parish of Coorumbung, plan catalogued N.126-1501R in the Department of Lands and portion 175 (of 3 acres 1 rood 13 perches), portion 176 (of 2 acres 0 roods 18 perches) and portion 177 (of 1 acre 3 roods 22 perches), parish of Awaba, plan catalogued N.3314-2111 in the Department of Lands,
- (b) the land which is above 50 feet below the surface of portion 217 (of 10 acres 2 roods 20 perches excluding road) parish of Awaba, plan catalogued N.3320-2111 in the Department of Lands other than that part of that portion resumed for railway purposes by notification in the Government Gazette of 7 May 1971, folio 1462 and being lot 5 in Deposited Plan 239629,
- (c) the land which is above 50 feet below the surface of the Main Northern Railway Line from Sydney to Newcastle and of adjacent railway lands plans catalogued Ms.448 Sy.Bk., and Ms.829 Md. R. in the Department of Lands,
- (d) the land which is above 50 feet below the surface of portion 247 (of 900 acres) parish of Awaba plan catalogued N.5368R/-2111 in the Department of Lands,
- (e) the land which is above 50 feet below the surface of portion 94 (of 88 acres 3 roods) and portion 95 (of 79 acres) parish of Coorumbung plan catalogued N.3260R-2111 in the Department of Lands,
- (f) the land which is above 50 feet below the surface of the area bounded as follows: Commencing at the northern most corner of portion 143 parish of Coorumbung thence by part of the eastern boundary of that portion, the northern and eastern boundaries of portion 18, part of the eastern boundary of portion 17, the northern, eastern and southern boundaries of portion 54, a line, the eastern boundary of portion 15, the eastern and part of the southern boundary of portion 14, the eastern boundary of portion 53 and part of the southern boundary of that portion to the point where the last mentioned boundary intersects the northerly prolongation of the eastern boundary of portion 116, thence southerly by that prolongation, the eastern boundary of said portion 116 and the generally eastern boundaries of portion 97 to the point where a generally eastern boundary of portion 97 intersects the westerly prolongation of the northern boundary of portion 171, thence by that prolongation and the northern, eastern and south-eastern boundaries of portion 171 to its southern most corner, thence by a line to the most northerly north-western corner of portion 108, thence by the northern boundary of portion 108 a line, the northern boundary of portion 110 and part of the northern boundary of portion 151 and the south-western boundaries of portion 170 to the north-western corner of said portion 170, thence south-westerly by the south-eastern side of a road adjacent to the south-eastern boundary of portion 186 to the point where that side of that road intersects the southerly prolongation of the western boundary of said portion 186, thence by that prolongation and western boundary of portion 186, the western and northern boundaries of portion 179 and the westerly prolongation of the northern boundary of

said portion 179 to the south-western boundary of portion 187, thence by that south-western boundary and a line to the north-western corner of portion 86, thence by part of the western boundary of that portion to the point where the said boundary intersects the easterly prolongation of the northern boundary of portion 70, thence by that easterly prolongation, the northern boundaries of portions 70 and 111 and part of the western boundary of said portion 111 to its intersection with the easterly prolongation of the northern boundary of portion 109, thence by that prolongation, the northern boundary of portion 109 and part of the western boundary of said portion to a point due east of the second most northerly north-eastern corner of portion 107, thence by a line, the most northerly north-eastern and the northern boundaries of portion 107, the northern boundaries of portions 106, 105 and 50 and the westerly prolongation of the northern boundary of portion 50 to the eastern boundary of portion 1, thence by part of that eastern boundary, the generally south-eastern boundaries of portions 73, 74 and 75, the generally south-eastern, eastern and north-eastern boundaries of portion 33 and the south-eastern boundary of portion 34 to the southern boundary of portion 7, thence easterly by part of that southern boundary to the generally eastern side of a closed road of part 12 acres 3 roods 10 perches, thence generally northerly by that side of that closed road, a line and again by that side of said closed road to the north-eastern corner of portion 15 and being a point on the generally eastern side of public road from Gosford to Wallsend, thence generally northerly by that side of that road to the point of commencement,

- (g) the land which is below a depth of 50 feet from the surface of the area bounded as follows: Commencing at the third most southerly south-eastern corner of portion 152 parish of Awaba thence north-easterly by a south-eastern boundary of portion 152 to the point where that south-eastern boundary intersects the westerly prolongation of the southern boundary of portion 156, thence by that prolongation, the southern boundaries of said portion 156, part of the western boundary of portion 160, the southern boundaries of portions 157 and 158, a line, the southern boundaries of portions 162, 163 and 164, the south-eastern boundary of portion 165, a line, the north-eastern boundaries of portions 170, 171, a line, the north-eastern boundary of portion 177, a line, the north-eastern, northern and part of the eastern boundary of portion 231 to the point where the last mentioned boundary intersects a line from the third most southerly south-eastern corner of portion 152 aforementioned to the north-eastern corner of portion 219, thence generally north-westerly by part of that line to the point of commencement,
- (h) the land which is below a depth of 50 feet from the surface of the area bounded as follows: Commencing at the north-eastern corner of portion 219 parish of Awaba, thence north-easterly by a line to the most westerly south-western corner of portion 116, thence by the south-western boundary of that portion, a line, a north-eastern, northern and the western boundaries of portion 99 and the western boundary of portion 100 to the southern most corner of said portion 100, thence by the south-eastern, eastern and generally south-western boundaries of portion 101 and the generally south-western boundaries of portion 103 to the point of intersection with a line from the aforesaid north-eastern corner of portion 219 to the south-western corner of portion 109, thence by part of that line generally north-easterly to the point of commencement.

Schedule 6 Provisions relating to constitution and procedure of Board

(Section 5B)

Part 1 Constitution of Board

1 Definition

In this Part:

part-time director means a director appointed under section 5B (2) (b) or (c).

2 Terms of office of part-time directors

Subject to this Schedule, a part-time director holds office for such period (not exceeding 1 year) as is specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

4 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a part-time director, and the Minister may revoke any such appointment.
- (2) In the absence of a part-time director, the director's deputy:
 - (a) may, if available, act in the place of the director, and
 - (b) while so acting, has all the functions of the director and is taken to be a part-time director.
- (3) A person while acting in the place of a part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a part-time director is taken to be an absence of the director.

5 Vacancy in office of part-time director

- (1) The office of a part-time director becomes vacant if the director:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or by post, except on leave granted by the Minister or unless the director is excused by the Minister for having been absent from those meetings, or
- (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
- (g) becomes a mentally incapacitated person, or
- (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.

(2) The Governor may remove a part-time director from office at any time.

6 Filling of vacancy in office of director

If the office of any part-time director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Chairperson and Deputy Chairperson

- (1) In the absence of the Chairperson, the Deputy Chairperson:
 - (a) may, if available, act in the place of the Chairperson, and
 - (b) while so acting, has all the functions of the Chairperson and is taken to be the Chairperson.
- (2) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:
 - (a) is removed from office by the Minister under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
 - (b) ceases to be a part-time director.
- (3) The Minister may remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

8 Disclosure of pecuniary interests

- (1) If:

(a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and

(b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:

(a) be present during any deliberation of the Board with respect to the matter, or

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination, or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

9 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a part-time director.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time director or from accepting and retaining any remuneration payable to the person under this Act as a part-time director.

(3) The office of a part-time director is not, for the purposes of any Act, an office or place of profit under the Crown.

10 Provisions regarding directors who are employees

(1) A person may be, at the same time, both a director of the Board and an employee of Pacific Power.

(2) Nothing in any law, rule, direction or other requirement:

(a) that is applicable to a director in his or her capacity as an employee of Pacific Power, and

(b) that would not be so applicable if he or she were not such an employee,

operates so as to prevent or restrict the exercise by the director of any of his or her functions as a director.

Part 2 Procedure of Board

11 Quorum

The quorum for a meeting of the Board is 4 directors, of whom one must be the Chairperson or Deputy Chairperson.

12 Presiding director

(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

14 Transaction of business outside meetings or by telephone

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the Board for the time being, and a resolution in writing approved in writing by a majority of those directors is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 7 Savings, transitional and other provisions

(Section 99)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - Electricity Legislation Amendment Act 1995*
 - Energy Services Corporations Act 1995*
 - Electricity Supply Act 1995*
- (2) Any such provision may, if the regulations so provide, take effect from the date of

assent to the Act concerned or a later day.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, 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.

Part 2 Provisions consequent on enactment of [Electricity Legislation Amendment Act 1995](#)

2 Definition

In this Part:

amending Act means the [Electricity Legislation Amendment Act 1995](#).

3 Abolition of Electricity Commission

- (1) The Electricity Commission of New South Wales is abolished.
- (2) Pacific Power is a continuation of, and the same legal entity as, the Electricity Commission of New South Wales.

4 Preservation of certain entitlements

- (1) Part 8 of the [Public Sector Management Act 1988](#) applies to each commissioner of the Electricity Commission holding office immediately before the commencement of this clause as if the commissioner had been removed from office by the Governor under section 90 of that Act.
- (2) Subclause (1) does not apply to the persons referred to in clauses 5 and 6.

5 Former chairperson to continue as director and Chairperson

The person who, immediately before the commencement of this clause, was the chairperson of the Electricity Commission is taken:

- (a) to have been appointed, for a term of 1 year beginning on that commencement, as a part-time director of the Board, and
- (b) to have been appointed Chairperson of the Board,

on the same terms and conditions as to remuneration and allowances as those on which that person held office as chairperson immediately before that commencement.

6 Former elected commissioner to continue as director

The person who, immediately before the commencement of this clause, was the commissioner referred to in clause 2 (1) (c) of Schedule 6 (as in force immediately before that commencement) is taken to be the person recommended for appointment as a part-time director (as referred to in section 5B (2) (c)) for the purposes of the first Board to be established after that commencement.

7 Removal from office of General Manager

- (1) The office of General Manager is abolished.
- (2) Part 2A of the *Public Sector Management Act 1988* applies to the General Manager of the Electricity Commission holding office immediately before the commencement of this clause as if the General Manager had been removed from office by the Governor under section 42Q of that Act.
- (3) If the General Manager referred to in subclause (2):
 - (a) is appointed as Chief Executive, within 3 months after the commencement of this clause, for a term that expires before the date on which his or her term of office as General Manager would have expired had the office of General Manager not been abolished, and
 - (b) is not re-appointed as Chief Executive between the date on which his or her term of office as Chief Executive expires and the date on which his or her term of office as General Manager would have expired had the office of General Manager not been abolished,

the compensation (if any) to which he or she is entitled under section 42S of the *Public Sector Management Act 1988* as a consequence of not having been re-appointed as Chief Executive is to be determined by the Statutory and Other Offices Remuneration Tribunal as if the office of General Manager had not been abolished and as if he or she had been removed from office as General Manager on the date on which his or her term of office as Chief Executive expires.

8 Delegations

Any delegation in force under section 5B, as in force immediately before the commencement of this clause, continues to have effect as if it had been made under section 5G, as inserted by the amending Act.

9 Ministerial directions

Any direction in force under section 7, as in force immediately before the commencement of this clause, continues to have effect as if it had been given under section 7, as substituted by the amending Act.

10 Construction of certain references

In any Act or instrument:

- (a) a reference to the Electricity Commission of New South Wales, however expressed, includes a reference to Pacific Power, and
- (b) a reference to a commissioner of the Electricity Commission of New South Wales includes a reference to a member of the Board of directors for Pacific Power, and
- (c) a reference to the General Manager of the Electricity Commission of New South Wales includes a reference to the Chief Executive of Pacific Power.