

# Energy and Utilities Administration Act 1987 No 103

[1987-103]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Previously named**  
Energy Administration Act 1987
- **Does not include amendments by**  
[Electricity \(Consumer Safety\) Act 2004 No 4](#) (amended by [Sustainable Energy Development Repeal Act 2004 No 64](#) and [Energy Administration Amendment \(Water and Energy Savings\) Act 2005 No 18](#)) (not commenced)  
[Energy Administration Amendment \(Water and Energy Savings\) Act 2005 No 18](#), Sch 1 [13] (not commenced)

### Authorisation

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File last modified 30 May 2005

# Energy and Utilities Administration Act 1987 No 103



New South Wales

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# Energy and Utilities Administration Act 1987 No 103



New South Wales

An Act to establish the Department of Energy; to constitute the Energy Corporation of New South Wales and define its functions; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Energy and Utilities Administration Act 1987*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act:

**area of operations**, in relation to Sydney Water Corporation, has the same meaning as it has in the *Sydney Water Act 1994*.

**Corporation** means the Energy Corporation of New South Wales constituted by section 7.

**Department** means the Department of Energy, Utilities and Sustainability.

**designated energy users**—see section 34B.

**designated water users**—see section 34A.

**Director-General** means the Director-General of the Department.

**distribution network service provider** has the same meaning as it has in the *Electricity Supply Act 1995*.

**employee**, in relation to the Corporation, means a person employed by the Corporation under section 9 (5) as an employee of the Corporation.

**energy** means energy, power or fuel.

**energy savings action plan** means a savings action plan relating to the use of energy.

**Energy Savings Fund** means the Energy Savings Fund established under section 34K.

**energy service** includes the supply or distribution of energy.

**financial year** means the year commencing 1 July.

**local government area**, in relation to a local council, means the area within the meaning of the [Local Government Act 1993](#) of the council.

**public authority** means a public or local authority constituted by or under an Act other than this Act, and includes any other body prescribed by the regulations.

**regulation** means a regulation made under this Act.

**savings action plan** means a savings action plan prepared under Division 4 of Part 6A.

**savings measure**, in relation to energy or water, means a program, project or other measure:

- (a) to reduce the use of, or demand for, energy or water, or
- (b) to promote awareness or acceptance of the need to reduce the use of energy or water.

**savings order** means an order made under section 34D.

**State agency** means:

- (a) a public or local authority constituted by or under an Act (including a local council), or
- (b) a Government Department, or
- (c) a statutory body representing the Crown, or
- (d) a State owned corporation (including any subsidiary of a State owned corporation) within the meaning of the [State Owned Corporations Act 1989](#).

**State water agency** means:

- (a) Sydney Water Corporation, or
- (b) any other State agency prescribed by the regulations that provides any water service in a water savings area.

**water savings action plan** means a savings action plan relating to the use of water.

**water savings area** means:

- (a) the area of operations of Sydney Water Corporation, or
- (b) any other area or areas of the State prescribed by the regulations for the purposes of this definition.

**Water Savings Fund** means the Water Savings Fund established under section 34E.

**water service** includes any of the following:

- (a) the storage or supply of water,
- (b) the disposal of waste water,
- (c) the provision of a sewerage, stormwater or drainage service.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to the allocation of energy or energy resources includes a reference to the allocation of energy or energy resources in the event that there is insufficient to meet demand.

(4) Notes included in this Act do not form part of this Act.

#### **4 Act binds the Crown**

This Act binds the Crown, not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 Objects**

### **5 Objects**

- (1) The objects of this Act in relation to energy are:
  - (a) to secure the best management of the supply and use of energy in the State,
  - (b) to provide an authoritative source of advice to the Government and the



community on energy matters and their co-ordination,

- (c) to apply the State's energy resources, technologies and associated expertise to promote economic development and employment in the State,
  - (d) to promote and maintain the efficiency and accountability of energy producers and suppliers and their responsiveness to community needs and expectations,
  - (e) to promote the most cost-effective long term match of energy supply and demand, and
  - (f) to promote the safe and effective utilisation of energy.
- (2) In the administration of Acts relating to energy, regard shall, to the maximum extent possible having regard to the needs of the State and available resources, and subject to any directions of the Minister, be had to the objects of this Act.
- (3) The objects of this Act in relation to water are:
- (a) to reduce the demand for water in water savings areas, and
  - (b) to stimulate investment in innovative water savings measures for use in water savings areas, and
  - (c) to increase public awareness and acceptance of the need to save water in water savings areas, and
  - (d) to improve access to a wider range of water saving technologies in water savings areas, and
  - (e) to encourage the use of non-potable water in water savings areas as an alternative to potable water.

## **Part 3 Administration**

### **6 (Repealed)**

### **7 Constitution of the Corporation**

- (1) There is constituted by this Act a corporation under the corporate name of the "Energy Corporation of New South Wales".
- (2) The Department and the Corporation shall, to the maximum extent possible, so act in a complementary manner as to achieve a unified administration of this Act and other Acts conferring or imposing functions on the Corporation.

### **8 Management of the Corporation**

- (1) The affairs of the Corporation shall be managed by the Director-General.

- (2) A function of the Corporation may be exercised in the name of, or on behalf of, the Corporation by:
  - (a) the Director-General, or
  - (b) an officer or employee of the Department or of the Corporation with the authority of, and on behalf of, the Director-General.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Director-General, or with the authority of the Director-General, shall be deemed to have been done by the Corporation.
- (4) Functions of the Corporation may also be exercised in accordance with a delegation under this Act.
- (5) The Corporation is subject to the control and direction of the Minister.

## **9 Staff**

- (1) Except as provided by subsection (5), such staff as may be necessary to enable the Corporation to exercise its functions shall be employed under the *Public Sector Management Act 1988*.
- (2) The Corporation may use the services of any staff or facilities of the Department.
- (3) The Corporation may:
  - (a) with the approval of the Minister, and
  - (b) on such terms and conditions as may be approved by the Public Service Board, arrange for the use of the services of any staff or facilities of any other government department or administrative office.
- (4) The Corporation may, with the approval of the Minister and of a public authority, arrange for the use of the services of any staff or facilities of the public authority.
- (5) The Corporation may appoint and employ, on such terms and conditions as it thinks fit, any person, body or organisation considered capable of providing services, information or advice required by the Corporation in exercising its functions, as an employee or consultant or in any other capacity.
- (6) The Minister may determine the maximum number of persons who may be appointed or employed under subsection (5) as employees.
- (7) If the instrument of appointment of an employee of the Corporation so provides, Schedule 1 has effect with respect to the employee.
- (8) Schedule 1 has effect with respect to the Corporation and its employees.

## **10 Committees**

- (1) The Director-General may and shall, if directed to do so by the Minister, establish standing or special committees for the purpose of advising the Corporation in the exercise of its functions under this or any other Act.
- (2) The Director-General may appoint as a member of any such committee any person who, in the Director-General's opinion, appears to be qualified to be a member of the committee.
- (3) The Director-General shall appoint one of the members of a committee to be chairperson of the committee.
- (4) A committee may, subject to this section and to any directions of the Director-General, regulate its procedure in such manner as it thinks fit.
- (5) The Director-General may specify the number of persons who shall constitute a quorum of a committee.

## **Part 4 Functions of the Corporation**

### **11 Objects and general functions**

- (1) The objects of the Corporation are:
  - (a) to carry out such investigations relating to the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources as it considers appropriate or as the Minister directs,
  - (b) to plan the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources in such manner as it considers appropriate or as the Minister directs,
  - (c) to assist and advise, and make reports and recommendations to, the Minister in respect of matters relevant to this Act and any other Act administered by the Minister,
  - (d) to review plans or draft plans for the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources prepared by any energy undertakings operating in the State, and
  - (e) in accordance with this Act, to acquire and dispose of energy and energy resources or operations connected with the locating and the development, extraction, provision, transportation, distribution, conservation or utilisation of energy and energy resources, and

(f) to promote energy conservation and measures to increase the efficiency of energy supply, transmission and use.

(2) The Corporation:

(a) has and may exercise the functions conferred or imposed on it by or under this or any other Act, and

(b) without limiting any other provision conferring or imposing functions on it, may, subject to this Act, do all such things and engage in all such activities as are reasonably required for it to carry out its objects.

(3) Nothing in this Act authorises the Corporation to engage in the generation of electricity or the supply of electricity except in connection with its own undertakings.

(4) Except as provided by section 15, nothing in this Part authorises anything to be compulsorily acquired.

## **12 Functions**

The Corporation may also do any or all of the following:

(a) investigate the extent of the energy resources available within the State,

(b) carry out, or commission the carrying out of, such inspections, tests, investigations, surveys, experiments, boring, drilling and exploration as it considers necessary or desirable to enable it to effectively exercise its functions under this or any other Act,

(c) evaluate the future demands for energy and energy resources within the State and the capacity of the State to meet those demands, whether from internal resources or otherwise, and assess the impact of any lack of energy or energy resources on the development of the State or any part of the State,

(d) promote the locating and the development, extraction, provision, transportation, distribution, conservation and utilisation of energy and energy resources,

(e) (Repealed)

(f) disseminate or promote the dissemination of information regarding the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources,

(g) carry out, commission or co-ordinate research, development and demonstration with respect to any matter relating to energy or energy resources,

(h) assist and co-operate with authorities of the Commonwealth and other States and Territories in the planning and co-ordination of policies related to energy and energy resources,

- (i) have consultations, and make arrangements, with any public authority in respect of the exercise or undertaking by that authority of anything within that authority's functions that may affect energy or energy resources,
- (j) undertake negotiations on behalf of, or in co-operation with, persons who are interested in making energy or energy resources available for use by the community,
- (k) formulate proposals to assist with the provision by a gas producing, extracting or transporting undertaking of a bulk supply of gas to a gas distributing undertaking including a scheme to enable that gas to be provided,
- (l) acquire a gas producing or distributing undertaking by agreement,
- (m) undertake, or cause to be undertaken, the construction of works or apparatus to be used for or in connection with the locating or the development, extraction, provision, transportation, distribution, conservation or utilisation of energy or energy resources,
- (n) maintain and operate any undertaking constructed or acquired by it under this or any other Act.

### **13 Review of plans and draft plans**

- (1) The Corporation shall review any plan or draft plan required to be submitted to the Corporation by or under any other Act.
- (2) In reviewing such a plan or draft plan, the Corporation may do any or all of the following:
  - (a) advertise the plan or draft plan in such manner as it considers appropriate,
  - (b) cause the plan or draft plan to be published in such manner as it considers appropriate,
  - (c) invite comments on the plan or draft plan from the public or any persons or groups,
  - (d) conduct an inquiry under section 21,
  - (e) refer the whole or part of the plan or draft plan to a consultant for review or comment by the consultant,
  - (f) exercise any other relevant functions conferred or imposed on it by or under this or any other Act.
- (3) Nothing in this section limits the exercise by the Corporation of any of its functions.

### **14 Purchase etc of certain shares**

- (1) The Corporation may, on behalf of the Crown, negotiate and enter into agreements for

the purposes of, or in connection with, the acquisition, holding, dealing with, and disposal of shares in any company having (whether expressly or otherwise) among its objects:

- (a) the carrying out of investigations or research into energy or energy resources, or
  - (b) the locating, development, extraction, transportation, distribution, conservation, utilisation, acquisition or disposal of energy or energy resources.
- (2) Such an agreement may be entered into by the Corporation only with the approval of the Governor given on the recommendation of the Minister with the concurrence of the Treasurer.
  - (3) Such an agreement may be executed, on behalf of the Corporation, only by 2 or more persons authorised for the purpose by the Governor on that recommendation and with that concurrence.
  - (4) The Corporation may do all things authorised or required by such an agreement to be done and all incidental things, and may also do such things as are necessary or convenient to be done for the purpose of carrying into effect and implementing the terms of any such agreement.
  - (5) Without affecting the generality of subsection (4), the Corporation may:
    - (a) acquire, hold, deal with and dispose of shares in a company to which an agreement entered into by it under this section relates, and
    - (b) do all such things as are appropriate by reason of its being a holder of any such shares, including the appointment of any director or directors of any such company.
  - (6) Any appointment of such a director shall not be made except with the approval of the Minister and the Treasurer.
  - (7) The fact that any director of a company so appointed is accustomed to act in accordance with the directions or instructions of a Minister of the Crown does not constitute that Minister a director of the company.

## **15 Acquisition of land**

- (1) The Corporation may, for the purposes of this Act or any other Act administered by the Minister, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) For the purposes of the [Public Works Act 1912](#), any such acquisition of land is taken to be for an authorised work and the Corporation is, in relation to that authorised work, taken to be the Constructing Authority.

- (3) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

#### **16 Power to accept gifts etc of property**

- (1) The Corporation may acquire by gift, bequest or devise any property for any of the purposes of this Act or any other Act administered by the Minister and may agree to carry out the conditions of the gift, bequest or devise.
- (2) The rule of law relating to remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the Corporation has agreed.

#### **17 Disposal of and dealings with land vested in Corporation**

- (1) The Corporation shall not sell, lease, exchange or otherwise deal with or dispose of land acquired by or vested in the Corporation except with the approval of the Minister and subject to such terms and conditions as the Minister may impose.
- (2) The Minister's approval is not required to a lease of land where the term of the lease is less than 3 years.

#### **18 Contracts**

- (1) The Corporation may make and enter into contracts with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of its functions.
- (2) A contract under this section shall be deemed for the purposes of the *Constitution Act 1902* to be a contract for or on account of the Public Service of New South Wales.

#### **19 Arrangements with public authorities**

- (1) The Corporation may enter into an arrangement or agreement with any public authority that:
- (a) the public authority shall act as agent of the Corporation for the purposes of this Act or any other Act administered by the Minister, or
  - (b) the Corporation shall act as agent of the public authority for the purposes of this Act or any other Act administered by the Minister,
- on such terms and conditions as are agreed on between the Corporation and the public authority.
- (2) Notwithstanding anything in any other Act, any public authority may enter into any such arrangements or agreements and may do or suffer anything necessary or expedient for carrying out any such arrangements or agreements.

## **20 Arrangements for investigation and research**

The Corporation may enter into arrangements with:

- (a) a Minister of the Crown of any State, a Minister of State of the Commonwealth or a Department or instrumentality of any State or of the Commonwealth,
- (b) a university or another tertiary institution, or
- (c) any other body or person,

with respect to the conduct of any investigation, study or research that may be necessary or desirable to enable the Corporation to exercise its functions.

## **Part 5 Inquiries**

### **21 Inquiries into energy matters**

- (1) The Minister or the Corporation may conduct an inquiry, and the Corporation shall conduct an inquiry if directed to do so by the Minister, into:
  - (a) any matter relating to the locating or the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation or conditions of supply of energy or energy resources, or
  - (b) without affecting the generality of paragraph (a), any plan or draft plan referred to in section 11 or 13.
- (2) The Minister or the Corporation may, by order in writing, authorise, subject to the terms of the authorisation:
  - (a) a committee established under section 10, or
  - (b) any other person,to examine, and report to the Minister or the Corporation on, any matter in connection with an inquiry.
- (3) Nothing in this section limits the power of the Minister or the Corporation to conduct an examination in connection with an inquiry under this section, and the Minister or the Corporation may conduct such an examination even though another body or person has been authorised to do so.
- (4) No matter or thing done by:
  - (a) a member of a committee, or
  - (b) any other person,authorised under this section to examine, and report to the Minister or the Corporation



on, any matter in connection with an inquiry shall, if the matter or thing was done in good faith for the purposes of the inquiry, subject the member or person personally to any action, liability, claim or demand.

## 22 Royal Commission powers at inquiries

- (1) For the purposes of an inquiry or examination under section 21:
  - (a) the Minister, the person conducting it on behalf of the Corporation or the chairperson of the committee conducting it has the functions, protections and immunities conferred on a chairperson of a Royal Commission by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
  - (b) a member of the committee conducting it has the functions, protections and immunities conferred on a commissioner by that Division.
- (2) The *Royal Commissions Act 1923* (except section 13 and Division 2 of Part 2) applies to and in respect of an inquiry or examination under section 21.

## Part 6 Emergency provisions

### 23 Definitions

In this Part:

**inspector** means a person authorised, for the time being, under section 31.

**place** includes a building, structure and mine.

**proclaimed form of energy** means a form of energy or energy resources specified in an unrevoked proclamation referred to in section 24.

### 24 Proclamation in respect of a form of energy

- (1) Whenever it appears to the Governor that from any cause the available supply of any form of energy or energy resources is or is likely to become less than is sufficient for the reasonable requirements of the community, the Governor may:
  - (a) exercise all or any of the functions conferred on the Governor by or under this section, and
  - (b) do and perform all such acts, matters and things as are necessary or expedient for carrying into effect the purposes of this section.
- (2) The Governor may from time to time, by proclamation published in the Gazette, declare that, on and after the date of its publication or a later date specified in it, the provisions of this section have effect in respect of the form of energy or energy resources specified in the proclamation.

- (3) A proclamation published under this section shall take effect from its publication or from a later date specified in it, and shall (unless sooner revoked) continue in force for a period not exceeding 30 days from the date of its being published.
- (4) A proclamation under this section may be amended, varied or revoked by a later proclamation.

## **25 Regulations in respect of emergencies**

- (1) So long as a proclamation referred to in section 24 (2) remains in force, the Governor may make a regulation:
  - (a) controlling, directing, restricting or prohibiting the sale, supply, use or consumption of the proclaimed form of energy, whether generally or for any purpose or purposes specified in the regulation,
  - (b) authorising the Director-General or a person specified in the regulation to exercise such functions as to the Governor appear to be necessary or expedient to carry into effect the purposes of this section or the regulation, and in particular (but without limiting the foregoing provisions of this subsection) authorising the Director-General or that person:
    - (i) to control, direct, restrict and prohibit the sale, supply, use or consumption of the proclaimed form of energy, whether generally or for any purpose or purposes specified in the regulation,
    - (ii) to direct a person who extracts, provides, supplies, transports or distributes the proclaimed form of energy to extract it for or provide, supply, transport or distribute it to a person specified in the regulation,
    - (iii) to specify the terms and conditions on which the proclaimed form of energy shall be extracted, produced, provided, supplied, transported or distributed,
    - (iv) to direct that a person to whom the proclaimed form of energy is provided, supplied, transported or distributed accept the proclaimed form of energy so provided, supplied, transported or distributed, and
    - (v) to make such orders, take such measures, give such directions and do such things as are in the opinion of the Director-General or the person specified in the regulation necessary or expedient to carry into effect the purposes of this section and any regulation made under this section, or
  - (c) generally, prescribing all such matters or things as are necessary or expedient to be prescribed for carrying into effect the purposes of this section and the regulation.
- (2) Any such regulation may be made before the proclamation under the authority of which it is made has taken effect, but any such regulation shall not take effect before

that proclamation has taken effect.

- (3) Any such regulation and any order or direction made or given under the authority of the regulation:
- (a) may be made or given so as to apply to or have operation throughout the whole or any specified part of the State,
  - (b) may be made or given so as to operate for any period or periods or for any time or times or for any occasion or occasions specified in it,
  - (c) may be of general operation or of specially limited operation according to any specified times, places, circumstances, conditions or restrictions, or
  - (d) may authorise a person specified in the regulation, order or direction:
    - (i) to enter any land, building or structure, or
    - (ii) to take possession or control of or use any property, undertaking, equipment, goods, vehicles, articles or things of any kind,used for or in connection with the extraction, production, provision, supply, transportation or distribution of the proclaimed form of energy.
- (4) Any order or direction referred to in subsection (3):
- (a) shall if published in the Gazette be deemed to have been sufficiently served on or brought to the notice of all persons concerned or affected by it, and
  - (b) may be made or given so as to apply to any particular person and may be served on the person by delivering a copy of it to the person by hand, or by sending the copy to the person by post,
- or in the case of a direction may be given orally or by telegram.
- (5) A regulation made under this section shall, unless it sooner expires or is revoked, continue in operation until the proclamation under the authority of which it was made is revoked or ceases to remain in force.
- (6) A regulation made under this section may provide that a person who contravenes or fails to comply with a provision of the regulation is guilty of an offence against the regulation, and, in particular, may provide that a person who refuses or fails to comply with an order or direction made or given under the regulation is guilty of such an offence.
- (7) An order or direction referred to in subsection (3) shall, unless it sooner expires or is revoked, continue in operation until the regulation under the authority of which it was made or given is revoked.

## **26 State of emergency in respect of certain forms of energy**

- (1) This section applies in respect of a form of energy or energy resources other than gas or electricity.
- (2) Whenever it appears to the Governor that:
  - (a) from any cause the available supply of a form of energy or energy resources to which this section applies is or is likely to become less than is sufficient for the reasonable requirements of the community, and
  - (b) an emergency situation exists or is likely to exist in relation to that form of energy or energy resources,

the Governor may, by order in writing, declare that a state of emergency exists in relation to that form of energy or energy resources, either in the whole State, or in any part of the State specified or described in the declaration, in respect of the emergency.

- (3) An order under this section shall take effect from its making or from a later date specified in it and shall (unless sooner revoked) continue in force for such period not exceeding 28 days as is specified in it.
- (4) More than one order may be made under this section in respect of an emergency.
- (5) An order under this section shall be published in the Gazette as soon as practicable.

## **27 Minister's powers in respect of state of emergency**

- (1) If an order is in force under section 26 in respect of a form of energy or energy resources, the Minister may, by notice in writing:
  - (a) give such directions as are necessary to control, direct, restrict or prohibit the sale, supply, use or consumption of that form of energy or energy resources,
  - (b) direct a person who extracts, produces, provides, supplies, transports or distributes that form of energy or energy resources to extract it for or provide, supply, transport or distribute it to a person specified in the direction,
  - (c) direct a person to comply with such terms and conditions as the Minister determines relating to the extracting, producing, providing, supplying, transporting or distributing of that form of energy or energy resources,
  - (d) direct that a person to whom that form of energy or energy resources is provided, supplied, transported or distributed accept the energy or energy resources so provided, supplied, transported or distributed, and
  - (e) give such direction as the Minister considers necessary to give effect to any recommendation made by a qualified person under section 28.

- (2) Such a direction:
- (a) may apply to or have operation throughout the whole or any specified part of the State,
  - (b) may, while an order referred to in section 26 is in force, operate for any period or periods or for any time or times or for any occasion or occasions specified in the direction, or
  - (c) may be of general operation or of specially limited operation according to any times, places, circumstances, conditions or restrictions specified in the direction.
- (3) Such a notice:
- (a) may be published in the Gazette and when so published any direction contained therein shall be deemed to have been sufficiently served on or brought to the notice of all persons concerned or affected by it, and
  - (b) may, without affecting the provisions of paragraph (a), where it applies to any particular person, be served on the person by delivering a copy thereof to the person by hand, or by sending a copy to the person by post or telegram.

## **28 Appointment of qualified person to investigate certain industrial matters**

- (1) In this section:

**industrial matter** has the same meaning as in the [Industrial Relations Act 1996](#).

**qualified person** means a Member of the Industrial Relations Commission of New South Wales or other person having qualifications which the Minister considers appropriate to carry out the functions under this section of a person appointed under this section.

- (2) If an order is in force under section 26, the Minister may, by order published in the Gazette, appoint a qualified person to investigate any industrial matter specified or described in the order, being an industrial matter with respect to any one or more of the following:
- (a) the extraction, production, provision, supply, transportation or distribution of any form of energy or energy resources in relation to which the order under section 26 is in force when the qualified person is so appointed,
  - (b) persons engaged in the extraction, production, provision, supply, transportation or distribution of any form of energy or energy resources in relation to which the order under section 26 is in force when the qualified person is so appointed,
  - (c) the utilisation of any form of energy or energy resources in relation to which the order under section 26 is in force when the qualified person is so appointed.

- (3) A qualified person appointed under this section may carry out the functions given to the person under subsection (4) even though the order under section 26 that was in force when the person was so appointed has ceased to be in force.
- (4) A qualified person appointed under this section shall, as soon as practicable after being appointed, investigate the industrial matter specified or described in the order and make a report and recommendation to the Minister with respect to that industrial matter.
- (5) For the purposes of any investigation under this section:
  - (a) a qualified person appointed under this section has the powers, authorities, protections and immunities conferred on the chairperson of a Royal Commission by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
  - (b) sections 27A and 27B of the *Local Courts Act 1982* apply to or in respect of a witness or person summoned by or appearing before a qualified person in the same way as they apply to or in respect of a person appearing before a Local Court.
- (6) The provisions of the *Royal Commissions Act 1923* (section 13 and Division 2 of Part 2 excepted) apply to and in respect of any witness or person summoned by or appearing before a qualified person appointed under subsection (2) in the same way as they apply to and in respect of a witness or person summoned by or appearing before the chairperson of a Royal Commission under that Act.

## **29 Offence and penalty**

- (1) A person who commits an offence against a regulation made under section 25 is liable to a penalty of 10 penalty units.
- (2) A person shall not refuse or fail to comply with:
  - (a) a direction given under section 27, or
  - (b) an order or direction made or given under section 30.

Maximum penalty: 10 penalty units.

## **30 Discontinuance of supply**

- (1) If a person is convicted:
  - (a) of an offence against a regulation made under section 25—the person authorised in the regulation or in the order or direction, or
  - (b) of failing to comply with a direction given by the Minister under section 27—the Minister,

may make such orders or give such directions in respect of the discontinuance of supply of the proclaimed form of energy, or the form of energy or energy resources, as the case may be, to that firstmentioned person, during such period as that authorised person or the Minister, as the case may be, thinks fit.

- (2) An order made or direction given under this section has no further force or effect if the regulation, order or direction referred to in subsection (1) (a) or (b) is no longer in force.

### **31 Appointment of inspectors**

- (1) The Minister may authorise a person to carry out inspections and tests for the purposes of this Part.
- (2) The Minister shall provide an inspector with a certificate of the inspector's authority in the prescribed form.
- (3) An inspector, in exercising in any place any function conferred or imposed under this Part, shall, if so required by a person apparently in charge of that place, produce the certificate of authority to that person.

### **32 Functions of inspectors**

- (1) The functions conferred under this section on an inspector shall not be exercised or performed except:
- (a) where a proclamation has been made by the Governor under section 24:
- (i) during the period for which the proclamation remains in force, and
  - (ii) in relation to the form of energy or energy resource specified in the proclamation, or
- (b) where the Governor has by order under section 26 declared that a state of emergency exists:
- (i) during the period for which the order remains in force, and
  - (ii) in relation to the form of energy or energy resource specified in the order.
- (2) An inspector may:
- (a) enter and inspect any land or place on, in or from which a form of energy or energy resource is or may reasonably be believed by the inspector to be extracted, developed, produced, provided, supplied, stored, transported, distributed or utilised,
  - (b) inspect and test any plant or equipment on or in any such land or place, being plant or equipment which is or may reasonably be believed by the inspector to be

used for or in connection with the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,

- (c) conduct such tests as the inspector considers appropriate to determine any matter relating to the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
- (d) take samples of a form of energy or energy resource or any substance used in connection with the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
- (e) require any person on any such land or place to produce any accounts, records, books or other documents relating to the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource,
- (f) take copies of, or extracts or notes from, any such accounts, records, books or other documents,
- (g) require any person on any such land or place to answer questions or otherwise furnish information relating to the extraction, development, production, provision, supply, storage, transportation, distribution or utilisation of a form of energy or energy resource on, in or from the land or place, and
- (h) require the owner or occupier of any such land or place to provide the inspector with such assistance and facilities as are reasonably necessary to enable the inspector to exercise the inspector's functions under this section.

(3) The functions conferred under this section are in aid of and not in derogation from any other functions exercisable apart from this section.

### **33 Obstruction etc of inspectors**

(1) A person shall not:

- (a) prevent an inspector from exercising or performing any function conferred on the inspector under section 32,
- (b) hinder or obstruct an inspector in the exercise of any such functions,
- (c) refuse or fail to comply with any requirement or answer any question of an inspector,
- (d) furnish an inspector with information knowing that it is false or misleading in a material particular, or



(e) impersonate an inspector.

Maximum penalty: 10 penalty units.

- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) (c) by reason of the failure of the defendant to answer a question of an inspector under section 32 if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) A person is not excused from answering any question of an inspector under section 32 on the ground that the answer might tend to incriminate the person or make the person liable to a penalty, but the information furnished by the person is not admissible against the person in any proceedings, civil or criminal, except for an offence under subsection (1).
- (4) If:
- (a) an answer to a question of an inspector under section 32, or
  - (b) any information whatever,
- is given to an inspector by an officer of a corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation.
- (5) Subsection (4) does not apply if it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

### **34 Miscellaneous matters**

- (1) This Part has effect notwithstanding anything whether expressed or implied in any other Part of this Act or in any other Act or in any judgment or order or in any contract or agreement, whether oral or in writing, or in any deed, document, security or writing.
- (2) All powers given by or under this Part or in any proclamation or regulation made or any notice or direction given under this Part shall be in aid of and not in derogation from any other powers exercisable apart from this Part.
- (3) No action, claim or demand shall lie or be made or allowed by or in favour of any person against the Crown or any responsible Minister or any person acting in the execution of this Part or any proclamation, regulation, notice, order or direction made or given thereunder for or in respect of any damage, loss or injury sustained or alleged to be sustained by reason of the enactment of this Part or of its operation or of anything done or purporting to be done under this Part or under any such

proclamation, regulation, notice, order or direction.

## Part 6A Water and energy savings

### Division 1 General

#### 34A Designated water users

The following persons and bodies are **designated water users** for the purposes of this Part:

- (a) any local council that has all or part of its local government area located within a water savings area,
- (b) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that uses water in a water savings area.

#### 34B Designated energy users

The following persons and bodies are **designated energy users** for the purposes of this Part:

- (a) any State agency,
- (b) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that uses energy.

#### 34C Exemptions

A savings order may exempt specified persons and bodies (or specified classes of persons and bodies) from any or all of the provisions of this Part or the regulations relating to designated water users or designated energy users (or both).

#### 34D Savings orders

- (1) The Minister may, by order published in the Gazette, make provision for any matter that is required or permitted to be prescribed or otherwise dealt with by a savings order under a provision of this Act.

**Note—**

The Minister may amend or repeal an order made under this section. See section 43 of the [Interpretation Act 1987](#).

- (2) Sections 40, 41 and 42 of the [Interpretation Act 1987](#) apply to a savings order in the same way as they apply to a statutory rule.

## Division 2 Water Savings Fund

### **34E Establishment of Water Savings Fund**

There is to be established in the Special Deposits Account a fund called the “Water Savings Fund”.

### **34F Purposes of Water Savings Fund**

The purposes of the Water Savings Fund are:

- (a) to provide funding to encourage water savings and the recycling of water in water savings areas, and
- (b) to provide funding to reduce the demand for water in water savings areas, and
- (c) to provide funding to stimulate investment in innovative water savings measures for use in water savings areas, and
- (d) to provide funding to increase public awareness and acceptance of the importance of water savings measures in water savings areas.

### **34G Payments into Water Savings Fund**

(1) There is payable into the Water Savings Fund:

- (a) all money received from contributions required to be made to the Fund under section 34J, and
- (b) all money advanced by the Treasurer for the Fund, and
- (c) all money appropriated by Parliament for the purposes of the Fund, and
- (d) the proceeds of the investment of money in the Fund, and
- (e) all money directed or authorised to be paid into the Fund by or under this or any other Act or law, and
- (f) all money received from voluntary contributions to the Fund made by any other person or body.

(2) Without limiting subsection (1) (f), State agencies are authorised by this section to make voluntary contributions to the Fund.

(3) Nothing in subsection (2) authorises a State water agency to refuse to pay a contribution to the Fund that is payable under section 34J.

### **34H Payments out of Water Savings Fund**

(1) There is payable from the Water Savings Fund:

- (a) any money approved by the Minister to fund all or any part of the cost of any water savings measure that the Minister is satisfied promotes a purpose referred

to in section 34F, and

- (b) any money required to meet administrative expenses related to the Fund, and
  - (c) any money required to meet administrative expenses of the Minister in connection with the Minister's functions under this Act in relation to water savings action plans, and
  - (d) any money directed or authorised to be paid from the Fund by or under this or any other Act or law.
- (2) In exercising the Minister's functions under subsection (1) (a) (but without limiting the generality of that paragraph), the Minister may:
- (a) approve selection criteria from time to time to be applied to determine the kinds of water savings measures that will be eligible for funding, and
  - (b) require a person or body seeking funding for a water savings measure to do either or both of the following as a precondition to applying for or obtaining funding:
    - (i) to submit a water savings action plan that includes details about the measure,
    - (ii) to provide any other information requested by the Minister about the measure, and
  - (c) obtain and have regard to any advice, recommendations or other information provided to the Minister by a committee appointed by the Minister under Division 5, or by any other person or body, that the Minister considers relevant.

### **34I Investment of money in Water Savings Fund**

The Minister may invest money in the Water Savings Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Minister to invest the money, in any other manner approved by the Treasurer.

### **34J Minister may require State water agencies to make contributions**

- (1) The Minister may, by order published in the Gazette, require any one or more State water agencies to make an annual contribution for a specified financial year to the Water Savings Fund.

**Note—**

The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

- (2) An order under subsection (1):

- (a) must specify the annual contributions payable by each State water agency to which it applies (being an amount that does not exceed the maximum amount, if any, prescribed by the regulations), and
  - (b) may specify that an annual contribution may be paid by instalments during the financial year to which the order applies, and
  - (c) must specify the time or, in the case of an annual contribution that is payable by instalments, the times at which any contribution required under the order is to be made, and
  - (d) may be made before or during the financial year to which it relates.
- (3) If a State water agency to which an order under subsection (1) is to apply is constituted by or under an Act that is administered by a Minister other than the Minister administering this section, the order may be made only with the concurrence of the Minister administering the Act by or under which the agency is constituted.
- (4) If a State water agency to which an order under subsection (1) is to apply is a local water utility within the meaning of the *Water Management Act 2000* but not a State owned corporation, the Minister must consult with each of the following before making the order:
- (a) the State water agency,
  - (b) the Local Government and Shires Associations of New South Wales.
- (5) The Minister is to cause a copy of an order under subsection (1) to be served on the State water agencies to which it applies as soon as is reasonably practicable after the order is published in the Gazette.
- (6) A failure to comply with subsection (5) does not affect the validity of an order under subsection (1).
- (7) Despite any other Act or law, a State water agency to which an order under subsection (1) applies must pay into the Fund such amounts at such times as may be required by the order.
- (8) An amount that is payable by a State water agency under an order under subsection (1) may be recovered by the Minister as a debt in any court of competent jurisdiction for payment into the Fund.
- (9) If the Independent Pricing and Regulatory Tribunal is required by or under the *Independent Pricing and Regulatory Tribunal Act 1992* to determine a maximum price for a water service provided by a State water agency, any requirement imposed on the agency by this section to pay an amount into the Fund is to be treated for the purposes of section 16A of that Act as a requirement with which the agency must

comply in providing the service.

**Note—**

Section 16A of the *Independent Pricing and Regulatory Tribunal Act 1992* enables the Minister responsible for a government agency to direct the Tribunal, when it makes a determination of the maximum price for a government monopoly service provided by the agency, to include in the maximum price an amount representing the efficient cost of complying with a specified requirement imposed on the agency. It also enables the Minister to direct the Tribunal, when it makes a determination of the methodology for fixing the maximum price for the service, to include in the methodology a factor representing such a cost.

**Editorial note—**

For orders under this section see Gazette No 62 of 30.5.2005, p 1894.

## **Division 3 Energy Savings Fund**

### **34K Establishment of Energy Savings Fund**

There is to be established in the Special Deposits Account a fund called the “Energy Savings Fund”.

### **34L Purposes of Energy Savings Fund**

- (1) The purposes of the Energy Savings Fund are:
  - (a) to provide funding to encourage energy savings, and
  - (b) to provide funding to address peak demand for energy, and
  - (c) to provide funding to stimulate investment in innovative energy savings measures, and
  - (d) to provide funding to increase public awareness and acceptance of the importance of energy savings measures, and
  - (e) to provide funding for cost effective energy savings measures that reduce greenhouse gas emissions arising from the use of energy, and
  - (f) to provide funding for contributions made by the State for the purposes of national energy regulation.
- (2) However, it is not a purpose of the Fund to provide funding for investment in low emission power generation, or any other kind of power generation, where the primary purpose of the generation is to generate energy for sale into the power grid.

### **34M Payments into Energy Savings Fund**

- (1) There is payable into the Energy Savings Fund:
  - (a) all money received from contributions required to be made to the Fund under section 34P, and

- (b) all money advanced by the Treasurer for the Fund, and
  - (c) all money appropriated by Parliament for the purposes of the Fund, and
  - (d) the proceeds of the investment of money in the Fund, and
  - (e) all money directed or authorised to be paid into the Fund by or under this or any other Act or law, and
  - (f) all money received from voluntary contributions to the Fund made by any other person or body.
- (2) Without limiting subsection (1) (f), State agencies are authorised by this section to make voluntary contributions to the Fund.
- (3) Nothing in subsection (2) authorises a distribution network service provider to refuse to pay a contribution to the Fund that is payable under section 34P.

### **34N Payments out of Energy Savings Fund**

- (1) There is payable from the Energy Savings Fund:
- (a) any money approved by the Minister to fund all or any part of the cost of any energy savings measure that the Minister is satisfied promotes a purpose referred to in section 34L, and
  - (b) any money approved by the Minister to fund all or any part of the contributions that the State is required to make for the purposes of national energy regulation, and
  - (c) any money required to meet administrative expenses related to the Fund, and
  - (d) any money required to meet administrative expenses of the Minister in connection with the Minister's functions under this Act in relation to energy savings action plans, and
  - (e) any money directed or authorised to be paid from the Fund by or under this or any other Act or law.
- (2) In exercising the Minister's functions under subsection (1) (a) (but without limiting the generality of that paragraph), the Minister may:
- (a) approve selection criteria from time to time to be applied to determine the kinds of energy savings measures that will be eligible for funding from the Fund, and
  - (b) require a person or body seeking funding for an energy savings measure to do either or both of the following as a precondition to applying for or obtaining funding:

- (i) to submit an energy savings action plan that includes details about the measure,
- (ii) to provide any other information requested by the Minister about the measure, and
- (c) obtain and have regard to any advice, recommendations or other information provided to the Minister by a committee appointed by the Minister under Division 5, or by any other person or body, that the Minister considers relevant.

### **340 Investment of money in Energy Savings Fund**

The Minister may invest money in the Energy Savings Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Minister to invest the money, in any other manner approved by the Treasurer.

### **34P Minister may require distribution network service providers to make contributions**

- (1) The Minister may, by order published in the Gazette, require any one or more distribution network service providers to make an annual contribution for a specified financial year to the Energy Savings Fund.

**Note—**

The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

- (2) An order under subsection (1):
  - (a) must specify the annual contributions payable by each distribution network service provider to which it applies (being an amount that does not exceed the maximum amount, if any, prescribed by the regulations), and
  - (b) may specify that an annual contribution may be paid by instalments during the financial year to which the order applies, and
  - (c) must specify the time or, in the case of an annual contribution that is payable by instalments, the times at which any contribution required under the order is to be made, and
  - (d) may be made before or during the financial year to which it relates.
- (3) An order under subsection (1) may be made only with:
  - (a) the concurrence of the Treasurer, and
  - (b) if section 14 (Licences) of the *Electricity Supply Act 1995* is administered by a



Minister other than the Minister administering this section—the concurrence of the Minister administering section 14 of that Act.

- (4) The Minister is to cause a copy of an order under subsection (1) to be served on the distribution network service providers to which it applies as soon as is reasonably practicable after the order is published in the Gazette.
- (5) A failure to comply with subsection (4) does not affect the validity of an order under subsection (1).
- (6) Despite any other Act or law, a distribution network service provider to which an order under subsection (1) applies must pay into the Fund such amounts at such times as may be required by the order.
- (7) An amount that is payable by a distribution network service provider under an order under subsection (1) may be recovered by the Minister as a debt in any court of competent jurisdiction for payment into the Fund.

**Editorial note—**

For orders under this section see Gazette No 62 of 30.5.2005, p 1893.

## **Division 4 Savings action plans**

### **34Q Preparation of draft savings action plans**

- (1) **Draft water savings action plans** Each designated water user is to prepare a draft water savings action plan and submit it to the Minister for approval:
  - (a) if the user is a designated water user on the commencement of this section—within the period prescribed by a savings order after the commencement of this section, or
  - (b) if the user becomes a designated water user after the commencement of this section—within the period prescribed by a savings order after the user becomes a designated water user, or
  - (c) if an approved water savings action plan previously prepared by the user expires or is wholly revoked—within the period prescribed by a savings order after the approved action plan expires or is revoked.
- (2) **Draft energy savings action plans** Each designated energy user is to prepare a draft energy savings action plan and submit it to the Minister for approval:
  - (a) if the user is a designated energy user on the commencement of this section—within the period prescribed by a savings order after the commencement of this section, or
  - (b) if the user becomes a designated energy user after the commencement of this

section—within the period prescribed by a savings order after the user becomes a designated energy user, or

(c) if an approved energy savings action plan previously prepared by the user expires or is wholly revoked—within the period prescribed by a savings order after the approved action plan expires or is revoked.

(3) **Joint water and energy draft savings action plans** If a person or body is both a designated water user and designated energy user, a draft savings action plan dealing with both water and energy use by the person or body may be prepared and submitted to the Minister for approval.

(4) **Amendment or replacement of savings action plans** A designated water user or designated energy user may prepare and submit for approval by the Minister a draft savings action plan that amends or replaces a savings action plan at any time while that savings action plan is in effect.

### **34R Contents of draft savings action plans**

(1) A draft water savings action plan must include the following:

- (a) a description of the designated water user's current water usage,
- (b) a list of individual water savings measures prioritised in terms of water saved, cost effectiveness and potential benefits,
- (c) a statement concerning the water savings measures included on that list that the designated water user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),
- (d) any other matter prescribed by a savings order.

(2) A draft energy savings action plan must include the following:

- (a) a description of the designated energy user's current energy usage,
- (b) a list of individual energy savings measures prioritised in terms of energy saved, cost effectiveness and potential benefits,
- (c) a statement concerning the energy savings measures included on that list that the designated energy user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),
- (d) any other matter prescribed by a savings order.

(3) A draft savings action plan must be prepared in accordance with such guidelines concerning the preparation of savings action plans as may be issued by the Minister

from time to time and published in the Gazette.

### **34S Approval of savings action plans**

- (1) The Minister may:
  - (a) approve a draft savings action plan submitted by a designated water user or designated energy user, without alteration or with such alteration as the Minister thinks fit, or
  - (b) refer the draft savings action plan back to the user for further consideration.
- (2) Before making any alterations to the draft savings action plan, the Minister must consult the designated water user or designated energy user that submits the plan.
- (3) If the Minister approves a savings action plan, the Minister must give the designated water user or designated energy user that submits the plan written notice of the following within 14 days after approving the plan:
  - (a) that the Minister has approved the plan,
  - (b) the day on which the plan was approved.

### **34T Duration of a savings action plan**

A savings action plan that has been approved by the Minister:

- (a) has effect on and from the day on which the Minister serves a written notice on the designated water user or designated energy user that submitted the plan indicating the day on which the Minister approved the action plan, and
- (b) expires on the fourth anniversary of the day on which the Minister approved the action plan, unless sooner revoked by the Minister.

### **34U Amendment, replacement or revocation of savings action plans**

- (1) A savings action plan may be amended or replaced by a subsequent savings action plan prepared and approved in accordance with this Division.
- (2) A savings action plan may also be amended by the Minister, but only in the circumstances, in relation to the matters and to the extent the action plan provides.
- (3) The Minister may revoke a savings action plan, wholly or in part.
- (4) The amendment or revocation of a savings action plan by the Minister under this section takes effect on the day on which written notice of the amendment or revocation is served on the designated water user or designated energy user concerned or on a later date specified in the notice.

### **34V Compliance with this Division and savings action plans**

- (1) A designated water user or designated energy user must prepare and submit a savings action plan in accordance with the provisions of this Division.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant had a reasonable excuse for not preparing or submitting a savings action plan in accordance with the provisions of this Division.
- (3) Nothing in this Division requires a designated water user or designated energy user to implement any savings measures specified in a savings action plan submitted by the user and approved under this Division unless the regulations so provide.
- (4) Without limiting subsection (3), the regulations may make provision for or with respect to the following:
  - (a) the implementation of savings measures that are set out in savings action plans approved under this Division,
  - (b) the issuing of directions by the Minister to designated water users and designated energy users to implement savings measures set out in savings action plans approved under this Division (whether issued at the time of approval or subsequently).
- (5) Proceedings for an offence against subsection (1) or an offence against a provision of the regulations relating to the implementation of a savings measure set out in a savings action plan may only be instituted with the written consent of the Minister.
- (6) However, nothing in subsection (5) requires the consent of the Minister before a penalty notice can be issued for an offence.

## **Division 5 Advisory committees**

### **34W Committees**

- (1) The Minister may establish standing or special committees for the purpose of advising the Minister in the exercise of the Minister's functions under this Part.
- (2) The Minister may appoint as a member of any such committee any person who, in the Minister's opinion, appears to be qualified to be a member of the committee.
- (3) The Minister must appoint one of the members of a committee to be chairperson of the committee.
- (4) A committee may, subject to this section and to any directions of the Minister, regulate its procedure in such manner as it thinks fit.

- (5) The Minister may specify the number of persons who are to constitute a quorum of a committee.

## **Part 7 Finance**

### **35 Energy Administration Account**

- (1) There shall be established in the Special Deposits Account in the Treasury an Energy Administration Account.
- (2) There shall be paid into the Account:
  - (a) all money received by the Corporation and the Department,
  - (b) such amounts from the Consolidated Fund as the Treasurer determines, subject to any necessary appropriation by Parliament, and
  - (c) (Repealed)
- (3) There shall be paid out of the Account all amounts required to meet expenditure incurred in connection with the functions of the Department and the Corporation under this or any other Act.

### **35A State Energy Research and Development Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury a State Energy Research and Development Fund.
- (2) There is to be paid into the Fund:
  - (a) (Repealed)
  - (b) any money payable into the Fund by or under this or any other Act.
- (3) There is to be paid out of the Fund such amounts as the Minister may direct for or with respect to:
  - (a) research concerning, and the development of, energy resources for the State,
  - (b) such other purposes as may be prescribed in connection with the supply and use of energy resources for the State, and related technological development.
- (4) The regulations may make provision for and with respect to the application of the Fund.
- (5) The Fund is, subject to this Act and the regulations, under the direction, control and management of the Corporation.

### **35B (Repealed)**

## Part 8 Miscellaneous

### 36 Provisions relating to the Corporation

- (1) The Corporation:
  - (a) has perpetual succession,
  - (b) shall have a corporate seal,
  - (c) may take proceedings, and be proceeded against, in its corporate name,
  - (d) may do and suffer all other things that a corporation may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted, and
  - (e) is, for the purposes of any Act, a statutory body representing the Crown.
- (2) All courts and persons acting judicially:
  - (a) shall take judicial notice of the seal of the Corporation that has been affixed to any instrument or document, and
  - (b) shall, unless the contrary is proved, presume that the seal was properly affixed.
- (3) No matter or thing done by the Corporation or any person acting under the direction of the Corporation shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a person so acting personally to any action, liability, claim or demand.

### 37 Operation of certain other Acts

- (1) Nothing in this Act limits or otherwise affects the [State Emergency and Rescue Management Act 1989](#).
- (2) Nothing in this Act affects the operation of the [Mining Act 1992](#) or the [Offshore Minerals Act 1999](#), and the Corporation is bound by both of those Acts.

### 38 Testing and labelling of appliances

- (1) The regulations may make provision for or with respect to:
  - (a) the prescribing of standards for, or the tests to be carried out in relation to, appliances that consume energy, or both,
  - (b) the marking, labelling or tagging of appliances that consume energy,
  - (c) without limiting paragraph (b):
    - (i) the information to appear on any such mark, label or tag (including information

- as to any tests carried out in relation to the appliance), and
- (ii) the manner of making or affixing any such mark, label or tag,
- (d) prohibiting the fraudulent or improper use of marks, labels or tags similar to those required by the regulations or of marks, labels or tags so nearly resembling those required by the regulations as to be likely to deceive, and
- (e) the fees payable in relation to the labelling of appliances that consume energy.
- (2) The power to make regulations under this section does not limit the power to make regulations under any other Act.

### **39 Power of entry**

- (1) In this section, **place** includes building, structure and mine.
- (2) For the purpose of enabling the Corporation to exercise its functions under this or any other Act, the Corporation may:
- (a) by a person authorised in writing by the Corporation for the purpose enter:
    - (i) any land or any place (not being a dwelling-place) on any land used in connection with the locating or the development, extraction, production, provision, supply, transportation, distribution or utilisation of energy or energy resources, at any time when that land or place is being used for any of those purposes, and
    - (ii) any other land or any other place (not being a dwelling-place) on any land at any reasonable time,and may there carry out such inspections, tests, investigations, surveys, experiments, boring, drilling and exploration, and take such samples and such photographs, as the person considers necessary in connection with the exercise, by the Corporation, of its functions, and
  - (b) by its employees or agents or by officers or employees of the Department, enter any land and do all such things as are required:
    - (i) for the purpose of maintaining and operating any undertaking acquired by it under this or any other Act,
    - (ii) for the purpose of investigating any matter in respect of which it intends to make a proposal referred to in section 12, or
    - (iii) for any other purpose connected with or related or incidental to the exercise of its functions under this or any other Act,

even though an easement to enter the land or a right to enter the place may not have

been granted or acquired.

- (3) The Corporation shall not exercise any of its powers under this section unless it gives at least 7 days' notice to the owner or occupier of the land or place concerned.
- (4) In exercising a power under this section, the Corporation shall ensure that no more damage than is necessary in the circumstances is inflicted and shall fully compensate any person who sustains damage in the course of the exercise of the power.
- (5) A power under this section is in addition to any other power of entry conferred by or under this or any other Act.

#### **40 Persons may be required to furnish information**

- (1) The Corporation may, by notice in writing, require any person to furnish to it such information in connection with any matter relating to its functions as may be specified in the notice.
  - (1A) The Minister may, by notice in writing, require a water or energy service provider to furnish to the Minister such information concerning such of the following matters as may be specified in the notice:
    - (a) the identity of the persons or bodies to which the provider provides a water service within a water savings area,
    - (b) the identity of the persons or bodies to which the provider provides an energy service,
    - (c) the amount of water or energy that is provided to any such persons or bodies by the provider.
- (2) A person shall not neglect or fail to comply with a requirement under this section.

Maximum penalty: 10 penalty units.
- (3) Information furnished pursuant to such a requirement is not, if the person furnishing it objected, at the time, to doing so on the ground that it might tend to incriminate the person, admissible in evidence in any prosecution against the person for an offence (not being an offence under this section).
- (4) Compliance with a requirement under this section to furnish information is not to be regarded as:
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument, or
  - (c) an event of default under any contract or other instrument, or



(d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

(5) In this section:

**water or energy service provider** means any of the following:

- (a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*,
- (b) Sydney Water Corporation,
- (c) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that provides a water service or energy service.

#### **41 Disclosure of information**

- (1) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
- (a) with the consent of the person from whom the information was obtained,
  - (b) in connection with the administration or execution of this Act,
  - (c) for the purposes of any legal proceedings arising out of this Act,
  - (d) in accordance with a requirement of the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

- (2) Without limiting subsection (1) (c), nothing in this section or any other Act or law prevents the Minister from disclosing information about any matter referred to in section 40 (1A) that is furnished to the Minister under that section where that information is disclosed to indicate why persons or bodies have been, or are to be, prescribed as designated water users or designated energy users by a savings order.

#### **42 Authentication of process**

Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by:

- (a) the Director-General, or
- (b) any officer of the Department or Corporation authorised to do so by the Director-General.

### **43 Service of process**

Any notice, summons, writ or other proceeding to be served on the Corporation may be served:

- (a) by being left, or
- (b) in the case of a notice, by posting it addressed to the Corporation,  
at the office of the Corporation or the Director-General.

### **43A Service of documents**

(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

- (a) in the case of a natural person:
  - (i) delivering it to the person personally, or
  - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
  - (iii) sending it by facsimile transmission to the facsimile number of the person, or
- (b) in the case of a body corporate:
  - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
  - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### **44 Co-operation by other authorities**

- (1) Subject to any direction given by the Premier, if a function is conferred or imposed on a person by or under an Act, the person shall co-operate with the Corporation by exercising the function in a manner that, in the opinion of the Corporation, promotes the objects of this Act and the purposes for which the Corporation is constituted.
- (2) The Minister may establish a standing committee to advise the Minister and the Premier on matters arising under this section.

(3) A standing committee established under this section:

- (a) shall consist of such persons,
- (b) shall follow such procedures,

as are from time to time directed by the Minister with the concurrence of the Premier.

#### **45 Delegation**

- (1) The Minister may, by instrument in writing, delegate the exercise of any of the Minister's functions under this Act or the regulations (other than this power of delegation).
- (2) The Corporation may, by instrument in writing, delegate the exercise of any of its functions (other than this power of delegation).
- (3) The Director-General may, by instrument in writing, delegate the exercise of any of the Director-General's functions under this Act or any other Act administered by the Minister (other than this power of delegation).
- (4) The Director-General may delegate the exercise of any of the functions delegated to the Director-General by the Minister or the Corporation, unless the Minister or the Corporation (as the case may be) otherwise provides in the instrument of delegation to the Director-General.
- (5) A delegation may be made only to:
  - (a) the Director-General, or
  - (b) a member of staff of a Government Department, or
  - (c) the holder of a particular statutory or public office, or
  - (d) a committee established under section 10 or Division 5 of Part 6A.

#### **46 Recovery of money**

Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

#### **47 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court.

#### **47A Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned

in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

#### **48 Annual report**

A report under the *Annual Reports (Departments) Act 1985* in respect of the Department may include any report required to be made annually in respect of the Corporation under the *Annual Reports (Statutory Bodies) Act 1984*.

#### **49-52 (Repealed)**

#### **53 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to:
  - (a) the travelling expenses and the compensation to be paid to persons attending or giving evidence at an inquiry or examination referred to in section 21,
  - (b) the fees or travelling or other allowances to be paid to members of a committee established under section 10, and
  - (c) the custody and use of the seal of the Corporation.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (4) 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.

## 54 Savings, transitional and other provisions

Schedule 2 has effect.

## Schedule 1 Superannuation and other rights of employees of the Corporation

(Section 9 (7))

### 1 Definitions

In this Schedule:

**statutory body** means any body declared under clause 5 to be a statutory body for the purposes of this Schedule.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

### 2 Superannuation

(1) The Corporation:

- (a) may, with the concurrence of the Minister administering the *Public Authorities Superannuation Act 1985*, grant, or make provision for the grant of, pensions, gratuities, retirement benefits and other benefits to or in respect of its employees, and
- (b) may for that purpose establish, manage and control, or enter into an arrangement with any body corporate for the establishment, management and control by the body corporate, either alone or jointly with the Corporation, of any fund or scheme providing any such pensions, gratuities and benefits.

(2) The Corporation may make contributions to any such fund or scheme.

(3) In this clause, **employee** includes former employees and the dependants of employees and former employees.

### 3 Preservation of rights of employees previously public servants etc

(1) Subject to subclause (2) and to the terms of appointment, where a person was, immediately before being appointed as an employee of the Corporation:

- (a) an officer of the Public Service or the Teaching Service,
- (b) a contributor to a superannuation scheme,
- (c) an officer employed by a statutory body, or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she:

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person,

(f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as an employee of the Corporation, and

(g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as an employee of the Corporation and:

(h) his or her service as an employee of the Corporation shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred, and

(i) he or she shall be deemed to be an officer or employee, and the Corporation shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If an employee of the Corporation would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:

(a) he or she shall not be so entitled on becoming (whether on appointment as an employee of the Corporation or at any later time while such an employee) a contributor to any other superannuation scheme, and

(b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Corporation in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to an employee of the Corporation on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) An employee of the Corporation is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

#### **4 Employees entitled to re-appointment to former employment in certain cases**

(1) A person who:

(a) ceases to be an employee of the Corporation by reason of the expiration of the period for which the person was appointed or by reason of resignation, or

(b) was, immediately before being appointed as such an employee:

(i) an officer of the Public Service or the Teaching Service, or

(ii) an officer or employee of a statutory body,

(c) (Repealed)

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as an employee of the Corporation.

(2) If subclause (1) does not apply to a person who:

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b), and

(b) is after that appointment appointed as an employee of the Corporation,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be an employee of the Corporation, as are specified in the instrument of appointment as an employee of the Corporation or as are agreed on by the person and by or on behalf of the Government.

#### **5 Declaration of statutory bodies**

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

### **Schedule 2 Savings, transitional and other provisions**

(Section 54)

#### **Part 1 General**

##### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Sustainable Energy Development Repeal Act 2004*

*Energy Administration Amendment (Water and Energy Savings) Act 2005*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication 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 Sustainable Energy Development Repeal Act 2004**

### **2 Definitions**

In this Part:

**repealing Act** means the *Sustainable Energy Development Repeal Act 2004*.

**SEDA** means the Sustainable Energy Development Authority constituted by the *Sustainable Energy Development Act 1995*, as in force before its repeal by the repealing Act.

### **3 Abolition of SEDA**

(1) On the commencement of the repealing Act:

- (a) SEDA is abolished, and
- (b) any assets, rights and liabilities of SEDA become the assets, rights and liabilities of the Crown.

(2) In this clause:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).



#### **4 Executive Director of SEDA**

- (1) On the commencement of the repealing Act, the person who, immediately before that commencement, held office as the Executive Director of SEDA ceases to hold that office.
- (2) A person who, under this clause, ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

#### **5 Staff of SEDA**

- (1) On the commencement of the repealing Act, the staff of SEDA are transferred to the Department.
- (2) The transfer of such staff is taken to have been done under section 87 of the *Public Sector Employment and Management Act 2002*.

#### **6 Annual report of SEDA for year ending 30 June 2004**

The annual report of SEDA for the year ending 30 June 2004 may be included in the annual report of the Department for that year.

#### **7 References to SEDA**

A reference in any other Act or in an instrument made under an Act or in any document to SEDA or to the Executive Director of SEDA is to be read as a reference to the Director-General.

### **Part 4 Provisions consequent on enactment of *Energy Administration Amendment (Water and Energy Savings) Act 2005***

#### **10 Existing delegations**

The substitution of section 45 by the *Energy Administration Amendment (Water and Energy Savings) Act 2005* does not affect the continued validity of any delegation in force under that section immediately before the substitution.

#### **11 Department of Energy, Utilities and Sustainability**

The Department of Energy, Utilities and Sustainability (which was previously called the Department of Energy) established under section 6 of this Act before the repeal of that section is taken to have been established under the *Public Sector Employment and Management Act 2002*.