

# Electricity (Consumer Safety) Act 2004 No 4

[2004-4]



New South Wales

## Status Information

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Civil and Administrative Legislation \(Repeal and Amendment\) Act 2013 No 95](#) (not commenced — to commence on 1.1.2014)

### Authorisation

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# Electricity (Consumer Safety) Act 2004 No 4



New South Wales

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# Electricity (Consumer Safety) Act 2004 No 4



New South Wales

An Act to make provision with respect to electricity safety; to repeal the *Electricity Safety Act 1945*; to make consequential amendments to various other Acts and Regulations; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Electricity (Consumer Safety) Act 2004*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 4.1 and 4.11 [1] commence on the commencement of section 42 or the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, whichever is the later.
- (3) Schedule 4.4 and 4.11 [2] commence on the commencement of Schedule 2 [4] or the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, whichever is the later.

### 3 Definitions (cf 1946 No 13, ss 4, 4A, 20 and 27D)

(1) In this Act:

**acquisition guarantee**—see section 17 (2).

**acquisition guarantor**—see section 17 (1).

**authorised electrician** means a person who is authorised under the *Home Building Act 1989* to do electrical wiring work.

**authorised officer** means:

- (a) any investigator, or
- (b) any other person appointed under section 39 by the Director-General as an

authorised officer for the purposes of the provision in which the expression is used.

**class specification** for an electrical article—see section 7.

**declared electrical article**—see section 5 (1).

**Departmental staff member** means a member of staff of the Department of Commerce.

**Director-General** has the same meaning as it has in the [Fair Trading Act 1987](#).

**electrical article** means any appliance, wire, fitting, cable, conduit, meter, insulator, apparatus, material or other electrical equipment intended or designed for use in, or for the purposes of, or for connection to, any electrical installation.

**electrical installation** means any fixed appliances, wires, fittings, apparatus or other electrical equipment used for (or for purposes incidental to) the conveyance, control and use of electricity in a particular place, but does not include any of the following:

- (a) subject to any regulation made under subsection (4)—any electrical equipment used, or intended for use, in the generation, transmission or distribution of electricity that is:
  - (i) owned or used by an electricity supply authority, or
  - (ii) located in a place that is owned or occupied by such an authority,
- (b) any electrical article connected to, and extending or situated beyond, any electrical outlet socket,
- (c) any electrical equipment in or about a mine,
- (d) any electrical equipment operating at not more than 50 volts alternating current or 120 volts ripple-free direct current,
- (e) any other electrical equipment, or class of electrical equipment, prescribed by the regulations.

**electrical wiring work** means the actual physical work of installing, repairing, altering, removing or adding to an electrical installation or the supervising of that work.

**electricity supply authority** means a person or body engaged in the distribution 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) an energy services corporation within the meaning of the [Energy Services](#)

*Corporations Act 1995*, and

(b) (Repealed)

(b1) Rail Corporation New South Wales, and

(b2) Transport for NSW, and

(c) the Water Administration Ministerial Corporation constituted by the *Water Management Act 2000*.

**exercise** a function includes perform a duty.

**function** includes power, authority or duty.

**health care professional** means a person registered under the Health Practitioner Regulation National Law.

**investigator** means a person appointed as an investigator under section 18 of the *Fair Trading Act 1987*.

**mark** includes label.

**model** of electrical article—see section 8 (2).

**model approval** means an approval for a model of electrical article given by the Director-General under section 11.

**model approval holder**, in relation to a model approval, means the person to whom the model approval has been given.

**model specification** for an electrical article—see section 8 (1).

**process commencing proceedings for an offence** includes:

- (a) in the case of proceedings for an offence commenced in the Local Court—a court attendance notice issued under the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence, and
- (b) in the case of proceedings for an offence commenced in the Supreme Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

**recognised external approval scheme** means any scheme for the approval or certification of models of electrical articles that is declared under section 15 to be a recognised external approval scheme for the purposes of Part 2.

**relevant authority**, in relation to a State (other than New South Wales) or a Territory,



means the authority prescribed by the regulations as the relevant authority for the other State or the Territory.

**sell** includes:

- (a) auction or exchange, and
- (b) offer, agree or attempt to sell, and
- (c) advertise, expose, send, forward or deliver for sale, and
- (d) cause or permit to be sold or offered for sale, and
- (e) hire or cause to be hired, and
- (f) display for sale or hire.

**serious electrical accident** means an accident:

- (a) in which an electrical article or electrical installation is involved that is or was used for (or for purposes incidental to) the conveyance, control and use of electricity and electricity was, at the time of the accident, being so conveyed, controlled and used, and
- (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time,

but does not include an accident in which only electricity works (within the meaning of the [Electricity Supply Act 1995](#)) are involved.

**specification** includes (but is not limited to):

- (a) a standard, code, rule, testing requirement or other specification approved, recommended, adopted or published by Standards Australia, and
- (b) a standard, code, rule, testing requirement or other specification described in, or prescribed by, the regulations.

- (2) For the purposes of this Act, **place** includes land (whether or not covered with water), premises, buildings and other structures.
- (3) For the purposes of this Act, a person or thing is **in a place** if the person or thing is located in, on, over or under the place.
- (4) The regulations may make provision for when electrical equipment (or any part of electrical equipment) of the kind referred to in paragraph (a) of the definition of **electrical installation** in subsection (1) is taken to form part of an electrical installation in a place for the purposes of that definition.

(5) Notes included in the text of this Act do not form part of this Act.

**Note—**

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include:

- (a) 1946 No 13: *Electricity Safety Act 1945 (1946 No 13)* as in force immediately before the enactment of this Act.
- (b) 1987 No 68: *Fair Trading Act 1987 No 68* as in force immediately before the enactment of this Act.

**4 Act to bind Crown** (cf 1946 No 13, s 20 (4))

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **Part 2 Electrical articles**

### **Division 1 Declared electrical articles**

**5 Declared electrical articles** (cf 1946 No 13, s 21)

- (1) A **declared electrical article** is an electrical article that belongs to a class of electrical articles that is the subject of an order under this section.
- (2) The Director-General may, by order published in the Gazette, declare:
  - (a) electrical articles of a class described in the order to be, on and from a date specified in the order, declared electrical articles for the purposes of this Part, and
  - (b) the specifications that are applicable to electrical articles of that class.
- (3) An order under this section may declare a specification modified as stated in the order to be applicable to electrical articles of the class to which the order relates.

**Editorial note—**

For orders under this section see Gazettes No 106 of 25.8.2006, p 6710; No 175 of 8.12.2006, p 10669; No 103 of 24.8.2007, p 5952; No 30 of 7.3.2008, p 2222; No 123 of 26.9.2008, p 9605; No 65 of 24.4.2009, p 1816; No 119 of 8.10.2010, p 5097 and No 92 of 14.9.2012, p 3958.

**6 Declared electrical articles displayed for advertising to be treated as being displayed for sale** (cf 1946 No 13, s 20 (2) (b))

For the purposes of this Part, a declared electrical article that is displayed for the purpose of advertising, or otherwise in connection with, the sale of other declared electrical articles of the same class, is to be treated as being displayed for sale.

## Division 2 Specifications for electrical articles

### 7 Class specifications for electrical articles (cf 1946 No 13, s 20 (1))

A **class specification** for an electrical article is:

- (a) a specification for the time being declared by an order under section 5 to be applicable to articles of the class to which the article belongs, or
- (b) where any such specification is declared by the order to be modified in its application to those articles, the specification as so modified,

except so much, if any, of the specification, or of the specification as so modified, as is inconsistent with a model specification for the article.

### 8 Model specifications for electrical articles (cf 1946 No 13, s 20 (1) and (2) (a))

- (1) A **model specification** for an electrical article is a specification, or modified specification, that the Director-General has determined under section 11 (1) (c) to be applicable to electrical articles of the model to which the article belongs.
- (2) A reference in this Part to a **model** of electrical article is a reference to each electrical article of the same design, material and construction.

### 9 Compliance with class and model specifications (cf 1946 No 13, s 20 (3))

If a class specification or a model specification for an electrical article requires the article or any part of the article:

- (a) to have been submitted to a specified test, and
- (b) to have complied with a standard relating to the test,

the article is, for the purposes of this Part (other than section 11 (1) (b) or (c)), to be treated as complying with the requirement if the article or part would comply with the standard if it were to be submitted to the test.

## Division 3 Information concerning electrical articles

### 10 Publication of information concerning declared electrical articles and specifications

- (1) The Director-General is to publish details of the following matters on an Internet website or by such other printed or electronic means as the Director-General considers appropriate:
  - (a) the classes of electrical articles that are currently declared under section 5 (2),
  - (b) any class specifications for electrical articles that are currently in force.
- (2) A failure to comply with subsection (1) does not invalidate any order made under this

Part.

## **Division 4 Model approvals for electrical articles**

### **11 Approval of model of electrical article** (cf 1946 No 13, s 21C (1)–(5))

- (1) The Director-General may, by order in writing, approve any model of electrical article (whether or not a declared electrical article) if:
  - (a) an application for the approval is made in accordance with the regulations, and
  - (b) in the case of a model of electrical article that is a declared electrical article—the Director-General is satisfied that an article of that model complies with any class specification for that article, and
  - (c) the Director-General is satisfied that the model of electrical article complies with any other specification (other than a class specification) that the Director-General has determined should be applicable, or applicable in a modified form, to that model of electrical article.

**Note—**

If the Director-General determines a model specification under paragraph (c), section 7 provides that a class specification for an electrical article of that particular model will be taken not to include anything that is inconsistent with that model specification.

- (2) The Director-General may refuse to approve a model of electrical article unless an electrical article of that model has been lodged with the Director-General for testing or inspection.
- (3) The Director-General may approve a model of electrical article subject to it complying with a model specification.
- (4) If the Director-General approves a model of electrical article under this section, the Director-General must, by written notice given to the applicant for the approval, immediately provide the applicant with the following particulars:
  - (a) the name of the model approval holder,
  - (b) a description of the model,
  - (c) the fact that the Director-General has approved the model,
  - (d) the date of the approval,
  - (e) the duration of the approval,
  - (f) the mark (if any) approved by the Director-General for articles of the model,
  - (g) such other particulars as the Director-General considers appropriate or that are prescribed by the regulations.

- (5) If the Director-General is not satisfied that a model of electrical article should be approved, the Director-General must, by written notice given to the applicant for the approval, inform the applicant within 21 days of the refusal:
- (a) that the Director-General has refused the application for approval, and
  - (b) of the reasons for refusing the application.

## **12 Duration of model approvals**

- (1) A model approval remains in force for the period specified by the Director-General in the approval (not exceeding 5 years), subject to any cancellation or suspension of the approval or any extension or renewal of the approval in accordance with the regulations.
- (2) A model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.
- (3) Nothing in subsection (2) requires the Director-General to approve, or renew or extend a model approval for, a model of electrical article that does not comply with a relevant class or model specification as in force at the time the approval is sought.

## **13 Suspensions and cancellations of model approvals** (cf 1946 No 13, s 21C (7) and (8))

- (1) The Director-General may, by written notice given to the model approval holder:
- (a) suspend the model approval for a period not exceeding 90 days, or
  - (b) cancel the model approval.
- (2) The Director-General may suspend or cancel a model approval only on one or more of the following grounds:
- (a) an electrical article of the model is found by the Director-General not to comply with any one or more of the following:
    - (i) the class specifications for an electrical article of that model,
    - (ii) the model specifications for electrical articles of that model,
    - (iii) any specifications or requirements prescribed by the regulations for the purposes of section 16 (1) (c) (iii) or (iv) for an electrical article of that model,
  - (b) electrical articles of the model are unsafe by reason of their design or construction,
  - (c) the model approval holder gives the Director-General a written request for the suspension or cancellation,
  - (d) any other ground that may be prescribed by the regulations.

- (3) A written notice suspending or cancelling a model approval must set out the following matters:
- (a) the name of the model approval holder,
  - (b) the reasons for the suspension or cancellation,
  - (c) a description of the model,
  - (d) the mark (if any) approved by the Director-General for the model of electrical article,
  - (e) the date of the suspension or cancellation of the approval,
  - (f) in the case of a suspension, the period of suspension,
  - (g) in the case of a suspension, the remedial action (if any) necessary before the suspension is lifted,
  - (h) such other matters as the Director-General considers appropriate or that are prescribed by the regulations.

**14 Review of certain model approval decisions by Administrative Decisions Tribunal** (cf 1946 No 13, s 21C (6) and (9))

- (1) A person whose application for a model approval has been refused by the Director-General may apply to the Administrative Decisions Tribunal for a review of that refusal.
- (2) A model approval holder may apply to the Administrative Decisions Tribunal for a review of a decision of the Director-General suspending or cancelling the model approval given to the holder.
- (3) For the purposes of an application under subsection (1), an application for a model approval is taken to have been refused if it is not determined by the Director-General:
  - (a) except as provided by paragraph (b)—within 60 days after the date on which the application was lodged with the Director-General, or
  - (b) if the applicant and the Director-General agree on a longer period—within the longer agreed period after the date on which the application was lodged with the Director-General.

## **Division 5 Recognised external approval schemes**

**15 Recognised external approval schemes** (cf 1946 No 13, ss 21A (1) (a) (iii) and 21D (1) (a) and (2) (b) (i))

- (1) The Minister may, by order published in the Gazette, declare any scheme for the approval or certification of models of electrical articles to be a recognised external

approval scheme for the purposes of this Part.

- (2) The regulations may make provision with respect to the declaration of schemes for the purposes of subsection (1).

## **Division 6 Sale of electrical articles**

### **16 Electrical articles must meet certain standards before they can be sold** (cf 1946 No 13, ss 21A and 21DA)

- (1) A person must not sell an electrical article if:
- (a) in the case of a declared electrical article—the article is not of:
    - (i) a model of electrical article that has a model approval, or
    - (ii) a class, description or model that has been approved or registered by the relevant authority for another State or a Territory, or
    - (iii) a model of electrical article that has been approved or certified under a recognised external approval scheme (being an approval or certification that is evidenced by marking on the article), or
  - (b) the article is not marked in accordance with the regulations, or
  - (c) the article does not comply with any one or more of the following:
    - (i) the class specifications (if any) for the article,
    - (ii) the model specifications (if any) for the article,
    - (iii) any other specifications prescribed by the regulations (if any) for the article,
    - (iv) any other requirements prescribed by the regulations (if any) for the article.

Maximum penalty:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units, or
- (b) in the case of a first offence by a corporation—5,000 penalty units, or
- (c) in the case of a second or subsequent offence by an individual—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of a first offence by an individual—500 penalty units.

#### **Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section

45.

- (2) The Director-General may, by order in writing and subject to such conditions, if any, as are specified in the order, exempt a person or persons of a specified class from the operation of any or all of the provisions of subsection (1).

## **Division 7 Acquisition guarantees**

### **17 Acquisition guarantor and guarantees** (cf 1946 No 13, s 21D (2))

- (1) An **acquisition guarantor** is a person who gives an acquisition guarantee.
- (2) A guarantee is an **acquisition guarantee** in respect of an electrical article for the purposes of the prosecution of an offence only if:
- (a) the guarantee is in writing, and
  - (b) the matters guaranteed are that, when the guarantee is given:
    - (i) if the electrical article is a declared electrical article—the model of the article has a model approval or has been approved or certified under a recognised external approval scheme or the article is of a class, description or model approved or registered by a relevant authority for another State or a Territory, and
    - (ii) the electrical article complies with the class specifications (if any), the model specifications (if any) and any other specifications or requirements (if any) for the article prescribed by the regulations, and
    - (iii) the electrical article is marked as prescribed by the regulations, and
  - (c) the guarantor is:
    - (i) an individual who resides in Australia, or
    - (ii) a corporation that has a place of business within Australia, and
  - (d) the guarantee specifies the name of the guarantor and:
    - (i) in the case of a guarantor who is an individual and who resides within Australia—the address of the guarantor and of the place of business of the guarantor, or
    - (ii) in the case of a guarantor that is a corporation—an address of a place of business of the guarantor within Australia, and
  - (e) the guarantee applies:
    - (i) generally to electrical articles of the particular model to which the prosecution relates, or



(ii) to the specific electrical article to which the prosecution relates and refers to a sale note, bill of sale, invoice, bill of lading or other document describing the electrical article sold and the marking on it, and

(f) the guarantee complies with any other requirements prescribed by the regulations.

**18 Acquisition guarantee may be defence to certain offences** (cf 1946 No 13, s 21D (1), (3) and (4))

(1) Subject to this section, proceedings against a person for an offence under section 16 (1) are to be dismissed if it is proved that:

(a) the defendant received an acquisition guarantee in respect of the electrical article to which the offence relates from the person from whom the defendant obtained the electrical article, and

(b) the defendant had no reason to believe that, at the time of the alleged offence:

(i) if the electrical article was a declared electrical article—the model of the article did not have a model approval or had not been approved or certified under a recognised external approval scheme or the article was not of a class, description or model approved or registered by a relevant authority for another State or a Territory, and

(ii) the electrical article was not marked as prescribed by the regulations, and

(iii) the electrical article did not comply with the class specifications (if any), the model specifications (if any) and the other specifications or requirements (if any) for the article prescribed by the regulations.

(2) Subsection (1) does not apply unless, not later than 7 days after service on the defendant of the process commencing proceedings for the offence:

(a) the defendant has given a written notice to the prosecutor of the defendant's intention to rely on an acquisition guarantee and the notice specifies the following:

(i) the name of the acquisition guarantor,

(ii) any name under which the acquisition guarantor trades,

(iii) the address referred to in section 17 (2) (d) in relation to the acquisition guarantor, and

(b) the defendant has given a written notice to the acquisition guarantor of the defendant's intention to rely on the guarantee, and

(c) the defendant has given the prosecutor a copy of the guarantee.

(3) An acquisition guarantor given notice under subsection (2) is entitled to offer

evidence at the hearing of the proceedings to which the notice relates and the court may, if it thinks fit, adjourn the hearing to enable the guarantor to do so.

**19 Acquisition guarantor may be convicted of offence if proceedings against defendant dismissed** (cf 1946 No 13, s 21D (5))

- (1) If an offence is proved under section 16 (1) but the proceedings are dismissed under section 18, the acquisition guarantor is liable to the same penalty as could have been imposed if the offence to which the proceedings relate had been committed by the guarantor.
- (2) Subsection (1) does not apply if the acquisition guarantor proves that, when the acquisition guarantee was given, the guarantor had reasonable grounds for believing that the statements and descriptions contained in the acquisition guarantee were true.
- (3) Nothing in this section affects the liability of an acquisition guarantor to be prosecuted for an offence against section 20.

**20 Person must not give false acquisition guarantee** (cf 1946 No 13, s 21D (6) and (7))

- (1) A person must not make a false statement or give a false description in relation to an electrical article or model of electrical article in any acquisition guarantee, or purported acquisition guarantee, given by the person.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in any other case).

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

- (2) It is a defence to the prosecution of an offence against subsection (1) if the defendant proves that, when the defendant gave the guarantee, the defendant had reasonable grounds for believing that the statements and descriptions contained in the guarantee were true.

## **Division 8 Unsafe electrical articles**

**21 Prohibition of the sale of unsafe electrical articles** (cf 1946 No 13, s 21E (2) and (4))

- (1) The Director-General may, by a notice published in the Gazette, prohibit the sale of an electrical article or electrical articles of a particular model from the date of the publication of the notice in the Gazette or such later date as may be specified in the notice.
- (2) The Director-General may, by written notice served on any person, prohibit the person

from selling an electrical article or any electrical article of a particular model specified in the notice from the date on which the notice is so served or such later date as may be specified in the notice.

- (3) The Director-General may issue a notice under this section prohibiting the sale of an electrical article or electrical articles of a particular model only if the Director-General believes on reasonable grounds that:
  - (a) the electrical article or model of electrical article is, or is likely to become, by reason of its design or construction, unsafe to use, and
  - (b) prohibiting the sale of the electrical article, or electrical articles of that model, is warranted by reason of the risk of death or injury to any person or damage to any property arising out of the use of that article or those articles.
- (4) A notice issued under this section prohibiting the sale of an electrical article or electrical articles of a particular model may be revoked by the Minister or Director-General:
  - (a) in the case of a notice issued under subsection (1)—by notice published in the Gazette, or
  - (b) in the case of a notice issued under subsection (2)—by notice served on the person or persons to whom the original notice was directed.
- (5) The Director-General must publish copies of any notice issued under subsection (1), or any notice of revocation issued under subsection (4) (a), in such newspapers as may be prescribed by the regulations.
- (6) A failure to comply with subsection (5) does not invalidate any notice or revocation of a notice under this section.

**22 Requiring action to be taken by seller of unsafe electrical articles** (cf 1946 No 13, s 21E (3) and (5))

- (1) The Director-General may, by written notice served on any person (the **seller**) whose business is or includes the sale of electrical articles and who has sold an electrical article or electrical articles of a particular model, require the seller to take such action within such time as is specified in the notice if the Director-General believes on reasonable grounds that:
  - (a) the electrical article or model of electrical article is, or is likely to become, by reason of its design or construction, unsafe to use, and
  - (b) specific action is necessary to make the electrical article or electrical articles of that model safe to use or to render safe the use of that article or those articles.
- (2) Action that may be specified for the purposes of a notice under subsection (1) may

consist of or include:

- (a) sending a written request to a person to whom the electrical article or any other electrical article of the same model was sold by the seller to return the article to the place at which the article was sold, and
  - (b) making the electrical article safe to use or rendering safe the use of that article, in the manner specified in the notice.
- (3) If a seller is required to take action in a notice issued under this section, the Director-General or the Minister may (whether or not on application of the seller), alter the requirements of the notice or revoke the notice by further written notice served on the seller.

### **23 Requiring evidence of safety of electrical articles**

If the Director-General believes on reasonable grounds that an electrical article or model of electrical article is, or is likely to become, by reason of its design or construction, unsafe to use, the Director-General may, by written notice served on any person who sells such electrical articles or electrical articles of that model, require the person:

- (a) to carry out such testing of the safety of the article or model as is specified in the notice, and
- (b) to provide such other evidence concerning the safety of the article or model as may be specified in the notice.

### **24 Persons must comply with notices issued under this Division** (cf 1946 No 13, s 21E (6), (7) and (8))

- (1) A person must not sell an electrical article if the sale of that article by the person is prohibited by a notice in force under section 21.

Maximum penalty:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units, or
  - (b) in the case of a first offence by a corporation—5,000 penalty units, or
  - (c) in the case of a second or subsequent offence by an individual—750 penalty units or imprisonment for 2 years, or both, or
  - (d) in the case of a first offence by an individual—500 penalty units.
- (2) A person must comply with any requirement to take action in respect of an electrical article or model of electrical article made of the person under a notice in force under section 22.

Maximum penalty:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units, or
  - (b) in the case of a first offence by a corporation—5,000 penalty units, or
  - (c) in the case of a second or subsequent offence by an individual—750 penalty units or imprisonment for 2 years, or both, or
  - (d) in the case of a first offence by an individual—500 penalty units.
- (3) A person must comply with any requirement to test or provide evidence in respect of an electrical article or model of electrical article under a notice in force under section 23.

Maximum penalty:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units, or
  - (b) in the case of a first offence by a corporation—5,000 penalty units, or
  - (c) in the case of a second or subsequent offence by an individual—750 penalty units or imprisonment for 2 years, or both, or
  - (d) in the case of a first offence by an individual—500 penalty units.
- (4) A person is not guilty of an offence against this section if the person satisfies the court that the person had reasonable grounds for breaching or failing to comply with the prohibition or requirement to which the alleged offence relates.

**Note—**

An offence against subsection (1), (2) or (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**25 Effect of Division on [Fair Trading Act 1987](#)** (cf 1946 No 13, s 21E (11))

The provisions of this Division are in addition to, and not in derogation of, any provision of the [Fair Trading Act 1987](#) or any regulation made under that Act.

## **Division 9 Investigation powers**

**26 Powers of authorised officers** (cf 1946 No 13, s 21F (2); 1987 No 68, s 19 (4))

- (1) An authorised officer may, at any reasonable time, enter any place that the officer suspects on reasonable grounds to be a place in which the manufacture or sale of electrical articles is being, or may be, carried on and may:

- (a) inspect and test any electrical article or prototype of an electrical article, and
  - (b) inspect any manufacturing assembly or testing plant or equipment used in respect of any electrical article, and
  - (c) open any container or package which the authorised officer has reasonable grounds to believe contains any electrical article or require the person having the custody, control or possession of the container or package to open it, and
  - (d) seize, detain or remove, for the purpose of examination or testing, any electrical article or any container or package in which an electrical article is contained or has been contained, if the authorised officer has reasonable cause to believe that:
    - (i) an offence has been committed against this Act or the regulations in respect of the electrical article, or
    - (ii) the electrical article is or is likely to become unsafe, and
  - (e) require any person in the place to produce any accounts, records, books or other documents in the possession or under the control of that person relating to the manufacture or sale of any electrical article in the place, and
  - (f) take copies of, or extracts or notes from, any such accounts, records, books or other documents, and
  - (g) require any person in the place to answer questions or otherwise furnish information relating to the manufacture or sale of electrical articles in the place where the articles are in the possession or under the control of that person, and
  - (h) require the owner or occupier of the place to provide the authorised officer with such assistance and facilities as are reasonably necessary to enable the authorised officer to exercise the functions of the authorised officer.
- (2) If the Director-General believes on reasonable grounds that there are in any place documents evidencing conduct in connection with an electrical article in contravention of this Act or the regulations, an authorised officer may, with the written authority of the Director-General, enter the place, inspect any documents and make copies of them or take extracts from them.
- (3) An authorised officer may not exercise the authorised officer's functions under this section in relation to a part of any premises being used for residential purposes except:
- (a) with the permission of the occupier of that part of the premises, or
  - (b) under the authority conferred by a search warrant issued under this Act.

**Note—**

Section 42 enables authorised officers to obtain search warrants to search residential premises in certain circumstances.

**27 Prohibition of the sale of certain electrical articles and the labelling of such articles** (cf 1946 No 13, s 21F (3), (4), (5) and (7))

- (1) An authorised officer may, if the officer believes on reasonable grounds that an electrical article or more than one electrical article of a particular model is, or is likely to become, unsafe:
  - (a) by written notice served on the person having the custody, control or possession of the electrical article or of electrical articles of that model, prohibit the sale by that person of the electrical article or of all electrical articles of that model, and
  - (b) affix in some conspicuous position on the electrical article or each of the electrical articles (as the case may be) or on any container or package that contains such an article, a label indicating that the electrical article is to be considered dangerous and must not be sold or used until specified repairs necessary to make the electrical article safe to use have been effected by the person having the custody, possession or control of the electrical article.
- (2) A notice issued under this section ceases to have effect after the expiration of 2 weeks from the date on which it is issued unless within that period the Director-General has:
  - (a) confirmed or varied the terms of the notice under this section, or
  - (b) revoked the notice under this section.
- (3) For the purposes of subsection (2), the Director-General may, at any time, by a further written notice served on the person to whom a notice under subsection (1) was originally issued, confirm or vary the terms of, or revoke, the original notice.
- (4) A person must not:
  - (a) sell an electrical article in contravention of a notice in force under this section, or
  - (b) remove or alter a label affixed to an electrical article or a container or package under this section unless directed to do so by an authorised officer.

Maximum penalty (subsection (4)):

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units, or
- (b) in the case of a first offence by a corporation—5,000 penalty units, or
- (c) in the case of a second or subsequent offence by an individual—750 penalty units or imprisonment for 2 years, or both, or

(d) in the case of a first offence by an individual—500 penalty units.

**Note—**

An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

## **Division 10 Seizure and forfeiture of electrical articles**

### **28 Return of seized electrical articles** (cf 1946 No 13, s 21F (11))

- (1) If an electrical article is seized under section 26 (1) (d) (a **seized article**), the Director-General must, no later than 60 days (or such greater period as may be prescribed by the regulations) after the seizure, return the seized article to the person from whom it was seized unless:
  - (a) the Director-General has, within that period, determined that the article is unsafe and brought proceedings under section 29 for the forfeiture of the article, or
  - (b) proceedings are brought within that period against the person or any other person in connection with the article for an offence against this Act or the regulations.
- (2) The Director-General must provide compensation, determined in accordance with the regulations, for the seized article if:
  - (a) the Director-General does not find the article to be unsafe, or bring proceedings for the forfeiture of the article, within the period referred to in subsection (1), or
  - (b) proceedings for an offence against this Act or the regulations are not brought within the period referred to in subsection (1) against a person in connection with the article.
- (3) If proceedings are brought within the period referred to in subsection (1) against a person in connection with a seized article for an offence against this Act or the regulations:
  - (a) the Director-General may retain the article until the proceedings are finally determined, and
  - (b) the Director-General must immediately return the article to the person from whom it was seized if the defendant in the proceedings is acquitted of the offence.

### **29 Forfeiture of certain electrical articles** (cf 1946 No 13, s 21G)

- (1) The Director-General may apply, in the manner prescribed by the regulations, to the Local Court for the forfeiture of an electrical article to the Crown if:
  - (a) the Director-General determines that an electrical article seized under section 26 (1) (d) is unsafe, or



(b) a court has found a person guilty of an offence against this Act or the regulations in connection with the article.

- (2) On the making of an order by the Local Court for the forfeiture of an electrical article, the electrical article is forfeited to the Crown.
- (3) Any electrical article forfeited to the Crown may be disposed of as the Director-General directs.

### **Part 3 Electrical installations**

#### **30 Inspection of electrical installations** (cf 1946 No 13, s 25 (1) and (4); 1987 No 68, s 19 (4))

- (1) An authorised officer may enter any place at any reasonable time for the purpose of inspecting any electrical installation in the place.
- (2) An authorised officer may require:
- (a) any person who claims to be an authorised electrician to produce for inspection by the authorised officer, within such time as the authorised officer specifies, the person's licence or other authority to do electrical wiring work, or
  - (b) any person who appears to the authorised officer to be doing electrical wiring work to satisfy the authorised officer, within such time as the authorised officer specifies, that the person is not prohibited under the [Home Building Act 1989](#) from doing that electrical wiring work.
- (3) If the Director-General believes on reasonable grounds that there are in any place documents evidencing conduct in connection with an electrical installation in contravention of this Act or the regulations, an authorised officer may, with the written authority of the Director-General, enter the place, inspect any documents and make copies of them or take extracts from them.
- (4) An authorised officer may not exercise the authorised officer's functions under this section in relation to a part of any premises being used for residential purposes except:
- (a) with the permission of the occupier of that part of the premises, or
  - (b) under the authority conferred by a search warrant issued under this Act.

**Note—**

Section 42 enables authorised officers to obtain search warrants to search residential premises in certain circumstances.

#### **31 Electrical installation work to comply with regulations**

- (1) A person must carry out electrical installation work in accordance with such standards

or requirements as may be prescribed by the regulations.

Maximum penalty:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units, or
- (b) in the case of a first offence by a corporation—5,000 penalty units, or
- (c) in the case of a second or subsequent offence by an individual—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of a first offence by an individual—500 penalty units.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

(2) In this section:

**electrical installation work** means the work of installing, adding to, altering, disconnecting, reconnecting or replacing an electrical installation.

**32 Responsibilities of persons concerning the safety of electrical installations** (cf 1946 No 13, s 29)

(1) A responsible person for an electrical installation in a place must, to the best of the person's ability and knowledge, ensure that such parts of the electrical installation as may be prescribed by the regulations are maintained in accordance with the regulations while the electrical installation remains connected to the source of the supply of electricity.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in any other case).

(2) A responsible person for an electrical installation in a place must not connect the electrical installation or any part of it, or cause the installation or any part of it to be connected, to the source of supply of electricity if the installation has been lawfully disconnected for reasons of safety until the installation has been made safe.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in any other case).

(3) In this section, **responsible person**, in relation to an electrical installation in a place, means:

- (a) the occupier of the place, or
- (b) if there is no occupier, any owner of the place.

## **Part 4 Accident reporting and investigations**

### **33 Notification of serious electrical accidents** (cf 1946 No 13, s 27E)

- (1) A serious electrical accident must be notified in accordance with subsection (2) to the Director-General by:
  - (a) except as provided by paragraph (b), the occupier of the place at which the accident occurred, or
  - (b) such other person as is prescribed by the regulations.

Maximum penalty: 5 penalty units (where the place at which the accident occurred is residential premises) and 100 penalty units (in any other case).

- (2) A notice of an accident must be given within 7 days after the accident in such manner as may be prescribed by the regulations.
- (3) The regulations may exclude a person, or a person belonging to a class of persons, prescribed by the regulations from any requirement under this section to notify the Director-General of a serious electrical accident.

### **34 Investigation of serious electrical accidents** (cf 1946 No 13, s 27G)

The Director-General may arrange for an authorised officer to investigate and report to the Director-General concerning a serious electrical accident, whether or not notice of the accident is given to the Director-General.

### **35 Powers of authorised officers** (cf 1946 No 13, s 27H; 1987 No 68, s 19 (4))

- (1) For the purposes of this Part, an authorised officer may, in any place where a serious electrical accident has or may reasonably be expected to have occurred do any one or more of the following:
  - (a) enter and inspect the place,
  - (b) examine and test any electrical article, electrical installation or other electrical equipment,
  - (c) take photographs,
  - (d) take for analysis a sample of any substance or thing that in the authorised officer's opinion may relate to the accident,
  - (e) require any person in the place to produce any record that may be of relevance to the occurrence of the accident,
  - (f) take copies of, or extracts or notes from, any such record,
  - (g) require any person in the place to answer questions or otherwise furnish

information relating to the accident,

- (h) require the owner or occupier of the place to provide the authorised officer with such assistance and facilities as are reasonably necessary to enable the authorised officer to exercise the authorised officer's functions under this section.
- (2) If the Director-General believes on reasonable grounds that there are in any place documents evidencing conduct in connection with a serious electrical accident in contravention of this Act or the regulations, an authorised officer may, with the written authority of the Director-General, enter the place, inspect any documents and make copies of them or take extracts from them.
- (3) An authorised officer may not exercise the authorised officer's functions under this section in relation to a part of any premises being used for residential purposes except:
  - (a) with the permission of the occupier of that part of the premises, or
  - (b) under the authority conferred by a search warrant issued under this Act.

**Note—**

Section 42 enables authorised officers to obtain search warrants to search residential premises in certain circumstances.

**36 Interference with site of serious electrical accident** (cf 1946 No 13, s 27K)

A person must not disturb or interfere with the site of a serious electrical accident before it has been inspected by an authorised officer except:

- (a) to make it safe, or
- (b) with the permission of an authorised officer, or
- (c) as provided by the regulations.

Maximum penalty: 500 penalty units (in the case of a corporation) and 250 penalty units (in any other case).

**37 Publication of details of serious electrical accidents** (cf 1946 No 13, s 27L (1))

The Director-General may publish such details of serious electrical accidents as the Director-General considers necessary in the interests of public information and safety.

**38 Arrangements with other public authorities regarding investigable electrical incidents**

- (1) The Director-General, WorkCover and the Energy Director-General may enter into arrangements regarding any one or more of the following:
  - (a) matters concerning investigable electrical incidents that the Director-General or

the Energy Director-General will refer to WorkCover for investigation or other action under the [Work Health and Safety Act 2011](#),

- (b) matters concerning investigable electrical incidents that the Energy Director-General or WorkCover will refer to the Director-General for investigation or other action under this Act,
  - (c) matters concerning investigable electrical incidents that WorkCover or the Director-General will refer to the Energy Director-General for investigation or other action under the [Electricity Supply Act 1995](#),
  - (d) matters concerning an investigable electrical incident that is the subject of investigation or other action by more than one of the following at the same time:
    - (i) the Director-General,
    - (ii) WorkCover,
    - (iii) the Energy Director-General,
  - (e) the co-operative exercise of the respective functions of the Director-General, WorkCover and the Energy Director-General in respect of investigable electrical incidents.
- (2) The Director-General, WorkCover and the Energy Director-General are jointly to cause notice of any arrangements entered into under this section to be published in the Gazette as soon as is practicable after they are entered into. However, a failure to publish any such arrangements does not affect their validity.
- (3) A party to an arrangement entered into under this section:
- (a) may decline, discontinue or defer an investigation or other action in relation to an investigable electrical incident to give effect to the arrangement, and
  - (b) may disclose any information concerning a matter involving an investigable electrical incident that was duly obtained by that party to another party to the arrangement to which the matter is referred so as to give effect to the arrangement.
- (4) A party to which a matter is referred under an arrangement entered into under this section may investigate or deal with information obtained in respect of the matter referred in order to give effect to the arrangement.
- (5) In this section:

**Energy Director-General** means the Director-General within the meaning of the [Electricity Supply Act 1995](#).

**investigable electrical incident** means an accident or other incident:

- (a) in which electricity is involved, and
- (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time.

**WorkCover** means the WorkCover Authority constituted by the *Workplace Injury Management and Workers Compensation Act 1998*.

## Part 5 Enforcement

### Division 1 Authorised officers

#### 39 Authorised officers (cf 1946 No 13, ss 21F (1), (2), (13) and (14), 25 (1) and (9) and 27F)

- (1) The Director-General may appoint any person (other than an investigator) as an authorised officer for the purposes of any or all of the provisions of this Act or the regulations.

**Note—**

Any investigator under the *Fair Trading Act 1987* is an authorised officer for the purposes of this Act without further need for appointment under this section by reason of paragraph (a) of the definition of **authorised officer** in section 3 (1).

- (2) The Director-General may at any time and for any reason revoke a person's appointment under subsection (1).
- (3) An authorised officer is to be provided by the Director-General with a certificate of identification.
- (4) An authorised officer must, when exercising in any place any function of the authorised officer under this Act or the regulations, produce the officer's certificate of identification to any person apparently in charge of the place who requests its production.

#### 40 Obstruction etc of authorised officers (cf 1946 No 13, ss 21F (6), (8) and (12), 25 (5)–(8) and 27J)

- (1) A person must not:
  - (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised officer under this Act or the regulations, or
  - (b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer under this Act or the regulations knowing the information or evidence to be false or misleading in a material particular, or

(c) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer's functions under this Act or the regulations, or

(d) falsely represent himself or herself to be an authorised officer.

Maximum penalty: 500 penalty units (in the case of a corporation) and 150 penalty units (in any other case).

- (2) If an authorised officer makes a requirement under section 30 (2) (b), of a person who appears to the officer to be doing electrical wiring work, that person is not guilty of the offence of failing to comply with that requirement if it is proved that the person was not actually doing the electrical wiring work.
- (3) It is a sufficient defence to a prosecution for an offence arising under subsection (1) (a) by reason of the failure of a defendant to answer a question asked by an authorised officer under a power conferred by this Act or the regulations if the defendant satisfies the court that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (4) A person cannot be prosecuted for both an offence against this section and an offence against section 23 (Obstruction etc of officers) of the *Fair Trading Act 1987* in relation to the same act or omission.

#### **41 Powers of authorised officers who are investigators under *Fair Trading Act 1987* not limited**

The powers conferred by this Act or the regulations on persons who are authorised officers by reason of being investigators are in addition to, and not in derogation of, the powers conferred on investigators by Division 3 of Part 2 of the *Fair Trading Act 1987*.

## **Division 2 Search warrants**

#### **42 Search warrants** (cf 1946 No 13, ss 211 and 271)

- (1) An authorised officer may apply to an authorised warrants officer for a search warrant in respect of a place if the authorised officer has reasonable grounds for believing that:
- (a) an unsafe electrical installation is in the place, or
  - (b) a serious electrical accident has occurred in the place, or
  - (c) a provision of this Act or the regulations has been or is being contravened in the place.
- (2) An authorised warrants officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant:

- (a) to enter the place concerned, and
- (b) to search the place for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

**authorised warrants officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### Division 3 Undertakings

#### 43 Application of section 218 of the Australian Consumer Law (NSW) to undertakings given for purposes of this Act (cf 1987 No 68, s 73A)

- (1) Section 218 (Regulator may accept undertakings) of the *Australian Consumer Law (NSW)* applies in connection with a matter in relation to which the Director-General has a function under this Act as if the function were a function under that Law.

**Note—**

Section 218 of the *Australian Consumer Law (NSW)* enables the Director-General to accept a written undertaking given by a person in connection with a matter in relation to which the Director-General has a function under that Law. Any such undertaking is enforceable by the Supreme Court.

- (2) The costs incurred by the Director-General in taking action under section 218 of the *Australian Consumer Law (NSW)* to enforce an undertaking are recoverable from the person who gave the undertaking, as a debt due to the Crown, in a court of competent jurisdiction.

### Division 4 Proceedings for offences

#### 44 Limitation on self-incrimination (cf 1946 No 13, s 21F (9))

- (1) A person who is required under this Act or the regulations to answer a question, produce a thing or provide information is not excused from answering the question, producing that thing or providing the information on the ground that the answer to the question, the production of the thing or the provision of the information might tend to incriminate the person or make the person liable to a penalty.
- (2) However, any answer given to a question, thing produced or information provided by a natural person in compliance with a requirement under this Act or the regulations is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against section 27 (4) or 40 (1)).

#### 45 Liability of directors etc for offences by corporation—offences attracting executive



**liability**

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation:
    - (a) section 16 (1),
    - (b) section 20 (1),
    - (c) section 24 (1)-(3),
    - (d) section 27 (4),
    - (e) section 31 (1).
  - (2) A person commits an offence against this section if:
    - (a) a corporation commits an executive liability offence, and
    - (b) the person is:
      - (i) a director of the corporation, or
      - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
    - (c) the person:
      - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
      - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.
- Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.
- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
  - (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
  - (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
  - (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation)

who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

- (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
- (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

(c) action towards ensuring that:

- (i) the plant, equipment and other resources, and
- (ii) the structures, work systems and other processes,

relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

(d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

#### **45A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

(1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 45.

(2) A person commits an offence against this section if:

- (a) a corporation commits a corporate offence, and
- (b) the person is:

- (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**46 Evidentiary provisions relating to electrical articles** (cf 1946 No 13, s 21H)

A certificate purporting to be signed by the Director-General (or any Departmental staff member authorised in writing by the Director-General) to the effect that at any time, or during any period, specified in the certificate:

- (a) an electrical article was a declared electrical article, or
- (b) a standard, code, rule, testing requirement or other specification specified or described in the certificate (whether with or without modifications so specified or described) was a class specification or a model specification for a specified model of electrical article, or
- (c) an electrical article described in the certificate was or was not of a particular model

that had a model approval or of a class, description or model approved or registered by a relevant authority for another State or a Territory, or

- (d) a scheme for the approval or certification of models of electrical articles was a recognised external approval scheme,

is admissible in any proceedings and is evidence of the matters certified.

#### **47 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed:
  - (a) an amount equivalent in value to \$10,000, or
  - (b) the maximum amount of penalty that could be imposed for the offence by a court, whichever is the lesser.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

**48 Nature of proceedings for offences** (cf 1946 No 13, s 33)

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

**49 Commencement of proceedings** (cf 1946 No 13, ss 21D (8) and 31A)

- (1) Proceedings for an offence against this Act or the regulations may be commenced at any time within the period of 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within the period of 2 years after the date evidence of the offence that is alleged to have been committed first came to the attention of an authorised officer.
- (3) However, nothing in subsection (2) permits the commencement of proceedings if a period of 5 years has elapsed after the date on which the offence is alleged to have been committed.
- (4) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the process commencing proceedings for the offence must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the process commencing proceedings for the offence, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section:

**authorised officer** means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.

**evidence** of an offence means evidence of any act or omission constituting the offence.

## Part 6 Miscellaneous

### 50 Disclosure of information (cf 1946 No 13, s 21K)

- (1) Subject to subsection (3), a person must not disclose any information relating to any manufacturing or commercial secrets or working processes obtained by the person in connection with the administration or execution of this Act, unless the disclosure of information is:
- (a) made in connection with the administration or execution of this Act, or
  - (b) made with the prior permission of the Minister, or
  - (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

Maximum penalty: 100 penalty units.

- (2) The Minister may grant the permission referred to in subsection (1) (b) only if the Minister is satisfied that to do so would be in the public interest.
- (3) A Departmental staff member may, with the consent of the Director-General, communicate any matter which comes to the knowledge of the member of staff in the exercise of the functions of the member of staff under this Act to an officer or body engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to electrical articles.

### 51 Exclusion of personal liability (cf 1946 No 13, s 27L (2); 1987 No 68, s 10)

Anything done or omitted to be done by:

- (a) the Minister, or a person acting under the direction of the Minister, or
- (b) the Director-General, or a person acting under the direction of the Director-General, or
- (c) an authorised officer,

does not subject the Minister, Director-General, person or authorised officer personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

### 52 Service or giving of documents (cf 1946 No 13, s 21E (9))

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

### **53 Provision of documents to Director-General**

- (1) A document may be served on, or given to, or lodged with, the Director-General by leaving it at, or by sending it by post to:
- (a) the office of the Director-General, or
  - (b) if the Director-General has more than one office, any one of the Director-General's offices.
- (2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Director-General in a manner not provided for by subsection (1).

### **54 Delegation of functions** (cf 1946 No 13, s 28)

- (1) The Minister may delegate to an authorised person any of the functions of the Minister under this Act or the regulations, other than this power of delegation.
- (2) The Director-General may delegate to any other authorised person any of the functions of the Director-General under this Act or the regulations, other than this power of delegation.
- (3) A delegate may sub-delegate to an authorised person any function delegated by the Minister or the Director-General if the delegate is authorised in writing to do so by the Minister or Director-General (as the case may be).
- (4) In this section:

**authorised person** means:

- (a) a public authority or local authority or a member of staff of a public authority or local authority, or
- (b) a member of staff of a government Department, or
- (c) a person of a class prescribed by the regulations.

**55 Regulations** (cf 1946 No 13, s 37)

- (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), regulations may be made for or with respect to any of the following matters:
  - (a) standards for electrical articles and for the materials used in the manufacture of electrical articles,
  - (b) interference by persons with electrical installations or other electrical equipment,
  - (c) the installation of electrical installations or other electrical equipment and the alteration, repair or renewal of such installations or equipment,
  - (d) the provision of reports, information, particulars, returns and statistics for the purposes of this Act and the time and mode of furnishing and the manner of verification,
  - (e) the constitution, functions and procedures of a committee to advise the Director-General in relation to any matters relating to the approval or sale of electrical articles that may be referred to it by the Director-General,
  - (f) the making of applications for the purposes of Part 2 and the fees for any such applications,
  - (g) the testing and inspection of electrical articles,
  - (h) the approval, and the withholding and withdrawal of approval, of electrical articles or models of electrical articles and the renewal of any such approval,
  - (i) fees for the testing, inspection or approval of electrical articles or of models of electrical articles or for the renewal of any such approval,
  - (j) the marking of electrical articles and the improper use of such marks,
  - (k) guarantees to be given with respect to electrical articles,
  - (l) the disposal, whether by way of sale or otherwise, of electrical articles and the



display of electrical articles in connection with any such disposal.

- (3) The regulations may create offences punishable by a penalty not exceeding 500 penalty units (in the case of corporations) and 250 penalty units (in any other case).
- (4) The regulations may apply, adopt or incorporate (with or without modification) any publication as in force at a particular time or from time to time.
- (5) The regulations prevail over regulations made under the *Local Government Act 1993*, to the extent of any inconsistency.

## **56 Savings, transitional and other provisions**

Schedule 1 has effect.

## **57 Repeal of *Electricity Safety Act 1945 (1946 No 13)***

The *Electricity Safety Act 1945* is repealed.

## **58 (Repealed)**

## **59 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

(Section 56)

## **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:  
this Act
- (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.
- (4) Regulations made as referred to in subclause (1) may have effect despite the terms of any savings or transitional provisions contained in this Schedule, if the regulations so provide.

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1 Interpretation**

#### **2 Definitions**

(1) In this Part:

***new electricity safety legislation*** means:

- (a) any provision of this Act (other than Schedules 2-4), and
- (b) any provision of the *Electricity Supply Act 1995* inserted in that Act by an amendment made by Schedule 2 to this Act, and
- (c) any provision of the *Energy and Utilities Administration Act 1987* inserted in that Act by an amendment made by Schedule 3 to this Act.

***repeal date*** means the date on which the repealed Act is repealed by this Act.

***repealed Act*** means the *Electricity Safety Act 1945* as in force immediately before its repeal by this Act.

(2) For the purposes of this Part:

- (a) a provision of the new electricity safety legislation corresponds to a provision of the repealed Act if the provision is in the same (or in substantially the same) terms as the provision in the repealed Act, and
- (b) a function under the new electricity safety legislation corresponds to a function under the repealed Act if the function is the same (or substantially the same) as the function under the repealed Act.

## **Division 2 Continuing operation of repealed Act**

### **3 Repealed Act and regulations made under it continue to apply in certain circumstances**

- (1) The repealed Act and any regulations, approvals, exemptions, declarations or orders made under that Act continue to apply with respect to the following matters as if this Act had not been enacted:
- (a) an offence or alleged offence against the repealed Act or the regulations made under that Act,
  - (b) any proceedings for any such offence,
  - (c) any notice given to a distribution network service provider (within the meaning of the *Electricity Supply Act 1995*) under section 19G of the repealed Act in force immediately before the repeal date,
  - (d) any application for a notification of a type specification pending under section 21B of the repealed Act immediately before the repeal date,
  - (e) any notification of a type specification given under section 21B of the repealed Act before the repeal date,
  - (f) any appeal to the Minister under section 21C (9) of the repealed Act that is pending (or any entitlement to appeal to the Minister under that subsection that has not been exercised) immediately before the repeal date,
  - (g) any notice or notification issued under section 21E of the repealed Act in force immediately before the repeal date,
  - (h) any notice issued under section 21F of the repealed Act in force immediately before the repeal date or any label affixed to an electrical article under that section before the repeal date,
  - (i) any electrical article seized under section 21F of the repealed Act before the repeal date,
  - (j) any search warrant issued under section 21I or 27I of the repealed Act in force immediately before the repeal date,
  - (k) any certificate issued under section 21H of the repealed Act before the repeal date,
  - (l) any application made under section 21G of the repealed Act that is pending in a Local Court (or any entitlement to make such an application to a Local Court that has not been exercised) immediately before the repeal date,
  - (m) any requirement made of a person under section 25 (4) of the repealed Act that

had not yet been complied with before the repeal date,

(n) any order made under section 26 (3) of the repealed Act in force immediately before the repeal date,

(o) any serious electrical accident within the meaning of Part 6B of the repealed Act that occurred before the repeal date,

(p) any investigation, inspection, examination or testing of a thing, matter or place authorised to be begun but not commenced (or begun but not completed) under the repealed Act before the repeal date.

(2) For the purposes of the operation of this Part:

(a) any notification of a type specification given under section 21B of the repealed Act (as continued in force by subclause (1)) on or after the repeal date in respect of a type of electrical article (within the meaning of that Act) is to have effect as if the notification had been given immediately before the repeal date, and

(b) any action taken by the Minister on an appeal under section 21C (9) of the repealed Act (as continued in force by subclause (1)) on or after the repeal date in respect of a determination under section 21C of the repealed Act is to have effect as if the action had been taken immediately before the repeal date.

(3) This clause is subject to any contrary provision in this Schedule.

## **Division 3 Electricity Development Fund**

### **4 Electricity Development Fund**

Any money that, on the repeal date, was standing to the credit of the Electricity Development Fund established by section 15 of the repealed Act is to be transferred to the Consolidated Fund.

## **Division 4 Electrical articles**

### **5 Electrical articles to which Part 4C of repealed Act applied**

Any class of electrical articles that was declared in an order in force under section 21 of the repealed Act immediately before the repeal date to be a class of electrical articles to which Part 4C of the repealed Act applied is taken to be a class of electrical articles that is the subject of an order under section 5 of this Act.

### **6 Existing class and type specifications**

(1) Any specification that was a class specification in relation to a class of electrical articles within the meaning of the repealed Act immediately before the repeal date is taken to be a class specification under this Act in relation to the same class of

electrical articles.

- (2) Any specification that was a type specification in relation to a type of electrical article within the meaning of the repealed Act immediately before the repeal date is taken to be a model specification under this Act in relation to any model of electrical article having the same specifications as that type of electrical article.

## **7 Existing certification schemes approved by Minister**

Any certification scheme that was approved by the Minister for the purposes of Part 4C of the repealed Act and the approval of which continued in force immediately before the repeal date is taken to be a scheme for the approval or certification of models of electrical articles declared by the Minister under section 15 of this Act.

### **Editorial note—**

See clause 3 (2) of Schedule 4 to the [Electricity \(Consumer Safety\) Regulation 2006](#).

## **8 Existing relevant authorities**

Until a regulation is made for the purposes of the definition of **relevant authority** in section 3 (1), any authority that was prescribed as a relevant authority for another State or a Territory for the purposes of the definition of **relevant authority** in section 20 (1) of the repealed Act immediately before the repeal date is taken to be a relevant authority for the same State or Territory for the purposes of this Act.

## **9 Existing exemptions for prohibitions against sale of declared electrical articles**

Any exemption in force under section 21A (3) of the repealed Act immediately before the repeal date is taken to be an exemption given by the Director-General under section 16 (2) of this Act in respect of all of the provisions of section 16 (1) in relation to the same person (or class of persons) to which it was originally given and subject to the same conditions on which it was originally given.

## **10 Approvals under section 21C of repealed Act**

- (1) Any approval of a type of electrical article given under section 21C of the repealed Act that was in force immediately before the repeal date continues in force under this Act as if the approval had been given by the Director-General under section 11 of this Act for a model having the same specifications as the type of electrical article originally approved.
- (2) If any approval under section 21C of the repealed Act is the subject of a suspension in force immediately before the repeal date:
  - (a) subject to paragraph (b), subclause (1) applies to the approval, and
  - (b) the suspension continues in force as if it were a suspension under section 13 of this Act due to expire at the same time as the original suspension.

- (3) Section 12 applies to an approval to which subclause (1) applies as if the approval taken to be given under this Act had been given by the Director-General for the same period specified in the original approval and that period had commenced at the same time as the original approval commenced.

#### **11 Applications for approvals under section 21C of repealed Act**

The Director-General may deal with any application made under section 21C of the repealed Act that had not been determined immediately before the repeal date as if the application had been made under section 11 of this Act in respect of a model of electrical article having the same specifications as the type of electrical article specified in the original application.

#### **12 Prescribed guarantees under repealed Act**

Any prescribed guarantee within the meaning of section 21D (2) of the repealed Act given in respect of an electrical article or type of electrical article before the repeal date is taken to be an acquisition guarantee for the purposes of this Act in respect of the same article or the model of article having the same specifications as that type (as the case may be).

#### **13 Persons authorised under section 21F of repealed Act**

Any person authorised under section 21F (2) of the repealed Act whose authorisation was in force immediately before the repeal date is taken to have been appointed as an authorised officer by the Director-General under section 39 of this Act for the purposes of section 26 (1) of this Act.

### **Division 5 Electrical installations**

#### **14 Persons authorised under section 25 of repealed Act**

Any person authorised under section 25 (1) of the repealed Act in respect of the examination of electrical installations whose authorisation was in force immediately before the repeal date is taken to have been appointed as an authorised officer by the Director-General under section 39 of this Act in respect of the provisions of this Act and the regulations relating to electrical installations.

### **Division 6 Electrical accidents**

#### **15 Inspectors under section 27F of repealed Act**

Any person authorised under section 27F (1) of the repealed Act to carry out inspections in respect of serious electrical accidents involving electrical installations or electrical articles (within the meaning of that Act) whose authorisation was in force immediately before the repeal date is taken to have been appointed as an authorised officer by the Director-General under section 39 of this Act in respect of the provisions of this Act and the regulations relating to serious electrical accidents.

## **Division 7 General**

### **16 Certificates under section 21H of repealed Act**

Section 46 is taken to extend to any matter arising under the repealed Act that could have been the subject of a certificate under section 21H of the repealed Act if that Act had not been repealed.

### **17 Delegations under section 28 of repealed Act**

Any delegation under section 28 of the repealed Act in force immediately before the repeal date in respect of any function under the repealed Act concerning electrical installations or electrical articles (within the meaning of that Act) is taken to be a delegation given by the Minister under section 54 of this Act in respect of a corresponding function (if any) of the Minister under this Act.

### **18 Disclosure of information prohibited by section 21K of repealed Act**

Section 50 is taken to extend to the disclosure of any information on or after the repeal date that would have been prohibited by section 21K of the repealed Act if that Act had not been repealed.

### **19 Construction of references**

(1) In any other Act or instrument:

- (a) subject to paragraph (b), a reference to the repealed Act is taken to be a reference to this Act, and
- (b) a reference to a provision of the repealed Act is taken to be a reference to the corresponding provision or provisions (if any) of the new electricity safety legislation.

(2) Subclause (1) does not apply to:

- (a) section 135 (b) of the *Home Building Act 1989*, or
- (b) any other provision of another Act, or an instrument made under another Act, prescribed by the regulations.

### **20 Effect of this Part**

Nothing in this Part prevents the amendment or revocation of any delegation, authorisation, appointment, approval, exemption, declaration or order.

## **Schedules 2-4 (Repealed)**