

Energy Services Corporations Act 1995 No 95

[1995-95]



New South Wales

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New South Wales

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Energy Services Corporations Act 1995 No 95



New South Wales

An Act to establish certain statutory State owned corporations to exercise functions relating to the generation, transmission and distribution of electricity and other forms of energy; to make consequential amendments to other legislation; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Energy Services Corporations Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Interpretation

(1) In this Act:

electricity generator means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 1 of Schedule 1.

energy distributor means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 2 of Schedule 1.

energy services corporation means an electricity generator, an energy transmission operator or an energy distributor.

energy transmission operator means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 1A of Schedule 1.

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Words and expressions used in this Act and also in the *State Owned Corporations Act 1989* have the same meanings in this Act as they have in that Act.

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

Part 2 Electricity generators

4 Establishment of statutory State owned corporations

On the day on which this section commences:

- (a) corporations are constituted by this Act under each of the corporate names listed in Part 1 of Schedule 1, and
- (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names listed in Part 1 of Schedule 1.

5 Principal objectives of electricity generators

- (1) The principal objectives of an electricity generator are as follows:
 - (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses,
 - (ii) to maximise the net worth of the State's investment in it,
 - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
 - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
 - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
 - (d) to operate efficient, safe and reliable facilities for the generation of electricity,
 - (e) to be an efficient and responsible supplier of electricity,
 - (f) to be a successful participant in the wholesale market for electricity.
- (2) Each of the principal objectives of an electricity generator is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an electricity generator.

6 Functions of electricity generators

- (1) An electricity generator has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of an electricity generator are:
 - (a) to establish, maintain and operate facilities for the generation of electricity and

other forms of energy, and

(b) to supply electricity and other forms of energy to other persons and bodies.

(3) An electricity generator:

(a) may also provide facilities or services that are ancillary or incidental to its principal functions, and

(b) may also conduct any business (whether or not related to its principal functions) that it considers will further its objectives.

(3A) An electricity generator may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.

(4) This section does not limit the functions of an electricity generator apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

Part 2A Energy transmission operators

6A Establishment of statutory State owned corporations

On the day on which this section commences:

(a) a corporation is constituted by this Act under the corporate name listed in Part 1A of Schedule 1, and

(b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the corporate name listed in Part 1A of Schedule 1.

6B Principal objectives of energy transmission operators

(1) The principal objectives of an energy transmission operator are as follows:

(a) to be a successful business and, to this end:

(i) to operate at least as efficiently as any comparable businesses,

(ii) to maximise the net worth of the State's investment in it,

(iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,

(b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,

(c) to exhibit a sense of responsibility towards regional development and

decentralisation in the way in which it operates,

(d) to operate efficient, safe and reliable facilities for the transmission of electricity and other forms of energy,

(e) to promote effective access to those transmission facilities.

(2) Each of the principal objectives of an energy transmission operator is of equal importance.

(3) Without limiting subsection (1) (b), in implementing the principal objectives set out in subsection (1), an energy transmission operator has the special objective of minimising the environmental impact on land of activities authorised by easements for transmission facilities created in favour of the energy transmission authority. In implementing this special objective, the transmission operator is bound by all relevant laws (such as those concerning native vegetation, soil conservation and easement management) applying at the time.

(4) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an energy transmission operator.

6C Functions of energy transmission operators

(1) An energy transmission operator has the functions conferred or imposed on it by or under this or any other Act or law.

(2) The principal functions of an energy transmission operator are:

(a) to establish, maintain and operate facilities for the transmission of electricity and other forms of energy, and

(b) to provide services for the transmission of electricity and other forms of energy in accordance with the relevant regulatory regime.

(2A) An energy transmission operator may also utilise and develop its facilities for the transmission of electricity to carry out telecommunications services (the **telecommunications function**).

(2B) Without limiting subsection (2A), in exercising the telecommunications function, an energy transmission operator may do any of the following:

(a) install a telecommunications cable or equipment by attaching it to, or incorporating it in, any of its facilities for the transmission of electricity,

(b) remove any telecommunications cables or equipment so installed,

(c) operate and carry out work relating to telecommunications cables so installed,

(d) operate those facilities for the transmission of electricity for the purposes of

telecommunications.

- (2C) Any power or right that an energy transmission operator has under an affected easement with respect to the exercise of its principal functions is taken to extend to the exercise of the telecommunications function.
- (2D) Divisions 2 and 3 of Part 5 of the *Electricity Supply Act 1995* apply to and in respect of the exercise by an energy transmission operator of the telecommunications function as if the references in those Divisions to electricity works included references to telecommunications works.

Note—

An energy transmission operator, may, for example, for the purposes of exercising its telecommunications function, exercise powers of entry under, and in accordance with, Division 3 of Part 5 of the *Electricity Supply Act 1995*.

- (3) An energy transmission operator:
- (a) may also provide facilities and services that are ancillary or incidental to its principal or telecommunications functions, and
 - (b) may also conduct any business (whether or not related to its principal or telecommunications functions) that it considers will further its objectives.
- (4) This section does not limit the functions of an energy transmission operator apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.
- (5) In this section:
- affected easement** means any easement (whether created statutorily or otherwise):
- (a) acquired (whether by agreement or compulsorily) before the commencement of this paragraph, or
 - (b) acquired compulsorily after the commencement of this paragraph.

Part 3 Energy distributors

7 Establishment of statutory State owned corporations

On the day on which this section commences:

- (a) corporations are constituted by this Act under each of the corporate names listed in Part 2 of Schedule 1, and
- (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names listed in Part 2 of Schedule 1.

8 Principal objectives of energy distributors

- (1) The principal objectives of an energy distributor are as follows:
 - (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses,
 - (ii) to maximise the net worth of the State's investment in it,
 - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
 - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
 - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
 - (d) to operate efficient, safe and reliable facilities for the distribution of electricity and other forms of energy,
 - (e) to be an efficient and responsible supplier of electricity and other forms of energy and of services relating to the use and conservation of electricity and other forms of energy,
 - (f) to be a successful participant in the wholesale and retail markets for electricity and other forms of energy and for services relating to the use and conservation of electricity and other forms of energy.
- (2) Each of the principal objectives of an energy distributor is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an energy distributor.

9 Functions of energy distributors

- (1) An energy distributor has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of an energy distributor are:
 - (a) to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and
 - (b) to supply electricity and other forms of energy, and services relating to the use and conservation of electricity and other forms of energy, to other persons and bodies.

- (3) An energy distributor:
 - (a) may also provide facilities or services that are ancillary or incidental to its principal functions, and
 - (b) may also conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (3A) An energy distributor may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.
- (4) In seeking to obtain electricity and other forms of energy, an energy distributor should consider:
 - (a) all sources of energy, with particular regard to energy that has been produced from renewable energy reserves, and
 - (b) the likely impact on the environment of the means by which energy from each such source is produced.
- (5) An energy distributor should encourage users of electricity and other forms of energy:
 - (a) to use energy safely, efficiently and in a manner that minimises the adverse effects on the environment of their activities in their use of energy, and
 - (b) in particular, to observe safe procedures in the operation of electrical installations and electrical articles.
- (6) An energy distributor should promote public awareness of the dangers that can arise from damaging or coming into contact with works used in connection with the distribution of electricity and other forms of energy.
- (7) This section does not limit the functions of an energy distributor apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

9A Joint board of energy distributors

- (1) Each of the energy distributors is to have the same board of directors and for that purpose there is to be a single board (referred to in this Act as the **joint board** of the energy distributors) that is to constitute the board of directors of each of the energy distributors.
- (2) The joint board is to act in the best interests of energy distributors as a combined operation (as if their individual businesses were being operated as parts of a single enterprise) even if acting in that way is not in the best interests of one or more individual energy distributors.

- (3) A reference in this Act, the *State Owned Corporations Act 1989* or the constitution of an energy distributor to the voting shareholders is, in connection with the joint board of the energy distributors, a reference to the voting shareholders of all the energy distributors.

9B Directions affecting commercial interests of energy distributors

- (1) An energy distributor is not entitled to be reimbursed under section 20N of the *State Owned Corporations Act 1989* in connection with compliance with a direction under that section that is not in the commercial interests of the energy distributor if the direction is in the combined commercial interests of energy distributors.
- (2) If the direction is not in the combined commercial interests of energy distributors, any amount that the energy distributor is entitled to be reimbursed in connection with compliance with the direction is to be reduced by the amount of the net benefit accruing to any other energy distributor as a result of compliance with the direction.
- (3) A direction is considered to be in the combined commercial interests of energy distributors if the joint board of the energy distributors considers that compliance with the direction would be in the commercial interests of a single enterprise that comprised the individual businesses of the energy distributors being operated as part of that single enterprise.

Part 4 Miscellaneous

10 Constitution and procedure of energy services corporations

- (1) Schedule 2 has effect with respect to the constitution and procedure of an energy services corporation.
- (2) The provisions of Schedule 2 are in addition to and (except to the extent to which that Schedule provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

11 Prohibition on privatisation of energy services corporations

- (1) Shares in an energy services corporation may not be sold or otherwise disposed of except to eligible Ministers.
- (2) The following Ministers may not be nominated as eligible Ministers for an energy services corporation:
 - (a) the Minister administering the *Electricity Supply Act 1995*,
 - (b) the Minister administering the *Environmental Planning and Assessment Act 1979*,
 - (c) the Minister administering the *Protection of the Environment Administration Act 1991*.

12 Variation of names of energy services corporations

The Governor may, by regulation, amend Part 1, 1A or 2 of Schedule 1 so as to vary the name of an energy services corporation.

13 Creation of additional energy services corporations

- (1) The Governor may, by regulation, amend Part 1, 1A or 2 of Schedule 1 so as to add the corporate names of one or more additional corporations to be constituted by this Act.
- (2) A regulation under this section takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subsection (3)) or on such later day as may be specified in the regulation.
- (3) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this section does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act.
- (4) On the day on which a regulation under this section takes effect:
 - (a) corporations are constituted by this Act under each of the corporate names given to them by the regulation, and
 - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names given to the corporations by the regulation.

14 Dissolution of existing energy services corporations

- (1) The Governor may, by regulation, amend Part 1, 1A or 2 of Schedule 1 by omitting the corporate names of one or more energy services corporations to be dissolved by this Act.
- (2) A regulation under this section takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subsection (3)) or on such later day as may be specified in the regulation.
- (3) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this section does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act.
- (4) On the day on which a regulation under this section takes effect:
 - (a) the energy services corporations whose corporate names are omitted by the regulation are dissolved, and

(b) the *State Owned Corporations Act 1989* is amended by omitting those names from Schedule 5.

- (5) The regulations may contain provisions of a savings or transitional nature consequent on the dissolution of an energy services corporation under this section.
- (6) Any such provision may, if the regulations so provide, take effect from the day on which the energy services corporation is dissolved or a later day.
- (7) 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.

15 Transfer of staff, assets, rights and liabilities of dissolved energy services corporations

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of an energy services corporation that has been dissolved by this Act be transferred to such other energy services corporation, or to such other person or body acting on behalf of the Crown, as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this section.

16 Service of documents on energy services corporations

- (1) A document may be served on an energy services corporation by leaving it at, or by sending it by post to:
 - (a) the office of the energy services corporation, or
 - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any other Act or law, or of any rules of court, that authorise a document to be served on an energy services corporation in any other manner.

17 Regulations

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.

18 Repeals

The following Regulations are repealed:

- (a) *Electricity (Accounts) Regulation 1994*,
- (b) *Electricity Distributors (Contract Tendering) Regulation 1994*,
- (c) *Electricity (Dismissal of Boards) Regulation 1995*,
- (d) *Electricity (Senior Staff Positions) Regulation 1995*,
- (e) *Electricity (Amalgamation of Electricity Distributors) Regulation 1995*.

19 (Repealed)

20 Savings, transitional and other provisions

Schedule 5 has effect.

21 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 Energy services corporations

(Sections 4, 7, 12, 13, 14)

Part 1 Electricity generators

Delta Electricity

Part 1A Energy transmission operators

TransGrid

Part 2 Energy distributors

Essential Energy

Ausgrid

Endeavour Energy

Schedule 2 Supplementary provisions concerning constitution and procedure

(Section 10)

1 Board of directors

(1) Each energy services corporation is to have a board of directors.

Note—

Under section 9A, each of the energy distributors has the same board (the **joint board** of the energy distributors).

(2) The board is to consist of:

(a) the chief executive officer, and

(b) (Repealed)

(c) at least 3, and

(i) in the case of Australian Inland Energy Water Infrastructure—not more than 7, and

(ii) in the case of each other energy services corporation—not more than 6,

other directors, to be appointed by the voting shareholders at their discretion.

(2A) The membership of the joint board of the energy distributors is to be as provided by subclause (2) except that the chief executive officer of each energy distributor is to be a member of the joint board.

(3) (Repealed)

(4) One of the directors referred to in subclause (2) (c) is (in and by the director's instrument of appointment or in and by another instrument executed by the voting shareholders) to be appointed as chairperson of the board.

(5) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the energy services corporation.

(6) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.

- (7) Subject to subclauses (8) and (9), Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (8) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2) and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to an energy services corporation or to the chairperson.
- (9) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director.

2 Chief executive officer

- (1) The chief executive officer of an energy services corporation is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (3A) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (4) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the chief executive officer.
- (5) Subject to subclause (6), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (6) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.
- (7) The chief executive officer of an energy distributor may delegate any functions of the chief executive officer to an employee of the energy distributor, but this power is subject to any directions of the joint board of the energy distributors.

3 Acting chief executive officer

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.

- (3) A person, while acting in the office of chief executive officer:
 - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office.
- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of an energy services corporation.

3A Ministerial directions in the public interest

- (1) This clause applies to Australian Inland Energy Water Infrastructure in relation only to the exercise of its functions under the *Water Supply Authorities Act 1987*.
- (2) A direction may be given to Australian Inland Energy Water Infrastructure under section 20P of the *State Owned Corporations Act 1989* without compliance with subsection (3) of that section if the portfolio Minister decides that this action is warranted on grounds involving urgency, public health or public safety.
- (3) The notice referred to in section 20P of the *State Owned Corporations Act 1989* is to include a statement of the reasons for that decision.
- (4) The portfolio Minister is to publish in the Gazette (and is to make available on the Internet) any direction under section 20P of the *State Owned Corporations Act 1989*, and any notification under section 20O of that Act, given to the board of Australian Inland Energy Water Infrastructure as soon as practicable after it is given.

4 Dividends

- (1) The voting shareholders of an energy services corporation, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by an energy services corporation are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to an energy services corporation.

5 Supply of information to portfolio Minister

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to an energy services corporation.

Schedule 2A Transferred provisions—dissolution of energy services

corporations

1 Energy Services Corporations (Dissolution of Australian Inland Energy Water Infrastructure) Regulation 2005

- (1) **Essential Energy may act in own name or in name of Australian Inland Energy Water Infrastructure** On and from 1 July 2005, Essential Energy may act in its own name as the universal successor of Australian Inland Energy Water Infrastructure or (if necessary) may act in the name of Australian Inland Energy Water Infrastructure.
- (2) Subclause (1) applies for all purposes, including for the purpose of the rules of private international law.
- (3) Without limiting subclause (1), Essential Energy may act in the name of Australian Inland Energy Water Infrastructure if it is necessary to do so under the law of any country:
 - (a) to perfect the transfer of any asset, right or liability of Australian Inland Energy Water Infrastructure, or
 - (b) to take, defend or maintain legal proceedings in connection with any such asset, right or liability.
- (4) For the purposes of this clause, Essential Energy is authorised to use the seal of Australian Inland Energy Water Infrastructure.
- (5) **References to Australian Inland Energy Water Infrastructure** On and from 1 July 2005, a reference in any Act or instrument to Australian Inland Energy Water Infrastructure includes a reference to Essential Energy.
- (6) In this clause, **asset**, **right** and **liability** have the same meanings as they have in Schedule 3.
- (7) **Transferred provisions to which Interpretation Act 1987 applies** Subclauses (1)–(6) re-enact (with minor modifications) clauses 6 and 7 of the *Energy Services Corporations (Dissolution of Australian Inland Energy Water Infrastructure) Regulation 2005* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

2 Energy Services Corporations (Dissolution of Energy Distributors) Regulation 2001

- (1) **Essential Energy may act in own name or in name of Great Southern Energy or Advance Energy** On and from 5 July 2001, Essential Energy may act in its own name as the universal successor of Great Southern Energy or Advance Energy or (if necessary) may act in the name of Great Southern Energy or Advance Energy.
- (2) Subclause (1) applies for all purposes, including for the purpose of the rules of private international law.

- (3) Without limiting subclause (1), Essential Energy may act in the name of Great Southern Energy or Advance Energy if it is necessary to do so under the law of any country:
 - (a) to perfect the transfer of any asset, right or liability of Great Southern Energy or Advance Energy, or
 - (b) to take, defend or maintain legal proceedings in connection with any such asset, right or liability.
- (4) For the purposes of this clause, Essential Energy is authorised to use the seals of Great Southern Energy and Advance Energy.
- (5) **References to Great Southern Energy and Advance Energy** On and from 5 July 2001, a reference in any Act or instrument to Great Southern Energy or Advance Energy extends to Essential Energy.
- (6) In this clause, **asset**, **right** and **liability** have the same meanings as they have in Schedule 3.
- (7) **Transferred provisions to which Interpretation Act 1987 applies** Subclauses (1)–(6) re-enact (with minor modifications) clauses 7 and 8 of the *Energy Services Corporations (Dissolution of Energy Distributors) Regulation 2001* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Schedule 3 Transfer of staff, assets, rights and liabilities

(Section 15, clauses 7, 12, 13A, 13D, 13F, 16 and 22 of Schedule 5)

1 Application and interpretation

- (1) This Schedule applies to any transfer of staff, assets, rights or liabilities under section 15 or clause 7, 12, 13A, 13D, 13F, 16 or 22 of Schedule 5.
- (2) In this Schedule, the person or body from which any staff, assets, rights or liabilities are transferred is called the transferor and the person or body to which they are transferred is called the transferee.

2 Transfer of staff

A member of staff who is transferred by a transfer to which this Schedule applies is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred but remained a member of staff of the transferor.

3 Vesting of undertaking in transferee

- (1) When any assets, rights or liabilities are transferred by a transfer to which this

Schedule applies, the following provisions have effect:

- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this clause is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.
- (5) A transfer is subject to the terms and conditions of the order by which it is effected.
- (6) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides.
- (7) Subclause (6) does not affect the rights of any member of staff who is the subject of a transfer to which this Schedule applies.

4 Date of vesting

A transfer to which this Schedule applies takes effect on the date specified in the order by which it is effected.

5 Consideration for vesting

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

6 Stamp duty

Stamp duty is not chargeable for or in respect of:

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

7 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

8 Definitions

In this Schedule:

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 any liabilities, debts or obligations (whether present or future and whether vested or contingent).

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

Schedule 4 (Repealed)

Schedule 5 Savings, transitional and other provisions

(Section 20)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends 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 day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on the enactment of the **Energy Services Corporations Act 1995**

Division 1

2-5 (Repealed)

Division 2 Provisions relating to former distributors

6 Definitions

In this Division:

former Act means the *Electricity Act 1945*.

former distributor means an electricity distributor constituted under the former Act.

new distributor means an energy distributor constituted under this Act.

7 Transfer of staff, assets, rights and liabilities of former distributors

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of a former distributor be transferred to such energy services corporation, or to such other person or body acting on behalf of the Crown, as is specified in the order.

(2) Such an order may be made on such terms and conditions as are specified in the order.

(3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this clause.

8 First board of directors

The directors for each former distributor become the directors for the new distributor of the same name for the residue of their terms of office as, and subject to the same conditions (including conditions as to remuneration) as those of their appointment as, directors of the former distributor.

9 First chief executive officer

The chief executive officer of each former distributor becomes the chief executive officer for the new distributor of the same name for the residue of his or her term of office as, and subject to the same conditions (including conditions as to remuneration) as those of his or her appointment as, chief executive officer of the former distributor.

10 General managers

(1) The office of general manager is abolished in relation to each former distributor.

(2) This clause does not affect any contract of employment under which any such general manager is employed.

11 Pending environmental impact statements

(1) If, before the commencement of this clause:

(a) the Director of Planning has notified a former distributor of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the former distributor in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, or

(b) a former distributor, or a person on its behalf, has commenced the preparation of an environmental planning impact statement under that Part, or

(c) an environmental impact statement has been prepared by or on behalf of a former distributor under that Part,

that Part applies in relation to the activity concerned as if the former distributor had continued in existence and the Minister were the former distributor.

(2) This clause is subject to the regulations under clause 1.

12 Dissolution of former distributors

(1) Each former distributor is dissolved.

- (2) The assets, rights and liabilities (if any) of a former distributor immediately before its dissolution are by this clause transferred to the Ministerial Holding Corporation established under section 37B of the *State Owned Corporations Act 1989*.
- (3) On and from the dissolution of a former distributor, each new distributor of the same name is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the former distributor.
- (4) This clause does not affect any transfer of assets, rights and liabilities by or under this clause or clause 7.

Division 2A Provisions consequent on enactment of the *Energy Services Corporations Amendment (TransGrid Corporatisation) Act 1998*

13 Definitions

In this Division:

former Act means the *Electricity Transmission Authority Act 1994*.

former Authority means the Electricity Transmission Authority constituted by the former Act.

former staff means the persons who were members of the staff of the former Authority immediately before the dissolution of the former Authority (other than the Chief Executive of the former Authority), and includes any such person who was seconded to a subsidiary company pursuant to section 26 of the former Act.

13A Transfer of assets, rights and liabilities of former Authority

- (1) The Minister may direct, by order in writing:
 - (a) that all assets, rights and liabilities of the former Authority, or
 - (b) that any specified assets, rights and liabilities of the former Authority, or
 - (c) that all assets, rights and liabilities of the former Authority other than those specified,be transferred to TransGrid.
- (2) The Minister may also direct, by order in writing, that any specified assets, rights and liabilities of the former Authority be transferred to any other person or body acting on behalf of the Crown as is specified in the order.
- (3) An order under this clause may be made on such terms and conditions as are specified in the order.

- (4) Schedule 3 applies to a transfer of assets, rights and liabilities under this clause.
- (5) Section 20C of the *State Owned Corporations Act 1989* does not apply to the assets, rights or liabilities of the former Authority.

13B Part-time directors and Chairperson of Board of former Authority

- (1) The part-time directors of the Board of the former Authority become, on the dissolution of the former Authority, directors of the Board of TransGrid.
- (2) Those directors are taken to have been appointed to the Board of TransGrid for a term of one year from that dissolution.
- (3) The part-time director referred to in section 16 (2) (c) of the former Act is taken to have been appointed as the director referred to in clause 1 (2) (b) of Schedule 2 to this Act.
- (4) The part-time director who was, on the dissolution of the former Authority, the Chairperson of the Board of the former Authority is taken to have been appointed as the chairperson of the Board of TransGrid.

13C Chief Executive of former Authority

- (1) The Chief Executive of the former Authority (if any) becomes, on the dissolution of the former Authority, the chief executive officer of TransGrid for the residue of his or her term of office as, and subject to the same conditions (including conditions as to remuneration) as those of his or her appointment as, Chief Executive of the former Authority.
- (2) The other provisions of clause 2 of Schedule 2 apply to a chief executive officer taken to be appointed in accordance with this clause.

13D Transfer of staff

- (1) All former staff are transferred to TransGrid on the dissolution of the former Authority.
- (2) Schedule 3 applies to a transfer of staff under this clause.

13E Special provision relating to former public sector executive officers

- (1) This clause applies to a person to whom clause 13C or 13D applies who held an executive position under Part 2A of the *Public Sector Management Act 1988* immediately before the dissolution of the former Authority.
- (2) Any such person is not entitled to exercise a right of return to the public sector under section 42R, or to seek compensation under section 42S, of the *Public Sector Management Act 1988*:
 - (a) on ceasing to hold the executive position on the dissolution of the former

Authority, or

(b) on ceasing to be employed by TransGrid.

(3) This clause applies despite anything to the contrary in this Act.

13F Dissolution of Electricity Transmission Authority

(1) The former Authority is dissolved.

(2) The assets, rights and liabilities (if any) of the former Authority immediately before its dissolution are by this clause transferred to the Ministerial Holding Corporation established under section 37B of the *State Owned Corporations Act 1989*, if any such assets, rights or liabilities remain after the operation of any order under clause 13A that takes effect on or before its dissolution.

(3) On and from the dissolution of the former Authority, TransGrid is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the former Authority.

13G Variation of timetable for first statement of corporate intent

(1) A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of TransGrid may be extended by the voting shareholders of TransGrid.

(2) The voting shareholders of TransGrid may also dispense with the need for the first statement of corporate intent to cover a specified period after the commencement of this clause or may direct that any such period be added to the period covered by the first statement of corporate intent.

13H Special provisions applying if this Act commences before commencement of national market in electricity

(1) This clause applies if the former Act is repealed before the commencement of the *National Electricity (NSW) Law* and applies until such time as that Law commences.

(2) In this clause, a reference to the alternative Market and System Operator is a reference to the eligible person appointed (instead of TransGrid) as the Market and System Operator for the purposes of the *Electricity Supply Act 1995* under section 77 (2) of that Act.

(3) The Minister may, by order, transfer to the alternative Market and System Operator specified employees of TransGrid. The transferred employees remain employees of TransGrid and are merely seconded to the alternative Market and System Operator.

(4) The Minister may, after consultation with the Treasurer, give the Board of TransGrid a written direction with respect to the provision of facilities, services or information by

TransGrid to the alternative Market and System Operator to enable the exercise of that Operator's functions under the *Electricity Supply Act 1995*. The Board must ensure that any such direction is carried out.

- (5) Sections 9 (1A), 11 and 38 (1) of the former Act continue to have effect, as if references to the former Authority were references to:
 - (a) TransGrid, and
 - (b) the alternative Market and System Operator.
- (6) Section 98U (1) (o) of the *Stamp Duties Act 1920* and paragraph (a) (viic) of the definition of **excluded debit** in section 3 (1) of the *Debits Tax Act 1990* have effect as if a reference in those provisions to the former Authority were a reference to:
 - (a) TransGrid, and
 - (b) the alternative Market and System Operator.

Division 3 General

14 (Repealed)

15 Timetable for first statement of corporate intent

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of an energy services corporation may be extended by the voting shareholders of the corporation.

16 Finalisation of arrangements relating to certain property transfers

- (1) This clause applies to assets, rights and liabilities of a relevant body:
 - (a) that comprise or relate to electricity transmission lines of 132kV (or lower voltage), substations, switching stations or other facilities, and
 - (b) that are:
 - (i) to be transferred with the agreement of the relevant body, or
 - (ii) the subject of any directions, recommendations or arrangements for transfer given or made under this Act or any other Act before the commencement of this clause, or
 - (iii) the subject of discussions and negotiations under clause 5 of Schedule 2 to the *Electricity Transmission Authority Act 1994* before its repeal.
- (2) The Minister may direct, by order in writing, that any such specified assets, rights and liabilities of a relevant body be transferred to another relevant body specified in the

order.

- (3) A **relevant body** is an energy services corporation, the Ministerial Holding Corporation established under section 37B of the *State Owned Corporations Act 1989* or any other person or body acting on behalf of the Crown.
- (4) An order under this clause may be made on such terms and conditions as are specified in the order.
- (5) Schedule 3 applies to a transfer of assets, rights and liabilities under this clause.
- (6) This clause does not affect the power under this Act to make any other order to which Schedule 3 applies.
- (7) The clause expires on the fifth anniversary of the day on which it commences.

Part 3 Provisions consequent on the enactment of the *Electricity Legislation Amendment (TransGrid) Act 2000*

17 Definition

In this Part:

amending Act means the *Electricity Legislation Amendment (TransGrid) Act 2000*.

18 Validation

Any act done by an energy transmission operator with respect to the carrying out of telecommunications services before the commencement of this clause that could have validly been done had section 6C, as amended by the amending Act, been in force at the time it was done is taken at all times (to the extent of any invalidity) to have been validly done.

Part 4 Provisions consequent on enactment of the *Energy Services Corporations Amendment (Distributor Efficiency) Act 2013*

19 Membership of first joint board of energy distributors

On the commencement of section 9A:

- (a) the members immediately before that commencement of the board of each of the energy distributors cease to hold office as such, and
- (b) the persons holding office immediately before that commencement as members of the board of Ausgrid are taken to have been appointed as members of the first joint board of the energy distributors, and
- (c) the person holding office immediately before that commencement as chairperson of the board of Ausgrid is taken to have been appointed as chairperson of the first joint

board of the energy distributors.

20 Actions of previous boards

Any act, matter or thing done or omitted to be done by the board of an energy distributor before the commencement of section 9A is taken to have been done or omitted by the joint board of the energy distributors.

Part 5 Provisions consequent on repeal of [Pacific Power \(Dissolution\) Act 2003](#) by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2014](#)

21 Definition

In this Part:

former authority means the Residual Business Management Corporation constituted by the [Pacific Power \(Dissolution\) Act 2003](#).

22 Dissolution of Residual Business Management Corporation

- (1) The former authority is dissolved.
- (2) The assets, rights and liabilities of the former authority immediately before its dissolution are transferred to the Crown by this clause.
- (3) Despite clause 4 of Schedule 3, the transfer of assets, rights and liabilities under this clause takes effect on 8 January 2015.
- (4) The SAS Trustee Corporation may, at the request of the Treasurer, debit all or part of the funds from an employer reserve of the former authority in an account established under section 81 of the [Superannuation Administration Act 1996](#) and credit that amount to an employer reserve of the Crown established under that section.