

# Electricity Network Assets (Authorised Transactions) Act 2015 No 5

[2015-5]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2017 No 22](#) (not commenced — to commence on 7.7.2017)

### Authorisation

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# Electricity Network Assets (Authorised Transactions) Act 2015 No 5



New South Wales

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# Electricity Network Assets (Authorised Transactions) Act 2015 No 5



New South Wales

An Act to provide for the transfer of certain electricity network assets of the State.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Electricity Network Assets (Authorised Transactions) Act 2015*.

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 6 (Ownership restrictions in floated transaction companies) commences on a day to be appointed by proclamation.

### 3 Interpretation—key definitions

#### Note—

Schedule 1 contains other interpretative provisions.

In this Act:

***associated electricity network land*** means land (including an interest in land) that is vested in any of the following agencies and designated by the Treasurer by order in writing as associated electricity network land for the purposes of this Act:

- (a) Roads and Maritime Services,
- (b) Government Property NSW,
- (c) Transport for NSW,
- (d) RailCorp,
- (d1) Sydney Trains,

- (e) a council under the *Local Government Act 1993*,
- (f) any other public sector agency prescribed by the regulations for the purposes of this definition.

**authorised transaction** means a transfer of electricity network assets authorised by Part 2.

**electricity network assets** means:

- (a) the assets, rights and liabilities of an electricity network SOC, and
- (b) associated electricity network land.

**electricity network SOC** means TransGrid, Ausgrid and Endeavour Energy constituted as statutory State owned corporations under the *Energy Services Corporations Act 1995*.

**Note—**

Essential Energy is not an electricity network SOC for the purposes of this Act.

**network infrastructure assets**—see section 4.

#### 4 Network infrastructure assets

- (1) In this Act, **network infrastructure assets** means the following assets that are wholly owned by an electricity network SOC and form part of or are used in connection with the operation of the distribution system, transmission system or street lighting system of the electricity network SOC:
  - (a) electricity power lines and their supporting or protective structures and conduits,
  - (b) associated equipment,
  - (c) street lighting structures,
  - (d) buildings,
  - (e) plant and machinery (excluding motor vehicles),
  - (f) any freehold or leasehold interest in land.
- (2) Freehold or leasehold interests in land that are wholly owned by an electricity network SOC and held for the purpose of their forming part of or being used in connection with the operation of the distribution system, transmission system or street lighting system of the electricity network SOC in the future are also network infrastructure assets for the purposes of this Act.
- (3) Assets that are not required for the purposes of the operation, in the ordinary course, of the distribution, transmission or street lighting system concerned are not network infrastructure assets for the purposes of this Act.

(4) In this section:

**associated equipment** means the following:

- (a) electricity substations,
- (b) electricity switchyards,
- (c) transformers,
- (d) capacitors,
- (e) reactive plant,
- (f) protection equipment, including circuit breakers,
- (g) monitoring equipment,
- (h) network communications equipment,
- (i) customer connection assets (excluding meters).

## **Part 2 The authorised transactions**

### **5 Authorisation for transfer of electricity network assets**

- (1) This Act authorises the transfer of electricity network assets to the private sector or to any public sector agency, subject to the following conditions:
  - (a) network infrastructure assets can only be transferred to the private sector by lease,
  - (b) the initial term of a lease of network infrastructure assets to the private sector must not exceed 99 years (without limiting any option to renew for any additional term or terms),
  - (c) the private sector interest in the State's electricity network assets (calculated as provided by this Part) must not exceed 49%.
- (2) For the removal of doubt, this Act does not authorise the transfer of any assets, rights or liabilities of Essential Energy.

### **6 Calculation of private sector interest**

- (1) The private sector interest in the State's electricity network assets is to be calculated for the purposes of this Part as follows:
  - (a) for each transacted electricity network SOC the asset value of the SOC is to be multiplied by the level of the interest of the private sector in the transacted business of the SOC on completion of the relevant authorised transaction, to arrive

at an amount that is the private sector interest in the assets of the SOC,

- (b) the amounts calculated under paragraph (a) for all transacted electricity network SOCs are to be summed to arrive at an amount that is the total private sector interest in the assets of transacted electricity network SOCs,
- (c) the amount arrived at under paragraph (b), expressed as a percentage of the total of the asset values of the 3 electricity network SOCs and of Essential Energy, is the private sector interest in the State's electricity network assets.

(2) The level of the interest of the private sector in the transacted business of a SOC is:

- (a) the share to which a person other than a public sector agency is entitled, as at the completion of the relevant authorised transaction, of the distributed profits from the operation of the transacted business of the SOC (unless the share referred to in paragraph (b) is greater), or
- (b) the share of the assets of the transacted business of the SOC to which a person other than a public sector agency is entitled, as at the completion of the relevant authorised transaction, on a winding up of an entity that controls or operates the business.

(3) In this section:

**asset value** of a SOC means the amount of the forecast closing regulatory asset base of the SOC for the 2014–15 regulatory year as set out in the final determination of the Australian Energy Regulator (published on 30 April 2015), being:

- (a) for Ausgrid—\$14,752.3 million, or
- (b) for Endeavour Energy—\$5,944.3 million, or
- (c) for Essential Energy—\$7,187.4 million, or
- (d) for TransGrid—\$6,241.5 million.

**relevant authorised transaction** for a SOC means the authorised transaction that results in the SOC becoming a transacted electricity network SOC.

**transacted business** of a SOC means the business of a SOC that becomes a business controlled and operated by the private sector as a result of an authorised transaction.

**transacted electricity network SOC** means an electricity network SOC the business of which becomes a business controlled and operated by the private sector as a result of an authorised transaction.



## 7 Protection of State's interest in transferred network infrastructure assets

- (1) A public sector agency must not transfer any network retained interest held by the public sector agency.
- (2) This section does not prevent:
  - (a) the granting or enforcement of a security interest over any network retained interest, or
  - (b) the conferral or enforcement of a security interest over any interest in a network infrastructure assets lease, being a security interest that arises by operation of law, or
  - (c) a transfer by or at the direction or under the authority of a liquidator, receiver, receiver and manager, administrator or the like in the course of a winding-up, receivership or other external administration, or
  - (d) a transfer by way of lease (a **new lease**) created by a sublease under, or surrender and regrant of, an existing network infrastructure assets lease (the **existing lease**) where the transfer does not result in the level of the public sector's interest in the entity that is the lessee under the new lease being less than it was for the existing lease, or
  - (e) any transfer to a public sector agency, or
  - (f) a transfer authorised by the regulations.

- (3) In this section:

**network infrastructure assets lease** means a lease of assets comprising or including network infrastructure assets.

**network retained interest** means any interest of a public sector agency in:

- (a) a network infrastructure assets lease (other than as the lessor of a transacted distribution system or transacted transmission system), or
- (b) a public sector agency that is a lessee of such a lease or that is a partner in a partnership that is a lessee of such a lease.

**transfer** includes surrender.

## 8 Electricity price guarantee

- (1) The Treasurer must ensure that an authorised network operator of a transacted distribution system or transacted transmission system provides a guarantee (its **electricity price guarantee**) to the effect that:
  - (a) the authorised network operator's total network charges for the financial year

ending 30 June 2019 will be lower than the network operator's total network charges for the financial year ending 30 June 2014, and

- (b) the authorised network operator will promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, safety, reliability and security of supply of electricity, and
- (c) the authorised network operator will comply with any Efficiency Benefit Sharing Scheme developed by the AER for the sharing of efficiency gains and losses between network operators and their customers that is applicable to the network operator.

(2) The Treasurer is to request the Price Commissioner to provide the following reports:

- (a) a report, for each proposed authorised transaction, as to whether the amount of the private sector investment for the purpose of acquiring an interest in electricity network assets pursuant to the authorised transaction (including costs incurred for that purpose) is likely to result in an increase in network charges,
- (b) an annual report, for each completed authorised transaction, on compliance by the authorised network operator with its obligations under its electricity price guarantee.

(3) A public sector agency must comply with any reasonable request by the Price Commissioner that the agency provide information to the Price Commissioner for the purposes of reports under this section (with any dispute as to the reasonableness of a request to be decided by the Secretary of the Department of Premier and Cabinet).

(4) The Price Commissioner is not subject to control or direction by or on behalf of the Government in connection with any report of the Price Commissioner.

(5) An authorised network operator must within 2 months after the end of each financial year provide to the Price Commissioner such information as the Price Commissioner may reasonably require to enable the Price Commissioner to report on compliance by the authorised network operator with its obligations under its electricity price guarantee.

(6) In this section:

**network charges** means revenue collected by a network operator in respect of regulated services provided by the network operator.

**Price Commissioner** means the person engaged by the Secretary of the Department of Premier and Cabinet as a consultant to provide services as the NSW Electricity Price Commissioner.

**regulated services** means the following direct control network services (within the meaning of the *National Electricity (NSW) Law*):

- (a) a standard control service or prescribed transmission service,
- (b) any other service prescribed by the regulations.

**total network charges** for a period means the total revenue collected by a network operator at any time (whether or not during the period concerned) in respect of regulated services provided by the network operator during that period.

## 9 Independent review of economic impact report

As soon as reasonably practicable after the commencement of this Act, the Treasurer must commission and publish an independent review of the Deloitte Access Economics report entitled "*Economic Impact of State Infrastructure Strategy—Rebuilding NSW*" published in November 2014.

## 10 Post-transaction independent review

Within 12 months after completion of the last authorised transaction under this Act, the Treasurer is to commission and publish an independent review that:

- (a) reviews the powers of the Price Commissioner under this Act (with the review to include consultation with stakeholders), and
- (b) determines whether network charges have increased as a result of the authorised transactions.

## 11 Payment and application of proceeds of transactions

- (1) The proceeds of the transfer of electricity network assets to the private sector pursuant to an authorised transaction (**the transaction proceeds**) belong to and are payable directly to the State.
- (2) The transaction proceeds include any payment to a public sector agency that is a periodic lease payment under a lease of electricity network assets to the private sector pursuant to an authorised transaction.
- (3) The transaction proceeds paid to the State are to be paid in such proportions as the Treasurer directs into:
  - (a) the Restart NSW Fund (**the Restart Fund**) established under the *Restart NSW Fund Act 2011*, and
  - (b) the Residual Liabilities Fund established under this Part.
- (4) The following deductions are authorised to be made from the transaction proceeds:
  - (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy

other liabilities of a public sector agency in respect of electricity network assets transferred for the purposes of an authorised transaction,

- (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,
  - (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
  - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of an authorised transaction.
- (5) The transaction proceeds do not include any amount certified by the Treasurer as paid or payable to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (6) The deductions authorised to be made from the transaction proceeds may be made before payment of the transaction proceeds into the Restart Fund or Residual Liabilities Fund, or may be made by payment from either or both of those Funds.
- (7) The requirements of this section do not affect the validity of a transaction arrangement.

## 12 Residual Liabilities Fund

- (1) There is to be established in the Special Deposits Account a fund called the Electricity Network Residual Liabilities Fund (***the Residual Liabilities Fund***), which is to be administered by the Treasurer.
- (2) There is payable into the Residual Liabilities Fund:
  - (a) such amount as the Treasurer directs to be paid out of the transaction proceeds under section 11, and
  - (b) interest and any other amounts accruing from time to time from the investments of the Residual Liabilities Fund.
- (3) There is payable from the Residual Liabilities Fund such amounts as the Treasurer directs from time to time:
  - (a) for payment in discharge of any liabilities of a public sector agency that arise in connection with an authorised transaction or electricity network assets (***residual transaction liabilities***), or

- (b) for payment to the Consolidated Fund or the Restart Fund, or
  - (c) for payment of expenses incurred in relation to the administration of the Residual Liabilities Fund.
- (4) For the purposes of this section, assets, rights and liabilities do not cease to be electricity network assets when they are transferred to the private sector for the purposes of an authorised transaction.
- (5) The Treasurer may invest money in the Residual Liabilities Fund in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

### **Part 3 Facilitating the authorised transactions**

#### **13 Treasurer's functions**

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

#### **14 Manner of effecting authorised transaction**

- (1) An authorised transaction is to be effected as directed by the Treasurer and can be effected in any manner considered appropriate by the Treasurer.
- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of an authorised transaction.
- (3) Electricity network assets can be transferred pursuant to this Act whether or not the land in, on or over which they are situated is owned by the owner of the assets.

**Note—**

Section 51 of the ES Act provides that electricity works are owned separately from the land in, on or over which they are situated and ownership of land in, on or over which electricity works are situated does not constitute ownership of those works.

- (4) The provisions of this Act for the establishment of various kinds of transaction entity do not limit the nature of the entities or arrangements that can be used for the purposes of an authorised transaction.

#### **15 Transaction SOCs**

- (1) A statutory State owned corporation may be established under this Act as a transaction SOC for the purposes of an authorised transaction.
- (2) The Governor may by order published in the Gazette:
  - (a) create a corporation under a corporate name specified in the order, and
  - (b) specify the functions of the corporation, and

- (c) direct that the corporation is established as a statutory State owned corporation and as a transaction SOC.
- (3) On the day on which the order takes effect:
  - (a) a corporation is constituted with the corporate name and functions specified in the order, and
  - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5 the corporate name specified in the order (to establish the corporation as a statutory State owned corporation under that Act), and
  - (c) the State owned corporation thereby established is a transaction SOC for the purposes of this Act.
- (4) The portfolio Minister of a SOC established under this section is the Minister administering the *Energy Services Corporations Act 1995*.
- (5) Schedule 2 has effect with respect to a transaction SOC. The provisions of that Schedule are in addition to and (except to the extent to which that Schedule otherwise provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

## **16 Transaction companies**

- (1) The Treasurer may for the purposes of an authorised transaction establish, or direct the establishment of, companies as transaction companies in any of the following ways:
  - (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both),
  - (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company,
  - (c) the conversion of an electricity network SOC or transaction SOC into a company limited by shares as provided by Schedule 3.
- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer:
  - (a) a transaction company is not and does not represent the State, and
  - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State.

- (4) The Treasurer may act for or on behalf of the State, a SOC or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations, of the State, a SOC or a transaction company as the holder of shares or other securities in or issued by a transaction company.
- (5) Shares and other securities in or issued by a transaction company that is a public sector agency may be issued or transferred in accordance with the directions of the Treasurer. The Treasurer may on behalf of the State, a SOC or a transaction company that is a public sector agency, enter into and carry out transaction arrangements for the issue or transfer of shares and other securities in or issued by a transaction company.
- (6) If an electricity network SOC becomes a transaction company by being converted into a company under this section, a reference in this Act to the electricity network SOC includes a reference to that transaction company.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

#### **17 Functions of electricity network SOCs and transaction entities**

- (1) Each electricity network SOC and transaction entity has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that an electricity network SOC or a transaction entity has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for or on behalf of an electricity network SOC or a transaction entity in the exercise of any of its functions for the purposes of an authorised transaction while it is a public sector agency.

#### **18 Direction and control of electricity network SOCs and transaction entities**

- (1) Each electricity network SOC and transaction entity is subject to the direction and control of the Treasurer in the exercise of any of its functions for the purposes of an authorised transaction while it is a public sector agency.
- (2) The Treasurer may give directions for the purposes of an authorised transaction to an electricity network SOC or transaction entity, and to the directors and other officers of an electricity network SOC or transaction entity. Any such directions must be complied with by the electricity network SOC, the transaction entity or the directors or other officers concerned.

- (3) Directions to a transaction entity (or its directors and other officers) can only be given and are only required to be complied with while the transaction entity is a public sector agency.
- (4) The power to give directions under this section extends to directions with respect to the way in which an electricity network SOC or transaction entity is to conduct its business and other affairs.
- (5) Action taken by an electricity network SOC or transaction SOC to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of the corporation.
- (6) Anything done or omitted to be done by a director or other officer of an electricity network SOC or transaction entity in compliance or purported compliance with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

## **Part 4 Arrangements for transfer of staff**

### **19 Interpretation**

In this Part, **networks employee** means an employee of an electricity network SOC and includes a person who was an employee of an electricity network SOC immediately before the person's employment was transferred under this Part to the employment of another public sector agency.

### **20 Transfers within public sector**

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of a networks employee to the employment of another public sector agency.
- (2) A transfer of employment under this section does not require the consent of the person transferred.
- (3) An employee whose employment is transferred under this section 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 employee had the employee remained an employee of the electricity network SOC concerned.
- (4) The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency in connection



with the operation of this section.

## 21 Transfers to private sector employment

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of a networks employee (a **transferred employee**) to the employment of a private sector entity (the **new employer**).
- (2) A transfer of employment under this section does not require the consent of the networks employee transferred.
- (3) The employment of a transferred employee with the new employer is to be on the same terms and conditions as applied to the employee as a networks employee immediately before the transfer of employment.

## 22 Arrangements for transferred employees

- (1) On the transfer by order under this Part of an employee's employment from one employer (the **current employer**) to another employer (the **new employer**) the provisions of this section have effect.
- (2) If the employee is an apprentice or trainee under the [Apprenticeship and Traineeship Act 2001](#):
  - (a) the new employer must apply under section 20 of that Act for approval to the transfer of the apprenticeship or traineeship to the new employer, and
  - (b) consent to the transfer is not required to be given by the apprentice or trainee or the current employer (despite section 20 (4) of the [Apprenticeship and Traineeship Act 2001](#)).
- (3) An employee is not entitled in respect of the same period of service to claim a benefit under this Act and another law or instrument.
- (4) The Treasurer may in connection with the operation of Schedule 4 give a certificate in writing as to the extent of the accrued rights to annual leave, extended or long service leave or sick leave that are retained by the employee under that Schedule, and such a certificate is evidence of the matters certified.
- (5) Nothing in the [Long Service Leave Act 1955](#) prevents payment in connection with the transfer under this Act of the employment of an employee to the employment of a private sector entity of the monetary value of long service leave in lieu of an entitlement to that leave accrued as a networks employee before the transfer of the employee's employment.

## 23 Operation of other laws and entitlements

The following provisions apply in relation to the transfer of a person's employment under

this Part:

- (a) the transfer has effect despite any other law, contract or instrument under a law,
- (b) the transfer does not constitute a retrenchment, redundancy or termination of employment at the initiative of the Crown or any other public sector agency,
- (c) the person transferred is not entitled to any payment or other benefit by reason only of having ceased to be an employee of a public sector agency as a result of the transfer,
- (d) a public sector agency is not required to make any payment to the transferred person in relation to the transferred person's accrued rights in respect of annual leave, sick leave or extended or long service leave.

#### **24 Operation of Commonwealth law**

A provision of this Part (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the *Fair Work Act 2009* of the Commonwealth or of any instrument under that Act.

### **Part 5 Arrangements for transfer of assets and functions**

#### **25 Vesting orders**

The Treasurer may make vesting orders under Schedule 5 for the purposes of an authorised transaction.

#### **26 Severance of fixtures**

- (1) The Treasurer may by order in writing for the purposes of an authorised transaction direct that specified assets to which this section applies are (if they are fixtures) severed from the land on, under or above which they are situated.
- (2) The effect of such an order is that the assets concerned are deemed to be severed from the land concerned and may be dealt with as personal property separate from the land for the purposes of an authorised transaction.
- (3) This section applies to assets designated by the Treasurer by order in writing to be assets to which this section applies. Assets may be designated as assets to which this section applies only if they are owned by an electricity network SOC (whether or not the land concerned is owned by an electricity network SOC or another public sector agency).
- (4) The severance of an asset from land under this section does not affect the right of the asset to be situated on, under or above that land and does not affect any right to drain water or sewage from the asset across and through the land or to use any

means of drainage of water or sewage from the asset across and through the land.

## **27 Grant of relevant authorisations**

- (1) The Treasurer may by order in writing given to the relevant administering agency direct the grant of a specified relevant authorisation to a person who becomes or who it is proposed will become the new operator of any electricity network assets pursuant to an authorised transaction.
- (2) Such a direction (a **grant direction**) operates to grant the specified relevant authorisation on such terms and conditions and subject to such endorsements as may be specified in the direction, and so operates:
  - (a) without the need for any action by the relevant administering agency, and
  - (b) without the need for the making or determination of any application for the relevant authorisation, and
  - (c) despite any requirement of or restriction imposed by a relevant law in relation to the grant of a relevant authorisation.
- (3) A grant direction may only direct the grant of a relevant authorisation that:
  - (a) operates to transfer or replace a relevant authorisation that is currently in force, and
  - (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that relevant authorisation is subject.
- (4) A grant direction may direct the grant of more than one relevant authorisation to transfer or replace an existing relevant authorisation.
- (5) The Treasurer is to consult with the relevant administering agency before giving a grant direction for a relevant authorisation.
- (6) The Treasurer may direct the relevant administering agency to give effect to a grant direction by formally granting, and issuing the appropriate documentation for, the relevant authorisation concerned. The relevant administering agency must comply with the Treasurer's direction within the period specified in the direction.
- (7) Anything done by an electricity network SOC or other public sector agency in compliance with a condition or endorsement of a relevant authorisation in relation to electricity network assets of which a person is the new operator is taken to have been done by the new operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new operator pursuant to this section.

(8) A relevant authorisation granted to an electricity network SOC or to the new operator of electricity network assets may not be suspended or cancelled on the ground of the conversion of the electricity network SOC or new operator to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to a transaction arrangement.

(9) In this section:

**grant** includes issue and transfer.

**new operator** of electricity network assets means:

- (a) a public sector agency to which any electricity network assets are transferred for the purposes of an authorised transaction, or
- (b) a person (or the nominee of a person) who becomes the owner, controller or operator of a transacted distribution system or transacted transmission system pursuant to an authorised transaction.

**relevant administering agency**, in relation to a relevant authorisation, means the public sector agency or public official having the function of granting the relevant authorisation.

**relevant authorisation** means a licence, permit, consent, entitlement, accreditation, exemption or other authorisation held by an electricity network SOC, or held by another public sector agency as a result of being granted pursuant to this section.

## 28 Acquisition of land

- (1) Land (including an interest in land) may be acquired for the purposes of an authorised transaction by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) Land may be acquired under this section only by an electricity network SOC, a transaction entity or the Electricity Assets Ministerial Holding Corporation (each an **acquiring authority** for the purposes of this section) and only if the acquiring authority has determined the land to be:
  - (a) land on which electricity network assets of an electricity network SOC were situated on the date of assent to this Act and continue to be situated, or
  - (b) land that on the date of assent to this Act was used or occupied by an electricity network SOC for or in connection with the exercise of any function of the electricity network SOC and continues to be so used or occupied, or
  - (c) land that adjoins land referred to in paragraph (a) or (b) and that is or may be required to be used or occupied in connection with the use of electricity network assets.

- (3) In the case of land used (but not occupied) by an electricity network SOC for or in connection with the exercise of any function of the electricity network SOC, such as land used for the purposes of access, the power conferred by this section to acquire the land is limited to a power to acquire an interest in the land sufficient to allow that use of the land to continue.
- (4) The Treasurer may direct a public sector agency as to how the public sector agency must exercise any function of the agency in connection with the acquisition of land from the agency under this section. If a public sector agency fails to exercise a function in compliance with a direction under this section within 1 month after it is given, the Treasurer may exercise the function for or on behalf of the agency to give effect to the direction.
- (5) A public sector agency is not entitled to compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* as the owner of land acquired pursuant to this section.
- (6) Land acquired under this section is deemed to be an asset of an electricity network SOC for the purposes of this Act and the acquiring authority is deemed to be an electricity network SOC for the purposes of this Act while it holds the land.

**Note—**

Land acquired pursuant to this section is an electricity network asset for the purposes of an authorised transaction whether or not it was an electricity network asset before it was acquired.

## **29 Adjustment of electricity network SOC objectives and functions**

- (1) The Treasurer may by direction in writing to an electricity network SOC adjust the objectives and functions of the electricity network SOC in such manner as the Treasurer considers appropriate to ensure that the objectives and functions of the electricity network SOC remain appropriate, having regard to:
  - (a) the capacity of the electricity network SOC to give effect to or exercise its existing objectives and functions following the transfer of any of its electricity network assets for the purposes of an authorised transaction, and
  - (b) the objectives and functions that would be appropriate for any remaining electricity network assets of the electricity network SOC.
- (2) The objectives and functions of an electricity network SOC may be adjusted under this section by being limited or dispensed with but not by being broadened.

## **Part 6 Operation of transacted distribution and transmission systems**

### **30 Terminology for transacted systems**

- (1) When electricity network assets comprising a distribution or transmission system are

transferred to the private sector for the purposes of an authorised transaction, the distribution system or transmission system becomes, and may be referred to in this or any other Act as, a **transacted distribution system** or **transacted transmission system**.

- (2) For the purposes of this or any other Act:
- (a) an entity that controls or operates a transacted distribution system or transacted transmission system may be referred to as an **authorised distributor** (for a distribution system) or an **authorised transmission operator** (for a transmission system), and
  - (b) authorised distributors and authorised transmission operators may be referred to as **authorised network operators**, and
  - (c) the public sector agency that is the lessor of electricity network assets comprising a transacted distribution system or transacted transmission system may be referred to as **the lessor** or **the owner** of the transacted distribution system or transacted transmission system.
- (3) A reference (however expressed) in any Act or statutory rule to the distribution system, transmission system or electricity works of a network operator is (in the context of the controller or operator of a transacted distribution system or transacted transmission system) a reference to the distribution system, transmission system or electricity works controlled or operated by the network operator.

### 31 Rights of lessor

- (1) Ownership of electricity network assets by the lessor of a transacted distribution system or transacted transmission system is to be treated as ownership by the Crown for the purposes of any provision of an Act that confers a right, privilege or immunity on the Crown as an owner of land or other assets.
- (2) The lessor of a transacted distribution system or transacted transmission system is not a distributor, transmission operator or network operator for the purposes of the ES Act or the regulations under that Act except for the purposes of the following provisions (**the relevant provisions**) of that Act:
  - (a) section 44 (Acquisition of land),
  - (b) section 45 (Erection and placement of electricity works),
  - (c) section 50 (Charges for placement of electricity works),
  - (d) section 51 (Ownership of electricity works),
  - (e) section 53 (Protection of certain electricity works),

- (f) section 85 (Transfer of staff, assets, rights and liabilities),
  - (g) such other provisions as may be prescribed by the regulations under this Act.
- (3) For the purposes of the application of the relevant provisions to the lessor of a transacted distribution system or transacted transmission system, the lessor is considered to have the functions of an authorised distributor or authorised transmission operator.

### 32 Functions of authorised network operators

- (1) A reference in any Act to the functions of a network operator includes:
- (a) in the case of an authorised distributor—the functions of establishing, maintaining and operating facilities for the distribution of electricity, or
  - (b) in the case of an authorised transmission operator—the functions (its **electricity functions**) of establishing, maintaining and operating facilities for the transmission of electricity and the functions (its **telecommunications functions**) of utilising and developing its facilities for the transmission of electricity to carry out telecommunications services.
- (2) Divisions 2, 2A and 3 of Part 5 of the ES Act apply to and in respect of the exercise by an authorised transmission operator of its telecommunications functions as if the references in those Divisions to electricity works included references to telecommunications works.

**Note—**

An authorised 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 ES Act.

- (3) Any power or right that an authorised transmission operator has under an affected easement with respect to the exercise of its electricity functions is taken to extend to the exercise of the authorised transmission operator's telecommunications functions.
- (4) Section 44 of the ES Act authorises an authorised transmission operator to acquire land by agreement or compulsorily for the purposes of the exercise of its electricity functions (whether or not the land acquired may also be used for the purposes of its telecommunications functions) but that section does not authorise it to acquire land compulsorily solely for the purposes of the exercise of its telecommunications functions.
- (5) In this section:

**affected easement** means any easement (whether created statutorily or otherwise):

- (a) that was an affected easement under section 6C of the *Energy Services Corporations Act 1995* immediately before the commencement of this section, or

(b) that is acquired compulsorily after that commencement.

### **33 Liability of authorised network operators**

- (1) If an authorised network operator of a transacted distribution system or transacted transmission system contravenes a provision of the ES Act or the regulations under that Act in the course of or in connection with the operation of the distribution or transmission system, each authorised network operator of the distribution or transmission system is taken to have contravened the same provision.
- (2) An authorised network operator may be proceeded against and convicted under a provision pursuant to this section whether or not any other authorised network operator of the distribution or transmission system has been proceeded against or convicted under that provision.
- (3) This section does not affect any liability imposed on an authorised network operator for an offence actually committed by the authorised network operator.

### **34 Authorised network operators as public bodies**

- (1) The regulations may provide that a reference in a specified provision of any other Act or an instrument made under any other Act to a public authority includes, or does not include, a reference to the owner, controller or operator of a transacted distribution system or transacted transmission system.
- (2) In this section, **public authority** includes statutory authority, statutory body, public utility undertaking, government agency and other public bodies.

### **35 Modification of ES Act provisions conferring functions on network operators**

The regulations may modify any provision of the ES Act that confers a function on a network operator for the purposes of adapting the application of the provision to or in respect of the functions of the owner, controller or operator of a transacted distribution system or transacted transmission system.

### **36 Land acquisition functions**

- (1) The land acquisition functions of the lessor of a transacted distribution system or transacted transmission system cannot be exercised by the lessor in the lessor's own right but can be exercised by another network operator of the distribution or transmission system on behalf of the lessor, and the other network operator has full power and authority to exercise those functions on behalf of the lessor.
- (2) The following provisions apply to the exercise of land acquisition functions by a network operator of a transacted distribution system or transacted transmission system on behalf of the lessor:
  - (a) the exercise of any such function by a network operator on behalf of the lessor is



subject to any agreement between the network operator and the lessor concerning the exercise of those functions and to any agreement between network operators as to which of them is to exercise the function on behalf of the lessor in a particular case,

- (b) land (including an interest in land) that is acquired in the exercise of land acquisition functions by a network operator is acquired on behalf of and vests in the lessor,
  - (c) the lessor has no liability in connection with the exercise of any land acquisition function on its behalf by a network operator (other than a liability to the network operator arising under an agreement between the lessor and the network operator as to the exercise of those functions) and any such liability that the lessor would otherwise have becomes instead a liability of the network operator,
  - (d) the lessor cannot be made a party to any proceedings in connection with the exercise of any land acquisition function on its behalf by a network operator (other than proceedings in connection with an agreement between the lessor and the network operator as to the exercise of those functions).
- (3) A network operator of a transacted distribution system or transacted transmission system cannot exercise a land acquisition function in its own right (and can only exercise that function on behalf of the lessor as provided by this section) if the function relates to land of which the lessor of the transacted distribution system or transacted transmission system will become the owner.
- (4) The approval of the Minister under section 44 (3) of the ES Act in respect of the acquisition of land on behalf of the lessor of a transacted distribution system or transacted transmission system is not to be given unless the Minister is satisfied that all reasonable steps have been taken to enter into an agreement with the owner of the land to acquire the land and those steps have not resulted in any such agreement.
- (5) In this section, **land acquisition functions** means any of the following functions to the extent that they may be exercised for the purposes of or in connection with the functions of a network operator:
- (a) functions under section 44 (Acquisition of land) of the ES Act,
  - (b) any function that concerns the creation, assurance or extinguishment of an interest in land.

### **37 Protection of electricity works**

- (1) Section 53 of the ES Act applies in respect of electricity works that form part of a transacted distribution system or transacted transmission system as if:
- (a) a reference in that section to the commencement of the *Electricity Supply*

*Amendment (Protection of Electricity Works) Act 2006* were a reference to the completion of the authorised transaction as a result of which the electricity works form part of that transacted distribution system or transacted transmission system, and

(b) a reference to the network operator included a reference to a network operator after the completion of that authorised transaction.

(2) Section 53 of the ES Act does not apply to prevent an action lying by the owner of a transacted distribution system or transacted transmission system against a network operator that controls or operates the system.

### **38 Licensing**

(1) The Treasurer may for the purposes of an authorised transaction request the Minister under the ES Act to grant a licence referred to in section 13 or 93A of that Act to an entity nominated by the Treasurer as the new operator of a transacted distribution system or transacted transmission system.

(2) The Minister under the ES Act is to grant a licence in accordance with the Treasurer's request. The licence is to be granted on terms and conditions approved by the Treasurer and as may be required by or under the ES Act.

(3) Clauses 2, 3 and 4 of Schedule 2 to the ES Act do not apply in respect of the grant of a licence pursuant to a request under this section.

### **39 Boundaries of distribution districts**

(1) The boundaries of the distribution district for a transacted distribution system cannot be varied under section 84 of the ES Act except with the consent in writing of the authorised distributor.

(2) If the boundaries of the distribution district for a transacted distribution system are varied under section 84 of the ES Act, the power of the Minister under section 85 (Transfer of staff, assets, rights and liabilities) of the ES Act to order the transfer of staff, assets, rights or liabilities of a distributor includes the power to order the transfer of staff, assets, rights or liabilities of the owner or controller of the distribution system concerned.

### **40 Land tax**

(1) The exception provided for a sublessee in section 21C of the *Land Tax Management Act 1956* does not apply to a sublessee under an authorised transaction sublease and the sublessee is liable for land tax accordingly.

(2) An **authorised transaction sublease** is a sublease entered into for the purposes of an authorised transaction.

## 41 Planning laws

- (1) For the purposes of any environmental planning instrument, the supply of electricity by an authorised network operator is a public utility undertaking carried on by the authorised network operator as an electricity supply authority.
- (2) For the purposes of any relevant planning law provision, the carrying out of development by or on behalf of an authorised network operator for the purpose of an electricity transmission or distribution network (within the meaning of [State Environmental Planning Policy \(Infrastructure\) 2007](#)) constitutes the carrying out of that development by the authorised network operator as an electricity supply authority and public authority.
- (3) After a distribution system or transmission system becomes a transacted distribution system or transacted transmission system, a reference in an environmental planning instrument to the former network operator is to be read as a reference to the authorised network operator that operates the transacted distribution system or transacted transmission system.
- (4) In this section:

**environmental planning instrument** has the same meaning as in the Planning Act.

**former network operator** means the electricity network SOC that was the network operator of the distribution or transmission system concerned before the authorised network operator became the network operator.

**Planning Act** means the [Environmental Planning and Assessment Act 1979](#).

**relevant planning law provision** means:

- (a) any provision of an environmental planning instrument that permits specified development to be carried out with or without development consent, or
- (b) any provision of an environmental planning instrument that deals with the obligations of a public authority in connection with the carrying out of development by or on behalf of the public authority that may be carried out without development consent (including the carrying out of an activity to which Part 5 of the Planning Act applies).

## 42 Coastal protection

Nothing done for the purposes of an authorised transaction requires the concurrence of the Minister under section 38 or 39 of the [Coastal Protection Act 1979](#).

## Part 7 Operation of other laws

### 43 State taxes

(1) In this section:

**relevant matter** means any of the following:

- (a) any transaction arrangement,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 5 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities or interest in or issued by an entity for the purposes of an authorised transaction,
- (d) any matter connected with the corporate conversion of an electricity network SOC or transaction SOC for the purposes of an authorised transaction,
- (e) any transaction, agreement or other arrangement (a **post-completion arrangement**) occurring within 2 years after completion of an authorised transaction and certified by the Treasurer to have been entered into in connection with the transfer of electricity network assets to the private sector pursuant to the authorised transaction,
- (f) such other matters for the purposes of an authorised transaction as may be prescribed by the regulations.

**State tax** means application, transfer or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) The Treasurer may by order in writing direct that subsection (2) does not apply to a public sector agency either generally or in respect of a particular relevant matter or class of relevant matters.
- (4) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (5) The Treasurer may by order in writing limit the application of this section in respect of a particular post-completion arrangement by imposing conditions on the application of this section to the arrangement.
- (6) An order may be made by the Treasurer under this section before or after the liability

to pay the State tax concerned accrues.

- (7) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

#### **44 General relationship of Act with other State legislation**

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of a transaction arrangement or the exercise of a function for the purposes of an authorised transaction:
- (a) any provision of the *State Owned Corporations Act 1989*,
  - (b) any provision of the *Energy Services Corporations Act 1995*,
  - (c) any provision of the constitution of a statutory SOC or a subsidiary of a statutory SOC.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes the transfer of electricity network assets for the purposes of an authorised transaction is satisfied by the enactment of this Act.

#### **45 Public Authorities (Financial Arrangements) Act**

The *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction arrangement.

#### **46 Release of information by Auditor-General**

Section 38 (Secrecy) of the *Public Finance and Audit Act 1983* does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of an authorised transaction or for the purposes of the audit (before or after the completion of an authorised transaction) of records relating to electricity network assets transferred pursuant to an authorised transaction.

#### **47 Conveyancing Act**

Section 52A of the *Conveyancing Act 1919* does not apply to a contract entered into for the purposes of an authorised transaction.

#### **48 Protection against breach of contractual and other obligations**

- (1) The following matters and things are protected by this section:

- (a) the operation of this Act (including any regulation or order under this Act),
  - (b) the transfer of electricity network assets for the purposes of an authorised transaction,
  - (c) the entering into or performance of obligations under a transaction, agreement or other arrangement for the purposes of an authorised transaction,
  - (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of an authorised transaction,
  - (e) anything else done or omitted to be done under or for the purposes of this Act or an authorised transaction.
- (2) None of the matters or things protected by this section are to be regarded as:
- (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
  - (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or
  - (d) an event of default under any contract or other instrument, or
  - (e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
  - (f) releasing a surety or other obligee wholly or in part from an obligation.
- (3) This section does not affect rights and obligations that arise under a transaction, agreement or other arrangement entered into for the purposes of an authorised transaction.
- (4) In this section:

***instrument*** means an instrument (other than an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

#### **49 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Act, or for any consequence of that

enactment or operation, or

(b) because of any statement or conduct relating to the enactment of this Act.

(2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.

(3) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.

**statement** includes a representation of any kind:

(a) whether made verbally or in writing, and

(b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

## 50 Leases of electricity network assets

(1) The provisions of an electricity network assets lease (or of any agreement or arrangement entered into in connection with such a lease) dealing with the following matters have effect according to their terms despite any law or rule to the contrary:

(a) the term of the lease,

(b) the existence or exercise of an option under the lease,

(c) the payment of any amount by way of a premium for the lease and the retention of any such amount by the lessor or the State,

(d) the circumstances or conditions under which the lease may be terminated by the lessor or lessee,

(e) the application or operation of section 122, 130 or 133B of the [Conveyancing Act 1919](#) to or in respect of the lease (or any lease under the lease),

(f) the application of a security provided in relation to the lease,

(g) the payment of a sum that is in the nature of a penalty,

- (h) the ownership of, or the vesting or forfeiture of ownership of, any real or personal property on termination of the lease or on the occurrence of some other specified event or other thing,
  - (i) the pre-payment of amounts payable by way of rent under the lease and the retention of any such amounts by the lessor or the State,
  - (j) the continuance of the lease despite the occurrence of unintended or unforeseen circumstances,
  - (k) the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances,
  - (l) the amount payable in consequence of a breach or early termination of the lease, expiry of the lease or exercise of any option to extend the lease,
  - (m) the liability of the lessor or lessee in relation to the leased assets,
  - (n) the non-refundability of any payment made on account of rent, premium, option fee, outgoings, security deposit or otherwise,
  - (o) the operation of any set-off.
- (2) A provision of an electricity network assets lease (or of any agreement or arrangement entered into in connection with such a lease) that confers rights or obligations on the State is enforceable by or against the State even though the State is not a party to the lease, agreement or arrangement.
- (3) An electricity network assets lease may include provision for the removal by the lessee of any fixture severable from the land leased.
- (4) A scheme of arrangement, receivership, winding up or other external administration of a company is to be carried out in a manner that gives effect to this section.
- (5) A variation of an electricity network assets lease that varies the land to which the lease relates and that is made pursuant to a provision of the lease or another transaction arrangement:
- (a) can be registered under the *Real Property Act 1900* (despite section 55A (4) of that Act), and
  - (b) does not have the effect of surrendering or regranting the lease.
- (6) A certificate given by the Treasurer to the effect that a variation of lease is a variation to which subsection (5) applies is evidence of the matters certified.
- (7) In this section:

***electricity network assets lease*** means:



- (a) a lease of electricity network assets entered into for the purposes of an authorised transaction, or
- (b) a lease of electricity network assets that the Treasurer designates by order in writing as an electricity network assets lease for the purposes of this section, or
- (c) a sublease under a lease referred to in paragraph (a) or (b).

## Part 8 Miscellaneous

### 51 Functions of Electricity Assets Ministerial Holding Corporation

- (1) The functions of the Electricity Assets Ministerial Holding Corporation include:
  - (a) to hold, on behalf of the Crown, electricity network assets acquired by it or transferred to it, and
  - (b) to carry on any activities or business that relate to any electricity network assets held by it, including demanding, collecting and receiving charges, levies, rates and fees, and
  - (c) such other functions for the purposes of an authorised transaction under this Act as may be prescribed by the regulations.
- (2) There is to be established in the Special Deposits Account a fund called the Electricity Assets Ministerial Holding Corporation Fund (**the EAMHC Fund**), which is to be administered by the Treasurer.
- (3) There is payable into the EAMHC Fund:
  - (a) all money received by the Corporation in the exercise of its functions under this or any other Act, and
  - (b) all money standing to the credit of any working account established for the Corporation under section 13A of the *Public Finance and Audit Act 1983* on the commencement of this section.
- (4) There is payable from the EAMHC Fund such amounts as the Treasurer directs from time to time for:
  - (a) payment of expenditure by the Corporation in the exercise of its functions under this or any other Act, or
  - (b) payment of expenses incurred in relation to the administration of the EAMHC Fund, or
  - (c) payment to the Consolidated Fund.
- (5) The Treasurer may invest money in the EAMHC Fund in such manner as may be

authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

## **52 Functions of New South Wales Treasury Corporation**

- (1) New South Wales Treasury Corporation (**TCorp**) has the object of providing financial services for the purposes of an authorised transaction at the direction of the Treasurer.
- (2) The Treasurer may direct TCorp to do any one or more of the following for the purposes of an authorised transaction on terms and conditions determined by the Treasurer:
  - (a) provide financial accommodation (including by the lending of money) to or for the benefit of a private sector entity,
  - (b) effect a financial adjustment for the benefit of or on behalf of a private sector entity,
  - (c) participate in any other arrangement or transaction approved by the Treasurer for the purposes of an authorised transaction.
- (3) TCorp is authorised and required to comply with a direction of the Treasurer under this section.
- (4) Words and expressions used in this section that are defined in the *Public Authorities (Financial Arrangements) Act 1987* have the same meanings as in that Act.

## **53 Delegation**

The Treasurer may delegate to the Secretary of the Treasury, or to any other Government sector employee prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

## **54 Act to bind State and other jurisdictions**

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

## **55 Extraterritorial operation of Act**

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act

should, as far as possible, include operation in relation to the following:

- (a) things situated in or outside the territorial limits of the State,
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.

(2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

#### **56 Construction of Act and instruments so as not to exceed legislative power**

(1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:

- (a) would, apart from this section, have an invalid application, but
- (b) also has at least one valid application,

it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if:

- (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or
- (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.

(3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section is in addition to, and not in derogation of, section 31 of the [Interpretation Act 1987](#).

(5) In this section:

**application** means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases, or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

**invalid application**, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

**valid application**, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

## 57 Orders

- (1) An order made under a provision of this Act takes effect at the beginning of the day on which it is made, unless the order otherwise provides.
- (2) An order cannot provide for the order to take effect earlier than the beginning of the day on which it is made (but can provide for the order to take effect at a time on the day on which it is made that is earlier than the time at which it is made).
- (3) A document purporting to be an order made under a provision of this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (4) A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.
- (5) A provision of another Act that results from an amendment made by this Act and that provides for the making of an order is deemed for the purposes of this section to be a provision of this Act (and the order is deemed to be an order made under a provision of this Act).

## 58 Service or giving of documents

- (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:
  - (a) in the case of a natural person:
    - (i) by delivering it to the person personally, or
    - (ii) by 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) by sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

(i) by 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) by 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.

## 59 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.

## Schedule 1 Interpretative provisions

### 1 Definitions

In this Act:

**AER** means the Australian Energy Regulator established by the [Competition and Consumer Act 2010](#) of the Commonwealth.

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

**associated electricity network land**—see section 3.

**authorised distributor**—see section 30.

**authorised network operator**—see section 30.

**authorised transaction**—see section 3.

**authorised transmission operator**—see section 30.

**completion** of an authorised transaction occurs on such date as may be designated by the Treasurer by order in writing as the date of completion of the authorised transaction.

**Editorial note—**

Designated date of completion of the authorised transaction of TransGrid's electricity network assets: 16.12.2015. See Gazette No 114 of 16.12.2015, p 4085. Designated date of completion of the authorised transaction of Ausgrid's electricity network assets: 1.12.2016. See Gazette No 103 of 1.12.2016, p 3367. Designated date of completion of the authorised transaction of Endeavour Energy's electricity network assets: 14.6.2017. See Gazette No 62 of 14.6.2017, p 2502.

**corporate conversion**, in relation to an electricity network SOC or a transaction SOC, means the registration of the corporation as a company under the Corporations Act.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

**Electricity Assets Ministerial Holding Corporation** or **the Corporation** means the Electricity Assets Ministerial Holding Corporation constituted by section 12 of the [Electricity Generator Assets \(Authorised Transactions\) Act 2012](#).

**electricity network assets**—see section 3 (and clause 4 of this Schedule).

**electricity network SOC**—see section 3.

**entity** means a body corporate, a partnership, an unincorporated body, an individual or a trust (including the trustee of a trust).

**ES Act** means the [Electricity Supply Act 1995](#).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general law** means the common law and equity (as modified from time to time by legislation).

**lease** includes:

- (a) licence, and
- (b) agreement to lease or license, and
- (c) concurrent lease or licence and any subletting or sublicensing (or concurrent subletting or sublicensing).

**legislation** includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate

legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

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

**network infrastructure assets**—see section 4.

**private sector** means any person other than a public sector agency and includes a private sector entity.

**Note—**

A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

**private sector entity** means an entity in which the private sector has an interest.

**public sector agency** means any of the following:

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) the Ministerial Holding Corporation constituted by the [State Owned Corporations Act 1989](#),
- (d) the Electricity Assets Ministerial Holding Corporation,
- (e) a Ministerial Holding Corporation established by or under this Act,
- (f) a SOC,
- (g) a public authority of the State (including a council under the [Local Government Act 1993](#)),
- (h) any other person acting on behalf of the State (or the Crown in right of the State),
- (i) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or a SOC or the transaction company is the subsidiary of another transaction company all the shares in which are held by or on behalf of the State or a SOC,
- (j) a wholly-owned subsidiary of a public sector agency.

**Residual Liabilities Fund** means the Electricity Network Residual Liabilities Fund established by section 12.

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

**SOC** means a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#).

**State legislation** means any legislation of the State.

**the State** means the State of New South Wales.

**transacted distribution system**—see section 30.

**transacted transmission system**—see section 30.

**transaction arrangement** means a transaction, agreement or other arrangement entered into by or on behalf of a public sector agency for the purposes of an authorised transaction.

**transaction company** means a company established as a transaction company pursuant to this Act.

**transaction entity** means a transaction SOC, transaction company or any other entity established for the purposes of an authorised transaction.

**transaction SOC** means a SOC established as a transaction SOC pursuant to this Act.

**transfer**, in relation to assets, rights and liabilities, includes lease and licence and any action that results in the vesting of assets, rights and liabilities in another person or the creation or transfer of any interest in or right in respect of assets.

## 2 Interpretation—[Electricity Supply Act 1995](#)

Words and expressions used in this Act that are defined in the [Electricity Supply Act 1995](#) have the same meanings as in that Act, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

## 3 Words and expressions defined in Corporations Act

In this Act, the following expressions have the meaning that they have in the Corporations Act (except where a definition of the expression in this Act otherwise requires):

**company**

**company limited by shares**

**corporation**

**subsidiary**

**wholly-owned subsidiary**



#### **4 Electricity network assets**

- (1) An interest in or right in respect of electricity network assets that is created for the purposes of an authorised transaction is itself an electricity network asset.
- (2) Assets, rights and liabilities that are transferred to a public sector agency for the purposes of an authorised transaction and that were electricity network assets before their transfer remain electricity network assets after their transfer to the public sector agency.
- (3) Assets, rights and liabilities cease to be electricity network assets when they are transferred to the private sector for the purposes of an authorised transaction.

#### **5 Lease of electricity network assets**

- (1) A lease does not cease to be a lease of electricity network assets merely because the assets leased cease to be electricity network assets after their transfer by lease to the private sector or because other assets become subject to the lease after it is entered into.
- (2) For the purposes of the application of this Act to a lease of electricity network assets:
  - (a) the assets leased remain electricity network assets despite their transfer by lease to the private sector, and
  - (b) any assets that become subject to such a lease pursuant to the terms of the lease or pursuant to a transaction arrangement after the lease is entered into are taken to be electricity network assets.

#### **6 Functions for the purposes of an authorised transaction**

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of an authorised transaction if:

- (a) it is done or has effect for the purpose of effecting or facilitating an authorised transaction, or
- (b) it is done or has effect for any purpose connected with, ancillary or incidental to or consequential on an authorised transaction, or
- (c) it is done or has effect for any purpose connected with the vesting of electricity network assets in, or the transfer of staff of an electricity network SOC to, a public sector agency at any time after completion of an authorised transaction, or
- (d) it is done or has effect after the completion of an authorised transaction for any purpose that is necessary or convenient in connection with the ongoing operation of or the winding up of the affairs of any electricity network SOC or transaction entity.

## **7 Transfer and acquisition of assets, rights and liabilities**

- (1) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly-owned subsidiary of the body corporate and accordingly the following principles apply in the interpretation of this Act:
- (a) assets, rights and liabilities of a body corporate can be transferred to another person (***the transferee***) by a transfer of shares or any other transaction that results in the body corporate becoming a wholly-owned subsidiary of the transferee,
  - (b) assets, rights and liabilities of a body corporate are acquired by (and become assets, rights and liabilities of) a transferee when the body corporate becomes a wholly-owned subsidiary of the transferee.
- (2) This clause does not limit the ways in which assets, rights and liabilities can be transferred for the purposes of an authorised transaction and does not prevent the direct transfer of assets, rights and liabilities to a transferee.

## **8 Employees of electricity network SOC**

If a transaction company is established by the conversion of an electricity network SOC into a company, a reference in a provision of this Act to an employee of an electricity network SOC includes a reference to an employee of the transaction company and a reference in the provision to the electricity network SOC is to be read as a reference to the transaction company.

## **9 Transfers to public sector agencies**

No compensation is payable in connection with the transfer for the purposes of an authorised transaction of assets, rights or liabilities to a public sector agency (but this does not prevent such a transfer being for consideration).

## **10 When events occur**

If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

## **11 Notes**

Notes included in this Act do not form part of this Act.

## **Schedule 2 Provisions concerning transaction SOCs**

(Section 15)

### **1 Board of directors**

- (1) Each transaction SOC is to have a board of directors.

- (2) The board is to consist of:
  - (a) the chief executive officer, and
  - (b) at least 3 and not more than 5 other directors appointed by the voting shareholders.
- (3) Of the directors appointed under subclause (2) (b), one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the Board.
- (4) 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 transaction SOC.
- (5) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice 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*.
- (6) Except as provided by this clause, Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (7) 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 a transaction SOC or to the chairperson.
- (8) 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 a transaction SOC 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.
- (4) 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.
- (5) The *Government Sector Employment Act 2013* (Chapter 6 included) does not apply to the chief executive officer.

- (6) Subject to subclause (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (7) 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.

### **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 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 a transaction SOC.

### **4 Dividends**

- (1) The voting shareholders of a transaction SOC, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by a transaction SOC 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 a transaction SOC.

### **5 Supply of information to portfolio Minister**

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to a transaction SOC.

## **Schedule 3 Corporate conversion of electricity network SOCs and**

## transaction SOCs

(Section 16)

### 1 Direction for corporate conversion of electricity network SOCs and transaction SOCs

- (1) The Treasurer may direct by order in writing (**a corporate conversion direction**) that an electricity network SOC or a transaction SOC be converted into a company limited by shares of a specified type.
- (2) An electricity network SOC cannot be the subject of a corporate conversion direction unless it is an electricity network SOC on the date of assent to this Act or is a transaction SOC.

### 2 Application for conversion to company

- (1) A SOC to which a corporate conversion direction has been given is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.
- (2) That application can only be made if the Treasurer has issued a certificate to the corporation that certifies that the Treasurer is satisfied that the provisions of this Act have been complied with concerning the transfer of its incorporation to the Corporations Act.
- (3) A certificate issued by the Treasurer for the purposes of this clause:
  - (a) cannot be challenged, reviewed or called into question in proceedings before any court or tribunal, and
  - (b) is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of the corporation to the Corporations Act.

### 3 Effect of conversion

- (1) The following provisions are taken to have had effect immediately before a SOC to which a corporate conversion direction has been given is registered as a company under the Corporations Act:
  - (a) the corporation ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
  - (b) the corporation ceases to be an energy services corporation under the *Energy Services Corporations Act 1995* unless the regulations provide otherwise,
  - (c) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of the corporation cease to be members of the corporation,

- (d) the board of directors of the corporation is dissolved and each member (including any acting member) of the board ceases to hold office as such,
  - (e) any person who holds a statutory office of the corporation ceases to hold that office,
  - (f) any person who ceases to be a member of the corporation or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office.
- (2) Nothing in this clause prevents any person from becoming an officer of the company into which the corporation is being converted in accordance with its constitution and the provisions of the Corporations Act.
- (3) A SOC to which a corporate conversion direction has been given becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act.
- (4) When a SOC is registered as a company under the Corporations Act pursuant to a corporate conversion direction, section 43A (General audit of former statutory bodies) of the [Public Finance and Audit Act 1983](#) applies as if the SOC had been abolished.

## Schedule 4 Employment guarantees

### 1 Employment guarantee period

For the purposes of this Schedule, there is a 5-year **employment guarantee period** starting on 1 July 2015 and ending on 30 June 2020.

### 2 Salary

A continuing employee's salary under an enterprise agreement cannot be varied during the employment guarantee period except in accordance with the [Fair Work Act 2009](#) of the Commonwealth.

### 3 Minimum number of employees

- (1) For each relevant period during the employment guarantee period, the number of full time equivalent employees of a network operator must not be less than the appropriate staffing level for the relevant electricity network SOC.
- (2) The **appropriate staffing level** for an electricity network SOC is the number of full time equivalent employees that is sustainable in the context of business revenue resulting from the AER Final Determination for the SOC as determined in accordance with the business practices of the SOC, being:
  - (a) for Ausgrid—3,570 full time equivalent employees, or

- (b) for Endeavour Energy—2,100 full time equivalent employees, or
  - (c) for TransGrid—1,000 full time equivalent employees.
- (3) For a network operator that is not an electricity network SOC, the **relevant electricity network SOC** is the electricity network SOC whose former distribution or transmission system is controlled or operated by the network operator.
- (4) If a relevant amendment is made to the AER Final Determination for an electricity network SOC, the Treasurer must engage a suitably qualified and independent person (**the independent expert**) to determine whether any adjustment to operating expenditure allowance or capital expenditure allowance resulting from the relevant amendment would be applied in accordance with the business practices of the SOC as an adjustment to the appropriate staffing level of the SOC.
- (5) The Treasurer must give effect to any determination of the independent expert for any adjustment to the appropriate staffing level for the SOC by notifying the adjustment by order published in the Gazette. The adjustment then has effect for the purposes of this Schedule at the beginning of the next relevant period.
- (6) A **relevant amendment** is:
- (a) a change to the AER Final Determination resulting from a merits review or judicial review of the AER Final Determination (including any appeal from such a review) that changes the operational expenditure allowance or capital expenditure allowance for the network operator, or
  - (b) a new determination of the AER for the regulatory control period following the regulatory control period to which the AER Final Determination applies that results in a change to the operational expenditure allowance or capital expenditure allowance in the AER Final Determination for the network operator.

**Note—**

This clause does not override or otherwise interfere with the rights of any individual employee in relation to termination of employment or redundancy that arise under a law of the Commonwealth or an industrial instrument made under a law of the Commonwealth.

#### **4 Voluntary redundancies**

A continuing employee may be offered voluntary redundancy in accordance with the terms and conditions of an enterprise agreement or a redundancy policy that applies to the employee.

#### **5 Forced redundancies**

There are to be no forced redundancies of continuing employees during the employment guarantee period, except by agreement between the affected employees (or a person authorised to act on their behalf or on behalf of a majority of them) and the employer, or

in accordance with the *Fair Work Act 2009* of the Commonwealth.

## 6 Leave entitlements

An employee whose employment is transferred under this Act retains any rights to annual leave, extended or long service leave or sick leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).

## 7 Recognition of service

The continuity of the employment of a continuing employee is taken not to have been broken by a transfer of employment under this Act, and service of the employee with the employee's current employer (including service deemed to be service with that employer) that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer.

## 8 Enforcement of obligations

- (1) The Independent Pricing and Regulatory Tribunal is responsible for monitoring and enforcing the obligations of an employer under this Schedule.
- (2) In addition, a relevant employee guarantee is enforceable by an affected employee or a person authorised to act on behalf of an affected employee or a majority of affected employees. A **relevant employee guarantee** is a guarantee provided by this Schedule (except clauses 3, 9 and 15).
- (3) The Tribunal may direct an employer to take, within a specified time, any action that the Tribunal determines to be necessary to remedy any failure by the employer to comply with its obligations under this Schedule or to prevent the continuance or recurrence of such a failure.
- (4) An employer must comply with a direction of the Tribunal under this clause.  
Maximum penalty: 5,000 penalty units.
- (5) This section does not limit the persons who are entitled to enforce the terms and conditions of an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth.

## 9 Existing locations

- (1) A network operator must, for the duration of the employment guarantee period, maintain an administrative office, depot or other administrative centre within the vicinity of an existing administrative location that is in the area of operations of its distribution or transmission system.



- (2) An **existing administrative location** is an area in which an existing administrative office, depot or other administrative centre is operated by an electricity network SOC on the commencement of this Act.

## 10 Relocation policies

- (1) Any employee relocation policy (**the existing policy**) that was applicable to continuing employees on the commencement of the employment guarantee period must be maintained in its application to those employees for the duration of the employment guarantee period.
- (2) The existing policy cannot be amended during the employment guarantee period except by agreement between the affected employees (or a person authorised to act on their behalf or on behalf of a majority of them) and the employer, or in accordance with the [Fair Work Act 2009](#) of the Commonwealth.

## 11 Enterprise agreements

An enterprise agreement cannot be varied in its application to a continuing employee during the employment guarantee period except in accordance with the [Fair Work Act 2009](#) of the Commonwealth.

## 12 Superannuation

- (1) A continuing employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee as an employee of an electricity network SOC on the commencement of this Act and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law.
- (2) The employer of the continuing employee is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this clause.
- (3) The employer of a continuing employee is not entitled to access funds deposited in a superannuation account of the employee unless that access is permitted by a law of the State or the Commonwealth.
- (4) The operation of this clause is not limited to the employment guarantee period.

## 13 Disputes

Any dispute that concerns a relevant employee guarantee may be resolved in accordance with the [Fair Work Act 2009](#) of the Commonwealth or any dispute resolution process applicable to the employee. A **relevant employee guarantee** is a guarantee provided by this Schedule (except clauses 3, 9 and 15).

#### 14 Existing apprentices

- (1) An apprentice who completes their training while a continuing employee during the employment guarantee period and who meets reasonable business hiring standards of the employer must be offered suitable employment.
- (2) Employment is **suitable** employment if it is employment in a trade that is relevant to the training in which the person was engaged as an apprentice.
- (3) The employment of a person pursuant to an offer of employment under this clause cannot be terminated for a period of 2 years after that employment commences (even if that 2 year period extends beyond the employment guarantee period), except:
  - (a) for serious misconduct, or
  - (b) pursuant to the proper application of reasonable disciplinary procedures, or
  - (c) by agreement with the employee.

#### 15 Future apprentices

- (1) If the number of full time equivalent employees of a network operator for the final relevant period of a financial year within the employment guarantee period is less than or equal to 110% of the appropriate staffing level for the network operator, a sufficient number of apprentices must be employed during the following financial year (as new employees of the network operator) to achieve the guaranteed apprenticeship intake for the relevant electricity network SOC.
- (2) The **guaranteed apprenticeship intake** is:
  - (a) for Ausgrid—25 apprentices, or
  - (b) for Endeavour Energy—10 apprentices, or
  - (c) for TransGrid—5 apprentices.
- (3) For a network operator that is not an electricity network SOC, the **relevant electricity network SOC** is the electricity network SOC whose former distribution or transmission system is controlled or operated by the network operator.
- (4) The following financial year to which a guaranteed apprenticeship intake applies need not be within the employment guarantee period.

#### 16 Cadets, trainees and graduate engineers

A person employed as a cadet, trainee or graduate engineer is an employee for the purposes of this Schedule (including for the purposes of employee guarantees under this Schedule).

### **17 Fixed term employees**

- (1) A fixed term employee is an employee for the purposes of this Schedule (including for the purposes of employee guarantees under this Schedule).
- (2) In this clause, **fixed term employee** means an employee whose terms and conditions of employment are provided by an individual contract that provides for a fixed term of employment and not by an award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees.

### **18 Contract employees**

- (1) A contract employee is an employee for the purposes of this Schedule (including for the purposes of employee guarantees under this Schedule).
- (2) In this clause, **contract employee** means an employee whose terms and conditions of employment are provided by an individual contract and not by an award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees.

### **19 Proceedings for offences**

- (1) Proceedings for an offence under this Schedule may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence to which this clause applies are brought in the Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any other provision of this Schedule, \$50,000 or the maximum penalty provided by this Schedule, whichever is the lesser.
- (3) If proceedings for an offence to which this clause applies are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Schedule in respect of the offence.

### **20 Interpretation—employees of network operator**

- (1) A person is an employee of a network operator for the purposes of this Schedule if the person carries out work solely or primarily in connection with the business of the network operator and is employed by:
  - (a) the network operator, or
  - (b) an associated entity of the network operator, or
  - (c) an entity that provides the services of the person exclusively to the network operator on an ongoing basis.

- (2) An entity is an **associated entity** of a network operator if:
- (a) the network operator has an ownership interest in the entity or the entity has an ownership interest in the network operator, or
  - (b) another entity has an ownership interest in both the entity and the network operator.

## 21 Calculation of number of full time equivalent employees

- (1) The number of full time equivalent employees of a network operator for a relevant period is to be calculated for the purposes of this Schedule as  $F + A/B$ , where:

**F** is the average number of full time employees of the network operator during the relevant period.

**A** is the total number of hours worked during the relevant period by all part time employees of the network operator.

**B** is the average number of hours worked during the relevant period by all full time employees of the network operator.

- (2) To calculate the average number of hours worked by full time employees of an employer, overtime is to be excluded.

- (3) In this clause:

**full time employee** means an employee whose standard or average hours of work per week is 35 hours or more.

**part time employee** means an employee who is not a full time employee.

## 22 Obligations of controller and operator as single entity

If the controller and operator of a distribution or transmission system are separate entities (with the result that each is a network operator of the distribution or transmission system), an obligation of the network operator under this Schedule is an obligation of the controller and operator combined, as if they were a single entity.

### Note—

For example, the minimum number of employees provided for by this Schedule applies to the total employee numbers of both the controller and the operator.

## 23 Definitions

In this Schedule:

**AER Final Determination** for an electricity network SOC means the determination of the

AER for the electricity network SOC published on 30 April 2015.

**continuing employee** means:

- (a) an employee of an electricity network SOC, or
- (b) an employee whose employment is transferred under this Act.

**employment guarantee period** means the period of 5 years starting on 1 July 2015 and ending on 30 June 2020.

**network operator** means each of the following:

- (a) Ausgrid,
- (b) Endeavour Energy,
- (c) TransGrid,
- (d) any public sector agency that becomes a network operator of the distribution system or transmission system of Ausgrid, Endeavour Energy or TransGrid for the purposes of an authorised transaction,
- (e) an authorised network operator (meaning an entity that controls or operates a transacted distribution system or transacted transmission system).

**relevant period** means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April in each year.

## Schedule 5 Vesting of assets, rights and liabilities

(Section 25)

### 1 Definitions

In this Schedule:

**transferee** means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

**transferor** means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

**vesting order** means an order made by the Treasurer in writing for the purposes of this Schedule.

### 2 Making of vesting order

- (1) A vesting order may vest assets, rights and liabilities comprising electricity network assets in a person specified in the order as the transferee.

- (2) A vesting order may vary the terms and conditions of any instrument or contract that relates to assets, rights or liabilities to the extent that is necessary or convenient for the purposes of an authorised transaction.

### **3 Effect of vesting order**

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect except as otherwise provided by the vesting order:
- (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
  - (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
  - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (f) 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 that it relates to those assets or liabilities and except as otherwise provided by the regulations) to be read as, or as including, a reference to the transferee.
- (2) A vesting order that varies the terms and conditions of any instrument or contract has effect according to its tenor.
- (3) No attornment to the transferee by a lessee from the transferor is required.

### **4 Terms and conditions of vesting**

A vesting order may be made on such terms and conditions as are specified in the order.

### **5 Consideration for vesting**

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

## **6 Vesting of interests in land**

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

## **7 Confirmation of vesting**

- (1) The Treasurer may by order in writing confirm a vesting of assets, rights or liabilities, or a variation of the terms and conditions of an instrument or contract, by operation of this Schedule.
- (2) Such an order is evidence of that vesting or variation.

## **8 Determinations by Treasurer**

For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise electricity network assets, and such a determination is conclusive as to the matters determined.

## **9 Certification to registration authorities**

- (1) A party to a vesting order may lodge with a registration authority a certificate certifying as to such information as the party considers the registration authority reasonably requires to enable the registration authority to exercise any function of the registration authority arising in connection with the vesting of any asset, right or liability, or the variation of any terms and conditions of an instrument or contract, by operation of this Schedule.
- (2) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (3) A certificate under this clause is a dealing for the purposes of the *Real Property Act 1900* to the extent that any recording in the Register under that Act is permitted to be made on the basis of the certificate because of the operation of this clause.
- (4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability, or the variation of any terms and conditions of an instrument or contract, by operation of this Schedule.
- (5) A document purporting to be a certificate given under this clause is, unless the

contrary is established, taken to be such a certificate and to have been properly given.

(6) Each of the Treasurer and a public sector agency that is the transferee or transferor under a vesting order is a party to the vesting order for the purposes of this clause.

(7) In this clause:

**registration authority** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities or transactions affecting assets, rights or liabilities.

## 10 Public sector accounting policies

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities comprising electricity network assets for the purposes of an authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

## Schedule 6 Ownership restrictions in floated transaction companies

### Part 1 Ownership restrictions

#### Note—

Some of the terms and expressions used in this Part are defined in Part 5 (Interpretative provisions) of this Schedule.

#### 1 Maximum ownership level

- (1) If electricity network assets are transferred pursuant to an authorised transaction by means of an initial public offer of shares in a transaction company, this Schedule applies to impose ownership restrictions in relation to the company.
- (2) The **maximum ownership level** for the purposes of this Schedule is set at the percentage prescribed by the regulations.
- (3) This Schedule ceases to apply in relation to a transaction company at the end of the period of 2 years (or such longer period as may be prescribed by the regulations as the period for which this Schedule is to apply to the company) beginning on the day on which the company is first listed on a stock exchange that is a prescribed financial market under the Corporations Act.
- (4) A regulation may not be made under this clause in respect of a company after the commencement of the period during which an offer of shares in the company (for the purposes of the initial public offer concerned) can be accepted.
- (5) If electricity network assets are transferred pursuant to an authorised transaction by means of an initial public offer of securities of or interests in a transaction entity that is not a transaction company, this Schedule applies to impose ownership restrictions



in relation to the transaction entity and so applies:

- (a) as if a reference to a company included a reference to the entity and a reference to shares in a company included a reference to securities of or interests in the entity, and
- (b) with such modifications as may be prescribed by the regulations.

## **2 Meaning of “prohibited ownership situation”**

For the purposes of this Schedule, a **prohibited ownership situation** exists in relation to a floated transaction company and in relation to a particular person if the person holds a particular type of stake in the company of more than the maximum ownership level set by clause 1.

### **Note—**

A person’s **stake** includes the interests of the person’s associates—see Part 5 of this Schedule.

## **3 Acquisition of shares that result in prohibited ownership situation**

A person, or 2 or more persons under an arrangement, who acquire shares in a floated transaction company are each guilty of an offence if:

- (a) the acquisition has any of the following results:
  - (i) a prohibited ownership situation comes into existence in relation to the company and in relation to a person,
  - (ii) if a prohibited ownership situation already exists in relation to the company and in relation to a person—there is an increase in any type of stake held by the person in the company, and
- (b) the person or persons under the arrangement knew, or were reckless as to whether, the acquisition would have that result.

Maximum penalty: 400 penalty units.

## **4 Floated transaction company to take reasonable steps to prevent contraventions of ownership restrictions**

- (1) A floated transaction company must take all reasonable steps to ensure that a prohibited ownership situation does not exist in relation to the company.
- (2) A floated transaction company is guilty of an offence if it engages in conduct that contravenes a requirement of subclause (1).

Maximum penalty: 500 penalty units.

### **Note—**

If a floated transaction company contravenes this subclause, clause 22 operates to make each person who

is a director of the company or who is concerned in the management of the company liable for the offence if the person knowingly authorised or permitted the contravention.

(3) An offence under subclause (2) is a strict liability offence.

## **5 Contravention of Part does not affect validity of acts**

An act is not invalidated only because it constitutes an offence under this Part.

## **Part 2 Location of Member Registers of floated transaction companies**

### **6 Member Register to be within the State**

A floated transaction company must not, without the written approval of the Treasurer:

- (a) change the location where any Member Register of the company is kept to a location that is outside of the territorial limits of the State, or
- (b) keep any Member Register of the company at a location that is outside of the territorial limits of the State.

Maximum penalty: 500 penalty units.

#### **Note—**

If a floated transaction company contravenes this clause, clause 22 operates to make each person who is a director of the company or who is concerned in the management of the company liable for the offence if the person knowingly authorised or permitted the contravention.

## **Part 3 Records and information**

### **7 Record-keeping and information giving**

- (1) The regulations may make provision for or with respect to requiring a person:
  - (a) to keep and retain records, where the records are relevant to an ownership matter, and
  - (b) to give information to the Treasurer or a floated transaction company that is relevant to:
    - (i) an ownership matter, or
    - (ii) ascertaining whether Part 1 of this Schedule has been or is being complied with.
- (2) The regulations may provide that information given in accordance with a requirement of regulations made for the purposes of subclause (1) (b) must be verified by statutory declaration.
- (3) A person is not excused from giving information in accordance with a requirement of

regulations made for the purposes of subclause (1) (b) on the ground that the information may tend to incriminate the person or expose the person to a penalty.

- (4) However, any information obtained from a natural person in compliance with a requirement of regulations made for the purposes of subclause (1) (b) is not admissible against the person in criminal proceedings other than proceedings for an offence under this clause.
- (5) A person must keep records, and provide information, in compliance with any requirements of regulations made for the purposes of subclause (1) (b).

Maximum penalty: 50 penalty units.

- (6) In this clause:

**control** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**ownership matter** means any of the following matters:

- (a) whether a person holds a particular type of stake in a floated transaction company and, if so, the level of that stake,
- (b) whether the directors of a floated transaction company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates),
- (c) whether a person (either alone or together with associates) is in a position to exercise control over a floated transaction company.

## **Part 4 Remedial orders**

### **8 Applications to Supreme Court for remedial orders**

- (1) If a prohibited ownership situation exists in relation to a floated transaction company, the company or the Treasurer (or both) may apply to the Supreme Court to make such orders as the Court considers appropriate for the purpose of ensuring that the situation ceases to exist.
- (2) Without limiting subclause (1), the Court may make any of the following orders on any such application:
- (a) an order directing the disposal of shares,
- (b) an order restraining the exercise of any rights attached to shares,
- (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person,

(d) an order that any exercise of rights attached to shares be disregarded.

- (3) The Supreme Court may, before making an order under this clause, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (4) A floated transaction company and its directors and secretary are specifically authorised and required to ensure that any rights attached to shares are not exercised in contravention of an order made under this clause (including ensuring that meetings of the company are conducted in accordance with requirements of any such order).

## 9 Injunctions

If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Schedule, the Supreme Court may, on the application of a floated transaction company or the Treasurer (or both), grant an injunction:

- (a) restraining the person from engaging in the conduct, or
- (b) requiring the person to do something.

## Part 5 Interpretative provisions

### 10 Definitions

In this Schedule:

**acquisition** includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law, or
- (b) an acquisition by way of enforcement of a loan security.

**aggregate substantial interest**, in relation to a trust estate, has the meaning given by clause 20.

**arrangement**—see clause 11.

**associate**—see clause 12.

**company** means a body corporate.

**constituent document**, in relation to a company, means:

- (a) the constitution of the company, or
- (b) any rules or other documents constituting the company or governing its activities.

**contravene** includes fail to comply with.

**direct control interest**—see clause 19.

**director** includes any person occupying the position of director of a company, by whatever name called.

**discretionary trust** means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion, and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
  - (i) the identities of those who may benefit under the trust,
  - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

**engage in conduct** means do an act or omit to do an act.

**floated transaction company** means a transaction company in relation to which the ownership restrictions set out in this Schedule apply.

**increase**, in relation to a stake in a company, includes an increase from a starting point of nil.

**interest in a share**—see clause 15.

**lender**, in relation to a loan security, means the person who is entitled to enforce the security.

**lending money** includes providing non equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

**loan security** means a security held solely for the purposes of a moneylending agreement.

**Member Register** of a company means a register of members of the company kept under Chapter 2C of the Corporations Act.

**moneylending agreement** means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

**officer**, in relation to a company, includes:

- (a) a director, secretary or employee of the company, or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument, or
- (c) a liquidator of the company appointed in a voluntary winding up.

**power to appoint a director of a company**—see clause 13.

**relative**, in relation to a person, means:

- (a) the person's spouse or the person's de facto partner (being the other party to a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the person), or
- (b) a parent or remoter lineal ancestor of the person, or
- (c) a child or remoter issue of the person, or
- (d) a sibling of the person.

**share**, in relation to a company, means a share in the share capital of the company, and includes an interest in such a share.

**stake**—see clause 18.

**substantial interest**—see clause 20.

**voting power**—see clause 17.

## **11 Entering into an agreement or arrangement**

- (1) For the purposes of this Schedule, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in this Schedule to **entering into an agreement or arrangement** includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in this Schedule to **entering into an arrangement** is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
  - (a) entering into an agreement, or
  - (b) creating a trust, whether express or implied, or
  - (c) entering into a transaction,and a reference in this Schedule to an arrangement is to be construed accordingly.
- (4) A reference in this Schedule to an **arrangement** does not include a reference to a moneylending agreement.

## 12 Associates

- (1) For the purposes of this Schedule, the following persons are, subject to subclause (3), **associates** of a person:
- (a) a relative of the person,
  - (b) a partner of the person,
  - (c) a company of which the person is an officer,
  - (d) if the person is a company—an officer of the company,
  - (e) an employee or employer of the person,
  - (f) an officer of a company of which the person is an officer,
  - (g) an employee of an individual of whom the person is an employee,
  - (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts,
  - (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person,
  - (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company,
  - (k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15 percent,
  - (l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15 percent,
  - (m) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (**the first person**) enters, or proposes to enter, into an arrangement with another person (**the second person**) that relates to any of the following matters:
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company,

- (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company,
- (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together,

the second person is taken to be an associate of the first person for the purposes of the application of a provision of this Schedule in relation to the matter concerned.

- (3) The regulations may provide that, for the purposes of this Schedule, a specified person (or class of persons) is not an associate of another specified person (or class of persons).

### **13 Power to appoint director**

- (1) A reference in this Schedule to a **power to appoint a director** includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of this Schedule, a person is taken to have the power to appoint a director if:
  - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment, or
  - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first mentioned person.

### **14 Meaning of entitled to acquire**

For the purposes of this Schedule, a person is **entitled to acquire** anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

### **15 Meaning of interest in a share**

- (1) Subject to this clause, a person holds an **interest in a share** if the person has any legal or equitable interest in the share.
- (2) Without limiting subclause (1), a person is taken to hold an interest in a share if:
  - (a) the person has entered into a contract to purchase the share, or
  - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or



- (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or
  - (d) the person is otherwise entitled to acquire the share or an interest in the share, or
  - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.
- (4) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (5) An interest in a share is not to be disregarded only because of:
- (a) its remoteness, or
  - (b) the manner in which it arose, or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

## **16 Certain interests and stakes to be disregarded**

- (1) For the purposes of this Schedule, the following interests and stakes must be disregarded:
- (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security,
  - (b) an interest in a share held by a person, being an interest held by the person because the person holds an office (or an office belonging to a class of offices) prescribed by the regulations,
  - (c) an interest of a prescribed kind in a share, being an interest held by such persons (or persons belonging to a class of persons) as are prescribed by the regulations,
  - (d) an interest in a share held by a public sector agency,
  - (e) a stake of a kind prescribed by the regulations in a company, being a stake held by a person (or person belonging to a class of persons) prescribed by the regulations.
- (2) For the purposes of this Schedule, if:

- (a) a person holds an interest in a share as a loan security, and
- (b) the ordinary business of the person includes the lending of money, and
- (c) the loan security is enforced, and
- (d) as a result of the enforcement of the loan security, the person becomes the holder of the share, and
- (e) the person holds the share for a continuous period (***the holding period***) beginning at the time when the security was enforced,

the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:

- (f) the period of 90 days beginning when the security was enforced,
- (g) if the Treasurer, by written notice given to the person, allows a longer period—the end of that longer period.

(3) For the purposes of this Schedule, if:

- (a) a person acquires an interest in a share in a floated transaction company, and
- (b) the interest was acquired in the person's capacity as an underwriter or a sub-underwriter in connection with the transfer or issue of shares in the company by or on behalf of a public sector agency or the company (whether under an initial public offer of the company or otherwise),

the person's interest in the share must be disregarded at all times during whichever of the following periods is applicable:

- (c) the period of 90 days beginning when the person acquired the interest,
- (d) if the Treasurer, by written notice given to the person, allows a longer period—that longer period.

## **17 Voting power**

- (1) A reference in this Schedule to the ***voting power*** in a company is a reference to the total rights of shareholders to vote, or participate in any decision making, concerning any of the following:
  - (a) the making of distributions of capital or profits of the company to its shareholders,
  - (b) the constituent document of the company,
  - (c) any variation of the share capital of the company.
- (2) A reference in this Schedule to ***control of the voting power*** in a company is a

reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:

- (a) whether or not having legal or equitable force, and
- (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision making differs as between different types of voting or decision making, the highest of those percentages applies for the purposes of this clause.

(4) If a company:

- (a) is limited both by shares and by guarantee, or
- (b) does not have a share capital,

this clause has effect as if the members or policy holders of the company were shareholders in the company.

## **18 Stake in a company**

(1) A particular type of **stake** that a person holds in a company at a particular time is the aggregate of:

- (a) the direct control interests in the company of that type that the person holds at that time, and
- (b) the direct control interests in the company of that type held at that time by associates of the person.

(2) In calculating the stake that a person holds in a company, a direct control interest held because of clause 19 (5) is not to be counted under subclause (1) (a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subclause (1) (b).

## **19 Direct control interests in a company**

(1) A person holds a **direct control interest** in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.

(2) A person also holds a **direct control interest** in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.

(3) A person also holds a **direct control interest** in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders

on winding up.

(4) A person also holds a **direct control interest** in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding up.

(5) If:

(a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subclause) in a company (**the first level company**), and

(b) the first level company holds the same type of direct control interest in another company (**the second level company**),

the person is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

$\text{first level percentage} \times \text{second level percentage}$

where:

**first level percentage** means the percentage of the direct control interest held by the person in the first level company.

**second level percentage** means the percentage of the direct control interest held by the first level company in the second level company.

(6) The regulations may make provision for or with respect to the application of this clause to interests in an entity other than a company.

## 20 Substantial interests in trust estates

(1) For the purposes of this Schedule:

(a) a person is taken to hold a **substantial interest** in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15 percent of the corpus or income of the trust estate, and

(b) 2 or more persons are taken to hold an **aggregate substantial interest** in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40 percent of the corpus or income of the trust estate.

(2) For the purposes of subclause (1), if, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to

distribute to that beneficiary.

## **Part 6 Miscellaneous**

### **21 Displacement of Corporations legislation**

The provisions of this Schedule are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

### **22 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Schedule, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subclause (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this clause affects any liability imposed on a corporation for an offence committed by the corporation under this Schedule.

### **23 Proceedings for offences**

- (1) Proceedings for an offence under this Schedule may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence to which this clause applies are brought in the Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any other provision of this Schedule, \$50,000 or the maximum penalty provided by this Schedule, whichever is the lesser.
- (3) If proceedings for an offence to which this clause applies are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Schedule in respect of the offence.

## **Schedule 7 Savings, transitional and other provisions**

### **Part 1 General**

#### **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 date.

- (3) Any such provision may, if the regulations so provide, have effect notwithstanding any other provision of this Schedule.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than a public sector agency), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than a public sector agency) in respect of anything done or omitted to be done before the date of its publication.

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

### **Division 1 Electricity network SOC**

#### **2 References to electricity network SOC**

The regulations may provide that a reference in a specified provision of an Act or an instrument under an Act to an electricity network SOC is to be read as a reference to a specified public sector agency or authorised network operator.

#### **3 Half-yearly reports**

The Treasurer may by direction in writing to an electricity network SOC vary the information required to be included in a report of the operations of the SOC under section 23 of the *State Owned Corporations Act 1989*.

#### **4 Cancellation of licences**

A distributor's licence held (including deemed to be held) by an electricity network SOC under the *Electricity Supply Act 1995* is cancelled on completion of an authorised transaction under this Act that results in the network infrastructure assets of the SOC being leased to a private sector entity.

#### **5 Dissolution of electricity network SOC**

- (1) The Governor may, by proclamation, amend Part 1A or 2 of Schedule 1 to the *Energy Services Corporations Act 1995* by omitting the corporate name of an electricity network SOC, other than Essential Energy.
- (2) On the day on which a proclamation under this clause takes effect:
  - (a) the electricity network SOC whose corporate name is omitted by the proclamation is dissolved, and

- (b) the *State Owned Corporations Act 1989* is amended by omitting that name from Schedule 5, and
  - (c) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of the corporation cease to be members of the corporation, and
  - (d) the board of directors of the corporation is dissolved and each member (including any acting member) of the board ceases to hold office as such, and
  - (e) any person who holds a statutory office of the corporation ceases to hold that office, and
  - (f) any person who ceases to be a member of the corporation or to hold an office because of the operation of this clause is not entitled to any compensation for the loss of that membership or office.
- (3) Section 15 (Transfer of staff, assets, rights and liabilities of dissolved energy services corporations) of the *Energy Services Corporations Act 1995* applies in respect of the dissolution of an electricity network SOC by proclamation under this clause in the same way as it applies to the dissolution of an energy services corporation by that Act.
- (4) This clause does not operate to dissolve the joint board of energy distributors provided for by section 9A of the *Energy Services Corporations Act 1995* or result in the members of that board ceasing to hold office.

## **6 Conversion of electricity network SOC into Ministerial Holding Corporation**

- (1) The Treasurer may by order published in the Gazette convert an electricity network SOC into a corporation constituted as a Ministerial Holding Corporation for the purposes of this Act with the corporate name specified in the order.

### **Editorial note—**

For orders published under this subclause, see Gazettes No 114 of 16.12.2015, p 4085; No 103 of 1.12.2016, p 3367 and No 62 of 14.6.2017, p 2502.

- (2) The Ministerial Holding Corporation so constituted is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the electricity network SOC concerned and a reference in this Act to the electricity network SOC includes a reference to the Ministerial Holding Corporation.
- (3) Division 2 applies to a Ministerial Holding Corporation into which an electricity network SOC is converted under this clause in the same way as that Division applies to a Ministerial Holding Corporation established under that Division and so applies as if the functions of the Ministerial Holding Corporation included the function of holding, on behalf of the Crown, assets, rights and liabilities vested in it.
- (4) The following provisions are taken to have had effect immediately before an electricity network SOC is converted into a Ministerial Holding Corporation under this clause:

- (a) the SOC ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
  - (b) the SOC ceases to be an energy services corporation under the *Energy Services Corporations Act 1995* unless the regulations provide otherwise,
  - (c) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of the SOC cease to be members of the corporation,
  - (d) the board of directors of the SOC is dissolved and each member (including any acting member) of the board ceases to hold office as such,
  - (e) any person who holds a statutory office of the SOC ceases to hold that office,
  - (f) any person who ceases to be a member of the SOC or to hold an office because of the operation of this clause is not entitled to any compensation for the loss of that membership or office.
- (5) This clause does not operate to dissolve the joint board of energy distributors provided for by section 9A of the *Energy Services Corporations Act 1995* or result in the members of that board ceasing to hold office.
- (6) When an electricity network SOC is converted into a Ministerial Holding Corporation under this clause, section 43A (General audit of former statutory bodies) of the *Public Finance and Audit Act 1983* applies as if the SOC had been abolished.

## 7 Networks NSW

- (1) The joint board of energy distributors provided for by section 9A of the *Energy Services Corporations Act 1995* ceases to be a joint board for the purposes of that section on a day notified to the board by the Treasurer by order in writing and becomes instead the board of Essential Energy.
- (2) Sections 9A and 9B of the *Energy Services Corporations Act 1995* cease to operate on and from the day notified under this clause.

## Division 2 Ministerial Holding Corporations

### 8 Definitions

In this Division:

**authorised transaction Act** means each of the following Acts:

this Act

*Electricity Generator Assets (Authorised Transactions) Act 2012*

*NSW Lotteries (Authorised Transaction) Act 2009*



*Ports Assets (Authorised Transactions) Act 2012*

*Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010*

any other Act prescribed by the regulations.

**existing MHC** means each of the following corporations:

Electricity Assets Ministerial Holding Corporation established by the *Electricity Generator Assets (Authorised Transactions) Act 2012*

Lotteries Assets Ministerial Holding Corporation established by the *NSW Lotteries (Authorised Transaction) Act 2009*

Ports Assets Ministerial Holding Corporation established by the *Ports Assets (Authorised Transactions) Act 2012*

Waste Assets Management Corporation established by the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010*.

**MHC** means a Ministerial Holding Corporation established under this Division.

## **9 Establishment of Ministerial Holding Corporations**

- (1) The Treasurer may by order published in the Gazette constitute a corporation as a Ministerial Holding Corporation (an **MHC**) for the purposes of this Act with the corporate name specified in the order.
- (2) More than one MHC may be established under this clause.
- (3) The affairs of an MHC are to be managed by the Treasurer who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.
- (4) Any act, matter or thing done in the name of, or on behalf of, an MHC by the Treasurer or a Minister authorised by the Treasurer, or with the authority of the Treasurer or any such Minister, is taken to have been done by the MHC.

## **10 Functions of Ministerial Holding Corporations**

- (1) An MHC has the functions conferred or imposed on it by or under this or any other Act.
- (2) The functions of an MHC are:
  - (a) to hold, on behalf of the Crown, assets, rights and liabilities acquired by it or transferred to it by or under an authorised transaction Act, and
  - (b) to carry on any activities or business that relate to any assets, rights and liabilities held by it, including demanding, collecting and receiving charges, levies, rates and fees, and

- (c) such other functions for the purposes of an authorised transaction under an authorised transaction Act as may be prescribed by the regulations.

### **11 Special Deposit Account funds for MHCs**

- (1) A fund (an **MHC fund**) is to be established in the Special Deposits Account for each MHC.
- (2) Each MHC fund is to be administered by the Treasurer.
- (3) There is payable into an MHC fund all money received by the MHC in the exercise of its functions under this or any other Act.
- (4) There is payable from an MHC fund such amounts as the Treasurer directs from time to time for:
  - (a) payment of expenditure by the MHC in the exercise of its functions, or
  - (b) payment of administrative expenses incurred in relation to the fund, or
  - (c) payment to the Consolidated Fund.
- (5) The Treasurer may invest money in an MHC fund in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

### **12 Transfer of assets, rights and liabilities**

Assets, rights and liabilities held by an MHC or existing MHC may be transferred by the MHC or existing MHC to any other public sector agency whether or not the transfer is for the purposes of an authorised transaction under an authorised transaction Act.

### **13 Audit**

Part 3 (Audit) of the *Public Finance and Audit Act 1983* does not apply to an MHC in respect of a financial year of the MHC in which the MHC holds no assets, rights or liabilities.

### **14 Change of name**

The Treasurer may by order published in the Gazette change the name of an MHC or existing MHC.

### **15 Dissolution**

The regulations may dissolve an MHC or existing MHC.

## Division 3 Transacted distribution and transmission systems

### 16 Functions as determining authority under Part 5 of Planning Act

**Note—**

This clause provides transitional arrangements for the exercise of environmental assessment functions commenced to be exercised before the appropriate regulations commenced to apply to those functions. It does not relate to environmental assessment functions commenced to be exercised after the appropriate regulations commenced to apply to those functions.

- (1) An authorised network operator must exercise its environmental assessment functions in respect of an activity that were commenced to be exercised before the appropriate regulations commenced to apply to the authorised network operator (including functions commenced to be exercised by the predecessor of the authorised network operator):
  - (a) in a manner with which the Minister for Planning concurs, or
  - (b) in compliance with appropriate regulations for the activity.
- (2) For the purposes of this clause, environmental assessment functions exercised in respect of an activity by the predecessor of an authorised network operator are taken to have been exercised by the authorised network operator.

- (3) In this clause:

**appropriate regulations** for an activity means:

- (a) regulations under section 111A of the Planning Act that apply to an activity of an authorised network operator as a prescribed determining authority (unless paragraph (b) applies), or
- (b) if the regulations referred to in paragraph (a) provide for the approval of a code in respect of the activity—the code approved under those regulations.

**environmental assessment functions** means functions as a prescribed determining authority under section 111 of the Planning Act.

**Planning Act** means the [Environmental Planning and Assessment Act 1979](#).

**predecessor** of an authorised network operator means the electricity network SOC that was the network operator of the distribution or transmission system concerned before the authorised network operator became the network operator.

**prescribed determining authority** means a prescribed determining authority under section 111A of the Planning Act.

## Schedule 8 (Repealed)