

ELECTRICITY ACT 1996

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[New Part 3 and Appendix]

[New Parts 1, 8 and Appendix]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]

South Australia

ELECTRICITY ACT 1996

An Act to regulate the electricity supply industry; to make provision for safety and technical standards for electrical installations; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 June 2000**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

ELECTRICITY ACT 1996

being

Electricity Act 1996 No. 96 of 1996
[Assented to 19 December 1996]¹

as amended by

Electricity (Vegetation Clearance) Amendment Act 1997 No. 62 of 1997 [Assented to 7 August 1997]²

Electricity (Miscellaneous) Amendment Act 1997 No. 71 of 1997 [Assented to 18 December 1997]³

Electricity (Miscellaneous) Amendment Act 1999 No. 60 of 1999 [Assented to 19 August 1999]⁴

Statutes Amendment (Electricity) Act 1999 No. 74 of 1999 [Assented to 25 November 1999]⁵

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]⁶

¹ Came into operation 1 January 1997: *Gaz.* 19 December 1996, p. 1922.

² Came into operation 1 January 1998: *Gaz.* 27 November 1997, p. 1426.

³ Came into operation 5 March 1998: *Gaz.* 5 March 1998 p. 1062.

⁴ Came into operation (except ss. 3, 4(a)-(d), (f)-(l), 5-14, 17-74 and Sched.) 19 August 1999: *Gaz.* 19 August 1999, p. 882; remainder of Act came into operation 11 October 1999: *Gaz.* 30 September 1999, p. 1341.

⁵ Part 2 (s. 4) came into operation 11 October 1999: s. 2(3).

⁶ **Schedule 1 (cl. 12) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Electricity Act 1996*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects

3. The objects of this Act are—

- (a) to promote efficiency and competition in the electricity supply industry; and
- (b) to promote the establishment and maintenance of a safe and efficient system of electricity generation, transmission, distribution and supply; and
- (c) to establish and enforce proper standards of safety, reliability and quality in the electricity supply industry; and
- (d) to establish and enforce proper safety and technical standards for electrical installations; and
- (e) to protect the interests of consumers of electricity.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"**authorised officer**" means a person appointed under Part 7 as an authorised officer;

"**bush fire**" means a fire that originates in, or spreads through, forest, scrub, grass or other vegetation;

"**condition**" includes a limitation or restriction;

"**contestable customer**" means a customer classified by regulation as a contestable customer;

"**contravention**" includes a failure to comply;

"**council**" means a council within the meaning of the *Local Government Act 1934* and includes the Outback Areas Community Development Trust;

"**council officer**" means a person authorised by a council to exercise powers conferred on a council officer under this Act;

"**cross-ownership rules**" means the provisions set out in clause 2 of Schedule 1;

"**customer**" means a person who has a supply of electricity available from a transmission or distribution network for consumption by that person and includes—

- (a) the occupier for the time being of a place to which electricity is supplied; and
- (b) where the context requires, a person seeking an electricity supply; and
- (c) a person of a class declared by regulation to be customers;

"**disconnect**" electricity supply includes a procedure to interrupt or discontinue the electricity supply to a customer;

"**electrical installation**" means a set of wires and associated fittings, equipment and accessories installed in a place for the conveyance, control, measurement or use of electricity that is, or is to be, or has been, supplied for consumption in the place, but does not include—

- (a) electricity infrastructure owned or operated by an electricity entity; or
- (b) any wires, fittings, equipment or accessories connected to and beyond any electrical outlet at which fixed wiring terminates (other than any such outlet used to connect sections of fixed wiring);

"**electricity entity**" means a person licensed under Part 3 to carry on operations in the electricity supply industry and includes (where the context requires) a person who has been licensed to carry on operations in the electricity supply industry under that Part whose licence has been suspended or cancelled or has expired;

"**electricity infrastructure**" means—

- (a) electricity generating plant; and
- (b) powerlines; and
- (c) substations for converting, transforming or controlling electricity; and
- (d) equipment for metering, monitoring or controlling electricity; and
- (e) any wires, equipment or other things (including tunnels and cavities) used for, or in connection with, the generation, transmission, distribution or supply of electricity;

"**electricity officer**" means a person appointed under Part 4 as an electricity officer;

"**electricity supply industry**" means the industry involved in the generation, transmission, distribution, supply or sale of electricity or other operations of a kind prescribed by regulation;

"**generation**" of electricity means the operation of any kind of electricity generating plant and all incidental and related operations, but does not include anything declared by regulation not to be generation of electricity;

"**Industry Regulator**" means the South Australian Independent Industry Regulator established under the *Independent Industry Regulator Act 1999*;

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"**land**" includes—

- (a) an estate or interest in land (including an easement); or
- (b) a right or power over or in respect of land;

"**National Electricity Code**" means the Code as defined in the *National Electricity (South Australia) Law*;

"**National Electricity (South Australia) Law**"—see the Schedule of the *National Electricity (South Australia) Act 1996*;

"**naturally occurring vegetation**" means vegetation that has not been planted or nurtured by any person;

"**network services**" means—

- (a) the transmission and distribution of electricity between electricity entities and from electricity entities to customers (including connection to a transmission or distribution network); and
- (b) controlling and regulating the quality of electricity;

"**non-contestable customer**" means any customer other than a contestable customer;

"**nurture**", in relation to vegetation, means actively assist the growth of the vegetation;

"**occupier**" of land or a place means a person who has or is entitled to possession or control of the land or place;

"**operations**" includes activities;

"**powerline**" means—

- (a) a set of cables for the transmission or distribution of electricity and their supporting or protective structures, conduits and equipment; and
- (b) associated equipment for the transmission or distribution of electricity,

but does not include a telecommunications cable or associated equipment;

"**power system**" means a system for the generation, transmission and distribution of electricity or a part of such a system;

"**principles of vegetation clearance**" means the regulations dealing with the clearance of vegetation from, or the planting or nurturing of vegetation near, public and private powerlines;

"**private land**" means—

- (a) land alienated or contracted to be alienated from the Crown in fee simple; or
- (b) land occupied under a lease or licence from the Crown; or

- (c) land dedicated to a particular purpose and placed under the care, control and management of any person (whether or not that person is a Minister, agency or instrumentality of the Crown),

except any such land vested in, or under the care, control or management of, a council and dedicated to, or held for, a public purpose;

"private powerline" means a powerline—

- (a) designed to convey electricity at a prescribed voltage or less; and
- (b) situated on, above or under private land for the purpose only of supplying electricity to some point on that land;

"public powerline" means any powerline except a private powerline;

"retailing" of electricity means the sale of electricity to customers, but does not include an activity declared by regulation not to be retailing of electricity;

"supply" of electricity means the delivery of electricity to a customer;

"system controller" means a person licensed under Part 3 to exercise system control over a power system;

"Technical Regulator" means the person holding the office of Technical Regulator under Part 2;

"telecommunications" means the transmission of telephonic, radio, computer, television or other signals;

"transmission or distribution network" means the whole or a part of a system for the transmission or distribution of electricity, but does not include anything declared by regulation not to be a transmission or distribution network or part of a transmission or distribution network;

"vegetation clearance scheme" means a vegetation clearance scheme agreed or determined under Part 5.

(2) A reference in this Act to a powerline, a network, infrastructure or other property of an entity includes a reference to a powerline, a network, infrastructure or other property that is not owned by the entity but is operated by the entity.

Crown bound

5. (1) This Act binds the Crown.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

(3) For the purposes of this section, a reference to the Crown extends—

- (a) not only to the Crown in right of this State but also (so far as the legislative power of the State permits) to the Crown in any other capacity; and

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- (b) to an instrumentality of the Crown, and to an officer or employee of the Crown and any contractor or other person who carries out functions on behalf of the Crown.

Other statutory requirements not affected

6. This Act is in addition to and does not derogate from the provisions of the *National Electricity (South Australia) Act 1996*, the *Environment Protection Act 1993* or any other Act.

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**PART 2
ADMINISTRATION**

DIVISION 1—INDUSTRY REGULATOR

Functions and powers of Industry Regulator

6A. (1) The Industry Regulator has (in addition to the Industry Regulator's functions and powers under the *Independent Industry Regulator Act 1999*)—

- (a) the licensing, price regulation and other functions and powers conferred by this Act; and
- (b) if the Industry Regulator is appointed under the National Electricity Code as the body to perform or exercise certain functions and powers—those functions and powers; and
- (c) any other functions and powers conferred by regulation under this Act.

(2) If electricity entities are required by licence condition to participate in an ombudsman scheme, the Industry Regulator must, in performing licensing functions under this Act, liaise with the ombudsman appointed under the scheme.

(3) Without limiting subsection (1), the Governor may, by regulation, confer functions and powers on the Industry Regulator, or vary the functions and powers of the Industry Regulator, as the Governor considers necessary or expedient for the purposes of the *National Electricity (South Australia) Law* and the National Electricity Code.

(4) In performing functions under this Act, the Industry Regulator must (in addition to having regard to factors specified in this Act or the *Independent Industry Regulator Act 1999*) have regard to the provisions of the National Electricity Code and the need to avoid duplication of, or inconsistency with, regulatory requirements under the Code.

DIVISION 2—ELECTRICITY SUPPLY INDUSTRY PLANNING COUNCIL

Interpretation

6B. In this Division—

"**board**" means the board of directors established as the governing body of the Planning Council;

"**director**" means a member of the board of the Planning Council;

"**independent director**" means a director appointed under section 6G(4);

"**Planning Council**" means the *Electricity Supply Industry Planning Council* established under this Division.

Establishment of Electricity Supply Industry Planning Council

6C. (1) The *Electricity Supply Industry Planning Council* is established.

(2) The Planning Council—

- (a) is a body corporate; and

- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) has the functions and powers assigned or conferred by or under this or any other Act.

Application of Public Corporations Act 1993

6D. The Planning Council is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply subject to any exclusions or modifications prescribed by regulation.

Functions of Electricity Supply Industry Planning Council

6E. (1) The Planning Council has the following functions:

- (a) to develop overall electricity load forecasts in consultation with participants in the electricity supply industry and report the forecasts to the Minister and the Industry Regulator;
- (b) to review and report to the Minister and the Industry Regulator on the performance of the South Australian power system;
- (c) to advise the Minister and the Industry Regulator on matters relating to the future capacity and reliability of the South Australian power system;
- (d) to prepare or review proposals for significant projects relating to the transmission network in South Australia (taking into account possible alternatives to those projects such as the augmentation or extension of a distribution network, the construction or augmentation of the capacity of a generating plant and measures for reducing demand for electricity from the transmission network) and to make reports and recommendations to the Minister and the Industry Regulator in relation to such proposals;
- (e) to advise the Minister and the Industry Regulator, either on its own initiative or at the request of the Minister or the Industry Regulator, on other electricity supply industry and market policy matters;
- (f) to submit to the Minister and the Industry Regulator, and publish, an annual review of the performance, future capacity and reliability of the South Australian power system;
- (g) if the Planning Council is appointed under the National Electricity Code as the body to carry out certain functions—to carry out those functions;
- (h) to publish from time to time such information relating to the matters referred to above as the Planning Council considers appropriate;
- (i) to perform any other function prescribed by regulation or assigned by or under any other Act.

(2) The Planning Council has all the powers of a natural person together with powers conferred on it under this or any other Act.

(3) The Planning Council may perform its functions and exercise its powers within or outside the State.

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Common seal and execution of documents

6F. (1) The common seal of the Planning Council must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The Planning Council may, by instrument under the common seal of the Planning Council, authorise a director or employee of the Planning Council (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Planning Council subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Planning Council.

(4) A document is duly executed by the Planning Council if—

- (a) the common seal of the Planning Council is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Planning Council by a person or persons in accordance with an authority conferred under this section.

Establishment of board

6G. (1) A board of directors is established as the governing body of the Planning Council.

(2) The board is to consist of five members appointed by the Governor.

(3) The members must be persons who have, in the Governor's opinion, appropriate qualifications or expertise in relation to one or more of the following:

- (a) power system planning, design, development or operation;
- (b) electricity markets;
- (c) financial management.

(4) Two of the members must be persons who are, in the opinion of the Governor, independent of the holders of licences authorising the generation of electricity or the operation of transmission or distribution networks.

(5) The Treasurer will consult with—

- (a) the holders of licences authorising the generation of electricity in respect of the selection of a person for appointment as one of the remaining three members;
- (b) the holders of licences authorising the operation of transmission networks in respect of the selection of a person for appointment as another of the remaining three members;
- (c) the holders of licences authorising the operation of distribution networks in respect of the selection of a person for appointment as the other of the remaining three members.

(6) At least one member of the board must be a woman and at least one must be a man.

(7) One of the independent directors will be appointed by the Governor to chair meetings of the board.

(8) On the office of a director becoming vacant, a person may be appointed under this section to the vacant office.

(9) The Governor may appoint deputies of directors, and the provisions of subsections (3), (4) and (5) apply in relation to the appointment of deputies in the same way as to directors.

(10) A deputy of a director is, in the absence of that director, to be taken to have the powers, functions and duties of a director in the same way as if the deputy had been appointed to be a director.

Conditions of membership

6H. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove a director from office—

- (a) for misconduct (including non-compliance with a duty imposed under the *Public Corporations Act 1993*); or
- (b) for failure or incapacity to carry out the duties of office satisfactorily; or
- (c) if irregularities have occurred in the conduct of the Planning Council's affairs or the board has failed to carry out its functions satisfactorily and the board's membership should, in the opinion of the Governor, be reconstituted for that reason; or
- (d) in the case of an independent director—if the director has, in the opinion of the Governor, ceased to be so independent.

(3) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (f) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

6I. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

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Remuneration

6J. A director is entitled to be paid from the funds of the Planning Council such remuneration, allowances and expenses as may be determined by the Governor.

Board proceedings

6K. (1) A quorum of the board consists of three directors at least one of whom must be an independent director or a deputy of an independent director.

(2) The director appointed to chair meetings of the board will preside at each meeting of the board at which the director is present.

(3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:

- (a) if the deputy of that director is present at the meeting—the deputy will preside at the meeting;
- (b) if the deputy of that director is not present at the meeting—the other independent director will preside at the meeting;
- (c) if that other independent director is not present at the meeting—the deputy of that other independent director will preside at the meeting.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
- (b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
- (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the board may determine its own procedures.

Staff of Planning Council

6L. (1) The Minister may appoint a chief executive of the Planning Council on terms and conditions fixed by the Minister.

(2) The Planning Council may appoint, on terms and conditions fixed by the Planning Council, such employees as it thinks necessary or desirable.

Consultants

6M. The Planning Council may engage consultants on terms and conditions considered appropriate by the Planning Council.

DIVISION 3—TECHNICAL REGULATOR

Technical Regulator

7. (1) There is to be a *Technical Regulator*.

(2) The Technical Regulator is to be appointed by the Minister.

(3) The office of Technical Regulator may be held in conjunction with a position in the Public Service.

(4) The Minister may assign an employee in the Public Service to act as the Technical Regulator—

(a) during a vacancy in the office of Technical Regulator; or

(b) when the Technical Regulator is absent from, or unable to discharge, official duties.

Functions of Technical Regulator

8. The Technical Regulator has the following functions:

(a) the monitoring and regulation of safety and technical standards in the electricity supply industry; and

(b) the monitoring and regulation of safety and technical standards with respect to electrical installations; and

(c) the administration of the provisions of this Act relating to the clearance of vegetation from powerlines; and

(d) any other functions assigned to the Technical Regulator under this Act.

Delegation

9. (1) The Technical Regulator may delegate powers to a person or body of persons that is, in the Technical Regulator's opinion, competent to exercise the relevant powers.

(2) A delegation under this section—

(a) must be in writing; and

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- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

Technical Regulator’s power to require information

10. (1) The Technical Regulator may, by written notice, require a person to give the Technical Regulator, within a time stated in the notice (which must be reasonable), information in the person’s possession that the Technical Regulator reasonably requires for the performance of the Technical Regulator’s functions under this Act.

(2) A person required to give information under this section must provide the information within the time stated in the notice.

Maximum penalty: \$20 000.

(3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

Obligation to preserve confidentiality

11. (1) The Technical Regulator must preserve the confidentiality of information gained in the course of the performance of the Technical Regulator’s functions under this Act (including information gained by an authorised officer under Part 7) that—

- (a) could affect the competitive position of an electricity entity or other person; or
- (b) is commercially sensitive for some other reason.

(1a) Subsection (1) does not apply to the disclosure of information between persons engaged in the administration of this Act (including the Industry Regulator and persons assisting the Industry Regulator).

(2) Information classified by the Technical Regulator as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

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Annual report

14. (1) The Technical Regulator must, within three months after the end of each financial year, deliver to the Minister a report on the Technical Regulator’s operations under this Act during that financial year.

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(3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

DIVISION 4—ADVISORY COMMITTEES

Consumer advisory committee

14A. The Industry Regulator must establish an advisory committee comprising representatives of consumers (the **consumer advisory committee**)—

- (a) to provide advice to the Industry Regulator in relation to the performance of the Industry Regulator's licensing functions under Part 3; and
- (b) to provide advice to the Industry Regulator, either on its own initiative or at the request of the Industry Regulator, on any other matter relating to the electricity supply industry.

Technical advisory committee

14B. The Technical Regulator must establish an advisory committee (the **technical advisory committee**) including representatives of—

- (a) electricity entities; and
- (b) contractor and employee associations involved in the electricity supply industry; and
- (c) local government,

to provide advice to the Technical Regulator, either on its own initiative or at the request of the Technical Regulator, on any matter relating to the functions of the Technical Regulator.

Other advisory committees

14C. The Minister, the Industry Regulator or the Technical Regulator may establish other advisory committees to provide advice on specified aspects of the administration of this Act.

**PART 3
ELECTRICITY SUPPLY INDUSTRY**

DIVISION A1—DECLARATION AS REGULATED INDUSTRY

Declaration as regulated industry

14D. The electricity supply industry is declared to be a regulated industry for the purposes of the *Independent Industry Regulator Act 1999*.

DIVISION 1—LICENSING OF ELECTRICITY ENTITIES

Requirement for licence

15. (1) A person must not carry on operations in the electricity supply industry for which a licence is required unless the person holds a licence under this Part authorising the relevant operations.

Maximum penalty: \$250 000.

(2) The operations in the electricity supply industry for which a licence is required are—

- (a) generation of electricity; or
- (b) operation of a transmission or distribution network; or
- (c) retailing of electricity; or
- (ca) system control over a power system; or
- (d) other operations for which a licence is required by the regulations.

(3) Nothing in this section requires NEMMCO (within the meaning of the *National Electricity (South Australia) Law*) to hold a licence.

Application for licence

16. (1) An application for the issue of a licence must—

- (a) be made to the Industry Regulator in a form approved by the Industry Regulator; and
- (b) contain the information specified in the form.

(2) The applicant must pay to the Industry Regulator an application fee fixed by the Minister of an amount that the Minister considers appropriate to meet the reasonable costs of determining the application.

(3) The Industry Regulator may, as the Industry Regulator considers appropriate, accept a single application from an applicant in respect of different operations of the applicant or operations of the applicant at different locations or may require separate applications.

(4) The applicant must give the Industry Regulator further relevant information requested by the Industry Regulator.

Consideration of application

17. (1) The Industry Regulator must consider an application for the issue of a licence and may, subject to this Division, issue, or refuse to issue, the licence.

(2) The Industry Regulator must have regard to the general factors specified in Part 2 of the *Independent Industry Regulator Act 1999* and, subject to this section, may only issue a licence if satisfied that—

- (a) the applicant is a suitable person to hold the licence; and
- (ab) the issue of the licence will not result in a breach of the cross-ownership rules; and
- (ac) the issue of the licence will not result in the same person holding both a licence authorising the operation of a distribution network and a licence authorising retailing of electricity; and
- (b) in the case of a licence authorising the generation of electricity—the generating plant (or proposed generating plant) will generate electricity of the appropriate quality for the relevant transmission or distribution network; and
- (c) in the case of a licence authorising the operation of a transmission or distribution network—the network has (or the proposed network will have) the necessary capacity for transmitting or distributing electricity safely; and
- (d) in the case of a licence authorising retailing of electricity—the applicant will be able to meet reasonably foreseeable obligations under contracts for the sale of electricity; and
- (da) in the case of a licence authorising system control over a power system—the applicant will be able to adequately exercise system control functions; and
- (e) in the case of a licence authorising other operations in the electricity supply industry for which a licence is required under the regulations—the applicant meets any special requirements imposed by the regulations for the holding of the licence; and
- (f) in the case of a licence of any class—the grant of the licence would be consistent with criteria (if any) prescribed by regulation for a licence of the relevant class.

(3) In deciding whether an applicant is a suitable person to hold a licence, the Industry Regulator may consider—

- (a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and
- (b) the financial, technical and human resources available to the applicant; and
- (c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and
- (d) other matters prescribed by regulation.

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(4) If—

- (a) a person carries on or proposes to carry on operations for which a licence is required as agent of another person; and
- (b) the agent makes application for the issue of such a licence on the agent's own behalf and on behalf of the principal; and
- (c) the Industry Regulator is satisfied that the criteria for the issue of the licence are met in relation to the agent,

the Industry Regulator may, at the Industry Regulator's discretion, dispense with the requirement that the Industry Regulator be satisfied that the criteria are met in relation to the principal and issue the licence to the agent and the principal to be held by them jointly.

(5) If an applicant for the issue of a licence is registered as a Code participant in accordance with the National Electricity Code, the Industry Regulator may, in determining the application, in order to avoid duplication of, or inconsistency with, regulatory requirements under the Code, dispense with a requirement under this section that the Industry Regulator be satisfied as to a particular matter.

Licences may be held jointly

17A. (1) A licence may be held jointly by two or more persons.

(2) If a licence is held jointly by two or more persons, those persons are jointly and severally liable to meet requirements imposed under this Act or the *Independent Industry Regulator Act 1999*.

Authority conferred by licence

18. (1) A licence authorises the person named in the licence to carry on operations in the electricity supply industry in accordance with the terms and conditions of the licence.

(2) The operations authorised by a licence need not be all of the same character or at the same location but may consist of a combination of different operations or operations at different locations.

Term of licence

19. A licence may be issued for an indefinite period or for a term specified in the licence.

Licence fees and returns

20. (1) A person is not entitled to the issue of a licence unless the person first pays to the Industry Regulator the annual licence fee, or the first instalment of the annual licence fee, as the case may require.

(2) The holder of a licence issued for a term of two years or more must—

- (a) in each year lodge with the Industry Regulator, before the date prescribed for that purpose, an annual return containing the information required by the Industry Regulator by condition of the licence or by written notice; and

- (b) in each year (other than a year in which the licence is due to expire) pay to the Industry Regulator, before the date prescribed for that purpose, the annual licence fee, or the first instalment of the annual licence fee, as the case may require.

(3) The annual licence fee for a licence is the fee fixed, from time to time, by the Minister in respect of that licence as an amount that the Minister considers to be a reasonable contribution towards administrative costs.

(4) An annual licence fee may, if the Industry Regulator so determines, be paid in equal instalments at intervals fixed by the Industry Regulator.

(5) If the holder of a licence fails to lodge the annual return or pay the annual licence fee (or an instalment of the annual licence fee) in accordance with this section, the Industry Regulator may, by written notice, require the holder to make good the default and, in addition, to pay to the Industry Regulator the amount prescribed as a penalty for default.

(6) An annual licence fee (including any instalment of an annual licence fee or any penalty for default) payable under this section is recoverable as a debt due to the Crown.

(7) In this section—

"**administrative costs**" means—

- (a) the costs of administration of this Act; and
- (b) any costs of administration of the *Independent Industry Regulator Act 1999* relating to the electricity supply industry; and
- (c) the costs of the Electricity Supply Industry Planning Council; and
- (d) other costs prescribed by regulation;

"**holder**" of a licence includes the holder of a licence that has been suspended.

Licence conditions

21. (1) The Industry Regulator must, on the issue of a licence, make the licence subject to conditions determined by the Industry Regulator—

- (a) requiring compliance with applicable codes or rules made under the *Independent Industry Regulator Act 1999* as in force from time to time; and
- (b) requiring compliance with specified technical or safety requirements or standards; and
- (c) relating to the electricity entity's financial or other capacity to continue operations under the licence; and
- (d) if the cross-ownership rules apply to the electricity entity—
 - (i) requiring the electricity entity to comply with the cross-ownership rules; and

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- (ii) requiring the electricity entity to contain provisions for the divestiture of shares for the purposes of rectifying a breach of the cross-ownership rules; and
- (iii) requiring the electricity entity to notify the Industry Regulator about any matters relevant to the enforcement of the cross-ownership rules; and
- (e) requiring the electricity entity to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Industry Regulator; and
- (f) requiring the electricity entity to notify the Industry Regulator about changes to officers and, if applicable, major shareholders of the entity; and
- (g) requiring the electricity entity to provide, in the manner and form determined by the Industry Regulator, such other information as the Industry Regulator may from time to time require; and
- (h) requiring the electricity entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by electricity entities.

(2) The Industry Regulator must, on the issue of a licence, make the licence subject to further conditions that the Industry Regulator is required by regulation to impose on the issue of such a licence.

(3) The Industry Regulator may, on the issue of a licence, make the licence subject to further conditions considered appropriate by the Industry Regulator.

(4) The Industry Regulator must provide to the Minister any information that the Minister requires for the purposes of the administration of a scheme for the provision by the State of customer concessions, or the performance of community service obligations, relating to the sale or supply of electricity.

Licences authorising generation of electricity

22. (1) The Industry Regulator must, on the issue of a licence authorising the generation of electricity, make the licence subject to conditions determined by the Industry Regulator—

- (a) requiring compliance with directions of the system controller; and
- (b) requiring the electricity entity not to do anything affecting the compatibility of the entity's electricity generating plant with any transmission or distribution network so as to prejudice public safety or the security of the power system of which the generating plant forms a part; and
- (c) requiring the electricity entity—
 - (i) to prepare and periodically revise a safety and technical management plan dealing with matters prescribed by regulation; and
 - (ii) to obtain the approval of the Industry Regulator (which may only be given by the Industry Regulator on the recommendation of the Technical Regulator) to the plan and any revision; and

- (iii) to comply with the plan as approved from time to time; and
- (iv) to audit from time to time the entity's compliance with the plan and report the results of those audits to the Technical Regulator; and
- (d) requiring the electricity entity to provide to the Electricity Supply Industry Planning Council such information as it may reasonably require for the performance of its functions; and
- (e) requiring the electricity entity—
 - (i) to grant to each electricity entity holding a licence authorising the operation of a transmission or distribution network rights to use or have access to the entity's electricity generating plant that are necessary for the purpose of ensuring the proper integrated operation of the State's power system and the proper carrying on of the operations authorised by the entity's licence; and
 - (ii) in the absence of agreement as to the terms on which such rights are to be granted, to comply with any determination of the Industry Regulator as to those terms; and
 - (iii) to comply with any code provisions in force from time to time under the *Independent Industry Regulator Act 1999* establishing a scheme for the resolution of disputes in relation to such rights; and
- (f) requiring the electricity entity to maintain insurance against any liability for causing a bushfire and to provide the Industry Regulator with a certificate of the insurer or the insurance broker by whom the insurance was arranged certifying (in a manner approved by the Industry Regulator) that the insurance is adequate and appropriate given the nature of the operations carried on under the entity's licence and the risks entailed in those operations.

(2) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the generation of electricity.

Licences authorising operation of transmission or distribution network

23. (1) The Industry Regulator must, on the issue of a licence authorising the operation of a transmission or distribution network, make the licence subject to conditions determined by the Industry Regulator—

- (a) requiring compliance with directions of the system controller; and
- (b) requiring the electricity entity not to do anything affecting the compatibility of the entity's transmission or distribution network with any electricity generating plant or transmission or distribution network so as to prejudice public safety or the security of the power system of which the transmission or distribution network forms a part; and
- (c) requiring the electricity entity—
 - (i) to prepare and periodically revise a safety and technical management plan dealing with matters prescribed by regulation; and

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- (ii) to obtain the approval of the Industry Regulator (which may only be given by the Industry Regulator on the recommendation of the Technical Regulator) to the plan and any revision; and
 - (iii) to comply with the plan as approved from time to time; and
 - (iv) to audit from time to time the entity's compliance with the plan and report the results of those audits to the Technical Regulator; and
- (d) requiring the electricity entity to provide to the Electricity Supply Industry Planning Council such information as it may reasonably require for the performance of its functions; and
- (e) requiring the electricity entity to maintain specified accounting records and to prepare accounts according to specified principles; and
- (f) requiring the electricity entity to inform persons seeking or in receipt of network services of the terms on which the services are provided (including the charges for the services) and of any changes in those terms; and
- (g) requiring the electricity entity to carry out work to locate powerlines underground in accordance with a program established under Part 5A; and
- (h) requiring the electricity entity to comply with—
- (i) specified provisions for or relating to the granting to other electricity entities of rights to use or have access to the entity's transmission or distribution network (on non-discriminatory terms) for the transmission or distribution of electricity by the other entities; and
 - (ii) any scheme that the Industry Regulator may establish by a code made under the *Independent Industry Regulator Act 1999* for the resolution of disputes in relation to such rights; and
- (i) requiring the electricity entity to comply with—
- (i) specified provisions for or relating to the granting to all electricity entities and customers of a class specified in the condition of rights to use or have access to the entity's transmission or distribution network (on non-discriminatory terms) to obtain electricity from the network; and
 - (ii) any scheme that the Industry Regulator may establish by a code made under the *Independent Industry Regulator Act 1999* for the resolution of disputes in relation to such rights; and
- (j) requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act 1999*) establishing a scheme—
- (i) for other bodies to use or have access to the entity's transmission or distribution network for telecommunications purposes (subject to requirements as to technical feasibility and preservation of visual amenity); and

- (ii) for the resolution of disputes in relation to such use or access by a person other than the Industry Regulator who is appointed by the Industry Regulator; and
- (k) requiring the electricity entity to participate in an ombudsman scheme the terms and conditions of which are approved by the Industry Regulator; and
- (l) requiring the electricity entity to maintain insurance against any liability for causing a bushfire and to provide the Industry Regulator with a certificate of the insurer or the insurance broker by whom the insurance was arranged certifying (in a manner approved by the Industry Regulator) that the insurance is adequate and appropriate given the nature of the operations carried out under the entity's licence and the risks entailed in those operations; and
- (m) in the case of a licence authorising the operation of a transmission network—
 - (i) requiring the business of the operation of the transmission network authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions; and
 - (ii) requiring the electricity entity—
 - (A) to grant to each electricity entity holding a licence authorising the generation of electricity or the operation of a distribution network rights to use or have access to the entity's transmission network that are necessary for the purpose of ensuring the proper integrated operation of the State's power system and the proper carrying on of the operations authorised by the entity's licence; and
 - (B) in the absence of agreement as to the terms on which such rights are to be granted, to comply with any determination of the Industry Regulator as to those terms; and
 - (C) to comply with any code provisions in force from time to time under the *Independent Industry Regulator Act 1999* establishing a scheme for the resolution of disputes in relation to such rights; and
- (n) in the case of a licence authorising the operation of a distribution network—
 - (i) requiring the business of the operation of the distribution network authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions; and

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- (ii) requiring the electricity entity—
 - (A) to grant to each electricity entity holding a licence authorising the generation of electricity or the operation of a transmission network rights to use or have access to the entity's distribution network that are necessary for the purpose of ensuring the proper integrated operation of the State's power system and the proper carrying on of the operations authorised by the entity's licence; and
 - (B) in the absence of agreement as to the terms on which such rights are to be granted, to comply with any determination of the Industry Regulator as to those terms; and
 - (C) to comply with any code provisions in force from time to time under the *Independent Industry Regulator Act 1999* establishing a scheme for the resolution of disputes in relation to such rights; and
- (iii) requiring the electricity entity to establish customer consultation processes of a specified kind; and
- (iv) requiring or relating to standard contractual terms and conditions to apply to the supply of electricity to non-contestable customers or customers of a prescribed class; and
- (v) requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act 1999*) imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards; and
- (vi) requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act 1999*) limiting the grounds on which the supply of electricity to customers may be disconnected and prescribing the process to be followed before the supply of electricity is disconnected; and
- (vii) requiring a specified process to be followed to resolve disputes between the electricity entity and customers as to the supply of electricity; and
- (viii) requiring the electricity entity to enter into and comply with an agreement (on terms approved from time to time by the Industry Regulator) with each person holding a licence authorising the retailing of electricity who provides services to the same customers as the entity as to the co-ordination of the provision of services to those customers; and

- (ix) requiring the electricity entity to sell and supply electricity (on terms and conditions approved by the Industry Regulator) to customers of another electricity entity whose licence under this Act to carry on retailing of electricity is suspended or cancelled or whose right to acquire electricity from the market for wholesale trading in electricity is suspended or terminated or who has ceased to retail electricity in the State (a **retailer of last resort requirement**); and
- (x) requiring the electricity entity—
 - (A) to investigate, before it makes any significant expansion of the distribution network or the capacity of the distribution network, whether it would be cost effective to avoid or postpone such expansion by implementing measures for the reduction of demand for electricity from the network; and
 - (B) to prepare and publish reports relating to such demand management investigations and measures.

(2) A condition of an electricity entity's licence imposed under subsection (1)(h) is not to be taken to require the granting to other electricity entities of rights to use or have access to the entity's transmission or distribution network for the support or use of electricity infrastructure of the other entities.

(3) A retailer of last resort requirement operates only until 1 January 2005.

(4) The obligation to sell and supply electricity to a customer imposed by a retailer of last resort requirement continues only until the end of three months from the event giving rise to the obligation or until the customer advises the electricity entity that the sale and supply is no longer required, whichever first occurs.

(5) A licence that is subject to a retailer of last resort requirement is to be taken to authorise the sale and supply of electricity in accordance with the requirement.

(6) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the operation of a transmission or distribution network.

Licences authorising retailing

24. (1) A licence authorising the retailing of electricity must, if the Minister so determines and despite section 7 of the *Independent Industry Regulator Act 1999*, confer on the entity an exclusive right to sell electricity to non-contestable customers within a specified area.

(2) The Industry Regulator must, on the issue of a licence authorising the retailing of electricity, make the licence subject to conditions determined by the Industry Regulator—

- (a) requiring, if the holder of the licence is a related body corporate (within the meaning of the *Corporations Law*) in relation to the holder of a licence authorising the operation of a distribution network, the business of the retailing of electricity authorised by the licence to be kept separate from the business of the operation of the distribution network in the manner and to the extent specified in the conditions; and

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- (b) if the electricity entity sells electricity to non-contestable customers, requiring the electricity entity to maintain specified accounting records and to prepare accounts according to specified principles; and
- (c) requiring the electricity entity to establish customer consultation processes of a specified kind; and
- (d) requiring the electricity entity, until 31 December 2002, to—
 - (i) request its contestable customers to give written consent to the electricity entity providing their names, addresses and other contact details from time to time to the Industry Regulator and the Industry Regulator providing that information to other electricity entities holding licences authorising the retailing of electricity; and
 - (ii) provide copies of such consents and the information relating to the consenting customers to the Industry Regulator; and
- (e) if the electricity entity sells electricity to non-contestable customers—
 - (i) requiring the electricity entity to take reasonable steps to identify when its non-contestable customers will or could become contestable customers and to give such customers at least 20 clear business days notice of that fact, together with notice of the tariffs and charges for electricity currently applicable to the customers and the names of other electricity entities that hold licences authorising the retailing of electricity; and
 - (ii) specifying the manner in which such notice must be given; and
- (f) if the electricity entity sells electricity to non-contestable customers and under the standard terms and conditions governing the sale of electricity by the electricity entity at least the same level of the tariffs and charges applicable to customers as non-contestable customers will apply to the customers for a specified period after they become contestable customers—
 - (i) requiring the electricity entity to take reasonable steps to give the customers at least 20 clear business days notice of the date on which the specified period will expire; and
 - (ii) specifying the manner in which such notice must be given; and
- (g) requiring or relating to standard contractual terms and conditions to apply to the sale of electricity to non-contestable customers or customers of a prescribed class; and
- (h) requiring the electricity entity to enter into and comply with an agreement (on terms approved from time to time by the Industry Regulator) with each person holding a licence authorising the operation of a distribution network who provides services to the same customers as the entity as to the co-ordination of the provision of services to those customers; and

- (i) requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act 1999*) imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards; and
- (j) requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act 1999*) limiting the grounds on which the supply of electricity to customers may be discontinued or disconnected and prescribing the process to be followed before the supply of electricity is discontinued or disconnected; and
- (k) requiring a specified process to be followed to resolve disputes between the electricity entity and customers as to the sale of electricity; and
- (l) requiring the electricity entity to participate in an ombudsman scheme the terms and conditions of which are approved by the Industry Regulator; and
- (m) requiring the electricity entity—
 - (i) to investigate strategies for achieving a reduction of greenhouse gas emissions to such targets as may be set by the Environment Protection Authority from time to time or such levels as may be binding on the entity from time to time, including strategies for promoting the efficient use of electricity and the sale, as far as is commercially and technically feasible, of electricity produced through cogeneration or from sustainable sources; and
 - (ii) to prepare and publish annual reports on the implementation of such strategies.

(3) The Industry Regulator must, before issuing a licence conferring an exclusive right to sell electricity to non-contestable customers within a specified area, agreeing to the transfer of such a licence or determining or varying conditions of such a licence, consult with and have regard to the advice of—

- (a) the Commissioner for Consumer Affairs; and
- (b) the consumer advisory committee established under Part 2.

(4) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the retailing of electricity.

Licences authorising system control

24A. (1) The Industry Regulator must, on the issue of a licence authorising system control over a power system, make the licence subject to conditions determined by the Industry Regulator requiring the business of system control authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions.

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(2) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising system control over a power system.

Licence conditions and National Electricity Code

24B. Despite the preceding provisions of this Part, the Industry Regulator is not to impose a condition on a licence if the Industry Regulator is satisfied that the condition would duplicate, or be inconsistent with, regulatory requirements under the National Electricity Code.

Offence to contravene licence conditions

25. (1) An electricity entity must not contravene a condition of its licence.

Maximum penalty: \$250 000.

(2) If an electricity entity profits from contravention of a condition of its licence, the Industry Regulator may recover an amount equal to the profit from the entity—

- (a) on application to a court convicting the entity of an offence against this section; or
- (b) by action in a court of competent jurisdiction.

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Variation of licence

27. (1) The Industry Regulator may vary the terms or conditions of an electricity entity's licence by written notice to the entity as the Industry Regulator considers appropriate (but not so as to remove a condition that the Industry Regulator is required by this Act to impose on such a licence).

(2) A variation may only be made—

- (a) on application by the electricity entity or with the electricity entity's agreement; or
- (b) after giving the electricity entity reasonable notice of the proposed variation and allowing the entity a reasonable opportunity to make representations about the proposed variation.

Transfer of licence

28. (1) A licence may only be transferred with the Industry Regulator's agreement.

(2) The Industry Regulator may impose conditions on the transfer of a licence, or vary the terms and conditions of the licence on its transfer.

(3) The Industry Regulator must not agree to the transfer of a licence if the transferee would not be entitled to the issue of the licence.

(4) An application for agreement to the transfer of a licence must—

- (a) be made by the transferor with the consent of the transferee to the Industry Regulator in a form approved by the Industry Regulator; and
- (b) contain the information specified in the form.

(5) The applicant must pay to the Industry Regulator an application fee fixed by the Minister of an amount that the Minister considers appropriate to meet the reasonable costs of determining the application.

(6) The applicant must give the Industry Regulator further relevant information requested by the Industry Regulator.

Consultation with consumer bodies

28A. The Industry Regulator may, before issuing a licence, agreeing to the transfer of a licence or determining or varying conditions of a licence, consult with and have regard to the advice of—

- (a) the Commissioner for Consumer Affairs; and
- (b) the consumer advisory committee established under Part 2.

Notice of licence decisions

28B. (1) The Industry Regulator must give an applicant for a licence, or for agreement to the transfer of a licence, written notice of the Industry Regulator's decision on the application.

(2) The Industry Regulator must give the holder of a licence written notice of any decision by the Industry Regulator affecting the terms or conditions of the licence.

Surrender of licence

29. (1) An electricity entity may, by written notice given to the Industry Regulator, surrender its licence.

(2) The notice must be given to the Industry Regulator at least six months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.

(3) The Industry Regulator may, by agreement with the electricity entity, shorten the required period of notice.

Register of licences

30. (1) The Industry Regulator must keep a register of the licences issued to electricity entities under this Act.

- (2) The register must include—
- (a) the terms and conditions of each licence; and
 - (b) other information required under the regulations.

(3) A person may, without payment of a fee, inspect the Register.

DIVISION 2—SYSTEM CONTROLLER

Functions and powers of system controller

31. (1) Subject to the regulations, a system controller for a power system has the function of monitoring and controlling the operation of the power system with a view to ensuring that the system operates safely and reliably.

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(2) A system controller for a power system has, in carrying out the system controller's functions under this Act—

- (a) power to issue directions to electricity entities that are engaged in the operation of the power system, or contribute electricity to, or take electricity from, the power system; and
- (b) the other powers conferred by regulation.

(3) Without limiting subsection (2)(a), the directions may include directions—

- (a) to switch off or reroute a generator;
- (b) to call equipment into service;
- (c) to take equipment out of service;
- (d) to commence operation or maintain, increase or reduce active or reactive power output;
- (e) to shut down or vary operation;
- (f) to shed or restore customer loads.

(4) If an electricity entity refuses or fails to comply with a direction of a system controller, the system controller may—

- (a) authorise a person to take the action required by the direction or to cause the action to be taken; and
- (b) give the electricity entity any directions the system controller considers necessary to facilitate the taking of the action.

(5) Costs and expenses incurred in taking action or causing action to be taken under subsection (4) are recoverable from the electricity entity by the system controller as a debt in a court of competent jurisdiction.

(6) The functions and powers of a system controller for a power system operated in the National Electricity Market (*ie* the market regulated by the *National Electricity Law*) may only be performed or exercised in a manner that is consistent with the *National Electricity (South Australia) Law* and the National Electricity Code.

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Remuneration of system controller

34. A system controller will, in accordance with the regulations, be entitled to impose and recover charges in respect of the performance of the system controller's functions.

Obligation to preserve confidentiality

35. (1) A system controller must preserve the confidentiality of information that—

- (a) could affect the competitive position of an electricity entity or other person; or

(b) is commercially sensitive for some other reason.

(2) Information classified by a system controller as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

DIVISION 2A—PRICE REGULATION

Price regulation by determination of Industry Regulator

35A. (1) The Industry Regulator may make a determination regulating prices, conditions relating to prices and price-fixing factors for—

- (a) the sale and supply of electricity to non-contestable customers or customers of a prescribed class;
- (b) the sale and supply of electricity to customers of another electricity entity as required by a retailer of last resort requirement (*see section 23(1)(n)(ix)*);
- (c) subject to the *National Electricity (South Australia) Law* and the National Electricity Code—network services;
- (d) other goods and services in the electricity supply industry specified by the Treasurer by notice in the *Gazette*.

(2) In making a determination, the Industry Regulator must (in addition to having regard to the factors specified in the *Independent Industry Regulator Act 1999*) have regard to the principle that the prices charged to small customers for network services in relation to the transmission network in South Australia and the distribution networks that are connected to it should be at the same rates for all small customers regardless of their location.

(3) The Treasurer may, by further notice in the *Gazette*, vary or revoke a notice under subsection (1)(d).

(4) In this section—

"small customer" means a customer with electricity consumption levels (in respect of a single site) of less than 160 MW.h per year.

Initial electricity pricing order by Treasurer

35B. (1) The Treasurer may issue an order (an **electricity pricing order**) regulating prices, conditions relating to prices and price-fixing factors for—

- (a) the sale and supply of electricity to non-contestable customers or customers of a prescribed class;
- (b) the sale and supply of electricity to customers of another electricity entity as required by a retailer of last resort requirement (*see section 23(1)(n)(ix)*);
- (c) subject to the *National Electricity (South Australia) Law* and the National Electricity Code—network services;
- (d) other goods and services in the electricity supply industry.

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(2) The Treasurer must not issue an electricity pricing order after a date fixed by proclamation.

(3) An electricity pricing order may regulate prices, conditions relating to prices or price-fixing factors in any manner the Treasurer considers appropriate, including—

- (a) fixing a price or the rate of increase or decrease in a price;
- (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;
- (c) fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;
- (d) specifying pricing policies or principles;
- (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
- (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of specified goods or services;
- (g) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to specified goods or services.

(4) An electricity pricing order may provide that a calculation is to be performed, or a matter is to be determined, by the Industry Regulator in a manner specified by the order.

(5) A determination of the Industry Regulator for the purposes of an electricity pricing order will not, except as provided in the order, be taken to be a determination for the purposes of the *Independent Industry Regulator Act 1999*.

(6) An electricity pricing order may require an electricity entity to provide information to other electricity entities, customers or others, or generally publish information, relating to prices, conditions relating to prices or price-fixing factors.

(7) An electricity pricing order—

- (a) takes effect on a date specified in the order; and
- (b) cannot be varied (except as contemplated by the order) or revoked.

(8) Notice of the making of an electricity pricing order must be published—

- (a) in the *Gazette*; and
- (b) in a newspaper circulating generally in the State.

(9) The notice must include a brief description of the nature and effect of the electricity pricing order and state how a copy of the order may be inspected or purchased.

(10) The Treasurer must—

- (a) send a copy of an electricity pricing order to each licensed entity to which the order applies; and
- (b) ensure that copies of the order are available for inspection and purchase by members of the public.

(11) An electricity entity must comply with an electricity pricing order or part of an electricity pricing order that applies to the entity.

(12) The Industry Regulator must—

- (a) perform any functions that an electricity pricing order contemplates will be performed by the Industry Regulator for the purposes of the order; and
- (b) enforce an electricity pricing order in the same way as if it were a determination of the Industry Regulator under this Division.

(13) The Industry Regulator's powers under this Division and the *Independent Industry Regulator Act 1999* are restricted to the extent specified in an electricity pricing order.

(14) In this section—

"price" includes a price range.

DIVISION 3—STANDARD TERMS AND CONDITIONS FOR SALE OR SUPPLY

Standard terms and conditions for sale or supply

36. (1) An electricity entity may, from time to time, fix standard terms and conditions governing the sale or supply of electricity (including the service of making connections to a transmission or distribution network) by the entity to non-contestable customers or customers of a prescribed class.

(2) An electricity entity must publish in the *Gazette* and in a daily newspaper circulating in the area in which the entity is selling or supplying electricity a notice setting out any standard terms and conditions fixed by the entity.

(3) Standard terms and conditions fixed under this section—

- (a) must comply with the conditions of the electricity entity's licence; and
- (b) come into force on the day specified by the electricity entity in the notice of the standard terms and conditions published under this section, being a day not earlier than the day on which the notice is published; and
- (c) when in force are contractually binding on the electricity entity and the class of customers to which the terms and conditions are expressed to apply; and
- (d) will, if they vary or exclude the operation of section 78(1) of the *National Electricity Law*, form an agreement between the electricity entity and each of the customers to which they are expressed to apply for the purposes of that section.

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(4) Subject to the conditions of an electricity entity's licence, a standard term or condition fixed under this section may be modified or excluded by express agreement between the entity and a customer of the entity.

DIVISION 3A—PROTECTION OF PROPERTY IN INFRASTRUCTURE

Electricity infrastructure does not merge with land

36A. Subject to any agreement in writing to the contrary, the ownership of electricity infrastructure constructed or installed for operation by an electricity entity is not affected by its affixation or annexation to land.

Prevention of dismantling of electricity infrastructure in execution of judgment

36B. (1) Electricity infrastructure owned or operated by an electricity entity cannot be dismantled in execution of a judgment.

(2) This section does not prevent the sale of an electricity generating plant or a transmission or distribution network as a going concern in execution of a judgment.

DIVISION 4—SUSPENSION OR CANCELLATION OF LICENCES

Suspension or cancellation of licences

37. (1) The Industry Regulator may, if satisfied that—

- (a) the holder of a licence obtained the licence improperly; or
- (b) the holder of a licence has been guilty of a material contravention of a condition of the licence or any other requirement imposed by or under this Act or any other Act in connection with the operations authorised by the licence; or
- (c) the holder of a licence has ceased to carry on operations authorised by the licence; or
- (d) there has been any act or default or change of circumstances such that the holder of a licence would no longer be entitled to the issue of such a licence,

suspend or cancel the licence with effect from a specified date.

(2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Industry Regulator.

(3) Before the Industry Regulator acts under this section, the Industry Regulator must—

- (a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and
- (b) allow the holder of the licence at least 14 days within which to make submissions to the Industry Regulator in relation to the proposed action.

DIVISION 5—INDUSTRY REGULATOR'S POWERS TO TAKE OVER OPERATIONS

Power to take over operations

38. (1) If—

- (a) an electricity entity contravenes a condition of its licence or any other requirement of this Act, or an electricity entity's licence ceases, or is to cease, to be in force; and
- (b) it is necessary, in the Industry Regulator's opinion, to take over the entity's operations (or some of them) to ensure an adequate supply of electricity to customers,

the Governor may make a proclamation under this section.

(2) Before a proclamation is made under this section, the Industry Regulator must give the electricity entity a reasonable opportunity to make written representations giving reasons why the proclamation should not be made.

(3) A proclamation under this section—

- (a) authorises the Industry Regulator to take over the electricity entity's operations or a specified part of the electricity entity's operations; and
- (b) may contain ancillary directions (and may, in particular, contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with).

(4) A direction under subsection (3)(b) operates to the exclusion of rights that are inconsistent with it.

Appointment of operator

39. (1) When a proclamation is made under this Part, the Industry Regulator must appoint a suitable person (who may, but need not, be an electricity entity) to take over the relevant operations on agreed terms and conditions.

(2) A person appointed to take over an electricity entity's operations is referred to in this section as the "**operator**".

(2a) The operator must comply with any applicable provisions of the *National Electricity (South Australia) Law* and the National Electricity Code.

(3) The electricity entity must facilitate the take over of the relevant operations by the operator.

(4) The operator may have access to the electricity infrastructure and other property of the electricity entity for the purposes of carrying on the relevant operations.

(5) A person must not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Part.

Maximum penalty: \$250 000.

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(6) A person must comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.

Maximum penalty: \$250 000.

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**PART 4
ELECTRICITY ENTITIES' POWERS AND DUTIES**

DIVISION 1—ELECTRICITY OFFICERS

Appointment of electricity officers

41. (1) An electricity entity may, subject to conditions determined by the Minister, appoint a person to be an electricity officer for the entity.

(2) An electricity officer may only exercise powers under this Act subject to the conditions of appointment and any directions given to the electricity officer by the entity.

Conditions of appointment

42. (1) An electricity officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) An electricity officer may be removed from office by the electricity entity.

Electricity officer's identity card

43. (1) An electricity entity must give each electricity officer for the entity an identity card.

(2) The identity card must be in a form approved by the Minister and must—

- (a) contain a photograph of the electricity officer taken for the purpose; and
- (b) be signed by the electricity officer; and
- (c) identify the electricity officer as an electricity officer for the relevant electricity entity.

(3) A person must, within two days after ceasing to be an electricity officer, return the identity card to the electricity entity.

Maximum penalty: \$250.

Production of identity card

44. An electricity officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

DIVISION 2—POWERS AND DUTIES RELATING TO INFRASTRUCTURE

Entry on land to conduct surveys, etc.

45. (1) An electricity entity may, by agreement with the occupier of land or on the authorisation of the Minister, enter and remain on land to conduct surveys or assess the suitability of the land for the construction or installation of electricity infrastructure.

(2) The Minister may authorise an electricity entity to enter and remain on land under this section on conditions the Minister considers appropriate.

(3) If an electricity entity enters land under the authorisation of the Minister, the electricity entity—

- (a) must give reasonable notice of the proposed entry on land under this section to the occupier; and
- (b) must minimise the impact of work carried out by the electricity entity on activities of others on the land; and
- (c) must comply with the conditions of the authorisation.

Acquisition of land

46. (1) An electricity entity may acquire land in accordance with the *Land Acquisition Act 1969*.

(2) An electricity entity may only acquire land by compulsory process under the *Land Acquisition Act 1969* if the acquisition is authorised in writing by the Minister.

Power to carry out work on public land

47. (1) Subject to this section, an electricity entity may—

- (a) install electricity infrastructure on public land; or
- (b) operate, maintain, repair, alter, add to, remove or replace electricity infrastructure on public land; or
- (c) carry out other work on public land for the generation, transmission, distribution or supply of electricity.

(2) Without limiting subsection (1), the electricity entity may—

- (a) erect powerlines on public land;
- (b) excavate public land and install underground cables.

(2a) This section does not apply to work of a kind that may be carried out under the statutory easement under Schedule 1 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*.

(3) Subject to this section, an electricity entity must—

- (a) give the authority responsible for the management of public land not less than seven days' notice of the entity's intention to carry out work on the land; and
- (b) secure the authority's agreement to the carrying out of the work.

(4) An agreement under this section may contain conditions the authority responsible for management of the land considers appropriate in the public interest.

(5) Prior notice and agreement are not required under subsection (3) for work of a kind prescribed by regulation for the purposes of this subsection.

(6) Agreement is not required under subsection (3) for work of a kind prescribed by regulation for the purposes of this subsection.

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(7) If a dispute arises between an electricity entity and the authority responsible for managing public land about whether work should be permitted under this section on the land or about the conditions on which work should be permitted on public land, either party to the dispute may refer the dispute to the Minister.

(8) Subsection (7) does not apply to a dispute where the authority responsible for managing the public land is a Minister or a person or body to whom directions may be given by a Minister in relation to the matter in dispute.

(9) If a dispute is referred to the Minister under this section, the Minister must—

- (a) allow the parties to the dispute the opportunity to make representations to the Minister on the questions at issue in the dispute; and
- (b) make a reasonable attempt to get the parties to agree to settlement of the dispute on agreed terms.

(10) If the Minister cannot get the parties to agree, the Minister may make—

- (a) an order that the work is or is not permitted on the land;
- (b) if the Minister orders that the work is permitted, an order fixing the conditions on which the work is permitted,

as the Minister thinks fit.

* * * * *

(13) An electricity entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

(14) An electricity entity may only act under this section in relation to public land in a way that interferes with the continued enjoyment or exercise of rights deriving from native title in the land by agreement with the Minister (on behalf of the State) and the holders of native title in the land.

(15) This section does not derogate from the obligation to comply with the provisions of any other Act.

(16) In this section—

"**native title**" and "**holder of native title**" have the same meanings as in the *Native Title (South Australia) Act 1994*;

"**public land**" means land owned by the Crown or an instrumentality or agent of the Crown or by a council or other local government body, including any such land that is subject to native title.

Entry under easements for purposes related to infrastructure

48. * * * * *

(2) Subject to this section, if an electricity officer seeks to enter land pursuant to rights conferred on an electricity entity by a statutory or other easement relating to electricity infrastructure situated on the land, the officer must give reasonable written notice to the occupier of the land stating the reason and the date and time of the proposed entry.

(3) If the proposed entry is refused or obstructed, an electricity officer may obtain a warrant under Part 9 to enter the land.

(4) In an emergency, an electricity officer may exercise a power of entry referred to in this section—

- (a) at any time and without prior notice if it is not practicable to give such notice; and
- (b) if necessary in the circumstances, by the use of reasonable force.

* * * * *

(6) An electricity officer may not enter a place under a warrant or by force in an emergency unless accompanied by a member of the police force.

(7) An electricity entity must make good any damage caused by the exercise of powers under a warrant or by force in an emergency as soon as practicable or pay reasonable compensation for the damage.

Easements and access to infrastructure for data transmission and telecommunications

48A. (1) Where electricity infrastructure owned or operated by an electricity entity is situated on land that does not belong to the entity, any powers or rights that the entity has under this Act or pursuant to a statutory or other easement for the purposes of installing, operating and carrying out work relating to electricity infrastructure on that land will be taken also to be exercisable for the purposes of—

- (a) installing telecommunications cables or equipment by attaching it to or incorporating it in the electricity infrastructure on the land; and
- (b) operating and carrying out work relating to telecommunications cables or equipment so installed; and
- (c) operating the electricity infrastructure on the land for telecommunications.

(2) Powers and rights conferred on an electricity entity under subsection (1) will also, with the consent of the electricity entity, be exercisable by another body in the same manner and subject to the same conditions as would apply if the other body were the electricity entity and persons appointed by the other body subject to conditions determined by the Minister were electricity officers.

(3) This section has effect despite the *Real Property Act 1886* or any other law.

DIVISION 3—POWERS RELATING TO INSTALLATIONS

Entry to inspect, etc., electrical installations

49. (1) An electricity officer for an electricity entity may, at any reasonable time, enter and remain in a place to which electricity is, is to be, or has been, supplied by the entity—

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- (a) to inspect electrical installations in the place to ensure that it is safe to connect or reconnect electricity supply; or
- (b) to take action to prevent or minimise an electrical hazard; or
- (c) to investigate suspected theft of electricity.

(2) In an emergency, an electricity officer may exercise a power of entry under this section at any time and, if necessary in the circumstances, by the use of reasonable force.

(3) When an electricity officer enters a place under this section, the electricity officer—

- (a) may be accompanied by such assistants as the electricity officer considers necessary or appropriate; and
- (b) may take any vehicles or equipment the electricity officer considers necessary or appropriate for the functions the electricity officer is to carry out in the place.

(4) An electricity officer may not enter a place by force in an emergency unless accompanied by a member of the police force.

(5) If in the opinion of an electricity officer an electrical installation is unsafe, the electricity officer may disconnect the electricity supply to the place in which the installation is situated until the installation is made safe to the satisfaction of the electricity officer.

Entry to read meters, etc.

50. An electricity officer for an electricity entity may, at any reasonable time, enter and remain in a place to which electricity is, or is to be, sold or supplied by the entity—

- (a) to read, or check the accuracy of, a meter for recording consumption of electricity; or
- (b) to examine the electrical installations in the place to determine load classification and the appropriate price for the sale of electricity; or
- (c) to install, repair or replace meters, control apparatus and other electrical installations in the place.

Entry to disconnect supply

51. If an electricity officer has proper authority to disconnect an electricity supply to a place, the electricity officer may, at any reasonable time, enter and remain in the place to disconnect the electricity supply to the place.

Disconnection of supply if entry refused

52. (1) If an electricity officer seeks to enter a place under this Division and entry is refused or obstructed, the electricity entity may, by written notice to the occupier of the place, ask for consent to entry by an electricity officer.

(2) The notice must state the reason and the date and time of the proposed entry.

(3) If entry is again refused or obstructed, the electricity entity may—

- (a) if it is possible to do so—disconnect the electricity supply to the place without entering the place; or
- (b) if not—obtain a warrant under Part 9 to enter the place for the purpose of disconnecting the electricity supply, enter the place under the warrant and disconnect the electricity supply.

(4) An electricity officer may not enter a place under a warrant unless accompanied by a member of the police force.

(5) An electricity entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

(6) The electricity entity must restore the electricity supply if—

- (a) the occupier—
 - (i) consents to the proposed entry; and
 - (ii) pays the appropriate reconnection fee; and
- (b) it is safe to restore the electricity supply; and
- (c) there is no other lawful ground for refusing to restore the electricity supply.

DIVISION 4—POWERS AND DUTIES IN EMERGENCIES

Electricity entity may cut off electricity supply to avert danger

53. (1) An electricity entity may, without incurring any liability, cut off the supply of electricity to any region, area, land or place if it is, in the entity's opinion, necessary to do so to avert danger to person or property.

(2) If an electricity entity proposes to cut off a supply of electricity in order to avert danger of a bush fire, the entity should, if practicable, consult with the Country Fire Service Board, or a delegate of that Board, before doing so.

Emergency legislation not affected

54. Nothing in this Act affects the exercise of any power, or the obligation of an electricity entity to comply with any direction, order or requirement, under the *Emergency Powers Act 1941*, *Essential Services Act 1981*, *State Disaster Act 1980* or *State Emergency Service Act 1987*.

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**PART 5
CLEARANCE OF VEGETATION FROM POWERLINES**

DIVISION 1—DUTIES IN RELATION TO VEGETATION CLEARANCE

Duties in relation to vegetation clearance

55. (1) An electricity entity has a duty to take reasonable steps—

- (a) to keep vegetation of all kinds clear of public powerlines under the entity's control other than powerlines in relation to which the duty to keep vegetation clear is conferred on a council under a vegetation clearance scheme; and
- (b) to keep naturally occurring vegetation clear of private powerlines under the entity's control,

in accordance with the principles of vegetation clearance.

(1a) A vegetation clearance scheme may, in accordance with Division 2, confer on a council the duty to take reasonable steps to keep vegetation of all kinds clear of public powerlines that are—

- (a) designed to convey electricity at 11 kV or less; and
- (b) within both the council's area and an area prescribed by the regulations (a "**prescribed area**"); and
- (c) not on, above or under private land,

in accordance with the principles of vegetation clearance.

(2) The occupier of private land has (subject to the principles of vegetation clearance) a duty to take reasonable steps to keep vegetation (other than naturally occurring vegetation) clear of any private powerline on the land in accordance with the principles of vegetation clearance.

(3) If vegetation is planted or nurtured near a public powerline contrary to the principles of vegetation clearance, the entity or council that has the duty under this Part to keep vegetation clear of the powerline may remove the vegetation and recover the cost of so doing as a debt from the person by whom the vegetation was planted or nurtured.

(4) If a council or occupier should have, but has not, kept vegetation clear of a powerline under an electricity entity's control in accordance with a duty of the council or occupier under this Part, the electricity entity may carry out the necessary vegetation clearance work (but the entity incurs no liability for failure to carry out such work).

(5) Any costs incurred by an electricity entity in carrying out vegetation clearance work under subsection (4) or repairs to a powerline required as a result of failure by a council or occupier to carry out the duty of the council or occupier under this Part may be recovered as a debt from the council or occupier.

(6) This Part operates to the exclusion of common law duties, and other statutory duties, affecting the clearance of vegetation from a public powerline or a private powerline, and so operates with respect to vegetation clearance work whether the work is carried out by the person having the duty under this Part to keep vegetation clear of the powerline or in pursuance of a delegation or by a contractor or other agent.

DIVISION 2—VEGETATION CLEARANCE SCHEMES IN PRESCRIBED AREAS

SUBDIVISION 1—CONTENT AND NATURE OF SCHEMES

Vegetation clearance schemes

55A. (1) An electricity entity may agree a vegetation clearance scheme with a council governing the way in which vegetation is to be kept clear of public powerlines on land (other than private land) within both the council's area and a prescribed area.

(2) A vegetation clearance scheme may do one or more of the following:

- (a) it may require the electricity entity to inspect and clear vegetation more frequently than is required under the principles of vegetation clearance or otherwise govern the way in which the entity will carry out its duty to clear vegetation;
- (b) it may—
 - (i) contain a delegation by the electricity entity of a function or power under this Part in relation to powerlines designed to convey electricity at 11 kV or less;
 - (ii) require that the electricity entity be indemnified for any liability arising from an act or omission of the council under the delegation;
- (c) it may confer on the council the duty to keep vegetation of all kinds clear of specified public powerlines that are designed to convey electricity at 11 kV or less;
- (d) it may exempt the council from the principles of vegetation clearance relating to the planting or nurturing of vegetation near overhead public powerlines;
- (e) it may impose obligations on the electricity entity or the council with respect to clearance work or reducing the need for clearance work;

For example, a scheme may provide for—

- specified powerlines to be moved or placed underground;
- specified vegetation to be removed or restrictions on the types of vegetation that may be planted or nurtured near powerlines;
- payments by the council to the entity or by the entity to the council.

(f) it may make provision for other related matters.

(3) A vegetation clearance scheme cannot derogate from the principles of vegetation clearance except to the extent referred to in subsection (2)(d).

(4) A vegetation clearance scheme—

- (a) must be in writing and (subject to Subdivision 2) executed by the council and the electricity entity; and

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(b) may be modified by written agreement between the parties.

(5) A delegation by the electricity entity under a vegetation clearance scheme—

(a) may be subject to conditions specified in the scheme; and

(b) may be varied or revoked by the electricity entity in accordance with the terms of the scheme; and

(c) does not prevent the electricity entity from acting in any matter.

(6) If the duty to keep vegetation of all kinds clear of powerlines is conferred on a council under a vegetation clearance scheme, the principles of vegetation clearance relating to the planting or nurturing of vegetation near powerlines do not apply to vegetation planted or nurtured on land (other than private land) by the council, or on the authority of the council, near overhead public powerlines in relation to which the duty is conferred.

SUBDIVISION 2—DISPUTES ABOUT SCHEMES

Vegetation clearance scheme dispute

55B. (1) A vegetation clearance scheme dispute exists if an electricity entity and a council fail to agree on—

(a) a proposal for a vegetation clearance scheme under this Division; or

(b) a proposal for modification of such a scheme.

(2) An electricity entity or a council may, by written notice to the Technical Regulator, ask the Technical Regulator to determine a vegetation clearance scheme dispute under this Division.

(3) The notice must contain or be accompanied by the information or documents required by the Technical Regulator.

(4) The party seeking a determination must give a copy of the notice to the other party to the dispute.

Circumstances in which Technical Regulator not obliged to determine dispute

55C. (1) The Technical Regulator will not determine a vegetation clearance scheme dispute unless—

(a) at least six months have passed since the presentation by one of the parties to the other of a written proposal for a vegetation clearance scheme between the parties or for modification of such a scheme; or

(b) less than six months have passed since the presentation of such a proposal but the other party has not negotiated reasonably and constructively, or at all, on the proposal.

(2) The Technical Regulator is not obliged to determine a vegetation clearance scheme dispute if the Technical Regulator is satisfied—

(a) that the subject matter of the dispute is trivial, misconceived or lacking in substance; or

- (b) taking into account the particular circumstances of the dispute, that the party seeking determination of the dispute has not negotiated reasonably and constructively, or at all, on the proposal; or
- (c) on the application of a party to the dispute and taking into account the particular circumstances of the dispute, that there are good reasons why the dispute should not be determined.

Determinations

55D. (1) The Technical Regulator may, on application under this Subdivision, determine—

- (a) in the case of a dispute about a proposal for a vegetation clearance scheme—the terms of the scheme;
- (b) in the case of a dispute about a proposal for modification of a vegetation clearance scheme—whether or not the scheme is to be modified and, if it is to be modified, the terms of the modification.

(2) The Technical Regulator may not, in determining a scheme or modification of a scheme, confer on a council the duty to keep vegetation clear of public powerlines except—

- (a) with the council's consent; or
- (b) in a case where the Technical Regulator is satisfied that it is appropriate to do so in view of significant failure by the council or the electricity entity to carry out properly, or at all, vegetation clearance work in relation to powerlines in the area and in view of the reasons for the failure.

(3) The Technical Regulator may confer a duty on a council in accordance with subsection (2) only in respect of particular powerlines in respect of which the Technical Regulator is satisfied the conferral of the duty is appropriate.

(4) If the Technical Regulator proposes to confer on a council a duty to keep vegetation clear of public powerlines in circumstances in which there has been failure by the electricity entity to carry out properly, or at all, vegetation clearance work in relation to those powerlines, the Technical Regulator must consider whether the council should be given an indemnity for any liability arising from the entity's failure or whether the conferral of the duty should be postponed for a period designed to allow any necessary work to be carried out.

(5) The Technical Regulator may—

- (a) stipulate that a scheme or modification of a scheme is to have effect at a specified future time;
- (b) stipulate that parts of a scheme or modification of a scheme have effect at different future times.

(6) A scheme or modification of a scheme determined by the Technical Regulator under this Division has effect according to its terms and need not be executed by the parties.

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Principles to be taken into account

55E. (1) In determining a vegetation clearance scheme dispute, the Technical Regulator must take into account—

- (a) the nature of the vegetation, including its expected rate of growth;
- (b) the impact that the clearance work would be likely to have on the amenity of the area;
- (c) the historical or biological significance (if any) of the vegetation;
- (d) the long term effect that the clearance work would be likely to have on the health and appearance of the vegetation;
- (e) the controls on the planting and nurturing of vegetation applicable in the area;
- (f) the need to prevent damage to the powerlines and interruption to the supply of electricity and to safeguard the public against electric shock and damage to property;
- (g) the extent and frequency of past vegetation clearance in the area;
- (h) whether requirements with respect to vegetation clearance and the planting and nurturing of vegetation have been complied with in the area and, if not, the reasons for the non-compliance;
- (i) the existence and terms of other vegetation clearance schemes;
- (j) any proposal to alter, remove or underground powerlines in the area;
- (k) the costs of the proposals (including insurance premiums) to the council and to the electricity entity and the financial resources of the council and entity;
- (l) the limits on the financial and other resources of the electricity entity that may be devoted to the scheme and the schemes for the areas of other councils;
- (m) the desirability of preserving so far as practicable terms agreed between the parties;
- (n) any other matters prescribed by the regulations.

(2) The Technical Regulator may take into account other matters the Technical Regulator considers appropriate.

Conduct of proceedings

55F. (1) The Technical Regulator must conduct proceedings for the determination of a dispute with a view to ensuring—

- (a) a fair and reasonable exchange of the parties' views; and
- (b) the proper investigation and consideration of all matters relevant to the fair determination of the dispute; and
- (c) the speedy resolution of the dispute.

(2) The Technical Regulator—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) may obtain information on matters relevant to the dispute in any way the Technical Regulator thinks fit.

(3) The Technical Regulator may require the presentation of evidence or argument in writing and may decide matters on which the Technical Regulator will hear oral evidence or argument.

(4) If the Technical Regulator decides to hear oral evidence or argument—

- (a) the proceedings must be conducted in public unless—
 - (i) both parties agree to have the proceedings (or part of the proceedings) conducted in private; or
 - (ii) the Technical Regulator orders the public to be excluded from attendance in accordance with subsection (5); and
- (b) the parties may not be represented in the proceedings by lawyers except by leave of the Technical Regulator.

(5) The Technical Regulator may order the public to be excluded from attendance at proceedings in order—

- (a) to consider in confidence information that has commercial value to a person or relates to the commercial or financial affairs of a person (the Technical Regulator being satisfied that it is reasonably foreseeable that public disclosure of the information could cause significant damage to a person or the interests of a person or confer an unfair commercial or financial advantage on a person); or
- (b) to ensure that the Technical Regulator does not—
 - (i) breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty; or
 - (ii) unreasonably expose himself or herself to any legal process or liability.

(6) The Technical Regulator may give directions about who may be present at proceedings during any period when the public is excluded from attendance having regard to the wishes of the parties and the need for commercial confidentiality.

(7) A person must comply with a direction under subsection (6).

Maximum penalty: \$10 000.

(8) The Technical Regulator may—

- (a) give procedural directions;

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- (b) make orders requiring—
 - (i) the delivery of documents clarifying the issues between the parties;
 - (ii) the discovery and inspection of documents;
- (c) sit at any time or place;
- (d) adjourn the proceedings from time to time and from place to place;
- (e) refer a matter to an expert for report, and accept the expert's report in evidence;
- (f) appoint a mediator to facilitate resolution of the dispute by conciliation;
- (g) fix and enforce time limits for steps in the proceedings and do anything else necessary for the expeditious and fair hearing and determination of the dispute.

(9) The Technical Regulator may proceed in the absence of a party or on failure by a party to provide written evidence or argument if the party has been given notice of the proceedings or of the requirement to provide written evidence or argument.

(10) The Technical Regulator may engage or appoint a lawyer to provide advice on the conduct of the proceedings and assist the Technical Regulator in drafting the determination.

Giving of relevant documents to Technical Regulator

55G. A party to the dispute may give the Technical Regulator a copy of documents (including confidential documents) the party considers to be relevant to the dispute.

Power to obtain information and documents

55H. (1) If the Technical Regulator has reason to believe that a person is in a position to give information, or to produce documents, that may be relevant to the dispute, the Technical Regulator may, by written notice—

- (a) require the person within a period stated in the notice—
 - (i) to give the Technical Regulator a written statement of specified information;
or
 - (ii) to produce to the Technical Regulator specified documents or copies of specified documents; or
- (b) require the person to appear before the Technical Regulator at a specified time and place to give evidence.

(2) A written statement must, if the Technical Regulator so requires, be verified by statutory declaration of the person providing the information or, if the person is a body corporate, an appropriate officer of the body corporate.

(3) If documents (whether originals or copies) are produced to the Technical Regulator, the Technical Regulator may—

- (a) take possession of, make copies of, and take extracts from, the documents; and

(b) keep the documents for as long as is reasonably necessary for the purposes of the determination.

(4) A person must—

(a) comply with a requirement of the Technical Regulator under subsection (1) or (2); and

(b) if the person is required to appear as a witness before the Technical Regulator—comply with further requirements to make an oath or affirmation, or to answer questions.

Maximum penalty: \$10 000.

(5) However, a person need not give information or produce a document if—

(a) the information or the contents of the document is the subject of legal professional privilege, or would tend to incriminate the person of an offence; and

(b) the person objects to giving the information or producing the document by giving written notice of the ground of the objection to the Technical Regulator or, if the person is appearing as a witness before the Technical Regulator, by an oral statement of the ground of objection.

Confidentiality of information

55I. (1) A person who gives the Technical Regulator information, or produces documents, may ask the Technical Regulator to keep the information or the contents of the documents confidential.

(2) The Technical Regulator may, after considering representations from the parties (or the other party), impose conditions limiting access to, or disclosure of, the information or documentary material in order—

(a) to consider in confidence information that has commercial value to a person or relates to the commercial or financial affairs of a person (the Technical Regulator being satisfied that it is reasonably foreseeable that public disclosure of the information could cause significant damage to a person or the interests of a person or confer an unfair commercial or financial advantage on a person); or

(b) to ensure that the Technical Regulator does not—

(i) breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty; or

(ii) unreasonably expose himself or herself to any legal process or liability.

(3) A person must not contravene a condition imposed under subsection (2).

Maximum penalty: \$10 000.

Termination of proceedings for determination

55J. The Technical Regulator may terminate proceedings for a determination if—

(a) the parties request or consent to the termination; or

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- (b) the Technical Regulator forms the opinion that—
 - (i) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
 - (ii) the party seeking determination of the dispute has refused or failed to negotiate reasonably and constructively with the other party.

Procedure for giving determination

55K. (1) Before the Technical Regulator makes a determination, the Technical Regulator must give each party to the dispute a copy of the draft determination and may take into account representations that either of them may make on the proposed determination.

(2) A determination must be in writing.

(3) If the Technical Regulator does not give reasons in writing for a determination under this Division when the determination is made, the Regulator must do so on request made by a party affected by the determination within one month of the making of the determination.

(4) The Technical Regulator must, within seven days after a determination is made give a copy of the determination to the parties to the dispute.

Costs

55L. (1) The Technical Regulator's costs in determining a vegetation clearance scheme dispute are to be borne by the parties to the dispute in proportions decided by the Technical Regulator and, in the absence of a decision by the Technical Regulator, in equal proportions.

(2) The costs will include the costs of any mediation or expert's report.

(3) The amount of the costs will be as determined by the Technical Regulator.

(4) The Technical Regulator may, but is not required to, hear submissions from the parties as to apportionment of the costs.

(5) The Technical Regulator may recover the costs as a debt.

(6) In any proceedings—

(a) a document signed by the Technical Regulator certifying as to the amount of the costs of a determination payable by a specified electricity entity or council constitutes proof of the matters so certified; and

(b) an apparently genuine document purporting to be such a certificate of the Technical Regulator is to be presumed to be such a certificate in the absence of proof to the contrary.

SUBDIVISION 3—ENFORCEMENT OF SCHEMES

Enforcement as contract

55M. A vegetation clearance scheme agreed or determined under this Division has effect, and may be enforced, as a contract between the electricity entity and the council concerned.

SUBDIVISION 4—RESOLUTION OF DISPUTES UNDER SCHEMES

Resolution of dispute by intervention of Technical Regulator

55N. (1) A party to a vegetation clearance scheme agreed or determined under this Division may ask the Technical Regulator to assist in the resolution of a dispute that has arisen under the scheme.

(2) The Technical Regulator has a discretion whether to assist in, or to continue to assist in, the resolution of the dispute and may impose conditions that must be satisfied if assistance is to be given or continued.

(3) If the Technical Regulator proceeds under this section, the Regulator may do one or more of the following to resolve the dispute:

- (a) appoint a mediator to facilitate resolution of the dispute by conciliation;
- (b) give directions to either or both parties;
- (c) determine that the vegetation clearance scheme is to be modified in a specified way.

(4) The provisions of Subdivision 2 apply (with necessary or prescribed modifications) to proceedings under this section in the same way as to proceedings for determination of a vegetation clearance scheme dispute.

DIVISION 3—MISCELLANEOUS

Role of councils in relation to vegetation clearance not within prescribed areas

56. (1) An electricity entity may make an arrangement with a council conferring on the council a specified role in relation to vegetation clearance around public powerlines that are not within a prescribed area.

(2) The arrangement—

- (a) must be in writing and executed by the electricity entity and the council; and
- (b) may contain a delegation by the electricity entity of a function or power under this Part; and
- (c) may require that the electricity entity be indemnified for any liability arising from an act or omission of the council under a delegation; and
- (d) may provide for the termination of the arrangement by the electricity entity or the council; and
- (e) may provide for the variation of the arrangement by the electricity entity and the council.

(3) A delegation by the electricity entity for the purposes of the arrangement—

- (a) may be subject to conditions specified in the arrangement; and

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- (b) may be varied or revoked by the electricity entity in accordance with the terms of the arrangement; and
- (c) does not prevent the electricity entity from acting in any matter.

Power to enter for vegetation clearance purposes

57. (1) An electricity officer for an electricity entity or council officer may, at any reasonable time, enter and remain on land to carry out vegetation clearance work that the entity or council is required or authorised to carry out under this Part.

(2) Subject to this section, if an electricity officer or council officer seeks to enter land under this section, the officer must give not less than 60 days written notice to the occupier of the land—

- (a) stating the reason and the date and time of the proposed entry; and
- (b) stating the nature of the clearance work to be carried out; and
- (c) otherwise complying with the requirements of the regulations.

(2a) Subsection (2) does not apply if the clearance work to be carried out is subject to a vegetation clearance scheme.

(3) If the proposed entry is refused or obstructed, an electricity officer or council officer may obtain a warrant under Part 9 to enter the land.

(4) In an emergency, an electricity officer or council officer may exercise a power of entry under this section—

- (a) at any time and without prior notice if it is not practicable to give such notice; and
- (b) if necessary in the circumstances, by the use of reasonable force.

(5) When an electricity officer or council officer enters land under this section, the officer—

- (a) may be accompanied by such assistants as the officer considers necessary or appropriate; and
- (b) may take any vehicles or equipment the officer considers necessary or appropriate for the functions the officer is to carry out on the land.

(6) An electricity officer may not enter a place under a warrant or by force in an emergency unless accompanied by a member of the police force.

(7) When entering a place under a warrant or by force in an emergency, a council officer may be accompanied by a member of the police force.

Regulations in respect of vegetation near powerlines

58. (1) The Governor may, after consulting with the Minister responsible for the administration of the *Environment Protection Act 1993*, make regulations dealing with the clearance of vegetation from, or the planting or nurturing of vegetation near, public or private powerlines.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) authorise the making of agreements between electricity entities and occupiers of land with respect to vegetation clearance work around powerlines on, above or under the land; and
 - (b) provide to owners or occupiers of land a right to object to a Minister or other specified person or body against proposed vegetation clearance work by electricity entities or councils around powerlines on, above or under the land, and provide for the consideration and determination of such objections; and
 - (c) provide for a process under which vegetation clearance schemes with respect to public powerlines within council areas but not within the prescribed areas are negotiated, from time to time, between electricity entities and councils; and
 - (d) provide for the granting of exemptions from the principles of vegetation clearance; and
 - (e) make provisions of a savings or transitional nature.

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**PART 5A
UNDERGROUNDING OF POWERLINES**

Program for undergrounding of powerlines

58A. (1) The Minister may prepare periodic programs for work to be carried out by an electricity entity for the undergrounding of powerlines forming part of a transmission or distribution network operated by the entity.

(2) Undergrounding work may not be included in a program unless—

- (a) the council of each area concerned agrees to contribute to the cost of the work in its area on the basis determined by the Minister; or
- (b) the Minister determines, in relation to particular work, that the council need not contribute to the cost of the work.

(3) In preparing programs, the Minister must ensure that the total cost of the work to be carried out at the expense of electricity entities in each financial year (as estimated by the Minister) is not less than an amount fixed or determined under the regulations for that financial year.

(4) The Minister must consult with the Local Government Association of South Australia before a regulation is made for the purposes of subsection (3).

(5) In preparing a program, the Minister must consult with, and seek proposals and submissions from, councils, electricity entities, bodies (other than councils) responsible for the care, control or management of roads and other persons as the Minister considers appropriate.

(6) The Minister must give a copy of a program to each electricity entity required to undertake work in accordance with the program at least six months before the commencement of the period to which the program relates.

(7) The Minister may, at the request or with the consent of an electricity entity required to undertake work in accordance with a program, vary the requirements imposed on the entity under the program.

(8) Before varying a program, the Minister must consult with councils, electricity entities, bodies (other than councils) responsible for the care, control or management of roads and other persons as the Minister considers appropriate.

(9) The Minister must give due consideration to matters arising from any submissions and consultations under this section.

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**PART 6
SAFETY AND TECHNICAL ISSUES**

Electrical installations to comply with technical requirements

59. (1) A person who connects an electrical installation to a transmission or distribution network must ensure that the installation, and the connection, comply with technical and safety requirements imposed under the regulations.

Maximum penalty: \$50 000.

(2) An electricity officer for an electricity entity may disconnect the electricity supply to an electrical installation that—

- (a) is connected to the entity's transmission or distribution network in contravention of this section; or
- (b) otherwise does not comply with this Act.

(3) For the purpose of ensuring under this section that an electrical installation complies with the technical and safety requirements, a person may, subject to the regulations, rely on a certificate of compliance issued under this Part in relation to the installation.

Responsibility of owner or operator of infrastructure or installation

60. (1) A person who owns or operates electricity infrastructure or an electrical installation must take reasonable steps to ensure that—

- (a) the infrastructure or installation complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and
- (b) the infrastructure or installation is safe and safely operated.

Maximum penalty: \$250 000.

(2) For the purpose of ensuring under this section that an electrical installation complies with the technical and safety requirements and is safe, a person may, subject to the regulations, rely on a certificate of compliance issued under this Part in relation to the installation.

Electrical installation work

61. (1) A person to whom this section applies who carries out work on an electrical installation or proposed electrical installation must ensure that—

- (a) the work is carried out as required under the regulations; and
- (b) examinations and tests are carried out as required under the regulations; and
- (c) the requirements of the regulations as to notification and certificates of compliance are complied with.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) This section applies—

- (a) if a licensed electrical contractor or licensed building work contractor has employed or engaged a registered electrical worker to personally carry out work on an electrical installation or proposed electrical installation—to the licensed electrical contractor or licensed building work contractor; or
- (b) if a registered electrical worker who personally carries out work on an electrical installation or proposed electrical installation has not been employed or engaged to do so by a licensed electrical contractor or licensed building work contractor—to the registered electrical worker.

* * * * *

Power to require rectification, etc., in relation to infrastructure or installations

62. (1) If electricity infrastructure or an electrical installation is unsafe, or does not comply with this Act, the Technical Regulator may give a direction requiring—

- (a) rectification of the infrastructure or installation to the Technical Regulator’s satisfaction;
- (b) if appropriate, the temporary disconnection of the electricity supply while the rectification work is carried out;
- (c) the disconnection and removal of the infrastructure or installation.

(2) Subject to this section, a direction under this section must be given—

- (a) in relation to infrastructure—to the electrical entity that operates the infrastructure;
- (b) in relation to an installation—to the person in charge of the installation or the occupier of the place in which the installation is situated.

(3) A direction may be given by written notice or, if the Technical Regulator is of the opinion that immediate action is required, orally (but if the direction is given orally it must be confirmed in writing).

(4) A person to whom a direction is given under this section must comply with the direction.

Maximum penalty: \$50 000.

(5) If a person does not comply with a direction, the Technical Regulator may take the action that is reasonable and necessary to have the direction carried out.

(6) A person, authorised in writing by the Technical Regulator, may do what is reasonable and necessary to carry out the direction.

(7) The costs incurred in carrying out the direction are recoverable as a debt due to the Crown.

Reporting of accidents

63. (1) If an accident happens that involves electric shock caused by the operation or condition of electricity infrastructure or an electrical installation—

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- (a) the accident must be reported as required under the regulations—
 - (i) if the accident involves part of an electricity entity's infrastructure—by the electricity entity; or
 - (ii) if the accident happens while an electrical worker is working on an electrical installation and the electrical worker is able to make the report—by the electrical worker; or
 - (iii) in any other case—by the occupier of the place in which the accident happens; and
- (b) the infrastructure or installation must not be altered or interfered with unnecessarily by any person so as to prevent a proper investigation of the accident.

Maximum penalty: \$2 500.

Expiation fee: \$210.

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**PART 7
ENFORCEMENT**

DIVISION 1—APPOINTMENT OF AUTHORISED OFFICERS

Appointment of authorised officers

64. (1) The Minister may appoint suitable persons as authorised officers.

(2) An authorised officer may (but need not be) a Public Service employee.

(3) An authorised officer may be assigned by the Minister to assist the Industry Regulator, the Technical Regulator or both, as the Minister considers appropriate.

(4) An authorised officer will—

(a) in the exercise of powers for the enforcement of Part 3 or Schedule 1—be subject to control and direction by the Industry Regulator;

(b) in the exercise of powers for the enforcement of any other provisions under this Act—be subject to control and direction by the Technical Regulator.

Conditions of appointment

65. (1) An authorised officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) An authorised officer holds office on the conditions stated in the instrument of appointment.

(3) An authorised officer may resign by written notice given to the Minister.

(4) An authorised officer may be removed from office by the Minister.

Authorised officer's identity card

66. (1) The Minister must give each authorised officer an identity card.

(2) The identity card must—

(a) contain a photograph of the authorised officer taken for the purpose; and

(b) be signed by the authorised officer.

(3) A person must, within two days after ceasing to be an authorised officer, return the identity card to the Minister.

Maximum penalty: \$250.

Production of identity card

67. An authorised officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

DIVISION 2—AUTHORISED OFFICERS' POWERS

Power of entry

68. (1) An authorised officer may, as reasonably required for the purposes of the enforcement of this Act, enter and remain in any place.

(2) When an authorised officer enters a place under this section, the authorised officer—

(a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and

(b) may take any vehicles or equipment the authorised officer considers necessary or appropriate for the functions the authorised officer is to carry out in the place.

(3) An authorised officer may use reasonable force to enter a place under this Part if—

(a) the entry is authorised under a warrant under Part 9; or

(b) the entry is necessary in an emergency.

(4) When entering a place under a warrant or by force in an emergency, an authorised officer may be accompanied by a member of the police force.

General investigative powers of authorised officers

69. (1) An authorised officer who enters a place under this Part may exercise any one or more of the following powers:

(a) investigate whether the provisions of this Act are being or have been complied with;

(b) examine and test electrical infrastructure, electrical installations or equipment in the place to find out whether the infrastructure, installations or equipment are safe and comply with the requirements of this Act;

(c) investigate a suspected electrical accident;

(d) investigate a suspected interference with electrical infrastructure or an electrical installation;

(e) investigate a suspected theft or diversion of electricity;

(f) search for, examine and copy or take an extract from a document or record of any kind as reasonably required for the purposes of the enforcement of this Act;

(g) take photographs or make films or other records of activities in the place and electrical infrastructure, installations or equipment in the place;

(h) take possession of any object that may be evidence of an offence against this Act.

(2) If an authorised officer takes possession of an object that may be evidence of an offence—

(a) the authorised officer must give the occupier of the place a receipt for the object; and

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- (b) the object must be returned to its owner—
- (i) if proceedings for an offence are not commenced within six months after the authorised officer takes possession of the object—at the end of that period; or
 - (ii) if such proceedings are commenced within that period—on completion of the proceedings, unless the court, on application by the Industry Regulator or Technical Regulator (as the case may be), orders confiscation of the object.

(3) A court may order the confiscation of an object of which an authorised officer has taken possession under subsection (1) if of the opinion that the object has been used for the purpose of committing an offence or there is some other proper reason for ordering its confiscation.

(4) If the court orders the confiscation of an object, the Regulator on whose application the order was made may dispose of the object.

Disconnection of electricity supply

70. (1) If an authorised officer finds that electricity is being supplied or consumed contrary to this Act, the authorised officer may disconnect the electricity supply.

(2) If an authorised officer disconnects an electricity supply under this section, the officer must give written notice to the occupier of the relevant place—

- (a) informing the occupier that the electricity supply has been disconnected under this section; and
- (b) directing that the electricity supply must not be reconnected until arrangements have been made to the satisfaction of an authorised officer to ensure against future contravention of this Act.

(3) If an electricity supply has been disconnected under this section, a person must not reconnect the electricity supply, or have it reconnected, without the approval of an authorised officer.

Maximum penalty: \$50 000.

Power to require disconnection of cathodic protection system

71. (1) If an authorised officer finds that a cathodic protection system does not comply with, or is being operated contrary to, the regulations, the authorised officer may take reasonable action, or give a direction to the person in charge of the system or the occupier of the place in which the system is situated to take reasonable action, to disconnect the system so as to make it inoperable.

(2) A direction under this section must be given by written notice.

(3) A person to whom a direction is given under this section must comply with the direction.

Maximum penalty: \$50 000.

Power to make infrastructure or installation safe

72. (1) If an authorised officer finds that electricity infrastructure or an electrical installation is unsafe, the officer may—

- (a) disconnect the electricity supply or give a direction requiring the disconnection of the electricity supply;
- (b) give a direction requiring the carrying out of the work necessary to make the infrastructure or installation safe before the electricity supply is reconnected.

(2) Subject to this section, a direction under this section must be given—

- (a) in relation to infrastructure—to the electrical entity that operates the infrastructure;
- (b) in relation to an installation—to the person in charge of the installation or the occupier of the place in which the installation is situated.

(3) A direction under this section may be given by written notice or, if the authorised officer is of the opinion that immediate action is required, orally (but if the direction is given orally it must be confirmed in writing).

(4) A person to whom a direction is given under this section—

- (a) must comply with the direction; and
- (b) must not reconnect or permit the reconnection of the electricity supply unless the work required by the direction under this section has been carried out, or an authorised officer approves the reconnection of the electricity supply.

Maximum penalty: \$50 000.

Power to require information

73. (1) An authorised officer may require a person to provide information in the person's possession relevant to the enforcement of this Act.

(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to the enforcement of this Act for inspection by the authorised officer.

(3) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty: \$20 000.

(4) A person is not required to give information or produce a document under this section if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

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**PART 8
REVIEWS AND APPEALS**

Interpretation

74. In this Part—

"**relevant Regulator**" means—

- (a) in relation to a decision under Part 3 or Schedule 1—the Industry Regulator;
and
- (b) in any other case—the Technical Regulator.

Review of decisions by relevant Regulator

75. (1) An application may be made to the relevant Regulator—

- (a) by an applicant for the issue or variation of the terms or conditions of a licence under Part 3, or for agreement to the transfer of such a licence, for review of the decision of the Industry Regulator to refuse the application; or
- (b) by an electricity entity for review of a decision of the Industry Regulator under Part 3 to suspend or cancel the entity's licence or to vary the terms or conditions of the entity's licence; or
- (c) by a person to whom a rectification order has been given under Schedule 1 by the Industry Regulator for review of the decision to give the order; or
- (d) by a person to whom a direction has been given under this Act by the Technical Regulator or an authorised officer (other than a direction given by the Technical Regulator under Part 5) for review of the decision to give the direction; or
- (e) by a person affected by the decision for review of the decision of an authorised officer or an electricity officer to disconnect an electricity supply or to disconnect a cathodic protection system.

(2) An application for review must—

- (a) be in writing; and
- (b) set out the decision to which the application relates; and
- (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
- (d) be accompanied by any information that the applicant considers should be taken into account by the relevant Regulator on the review; and
- (e) be lodged with the relevant Regulator—
 - (i) in the case of a decision relating to a licence or application for a licence—within 10 working days after written notice of the decision is given to the electricity entity or applicant;

- (ii) in the case of a decision to give a rectification order—within 10 working days after the order is given;
- (iii) in the case of a decision to give a direction—within 10 working days after the direction is given;
- (iv) in the case of a decision to disconnect an electricity supply or cathodic protection system—within 10 working days after notice of the disconnection is given or, if notice is not given, within 10 working days after the supply or system is disconnected.

(3) The relevant Regulator may stay the operation of the decision to which the application relates.

(4) A review must be decided within four weeks of the application being lodged with the relevant Regulator.

(5) If a review is not decided within that period, the relevant Regulator is to be taken to have confirmed the decision.

(6) After considering the application, the relevant Regulator may confirm, amend or substitute the decision.

(7) The relevant Regulator must give the applicant written notice of the relevant Regulator's decision, and the reasons for the decision, on the review.

Appeal

76. (1) An applicant for review who is dissatisfied with a decision as confirmed, amended or substituted by the relevant Regulator on the review under this Part may appeal against the decision to the Administrative and Disciplinary Division of the District Court (the **Court**).

(2) The Court must sit with experts selected in accordance with Schedule 1A.

(3) An appeal must be made within 10 working days after receipt of the written notice of the decision appealed against or, if the relevant Regulator failed to make a decision on the review within the allowed period, within 10 working days after the end of that period.

* * * * *

(5) The Court may, on an appeal—

(a) affirm the decision appealed against; or

(b) remit the matter to the original decision maker for consideration or further consideration in accordance with any directions of the Court.

(6) An appeal under the *District Court Act 1991* will lie against a decision of the Court under this section on a question of law (but not on a question of fact).

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Minister's power to intervene

77. The Minister may intervene, personally or by counsel or other representative, in a review or appeal under this Part for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.

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**PART 9
MISCELLANEOUS**

Power of exemption

80. (1) The Industry Regulator may, with the approval of the Minister, grant an exemption from Part 3 or Schedule 1, or specified provisions of Part 3 or Schedule 1, on terms and conditions the Industry Regulator considers appropriate.

(2) If the Industry Regulator exempts a person from the requirement to hold a licence under Part 3, the Industry Regulator may (without limiting subsection (1)) by conditions of the exemption require that the person is to be treated as an electricity entity for the purposes of specified provisions of this Act.

(3) Except as otherwise provided in the exemption, an exemption under subsection (1) may be varied or revoked by the Industry Regulator by notice in writing.

(4) The Technical Regulator may grant an exemption from Part 6, or specified provisions of that Part, on terms and conditions the Technical Regulator considers appropriate.

(5) Except as otherwise provided in the exemption, an exemption under subsection (4) may be varied or revoked by the Technical Regulator by notice in writing.

Register of exemptions

80A. (1) The Industry Regulator and the Technical Regulator must each keep a register of exemptions granted by him or her under this Act.

(2) A register kept under this section must include the terms and conditions of each exemption recorded in it.

(3) A person may, without payment of a fee, inspect a register kept under this section.

Obligation to comply with conditions of exemption

81. A person in whose favour an exemption is given must comply with the conditions of the exemption.

Maximum penalty: \$50 000.

Delegation by Minister

81A. (1) The Minister may delegate any of his or her functions or powers under this Act to a person or body of persons.

(2) A delegation under this section—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent the Minister from acting in any matter.

Application and issue of warrant

82. (1) An authorised officer, electricity officer or council officer may apply to a magistrate for a warrant to enter a place specified in the application.

(2) A magistrate may issue a warrant if satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant authorises the authorised officer, electricity officer or council officer with any assistance and by any force reasonably necessary—

(a) to enter the place specified in the warrant; and

(b) to do anything authorised by this Act,

at any time, or within any period, specified in the warrant.

(4) An electricity officer must be accompanied by a member of the police force when entering a place under a warrant.

(5) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

Urgent situations

83. (1) An authorised officer, electricity officer or council officer may apply to a magistrate for a warrant by telephone, facsimile or other prescribed means if the officer considers the urgency of the situation requires it.

(2) The magistrate may complete and sign the warrant in the same terms as for a warrant applied for in person if satisfied that there are reasonable grounds for issuing the warrant urgently.

(3) The magistrate must—

(a) tell the officer—

(i) the terms of the warrant; and

(ii) the date on which and the time at which, the warrant was signed; and

(iii) the date on which, and the time at which, the warrant ceases to have effect; and

(b) record on the warrant the reasons for granting the warrant.

(4) The officer must—

(a) complete a form of warrant in the same terms as the warrant signed by the magistrate; and

(b) write on the form—

(i) the name of the magistrate; and

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- (ii) the date on which, and the time at which, the warrant was signed; and
- (c) send the magistrate the completed form of warrant not later than the day after the warrant is executed or ceases to have effect.

(5) On receipt of the form of warrant, the magistrate must attach it to the warrant the magistrate signed.

(6) A form of warrant completed by an authorised officer, electricity officer or council officer under subsection (4) has the same force as a warrant signed by the magistrate under subsection (2).

Unlawful interference with electricity infrastructure or electrical installation

84. (1) A person must not, without proper authority—

- (a) attach an electrical installation or other thing, or make any connection, to a transmission or distribution network; or
- (b) disconnect or interfere with a supply of electricity from a transmission or distribution network; or
- (c) damage or interfere with electrical infrastructure or an electrical installation in any other way.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A person must not, without proper authority—

- (a) be in an enclosure where electrical infrastructure is situated; or
- (b) climb on poles and other structures that are part of electrical infrastructure.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(3) A person must not discharge a firearm or throw or project an object towards electrical infrastructure or an electrical installation if there is a risk of damage to the infrastructure or installation, or interruption of electricity supply.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Unlawful abstraction or diversion of electricity

85. (1) A person must not, without proper authority—

- (a) abstract or divert electricity from a power system; or
- (b) interfere with a meter or other device for measuring the consumption of electricity supplied by an electricity entity.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A person must not install or maintain a line capable of conveying an electricity supply beyond the boundaries of property occupied by the person unless—

- (a) the person is an electricity entity; or
- (b) the person does so with the approval of an electricity entity responsible for electricity supply to the property; or
- (c) the line is authorised under the regulations.

Maximum penalty: \$10 000.

(3) If, in proceedings for an offence against subsection (1), it is proved that a device has been installed or any other act done, without proper authority, the apparent purpose of which is to abstract or divert electricity to any particular land or place or to affect the proper measurement of electricity supplied to any particular land or place, it will be presumed, in the absence of proof to the contrary, that the occupier of the land or place installed the device or did the other act with that purpose.

(4) If an electricity entity suffers loss or damage as a result of a contravention of this section, the entity may recover compensation for the loss or damage from a person guilty of the contravention—

- (a) on application to a court convicting the person of an offence against this section; or
- (b) by action in a court of competent jurisdiction.

Erection of buildings in proximity to powerline

86. (1) A person must not, except as approved by the Technical Regulator, erect a building or structure in proximity to a powerline contrary to the regulations.

Maximum penalty: \$10 000.

(2) Subject to the regulations, the Technical Regulator may give an approval for the purposes of this section.

(3) An approval under this section—

- (a) may be general or specific; and
- (b) will, insofar as the approval operates for the benefit of a particular person, be subject to such conditions as the Technical Regulator may fix from time to time by notice in writing served personally or by post on that person.

(4) If a building or structure is erected by a person in proximity to a powerline of an electricity entity in contravention of this section, the entity may—

- (a) on application to a court convicting the person of an offence against subsection (1); or
- (b) by action in a court of competent jurisdiction,

obtain one or more of the following orders:

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- (c) an order of the court requiring the person to take specified action to remove or modify the building or structure within a specified period;
- (d) an order for compensation from the person for loss or damage suffered in consequence of the contravention;
- (e) an order for costs reasonably incurred by the entity in relocating the powerline or carrying out other work to rectify the situation.

Notice of work that may affect electricity infrastructure

87. (1) A person who proposes to do work near electricity infrastructure must give the appropriate electricity entity at least seven days' notice of the proposed work if—

- (a) there is a risk of equipment or a structure coming into dangerous proximity to electrical conductors; or
- (b) the work may affect the support for any part of electricity infrastructure; or
- (c) the work may interfere with the electricity infrastructure in some other way.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(2) It is a defence to a charge of an offence against subsection (1) if, in the circumstances of an emergency, it is not practicable to give the notice required by subsection (1) and the notice is given as soon as practicable.

(3) A person who does work near electricity infrastructure must comply with—

- (a) requirements prescribed by regulation that are applicable to the work; and
- (b) reasonable requirements made by the electricity entity for the protection of the infrastructure or the safety of the persons carrying out the work.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Impersonation of officials, etc.

88. A person must not impersonate an authorised officer, an electricity officer or anyone else with powers under this Act.

Maximum penalty: \$5 000.

Obstruction

89. (1) A person must not, without reasonable excuse, obstruct an authorised officer, an electricity officer, or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: \$5 000.

(2) A person must not use abusive or intimidatory language to, or engage in offensive or intimidatory behaviour towards, an authorised officer, an electricity officer, or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: \$5 000.

False or misleading information

90. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under this Act.

Maximum penalty: If the person made the statement knowing that it was false or misleading—\$10 000 or imprisonment for 2 years.
In any other case—\$5 000.

Statutory declarations

91. If a person is required by or under this Act to furnish information to the Industry Regulator or Technical Regulator, the Industry Regulator or Technical Regulator may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Industry Regulator or Technical Regulator.

General defence

92. (1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

(2) It is a defence to a charge of an offence against this Act if the defendant proves that the act or omission constituting the offence was reasonably necessary in the circumstances in order to avert, eliminate or minimise danger to person or property.

Offences by bodies corporate

93. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defences under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

94. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-fifth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-fifth of the maximum penalty prescribed for the offence.

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(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Immunity from personal liability

95. (1) No personal liability attaches to any person engaged in the administration or enforcement of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Evidence

96. (1) If, in any legal proceedings, a person is alleged to have held a specified appointment under this Act at a specified time, the allegation is taken to have been proved in the absence of proof to the contrary.

(2) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Industry Regulator certifying—

(a) that a person was or was not the holder of a licence at a specified date or as to the particulars or conditions of a licence; or

* * * * *

(b) as to the giving and contents of an order, direction, delegation, exemption, approval or authorisation by the Industry Regulator,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(3) An apparently genuine document purporting to be a certificate of the Industry Regulator certifying as to a person's status as a contestable customer or non-contestable customer in relation to a specified time and place constitutes proof of the matters so certified in the absence of proof to the contrary.

(3a) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Technical Regulator certifying—

(a) as to the existence and contents of a vegetation clearance scheme; or

(b) as to the giving and contents of a direction, delegation, exemption, approval or authorisation by the Technical Regulator under this Act,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(4) In any legal proceedings, an apparently genuine document purporting to be a certificate of an authorised officer certifying as to the giving and contents of a direction by the officer under this Act, constitutes proof of the matters so certified in the absence of proof to the contrary.

(5) If, in any legal proceedings, a person is alleged to have acted without proper authority or a specified approval required under this Act, the absence of such authority or approval will be presumed in the absence of proof that such authority or approval in fact existed or had been given.

Service

97. (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may, if the person is a body corporate, be given to or served on the person in accordance with section 109X of the *Corporations Law*.

(3) If a notice or other document is required or authorised to be given to or served on the holder of a licence under this Act and the licence is held by two or more persons, it is sufficient for the purposes of this Act if the notice or other document is given to or served on any one of those persons.

Regulations

98. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may deal with the following matters:

- (a) the generation, transmission, distribution, sale and supply of electricity; and
- (b) the construction, installation and positioning of electricity infrastructure and electrical installations; and
- (c) technical, operational and safety requirements and standards and monitoring and enforcing compliance with the prescribed requirements and standards; and

* * * * *

- (e) the exemption (conditionally or unconditionally) of persons or operations from the application of this Act or specified provisions of this Act; and
- (f) fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; and
- (g) penalties not exceeding \$5 000 for contravention of a regulation.

(2a) If the regulations grant an exemption from the requirement to hold a licence under Part 3, the regulations may require a person exempted from the requirement to be treated as an electricity entity for the purposes of specified provisions of this Act.

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(2b) The regulations may make transitional provisions in relation to successive classes of customers prescribed as contestable customers under this Act, including provisions prescribing procedures to be followed by electricity entities with such customers and creating or dealing with contractual relations between electricity entities and such customers.

(2c) The Governor may make regulations that the Governor considers necessary or expedient for the purposes of the *National Electricity (South Australia) Law* and the National Electricity Code.

(3) The regulations may—

- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister, the Industry Regulator or the Technical Regulator;
- (c) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time.

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SCHEDULE 1
*Cross-ownership Rules***Interpretation**

1. (1) In this Schedule—

"**associate**"—*see subclause (2)*;

"**gas pipeline licence**" means a pipeline licence under the *Petroleum Act 1940* in respect of the Moomba-Adelaide pipeline as defined in the *Natural Gas Authority Act 1967*;

"**gas trading company**" means a body corporate carrying on the business of selling gas for the generation of electricity in South Australia declared by proclamation to be a gas trading company for the purposes of this Schedule;

"**Pelican Point generation licence**" means a licence under this Act authorising the generation of electricity by means of an electricity generating plant situated on the Pelican Point land (whether the plant is contained within that land or extends to adjacent land);

"**the Pelican Point land**" means the land comprised in Certificate of Title Register Book Volume 5660 Folio 245 and Volume 5660 Folio 246;

"**share**" has the same meaning as in the *Corporations Law*;

"**specially issued distribution licence**" means a licence issued in accordance with an order of the Minister under Part 5 of the *Electricity Corporations (Restructuring and Disposal) Act 1999* authorising the operation of a distribution network or some other licence authorising the operation of all or part of that distribution network;

"**specially issued generation licence**" means a licence issued in accordance with an order of the Minister under Part 5 of the *Electricity Corporations (Restructuring and Disposal) Act 1999* authorising the generation of electricity or some other licence authorising the generation of electricity by means of an electricity generating plant previously operated pursuant to the licence issued in accordance with the order of the Minister;

"**specially issued retailing licence**" means a licence issued in accordance with an order of the Minister under Part 5 of the *Electricity Corporations (Restructuring and Disposal) Act 1999* authorising the retailing of electricity or some other licence authorising the retailing of electricity to non-contestable customers;

"**specially issued transmission licence**" means a licence issued in accordance with an order of the Minister under Part 5 of the *Electricity Corporations (Restructuring and Disposal) Act 1999* authorising the operation of a transmission network or some other licence authorising the operation of all or part of that transmission network;

"**State-owned company**" has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*.

(2) Two persons are **associates** of each other if—

- (a) one is a body corporate and the other has a substantial shareholding in the body corporate; or
- (b) one is a body corporate and the other is a director or secretary of the body corporate; or
- (c) they are related bodies corporate within the meaning of the *Corporations Law*; or
- (d) they are members of a partnership or joint venture; or

- (e) one is a trustee and the other is a beneficiary of the same trust; or
 - (f) there is an agreement, arrangement or understanding (whether or not having any legal or equitable force) under which—
 - (i) one acts in accordance with the directions, instructions or wishes of the other; or
 - (ii) where one is a body corporate—the majority of the directors of the body corporate act in accordance with the directions, instructions or wishes of the other,

(other than an agreement, arrangement or understanding entered into in the ordinary course of business for the supply of goods or services); or
 - (g) the regulations declare them to be associates for the purposes of this Schedule; or
 - (h) a chain of associations can (by applying any one or more of the above provisions) be traced between them through another person or other persons.
- (3) For the purposes of this Schedule—
- (a) a person has a substantial shareholding in a body corporate if, and only if, the person is entitled to not less than 20%, or, if a lesser percentage is prescribed by regulation, that lesser percentage, of—
 - (i) if the shares in the body are not divided into two or more classes—those shares; or
 - (ii) if the shares in the body are divided into two or more classes—the shares in one of those classes;
 - (b) a person's entitlement to shares is to be determined in accordance with section 609 of the *Corporations Law*.

Application and expiry of Schedule

2. (1) This Schedule—

- (a) does not apply in relation to an instrumentality of the Crown in right of this State; and
- (b) does not prevent an electricity entity from acquiring an interest in, or rights in respect of, electricity infrastructure as contemplated by conditions of a licence under this Act or as a necessary or incidental part of the operations authorised by the licence held by the entity; and
- (c) has effect subject to any other exceptions prescribed by regulation.

(2) This Schedule expires on 31 December 2002.

Cross-ownership rules

3. (1) The holder of a specially issued generation licence or an associate of the holder must not—

- (a) hold another specially issued generation licence; or
- (b) be entitled to any shares in, or be an associate of, the holder of another specially issued generation licence; or
- (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of another specially issued generation licence.

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(2) The holder of a specially issued generation licence in respect of Torrens Island Power Station A or Torrens Island Power Station B or Northern Power Station at or near Port Augusta or Playford Power Station at or near Port Augusta or an associate of the holder must not—

- (a) hold a Pelican Point generation licence; or
- (b) be entitled to any shares in, or be an associate of, the holder of a Pelican Point generation licence; or
- (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of a Pelican Point generation licence.

(3) The holder of a Pelican Point generation licence or an associate of the holder must not—

- (a) hold a specially issued generation licence in respect of Torrens Island Power Station A or Torrens Island Power Station B or Northern Power Station at or near Port Augusta or Playford Power Station at or near Port Augusta; or
- (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
- (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of a licence referred to in paragraph (a).

(4) The holder of a specially issued generation licence or a Pelican Point generation licence or an associate of the holder must not—

- (a) hold a specially issued transmission licence, a specially issued distribution licence or a specially issued retailing licence; or
- (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
- (c) acquire an interest in, or rights in respect of, the assets of the holder of a specially issued retailing licence or the electricity infrastructure of the holder of any other licence referred to in paragraph (a); or
- (d) operate an electricity transmission network in another State or a Territory of the Commonwealth; or
- (e) be entitled to any shares in, or be an associate of, the operator of an electricity transmission network in another State or a Territory of the Commonwealth; or
- (f) acquire an interest in, or rights in respect of, an electricity transmission network in another State or a Territory of the Commonwealth; or
- (g) be entitled to any shares in, or be an associate of, a gas trading company; or
- (h) acquire an interest in, or rights in respect of, assets of a gas trading company; or
- (i) hold a gas pipeline licence; or
- (j) be entitled to any shares in, or be an associate of, a person who holds a gas pipeline licence; or
- (k) acquire an interest in, or rights in respect of, assets of a person who holds a gas pipeline licence.

- (5) The holder of a specially issued transmission licence or an associate of the holder must not—
- (a) hold a specially issued generation licence, a Pelican Point generation licence, a specially issued distribution licence or a specially issued retailing licence; or
 - (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
 - (c) acquire an interest in, or rights in respect of, the assets of the holder of a specially issued retailing licence or the electricity infrastructure of the holder of any other licence referred to in paragraph (a).
- (6) The holder of a specially issued distribution licence or specially issued retailing licence or an associate of the holder must not—
- (a) hold a specially issued generation licence, a Pelican Point generation licence or a specially issued transmission licence; or
 - (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
 - (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of a licence referred to in paragraph (a).
- (7) The operator of an electricity transmission network in another State or a Territory of the Commonwealth or an associate of such an operator must not—
- (a) hold a specially issued generation licence or a Pelican Point generation licence; or
 - (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
 - (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of a licence referred to in paragraph (a).
- (8) A gas trading company or an associate of a gas trading company must not—
- (a) hold a specially issued generation licence or a Pelican Point generation licence; or
 - (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
 - (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of a licence referred to in paragraph (a).
- (9) A person who holds a gas pipeline licence or an associate of such a person must not—
- (a) hold a specially issued generation licence or a Pelican Point generation licence; or
 - (b) be entitled to any shares in, or be an associate of, the holder of a licence referred to in paragraph (a); or
 - (c) acquire an interest in, or rights in respect of, the electricity infrastructure of the holder of a licence referred to in paragraph (a).

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Powers to rectify breach of cross-ownership rules

4. (1) If the Industry Regulator forms the opinion that there has been a breach of the cross-ownership rules, the Industry Regulator may, as the Industry Regulator considers necessary to rectify the breach, make one or more of the following orders (**rectification orders**):

- (a) an order requiring a person (whether or not the person in breach of the cross-ownership rules) to dispose of shares (in such a number only as is necessary to rectify the breach and in such a manner as will not result in a further breach) within a period specified in the order;
- (b) an order requiring an electricity entity to exercise its powers under the divestiture provisions in its constitution for the disposal of shares in the entity (in such a number only as is necessary to rectify the breach and in such a manner as will not result in a further breach) within a period specified in the order;
- (c) an order suspending voting rights attaching to shares to which an order under paragraph (a) or (b) relates until the order under that paragraph is complied with;
- (d) an order requiring termination of a partnership or joint venture giving rise to or involved in the breach of the cross-ownership rules within a period specified in the order;
- (e) an order requiring termination of an agreement, arrangement or understanding giving rise to or involved in the breach of the cross-ownership rules within a period specified in the order;
- (f) an order requiring an electricity entity or an associate of an electricity entity to cease carrying on operations giving rise to the breach of the cross-ownership rules within a period specified in the order;
- (g) an order requiring an electricity entity or an associate of an electricity entity to cease carrying on a business giving rise to the breach of the cross-ownership rules within a period specified in the order;
- (h) an order requiring disposal or surrender (in such a manner as will not result in a further breach) of interests or rights giving rise to the breach of the cross-ownership rules within a period specified in the order.

(2) A rectification order—

- (a) must be in writing; and
- (b) must be given to the person to whom it is directed; and
- (c) has effect according to its terms.

(3) If a person required by a rectification order to dispose of shares fails to comply with the order, the Industry Regulator may determine that the shares to which the order relates are forfeited to the Crown.

(4) Shares forfeited under subsection (3) must be sold by the Industry Regulator (to such a person as will not result in a further breach of the cross-ownership rules) and the proceeds of the sale, after deduction of the reasonable costs of the sale, paid to the person from whom the shares were forfeited.

(5) If a person to whom a rectification order is given fails to comply with the order, the person is guilty of an offence.

Maximum penalty: \$250 000.

Proclamations

5. The Governor may make proclamations for the purposes of this Schedule.

SCHEDULE 1A

Appointment and Selection of Experts for Court

(1) The Minister must establish a panel of experts who may sit as assessors with the Court consisting of persons with knowledge of, or experience in, the electricity supply industry or in the fields of commerce or economics.

(2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(4) Subject to subclause (5) and except in the case of an appeal limited to a question of law, a judicial officer of the Court must select two members from the panel to sit with the Court on an appeal.

(5) A member of a panel who has a direct or indirect pecuniary or other interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(6) Subclause (5) does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.

(7) If a member of a panel sitting with the Court dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other member of the panel sitting with the Court may, if the judicial officer so determines, continue and complete the proceedings.

(8) If proceedings are reheard, the Court may have regard to any record of proceedings made in the earlier proceedings (including a record of evidence taken in those proceedings).

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SCHEDULE 2
Transitional Provisions

Continuation of certain arrangements

1. (1) An arrangement between an electricity corporation and a council in force under clause 8 of the repealed provisions immediately before the commencement of this Schedule continues in force as such an arrangement for the purposes of Part 5 of this Act.

(2) In this clause—

"**the repealed provisions**" means those clauses of Schedule 4 of the *Electricity Corporations Act 1994* repealed by this Act.

* * * * *

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APPENDIX

LEGISLATIVE HISTORY

Amendments

The *Electricity Act 1996* amended the *Electricity Corporations Act 1994* and the *Local Government Act 1934*.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

| | |
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| Long title: | amended by 60, 1999, s. 3 |
| Section 4: | redesignated as s. 4(1) by 60, 1999, s. 4(l) definition of "access" repealed by 60, 1999, s. 4(a) definition of "contestable customer" substituted by 71, 1997, s. 3(a) definition of "council officer" inserted by 62, 1997, s. 3(a) definition of "cross-ownership rules" inserted by 60, 1999, s. 4(b) definition of "customer" substituted by 60, 1999, s. 4(b) definition of "electrical installation" amended by 71, 1997, s. 3(b) definition of "electricity infrastructure" amended by 60, 1999, s. 4(c) definition of "electricity supply industry" amended by 60, 1999, s. 4(d) definition of "Industry Regulator" inserted by 60, 1999, s. 4(e) definition of "National Electricity Code" substituted by 60, 1999, s. 4(f) definition of "National Electricity (South Australia) Law" inserted by 60, 1999, s. 4(f) definition of "powerline" substituted by 62, 1997, s. 3(b); amended by 60, 1999, s. 4(g) definition of "Pricing Regulator" inserted by 71, 1997, s. 3(c); repealed by 60, 1999, s. 4(h) definition of "retailing" amended by 60, 1999, s. 4(i) definition of "system controller" amended by 60, 1999, s. 4(j) definition of "telecommunications" inserted by 60, 1999, s. 4(k) definition of "transmission or distribution system" amended by 71, 1997, s. 3(d) definition of "vegetation clearance scheme" inserted by 62, 1997, s. 3(c) |
| Section 4(2): | inserted by 60, 1999, s. 4(l) |
| Section 5(3): | amended by 60, 1999, s. 5 |
| Section 6: | substituted by 60, 1999, s. 6 |
| | Division 1 of Part 2 comprising s. 6A and heading inserted by 60, 1999, s. 7 |
| | Division 2 of Part 2 comprising ss. 6B - 6M and heading inserted by 60, 1999, s. 7 |
| Part 2 Division 1 heading: | inserted by 71, 1997, s. 4; repealed by 60, 1999, s. 8 |
| Part 2 Division 3 heading: | inserted by 60, 1999, s. 8 |
| Section 7(2): | amended by 60, 1999, s. 9 |
| Section 8: | substituted by 60, 1999, s. 10 |

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| Section 10(1): | amended by 60, 1999, s. 11(a) |
| Section 10(2): | amended by 60, 1999, s. 11(b) |
| Section 11(1): | amended by 60, 1999, s. 12(a) |
| Section 11(1a): | inserted by 71, 1997, s. 5; amended by 60, 1999, s. 12(b) |
| Sections 12 and 13: | repealed by 60, 1999, s. 13 |
| Section 14(1): | amended by 60, 1999, s. 14(a) |
| Section 14(2): | repealed by 60, 1999, s. 14(b) |
| | Division 2 of Part 2 comprising ss. 14A - 14D and heading inserted by 71, 1997, s. 6; repealed by 60, 1999, s. 15 |
| | Division 4 of Part 2 comprising ss. 14A - 14C and heading inserted by 60, 1999, s. 15 |
| | Division A1 of Part 3 comprising s. 14D and heading inserted by 60, 1999, s. 16 |
| Section 15(1): | amended by 60, 1999, s. 17(a) |
| Section 15(2): | amended by 60, 1999, s. 17(b) |
| Section 15(3): | inserted by 60, 1999, s. 17(c) |
| Section 16(1): | amended by 60, 1999, s. 18(a), (b) |
| Section 16(2): | amended by 60, 1999, s. 18(c) |
| Section 16(3): | amended by 60, 1999, s. 18(d), (e) |
| Section 16(4): | amended by 60, 1999, s. 18(f) |
| Section 17(1): | amended by 60, 1999, s. 19(a) |
| Section 17(2): | amended by 60, 1999, s. 19(b)-(d) |
| Section 17(3): | amended by 60, 1999, s. 19(e) |
| Section 17(4): | amended by 60, 1999, s. 19(f)-(i) |
| Section 17(5): | amended by 60, 1999, s. 19(j), (k) |
| Section 17A: | inserted by 60, 1999, s. 20 |
| Section 19: | substituted by 60, 1999, s. 21 |
| Section 20(1): | amended by 60, 1999, s. 22(a), (b) |
| Section 20(2): | amended by 60, 1999, s. 22(c) |
| Section 20(3): | substituted by 60, 1999, s. 22(d) |
| Section 20(4): | amended by 60, 1999, s. 22(e) |
| Section 20(5): | amended by 60, 1999, s. 22(f) |
| Section 20(7): | definition of "administrative costs" inserted by 60, 1999, s. 22(g) |
| Section 21: | amended by 71, 1997, s. 7; substituted by 60, 1999, s. 23 |
| Sections 22 - 24: | substituted by 60, 1999, s. 23 |
| Sections 24A and 24B: | inserted by 60, 1999, s. 23 |
| Section 25(1): | amended by 60, 1999, s. 24(a) |
| Section 25(2): | amended by 60, 1999, s. 24(b) |
| Section 26: | repealed by 60, 1999, s. 25 |
| Section 27(1): | substituted by 60, 1999, s. 26 |
| Section 28: | substituted by 60, 1999, s. 27 |
| Sections 28A and 28B: | inserted by 60, 1999, s. 27 |
| Section 29(1) - (3): | amended by 60, 1999, s. 28 |
| Section 30(1): | amended by 60, 1999, s. 29(a) |
| Section 30(3): | amended by 60, 1999, s. 29(b) |
| Section 31: | substituted by 60, 1999, s. 30 |
| Sections 32 and 33: | repealed by 60, 1999, s. 30 |
| | Division 2A of Part 3 comprising s. 35A and heading inserted by 71, 1997, s. 8; repealed and ss. 35A, 35B and heading inserted in its place by 60, 1999, s. 31 |
| Section 35B(7): | amended by 74, 1999, s. 4 |
| Part 3 Division 3 heading: | amended by 60, 1999, s. 32 |

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Section 36(1): amended by 60, 1999, s. 33(a)
Section 36(2): amended by 60, 1999, s. 33(b)
Section 36(3): amended by 60, 1999, s. 33(c)

Division 3A of Part 3 comprising ss. 36A, 36B and heading
inserted by 60, 1999, s. 34

Section 37(1): amended by 60, 1999, s. 35(a)-(c)
Section 37(2): amended by 60, 1999, s. 35(d)
Section 37(3): amended by 60, 1999, s. 35(e)
Part 3 Division 5 heading: amended by 60, 1999, s. 36
Section 38(1): amended by 60, 1999, s. 37(a), (b)
Section 38(2): amended by 60, 1999, s. 37(c)
Section 38(3): amended by 60, 1999, s. 37(d)
Section 39(1): amended by 60, 1999, s. 38(a)
Section 39(2a): inserted by 60, 1999, s. 38(b)
Section 39(5): amended by 60, 1999, s. 38(c)
Section 39(6): amended by 60, 1999, s. 38(d)

Division 6 of Part 3 comprising s. 40 and heading repealed by
60, 1999, s. 39

Section 41(1): amended by 60, 1999, s. 40
Section 43(2): amended by 60, 1999, s. 41(a)
Section 43(3): amended by 60, 1999, s. 41(b)
Section 45(1): amended by 60, 1999, s. 42(a)
Section 45(2): amended by 60, 1999, s. 42(b)
Section 45(3): amended by 60, 1999, s. 42(c), (d)
Section 47(2a): inserted by 60, 1999, s. 43(a)
Section 47(11) and (12): repealed by 60, 1999, s. 43(b)
Section 48(1): repealed by 60, 1999, s. 44(a)
Section 48(2): amended by 60, 1999, s. 44(b)
Section 48(4): amended by 60, 1999, s. 44(c)
Section 48(5): repealed by 60, 1999, s. 44(d)
Section 48(7): amended by 60, 1999, s. 44(e)
Section 48A: inserted by 60, 1999, s. 45
Section 50: amended by 60, 1999, s. 46
Section 53(2): amended by 60, 1999, s. 47
Part 5 Division 1 heading: inserted by 62, 1997, s. 4
Section 55(1): amended by 62, 1997, s. 5(a)
Section 55(1a): inserted by 62, 1997, s. 5(b)
Section 55(3): amended by 62, 1997, s. 5(c)
Section 55(4) - (6): substituted by 62, 1997, s. 5(d)

Division 2 of Part 5 comprising ss. 55A - 55N and headings
inserted by 62, 1997, s. 6

Part 5 Division 3 heading: inserted by 62, 1997, s. 7
Section 56(1): amended by 62, 1997, s. 8
Section 57(1): amended by 62, 1997, s. 9(a), (b)
Section 57(2): amended by 62, 1997, s. 9(c)
Section 57(2a): inserted by 62, 1997, s. 9(d)
Section 57(3): amended by 62, 1997, s. 9(e)
Section 57(4): amended by 62, 1997, s. 9(f)
Section 57(5): amended by 62, 1997, s. 9(g)
Section 57(7): inserted by 62, 1997, s. 9(h)
Section 58(1): amended by 60, 1999, s. 48
Section 58(2): amended by 62, 1997, s. 10

Part 5A comprising s. 58A and heading inserted by 60, 1999,
s. 49

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| Section 59(1): | amended by 60, 1999, s. 50 |
| Section 60(1): | amended by 60, 1999, s. 51 |
| Section 61(1): | amended by 60, 1999, s. 52(a) |
| Section 61(2): | substituted by 60, 1999, s. 52(b) |
| Section 61(3): | repealed by 60, 1999, s. 52(b) |
| Section 62(2): | amended by 60, 1999, s. 53(a) |
| Section 62(4): | amended by 60, 1999, s. 53(b) |
| Section 64(1): | amended by 60, 1999, s. 54(a) |
| Section 64(3): | substituted by 60, 1999, s. 54(b) |
| Section 64(4): | inserted by 60, 1999, s. 54(b) |
| Section 65(3) and (4): | amended by 60, 1999, s. 55 |
| Section 66(1): | amended by 60, 1999, s. 56(a) |
| Section 66(3): | amended by 60, 1999, s. 56(b), (c) |
| Section 69(2): | amended by 60, 1999, s. 57(a) |
| Section 69(4): | amended by 60, 1999, s. 57(b) |
| Section 70(3): | amended by 60, 1999, s. 58 |
| Section 71(3): | amended by 60, 1999, s. 59 |
| Section 72(2): | amended by 60, 1999, s. 60(a) |
| Section 72(4): | amended by 60, 1999, s. 60(b) |
| Section 73(3): | amended by 60, 1999, s. 61 |

Part 8 comprising ss. 74 - 79 and heading amended by 62, 1997,
s. 11; repealed and ss. 74 - 77 and heading inserted by
60, 1999, s. 62

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| Section 76(1): | amended by 4, 2000, s. 9(1) (Sched. 1 cl. 12(a)) |
| Section 76(2): | amended by 4, 2000, s. 9(1) (Sched. 1 cl. 12(b)) |
| Section 76(4): | repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 12(c)) |
| Section 76(5): | substituted by 4, 2000, s. 9(1) (Sched. 1 cl. 12(d)) |
| Section 80: | substituted by 60, 1999, s. 63 |
| Section 80A: | inserted by 60, 1999, s. 63 |
| Section 81: | amended by 60, 1999, s. 64 |
| Section 81A: | inserted by 60, 1999, s. 65 |
| Section 82(1): | amended by 62, 1997, s. 12(a) |
| Section 82(3): | amended by 62, 1997, s. 12(b) |
| Section 83(1): | amended by 62, 1997, s. 13(a) |
| Section 83(6): | amended by 62, 1997, s. 13(b) |
| Section 90: | amended by 60, 1999, s. 66 |
| Section 91: | amended by 71, 1997, s. 9; 60, 1999, s. 67 |
| Section 94(1): | amended by 60, 1999, s. 68 |
| Section 95(1): | amended by 60, 1999, s. 69 |
| Section 96(2): | amended by 62, 1997, s. 14; 60, 1999, s. 70(a), (b) |
| Section 96(3): | amended by 60, 1999, s. 70(c) |
| Section 96(3a): | inserted by 60, 1999, s. 70(d) |
| Section 97(2): | amended by 60, 1999, s. 71 |
| Section 98(2): | amended by 60, 1999, s. 72(a), (c) |
| Section 98(2)(d): | repealed by 60, 1999, s. 72(b) |
| Section 98(2a) - (2c): | inserted by 60, 1999, s. 72(d) |
| Section 98(3): | amended by 60, 1999, s. 72(e) |
| Schedule 1: | substituted by 60, 1999, s. 73 |
| Schedule 1A: | inserted by 60, 1999, s. 73 |
| Schedule 2 | |
| Clause 2: | amended by 71, 1997, s. 10; repealed by 60, 1999, s. 74 |