

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.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Objects
- 4 Interpretation
- 5 Crown bound
- 6 Other statutory requirements not affected

### Part 2—Administration

#### Division 1—Essential Services Commission

- 6A Functions and powers of Commission

#### Division 3—Technical Regulator

- 7 Technical Regulator
- 8 Functions of Technical Regulator
- 9 Delegation
- 10 Technical Regulator's power to require information
- 11 Obligation to preserve confidentiality
- 14 Annual report

#### Division 4—Advisory committees

- 14A Consumer advisory committee
- 14B Technical advisory committee
- 14C Other advisory committees

### Part 3—Electricity supply industry

#### Division A1—Declaration as regulated industry

- 14D Declaration as regulated industry

#### Division 1—Licensing of electricity entities

- 15 Requirement for licence
- 16 Application for licence
- 17 Consideration of application
- 17A Licences may be held jointly

18	Authority conferred by licence
19	Term of licence
20	Licence fees and returns
21	Licence conditions
22	Licences authorising generation of electricity
23	Licences authorising operation of transmission or distribution network
24	Licences authorising retailing
24A	Licences authorising system control
24B	Licence conditions and <i>National Electricity Code</i>
25	Offence to contravene licence conditions
27	Variation of licence
28	Transfer of licence
28A	Consultation with consumer bodies
28B	Notice of licence decisions
29	Surrender of licence
30	Register of licences

#### Division 2—System controller

31	Functions and powers of system controller
34	Remuneration of system controller
35	Obligation to preserve confidentiality

#### Division 2A—Price regulation

35A	Price regulation by Commission
35B	Initial electricity pricing order

#### Division 3—Standard terms and conditions for sale or supply

36	Standard terms and conditions for sale or supply
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#### Division 3AA—Special provisions relating to small customers

36AA	Provision for standing contract with small customers
36AB	Provision for default contract with small customers

#### Division 3AB—Feed-in mechanisms

36AC	Interpretation
36AD	Feeding-in of electricity to networks by domestic customers
36AE	Expiry of scheme

#### Division 3A—Protection of property in infrastructure

36A	Electricity infrastructure does not merge with land
36B	Prevention of dismantling of electricity infrastructure in execution of judgment

#### Division 4—Suspension or cancellation of licences

37	Suspension or cancellation of licences
----	--

#### Division 5—Commission's powers to take over operations

38	Power to take over operations
39	Appointment of operator

## Part 4—Electricity entities' powers and duties

### Division 1—Electricity officers

- 41 Appointment of electricity officers
- 42 Conditions of appointment
- 43 Electricity officer's identity card
- 44 Production of identity card

### Division 2—Powers and duties relating to infrastructure

- 45 Entry on land to conduct surveys etc
- 46 Acquisition of land
- 47 Power to carry out work on public land
- 48 Entry under easements for purposes related to infrastructure
- 48A Easements and access to infrastructure for data transmission and telecommunications

### Division 3—Powers relating to installations

- 49 Entry to inspect etc electrical installations
- 50 Entry to read meters etc
- 51 Entry to disconnect supply
- 52 Disconnection of supply if entry refused

### Division 4—Powers and duties in emergencies

- 53 Electricity entity may cut off electricity supply to avert danger
- 54 Emergency legislation not affected

## Part 5—Clearance of vegetation from powerlines

### Division 1—Duties in relation to vegetation clearance

- 55 Duties in relation to vegetation clearance

### Division 2—Vegetation clearance schemes in prescribed areas

#### Subdivision 1—Content and nature of schemes

- 55A Vegetation clearance schemes

#### Subdivision 2—Disputes about schemes

- 55B Vegetation clearance scheme dispute
- 55C Circumstances in which Technical Regulator not obliged to determine dispute
- 55D Determinations
- 55E Principles to be taken into account
- 55F Conduct of proceedings
- 55G Giving of relevant documents to Technical Regulator
- 55H Power to obtain information and documents
- 55I Confidentiality of information
- 55J Termination of proceedings for determination
- 55K Procedure for giving determination
- 55L Costs

#### Subdivision 3—Enforcement of schemes

- 55M Enforcement as contract

Subdivision 4—Resolution of disputes under schemes

55N Resolution of dispute by intervention of Technical Regulator

Division 3—Miscellaneous

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

57 Power to enter for vegetation clearance purposes

58 Regulations in respect of vegetation clearance

Part 5A—Undergrounding of powerlines

58A Program for undergrounding of powerlines

Part 6—Safety and technical issues

59 Requirements relating to electrical installation connection and meter installation

60 Responsibility of owner or operator of infrastructure or installation

60A Responsibility to ensure correct polarity and phase relationship

61 Electrical installation work

61A Unsafe installation of electrical equipment

62 Power to require rectification etc in relation to infrastructure, installations or equipment

62A Public warning statements

62B Immunity from liability

63 Reporting of accidents

Part 7—Enforcement

Division A1—Warning notices and assurances

63A Warning notices and assurances

63B Register of warning notices and assurances

Division A2—Injunctions

63C Injunctions

Division 1—Appointment of authorised officers

64 Appointment of authorised officers

65 Conditions of appointment

66 Authorised officer's identity card

67 Production of identity card

Division 2—Authorised officers' powers

68 Power of entry

69 General investigative powers of authorised officers

70 Disconnection of electricity supply

71 Power to require disconnection of cathodic protection system

72 Power to make infrastructure, installation or equipment safe

73 Power to require information

Part 8—Reviews and appeals

75 Review of decisions by Commission or Technical Regulator

76 Appeal

77 Minister's power to intervene

## Part 9—Miscellaneous

- 80 Power of exemption
- 80A Register of exemptions
- 81 Obligation to comply with conditions of exemption
- 81A Delegation by Minister
- 82 Application and issue of warrant
- 83 Urgent situations
- 84 Unlawful interference with electricity infrastructure or electrical installation
- 85 Unlawful taking of electricity, interference with meters or positioning of lines
- 86 Erection of buildings in proximity to powerline
- 87 Notice of work that may affect electricity infrastructure
- 88 Impersonation of officials etc
- 89 Obstruction
- 90 False or misleading information
- 91 Statutory declarations
- 92 General defence
- 93 Offences by bodies corporate
- 94 Continuing offence
- 94A Order for payment of profit from contravention
- 94B Energy efficiency shortfalls
- 96 Evidence
- 97 Service
- 98 Regulations

## Schedule 1A—Appointment and selection of experts for Court

## Schedule 2—Transitional provisions

- 1 Continuation of certain arrangements

## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

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

### **3—Objects**

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.

### **4—Interpretation**

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

***AEMO*** means the Australian Energy Market Operator Limited (ACN 072 010 327);

***annual electricity consumption level*** means a level of consumption of electricity determined in accordance with the regulations (and the regulations may, for that purpose, make provision for the estimation or agreement of the level in specified circumstances);

***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;

***Commission*** means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

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

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

***council*** means a council within the meaning of the *Local Government Act 1999* 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;

***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 equipment** means any electrical appliance or wires, fittings, equipment or accessories beyond an electrical outlet at which fixed wiring terminates;

**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, including anything declared by regulation to be or form part of an electrical installation, 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); or
- (c) anything declared by regulation not to be or form part of an electrical installation;

**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; and
- (f) anything declared by regulation to form part of electricity infrastructure,

but does not include anything declared by regulation not to form part of electricity infrastructure;

**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;

**employing authority** means the person designated by proclamation as being the employing authority for the purposes of this definition;

**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;

**install** includes place;



**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 Rules** means the National Electricity Rules 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;

**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;

**small customer** means a customer with an annual electricity consumption level less than the number of MW.h per year specified by regulation for that purpose, or any customer classified by regulation as a small customer;

**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.
- (3) A proclamation made for the purposes of the definition of **employing authority**—
- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

## 5—Crown bound

- (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
- (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.

## **6—Other statutory requirements not affected**

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.



## Part 2—Administration

### Division 1—Essential Services Commission

#### 6A—Functions and powers of Commission

- (1) The Commission has (in addition to the Commission's functions and powers under the *Essential Services Commission Act 2002*)—
  - (a) the licensing, price regulation and other functions and powers conferred by this Act; and
  - (b) if the Commission is appointed under the National Electricity Rules 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 Commission 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 Commission, or vary the functions and powers of the Commission, as the Governor considers necessary or expedient for the purposes of the *National Electricity (South Australia) Law* and the National Electricity Rules.
- (4) In performing functions under this Act, the Commission must (in addition to having regard to factors specified in this Act or the *Essential Services Commission Act 2002*) have regard to the provisions of the National Electricity Rules and the need to avoid duplication of, or inconsistency with, regulatory requirements under the Rules.

### Division 3—Technical Regulator

#### 7—Technical Regulator

- (1) There is to be a *Technical Regulator*.
- (2) The Technical Regulator is to be appointed by the Minister and is an agency of the Crown.
- (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.

## **8—Functions of Technical Regulator**

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
- (ca) the monitoring and investigation of major interruptions to the electricity supply in the State and the provision of reports relating to such interruptions in accordance with any requirements prescribed by the regulations; and
- (d) any other functions prescribed by regulation or assigned to the Technical Regulator by or under this or any other Act.

## **9—Delegation**

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

## **10—Technical Regulator's power to require information**

- (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.

## **11—Obligation to preserve confidentiality**

- (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) Despite subsection (1), the Technical Regulator may disclose confidential information in the following circumstances:
- (a) as reasonably required in connection with the administration or enforcement of this Act (including to the Minister, the Commission and persons assisting the Commission) or as otherwise related to the performance of the Technical Regulator's functions (whether under this Act or any other Act);
  - (b) to a person concerned in the administration or enforcement of another law of the State, or a law of the Commonwealth or another State or a Territory of the Commonwealth, for purposes related to the administration or operation of that other law;
  - (c) to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for purposes related to the performance of its functions (or to a person acting on behalf of such a government agency or instrumentality);
  - (d) with the consent of the person who gave the information or to whom the information relates;
  - (e) as required by a court or tribunal constituted by law;
  - (f) as authorised by the Minister.
- (2) Information classified by the Technical Regulator as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

## **14—Annual report**

- (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.
- (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**

### **14A—Consumer advisory committee**

The Commission must establish an advisory committee comprising representatives of consumers (the *consumer advisory committee*)—

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

### **14B—Technical advisory committee**

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.

#### **14C—Other advisory committees**

The Minister, the Commission 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**

#### **14D—Declaration as regulated industry**

The electricity supply industry is declared to be a regulated industry for the purposes of the *Essential Services Commission Act 2002*.

### **Division 1—Licensing of electricity entities**

#### **15—Requirement for licence**

- (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: \$1 000 000.

- (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 AEMO to hold a licence.

#### **16—Application for licence**

- (1) An application for the issue of a licence must—
  - (a) be made to the Commission in a form approved by the Commission; and
  - (b) contain the information specified in the form.
- (2) The applicant must pay to the Commission 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 Commission may, as the Commission 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 Commission further relevant information requested by the Commission.

#### **17—Consideration of application**

- (1) The Commission 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 Commission must have regard to the general factors specified in Part 2 of the *Essential Services Commission Act 2002* 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
  - (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 Commission 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.
- (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 Commission is satisfied that the criteria for the issue of the licence are met in relation to the agent,

the Commission may, at the Commission's discretion, dispense with the requirement that the Commission 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 a Registered participant, as defined in the *National Electricity (South Australia) Law*, the Commission may, in determining the application, in order to avoid duplication of, or inconsistency with, regulatory requirements under the National Electricity Rules, dispense with a requirement under this section that the Commission be satisfied as to a particular matter.

### **17A—Licences may be held jointly**

- (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 *Essential Services Commission Act 2002*.

### **18—Authority conferred by licence**

- (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.

### **19—Term of licence**

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

### **20—Licence fees and returns**

- (1) A person is not entitled to the issue of a licence unless the person first pays to the Commission 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 Commission, before the date prescribed for that purpose, an annual return containing the information required by the Commission 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 Commission, 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 Commission so determines, be paid in equal instalments at intervals fixed by the Commission.
- (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 Commission may, by written notice, require the holder to make good the default and, in addition, to pay to the Commission 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 *Essential Services Commission Act 2002* relating to the electricity supply industry; and
- (c) the costs of AEMO relating to the electricity supply industry that are designated by the Minister as being appropriate for recovery under this section; and
- (d) other costs prescribed by regulation;

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

## **21—Licence conditions**

- (1) The Commission must make a licence subject to conditions determined by the Commission—
  - (a) requiring compliance with applicable codes or rules made under the *Essential Services Commission Act 2002* 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
  - (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 Commission; and
  - (f) requiring the electricity entity to notify the Commission 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 Commission, such other information as the Commission 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 Commission must make a licence subject to further conditions that the Commission is required by regulation to impose on the issue of such a licence.
- (3) The Commission may make a licence subject to further conditions considered appropriate by the Commission.

- (4) The Commission 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.

## 22—Licences authorising generation of electricity

- (1) The Commission must make a licence authorising the generation of electricity subject to conditions determined by the Commission—
- (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, reliability, maintenance and technical management plan dealing with matters prescribed by regulation; and
    - (ii) to obtain the approval of the Commission (which may only be given by the Commission 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 AEMO 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 Commission as to those terms; and
    - (iii) to comply with any code provisions in force from time to time under the *Essential Services Commission Act 2002* 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 Commission with a certificate of the insurer or the insurance broker by whom the insurance was arranged certifying (in a manner approved by the Commission) 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.

### **23—Licences authorising operation of transmission or distribution network**

- (1) The Commission must make a licence authorising the operation of a transmission or distribution network subject to conditions determined by the Commission—
- (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, reliability, maintenance and technical management plan dealing with matters prescribed by regulation; and
    - (ii) to obtain the approval of the Commission (which may only be given by the Commission 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 AEMO 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 Commission may establish by a code made under the *Essential Services Commission Act 2002* 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 Commission may establish by a code made under the *Essential Services Commission Act 2002* 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 Commission must make under the *Essential Services Commission Act 2002*) 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 Commission who is appointed by the Commission; and
- (k) requiring the electricity entity to participate in an ombudsman scheme—
  - (i) that applies to the electricity supply industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*) prescribed by regulation; and
  - (ii) the terms and conditions of which are approved by the Commission; and
- (l) requiring the electricity entity to maintain insurance against any liability for causing a bushfire and to provide the Commission with a certificate of the insurer or the insurance broker by whom the insurance was arranged certifying (in a manner approved by the Commission) 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 Commission as to those terms; and
  - (C) to comply with any code provisions in force from time to time under the *Essential Services Commission Act 2002* 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
  - (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 Commission as to those terms; and
    - (C) to comply with any code provisions in force from time to time under the *Essential Services Commission Act 2002* 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 small 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 Commission must make under the *Essential Services Commission Act 2002*) 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 Commission must make under the *Essential Services Commission Act 2002*) 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 Commission) 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 Commission) 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 30 June 2015.
- (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.

- (5a) If an electricity entity fails, within a period of 90 days from a date specified by the Commission by written notice to the entity, to enter into an agreement with another electricity entity specified by the Commission as required by a condition of the entity's licence imposed under subsection (1)(n)(viii), the entities will, if the Commission so determines and notifies the entities in writing, be taken to have entered into such an agreement containing terms specified in the notice.
- (5b) The Commission may, by written notice to the electricity entities bound by—
- (a) an agreement entered into as required by conditions of their licences imposed under subsection (1)(n)(viii) and section 24(2)(h); or
  - (b) an agreement imposed under subsection (5a),
- vary or substitute terms of the agreement.
- (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.

## **24—Licences authorising retailing**

- (2) The Commission must make a licence authorising the retailing of electricity subject to conditions determined by the Commission—
- (a) requiring, if the holder of the licence is a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) 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
  - (b) if the electricity entity sells electricity to customers of a prescribed class, 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 to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002* on or before the prescribed date) relating to the provision of pricing information to enable small customers to compare competing offers in the retailing of electricity; and
  - (da) requiring the electricity entity to include (in a print size and form prescribed by regulation) in each account for electricity charges sent to a small customer information prescribed by regulation, including information relating to—
    - (i) the customer's electricity consumption during the preceding 12 months; and
    - (ii) the entity's daily charges for electricity during the period to which the account relates; and
    - (iii) obtaining advice through the Commission about reducing electricity consumption and about electricity consumer choices; and
    - (iv) greenhouse gas emissions associated with the customer's electricity consumption; and

- (e) requiring the electricity entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) relating to standard contractual terms and conditions to apply to the sale of electricity to small customers; and
- (f) requiring the electricity entity to provide services specified by the Commission, on a costs recovery basis approved by the Commission, to an electricity entity that becomes bound to sell and supply electricity under a retailer of last resort requirement; and
- (h) requiring the electricity entity to enter into and comply with an agreement (on terms approved from time to time by the Commission) 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 Commission must make under the *Essential Services Commission Act 2002*) 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 Commission must make under the *Essential Services Commission Act 2002*) 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) if the electricity entity sells electricity to customers with an annual electricity consumption level of less than 750MW.h per year, requiring the electricity entity to participate in an ombudsman scheme—
  - (i) that applies to the electricity supply industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*) prescribed by regulation; and
  - (ii) the terms and conditions of which are approved by the Commission; 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.
- (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.

#### **24A—Licences authorising system control**

- (1) The Commission must make a licence authorising system control over a power system subject to conditions determined by the Commission 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.
- (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.

#### **24B—Licence conditions and *National Electricity Code***

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

#### **25—Offence to contravene licence conditions**

- (1) An electricity entity must not contravene a condition of its licence.  
Maximum penalty: \$1 000 000.
- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed for the offence is a fine not exceeding \$20 000.

#### **27—Variation of licence**

- (1) The Commission may vary the terms or conditions of an electricity entity's licence by written notice to the entity as the Commission considers appropriate (but not so as to remove a condition that the Commission 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.

#### **28—Transfer of licence**

- (1) A licence may only be transferred with the Commission's agreement.
- (2) The Commission may impose conditions on the transfer of a licence, or vary the terms and conditions of the licence on its transfer.

- (3) The Commission 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 Commission in a form approved by the Commission; and
  - (b) contain the information specified in the form.
- (5) The applicant must pay to the Commission 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 Commission further relevant information requested by the Commission.

### **28A—Consultation with consumer bodies**

The Commission 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.

### **28B—Notice of licence decisions**

- (1) The Commission must give an applicant for a licence, or for agreement to the transfer of a licence, written notice of the Commission's decision on the application.
- (2) The Commission must give the holder of a licence written notice of any decision by the Commission affecting the terms or conditions of the licence.

### **29—Surrender of licence**

- (1) An electricity entity may, by written notice given to the Commission, surrender its licence.
- (2) The notice must be given to the Commission 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 Commission may, by agreement with the electricity entity, shorten the required period of notice.

### **30—Register of licences**

- (1) The Commission must keep a register of the licences currently held by 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

### 31—Functions and powers of system controller

- (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.
- (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, as defined in the *National Electricity (South Australia) Law*, may only be performed or exercised in a manner that is consistent with the *National Electricity (South Australia) Law* and the National Electricity Rules.

### 34—Remuneration of system controller

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.

### 35—Obligation to preserve confidentiality

- (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

#### 35A—Price regulation by Commission

- (1) The Commission may make a determination under the *Essential Services Commission Act 2002* regulating prices, conditions relating to prices and price-fixing factors for—
  - (a) the sale and supply of electricity to small customers;
  - (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 Rules—network services;
  - (d) other goods and services in the electricity supply industry specified by the Minister by notice in the Gazette.
- (2) In making a determination, the Commission must (in addition to having regard to the factors specified in the *Essential Services Commission Act 2002*) 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 Minister may, by further notice in the Gazette, vary or revoke a notice under subsection (1)(d).
- (4) Despite the provisions of the *Essential Services Commission Act 2002*, the operation of a determination of a kind referred to in subsection (1)(a) is not to be stayed pending the determination of an application for review or an appeal under Part 6 of that Act.

#### 35B—Initial electricity pricing order

- (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.

- (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 Commission in a manner specified by the order.
- (5) A determination of the Commission 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 *Essential Services Commission Act 2002*.
- (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.



- (10a) The following provisions apply in relation to the electricity pricing order notified in the Gazette on 11 October 1999 at page 1471:
- (a) despite subsection (7), the order is varied as proposed by the Treasurer by notice published in the Gazette on 28 June 2000 at page 3397 and is further varied as proposed by the Minister by notice published in the Gazette on 5 December 2002 at page 4458;
  - (b) the Minister must ensure that copies of the order as so varied are sent to each licensed entity to which the order applies and are made available for inspection and purchase by members of the public;
  - (c) a reference to the order in any document is, unless the context otherwise requires, to be taken to be a reference to the order as so varied.
- (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 Commission must—
- (a) perform any functions that an electricity pricing order contemplates will be performed by the Commission 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 Commission under this Division.
- (13) The Commission's powers under this Division and the *Essential Services Commission Act 2002* 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**

#### **36—Standard terms and conditions for sale or supply**

- (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 small customers or customers of a prescribed class.
- (2) An electricity entity must publish in the Gazette a notice setting out any standard terms and conditions fixed by the entity.
- (2a) An electricity entity must, when it publishes a notice in the Gazette under subsection (2), also publish a notice in a newspaper circulating generally in the State describing the general nature of the standard terms and conditions and advising where a person may read or obtain a copy of the standard terms and conditions.
- (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 in the Gazette 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 120(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.
- (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.
- (5) An electricity entity that has fixed standard terms and conditions under this section must—
  - (a) supply a copy of the standard terms and conditions, without charge, on request made to the entity at a place approved by the Commission; and
  - (b) publish the standard terms and conditions on a website maintained by the entity.

Maximum penalty: \$2 500.

### **Division 3AA—Special provisions relating to small customers**

#### **36AA—Provision for standing contract with small customers**

- (1) This section applies to an electricity entity holding a licence authorising the retailing of electricity that is declared by the Governor under this section to be an electricity entity to which this section applies.
- (2) It is a condition of the electricity entity's licence that the entity must, at the request of a small customer, agree to sell electricity to the customer at the entity's standing contract price and subject to the entity's standing contract terms and conditions.
- (3) A customer to whom the electricity entity was selling electricity immediately before the commencement of this section is, on that commencement, if—
  - (a) the customer is then a small customer; and
  - (b) has not contracted with another electricity entity for the purchase of electricity from that commencement,to be taken to have requested that the entity sell electricity to the customer on the basis referred to in subsection (2).
- (4) The entity is not required to sell electricity to a customer in compliance with the condition imposed under subsection (2) if the entity is entitled in accordance with the entity's standing contract terms and conditions to refuse to sell electricity to the customer.
- (4a) The following provisions apply in relation to the fixing by the Commission of a standing contract price for an entity for the purposes of this section:
  - (a) the Commission may fix the price by a determination of a kind referred to in section 35A(1)(a);
  - (b) a determination must provide for the expiry of the determination at the end of a period of not less than 3 years specified in the determination;
  - (c) a determination may provide for prices that vary at specified times according to a formula specified in the determination;

- (d) unless the Commission determines that special circumstances exist—
- (i) a determination may not be made to take effect before the expiry date of the last preceding determination made by the Commission in accordance with this subsection;
  - (ii) a determination may only be made if the entity has made a submission to the Commission stating the price that the entity proposes be fixed by the Commission as the entity's standing contract price, and the entity's justification for the price, not less than 6 months and not more than 9 months before the making of the determination;
  - (iii) the Commission must, before making a determination, have conducted an inquiry under Part 7 of the *Essential Services Commission Act 2002* into the question of the appropriate price to be fixed as the standing contract price;
- (e) a submission under paragraph (d) must comply with any requirements as to the form and content of such submissions imposed by the Commission by written notice served on the entity.
- (5) The Governor may, by proclamation—
- (a) declare that this section applies to a specified electricity entity; and
  - (b) vary or revoke such a declaration.
- (6) In this section—
- standing contract price***, in relation to an electricity entity, means—
- (a) the price fixed by the Commission as the entity's standing contract price in accordance with subsection (4a); or
  - (b) if there is no price for the time being fixed by the Commission as the entity's standing contract price in accordance with subsection (4a), the price fixed by the electricity pricing order under section 35B as at 31 December 2002 for the sale of electricity to non-contestable customers;
- standing contract terms and conditions*** means terms and conditions that have been published by the electricity entity under section 36 as the entity's standing contract terms and conditions.
- (7) The Governor may, by proclamation, fix a day on which this section expires.

### **36AB—Provision for default contract with small customers**

- (1) This section applies to an electricity entity holding a licence authorising the retailing of electricity that sells electricity to one or more small customers in South Australia.
- (2) It is a condition of the electricity entity's licence that the entity must, if the entity becomes bound, in accordance with the regulations, to sell electricity to a small customer under a default contract arrangement for a period specified in the regulations—
  - (a) give the customer a written notice in accordance with the regulations; and
  - (b) sell electricity to the customer at the entity's default contract price and subject to the entity's default contract terms and conditions for that period.

(3) In this section—

**default contract price**, in relation to an electricity entity, means whichever of the following is the price last fixed:

- (a) the price fixed for the sale of electricity to non-contestable customers by the electricity pricing order under section 35B immediately before 1 January 2003;
- (b) a price fixed by the entity as the entity's default contract price by notice published in the Gazette and in a newspaper circulating generally in the State, where—
  - (i) the price was fixed by the notice with effect from the end of the prescribed period from the date of publication of the notice; and
  - (ii) the notice contained a statement of the entity's justification for the price; and
  - (iii) the Commission did not, within the prescribed period, fix the entity's default contract price as referred to in paragraph (c);
- (c) a price fixed by the Commission as the entity's default contract price by a determination of a kind referred to in section 35A(1)(a);

**default contract terms and conditions** means terms and conditions that have been published by the electricity entity under section 36 as the entity's default contract terms and conditions.

## Division 3AB—Feed-in mechanisms

### 36AC—Interpretation

In this Division—

**excluded network** means a distribution network that supplies electricity to less than 10 000 domestic customers;

**qualifying customer**—a small customer is a qualifying customer for the purposes of this Division;

**qualifying generator** means a small photovoltaic generator—

- (a) that is operated by a qualifying customer; and
- (b) that complies with *Australian Standard—AS 4777* (as in force from time to time or as substituted from time to time); and
- (c) that is connected to a distribution network in a manner that allows electricity generated by the small photovoltaic generator to be fed into the network,

other than where the distribution network is an excluded network;

**small photovoltaic generator** means a photovoltaic system with capacity up to 10kVA for a single phase connection and up to 30kVA for a three phase connection.

**36AD—Feeding-in of electricity to networks by domestic customers**

- (1) It is a condition of a licence authorising the operation of a distribution network, other than an excluded network, that the holder of the licence will—
  - (a) allow a qualifying customer to feed into the network electricity generated by a qualifying generator (subject to complying with any relevant technical, safety or other requirements imposed by or under this or any other Act or relevant instrument); and
  - (b) credit against the charges payable by the qualifying customer for the supply of electricity to the qualifying customer the amount of \$0.44 per kWh for any electricity fed into the network under paragraph (a) (after taking into account the operation of subsections (2), (3) and (4)); and
  - (c) comply with any reporting requirements imposed by the Minister under subsection (4).
- (2) It is a condition of the licence of the electricity entity that has the relevant contract to sell electricity as a retailer to a qualifying customer who is entitled to a credit under subsection (1)(b) that the retailer will, after taking into account any requirements prescribed by the regulations—
  - (a) reflect the credit in the charges payable by the qualifying customer for the supply of electricity; and
  - (b) provide to the qualifying customer information relating to—
    - (i) the amount of electricity fed into the distribution network by the qualifying customer; and
    - (ii) the amount to be credited for the benefit of the qualifying customer for electricity fed into the distribution network.
- (3) If the whole of an amount to be credited to a qualifying customer under subsection (1)(b) in respect of electricity fed into a distribution network in a particular billing period has not been set-off against the charges payable by the qualifying customer for the supply of electricity by the expiration of 12 months after the end of that billing period, the qualifying customer is entitled to the payment of the outstanding balance.
- (4) The Minister may, in connection with the operation or administration of this section—
  - (a) by notice in the Gazette, impose reporting requirements on the holders of licences authorising the operation of distribution networks;
  - (b) by subsequent notice in the Gazette, vary any reporting requirements previously imposed under this subsection (including by the substitution or addition of requirements).

**36AE—Expiry of scheme**

The scheme established by this Division will not apply to electricity fed into a distribution network after 30 June 2028.

## **Division 3A—Protection of property in infrastructure**

### **36A—Electricity infrastructure does not merge with land**

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.

### **36B—Prevention of dismantling of electricity infrastructure in execution of judgment**

- (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**

### **37—Suspension or cancellation of licences**

- (1) The Commission 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 Commission.
- (3) Before the Commission acts under this section, the Commission 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 Commission in relation to the proposed action.

## **Division 5—Commission's powers to take over operations**

### **38—Power to take over operations**

- (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 Commission'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 Commission 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 Commission 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.

### 39—Appointment of operator

- (1) When a proclamation is made under this Part, the Commission 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 Rules.
- (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.
- (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.





## **Part 4—Electricity entities' powers and duties**

### **Division 1—Electricity officers**

#### **41—Appointment of electricity officers**

- (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.

#### **42—Conditions of appointment**

- (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.

#### **43—Electricity officer's identity card**

- (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.

#### **44—Production of identity card**

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**

#### **45—Entry on land to conduct surveys etc**

- (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.

#### **46—Acquisition of land**

- (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.

#### **47—Power to carry out work on public land**

- (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.
- (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.

#### **48—Entry under easements for purposes related to infrastructure**

- (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.

#### **48A—Easements and access to infrastructure for data transmission and telecommunications**

- (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**

#### **49—Entry to inspect etc electrical installations**

- (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—
  - (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.

#### **50—Entry to read meters etc**

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.

#### **51—Entry to disconnect supply**

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.

#### **52—Disconnection of supply if entry refused**

- (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**

### **53—Electricity entity may cut off electricity supply to avert danger**

- (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 Chief Officer of the South Australian Country Fire Service before doing so.

### **54—Emergency legislation not affected**

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 Management Act 2004*, *Essential Services Act 1981*, *Fire and Emergency Services Act 2005* or Part 4A of the *Public and Environmental Health Act 1987*.

## Part 5—Clearance of vegetation from powerlines

### Division 1—Duties in relation to vegetation clearance

#### 55—Duties in relation to vegetation clearance

- (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

#### 55A—Vegetation clearance schemes

- (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;

**Example—**

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
    - (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**

### **55B—Vegetation clearance scheme dispute**

- (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.

### **55C—Circumstances in which Technical Regulator not obliged to determine dispute**

- (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.

### **55D—Determinations**

- (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.

### **55E—Principles to be taken into account**

- (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.

### **55F—Conduct of proceedings**

- (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;
  - (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.

### **55G—Giving of relevant documents to Technical Regulator**

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.

### **55H—Power to obtain information and documents**

- (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.

### **55I—Confidentiality of information**

- (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.

### **55J—Termination of proceedings for determination**

The Technical Regulator may terminate proceedings for a determination if—

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

### **55K—Procedure for giving determination**

- (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.

### **55L—Costs**

- (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**

#### **55M—Enforcement as contract**

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**

#### **55N—Resolution of dispute by intervention of Technical Regulator**

- (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**

#### **56—Role of councils in relation to vegetation clearance not within prescribed areas**

- (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
  - (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.

#### **57—Power to enter for vegetation clearance purposes**

- (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 30 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.

### **58—Regulations in respect of vegetation clearance**

- (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; and
  - (f) fix a penalty not exceeding \$5 000 for contravention of a regulation.



## **Part 5A—Undergrounding of powerlines**

### **58A—Program for undergrounding of powerlines**

- (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.



## Part 6—Safety and technical issues

### 59—Requirements relating to electrical installation connection and meter installation

- (1) A person must not personally carry out the work of connecting electricity supply from a transmission or distribution network to an electrical installation, or installing or replacing a meter, unless—
- (a) the person is carrying out the work as an employee or contractor directly or indirectly on behalf of a prescribed person; or
  - (b) the electricity entity that operates the network has specifically authorised the person to carry out the work.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (1a) A prescribed person must not cause or permit or authorise a person to personally carry out the work of connecting electricity supply from a transmission or distribution network to an electrical installation, or installing or replacing a meter, unless the person personally carrying out the work has the appropriate knowledge and skills required for that purpose.

Maximum penalty: \$50 000.

- (1b) If, when electricity supply from a transmission or distribution network is connected to an electrical installation, other than an installation to which electricity supply from the network has previously been connected—
- (a) the installation does not comply with technical and safety requirements under the regulations; or
  - (b) there is a failure to comply with technical and safety requirements under the regulations relating to the making of the connection,

the person personally carrying out the work of making the connection and, if the person is carrying out the work as an employee or contractor directly or indirectly on behalf of the electricity entity that operates the network, the electricity entity are each guilty of an offence.

Maximum penalty:

- (a) in the case of the person personally carrying out the work of making the connection—\$5 000;
- (b) in the case of the electricity entity—\$50 000.

Expiation fee: in the case of the person personally carrying out the work of making the connection—\$315.

- (1c) Subject to the regulations, neither the electricity entity that operates the network nor the person personally carrying out the work of making the connection commits an offence under subsection (1b)(a) in relation to an electrical installation if the entity has, before the making of the connection, been provided with a certificate of compliance issued under this Part in relation to the installation.

- (1d) If, when electricity supply from a transmission or distribution network is connected to an electrical installation following the prior disconnection from the network of electricity supply to the installation for safety reasons—
- (a) any work that has been carried out on the installation since the disconnection has not complied with the regulations; or
  - (b) in a case where the disconnection was by, or at the direction of, an authorised officer or the Technical Regulator—the making of the connection has not been approved by an authorised officer or the Technical Regulator; or
  - (c) in a case where the disconnection was by an electricity officer—there has not been rectification of the fault giving rise to the disconnection; or
  - (d) there is a failure to comply with technical and safety requirements under the regulations relating to the making of the connection,

the person personally carrying out the work of making the connection and, if the person is carrying out the work as an employee or contractor directly or indirectly on behalf of a prescribed person, the prescribed person are each guilty of an offence.

Maximum penalty:

- (a) in the case of the person personally carrying out the work of making the connection—\$5 000;
- (b) in the case of the prescribed person—\$50 000.

Expiation fee: in the case of the person personally carrying out the work of making the connection—\$315.

- (1e) Subject to the regulations, neither a prescribed person nor the person personally carrying out the work of making the connection commits an offence under subsection (1d)(a) in relation to work carried out on an electrical installation if the prescribed person has, before the making of the connection, been provided with a certificate of compliance issued under this Part in relation to the work on the installation.
- (1f) Neither a prescribed person nor the person personally carrying out the work of making the connection commits an offence under subsection (1d)(b) unless notice has been given, orally or by fax or email, to the prescribed person, or an employee or agent of the prescribed person, that electricity supply to the installation has been disconnected by, or at the direction of, an authorised officer or the Technical Regulator.
- (1g) If, in carrying out the work of installing or replacing a meter, there is a failure to comply with—
- (a) regulations relating to the carrying out of such work or examinations and tests relating to such work; or
  - (b) technical and safety requirements under the regulations relating to the connection of electricity supply from a transmission or distribution network to an electrical installation,

the person personally carrying out the work and, if the person is carrying out the work as an employee or contractor directly or indirectly on behalf of a prescribed person, the prescribed person are each guilty of an offence.

Maximum penalty:

- (a) in the case of the person personally carrying out the work—\$5 000;

- (b) in the case of the prescribed person—\$50 000.
- Expiation fee: in the case of the person personally carrying out the work—\$315.
- (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 purposes of this section, electricity supply to an electrical installation is disconnected **for safety reasons** if the electricity supply is disconnected—
- (a) by, or at the direction of, an authorised officer or the Technical Regulator; or
  - (b) by an electricity officer because of a contravention of this Act relating to the electrical installation or its connection, or because the electrical installation is, in the officer's opinion unsafe; or
  - (c) to allow work on the electrical installation to be carried out safely.
- (4) For the purposes of this section—
- (a) the electricity entity that operates the transmission or distribution network concerned is a **prescribed person**; and
  - (b) a metering provider is a **prescribed person** in relation to the work of installing or replacing a meter; and
  - (c) **the work of installing or replacing a meter** includes connecting electricity supply from a transmission or distribution network to the electrical installation to which the meter is wired following the installation or replacement of the meter.
- (5) In this section—

**meter** means a meter and associated equipment for measuring the consumption of electricity supplied to a place from a transmission or distribution network;

**metering provider** means a person accredited and registered as a metering provider under the National Electricity Rules.

## 60—Responsibility of owner or operator of infrastructure or installation

- (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.

### **60A—Responsibility to ensure correct polarity and phase relationship**

An electricity entity that operates a transmission or distribution network must ensure that any work carried out on behalf of the entity that could affect the safety of connected electrical installations is appropriately tested to ensure the correct polarity and phase relationship.

Maximum penalty: \$50 000.

### **61—Electrical installation work**

- (1) A person to whom this subsection 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) Subsection (1) 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.
- (3) A prosecution for an offence against subsection (1) may be brought at any time within the period of 2 years after the date on which the offence is alleged to have been committed.
- (4) If a person other than a person to whom subsection (1) applies personally carries out work of a kind prescribed by the regulations on an electrical installation or proposed electrical installation, the person must ensure that the work is carried out as required under the regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **61A—Unsafe installation of electrical equipment**

A person must not install electrical equipment that the person knows or should be reasonably expected to know is, or will be, unsafe in use.

Maximum penalty: \$5 000.

Expiation fee: \$315.



## **62—Power to require rectification etc in relation to infrastructure, installations or equipment**

- (1) If electricity infrastructure, an electrical installation or electrical equipment is unsafe, or does not comply with this Act, the Technical Regulator may give a direction requiring—
  - (a) rectification of the infrastructure, installation or equipment 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, installation or equipment.
- (2) Subject to this section, a direction under this section must be given—
  - (a) in relation to infrastructure—to the electricity entity that operates the infrastructure;
  - (b) in relation to an installation or equipment—to the person in charge of the installation or equipment or the occupier of the place in which the installation or equipment 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.

## **62A—Public warning statements**

- (1) The Technical Regulator may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about any of the following:
  - (a) electrical equipment that, in the opinion of the Technical Regulator, is or is likely to become unsafe in use and persons who supply the equipment;
  - (b) uses of electrical equipment, or installation practices, that, in the opinion of the Technical Regulator, pose a danger to persons or property;
  - (c) any other dangers to persons or property associated with electricity or electrical equipment.
- (2) A statement under subsection (1) may identify particular electrical equipment, services, practices and persons.

### **62B—Immunity from liability**

- (1) Neither the Technical Regulator nor the Crown incurs any liability for a statement made by the Technical Regulator in good faith in the exercise or purported exercise of powers under section 62A.
- (2) No liability is incurred by a person for publishing in good faith—
  - (a) a statement referred to in subsection (1); or
  - (b) a fair report or summary of such a statement.

### **63—Reporting of accidents**

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

## Part 7—Enforcement

### Division A1—Warning notices and assurances

#### 63A—Warning notices and assurances

- (1) If it appears to the Commission that a person has been guilty of a contravention of Part 3, the Commission may issue a warning notice to the person, warning the person that it will be prosecuted for the contravention unless—
  - (a) if the contravention is capable of being rectified, the person takes action specified in the notice to rectify the contravention within the period specified in the notice; and
  - (b) the person gives the Commission an assurance, in the terms specified in the notice, and within the period specified in the notice, that the person will avoid a future such contravention.
- (2) If it appears to the Technical Regulator that a person has been guilty of a contravention of Part 6, the Technical Regulator may issue a warning notice to the person, warning the person that it will be prosecuted for the contravention unless—
  - (a) if the contravention is capable of being rectified, the person takes action specified in the notice to rectify the contravention within the period specified in the notice; and
  - (b) the person gives the Technical Regulator an assurance, in the terms specified in the notice, and within the period specified in the notice, that the person will avoid a future such contravention.
- (3) A warning notice issued under this section, and an assurance given under this section, must be in writing.
- (4) The action that may be specified in a warning notice to rectify a contravention may include action to remedy adverse consequences of the contravention, for example (without limitation)—
  - (a) the refunding of an amount wrongly paid to the person as a result of the contravention; or
  - (b) the payment of compensation to a person who has suffered loss, damage or injury as a result of the contravention; or
  - (c) the disclosure of information; or
  - (d) the publication of advertisements relating to the contravention or relating to action to rectify or remedy the contravention.
- (5) The Commission or the Technical Regulator may, by written notice to a person, vary a warning notice issued to the person.
- (6) If the Commission or the Technical Regulator issues a warning notice to a person, the Commission or the Technical Regulator must not proceed against the person in respect of the contravention to which the notice relates, unless the person—
  - (a) fails to take action specified in the notice to rectify the contravention within the period specified in the notice; or

- (b) fails to give the Commission or the Technical Regulator, as the case requires, an assurance in the terms specified in the notice within the period specified in the notice; or
- (c) contravenes an assurance given by the person in response to the notice.

### **63B—Register of warning notices and assurances**

- (1) The Commission must keep a register of warning notices issued by the Commission under this Division, and a register of assurances given to the Commission under this Division.
- (2) The Technical Regulator must keep a register of warning notices issued by the Technical Regulator under this Division, and a register of assurances given to the Technical Regulator under this Division.
- (3) A person may, without payment of a fee, inspect a register kept under this section.

## **Division A2—Injunctions**

### **63C—Injunctions**

- (1) If the District Court is satisfied, on the application of the Minister, the Commission, the Technical Regulator or any other person, that a person has engaged or proposes to engage in conduct that constitutes or would constitute a contravention of this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) If the District Court is satisfied, on the application of the Minister, the Commission, or the Technical Regulator, that a person has engaged in conduct constituting a contravention of this Act, the Court may grant an injunction requiring that person to take specified action to remedy any adverse consequence of that conduct.
- (3) The action that may be required by an injunction to remedy adverse consequences of conduct constituting a contravention may include (without limitation)—
  - (a) the refunding of an amount wrongly paid as a result of the contravention; or
  - (b) the payment of compensation to a person who has suffered loss, damage or injury as a result of the contravention; or
  - (c) the disclosure of information; or
  - (d) the publication of advertisements relating to the contravention or relating to action to rectify or remedy the contravention.
- (4) An injunction may be granted by the District Court under this section—
  - (a) in proceedings in which the Court convicts a person of an offence to which the application relates; or
  - (b) in proceedings brought before the Court for the purpose of obtaining the injunction.
- (5) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and

- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (6) The power of the District Court to grant an injunction requiring a person do an act or thing may be exercised—
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (7) An interim injunction may be granted under this section pending final determination of the application.
- (8) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.
- (9) Where the Minister, the Commission or the Technical Regulator applies for an injunction under this section, no undertaking as to damages will be required.
- (10) The Minister may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.
- (11) An injunction under this section may be rescinded or varied at any time.

## **Division 1—Appointment of authorised officers**

### **64—Appointment of authorised officers**

- (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 Commission, 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—be subject to control and direction by the Commission;
  - (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.

### **65—Conditions of appointment**

- (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.

## **66—Authorised officer's identity card**

- (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.

## **67—Production of identity card**

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**

### **68—Power of entry**

- (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.

### **69—General investigative powers of authorised officers**

- (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
  - (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 Commission 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 Commission or Technical Regulator may dispose of the object.

## **70—Disconnection of electricity supply**

- (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.

### **71—Power to require disconnection of cathodic protection system**

- (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.

### **72—Power to make infrastructure, installation or equipment safe**

- (1) If an authorised officer finds that electricity infrastructure, an electrical installation or electrical equipment 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, installation or equipment 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 electricity entity that operates the infrastructure;
  - (b) in relation to an installation or equipment—to the person in charge of the installation or equipment or the occupier of the place in which the installation or equipment 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.

### **73—Power to require information**

- (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.



## Part 8—Reviews and appeals

### 75—Review of decisions by Commission or Technical Regulator

- (1) An application may be made to—
  - (a) the Commission 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 Commission to refuse the application; or
  - (b) the Commission by an electricity entity for review of a decision of the Commission under Part 3 to suspend or cancel the entity's licence or to vary the terms or conditions of the entity's licence; or
  - (d) the Technical Regulator 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) the Technical Regulator 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 Commission or the Technical Regulator on the review; and
  - (e) be lodged with the Commission or the Technical 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;
    - (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 Commission or the Technical Regulator, as the case requires, 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.
- (5) If a review is not decided within that period, the Commission or the Technical Regulator, as the case requires, is to be taken to have confirmed the decision.

- (6) After considering the application, the Commission or the Technical Regulator, as the case requires, may confirm, amend or substitute the decision.
- (7) The Commission or the Technical Regulator must give the applicant written notice of the decision, and the reasons for the decision, on the review.

## **76—Appeal**

- (1) An applicant for review who is dissatisfied with a decision as confirmed, amended or substituted by the Commission or the Technical 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 Commission or the Technical 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).

## **77—Minister's power to intervene**

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.

## **Part 9—Miscellaneous**

### **80—Power of exemption**

- (1) The Commission may, with the approval of the Minister, grant an exemption from Part 3, or specified provisions of Part 3, on terms and conditions the Commission considers appropriate.
- (1a) Without limiting subsection (1), the power to exempt includes power to exempt a person from the application of a provision requiring the Commission to make a licence held by the person subject to a specified condition.
- (2) A person exempted from a requirement to hold a licence under Part 3 is, if the Commission has so determined by writing, to be treated as an electricity entity for the purposes of specified provisions of this or another Act.
- (3) Except as otherwise provided in the exemption, an exemption under subsection (1), or a determination under subsection (2), may be varied or revoked by the Commission 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.

### **80A—Register of exemptions**

- (1) The Commission and the Technical Regulator must each keep a register of exemptions granted by the Commission or the Technical Regulator (as the case may be) 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.

### **81—Obligation to comply with conditions of exemption**

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

Maximum penalty: \$50 000.

### **81A—Delegation by Minister**

- (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.

## 82—Application and issue of warrant

- (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.

## 83—Urgent situations

- (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
    - (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).

#### **84—Unlawful interference with electricity infrastructure or electrical installation**

- (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.

#### **85—Unlawful taking of electricity, interference with meters or positioning of lines**

- (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 with the approval of the Technical Regulator; 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.

### **86—Erection of buildings in proximity to powerline**

- (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:
    - (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.

### **87—Notice of work that may affect electricity infrastructure**

- (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.

### **88—Impersonation of officials etc**

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

Maximum penalty: \$5 000.

### **89—Obstruction**

- (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.

### **90—False or misleading information**

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.

## 91—Statutory declarations

If a person is required by or under this Act to furnish information to the Commission, AEMO or Technical Regulator, the Commission, AEMO 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 Commission, AEMO or Technical Regulator.

## 92—General defence

- (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.

## 93—Offences by bodies corporate

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.

## 94—Continuing offence

- (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.
- (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.

## 94A—Order for payment of profit from contravention

The court convicting a person of an offence against this Act may order the convicted person to pay to the Crown an amount not exceeding the court's estimation of the amount of any monetary, financial or economic benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence.

## 94B—Energy efficiency shortfalls

- (1) Subject to this section, if the Commission is satisfied that a relevant electricity retailer has an energy efficiency shortfall (or *REES shortfall*) with respect to a particular year, the Commission may recover an amount in respect of the shortfall (a *shortfall penalty*).

- (2) The amount that the Commission may recover as a shortfall penalty from the relevant electricity retailer in respect of a REES shortfall will be—
  - (a) the prescribed base penalty; and
  - (b) an additional amount, calculated in accordance with the regulations, to reflect the extent of the shortfall.
- (3) The Commission may not proceed to recover a shortfall penalty from a relevant electricity retailer under this section unless the Commission has served on the retailer a notice (a *shortfall notice*)—
  - (a) stating that the retailer has a REES shortfall and the grounds on which the shortfall has been determined; and
  - (b) setting out—
    - (i) the prescribed base penalty; and
    - (ii) the calculation used by the Commission to arrive at the amount payable under subsection (2)(b).
- (4) A shortfall notice must include, or be accompanied by, a statement advising that the relevant electricity retailer may, by written notice to the Commission served within a period specified by the Commission, elect to be prosecuted in respect of the shortfall as an alternative to paying the shortfall penalty.
- (5) The period specified by the Commission under subsection (4) must be at least 21 days from the date of service of the shortfall notice on the relevant electricity retailer.
- (6) If the relevant electricity retailer elects to be prosecuted within the time specified under subsection (4), the Commission may not proceed to recover the shortfall penalty specified in the shortfall notice.
- (7) If the relevant electricity retailer does not elect to be prosecuted within the time specified under subsection (4), the Commission may proceed to recover the shortfall penalty specified in the shortfall notice.
- (8) The Commission may, if it thinks fit, by subsequent notice—
  - (a) withdraw a shortfall notice;
  - (b) issue a new shortfall notice in place of an existing notice,on account of recalculations undertaken by the Commission (and this section will apply to any new shortfall notice published under this subsection as if the original notice had not been issued).
- (9) Subject to subsection (10), nothing in this section prevents the commencement of criminal proceedings at any time in relation to a contravention of this Act but if such proceedings are commenced then the Commission may not commence or continue proceedings to recover a shortfall penalty under this section in respect of the conduct to which the criminal proceedings relate.
- (10) If a shortfall penalty specified in a shortfall notice is paid by the relevant electricity retailer (other than where the payment is made in response to an original shortfall notice after a new shortfall notice is served on the retailer), the retailer cannot be prosecuted in relation to the relevant contravention of the Act.

- (11) Subject to the preceding subsections, the Commission may recover the amount of any shortfall penalty as a debt from the relevant electricity retailer.
- (12) If an amount is recovered as a shortfall penalty under this section, it must be applied under a scheme established by the Commission for 1 or more of the following purposes:
- (a) to assist persons who may have failed to benefit from activities relating to energy efficiency on account of any electricity retailer's energy efficiency shortfall;
  - (b) to support other programs or activities to promote or support energy efficiency or renewable energy initiatives within South Australian households.
- (13) For the purposes of this section—
- (a) a relevant electricity retailer has an energy efficiency shortfall if the retailer has failed to engage, in accordance with and to the extent required by the regulations, in activities relating to energy efficiency identified by the regulations for the purposes of this section; and
  - (b) the extent of an energy efficiency shortfall is to be calculated in accordance with the regulations.
- (14) This section extends to an energy efficiency shortfall occurring in 2009 (including a shortfall that is attributable to requirements arising before the commencement of this section).
- (15) In this section—
- prescribed base penalty*** means an amount, not exceeding \$100 000, prescribed by the regulations for the purposes of this section;
- relevant electricity retailer*** means an electricity entity that is authorised to sell electricity by retail identified by the regulations for the purposes of this section.

## 96—Evidence

- (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 Commission 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, issuing, receipt or contents of an order, direction, delegation, exemption, approval, authorisation, notice or assurance by the Commission,
- 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 Commission certifying as to a person's status as a small 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, issuing, receipt or contents of a direction, requirement, delegation, exemption, approval, authorisation, notice or assurance by the Technical Regulator,

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.

## 97—Service

- (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 the *Corporations Act 2001* of the Commonwealth.
- (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.

## 98—Regulations

- (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

- (d) the conferral or performance of functions associated with the operation of any legislation or scheme associated with an electricity market; 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.
- (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 Rules.
- (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 Commission 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;
  - (d) impose a requirement for compliance with procedures or requirements specified, whether in a particular case or generally, for safety or technical purposes by an electricity entity that operates a transmission or distribution network.

## 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).

## Schedule 2—Transitional provisions

### 1—Continuation of certain arrangements

- (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.





## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.7.2009
Part 2	1.2.2010
Part 3	1.7.2010
Part 4	1.7.2009
Part 5	1.9.2007
Part 5A	1.9.2007
Part 6	1.9.2007
Part 7	1.9.2007
Part 8	1.9.2007
Part 9	1.2.2010
Schedules	1.9.2007
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Electricity Act 1996* amended the following:

*Electricity Corporations Act 1994*

*Local Government Act 1934*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	96	<i>Electricity Act 1996</i>	19.12.1996	1.1.1997 ( <i>Gazette 19.12.1996 p1922</i> )
1997	62	<i>Electricity (Vegetation Clearance) Amendment Act 1997</i>	7.8.1997	1.1.1998 ( <i>Gazette 27.11.1997 p1426</i> )
1997	71	<i>Electricity (Miscellaneous) Amendment Act 1997</i>	18.12.1997	5.3.1998 ( <i>Gazette 5.3.1998 p1062</i> )
1999	60	<i>Electricity (Miscellaneous) Amendment Act 1999</i>	19.8.1999	11.10.1999 ( <i>Gazette 30.9.1999 p1341</i> ) except ss 4(e), 15 & 16—19.8.1999 ( <i>Gazette 19.8.1999 p882</i> )
1999	74	<i>Statutes Amendment (Electricity) Act 1999</i>	25.11.1999	Pt 2 (s 4)—11.10.1999: s 2(3)

## Electricity Act 1996—1.7.2010 to 4.8.2010

### Legislative history

2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 12)—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2000	51	<i>Electricity (Pricing Order and Cross-ownership) Amendment Act 2000</i>	20.7.2000	20.7.2000
2002	19	<i>Electricity (Miscellaneous) Amendment Act 2002</i>	12.9.2002	12.9.2002 except ss 3(c), (d), (f), 7—9, 10(a), (b), (d), 11(a)—(d), (f), 12, 17, 19—21, 24(b) & 25—1.1.2003 ( <i>Gazette 12.9.2002 p3384</i> ) and except ss 10(c) & 11(e)—1.7.2003 ( <i>Gazette 26.6.2003 p2810</i> )
2003	2	<i>Electricity (Pricing Order) Amendment Act 2003</i>	17.4.2003	17.4.2003
2003	9	<i>Statutes Amendment (Gas and Electricity) Act 2003</i>	12.6.2003	Pt 4 (s 74)—1.7.2003 ( <i>Gazette 26.6.2003 p2812</i> )
2004	30	<i>Emergency Management Act 2004</i>	29.7.2004	Sch 1 (cl 1)—25.11.2004 ( <i>Gazette 25.11.2004 p4406</i> )
2004	36	<i>Statutes Amendment (Electricity and Gas) Act 2004</i>	5.8.2004	Pt 2 (ss 4—6)—19.8.2004 except new s 36AA(4a)(d) & (e) (as inserted by s 6(1)) and s 6(2)—1.7.2005 ( <i>Gazette 19.8.2004 p3279</i> )
2005	40	<i>Fire and Emergency Services Act 2005</i>	14.7.2005	Sch 6 (cll 4 & 5)—1.10.2005 ( <i>Gazette 29.9.2005 p3547</i> )
2006	21	<i>Statutes Amendment (Electricity and Gas) Act 2006</i>	5.10.2006	Pt 2 (ss 4—17) & Sch 1—1.9.2007 ( <i>Gazette 19.4.2007 p1233</i> )
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 10 (ss 42—44)—1.4.2007 ( <i>Gazette 29.3.2007 p930</i> )
2008	1	<i>Electricity (Feed-In Scheme—Solar Systems) Amendment Act 2008</i>	21.2.2008	1.7.2008 ( <i>Gazette 19.6.2008 p2381</i> )
2009	19	<i>Statutes Amendment (Energy Efficiency Shortfalls) Act 2009</i>	4.6.2009	Pt 2 (s 4)—3.9.2009 ( <i>Gazette 3.9.2009 p4368</i> )
2009	29	<i>Statutes Amendment (Public Health Incidents and Emergencies) Act 2009</i>	25.6.2009	Pt 2 (s 3)—25.6.2009
2009	32	<i>Statutes Amendment (Australian Energy Market Operator) Act 2009</i>	25.6.2009	Pt 3 (ss 15—23) & Sch 1 (cll 1—13 & 28—30)—1.7.2009 ( <i>Gazette 25.6.2009 p3001</i> )
<b>2009</b>	<b>45</b>	<b><i>Statutes Amendment (Electricity and Gas—Information Management and Retailer of Last Resort) Act 2009</i></b>	<b>22.10.2009</b>	<b>Pt 2 (s 4)—22.10.2009: s 2 except s 5—1.7.2010 (<i>Gazette 10.12.2009 p6169</i>)</b>
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 54 (ss 110 & 111)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 60/1999 s 3	11.10.1999
Pt 1		

s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2003
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 60/1999 s 4(1)	11.10.1999
<i>access</i>	<i>deleted by 60/1999 s 4(a)</i>	11.10.1999
AEMO	inserted by 32/2009 s 15	1.7.2009
annual electricity consumption level	inserted by 19/2002 s 3(a)	12.9.2002
Commission	inserted by 19/2002 s 3(b)	12.9.2002
<i>contestable customer</i>	<i>substituted by 71/1997 s 3(a)</i>	5.3.1998
	<i>deleted by 19/2002 s 3(c)</i>	1.1.2003
council	amended by 21/2006 Sch 1	1.9.2007
council officer	inserted by 62/1997 s 3(a)	1.1.1998
<i>cross-ownership rules</i>	<i>inserted by 60/1999 s 4(b)</i>	11.10.1999
	<i>deleted by 19/2002 s 3(d)</i>	1.1.2003
customer	substituted by 60/1999 s 4(b)	11.10.1999
electrical equipment	inserted by 21/2006 s 4(1)	1.9.2007
electrical installation	amended by 71/1997 s 3(b)	5.3.1998
	amended by 21/2006 s 4(2), (3)	1.9.2007
electricity infrastructure	amended by 60/1999 s 4(c)	11.10.1999
	amended by 21/2006 s 4(4)	1.9.2007
electricity supply industry	amended by 60/1999 s 4(d)	11.10.1999
employing authority	inserted by 41/2006 s 42(1)	1.4.2007
install	inserted by 21/2006 s 4(5)	1.9.2007
<i>Industry Regulator</i>	<i>inserted by 60/1999 s 4(e)</i>	19.8.1999
	<i>deleted by 19/2002 s 3(e)</i>	12.9.2002
<i>National Electricity Code</i>	<i>substituted by 60/1999 s 4(f)</i>	11.10.1999
	<i>deleted by 21/2006 Sch 1</i>	1.9.2007
National Electricity Rules	inserted by 21/2006 Sch 1	1.9.2007
National Electricity Law (South Australia)	inserted by 60/1999 s 4(f)	11.10.1999
<i>non-contestable customer</i>	<i>deleted by 19/2002 s 3(f)</i>	1.1.2003
powerline	substituted by 62/1997 s 3(b)	1.1.1998
	amended by 60/1999 s 4(g)	11.10.1999
<i>Pricing Regulator</i>	<i>inserted by 71/1997 s 3(c)</i>	5.3.1998
	<i>deleted by 60/1999 s 4(h)</i>	11.10.1999
retailing	amended by 60/1999 s 4(i)	11.10.1999

**Electricity Act 1996—1.7.2010 to 4.8.2010**

## Legislative history

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small customer	inserted by 19/2002 s 3(g)	12.9.2002
system controller	amended by 60/1999 s 4(j)	11.10.1999
telecommunica- tion	inserted by 60/1999 s 4(k)	11.10.1999
s		
transmission or distribution system	amended by 71/1997 s 3(d)	5.3.1998
vegetation clearance scheme	inserted by 62/1997 s 3(c)	1.1.1998
s 4		
s 4(2)	inserted by 60/1999 s 4(l)	11.10.1999
s 4(3)	inserted by 41/2006 s 42(2)	1.4.2007
s 5		
s 5(3)	amended by 60/1999 s 5	11.10.1999
s 6	substituted by 60/1999 s 6	11.10.1999
Pt 2		
Pt 2 Div 1	inserted by 60/1999 s 7	11.10.1999
	heading amended by 19/2002 Sch	12.9.2002
s 6A		
s 6A(1)	amended by 19/2002 Sch	12.9.2002
	amended by 21/2006 Sch 1	1.9.2007
s 6A(2)	amended by 19/2002 Sch	12.9.2002
s 6A(3) and (4)	amended by 19/2002 Sch	12.9.2002
	amended by 21/2006 Sch 1	1.9.2007
<i>Pt 2 Div 2</i>	<i>inserted by 71/1997 s 6</i>	<i>5.3.1998</i>
	<i>deleted by 60/1999 s 15</i>	<i>19.8.1999</i>
<i>Pt 2 Div 2 before deletion</i>	<i>inserted by 60/1999 s 7</i>	<i>11.10.1999</i>
<i>by 32/2009</i>		
s 6E		
s 6E(1)	<i>amended by 19/2002 Sch</i>	<i>12.9.2002</i>
	<i>amended by 21/2006 Sch 1</i>	<i>1.9.2007</i>
s 6F		
s 6F(2)	<i>amended by 41/2006 s 43</i>	<i>1.4.2007</i>
s 6G		
s 6G(5)	<i>amended by 19/2002 s 4</i>	<i>12.9.2002</i>
s 6L	<i>substituted by 41/2006 s 44</i>	<i>1.4.2007</i>
s 6LA	<i>inserted by 41/2006 s 44</i>	<i>1.4.2007</i>
s 6N	<i>inserted by 19/2002 s 5</i>	<i>12.9.2002</i>
s 6N(1)	<i>amended by 21/2006 Sch 1</i>	<i>1.9.2007</i>
s 6O	<i>inserted by 19/2002 s 5</i>	<i>12.9.2002</i>
<i>Pt 2 Div 2</i>	<i>deleted by 32/2009 s 16</i>	<i>1.7.2009</i>
Pt 2 Div 3	Div 1 heading inserted by 71/1997 s 4	5.3.1998
	Div 1 heading deleted and Div 3 heading inserted by 60/1999 s 8	11.10.1999
s 7		

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s 7(2)	amended by 60/1999 s 9	11.10.1999
	amended by 84/2009 s 110	1.2.2010
s 8	substituted by 60/1999 s 10	11.10.1999
	amended by 32/2009 s 17(1)—(3)	1.7.2009
s 10		
s 10(1)	amended by 60/1999 s 11(a)	11.10.1999
s 10(2)	amended by 60/1999 s 11(b)	11.10.1999
s 11		
s 11(1)	amended by 60/1999 s 12(a)	11.10.1999
s 11(1a)	inserted by 71/1997 s 5	5.3.1998
	amended by 60/1999 s 12(b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	substituted by 45/2009 s 4	22.10.2009
<i>ss 12 and 13</i>	<i>deleted by 60/1999 s 13</i>	<i>11.10.1999</i>
s 14		
s 14(1)	amended by 60/1999 s 14(a)	11.10.1999
s 14(2)	<i>deleted by 60/1999 s 14(b)</i>	<i>11.10.1999</i>
Pt 2 Div 4	inserted by 60/1999 s 15	19.8.1999
ss 14A and 14C	amended by 19/2002 Sch	12.9.2002
Pt 3		
Pt 3 Div A1	inserted by 60/1999 s 16	19.8.1999
s 14D	amended by 19/2002 Sch	12.9.2002
Pt 3 Div 1		
s 15		
s 15(1)	amended by 60/1999 s 17(a)	11.10.1999
	amended by 19/2002 s 6	12.9.2002
s 15(2)	amended by 60/1999 s 17(b)	11.10.1999
s 15(3)	inserted by 60/1999 s 17(c)	11.10.1999
	substituted by 32/2009 s 18	1.7.2009
s 16		
s 16(1)	amended by 60/1999 s 18(a), (b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 16(2)	amended by 60/1999 s 18(c)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 16(3)	amended by 60/1999 s 18(d), (e)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 16(4)	amended by 60/1999 s 18(f)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 17		
s 17(1)	amended by 60/1999 s 19(a)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 17(2)	amended by 60/1999 s 19(b)—(d)	11.10.1999
	amended by 19/2002 Sch	12.9.2002

**Electricity Act 1996—1.7.2010 to 4.8.2010**

## Legislative history

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	(ab) deleted by 19/2002 s 7	1.1.2003
s 17(3)	amended by 60/1999 s 19(e)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 17(4)	amended by 60/1999 s 19(f)—(i)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 17(5)	amended by 60/1999 s 19(j), (k)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	amended by 21/2006 Sch 1	1.9.2007
s 17A	inserted by 60/1999 s 20	11.10.1999
s 17A(2)	amended by 19/2002 Sch	12.9.2002
s 19	substituted by 60/1999 s 21	11.10.1999
s 20		
s 20(1)	amended by 60/1999 s 22(a), (b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 20(2)	amended by 60/1999 s 22(c)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 20(3)	substituted by 60/1999 s 22(d)	11.10.1999
s 20(4)	amended by 60/1999 s 22(e)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 20(5)	amended by 60/1999 s 22(f)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 20(7)		
administrative costs	inserted by 60/1999 s 22(g)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	amended by 32/2009 s 19	1.7.2009
s 21	amended by 71/1997 s 7	5.3.1998
	substituted by 60/1999 s 23	11.10.1999
s 21(1)	amended by 19/2002 s 8(a)	1.1.2003
	amended by 19/2002 Sch	12.9.2002
	(d) deleted by 19/2002 s 8(b)	1.1.2003
s 21(2)	amended by 19/2002 s 8(c)	1.1.2003
	amended by 19/2002 Sch	12.9.2002
s 21(3)	amended by 19/2002 s 8(d)	1.1.2003
	amended by 19/2002 Sch	12.9.2002
s 21(4)	amended by 19/2002 Sch	12.9.2002
s 22	substituted by 60/1999 s 23	11.10.1999
s 22(1)	amended by 19/2002 s 9	1.1.2003
	amended by 19/2002 Sch	12.9.2002
	amended by 32/2009 s 20	1.7.2009
s 23	substituted by 60/1999 s 23	11.10.1999
s 23(1)	amended by 19/2002 Sch	12.9.2002
	amended by 19/2002 s 10(a), (b), (d)	1.1.2003
	amended by 19/2002 s 10(c)	1.7.2003

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	amended by 32/2009 s 21	1.7.2009
s 23(3)	amended by 36/2004 s 4	19.8.2004
	<b>amended by 45/2009 s 5</b>	<b>1.7.2010</b>
s 23(5a) and (5b)	inserted by 19/2002 s 10(e)	12.9.2002
s 24	substituted by 60/1999 s 23	11.10.1999
s 24(1)	<i>amended by 19/2002 Sch</i>	<i>12.9.2002</i>
	<i>deleted by 19/2002 s 11(a)</i>	<i>1.1.2003</i>
s 24(2)	amended by 19/2002 Sch	12.9.2002
	amended by 19/2002 s 11(b), (c), (d)	1.1.2003
	(f) and (g) deleted by 19/2002 s 11(d)	1.1.2003
	amended by 19/2002 s 11(e)	1.7.2003
	amended by 36/2004 s 5(1), (2)	19.8.2004
	amended by 21/2006 Sch 1	1.9.2007
s 24(3)	<i>amended by 19/2002 Sch</i>	<i>12.9.2002</i>
	<i>deleted by 19/2002 s 11(f)</i>	<i>1.1.2003</i>
s 24A	inserted by 60/1999 s 23	11.10.1999
s 24A(1)	amended by 19/2002 Sch	12.9.2002
	amended by 19/2002 s 12	1.1.2003
s 24B	inserted by 60/1999 s 23	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	amended by 21/2006 Sch 1	1.9.2007
s 25		
s 25(1)	amended by 60/1999 s 24(a)	11.10.1999
	amended by 19/2002 s 13(a)	12.9.2002
s 25(2)	amended by 60/1999 s 24(b)	11.10.1999
	substituted by 19/2002 s 13(b)	12.9.2002
s 26	<i>deleted by 60/1999 s 25</i>	<i>11.10.1999</i>
s 27		
s 27(1)	substituted by 60/1999 s 26	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 28	substituted by 60/1999 s 27	11.10.1999
s 28(1)—(6)	amended by 19/2002 Sch	12.9.2002
s 28A	inserted by 60/1999 s 27	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 28B	inserted by 60/1999 s 27	11.10.1999
s 28B(1) and (2)	amended by 19/2002 Sch	12.9.2002
s 29		
s 29(1)—(3)	amended by 60/1999 s 28	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 30		
s 30(1)	amended by 60/1999 s 29(a)	11.10.1999
	amended by 19/2002 s 14, Sch	12.9.2002
s 30(3)	amended by 60/1999 s 29(b)	11.10.1999

**Electricity Act 1996—1.7.2010 to 4.8.2010**

## Legislative history

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Pt 3 Div 2		
s 31	substituted by 60/1999 s 30	11.10.1999
s 31(6)	amended by 21/2006 Sch 1	1.9.2007
<i>ss 32 and 33</i>	<i>deleted by 60/1999 s 30</i>	<i>11.10.1999</i>
Pt 3 Div 2A	inserted by 71/1997 s 8	5.3.1998
	substituted by 60/1999 s 31	11.10.1999
s 35A		
s 35A(1)	amended by 19/2002 s 15(a), (b), Sch	12.9.2002
	amended by 2/2003 s 2	17.4.2003
	amended by 21/2006 Sch 1	1.9.2007
s 35A(2)	amended by 19/2002 Sch	12.9.2002
s 35A(3)	amended by 2/2003 s 2	17.4.2003
s 35A(4)	substituted by 19/2002 s 15(c)	12.9.2002
s 35B		
s 35B(4) and (5)	amended by 19/2002 Sch	12.9.2002
s 35B(7)	amended by 74/1999 s 4	11.10.1999
s 35B(10a)	inserted by 51/2000 s 2	20.7.2000
	amended by 2/2003 s 3	17.4.2003
s 35B(12) and (13)	amended by 19/2002 Sch	12.9.2002
Pt 3 Div 3	heading amended by 60/1999 s 32	11.10.1999
s 36		
s 36(1)	amended by 60/1999 s 33(a)	11.10.1999
	amended by 19/2002 s 16	12.9.2002
s 36(2)	amended by 60/1999 s 33(b)	11.10.1999
	amended by 9/2003 s 74(1)	1.7.2003
s 36(2a)	inserted by 9/2003 s 74(2)	1.7.2003
s 36(3)	amended by 60/1999 s 33(c)	11.10.1999
	amended by 9/2003 s 74(3)	1.7.2003
	amended by 21/2006 Sch 1	1.9.2007
s 36(5)	inserted by 9/2003 s 74(4)	1.7.2003
Pt 3 Div 3AA	inserted by 19/2002 s 17	1.1.2003
s 36AA	may expire by proclamation: s 36AA(7)	
s 36AA(4a)	inserted by 36/2004 s 6(1)	19.8.2004 except (d) and (e)—1.7.2005
s 36AA(6)		
standing contract price	substituted by 36/2004 s 6(2)	1.7.2005
s 36AA(7)	substituted by 36/2004 s 6(3)	19.8.2004
Pt 3 Div 3AB	inserted by 1/2008 s 4	1.7.2008
Pt 3 Div 3A	inserted by 60/1999 s 34	11.10.1999
Pt 3 Div 4		
s 37		
s 37(1)	amended by 60/1999 s 35(a)—(c)	11.10.1999



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	amended by 19/2002 Sch	12.9.2002
s 37(2)	amended by 60/1999 s 35(d)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 37(3)	amended by 60/1999 s 35(e)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
Pt 3 Div 5	heading amended by 60/1999 s 36	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 38		
s 38(1)	amended by 60/1999 s 37(a), (b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 38(2)	amended by 60/1999 s 37(c)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 38(3)	amended by 60/1999 s 37(d)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 39		
s 39(1)	amended by 60/1999 s 38(a)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 39(2a)	inserted by 60/1999 s 38(b)	11.10.1999
	amended by 21/2006 Sch 1	1.9.2007
s 39(5)	amended by 60/1999 s 38(c)	11.10.1999
s 39(6)	amended by 60/1999 s 38(d)	11.10.1999
Pt 3 Div 6	<i>deleted by 60/1999 s 39</i>	<i>11.10.1999</i>
Pt 4		
s 41		
s 41(1)	amended by 60/1999 s 40	11.10.1999
s 43		
s 43(2)	amended by 60/1999 s 41(a)	11.10.1999
s 43(3)	amended by 60/1999 s 41(b)	11.10.1999
s 45		
s 45(1)	amended by 60/1999 s 42(a)	11.10.1999
s 45(2)	amended by 60/1999 s 42(b)	11.10.1999
s 45(3)	amended by 60/1999 s 42(c), (d)	11.10.1999
s 47		
s 47(2a)	inserted by 60/1999 s 43(a)	11.10.1999
s 47(11) and (12)	<i>deleted by 60/1999 s 43(b)</i>	<i>11.10.1999</i>
s 48		
s 48(1)	<i>deleted by 60/1999 s 44(a)</i>	<i>11.10.1999</i>
s 48(2)	amended by 60/1999 s 44(b)	11.10.1999
s 48(4)	amended by 60/1999 s 44(c)	11.10.1999
s 48(5)	<i>deleted by 60/1999 s 44(d)</i>	<i>11.10.1999</i>
s 48(7)	amended by 60/1999 s 44(e)	11.10.1999
s 48A	inserted by 60/1999 s 45	11.10.1999
s 50	amended by 60/1999 s 46	11.10.1999

**Electricity Act 1996—1.7.2010 to 4.8.2010**

## Legislative history

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s 53		
s 53(2)	amended by 60/1999 s 47	11.10.1999
	amended by 40/2005 Sch 6 cl 4	1.10.2005
s 54	amended by 30/2004 Sch 1 cl 1	25.11.2004
	amended by 40/2005 Sch 6 cl 5(1), (2)	1.10.2005
	amended by 21/2006 Sch 1	1.9.2007
	amended by 29/2009 s 3	25.6.2009
Pt 5		
Pt 5 Div 1	heading inserted by 62/1997 s 4	1.1.1998
s 55		
s 55(1)	amended by 62/1997 s 5(a)	1.1.1998
s 55(1a)	inserted by 62/1997 s 5(b)	1.1.1998
s 55(3)	amended by 62/1997 s 5(c)	1.1.1998
s 55(4)—(6)	substituted by 62/1997 s 5(d)	1.1.1998
Pt 5 Div 2	inserted by 62/1997 s 6	1.1.1998
Pt 5 Div 3	heading inserted by 62/1997 s 7	1.1.1998
s 56		
s 56(1)	amended by 62/1997 s 8	1.1.1998
s 57		
s 57(1)	amended by 62/1997 s 9(a), (b)	1.1.1998
s 57(2)	amended by 62/1997 s 9(c)	1.1.1998
	amended by 21/2006 s 5	1.9.2007
s 57(2a)	inserted by 62/1997 s 9(d)	1.1.1998
s 57(3)	amended by 62/1997 s 9(e)	1.1.1998
s 57(4)	amended by 62/1997 s 9(f)	1.1.1998
s 57(5)	amended by 62/1997 s 9(g)	1.1.1998
s 57(7)	inserted by 62/1997 s 9(h)	1.1.1998
s 58		
s 58(1)	amended by 60/1999 s 48	11.10.1999
s 58(2)	amended by 62/1997 s 10	1.1.1998
	amended by 21/2006 s 6	1.9.2007
Pt 5A	inserted by 60/1999 s 49	11.10.1999
Pt 6		
s 59		
s 59(1)	amended by 60/1999 s 50	11.10.1999
	substituted by 21/2006 s 7(1)	1.9.2007
s 59(1a)—(1g)	inserted by 21/2006 s 7(1)	1.9.2007
s 59(3)	substituted by 21/2006 s 7(2)	1.9.2007
s 59(4) and (5)	inserted by 21/2006 s 7(2)	1.9.2007
s 60		
s 60(1)	amended by 60/1999 s 51	11.10.1999
s 60A	inserted by 21/2006 s 8	1.9.2007
s 61		

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s 61(1)	amended by 60/1999 s 52(a)	11.10.1999
	amended by 21/2006 s 9(1)	1.9.2007
s 61(2)	substituted by 60/1999 s 52(b)	11.10.1999
	amended by 21/2006 s 9(2)	1.9.2007
s 61(3)	deleted by 60/1999 s 52(b)	11.10.1999
	inserted by 21/2006 s 9(3)	1.9.2007
s 61(4)	inserted by 21/2006 s 9(3)	1.9.2007
s 61A	inserted by 21/2006 s 10	1.9.2007
s 62		
s 62(1)	amended by 21/2006 s 11(1), (2)	1.9.2007
s 62(2)	amended by 60/1999 s 53(a)	11.10.1999
	amended by 21/2006 s 11(3), (4)	1.9.2007
s 62(4)	amended by 60/1999 s 53(b)	11.10.1999
ss 62A and 62B	inserted by 21/2006 s 12	1.9.2007
s 63	amended by 21/2006 s 13	1.9.2007
Pt 7		
Pt 7 Div A1	inserted by 19/2002 s 18	12.9.2002
Pt 7 Div A2	inserted by 19/2002 s 18	12.9.2002
Pt 7 Div 1		
s 64		
s 64(1)	amended by 60/1999 s 54(a)	11.10.1999
s 64(3)	substituted by 60/1999 s 54(b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 64(4)	inserted by 60/1999 s 54(b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	amended by 19/2002 s 19	1.1.2003
s 65		
s 65(3) and (4)	amended by 60/1999 s 55	11.10.1999
s 66		
s 66(1)	amended by 60/1999 s 56(a)	11.10.1999
s 66(3)	amended by 60/1999 s 56(b), (c)	11.10.1999
Pt 7 Div 2		
s 69		
s 69(2)	amended by 60/1999 s 57(a)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 69(4)	amended by 60/1999 s 57(b)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
s 70		
s 70(3)	amended by 60/1999 s 58	11.10.1999
s 71		
s 71(3)	amended by 60/1999 s 59	11.10.1999
s 72		
s 72(1)	amended by 21/2006 s 14(1), (2)	1.9.2007

**Electricity Act 1996—1.7.2010 to 4.8.2010**

## Legislative history

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s 72(2)	amended by 60/1999 s 60(a)	11.10.1999
	amended by 21/2006 s 14(3), (4)	1.9.2007
s 72(4)	amended by 60/1999 s 60(b)	11.10.1999
s 73		
s 73(3)	amended by 60/1999 s 61	11.10.1999
Pt 8	amended by 62/1997 s 11	1.1.1998
	substituted by 60/1999 s 62	11.10.1999
s 74	<i>deleted by 19/2002 Sch</i>	12.9.2002
s 75		
s 75(1)	amended by 19/2002 Sch	12.9.2002
	(c) deleted by 19/2002 s 20(a)	1.1.2003
s 75(2)	amended by 19/2002 Sch	12.9.2002
	(e)(ii) deleted by 19/2002 s 20(b)	1.1.2003
s 75(3)—(7)	amended by 19/2002 Sch	12.9.2002
s 76		
s 76(1)	amended by 4/2000 s 9(1) (Sch 1 cl 12(a))	1.6.2000
	amended by 19/2002 Sch	12.9.2002
s 76(2)	amended by 4/2000 s 9(1) (Sch 1 cl 12(b))	1.6.2000
s 76(3)	amended by 19/2002 Sch	12.9.2002
s 76(4)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 12(c))</i>	1.6.2000
s 76(5)	substituted by 4/2000 s 9(1) (Sch 1 cl 12(d))	1.6.2000
Pt 9		
s 80	substituted by 60/1999 s 63	11.10.1999
s 80(1)	amended by 19/2002 Sch	12.9.2002
	amended by 19/2002 s 21	1.1.2003
s 80(1a)	inserted by 21/2006 s 15(1)	1.9.2007
s 80(2)	amended by 19/2002 Sch	12.9.2002
	substituted by 21/2006 s 15(1)	1.9.2007
s 80(3)	amended by 19/2002 Sch	12.9.2002
	amended by 21/2006 s 15(2)	1.9.2007
s 80A	inserted by 60/1999 s 63	11.10.1999
s 80A(1)	amended by 19/2002 Sch	12.9.2002
s 81	amended by 60/1999 s 64	11.10.1999
s 81A	inserted by 60/1999 s 65	11.10.1999
s 82		
s 82(1)	amended by 62/1997 s 12(a)	1.1.1998
s 82(3)	amended by 62/1997 s 12(b)	1.1.1998
s 83		
s 83(1)	amended by 62/1997 s 13(a)	1.1.1998
s 83(6)	amended by 62/1997 s 13(b)	1.1.1998
s 85		
s 85(2)	amended by 21/2006 s 16	1.9.2007
s 90	amended by 60/1999 s 66	11.10.1999

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s 91	amended by 71/1997 s 9	5.3.1998
	amended by 60/1999 s 67	11.10.1999
	amended by 19/2002 s 22, Sch	12.9.2002
	amended by 32/2009 s 22	1.7.2009
s 94		
s 94(1)	amended by 60/1999 s 68	11.10.1999
s 94A	inserted by 19/2002 s 23	12.9.2002
s 94B	inserted by 19/2009 s 4	3.9.2009
<i>s 95 before deletion by 84/2009</i>		
<i>s 95(1)</i>	<i>amended by 60/1999 s 69</i>	<i>11.10.1999</i>
s 95	<i>deleted by 84/2009 s 111</i>	<i>1.2.2010</i>
s 96		
s 96(2)	amended by 62/1997 s 14	1.1.1998
	amended by 60/1999 s 70(a), (b)	11.10.1999
	amended by 19/2002 s 24(a), Sch	12.9.2002
s 96(3)	amended by 60/1999 s 70(c)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	amended by 19/2002 s 24(b)	1.1.2003
s 96(3a)	inserted by 60/1999 s 70(d)	11.10.1999
	amended by 19/2002 s 24(c)	12.9.2002
s 97		
s 97(2)	amended by 60/1999 s 71	11.10.1999
	amended by 21/2006 Sch 1	1.9.2007
s 98		
s 98(2)	amended by 60/1999 s 72(a), (c)	11.10.1999
	(d) deleted by 60/1999 s 72(b)	11.10.1999
	(d) inserted by 32/2009 s 23	1.7.2009
s 98(2a)	inserted by 60/1999 s 72(d)	11.10.1999
s 98(2b)	<i>inserted by 60/1999 s 72(d)</i>	<i>11.10.1999</i>
	<i>deleted by 19/2002 s 25</i>	<i>1.1.2003</i>
s 98(2c)	inserted by 60/1999 s 72(d)	11.10.1999
	amended by 21/2006 Sch 1	1.9.2007
s 98(3)	amended by 60/1999 s 72(e)	11.10.1999
	amended by 19/2002 Sch	12.9.2002
	amended by 21/2006 s 17	1.9.2007
Sch 1	<i>substituted by 60/1999 s 73</i>	<i>11.10.1999</i>
	<i>amended by 51/2000 s 3</i>	<i>20.7.2000</i>
	<i>amended by 19/2002 Sch</i>	<i>12.9.2002</i>
	<i>expired: Sch 1 cl 2(2)—omitted under Legislation Revision and Publication Act 2002</i>	<i>(31.12.2002)</i>
Sch 1A	inserted by 60/1999 s 73	11.10.1999
Sch 2		

cl 2

amended by 71/1997 s 10  
deleted by 60/1999 s 74

5.3.1998  
11.10.1999

## Transitional etc provisions associated with Act or amendments

### *Electricity (Pricing Order and Cross-ownership) Amendment Act 2000*

#### 4—Exclusion of Crown liability in relation to electricity pricing order

- (1) No liability (including contractual liability) is incurred by the Crown in connection with the variation of the electricity pricing order notified in the Gazette on 11 October 1999 at page 1471.
- (2) In this section—

**Crown** includes a Minister of the Crown, an instrumentality of the Crown or an officer or employee of the Crown or an instrumentality of the Crown, but does not include a contractor, or an officer or employee of a contractor, engaged by the Crown.

### *Electricity (Pricing Order) Amendment Act 2003*

#### 4—Exclusion of Crown liability in relation to electricity pricing order

- (1) No liability (including contractual liability) is incurred by the Crown in connection with the further variation of the electricity pricing order notified in the Gazette on 11 October 1999 at page 1471.
- (2) In this section—

**Crown** includes a Minister of the Crown, an instrumentality of the Crown or an officer or employee of the Crown or an instrumentality of the Crown, but does not include a contractor, or an officer or employee of a contractor, engaged by the Crown.

### *Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions*

#### Note—

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

## 1—Interpretation

In this Part, unless the contrary intention appears—

**Commonwealth Act** means the *Workplace Relations Act 1996* of the Commonwealth;

**employing authority** means—

- (a) subject to paragraph (b)—the person who is the employing authority under a relevant Act;
- (b) in a case that relates to employment under the *Fire and Emergency Services Act 2005*—the Chief Executive of the South Australian Fire and Emergency Services Commission, or the Chief Officer of an emergency services organisation under that Act, as the case requires;

**Industrial Commission** means the Industrial Relations Commission of South Australia;

**prescribed body** means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;
- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;
- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;
- (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

**relevant Act** means—

- (a) in a case that relates to employment with a prescribed body established under an Act being amended by this Act—that Act;
- (b) in a case that relates to employment with a prescribed body who is a Minister to whom the administration of an Act being amended by this Act is committed—that Act;
- (c) in a case that relates to employment with a body constituted under the *Fire and Emergency Services Act 2005*—that Act.

## 2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
  - (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
  - (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
  - (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
  - (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
  - (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
  - (b) will not affect—
    - (i) existing conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.



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- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
- (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
  - (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day,
- subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
- (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
  - (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and
  - (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

### 3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
- (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,

and subclause (1) may have effect despite any other Act or law.

- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

#### **4—Interpretative provision**

- (1) The Governor may, by proclamation, direct that a reference in any instrument (including a statutory instrument) or a contract, agreement or other document to a prescribed body, or other specified agency, instrumentality or body, will have effect as if it were a reference to an employing authority under a relevant Act, the Minister to whom the administration of a relevant Act is committed, or some other person or body designated by the Governor.
- (2) A proclamation under subclause (1) may effect a transfer of functions or powers.

#### **5—Related matters**

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

#### **6—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

***Statutes Amendment (Australian Energy Market Operator) Act 2009, Sch 1***

***Part 1—Transitional provisions—Electricity market***

***Division 1—Preliminary***

**1—Preliminary**

In this Part, unless the contrary intention appears—

***AEMO*** means the Australian Energy Market Operator Limited (ACN 072 010 327);

***asset*** means tangible or intangible real or personal property of any description and includes—

- (a) a present, future or contingent legal or equitable interest in real or personal property;
- (b) a chose in action;
- (c) a right, power, privilege or immunity;
- (d) goodwill;
- (e) a security;
- (f) money;
- (g) documents;
- (h) information (including data and records) in any form;

***business day*** means any day except a Saturday, Sunday or public holiday;

***designated entity*** means—

- (a) AEMO; or
- (b) the relevant Minister;

***ESIPC*** means the Electricity Supply Industry Planning Council;

***liability*** means a monetary or non-monetary obligation and includes a future or contingent obligation;

***principal Act*** means the *Electricity Act 1996*;

***property*** includes intellectual property;

***relevant day*** means a day appointed by the relevant Minister by notice in the Gazette as the relevant day for the purposes of the provision in which the term is used;

***relevant Minister*** means the Minister responsible for the administration of the principal Act;

***Technical Regulator*** means the Technical Regulator under the principal Act.

## ***Division 2—Reporting requirements and financial statements—ESIPC***

### **2—Reporting and financial requirements—ESIPC**

- (1) AEMO must comply with any requirement that would have applied to or in relation to ESIPC with respect to ESIPC's operations before the relevant day had the repeal of Part 2 Division 2 of the principal Act not been effected by this Act—
  - (a) to ensure that proper accounts are maintained and financial statements prepared and finalised with respect to any financial year; and
  - (b) to ensure that financial statements are delivered to the Auditor-General for auditing (together with any relevant certificates, information or material); and
  - (c) to prepare and deliver any annual or other reports.
- (2) AEMO, or the Chief Executive of AEMO, may take such steps as are reasonably necessary in order to comply with subclause (1) (including by assuming control of any accounts, statements or other documents or materials or by providing any certificate, information or statement).

## ***Division 3—Assignment or provision of information***

### **3—Assignment of information held by ESIPC**

- (1) Despite any other Act or law, the documents and other information (including data and records) in any form held by ESIPC immediately before the relevant day (***designated information***) will be assigned by force of this clause to—
  - (a) in the case of designated information directly relevant to the functions of AEMO—AEMO;
  - (b) in the case of designated information directly relevant to the functions of the relevant Minister—the relevant Minister;
  - (c) in the case of designated information directly relevant to the functions of the Technical Regulator appointed under the principal Act—the Technical Regulator;
  - (d) in the case of any other designated information—the relevant Minister or, if so determined by the relevant Minister, another person or entity specified by the relevant Minister.
- (2) Any person or entity to which designated information is assigned under this clause will hold that designated information on the same basis as it was being held by ESIPC immediately before the relevant day.
- (3) It follows that—
  - (a) if the designated information was confidential in the hands of ESIPC immediately before the relevant day, it remains confidential in the hands of the person or entity to which it is assigned; and
  - (b) the person or entity must deal with any designated information in the same way as if it has been acquired or produced by the person or entity rather than ESIPC.

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- (4) Despite a preceding subclause, AEMO, the relevant Minister and the Technical Regulator may provide any information obtained under this clause to each other and, in doing so, will not be acting in breach of any confidence and will not be subject to any other form of limitation that may have applied to ESIPC.

#### **4—Provision of information under a licence**

A reference in a licence under the principal Act relating to the provision of information by an electricity entity to ESIPC will, on the relevant day, be taken to be a reference to the provision of information to AEMO.

#### ***Division 4—Transfer of assets and liabilities—ESIPC***

#### **5—Ministerial orders**

- (1) The relevant Minister may, by instrument in writing (an *allocation order*), transfer—
- (a) specified assets or liabilities of ESIPC to AEMO or to the relevant Minister;
  - (b) specified classes of assets or liabilities of ESIPC to AEMO or to the relevant Minister;
  - (c) all assets and liabilities of ESIPC, other than specified classes of assets or liabilities, to AEMO;
  - (d) all assets and liabilities of ESIPC, or all remaining assets and liabilities of ESIPC, to AEMO.
- (2) An allocation order takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (3) If it appears to the relevant Minister that assets or liabilities should not have been transferred to AEMO under this clause, the Minister may, by instrument in writing (a *claw back order*), transfer assets or liabilities transferred under this clause from AEMO to the relevant Minister or to another person or entity specified by the relevant Minister.
- (4) A claw back order—
- (a) must be made within 12 months after the date of the allocation order; and
  - (b) takes effect from a date (which may be earlier than the date of the order) specified in the order.
- (5) The relevant Minister must, at least 20 business days before making a claw back order, give AEMO written notice of the relevant Minister's intention to make the order.
- (6) The relevant Minister may make an allocation order, or a claw back order, in relation to assets or liabilities situated outside South Australia.
- (7) An allocation order or a claw back order may be made on conditions specified in the order.

#### **6—Effect of transfer order**

- (1) On the relevant date, assets and liabilities vest in the transferee named in a transfer order in accordance with the order.

- (2) If a transfer order provides for the transfer of the transferor's interest in an agreement—
  - (a) the transferee becomes on the relevant date a party to the agreement in place of the transferor; and
  - (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

- (3) In this clause—

*relevant date* means, in relation to an allocation order or a claw back order, the date specified in the order for the order to take effect;

*transfer order* means an allocation order or a claw back order under clause 5;

*transferor* means the person from whom assets or liabilities are transferred by a transfer order.

## **7—Continued effect of certain acts by ESIPC**

Anything done, or omitted to be done, by ESIPC in relation to assets or liabilities transferred to a designated entity under this Division is, if it continues to have effect as at the date of the transfer, taken to be the designated entity's act or omission.

## **8—Continuation of proceedings**

Proceedings commenced before the date of transfer by or against ESIPC in relation to an asset or liability transferred to a designated entity under this Division may be continued and completed by or against the designated entity.

## **9—Evidence of transfer**

A written notice signed by the relevant Minister stating that a specific transfer of assets or liabilities has been made under this Division is conclusive evidence of the transfer.

## **10—References**

- (1) A reference in an instrument or other document to ESIPC in connection with an asset or liability transferred to a designated entity under this Division is, from the date of transfer, taken to be a reference to the designated entity.
- (2) Subclause (1) does not apply to any instrument or document, or instrument or document of a specified class, excluded from the operation of that subclause by the relevant Minister by notice in the Gazette.

## **11—Parties to transfer must do anything necessary to perfect transfer**

- (1) AEMO must accept assets and liabilities transferred to it under this Division.
- (2) The relevant Minister may direct AEMO's directors to accept, on AEMO's behalf, a transfer of assets or liabilities under this Division.
- (3) AEMO must take necessary action to perfect a transfer of assets or liabilities under this Division.
- (4) The relevant Minister may direct the directors of AEMO to ensure that AEMO complies with an obligation under subclause (3).

## 12—Agreements

- (1) As from the relevant day, AEMO succeeds to ESIPC's powers, rights, obligations and liabilities under any agreement or other instrument related to an electricity market of which AEMO assumes the operation.
- (2) A reference in an agreement or other instrument within the ambit of subclause (1) continues to have effect in accordance with its terms as if any reference to ESIPC were a reference to AEMO (and AEMO will be taken to be a party to the agreement or other instrument, and to always have been such a party).

### *Division 5—Instruments made by ESIPC*

## 13—Instruments made by ESIPC

- (1) Unless the context otherwise requires, a procedure, guideline, directive, approval, determination or other instrument of a legislative or administrative character—
  - (a) made by ESIPC under the principal Act; and
  - (b) in force immediately before the relevant day,
 continues in force, subject to amendment or revocation by AEMO, as if made by AEMO.
- (2) Subclause (1) does not apply to any instrument, or instrument of a specified class, excluded from the operation of that subclause by the relevant Minister by notice in the Gazette.

### *Part 3—Related matters*

## 28—Corporations Act displacement

To the extent that any provision of this Schedule is incapable of concurrent operation with a provision of the *Corporations Act 2001* of the Commonwealth (a ***designated Commonwealth provision***), the provision of this Schedule is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the designated Commonwealth provision.

### **Note—**

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

## 29—Validity and effect of steps taken under Schedule

- (1) Nothing done under this Schedule—
  - (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
  - (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or

- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right of remedy in respect of or to terminate any agreement or obligation; or
  - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any relevant property; or
  - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) is to be regarded as frustrating any contract; or
  - (g) releases any surety or other obligor wholly or in part from any obligation; or
  - (h) gives rise to any right or entitlement to damages or compensation.
- (2) The transfer of a liability of an entity under this Part releases the entity from the liability.
- (3) If the books or records of an entity are transferred to AEMO under this Part, AEMO must—
- (a) preserve the books and records for at least 7 years; and
  - (b) allow—
    - (i) the entity and, if relevant, any director or former director of the entity; and
    - (ii) any other person authorised by the relevant Minister, reasonable access to the books and records.

- (4) In this clause—

**AEMO** means the Australian Energy Market Operator Limited (ACN 072 010 327);

**relevant Minister** means the Minister responsible for the administration of the *Electricity Act 1996*.

### 30—Exemption from taxes

Any stamp duty or other tax imposed by or under a law of this State is not payable in relation to a transfer of assets or liabilities under this Schedule.

### Historical versions

Reprint No 1—1.1.1998

Reprint No 2— 5.3.1998

Reprint No 3—19.8.1999

Reprint No 4—11.10.1999

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