

TASMANIA

ELECTRICITY REFORM BILL 2012

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ELECTRICITY REFORM BILL 2012

*(Brought in by the Minister for Energy and Resources, the
Honourable Bryan Alexander Green)*

A BILL FOR

**An Act to facilitate the implementation of reforms to the
electricity supply industry in Tasmania and for related
purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Electricity Reform
Act 2012*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Relationship to other State legislation

If a provision of this Act is inconsistent with a
provision of the *Electricity Companies Act 1997*, the
Hydro-Electric Corporation Act 1995, the
Government Business Enterprises Act 1995, the
Electricity Supply Industry Act 1995, the

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Electricity Supply Industry Expert Panel Act 2010 or the Tamar Valley Power Station Act 2008, the provision of this Act prevails to the extent of the inconsistency.

4. Interpretation

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

asset includes any, and any part of any, property, business or operation;

Aurora Energy means Aurora Energy Pty Ltd (ABN 85 082 464 622);

Aurora Energy (Tamar Valley) means Aurora Energy (Tamar Valley) Pty Ltd (ACN 123 391 613);

business, in relation to a State-owned electricity entity, means –

- (a) the business conducted by the entity; and
- (b) the goodwill of that business; and
- (c) any asset of the entity; and
- (d) the rights, liabilities, duties and obligations of the entity, whether those rights, liabilities, duties or obligations are present or future and whether vested or contingent –

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and includes a part of the business of the entity;

customer means a person to whom electricity is sold for premises by an electricity retailer;

distribution of electricity means the carrying of electricity between different points using a distribution network;

distribution network means the apparatus, electric line, equipment, plant, and buildings, that are –

- (a) used to convey, or control the conveyance of, electricity; and
- (b) specified by the National Electricity Rules as, or as forming part of, a distribution system;

Electricity Reform Co-ordinator means the office of Electricity Reform Co-ordinator existing under section 12;

electricity reform measures means the measures referred to in section 6(1);

electricity reform objectives means the objectives of electricity reform referred to in section 5;

electricity retailer means the holder of a retailer authorisation within the meaning

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of the National Energy Retail Law
(Tasmania);

gas contract means a contract for the sale of
gas;

Hydro-Electric Corporation has the same
meaning as in the *Hydro-Electric
Corporation Act 1995*;

liability means any liability, duty or
obligation, whether actual, contingent or
prospective, liquidated or unliquidated;

National Electricity Rules has the same
meaning as in the National Electricity
Law contained in the Schedule (as
amended from time to time) to the
*National Electricity (South Australia) Act
1996* of South Australia;

property means –

- (a) any legal or equitable estate or
interest (whether present or future
and whether vested or contingent)
in real or personal property; and
- (b) money, documents and securities;
and
- (c) shares in a subsidiary; and
- (d) any other rights;

retail business, in relation to a State-owned
electricity entity –

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(a) means any business of the entity that relates to the retailing of electricity; and

(b) includes any retail electricity contracts and any gas contracts;

retail electricity contract means a contract between an electricity retailer and a customer for the sale to the customer of electricity for premises;

retailing of electricity means selling to a customer electricity for premises;

right means any right, power, privilege, or immunity, whether actual, contingent or prospective;

shareholding Ministers means the Treasurer and the Minister;

small customer has the same meaning as in the National Energy Retail Law (Tasmania);

State-owned electricity entity means –

(a) Aurora Energy; and

(b) Transend; and

(c) any company established under the *Electricity Companies Act 1997*; and

(d) the Hydro-Electric Corporation; and

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- (e) a subsidiary of any State-owned electricity entity referred to in paragraph (a), (b), (c) or (d);

State tax means –

- (a) any tax, duty or charge; and
- (b) any application fee, registration fee or other fee –

imposed by an Act or other law of Tasmania;

subsidiary of a State-owned electricity entity – see subsection (2);

Transend means Transend Networks Pty Ltd (ABN 57 082 586 892);

transmission of electricity means the carrying of electricity between different points using a transmission system;

transmission system has the same meaning as in the National Electricity Rules.

- (2) For the purposes of this Act, a body corporate is a subsidiary of a State-owned electricity entity if –
 - (a) the body is a subsidiary of the State-owned electricity entity under the Corporations Law; or
 - (b) were the State-owned electricity entity, and the body corporate, corporations under the Corporations Law, the body

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corporate would be a subsidiary of the
State-owned electricity entity under the
Corporations Law.

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Part 2 – Electricity Reform Generally

PART 2 – ELECTRICITY REFORM GENERALLY

Division 1 – Electricity reform objectives and measures

5. Electricity reform objectives

For the purposes of this Act, the objectives of electricity reform are –

- (a) to assist in ensuring that the prices that customers are charged for electricity are as low as is consistent with ensuring the financial viability of the electricity supply industry; and
- (b) to ensure that the supply of electricity in Tasmania is safe, secure and reliable; and
- (c) to ensure that the advantage to Tasmania of generating electricity by means of renewable energy sources is maximised; and
- (d) to ensure that State-owned electricity entities are financially viable and operated efficiently and effectively and that their overall economic benefit to Tasmania is maximised.

6. Electricity reform measures

- (1) The measures that may be taken to achieve the electricity reform objectives include the following:

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- (a) the introduction of full retail competition into the electricity supply industry so that customers, including small customers, have a choice of electricity retailers from which electricity may be purchased;
 - (b) the restructuring of State-owned electricity entities;
 - (c) the integration of Aurora Energy's distribution network with Transend's transmission system to form a single combined network business;
 - (d) the transfer to the Hydro-Electric Corporation, or the sale to the private sector, of Aurora Energy (Tamar Valley) and any business of Aurora Energy (Tamar Valley);
 - (e) the establishment of independent regulation of the Hydro-Electric Corporation's wholesale market contracts;
 - (f) the sale to the private sector of the retail business of Aurora Energy or a subsidiary of Aurora Energy.
- (2) Subsection (1) does not limit the measures that may be taken to achieve the electricity reform objectives.

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Division 2 – Ministerial responsibility for electricity reform

7. Ministerial control

- (1) The shareholding Ministers are to take the actions they think necessary or desirable –
 - (a) to achieve the electricity reform objectives; and
 - (b) to implement the electricity reform measures.
- (2) The actions that may be taken to implement the electricity reform measures include, but are not limited to including, the following:
 - (a) the formation of companies under the *Electricity Companies Act 1997*;
 - (b) the sale and transfer, under this Act, of any retail business held by Aurora Energy or a subsidiary of Aurora Energy;
 - (c) the transfer, under this Act, between State-owned electricity entities, of certain assets, rights, liabilities and employees;
 - (d) the transfer, under this Act, to the Crown of all or part of the business of Aurora Energy, Transend or subsidiaries of Aurora Energy or Transend.

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8. Ministerial power of direction

- (1) The shareholding Ministers, by notice in writing to a State-owned electricity entity, may jointly issue a direction to the entity to ensure that –
 - (a) the electricity reform objectives are achieved; or
 - (b) the electricity reform measures are implemented.
- (2) Without limiting the generality of subsection (1), a direction issued under that subsection to a State-owned electricity entity may require the entity to –
 - (a) take the action specified in the direction; or
 - (b) take all reasonable steps to comply with the direction.
- (3) Without limiting the generality of subsection (1), a direction issued under that subsection to a State-owned electricity entity may require the entity to direct a subsidiary of the entity to take an action, or cease to take an action, that –
 - (a) is specified in the direction issued under subsection (1); or
 - (b) the entity, or the board of directors of the entity, thinks is necessary or convenient to assist in the carrying out of the direction issued under subsection (1).

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(4) If a direction is issued to a State-owned electricity entity under subsection (1) –

- (a) the State-owned electricity entity; and
- (b) the board of directors and the chief executive officer of the State-owned electricity entity; and
- (c) all officers of the State-owned electricity entity –

must comply with the direction and may do all things necessary or convenient to ensure the direction is complied with.

(5) Without limiting the generality of subsection (4), a State-owned electricity entity to which a direction is issued under subsection (1), and the board of directors of the State-owned electricity entity, may direct a subsidiary of the entity to take an action, or to cease to take an action, specified in the direction to the subsidiary, that –

- (a) is specified, in the direction issued under subsection (1), as a direction that the entity is to issue to the subsidiary; or
- (b) the entity or the board of directors thinks is necessary or convenient to assist in the carrying out of the direction issued under subsection (1).

(6) If a direction is issued to a subsidiary of a State-owned electricity entity under subsection (5) by a State-owned electricity entity or the board of directors of a State-owned electricity entity –

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-
- (a) the subsidiary; and
 - (b) the board of directors and the chief executive officer of the subsidiary; and
 - (c) all officers of the subsidiary –

must comply with the direction and may do all things necessary or convenient to ensure the direction is complied with.

- (7) If a direction is issued under subsection (1) to a State-owned electricity entity, details of the direction are to be published in the annual report of the entity.
- (8) If a direction is issued to a subsidiary of a State-owned electricity entity under subsection (5), details of the direction are to be published in the annual report of the subsidiary, or, if there is no such annual report, the annual report of the State-owned electricity entity.

9. Ministerial directions in relation to information held by Expert Panel

- (1) In this section –

authorised person means a person, or a person who is a member of a class of persons, authorised in writing by the Treasurer to receive information provided to the person under this section.

- (2) The Treasurer may issue to a person a direction that the person is to provide to the Electricity Reform Co-ordinator information, in the

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person's possession, that was produced by, or was in the possession of, the Electricity Supply Industry Expert Panel established under the *Electricity Supply Industry Expert Panel Act 2010*.

- (3) A person to whom a direction is issued under subsection (2) must comply with the direction and may do all things necessary or convenient to ensure the direction is complied with.
- (4) The Electricity Reform Co-ordinator, for the purposes of assisting in the performance of the functions of the Electricity Reform Co-ordinator, may provide to an authorised person information provided to the Electricity Reform Co-ordinator under this section.
- (5) The Electricity Reform Co-ordinator –
 - (a) may only use information provided to him or her under this section, or provide such information to an authorised person, for the purposes of assisting in the performance of the functions, or the exercise of the powers, of the Electricity Reform Co-ordinator; and
 - (b) must not provide the information to a person other than an authorised person.
- (6) An authorised person to whom information is provided under subsection (4) may provide that information to another authorised person.
- (7) An authorised person to whom information is provided under this section –

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- (a) may only use the information, or provide the information to another authorised person, for the purposes of assisting in the performance of the functions, or the exercise of the powers, of the Electricity Reform Co-ordinator; and
- (b) must not provide the information to a person other than an authorised person.

10. Indemnity in respect of compliance with direction

- (1) In this section –

relevant person, in relation to a State-owned electricity entity, means –

- (a) a member of the board of directors of the State-owned electricity entity; and
 - (b) the chief executive officer of the State-owned electricity entity; and
 - (c) any officer, employee, or agent, of the State-owned electricity entity.
- (2) A relevant person in relation to a State-owned electricity entity to which a direction is issued under section 8 is indemnified by the Crown against any liability incurred by the person in relation to –
- (a) an action taken by the person in relation to the direction; or

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- (b) a failure by the person to take an action in relation to the direction –

if the person took the action in good faith, or failed in good faith to take the action, in the belief that taking the action, or failing to take the action, was necessary or convenient to implement the direction.

- (3) A person to whom a direction is issued under section 9(2) is indemnified by the Crown against any liability incurred by the person in relation to an action taken by the person if the person took the action in good faith in the belief that taking the action was necessary or convenient to implement the direction.

- (4) A person to whom information to which section 9 relates is provided is indemnified by the Crown against any liability incurred by the person in relation to –

- (a) an action taken by the person in relation to the information; or

- (b) a failure by the person to take an action in relation to the information –

if the person took the action in good faith, or failed in good faith to take the action, in the belief that taking the action, or failing to take the action, was necessary or convenient for the purposes of assisting in the performance of the functions, or the exercise of the powers, of the Electricity Reform Co-ordinator and was not prohibited under section 9(5) or (7).

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11. Powers under this Division limited after 30 June 2015

A shareholding Minister may not, after 30 June 2015, perform a function, or exercise a power, under this Division except if, in the opinion of the shareholding Minister, it is necessary, or convenient, to do so for the purposes of winding up a State-owned electricity entity.

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Part 3 – Electricity Reform Co-ordinator

PART 3 – ELECTRICITY REFORM CO-ORDINATOR

12. Electricity Reform Co-ordinator

- (1) There is to be, until the expiry of 30 June 2015, an Electricity Reform Co-ordinator.
- (2) The Secretary of the department responsible to the Minister in relation to the administration of this Act is to hold the office of Electricity Reform Co-ordinator.

13. Functions of Electricity Reform Co-ordinator

- (1) It is a function of the Electricity Reform Co-ordinator to assist the shareholding Ministers –
 - (a) to achieve the electricity reform objectives and to implement the electricity reform measures; and
 - (b) to take any action under this Act that either or both of the shareholding Ministers may take.
- (2) It is a function of the Electricity Reform Co-ordinator to seek information, assistance, and advice, that is necessary, or convenient, to –
 - (a) enable the shareholding Ministers to achieve the electricity reform objectives and to implement the electricity reform measures; or
 - (b) enable the Electricity Reform Co-ordinator to assist the shareholding

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Ministers to achieve the electricity reform objectives and to implement the electricity reform measures; or

- (c) assist the Electricity Reform Co-ordinator in the performance of his or her functions, or the exercise of his or her powers, under this Act.
- (3) It is a function of the Electricity Reform Co-ordinator to oversee the implementation of directions or decisions issued or taken by the shareholding Ministers for the purpose of achieving the electricity reform objectives or implementing the electricity reform measures.
- (4) It is a function of the Electricity Reform Co-ordinator to –
 - (a) take steps necessary, or convenient, to assist in the sale, transfer or disposal of assets, rights or liabilities under this Act; and
 - (b) take any other action necessary to achieve, or incidental to achieving, the electricity reform objectives or implementing the electricity reform measures.

14. Powers of Electricity Reform Co-ordinator

- (1) The Electricity Reform Co-ordinator has the powers necessary to enable the performance of his or her functions.

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- (2) The Electricity Reform Co-ordinator may examine an asset, right or liability of a State-owned electricity entity, including a record in relation to such an asset, right or liability.

15. Electricity Reform Co-ordinator may request assistance, &c.

- (1) The Electricity Reform Co-ordinator may, for the purpose of assisting the shareholding Ministers to achieve the electricity reform objectives or to implement the electricity reform measures, request a State-owned electricity entity –
 - (a) to provide to the Electricity Reform Co-ordinator the information in the possession of the entity that he or she requests the entity to provide to him or her; or
 - (b) to permit the Electricity Reform Co-ordinator to access information in the possession of the entity; or
 - (c) to provide advice to the Electricity Reform Co-ordinator; or
 - (d) to provide assistance to the Electricity Reform Co-ordinator.
- (2) A State-owned electricity entity to which a request is made under subsection (1), and an officer, employee or agent of the State-owned electricity entity, must comply with the request.

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- (3) The Electricity Reform Co-ordinator may, for the purpose of assisting the shareholding Ministers to achieve the electricity reform objectives or to implement the electricity reform measures, provide to another person information or advice that has been provided to the Electricity Reform Co-ordinator by a State-owned electricity entity.
 - (4) A person is not to be taken, by reason only of providing information, advice or assistance under this section, to contravene a provision of any contract.

16. Delegation

The Electricity Reform Co-ordinator may delegate to any person any of his or her functions or powers, other than this power of delegation.

17. Immunity of Electricity Reform Co-ordinator and persons to whom requests are made

- (1) In this section –

relevant person, in relation to a State-owned electricity entity, means –

- (a) a member of the board of directors of the State-owned electricity entity; and
- (b) the chief executive officer of the State-owned electricity entity; and

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- (c) any officer, employee, or agent, of the State-owned electricity entity.
- (2) The Electricity Reform Co-ordinator is indemnified by the Crown against any liability incurred by him or her in relation to –
 - (a) an action taken by him or her; or
 - (b) a failure by him or her to take an action –
- (3) A relevant person in relation to a State-owned electricity entity to which a request is made under section 15 is indemnified by the Crown against any liability incurred by the person in relation to –
 - (a) an action taken by the person in relation to the request; or
 - (b) a failure by the person to take an action in relation to the request –

if the Electricity Reform Co-ordinator took the action in good faith, or failed in good faith to take the action, in the belief that taking the action, or failing to take the action, was necessary, or convenient, for the purposes of performing the functions, or exercising the powers, of the Electricity Reform Co-ordinator and was not prohibited under section 9(5).

if the person took the action in good faith, or failed in good faith to take the action, in the belief that taking the action, or failing to take the

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action, was necessary or convenient to comply with the request.

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Part 4 – Transfer of Certain Assets, Rights and Liabilities

**PART 4 – TRANSFER OF CERTAIN ASSETS, RIGHTS
AND LIABILITIES**

18. Interpretation of Part 4

In this Part –

transferee means a body corporate to which any assets, rights or liabilities are transferred under a transfer notice;

transfer notice means a notice under section 19;

transferor means a body corporate from which any assets, rights or liabilities are transferred under a transfer notice.

19. Transfer of assets, rights and liabilities between State-owned electricity entities

- (1) The Treasurer, by a notice (a *transfer notice*) published in the *Gazette*, may, as specified in the notice, transfer to another State-owned electricity entity an asset, right, or liability, of a State-owned electricity entity.
- (2) A transfer notice may be made on the terms and conditions specified in the notice.
- (3) The Treasurer may make more than one transfer notice in relation to an asset, right, or liability, of a State-owned electricity entity.
- (4) A transfer notice takes effect on the day specified in the notice.

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Part 4 – Transfer of Certain Assets, Rights and Liabilities

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- (5) The transfer notice may specify the consideration on which a transfer is made and the values at which the assets, rights or liabilities are transferred.
 - (6) The Treasurer, by a notice published in the *Gazette*, may amend or revoke a transfer notice.
 - (7) If the Treasurer amends a transfer notice by a notice under subsection (6), the notice under subsection (6) is to be taken to have taken effect at the same time as the transfer notice.
 - (8) If the Treasurer revokes a transfer notice by a notice under subsection (6), the transfer notice is to be taken to have never been in force.
 - (9) If the Treasurer amends or revokes a transfer notice by a notice under subsection (6) –
 - (a) any action that is, after the transfer notice takes effect but before the notice under subsection (6) is made, taken by the transferee in relation to the asset, right or liability transferred by the transfer notice to the transferee is to be taken to be an action taken by the transferor; and
 - (b) any failure by the transferee, after the transfer notice takes effect but before the notice under subsection (6) is made, to take an action in relation to the asset, right or liability transferred to the transferee by the transfer notice is to be taken to be a failure by the transferor.

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Part 4 – Transfer of Certain Assets, Rights and Liabilities

- (10) A notice under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

20. Effect of transfer notice

- (1) When any assets, rights or liabilities are transferred by a transfer notice, the following provisions have effect:

- (a) the assets of the transferor that are the subject of the transfer notice vest in the transferee by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance;
- (b) the rights or liabilities of the transferor that are the subject of the transfer notice become by virtue of this section the rights or liabilities of the transferee;
- (c) a reference in any Act, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind, to –
 - (i) the transferor; or
 - (ii) any predecessor of the transferor –

to the extent to which the reference relates to the assets, rights or liabilities that are the subject of the transfer notice,

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is taken to be, or include, a reference to the transferee;

- (d) any legal, or other, proceedings that –
 - (i) relate to the assets, rights or liabilities that are the subject of the transfer notice; and
 - (ii) are commenced before the transfer by or against the transferor or a predecessor of the transferor; and
 - (iii) are pending immediately before the transfer –

are taken to be proceedings pending by or against the transferee;

- (e) any legal, or other, proceedings that –
 - (i) relate to the assets, rights or liabilities that are the subject of the transfer notice; and
 - (ii) could have been commenced, before the transfer, by or against the transferor or a predecessor of the transferor –

may be commenced by or against the transferee;

- (f) a judgment or order of a court, or other tribunal, that –

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- (i) relates to the assets, rights or liabilities that are the subject of the transfer notice; and
 - (ii) is obtained before the transfer by or against the transferor or a predecessor of the transferor –

may be enforced by or against the transferee;
- (g) any document, relating to legal, or other, proceedings, that –
 - (i) relates to the assets, rights or liabilities that are the subject of the transfer notice; and
 - (ii) has been served on or by a transferor, or a predecessor of the transferor, before the transfer –

is taken, where appropriate, to have been served on or by the transferee;
- (h) any act, matter or thing done or omitted to be done –
 - (i) in relation to the assets, rights or liabilities that are the subject of the transfer notice before the transfer; and
 - (ii) by, to or in respect of the transferor or a predecessor of the transferor –

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is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee.

- (2) No compensation is payable to any person or body in connection with a transfer (or an amendment or revocation under section 19(6) of a transfer notice) except to the extent (if any) to which the transfer notice giving rise to the transfer, or the amendment or revocation, so provides.
- (3) State tax is not payable in respect of any document prepared to give effect to a transfer notice or an amendment or revocation under section 19(6) of a transfer notice.
- (4) A person is not entitled to –
 - (a) terminate or modify the operation or effect of a contract; or
 - (b) claim that there has been a breach of or default under a contract; or
 - (c) claim any remedy –by reason only of the transfer of that contract (or rights or liabilities under that contract) under a transfer notice or an amendment or revocation under section 19(6) of a transfer notice.
- (5) A transfer notice has effect despite any other law, contract or other instrument.

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Part 4 – Transfer of Certain Assets, Rights and Liabilities

21. Orders transferring employment of employees

- (1) The Treasurer, by order in writing given to a State-owned electricity entity, may transfer the employment of an employee of the State-owned electricity entity to another State-owned electricity entity specified in the order.
- (2) The Treasurer may give more than one order under subsection (1) in relation to one or more employees.
- (3) Before transferring the employment of an employee of a State-owned electricity entity, the Treasurer, or a person authorised by the Treasurer, is to consult with the employee.
- (4) The consultation with the employee may be in any manner the Treasurer, or a person authorised by the Treasurer, thinks fit, including, but not limited to including, consultation with the employee, a representative of the person or a representative of the employee organisation of which the person is a member.
- (5) Despite subsection (4), consultation with an employee may not be inconsistent with –
 - (a) any award, or agreement, that applies in relation to the employee under a law of a State, a Territory or the Commonwealth;
or
 - (b) any law of a State, a Territory or the Commonwealth that applies in relation to the employee.

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- (6) A State-owned electricity entity that is given an order under subsection (1) is to give to each person whose employment is transferred by the order written notice of the transferral.
- (7) The Treasurer, by order in writing given to a State-owned electricity entity, may amend or revoke an order under subsection (1).
- (8) If the Treasurer amends an order under subsection (1) by an order under subsection (7), the order under subsection (7) is to be taken to have taken effect at the same time as the order under subsection (1).
- (9) If the Treasurer revokes an order under subsection (1) by an order under subsection (7), the order under subsection (1) is to be taken to have never been in force.
- (10) If the Treasurer amends or revokes an order under subsection (1) by an order under subsection (7) –
- (a) any action that –
 - (i) is taken by the employer to whom an employee is or was transferred by the order under subsection (1); and
 - (ii) relates to the employee; and
 - (iii) occurs after the order under subsection (1) takes effect but before the order under subsection (7) is made –

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is to be taken to be an action taken, in relation to the employee, by the employer from whom the employee was transferred; and

(b) any failure that –

(i) is a failure of the employer to whom an employee is or was transferred by the order; and

(ii) relates to the employee; and

(iii) occurs after the order under subsection (1) takes effect but before the order under subsection (7) is made –

is to be taken to be a failure, in relation to the employee, of the employer from whom the employee was transferred.

(11) An order given under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

22. Effect of order transferring employment of employee

(1) If an order given under section 21(1) specifies that the employment of a person referred to in the order (the *transferred employee*) is, on a day specified in the order, transferred from a State-owned electricity entity (*the former employer*) to another State-owned electricity entity (*the new employer*) –

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- (a) the transferred employee ceases, on that day, to be an employee of the former employer and the former employer ceases to be the employer of the transferred employee; and
- (b) the transferred employee becomes, on that day, an employee of the new employer and the new employer becomes the employer of the transferred employee.

(2) A transferred employee –

- (a) is taken to have been employed by the new employer on the same terms and conditions as those on which he or she was employed by the former employer; and
- (b) except if an award, agreement or law otherwise provides –
 - (i) retains all entitlements that he or she has accrued as if employment by the new employer were a continuation of employment with the former employer; and
 - (ii) is entitled to claim those entitlements from the new employer; and
- (c) is not entitled to any compensation or other payment in respect of the change of his or her employment by virtue of the

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order given under section 21(1) that
transfers his or her employment.

- (3) An award or agreement that had effect in relation to a person immediately before he or she became a transferred employee continues to have effect in relation to the transferred employee, except if another award or agreement or law that applies in relation to him or her after he or she becomes a transferred employee provides otherwise.
- (4) A period of service, of the transferred employee, with the former employer is to be taken to be the equivalent period of service with the new employer.
- (5) Nothing in this section prevents any of the terms or conditions of employment of a transferred employee being altered by an award, agreement, or law.

**PART 5 – SALE OF RETAIL BUSINESS OF AURORA
ENERGY OR SUBSIDIARY**

23. Sale of retail business of Aurora Energy or subsidiary

- (1) The Treasurer, while the shareholding Ministers are the shareholders in relation to Aurora Energy, may sell all or part of the retail business of Aurora Energy or a subsidiary of Aurora Energy.
- (2) A sale under this section is to be on the terms the Treasurer thinks fit.
- (3) For the purposes of a sale under this section, the Treasurer may do any or all of the following:
 - (a) enter into contracts;
 - (b) transfer shares in a subsidiary of Aurora Energy that holds any retail business;
 - (c) transfer or novate any contracts held by Aurora Energy or a subsidiary of Aurora Energy as part of any retail business;
 - (d) amend, in any manner agreed between the parties to the contract, a contract made for the purposes of this section;
 - (e) do any other thing that the Treasurer considers necessary or convenient to effect the sale.

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- (4) In exercising a power of sale under this section, the Treasurer is to have regard to achieving a fair and reasonable price.
- (5) The net proceeds of a sale under this section are to be paid into the Consolidated Fund.

24. Contents of contracts for sale of retail business

- (1) In this section –

contract means –

- (a) an agreement, arrangement, undertaking, warranty or contract; or
- (b) any part of an agreement, arrangement, undertaking, warranty or contract;

purchaser, in relation to transferring business, means a person to whom all or part of the transferring business is sold under section 23;

sale contract means a contract under section 23 for the sale of any part of transferring business and includes –

- (a) part of any such contract; and
- (b) any amendment, to such a contract, that is effected in any manner agreed by the parties to the contract;

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sale day, in relation to any part of the transferring business sold under section 23, means the day on which the sale of the transferring business is to take effect;

transferor, in relation to transferring business of Aurora Energy, or a subsidiary of Aurora Energy, means Aurora Energy or the subsidiary, respectively;

transferring business means any part of the retail business of Aurora Energy, or of a subsidiary of Aurora Energy, that is sold under section 23.

(2) A sale contract may –

- (a) specify conditions including, but not limited to including –
 - (i) conditions relating to the transfer of the transferring business to which the sale contract relates; and
 - (ii) conditions relating to the payment of consideration; and
- (b) provide that a right under a contract specified in the sale contract is held by the transferor or the purchaser; and
- (c) provide that a liability under a contract specified in the sale contract is a liability of the transferor or the purchaser; and

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- (d) provide that a reference to the transferor in a contract specified in the sale contract is, or is to include, a reference to the purchaser; and
- (e) provide that a purchaser is substituted as a party to a contract, specified in the sale contract, in the place of the transferor, from a date not earlier than the sale day; and
- (f) provide that a legal, or other, proceeding instituted by or against the transferor, that relates to the transferring business and is pending immediately before the sale day may be continued by or against the purchaser; and
- (g) provide that a legal, or other, proceeding that could have been, immediately before the sale day, instituted, in relation to the transferring business, by or against the transferor may be instituted by or against the purchaser; and
- (h) provide that a document served on the transferor, in respect of a legal, or other, proceeding referred to in paragraph (f) is taken to have been served on the purchaser; and
- (i) provide that a judgment or order of a court or tribunal obtained by or against the transferor, in relation to the transferring business, may be enforced by or against the purchaser but may not

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be enforced by or against the transferor;
and

- (j) provide for any matter that is incidental to the transfer of the transferring business to which the sale contract relates.
- (3) Anything provided for in a sale contract in accordance with subsection (2) is taken to take effect in accordance with the terms of the sale contract, despite any other law or any other contract (including any contract specified in the sale contract).
- (4) The following provisions apply on and after the sale day in relation to transferring business, except as otherwise provided for in a sale contract:
- (a) a legal, or other, proceeding instituted by or against the transferor, that relates to the transferring business and is pending immediately before the sale day may be continued by or against the purchaser;
 - (b) a legal, or other, proceeding that could have been, immediately before the sale day, instituted, in relation to the transferring business, by or against the transferor, may be instituted by or against the purchaser;
 - (c) a document served on the transferor, in respect of a legal, or other, proceeding referred to in paragraph (a), is taken to have been served on the purchaser;

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- (d) a judgment or order of a court or tribunal obtained by or against the transferor, in relation to the transferring business, may be enforced by or against the purchaser but may not be enforced by or against the transferor;
- (e) an obligation of the transferor in relation to a liability that becomes the liability of the purchaser as part of the sale of the transferring business is discharged on the sale day.

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Part 6 – Transfer to Crown of Remaining Business of Aurora, Transend and
Subsidiaries, &c.

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**PART 6 – TRANSFER TO CROWN OF REMAINING
BUSINESS OF AURORA, TRANSEND AND
SUBSIDIARIES, &C.**

25. Interpretation of Part 6

In this Part –

transfer day, in relation to a transfer order,
means the date specified in the order in
accordance with section 26(4) as the date
on which the transfer of the business to
which the order relates takes effect;

transfer order means an order made under
section 26(1);

transferring business, in relation to a transfer
order, means the business that is the
subject of the order.

**26. Remaining business of Aurora Energy, Transend or
subsidiaries may be transferred to Crown**

(1) The Treasurer, by order (a *transfer order*)
published in the *Gazette*, may transfer to the
Crown any part of the business of –

(a) Aurora Energy or Transend; or

(b) a subsidiary of Aurora Energy or
Transend –

that has not been, at the transfer day, transferred
or sold.

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s. 26 Part 6 – Transfer to Crown of Remaining Business of Aurora, Transend and Subsidiaries, &c.

- (2) A transfer order may only be made after –
 - (a) the sale of the retail business of Aurora Energy or a subsidiary of Aurora Energy; and
 - (b) the merger of the network businesses of Aurora Energy and Transend.
- (3) The Treasurer may make more than one transfer order in relation to any part of the business of Aurora Energy or Transend or a subsidiary of Aurora Energy or Transend.
- (4) A transfer order is to specify the date on which the transfer specified in the order takes effect.
- (5) A transfer order may –
 - (a) specify conditions relating to the transfer; and
 - (b) provide for any other matter that is incidental to the transfer.
- (6) The Treasurer, by an order published in the *Gazette*, may amend or revoke a transfer order.
- (7) If the Treasurer amends a transfer order by an order under subsection (6), the order under subsection (6) is to be taken to have taken effect at the same time as the transfer order.
- (8) If the Treasurer revokes a transfer order by an order under subsection (6), the transfer order is to be taken to have never been in force.

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(9) If the Treasurer amends or revokes a transfer order by an order under subsection (6) –

(a) any action that –

(i) is taken by the Crown in relation to an asset, right or liability transferred to the Crown by the transfer order; and

(ii) is so taken after the transfer order takes effect but before the order under subsection (6) is made –

is to be taken to be an action taken by the State-owned electricity entity from which the asset, right or liability is transferred; and

(b) any failure by the Crown –

(i) to take an action in relation to an asset, right or liability transferred to the Crown by the transfer order; and

(ii) that occurs after the transfer order takes effect but before the order under subsection (6) is made –

is to be taken to be a failure by the State-owned electricity entity from which the asset, right or liability is transferred.

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s. 27 Part 6 – Transfer to Crown of Remaining Business of Aurora, Transend and Subsidiaries, &c.

- (10) An order under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

27. Effect of transfer order

- (1) On the transfer day in relation to a transfer order –

- (a) any business (other than a liability) of –

(i) Aurora Energy or Transend; or

(ii) a subsidiary of Aurora Energy or Transend –

that is business specified in, or transferred by, the order, vests in the Crown; and

- (b) any business of –

(i) Aurora Energy or Transend; or

(ii) a subsidiary of Aurora Energy or Transend –

that is a liability specified in, or transferred by, the order, becomes a liability of the Crown.

- (2) Except as otherwise provided in a transfer order, on and after the transfer day in relation to the order –

- (a) a reference in an existing document –

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Subsidiaries, &c.

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(i) to Aurora Energy or Transend, or
a subsidiary of Aurora Energy or
Transend; or

(ii) to the board of directors of
Aurora Energy or Transend, or of
a subsidiary of Aurora Energy or
Transend –

in relation to the transferring business is
taken, where appropriate, to be or to
include a reference to the Crown; and

(b) a contract made by Aurora Energy or
Transend, or a subsidiary of Aurora
Energy or Transend, relating to the
transferring business but not performed
or discharged before the transfer day is
taken to have been made by the Crown;
and

(c) a legal, or other, proceeding that could
have been instituted by or against –

(i) Aurora Energy or Transend; or

(ii) a subsidiary of Aurora Energy or
Transend –

immediately before the transfer day and
that relates to the transferring business
may be instituted by or against the
Crown; and

(d) a legal, or other, proceeding that –

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- (i) is instituted by or against Aurora Energy or Transend, or a subsidiary of Aurora Energy or Transend; and
- (ii) relates to the transferring business; and
- (iii) is pending immediately before the transfer day –

may be continued by or against the Crown; and
- (e) a document that is served on Aurora Energy or Transend, or a subsidiary of Aurora Energy or Transend, in respect of a proceeding referred to in paragraph (d) is taken to have been served on the Crown; and
- (f) a judgment or order of a court or tribunal obtained by or against Aurora Energy or Transend, or a subsidiary of Aurora Energy or Transend, in relation to the transferring business may be enforced by or against the Crown but may not be enforced by or against Aurora Energy or Transend, or a subsidiary of Aurora Energy or Transend.

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28. Deregistration of Aurora Energy and Transend and subsidiaries

- (1) If the Treasurer is satisfied that there are no longer any functions required to be performed by Aurora Energy, the Treasurer may apply, or require Aurora Energy to apply, for the deregistration of Aurora Energy under section 601AA of the Corporations Act.
- (2) If the Treasurer is satisfied that there are no longer any functions required to be performed by Transend, the Treasurer may apply, or require Transend to apply, for the deregistration of Transend under section 601AA of the Corporations Act.
- (3) If the Treasurer is satisfied that there are no longer any functions required to be performed by a subsidiary of Aurora Energy or Transend, the Treasurer may require the subsidiary to apply for the deregistration of the subsidiary under section 601AA of the Corporations Act.
- (4) A requirement under this section is to be in writing.
- (5) A company must comply with a requirement imposed on it under this section.

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PART 7 – MISCELLANEOUS

Division 1 – Relationship to certain Commonwealth Acts

29. Relationship of this Act to Corporations Act

To the extent that any provision of this Act is incapable of concurrent operation with the Corporations Act, that provision is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

30. Relationship of this Act to *Competition and Consumer Act 2010* of the Commonwealth

Anything specified in, and specifically authorised by this Act, or regulations made under this Act, is exempted from Part IV of the *Competition and Consumer Act 2010* of the Commonwealth.

Division 2 – Provisions relating to transfers and sales

31. Application of section 20 of *Electricity Companies Act 1997*

The sale or transfer of any contract, business or other asset of a State-owned electricity entity under this Act is not a sale or disposal of all or part of a transmission system or a distribution network for the purposes of section 20 of the *Electricity Companies Act 1997* and that section does not, despite anything to the contrary in that section, apply –

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-
- (a) in relation to such a sale or transfer under this Act; or
 - (b) to a provision of this Act.

32. Power to disclose information

- (1) Each of the following persons may disclose information (other than information to which section 9 relates) for the purposes of facilitating a sale or transfer under this Act:
 - (a) a State-owned electricity entity;
 - (b) a director, officer, employee, or agent, of a State-owned electricity entity;
 - (c) the Treasurer;
 - (d) a person providing professional advice to the Crown on any matter relating to such a sale or transfer;
 - (e) the Auditor-General;
 - (f) a person, or a person who is a member of a class of persons, authorised in writing by the Treasurer to disclose information.
- (2) Information for the purposes of facilitating a sale or transfer under this Act (other than information to which section 9 relates) may only be disclosed by a person referred to in subsection (1) to the following persons:
 - (a) a potential purchaser of an asset or right to which a sale under this Act relates;

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- (b) a director, officer, employee, or agent, of a potential purchaser;
- (c) a person providing professional advice to the potential purchaser on any matter relating to the potential purchase;
- (d) a person referred to in subsection (1);
- (e) a director, officer, employee, or agent, of a State-owned electricity entity;
- (f) a person, or a person who is a member of a class of persons, authorised in writing by the Treasurer to receive the information.

33. Protection in relation to disclosure or use of certain information

- (1) The disclosure or use of information in the possession or control of –
 - (a) a State-owned electricity entity; or
 - (b) a current or former member of the board of directors of, a chief executive officer of, or an officer, employee or agent of, a State-owned electricity entity; or
 - (c) the Electricity Reform Co-ordinator or a person acting on behalf of the Electricity Reform Co-ordinator; or
 - (d) a State Service officer or State Service employee or an authorised person under section 9 –

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is authorised despite any other law, contract or other instrument to the contrary, if the disclosure or use is reasonably required for, or in connection with, ensuring the electricity reform objectives are achieved or the electricity reform measures are implemented.

- (2) Nothing in subsection (1) is to be taken to authorise the disclosure of information in contravention of section 32 or section 9(5) or (7).

34. Protection for actions taken under this Act

Any thing done or omitted in good faith that is done or omitted under, or authorised by, this Act or a direction or request under section 8, section 9 or section 15, does not, except as otherwise expressly provided by or under this Act or as provided or agreed by the person doing or omitting the thing –

- (a) terminate or modify a contract, other instrument or obligation; or
- (b) give rise to a right to terminate or modify a contract, other instrument or obligation by fulfilling a condition or in any other manner; or
- (c) release a surety or other obligee wholly or in part from an obligation; or
- (d) give rise to any right or remedy by a party to a contract or other instrument; or

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- (e) constitute a breach of a contract or other instrument; or
- (f) constitute a civil or criminal wrong; or
- (g) constitute a breach of confidence.

35. Exemption from State tax

- (1) The Treasurer may determine that State tax is not payable in respect of any document prepared in relation to, or for the purposes of, any sale under this Act.
- (2) A determination is to be made by certificate provided to the person who would otherwise be required to pay the State tax.
- (3) State tax is not payable in respect of the transfer of any assets, rights or liability of any State-owned electricity entity to another State-owned electricity entity.

36. No Crown guarantee

The obligations of a State-owned electricity entity are not guaranteed by the Crown, except in so far as the obligation is a liability transferred to the Crown by the operation of section 27.

37. Disputes as to whether business is transferred

- (1) If any dispute arises –
 - (a) as to whether any business of a State-owned electricity entity is transferred

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under Part 4 or 6 to another State-owned
electricity entity or the Crown; or

- (b) as to whether any, or any part of any,
contract relates to business transferred
under Part 4 or 6 to another State-owned
electricity entity or the Crown –

the Treasurer may determine the matter and is to
provide written notice of that determination to
any State-owned electricity entity to which the
business relates.

- (2) The determination of the Treasurer under
subsection (1) as to whether any business is
transferred under this Act is final and binding
on –

- (a) each State-owned electricity entity to or
from which the business is transferred
under this Act; and

- (b) the Crown.

**38. Treasurer may amend constitution of State-owned
electricity entity**

- (1) In this section –

amend means do any one or more of the
following:

- (a) omit matter;
- (b) insert matter;

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- (c) omit matter and substitute any other matter.
- (2) Despite anything to the contrary in the constitution of a State-owned electricity entity, the Treasurer may, for the purpose of facilitating a sale or transfer under this Act, amend, or revoke and substitute, the constitution of a State-owned electricity entity.

Division 3 – Other matters

39. Extra-territorial operation

- (1) It is the intention of the Parliament of Tasmania that the operation of this Act should, as far as possible, include operation in relation to the following:
 - (a) things situated in or outside the territorial limits of the State;
 - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State;
 - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of Tasmania that the provisions of this Act operate in relation to the

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things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

40. Decisions of shareholding Ministers not reviewable

A decision of a shareholding Minister is not subject to review, whether judicial or otherwise.

41. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by a shareholding Minister or the Electricity Reform Co-ordinator.
- (4) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day

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specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

42. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Energy and Resources; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Treasury and Finance.