

***Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Bill 2011***

**Clause Notes**

**Clause 1                      Short Title**

**Clause 2                      Commencement**

This Act will commence on the day on which this Act receives the Royal Assent.

**Clause 3                      Principal Act**

The Principal Act referred to is the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.

**Clause 4                      Part 4, Division 2, substituted**

The existing Division 2 is substituted with a new Division 2.

**Section 16A Interpretation of Division**

The terms “2011 transition day”, “2011 transition period”, “entitlement holder”, “Lake River” and “Water Minister” are defined.

“2011 transition day” refers to the day on which the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2011* commences.

“2011 transition period” refers to the 4 month period following the commencement of the Act, and if extended by the Minister under s.16C(3), it refers to this 4 month period plus the extension.

“entitlement holder” refers to:

- a) an owner of land to which s.16(2)(b) of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995* applied immediately before the commencement of *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2011*;
- b) the Lawrenny Water Trust (as it has a statutory obligation under the *Irrigation Clauses Act 1973* to supply water to owners of land within the Lawrenny Waterworks)

“Lake River” means that watercourse from its source to its confluence with the South Esk River. At some point in the past the section of the Lake River between its junction with the Macquarie River and South Esk River was renamed the Macquarie River. For the purposes of this Act, that section of river is considered to be the Lake River (as it was known when the existing statutory provisions were first enacted in 1957).

“Water Minister” is defined as the Minister administering the *Water Management Act 1999*.

#### **Section 16B. Obligation of HEC to supply certain water entitlements**

Subsection (1) states that the HEC must make water available from the beds of the Lake River and River Ouse to every entitlement holder.

Subsection (2) requires that the HEC's obligation under subsection (1) is taken to be a condition of its special licence under the *Water Management Act 1999*.

#### **Section 16C. Quantification of HEC obligation to supply certain water entitlements**

Subsection (1) requires that the amount of water to be made available under section 16B(1) is to be determined by agreement during the 2011 transition period, or where agreement cannot be reached, awarded by arbitration. Consequent on agreement or award, the amount of water to be made available is to be fixed by an Order under section 16D.

Subsection (2) clarifies that an agreement under subsection (1) may be between the HEC and entitlement holders individually or collectively, or groups of entitlement holders (or any combination of these).

Subsection (3) enables the Minister to extend the 2011 transition period by a further period not exceeding 60 days to enable the HEC and entitlement holders to reach an agreement under section 16B(1).

Subsection (4) requires that a Ministerial extension under subsection (3) be made in writing before the 2011 transition period would otherwise end.

Subsection (5) specifies that if the HEC and any entitlement holders are not able to reach an agreement by the end of the 2011 transition period, the amount of water to be made available in the cases where agreement has not been reached is to be determined in accordance with the *Commercial Arbitration Act 1986*.

Subsection (6) clarifies that in addition to the powers conferred by the *Commercial Arbitration Act 1986*, an arbitrator may determine the amount of water to be made available under section 16B(1) in respect of the entitlement holders covered by the arbitration, and any conditions relating to the supply of water.

Subsection (7) specifies that an arbitration determination may be for entitlement holders individually or collectively, or groups of entitlement holders (or any combination of these).

Subsection (8) clarifies that an agreement or arbitrated award cannot suspend, relinquish or terminate or provide for the phased reduction of the HEC's obligation under section 16B(1).

#### **Section 16D. Orders providing for supply of certain water entitlements**

Subsection (1) clarifies that this section applies once an agreement or arbitrated award has been made for and entitlement holders individually or collectively, or groups of entitlement holders (or any combination of these).

Subsection (2) provides the head of power for a Ministerial Order to confer on entitlement holders covered by an agreement or award, an authorisation to take water under the *Water Management Act 1999* or *Irrigation Clauses Act 1973*.

Subsection (3) states that an Order is to fix the amount of water to be made available under section 16B(1) to entitlement holders covered by the agreement or award, and sets out other matters that may be included:

- a) appointment of one or more water districts under the *Water Management Act 1999*;
- b) prescription of terms and conditions relating to the discharge of the HEC's obligations under section 16B(1); and
- c) setting of limitations on the HEC's obligations under section 16B(1).

Subsection (4) states that an Order may be made at any time during and after the 2011 transition period. An Order is to incorporate matters agreed to or awarded under section 16C. The Order cannot be inconsistent with an agreement or award, and may also apply generally or differently as required.

Subsection (5) has been included to avoid any doubt regarding the powers the Water Minister has to confer authorisations and establish water districts under the *Water Management Act 1999* and *Irrigation Clauses Act 1973*. It provides that an Order cannot be invalidated by any inconsistency in other enactments made before the Order.

Subsection (6) states that an Order is a statutory rule for the purposes of the *Rules Publication Act 1953*, and is not subordinate legislation for the purpose of the *Subordinate Legislation Act 1992*.

#### **Section 16E. Transitional obligation to provide water for irrigation**

This clause states that until an Order under section 16D(2) takes effect in respect of an entitlement holder, the amount of water that the HEC must make to the entitlement holder under section 16B(1) is the same amount as it was obliged to make available under section 16(1) of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995* immediately before the 2011 transition day.

This clause also specifies that until an Order under section 16D(2) takes effect in respect of an entitlement holder, they are taken to hold an authorisation under the *Water Management Act 1999* or the *Irrigation Clauses Act 1973*, to take the water made available to them.

#### **Clause 5**

##### **Repeal of Act**

This clause details that this Act is repealed 90 days from the date of commencement.