

CLAUSE NOTES

Economic Regulator Amendment Bill 2015

Part 1 - Preliminary

- Clause 1 Short title.
- Clause 2 Provides that the commencement date is 1 July 2015.

Part 2 – Economic Regulator Act 2009 Amended

- Clause 3 States that the *Economic Regulator Act 2009* is the Principal Act for the purposes of Part 2.
- Clause 4 Amends the Act by:
- inserting the definition of *Acting Regulator*;
 - inserting the definition of *Assistant Regulator*; and
 - omitting the definition of *Regulator* and substituting a new definition that reflects the new structure of the Regulator as a single person.
- Clause 5 Amends section 6(3) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 6 Provides that the Minister responsible for the Act is to appoint the Regulator and that the Regulator is a legal entity that can sue and be sued and for whom judicial notice must be taken. This clause re-orders provisions already part of the Act and reflects the change to a one person Regulator.
- This clause also provides that the Regulator is to have regard to the costs and benefits of the Regulator's actions when performing any function or exercising any power. The level of costs or benefits of actions do not constrain the Regulator from performing or exercising any functions or powers, and the Regulator is not required to provide to any person a justification, in terms of costs and benefits, for his or her actions.
- Clause 7 Amends section 11 of the Act to reflect the new structure of the Regulator as a single person.
- Clause 8 Amends section 12 of the Act reflect the new structure of the Regulator as a single person.
- Clause 9 Omits reference to "a member of the Regulator" in section 13 of the Act to reflect the new structure of the Regulator as a single person.

- Clause 10** Repeals Division 2 of Part 2 of the Act which deals with the membership of the Regulator.
- A new Division 2 is inserted which establishing the terms of appointment for the Regulator, Acting Regulator and Assistant Regulator. These terms of appointment are consistent with those already in the Act but now reflect the changed structure of the Regulator.
- This clause prescribes the terms of office of the Regulator, Acting Regulator and Assistant Regulator. This clause also establishes the remuneration and conditions of appointment, the qualifications for appointment, arrangements in case of vacation of office, disclosures of interest, the validation of proceedings and presumptions in relation to the appointment of the Regulator, the Acting Regulator or an Assistant Regulator. Again, these terms replicate those in the Act, but now reflect the changed structure of the Regulator.
- This clause also provides that the Assistant Regulator may only make a determination or decision as agreed by the Regulator or Acting Regulator.
- Clause 11** Amends section 17 of the Act which references “its”, and replaces with “his or her”. This change reflects the new structure of the Regulator.
- Clause 12** Amends section 18 of the Act to reflect the new structure of the Regulator as a single person.
- Clause 13** Amends section 19 of the Act reflect the new structure of the Regulator as a single person.
- This clause also removes a section Act which refers to “members of the Regulator”, and replaces with “the Regulator, the Acting Regulator or an Assistant Regulator”.
- Clause 14** Amends section 20(6) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 15** Amends section 21 of the Act to reflect the new structure of the Regulator as a single person.
- Clause 16** Amends section 24(1) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 17** Amends section 25(c) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 18** Amends section 26(1)(b) of the Act, to allow the Regulator to give notice of monopoly provider pricing investigations (to be limited to Motor Accident Insurance Board investigations only) using options that do not have to include daily newspapers circulated in Tasmania.
- Clause 19** Amends section 27 of the Act to reflect the new structure of the Regulator as a single person.
- Clause 20** Amends section 30 of the Act to reflect the new structure of the Regulator as a single person.

Clause 21	Omits section 32(2) of the Act to reflect the new structure of the Regulator as a single person.
Clause 22	Omits section 33(1)(c) of the Act to reflect the new structure of the Regulator as a single person.
Clause 23	Amends section 34 of the Act to reflect the new structure of the Regulator as a single person). The omission of section 34(3) of the Act which refers to matters not to be included in reports that are not supported by every member of the Regulator to reflect the new structure of the Regulator as a single person.
Clause 24	Omits section 35(3)(c) of the Act which refers to contrary views by members of the Regulator, to reflect the new structure of the Regulator as a single person.
Clause 25	Amends section 37 of the Act to reflect the new structure of the Regulator as a single person.
Clause 26	Amends section 39(3)(a) of the Act to reflect the new structure of the Regulator as a single person.
Clause 27	Amends section 40 of the Act to reflect the new structure of the Regulator as a single person.
Clause 28	Amends section 41(1) of the Act to reflect the new structure of the Regulator as a single person.
Clause 29	Amends section 42(a) of the Act to reflect the new structure of the Regulator as a single person.
Clause 30	Amends section 43(b) of the Act to reflect the new structure of the Regulator as a single person.
Clause 31	Amends section 44(2) of the Act to reflect the new structure of the Regulator as a single person.
Clause 32	Amends section 45 of the Act to reflect the new structure of the Regulator as a single person.
Clause 33	Amends section 46(b) of the Act to reflect the new structure of the Regulator as a single person.
Clause 34	Amends section 47(a) of the Act to reflect the new structure of the Regulator as a single person.
Clause 35	Amends section 54 of the Act to reflect the new structure of the Regulator as a single person.
Clause 36	Amends section 56 of the Act to reflect the new structure of the Regulator as a single person.

- Clause 37** This clause repeals a section that relates to a requirement of a Minister to take an action following the outcome of a competitive neutrality complaint investigated by the Regulator. This section is no longer needed as clause 38 sets out new arrangements to be taken by a Minister following the outcome of a competitive neutrality complaint.
- Clause 38** Amends section 60 of the Act which sets out the actions required by the prescribed body after receiving a Regulator's report on a complaint investigation.
- In addition to the requirement to advise the Regulator of any action it has taken or intends to take in response to a recommendation from the Regulator following the outcome of a competitive neutrality complaint, the new subsection (1) requires that the prescribed body is also to provide the Regulator written notice of the time period in which the identified action is intended to be taken.
- The new subsection (2) allows the Regulator to require the prescribed body to supply further information on any actions or intended actions by the prescribed body at any time after the time period identified in subsection (1).
- Clause 39** A new section 60A of the Act requires the Regulator, within 45 days of receiving a written notice from a prescribed body, to provide to the Minister and Portfolio Minister a report on the action the prescribed body has advised it has taken or intends to take and any advice the Regulator has in regards to those actions.
- The clause allows the Minister, with the agreement of the Portfolio Minister, to make, or refuse to make, a direction to the prescribed body following advice from the Regulator. The Minister may also request further information from the Regulator to inform their decision to direct or not to direct the prescribed body.
- The clause allows the Regulator to provide the Minister with further information in regards to the prescribed body, regardless of whether a request for further information has been made.
- This clause establishes a penalty if the body does not comply with the Minister's direction as required in this clause.
- This clause specifies the information that must be provided by the Minister in its direction to the prescribed body, as well as the requirement to notify the Regulator and the complainant if a direction has been made, or not been made, to the prescribed body.
- Clause 40** Amends section 62(1)(c) of the Act to reflect the new structure of the Regulator as a single person.

- Clause 41** This clause deals with the transitional arrangements as the powers and functions of the former Regulator are transferred to the Regulator and the membership arrangements are changed.
- The clause inserts a new section 68A, which gives effect to the transitional provisions which are to commence on 1 July 2015. In particular, the clause provides that the former members are only entitled to the benefits conferred on the former members upon revocation of appointment, as prescribed in their instruments of appointment.
- Clause 42** Omits section 68(3) of the Act, which gives effect to Schedule 4, which set out the earlier savings and transitional provisions when the Act came into force in 2009. These provisions are no longer needed.
- Clause 43** Omits item 1 (Metro Tasmania Pty Ltd) from the list of monopoly providers in Schedule 1 of the Act, meaning that the Regulator will no longer undertake Metro Tasmania pricing investigations. This is replaced by the arrangements for the review of Metro Tasmania in clauses 82 and 83.
- Clause 44** Repeals Schedules 2 (Membership of Regulator), 3 (Meetings of Regulator) and 4 (Savings and Transitional Provisions) as these schedules are no longer needed.

Part 3 – Electricity Supply Industry (Pricing and Related Matters) Regulations 2013 Amended

This part amends the above Regulations to allow the Regulator to choose a form of communication, which may, but need not, include daily newspapers, to provide information in relation to pricing investigations.

- Clause 45** The *Electricity Supply Industry (Pricing and Related Matters) Regulations 2013* are referred to as the Principal Regulations for the purposes of Part 3.
- Clause 46** Amends regulation 10(1)(c) by allowing other forms of communication the Regulator may use, in relation to giving notice of an electricity retail price investigation.
- Clause 47** Amends regulation 14(1)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of an electricity retail price determination.
- Clause 48** Amends regulation 18(3)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of an amended or revoked electricity retail price determination.
- Clause 49** Amends regulation 22(1)(d) by allowing other forms of communication the Regulator may use, in relation to giving notice of a Hydro Tasmania electricity wholesale price investigation.
- This cause also amends regulation 22(6)(a) by allowing other forms of communication the Regulator may use, in relation to giving notice of an amended electricity wholesale price investigation.

- Clause 50** Amends regulation 27(1)(e) by allowing other forms of communication the Regulator may use, in relation to giving notice of a compliance investigation in relation to Hydro Tasmania's wholesale electricity prices.
- This cause also amends regulation 27(6)(a) by allowing other forms of communication the Regulator may use, in relation to giving notice of a change to a compliance investigation in relation to Hydro Tasmania's wholesale electricity prices.
- Clause 51** Amends regulation 31(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of a declaration of an electrical service.
- Clause 52** Amends regulation 35(3)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of a revocation of a declared electrical service.
- Clause 53** Amends regulation 37(1)(c) by allowing other forms of communication the Regulator may use, in relation to giving notice of a prices investigation in respect of a declared electrical service.
- Amends regulation 37(6)(a) by allowing other forms of communication the Regulator may use, in relation to giving change of a notice of a declared electrical service.
- Clause 54** Amends regulation 42(1)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of a determination relating to a declared electrical service.
- Clause 55** Amends regulation 46(3)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of an amendment or revocation of a determination relating to a declared electrical service.
- Clause 56** Amends regulation 47C(1)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of an investigation relating to feed-in tariffs.
- Amends regulation 47C(6)(a) by allowing other forms of communication the Regulator may use, in relation to giving notice of a change in an investigation relating to feed-in tariffs.
- Clause 57** Amends regulation 47F(1)(b) by allowing other forms of communication the Regulator may use, in relation to giving notice of a feed-in tariff determination.
- Clause 58** Amends regulation 47J(3)(b) by allowing other forms of communication the Regulator may use, in relation giving notice of an amendment or revocation of a feed-in tariff determination.
- Clause 59** Amends regulation 54(1)(d) by allowing other forms of communication the Regulator may use, in relation to giving notice of a final report of any electricity price investigation.

Part 4 – Electricity Supply Industry Act 1995 Amended

This Part amends the above Act to require the Regulator to prepare certain reports and to have the power to impose monetary penalties on licensed entities in the electricity supply industry. This Part also allows for the Regulator to appoint members to an advisory committee.

Clause 60 The *Electricity Supply Industry Act 1995* is referred to as the Principal Act for the purposes of Part 4.

Clause 61 This clause inserts a definition of the “energy Minister” as the Minister responsible for Division 1 of Part 3 of the Act. This Division relates to the licensing of electricity entities.

Clause 62 Amends section 6 of the Act to reflect the new structure of the Regulator as a single person.

Clause 63 Allows the Regulator, when satisfied that an electricity entity has contravened a provision in the Act or a condition of its licence, to impose a monetary penalty for the contravention.

The penalties are identical to the penalties in the *Water and Sewerage Industry Act 2008*.

This clause establishes that a decision by the Regulator under this section may be subject to administrative review under Part 9 of the Act.

Clause 64	<p>The new section 10A requires the Regulator to prepare an electricity supply industry state of the industry report either on his or her own initiative or when directed to do so by the energy Minister and the Minister responsible for the <i>Economic Regulator Act 2009</i>.</p> <p>The Regulator, within 7 sitting days after preparing the report, is to table the report in Parliament and to make it available to members of the public in such a manner as the Regulator considers appropriate.</p> <p>The new section 10B requires the Regulator to conduct a review into the reliability of electricity network services and prepare a report on its findings at least once in every 3-year period, or either on his or her own initiative or when directed to do so by the energy Minister and the Minister responsible for the <i>Economic Regulator Act 2009</i>.</p> <p>The Regulator is to table the report in Parliament and make it available to members of the public in such a manner as the Regulator considers appropriate.</p> <p>The new section 10C requires the Regulator to prepare a report that compares electricity prices available to small customers across Australian jurisdictions, and an annual report into the comparison between the prices of a prepayment meter system and all other relevant retail electricity prices for small customers in Tasmania. The Regulator is to table the reports in Parliament and make them available to members of the public in such a manner as the Regulator considers appropriate.</p> <p>The Regulator is to prepare the interstate price comparison report either on his or her own initiative or when directed to do so by the Minister responsible for pricing-related matters in the Act and the Minister responsible for the <i>Economic Regulator Act 2009</i>.</p>
Clause 65	<p>Omits section 12(2) of the Act which requires all members of an advisory committee to be appointed by the Minister.</p> <p>This clause provides that members of an advisory committee established by the Minister are appointed and hold office on such terms and conditions as determined by the Minister.</p> <p>The clause also provides that members of an advisory committee established by the Regulator are appointed and hold office on such terms and conditions as determined by the Regulator.</p>
Clause 66	<p>Amends section 43A(1)(a)(iii) of the Act to reflect the new structure of the Regulator as a single person.</p>
Clause 67	<p>Amends section 99(2) of the Act to reflect the new structure of the Regulator as a single person.</p>
Clause 68	<p>Amends section 116A of the Act to reflect the new structure of the Regulator as a single person.</p>

Part 5 – Energy Ombudsman Act 1998 Amended

- Clause 69** The *Energy Ombudsman Act 1998* is referred to as the Principal Act for the purposes of Part 5.
- Clause 70** This clause reflects the new structure of the Regulator as a single person, as the Regulator is to be appointed and not ‘established’ as the Act is currently worded.
- Clause 71** Amends section 39B(7)(b) of the Act to reflect the new structure of the Regulator as a single person.

Part 6 – Gas Act 2000 Amended

This part amends the above Act to establish the function of the Regulator to prepare performance reports and the power to impose monetary penalties for licensed entities in the gas industry.

- Clause 72** The *Gas Act 2000* is referred to as the Principal Act for the purposes of Part 6.
- Clause 73** Amends section 8(2A) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 74** The new section 8A requires the Regulator to prepare a state of the industry report for the gas industry either on his or her own initiative or when directed to do so by the energy Minister, as the Minister responsible for the licensing provisions in the Act, and the Minister responsible for the *Economic Regulator Act 2009*.
- The Regulator, within 7 sitting days after preparing the report, is to table the report in Parliament and to make it available to members of the public in such a manner as the Regulator considers appropriate.
- The new section 8B allows the Regulator, when satisfied that a gas entity has contravened a provision in the Act or a condition of its licence, to impose a monetary penalty for the contravention.
- The penalties are identical to the penalties in the *Water and Sewerage Industry Act 2008*.
- This clause establishes that a decision by the Regulator under this section may be subject to administrative review under Part 7 of the Act.
- Clause 75** Amends section 11 of the Act to reflect the new structure of the Regulator as a single person.
- Clause 76** Amends section 26(5) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 77** Amends section 30(4) of the Act to reflect the new structure of the Regulator as a single person.

Part 7 – Gas Pipelines Act 2000 Amended

- Clause 78** The *Gas Pipelines Act 2000* is referred to as the Principal Act for the purposes of Part 7.
- Clause 79** The new section 7 requires the Regulator to prepare a state of the industry report for the gas pipeline industry either on his or her own initiative or when directed to do so by the energy Minister, defined as the Minister responsible for the licensing provisions in the Act, and the Minister responsible for the *Economic Regulator Act 2009*.
- The Regulator, within 7 sitting days after preparing the report, is to table the report in Parliament and to make it available to members of the public in such a manner as the Regulator considers appropriate.
- The new section 7A allows the Regulator, when satisfied that a gas entity has contravened a provision in the Act or a condition of its licence, to impose a monetary penalty for the contravention.
- The penalties are identical to the penalties in the *Water and Sewerage Industry Act 2008*.
- This clause establishes that a decision by the Regulator under this section may be subject to administrative review under Part 6 of the Act.
- Clause 80** Amends section 11(6) of the Act by allowing other forms of communication the Regulator may use, in relation to giving notice of an application of a pipeline licence.
- Clause 81** Amends section 42(2) of the Act by allowing other forms of communication the Regulator may use, in relation to giving notice of the surrender of a pipeline licence.

Part 8 – Metro Tasmania Act 1997 Amended

- Clause 82** The *Metro Tasmania Act 1997* is referred to as the Principal Act for the purposes of Part 8.
- Clause 83** The new Part 3A of the Act sets out the arrangements for a Fares Order which is to be made in respect of Metro Tasmania's maximum prices.
- Section 18A sets out the relevant definitions, including the definition of the Secretary, who is the Secretary of the Department responsible to the Minister for the administration of the Act. Section 18B requires that at least 18 months before the expiry of the relevant fares order or determination, the Secretary is to conduct a Metro Tasmania review in respect of relevant services, in accordance with the Minister's requirement and the terms of reference.
- This clause also allows the Minister to amend the terms of reference, if the Secretary has not completed its final report.
- Section 18C specifies what must be included in the terms of reference for a Metro Tasmania review.

Section 18D sets out how the Secretary is to give notice of a requirement to conduct a Metro Tasmania review.

Section 18E sets out how the Secretary is to conduct a Metro Tasmania review and excludes documents or information and records of such documents or information which provided as part of a review from the operation of the *Personal Information Protection Act 2004* and the *Right to Information Act 2009*.

Section 18F sets out the information gathering powers of the Secretary in respect to undertaking a Metro Tasmania review.

Section 18G sets out the Secretary's obligations regarding a draft report of a Metro Tasmania review and, in particular, the required timeframes for the draft report.

This clause requires the Secretary to allow persons or bodies who have received the draft report to make submissions and to take those submissions into consideration before making a final report.

Section 18H sets out the Secretary's obligations regarding a final report of a Metro Tasmania review, including the requirement to contain recommendations in relation to the maximum prices set the Metro Tasmania for the period of any fares order which may result.

The clause sets out the arrangements for tabling in each House of Parliament and to ensure the final report is available for public release.

Section 18I requires the Minister, within 90 days of receiving a final report, to make a fares order after taking into consideration the Secretary's recommendations and any comments received from the Metro Tasmania in relation to the final report.

This clause ensures that the fares order overrules any other pricing order or any pricing arrangements set out in any other Act, and is to commence 61 days after it is gazetted.

Section 18J requires Metro Tasmania within 45 days of the order being made, to determine the prices to be charged when the order takes effect and lodge the prices with the Secretary for approval.

The clause prohibits a Company from amending the prices as approved unless it has the Secretary's written approval. This clause requires the Secretary is to give notice of its approval of the prices for the Company within 15 days after the application for approval is received, if the prices comply with the order.

Section 18K sets out transitional provisions to provide that the existing order continues to have effect and that, regardless of the duration of the current order, a Metro Tasmania review is not required until 18 months before end of the period for which the most recent Metro Tasmania investigation was prepared.

This clause does not prevent the existing order from being amended or rescinded under this Part after the commencement day.

Part 9 – Urban Drainage Act 2013 Amended

- Clause 84** The *Urban Drainage Act 2013* is referred to as the Principal Act for the purposes of Part 9.
- Clause 85** This clause reflects the new structure of the Regulator as a single person, as the Regulator is to be appointed and not ‘established’ as the Act is currently worded.

Part 10 – Water and Sewerage Industry (Pricing and Related Matters) Regulations 2011 Amended

- Clause 86** The Water and Sewerage Industry (Pricing and Related Matters) Regulations 2011 are referred to as the Principal Regulations for the purposes of Part 10.
- Clause 87** Amends regulation 23(5)(c) to allow the Regulator to give notice of a water and sewerage pricing investigation by using options that do not have to include daily newspapers circulated in Tasmania.

Part 11 – Water and Sewerage Industry Act 2008 Amended

- Clause 88** The Water and Sewerage Industry Act 2008 is referred to as the Principal Act for the purposes of Part 11.
- Clause 89** Omits section 8 of the Act which requires all members of an advisory committee to be appointed by the Minister.
- This clause provides that members of an advisory committee established by the Minister are appointed and hold office on such terms and conditions as determined by the Minister.
- This clause also provides that members of an advisory committee established by the Regulator are appointed and hold office on such terms and conditions as determined by the Regulator.
- Clause 90** Amends section 14 of the Act to reflect the new structure of the Regulator as a single person.
- Clause 91** Amends section 22(1) of the Act to reflect the new structure of the Regulator as a single person.
- Clause 92** Amends section 67(2)(b) to allow the Regulator to give notice of a water and sewerage price determination by using options that do not have to include daily newspapers circulated in Tasmania.

Clause 93 Omits section 70(1), which requires the Regulator to prepare an annual state of the industry report for the water and sewerage industry.

The new section 70(1A) requires the Regulator to prepare a state of the industry report within 3 months before a regulated entity is required to submit a proposed price and service plan or at any other time when directed to do so by the Minister with the agreement of the Minister responsible for the Economic Regulator Act 2009.

Section 70(1B) establishes that in drafting the state of the industry report on the direction of the Minister, the Minister may include the terms of reference.

Clause 94 Amends section 80 of the Act to reflect the new structure of the Regulator as a single person.

Part 12 – Miscellaneous

Clause 95 This clause provides that amendments to regulations as a result of this Act do not prevent consequential amendments of those provisions by regulation.

Clause 96 States the repeal date for the Economic Regulator Amendment Act 2015.