

TASMANIA

ELECTRICITY REFORM (IMPLEMENTATION) BILL 2013

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – ELECTRICITY SUPPLY INDUSTRY ACT 1995 AMENDED

3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 6 amended (Regulator's functions and powers)
6. Section 8 amended (Administrative fairness and independence)
7. Section 24A substituted
 - 24A. Licence condition relating to system security capability
8. Part 3, Division 4, Subdivision 1: Heading inserted
Subdivision 1 – Retailing generally
9. Section 38 amended (Only Aurora Retail may retail electricity to non-contestable customers on mainland Tasmania)
10. Sections 38A, 38B and 38C inserted
 - 38A. Transitional provisions in relation to retail sales
 - 38B. Regulated offer retailers
 - 38C. Local area retailer
11. Part 3, Division 4, Subdivision 2: Heading inserted
Subdivision 2 – Charging for retail services

12. Sections 40AA, 40AB, 40AC and 40AD inserted
 - 40AA. Determination of certain maximum prices
 - 40AB. Principles to be taken into account in making determinations under section 40AA
 - 40AC. Making of first determinations under section 40AA in relation to regulated offer retailers
 - 40AD. Declarations and determinations in relation to certain services
13. Section 40 amended (Standing offer prices)
14. Section 41 amended (Approval of standing offer prices)
15. Section 43A amended (Regulator may charge for certain expenses)
16. Part 3, Division 4, Subdivision 3: Heading inserted
Subdivision 3 – Community service obligation concessions
17. Sections 43C, 43D, 43E and 43F inserted
 - 43C. Interpretation of this Subdivision
 - 43D. Concession orders
 - 43E. Community service obligation agreements
 - 43F. Reimbursement of concessions
18. Part 3, Division 4A inserted
Division 4A – Wholesale electricity pricing and contracts
Subdivision 1 – Approvals
 - 43G. Approvals in relation to certain contracts of Hydro-Electric Corporation
 - 43H. Principles to be taken into account in approvals*Subdivision 2 – Contracts*
 - 43I. Approved standard form contracts to be offered to authorised retailers
 - 43J. Certain contracts not required to be offered, &c., if requirements as to risk not met
 - 43K. Certain contracts not required to be offered, &c., if minimum volume would be exceeded*Subdivision 3 – Price monitoring*
 - 43L. Application of approved methodologies
 - 43M. Regulator may approve fixing of prices in certain circumstances
 - 43N. Fixing of prices by Regulator*Subdivision 4 – Transitional matters*
 - 43O. Transitional provisions in relation to approvals under this Division

19. Section 49B amended (Review, amendment and replacement of Code)
20. Section 49I inserted
49I. Certain instruments not statutory rules
21. Section 119A inserted
119A. Entry into certain agreements is authorised
22. Section 121AA inserted
121AA. Costs of transfer of prepayment meter customers recoverable from distributor
23. Section 122 amended (Regulations)

PART 3 – NATIONAL ENERGY RETAIL LAW (TASMANIA) ACT 2012 AMENDED

24. Principal Act
25. Section 15 amended (Interpretation)
26. Section 17A inserted
17A. Modification of provisions of Law to apply to regulated offer retailers
27. Section 18 amended (Standing offer prices)

PART 4 – CONCLUDING PROVISIONS

28. Repeal of Act

ELECTRICITY REFORM (IMPLEMENTATION) BILL 2013

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
11 April 2013

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

A BILL FOR

**An Act to amend the *Electricity Supply Industry Act 1995*
and the *National Energy Retail Law (Tasmania) Act 2012***

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 (Implementation) Act 2013*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 3

Part 2 – Electricity Supply Industry Act 1995 Amended

**PART 2 – ELECTRICITY SUPPLY INDUSTRY ACT
1995 AMENDED**

3. Principal Act

In this Part, the *Electricity Supply Industry Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *AEMO*:

approved financial risk contract
means a contract that –

- (a) is an approved type of contract; and
- (b) is in an approved standard form in relation to that type of contract; and
- (c) contains prices calculated in accordance with the approved methodology in respect of contracts that are in that approved standard form;

*No. 58 of 1995

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 4

approved methodology means a methodology approved under section 43G;

approved standard form means a standard form approved under section 43G;

approved type of contract means a type of contract approved under section 43G;

- (b) by omitting the definition of *business customer*;
- (c) by inserting the following definition after the definition of *licence*:

load following swap means a type of contract that allows a retailer to manage financial risks associated with the purchase of a specified quantity of electricity over the duration of the contract, where that quantity is allocated to trading intervals, within the meaning of the National Electricity Rules, in proportion to the Tasmanian net system load profile, within the meaning of the NEM Metrology Procedures made in accordance with the National Electricity Rules;

- (d) by inserting the following definition after the definition of *powerline*:

Electricity Reform (Implementation) Act 2013
Act No. of

s. 4

Part 2 – Electricity Supply Industry Act 1995 Amended

price includes a tariff and a charge;

- (e) by inserting the following definition after the definition of *public land*:

regulated offer retailer means an authorised retailer who is declared to be a regulated offer retailer in an order made under section 38B(1);

- (f) by omitting the definition of *residential customer*;

- (g) by omitting the definition of *reviewable decision* and substituting the following definition:

reviewable decision means any direction, decision or determination under this Act, the regulations or the Code, other than –

- (a) a decision of the Regulator or the Minister to make an order, approval or determination under Division 4 or 4A of Part 3; or
- (b) a direction, decision or determination declared by this Act, the regulations or the Code not to be reviewable;

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 5

- (h) by inserting the following definition after the definition of *small customer*:

standard retail contract has the meaning it has in the National Energy Retail Law (Tasmania);

5. Section 6 amended (Regulator’s functions and powers)

Section 6 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (1):
- (ab) to monitor and provide reports in relation to the development of competition in respect of the electricity supply industry; and
- (b) by omitting from subsection (4) “have regard to” and substituting “take into account”;
- (c) by inserting the following subsection after subsection (4):
- (5) In performing and exercising its functions and powers, other than the functions and powers referred to in subsection (1)(c), the Regulator is to take into account the policy that it is desirable for the businesses of electricity

Electricity Reform (Implementation) Act 2013
Act No. of

s. 6

Part 2 – Electricity Supply Industry Act 1995 Amended

entities and authorised retailers to
be financially sustainable.

6. Section 8 amended (Administrative fairness and independence)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) In exercising powers and functions under this Act, the Regulator must not unfairly discriminate between electricity entities that are authorised to provide similar services, between authorised retailers, between customers for electricity or between other persons.
- (b) by inserting in subsection (3) “section 9,” after “under”;
- (c) by omitting from subsection (3) “of a kind specified in section 122(2A)” and substituting “for the purposes of Division 4 or 4A of Part 3”.

7. Section 24A substituted

Section 24A of the Principal Act is repealed and the following section is substituted:

24A. Licence condition relating to system security capability

If a licence authorises an electricity entity to operate a transmission system, it is a condition of the licence that the electricity entity must ensure that it has the capability to maintain the security of the system on mainland Tasmania.

8. Part 3, Division 4, Subdivision 1: Heading inserted

Division 4 of Part 3 of the Principal Act is amended by inserting the following heading before section 38:

Subdivision 1 – Retailing generally

9. Section 38 amended (Only Aurora Retail may retail electricity to non-contestable customers on mainland Tasmania)

Section 38 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) This section ceases to have effect immediately before 1 January 2014.

10. Sections 38A, 38B and 38C inserted

After section 38 of the Principal Act, the following sections are inserted in Subdivision 1:

Electricity Reform (Implementation) Act 2013
Act No. of

s. 10

Part 2 – Electricity Supply Industry Act 1995 Amended

38A. Transitional provisions in relation to retail sales

- (1) A person must not, in the period commencing on 1 January 2014 and ending immediately before 1 April 2014, sell electricity to a transitional customer at premises situated on mainland Tasmania, unless the person is a designated retailer, within the meaning of the National Energy Retail Law (Tasmania), in respect of the premises.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (2) A person must not, in the period commencing on 1 April 2014 and ending on 30 June 2014, sell electricity to a transitional customer at premises situated on mainland Tasmania, unless the person is –
- (a) a regulated offer retailer (whether or not the person is the regulated offer retailer in respect of the premises); or

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 10

- (b) a designated retailer in respect of the premises under the National Energy Retail Law (Tasmania).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (3) Subsections (1) and (2) do not apply in relation to –
 - (a) a person to whom section 23 of the *National Energy Retail Law (Tasmania) Act 2012* applies; or
 - (b) a sale of electricity to which section 23 of the *National Energy Retail Law (Tasmania) Act 2012* applies or an offer to sell such electricity; or
 - (c) a person who is an exempt seller, within the meaning of the National Energy Retail Law (Tasmania), if the sale of electricity to which that subsection would otherwise apply is permitted, or not prohibited, by the terms of the exemption of the person.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 10

Part 2 – Electricity Supply Industry Act 1995 Amended

- (4) A retailer authorisation under the National Energy Retail Law (Tasmania) is of no effect under that Law to the extent that it authorises, or purports to authorise, an authorised retailer to sell electricity to a customer in contravention of this section.
- (5) The Minister, by order –
 - (a) may specify conditions that must be satisfied before a transitional customer is permitted, during the period (in this section referred to as *the transitional period*) specified in the order to be the transitional period, to cease to be a customer of an authorised retailer and to become a customer of another authorised retailer; and
 - (b) may specify that an authorised retailer must –
 - (i) at the request of another authorised retailer, provide, during the transitional period, the other authorised retailer with the information; and
 - (ii) establish and maintain, during the transitional period, systems of information management –

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 10

necessary or convenient to enable the other authorised retailer to determine whether the conditions specified in the order in accordance with paragraph (a) have been satisfied in relation to a transitional customer.

- (6) Without limiting the generality of subsection (5), an order under that subsection may contain any one or more of the following conditions:
- (a) a limit on the number of transitional customers who are permitted, in any period (*a specified period*), specified in the order, that occurs during the transitional period, to cease to be customers of an authorised retailer and to become customers of another authorised retailer;
 - (b) conditions relating to the sequence in which, and the time at which, transitional customers are permitted to cease to be customers of an authorised retailer, and to become customers of another authorised retailer, after the end of a specified period that occurs during the transitional period.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 10

Part 2 – Electricity Supply Industry Act 1995 Amended

- (7) The period specified in an order under subsection (5) to be the transitional period is to be a period that –
 - (a) begins on 1 April 2014; and
 - (b) ends on a date, specified in the order, that occurs before 1 January 2015.
- (8) Nothing in any law of Tasmania authorises or requires an authorised retailer to –
 - (a) comply with a request by a transitional customer for electricity to be supplied to the premises of the customer; or
 - (b) submit or comply with a request, under the Retail Market Procedures, for the transfer to the authorised retailer of a transitional customer –

if the transfer of that customer to the authorised retailer would be inconsistent with a condition of an order made under subsection (5).

- (9) In this section –

regulated offer retailer in respect of the premises means the regulated offer retailer who is, by virtue of an order under section 38B, the

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 10

regulated offer retailer in respect
of the premises;

Retail Market Procedures has the
meaning it has in the National
Electricity Rules;

transitional customer, in relation to
premises –

- (a) means a person who is,
immediately before the
commencement of this
section, a non-contestable
customer in relation to the
premises; and
- (b) includes a transitional
prepayment meter
customer;

***transitional prepayment meter
customer***, in relation to premises,
means a person who is,
immediately before the
commencement of this section, a
customer to whom electricity was
provided at the premises using a
prepayment meter system within
the meaning of the National
Energy Retail Law (Tasmania).

38B. Regulated offer retailers

- (1) The Minister may, by order, declare an
authorised retailer to be a regulated offer
retailer in respect of premises.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 10

Part 2 – Electricity Supply Industry Act 1995 Amended

- (2) The Minister may make more than one order under subsection (1), but each such order is to relate to a different authorised retailer.
- (3) An authorised retailer may be declared in an order under subsection (1) to be a regulated offer retailer –
 - (a) in respect of premises situated on mainland Tasmania or on a part of mainland Tasmania specified in the order; or
 - (b) in respect of premises of a type of premises specified in the order; or
 - (c) in respect of premises of a type of customer, specified in the order, for the premises; or
 - (d) in respect of premises for a period specified in the order –or in respect of premises by virtue of a combination of the factors referred to in paragraph (a), (b), (c) and (d).
- (4) An authorised retailer may only be declared in an order under subsection (1) to be a regulated offer retailer if the retailer, any subsidiary of the retailer, or any related body corporate of the retailer, have between them more than 50,000 small customers at premises situated on mainland Tasmania.

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 10

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- (5) For the avoidance of doubt, an order under subsection (1) continues to apply, unless it is revoked, even if the authorised retailer in relation to which it is made, any subsidiary of the retailer, or any related body corporate of the retailer, have, at any time after the order is made and while the order is in force, between them less than 50,000 small customers at premises situated on mainland Tasmania.
- (6) The Minister, by order, may revoke an order made under subsection (1).
- (7) The Minister –
- (a) is to be taken to have made, on and from the day on which this section comes into force, an order under subsection (1) declaring Aurora Retail to be a regulated offer retailer in respect of premises situated on mainland Tasmania; and
 - (b) may revoke under subsection (6) the order that the Minister is to be taken, in accordance with paragraph (a), to have made under subsection (1).
- (8) In this section –

related body corporate, in relation to a regulated offer retailer, means a person that is a related body

Electricity Reform (Implementation) Act 2013
Act No. of

s. 10

Part 2 – Electricity Supply Industry Act 1995 Amended

corporate of the retailer under the Corporations Act;

subsidiary, in relation to a regulated offer retailer, means a person that is a subsidiary of the retailer under the Corporations Act.

38C. Local area retailer

- (1) The Minister, by order, may declare a regulated offer retailer to be a local area retailer for this State for the purposes of the National Energy Retail Law (Tasmania).
- (2) The Minister, by order, may revoke an order made under subsection (1).
- (3) The Minister –
 - (a) is to be taken to have made, on and from the day on which this section comes into force, an order under subsection (1) declaring Aurora Retail to be a local area retailer for this State for the purposes of the National Energy Retail Law (Tasmania); and
 - (b) may revoke under subsection (2) the order that the Minister is to be taken, in accordance with paragraph (a), to have made under subsection (1).

11. Part 3, Division 4, Subdivision 2: Heading inserted

Division 4 of Part 3 of the Principal Act is amended by inserting the following heading after section 39:

Subdivision 2 – Charging for retail services

12. Sections 40AA, 40AB, 40AC and 40AD inserted

After section 39 of the Principal Act, the following sections are inserted in Subdivision 2:

40AA. Determination of certain maximum prices

- (1) The Regulator must determine –
 - (a) the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers; or
 - (b) a method of determining the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers.
- (2) The Regulator must make a separate determination under subsection (1) in relation to each regulated offer retailer.
- (3) The Regulator may amend or revoke a determination under subsection (1).

Electricity Reform (Implementation) Act 2013
Act No. of

s. 12

Part 2 – Electricity Supply Industry Act 1995 Amended

- (4) An amendment to a determination under subsection (1) may not be made if the determination, as so amended, would be a determination that did not take into account the principles set out in section 40AB.
- (5) The regulations may make provision in relation to –
 - (a) the making of determinations under this section; and
 - (b) the matters that are to be considered in taking into account the principles set out in section 40AB(1); and
 - (c) the amending or revocation of determinations under this section; and
 - (d) the making of adjustments to determinations under this section; and
 - (e) the charging to an electricity entity, or a regulated offer retailer, of costs incurred by the Regulator in exercising the Regulator's powers under this Division or the regulations.
- (6) A determination made under this section remains in force for the period determined in accordance with the regulations.

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 12

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- (7) If the regulations make provision in relation to the making, amendment or revocation of a determination under this section, a determination under this section that is to be made, amended or revoked, is to be, respectively, made, amended or revoked in accordance with the regulations.

40AB. Principles to be taken into account in making determinations under section 40AA

- (1) In determining for the purposes of section 40AA the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers, or a method of determining the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers, the Regulator is to –
- (a) estimate the operational costs of the retailer in providing standard retail services; and
 - (b) take into account the principle that the maximum prices that may be imposed by the retailer under standard retail contracts in respect of small customers are to be such as will enable the retailer, after the operational costs are taken into account, to make a reasonable return on its

Electricity Reform (Implementation) Act 2013
Act No. of

s. 12

Part 2 – Electricity Supply Industry Act 1995 Amended

investment in respect of the provision of standard retail services, taking into account the risk of making that investment; and

(c) take into account the principle that small customers should be protected from the adverse effects of the exercise of substantial market power by –

(i) the Hydro-Electric Corporation; or

(ii) the regulated offer retailer in relation to prices, pricing policies and standards of service in respect of the provision of standard retail services by the regulated offer retailer; and

(d) take into account the principle that, for the purpose of benefiting the public interest, there is a need for efficiency in the provision of standard retail services.

(2) For the purposes of this section, the ***operational costs*** of the regulated offer retailer in providing standard retail services are –

(a) the wholesale electricity costs of the regulated offer retailer in

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 12

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- relation to the provision of those services; and
- (b) the transmission and distribution costs of the regulated offer retailer in relation to the provision of those services; and
 - (c) the cost to serve of the regulated offer retailer in relation to the provision of those services; and
 - (d) any other costs, incurred by the regulated offer retailer in relation to the provision of those services, that the Regulator thinks fit, including but not limited to –
 - (i) the cost of any obligation imposed on the retailer by or under this Act or by or under the *National Energy Retail Law (Tasmania) Act 2012*; or
 - (ii) the costs to the retailer, in relation to the generation of electricity, that may be imposed under any Commonwealth legislation relating to the emission of carbon.
- (3) For the purposes of this section, the ***wholesale electricity costs*** of a regulated offer retailer in relation to the provision of standard retail services consist of the

Electricity Reform (Implementation) Act 2013
Act No. of

s. 12

Part 2 – Electricity Supply Industry Act 1995 Amended

costs of the retailer in purchasing electricity for the purposes of providing those services, including any adjustment to the costs that would be made if the regulated offer retailer and the Hydro-Electric Corporation were to enter into a contract that –

- (a) was a contract in an approved standard form determined under section 43G(1) for a load following swap; and
 - (b) contained prices calculated in accordance with the approved methodology in relation to contracts in that approved standard form; and
 - (c) related to the same number of units of electricity as the number of units of electricity purchased by the retailer for the purposes of providing those services.
- (4) For the purposes of this section, the ***transmission and distribution costs*** of the regulated offer retailer in relation to the provision of standard retail services consist of –
- (a) the prices, as determined in accordance with any relevant distribution determination made under the National Electricity Rules, charged to the regulated

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 12

offer retailer for the distribution of electricity; and

- (b) the prices, as determined in accordance with any relevant transmission determination made under the National Electricity Rules, charged to the regulated offer retailer for the transmission of electricity –

but only in so far as the costs relate to electricity used in the provision of standard retail services.

- (5) For the purposes of this section, the ***cost to serve*** of the regulated offer retailer in relation to the provision of standard retail services consists of the costs (other than those referred to in subsection (2)(a), (b) or (d)) that are, in the opinion of the Regulator, reasonably incurred by the regulated offer retailer in the efficient provision of those services.

- (6) In this section –

standard retail services, in relation to a regulated offer retailer, means services to be provided by the retailer under standard retail contracts in respect of small customers.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 12

Part 2 – Electricity Supply Industry Act 1995 Amended

40AC. Making of first determinations under section 40AA in relation to regulated offer retailers

- (1) The regulations may provide that –
- (a) the Minister is to make a submission to the Regulator in relation to each of the first determinations, in relation to each of the regulated offer retailers, to be made by the Regulator under section 40AA; and
 - (b) the submission may be made in relation to an authorised retailer as if the retailer were a regulated offer retailer; and
 - (c) the submission is to specify the structure and methodology to be applied in the determination; and
 - (d) the submission may specify the cost to serve for the purposes of section 40AB; and
 - (e) the submission is to specify the period for which the determination is to remain in force; and
 - (f) the submission may specify that the Regulator is only to approve under section 41 draft standing offer prices to be fixed by a regulated offer retailer under section 40 in accordance with the

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 12

determination, if the prices are in accordance with a pricing structure specified in the determination; and

- (g) the submission may specify a pricing structure that is to be included, for the purposes of paragraph (f), in the determination.

(2) If –

- (a) the regulations specify that the Minister is to make a submission to the Regulator in relation to each of the first determinations, in relation to each of the regulated offer retailers, to be made by the Regulator under section 40AA; and
- (b) a matter referred to in subsection (1)(c), (d), (e), (f) or (g) is specified in the submission –

the determination is to be in accordance with the matter so specified.

- (3) The regulations may provide that a determination made under regulations in force before this section comes into operation is to be taken to be a determination made under section 40AA in relation to the authorised retailer specified in the determination.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 12

Part 2 – Electricity Supply Industry Act 1995 Amended

- (4) A determination, in relation to a regulated offer retailer, to be made, or taken to be made, by the Regulator under section 40AA –
 - (a) may be specified to apply to an authorised retailer even though, at the time the determination is made, the authorised retailer is not a regulated offer retailer; but
 - (b) does not apply in relation to the authorised retailer until the retailer is a regulated offer retailer.

40AD. Declarations and determinations in relation to certain services

- (1) The Regulator may declare that goods or a service that are or may be provided by an electricity entity, or an authorised retailer, specified in the declaration are a declared electrical service.
- (2) A declaration may not be made under subsection (1) in relation to –
 - (a) a service provided under standard retail contracts in respect of small customers; or
 - (b) a distribution service or a transmission service.
- (3) The Regulator may only make a declaration under subsection (1) in

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 12

relation to goods, or a service, that are or may be provided by an electricity entity, or an authorised retailer, specified in the declaration, if –

- (a) the electricity entity or authorised retailer has substantial market power in respect of the service; and
 - (b) the promotion of competition, efficiency or the public interest requires the making of the declaration.
- (4) The Regulator may amend or revoke a declaration made under subsection (1).
- (5) If the Regulator declares in accordance with subsection (1) goods or a service to be a declared electrical service, the Regulator may, in accordance with the regulations, determine the maximum prices, in relation to the declared electrical service, that the electricity entity or authorised retailer specified in the declaration may charge for the provision of the service.
- (6) If the Regulator determines in accordance with subsection (5) the maximum prices that the electricity entity or authorised retailer specified in the declaration may charge for the provision of a declared electrical service, the electricity entity or authorised retailer

Electricity Reform (Implementation) Act 2013
Act No. of

s. 12

Part 2 – Electricity Supply Industry Act 1995 Amended

must only impose a price in respect of the service if the price is in accordance with the determination, as amended, if at all, under subsection (7).

Penalty: Fine not exceeding 1 000 penalty units.

- (7) The Regulator may amend or revoke a determination made under subsection (5).
- (8) The regulations may make provision in relation to –
 - (a) the making by the Regulator of declarations or determinations under this section; and
 - (b) the amending or revocation of declarations or determinations under this section; and
 - (c) the matters that the Regulator is to take into account in making, amending or revoking declarations or determinations under this section; and
 - (d) the making of adjustments to determinations made under this section; and
 - (e) the charging to an electricity entity or an authorised retailer of costs incurred by the Regulator in exercising the Regulator's powers

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 13

under this Division or regulations
for the purposes of this Division.

- (9) If the regulations make provision in relation to the making, amendment or revocation of a declaration or determination under this section, a declaration or determination under this section that is to be made, amended or revoked, is to be, respectively, made, amended or revoked in accordance with the regulations.
- (10) A declaration or determination under this section remains in force for the period determined in accordance with the regulations.

13. Section 40 amended (Standing offer prices)

Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Aurora Retail must fix the tariffs and charges that are to constitute” and substituting “A regulated offer retailer must fix”;
- (b) by omitting from subsection (2) “Aurora Retail” and substituting “a regulated offer retailer”;
- (c) by omitting from subsection (2) “a tariff or charge” and substituting “a standing offer price”;

Electricity Reform (Implementation) Act 2013
Act No. of

s. 13

Part 2 – Electricity Supply Industry Act 1995 Amended

- (d) by omitting from subsection (2) “a tariff or charge” second occurring and substituting “a standing offer price”;
- (e) by omitting from subsection (3) “tariff or charge” twice occurring and substituting “standing offer price”;
- (f) by omitting from subsection (3) “tariffs or charges” and substituting “standing offer prices”;
- (g) by omitting from subsection (4) “Aurora Retail” and substituting “A regulated offer retailer”;
- (h) by omitting from subsection (4)(a) “tariff or charge” twice occurring and substituting “standing offer price”;
- (i) by omitting from subsection (4)(b) “tariff or charge” three times occurring and substituting “standing offer price”;
- (j) by omitting from subsection (5) “tariff or charge” twice occurring and substituting “standing offer price”;
- (k) by inserting in subsection (5)(a) “a determination of the Regulator under section 40AA(1),” after “Act,”;
- (l) by omitting from subsection (6) “tariff or charge, Aurora Retail” and substituting “standing offer price, a regulated offer retailer”;

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 14

- (m) by omitting from subsection (6) “tariffs or charges” and substituting “standing offer prices”;
- (n) by omitting from subsection (7) “tariff or charge” four times occurring and substituting “standing offer price”.

14. Section 41 amended (Approval of standing offer prices)

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “tariff or charge” first occurring and substituting “standing offer price”;
- (b) by omitting from subsection (1) “tariff or charge” second occurring and substituting “standing offer price”;
- (c) by omitting from subsection (1)(a) “tariff or charge” twice occurring and substituting “standing offer price”;
- (d) by omitting from subsection (1)(b) “tariff or charge” three times occurring and substituting “standing offer price”;
- (e) by omitting from subsection (2) “Aurora Retail” and substituting “A regulated offer retailer”;
- (f) by omitting from subsection (2) “tariff or charge” twice occurring and substituting “standing offer price”;

Electricity Reform (Implementation) Act 2013
Act No. of

s. 14

Part 2 – Electricity Supply Industry Act 1995 Amended

- (g) by omitting from subsection (3) “tariff or charge” first occurring and substituting “standing offer price”;
- (h) by omitting from subsection (3) “tariff or charge” second occurring and substituting “standing offer price”;
- (i) by omitting from subsection (3)(a) “tariff or charge” twice occurring and substituting “standing offer price”;
- (j) by omitting from subsection (3)(b) “tariff or charge” twice occurring and substituting “standing offer price”;
- (k) by omitting from subsection (3)(c) “tariff or charge” first occurring and substituting “standing offer price”;
- (l) by omitting from subsection (3)(c) “tariff or charge” second occurring and substituting “standing offer price”;
- (m) by inserting the following subsection after subsection (3):
 - (4) The Regulator may only approve the draft standing offer prices, that are to be fixed by a regulated offer retailer under section 40 in accordance with a determination that specifies, in accordance with regulations made for the purposes of section 40AC, a pricing structure for such prices, if the

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 15

prices are in accordance with the
pricing structure.

15. Section 43A amended (Regulator may charge for certain expenses)

Section 43A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Aurora Retail” first occurring and substituting “a regulated offer retailer”;
- (b) by omitting from subsection (1)(a)(i) “tariff or charge” twice occurring and substituting “standing offer price”;
- (c) by omitting from subsection (1)(a)(ii) “Aurora Retail” and substituting “the regulated offer retailer”;
- (d) by omitting from subsection (1)(a)(iii) “to non-contestable customers by Aurora Retail” and substituting “under standard retail contracts with the regulated offer retailer”;
- (e) by omitting from subsection (1)(b) “Aurora Retail” and substituting “the regulated offer retailer”;
- (f) by omitting from subsection (2) “Aurora Retail” first occurring and substituting “a regulated offer retailer”;

Electricity Reform (Implementation) Act 2013
Act No. of

s. 16

Part 2 – Electricity Supply Industry Act 1995 Amended

- (g) by omitting from subsection (2) “Aurora Retail” second occurring and substituting “the regulated offer retailer”;
- (h) by omitting from subsection (3) “Aurora Retail” first occurring and substituting “A regulated offer retailer”;
- (i) by omitting from subsection (3) “Aurora Retail” second occurring and substituting “the regulated offer retailer”;
- (j) by omitting from subsection (4) “Aurora Retail” first occurring and substituting “a regulated offer retailer”;
- (k) by omitting from subsection (4) “Aurora Retail” second occurring and substituting “the regulated offer retailer”.

16. Part 3, Division 4, Subdivision 3: Heading inserted

Division 4 of Part 3 of the Principal Act is amended by inserting the following heading after section 43B:

Subdivision 3 – Community service obligation concessions

17. Sections 43C, 43D, 43E and 43F inserted

After section 43B of the Principal Act, the following sections are inserted in Subdivision 3:

43C. Interpretation of this Subdivision

In this Subdivision –

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 17

concession means a concession specified in a concession order;

concession order means an order made under section 43D;

eligible person means a person who is a member of a class of eligible persons specified in a concession order to be a class of eligible persons;

relevant period means the period during which the user cost for which a concession is sought was incurred;

user cost means an amount payable (including any interest) in respect of electricity supplied to residential premises.

43D. Concession orders

- (1) The Minister, by order, may determine –
 - (a) the class or classes of persons, members of which are to be eligible persons; and
 - (b) the concessions in relation to those user costs that are payable by members of the class of eligible persons specified in the order; and

Electricity Reform (Implementation) Act 2013
Act No. of

s. 17

Part 2 – Electricity Supply Industry Act 1995 Amended

- (c) that authorised retailers are required to provide those concessions to those persons.
- (2) A concession specified in a concession order may be expressed –
 - (a) as a pro rata reduction of the user cost to which it applies; or
 - (b) as an amount that is payable in respect of, or that is to be deducted from, the user cost to which the order applies in relation to a particular period; or
 - (c) in any other manner.
- (3) Without limiting the subject matter or content of a concession order, a concession order may –
 - (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstance; and
 - (c) be expressed to apply subject to conditions specified in the order; and
 - (d) specify the manner in which an application for the granting of a concession in relation to a particular user cost may be made.

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 17

(4) If a concession order applies in relation to a user cost, an authorised retailer –

(a) to which the order applies; and

(b) that imposes the user cost on an eligible person to whom the order applies –

must provide the concession to the eligible person.

Penalty: Fine not exceeding 200 penalty units.

(5) A concession order takes effect –

(a) on the date that notice of the making of the order is published in the *Gazette* in accordance with the *Rules Publication Act 1953*; or

(b) if a later date is specified in the concession order, on that later date.

(6) The Minister, by order, may revoke a concession order from the date specified in the revoking order as the date on which the concession is revoked.

(7) Nothing in any law of Tasmania prevents the transfer, to an authorised retailer to whom a concession order relates, of information in relation to a customer in respect of whom a contract was

Electricity Reform (Implementation) Act 2013
Act No. of

s. 17

Part 2 – Electricity Supply Industry Act 1995 Amended

transferred to the retailer in accordance with the *Electricity Reform Act 2012*, if the information –

- (a) was held by a person with whom the contract was made before the contract was so transferred; and
 - (b) is required for the purpose of determining whether the retailer must provide the concession to the customer or the amount of such a concession that must be so provided.
- (8) The Minister is to provide to each authorised retailer that retails electricity in the State a copy of each order made under this section.

43E. Community service obligation agreements

- (1) The Minister may enter into a community service obligation agreement with an authorised retailer.
- (2) A community service obligation agreement with an authorised retailer is an agreement that sets out the circumstances, and the manner, in which –
 - (a) the retailer will comply with a concession order that applies to the retailer; and

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

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- (b) the Minister will reimburse to the retailer the amount of the concessions granted in accordance with the concession order.
 - (3) An agreement entered into under subsection (1) is for the period, and is subject to the terms and conditions, determined by the parties to the agreement.

43F. Reimbursement of concessions

- (1) The Minister must ensure that an authorised retailer is reimbursed by the State for the concessions granted by the retailer in accordance with a concession order.
- (2) If there is an agreement entered into with an authorised retailer under section 43E(1), the reimbursement to the authorised retailer is to be in accordance with the agreement.

18. Part 3, Division 4A inserted

After section 43B of the Principal Act, the following Division is inserted in Part 3:

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

Division 4A – Wholesale electricity pricing and contracts
Subdivision 1 – Approvals

43G. Approvals in relation to certain contracts of Hydro-Electric Corporation

- (1) The Regulator must approve –
- (a) a type of contract relating to managing the financial risks associated with the purchase of electricity supplied, or to be supplied, to an authorised retailer in the national electricity market; and
 - (b) a standard form, or standard forms, in relation to the type of contract specified in the approval; and
 - (c) a methodology for the calculation of prices in contracts that are in a standard form specified in the approval; and
 - (d) a total period, in contracts that are in a standard form specified in the approval, for which an authorised retailer may elect to have such a contract apply to prices for electricity; and
 - (e) a formula, rules or methodology for determining the minimum total quantity of units of

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

electricity in respect of the type
of contract specified in the
approval.

- (2) For the avoidance of doubt, a formula, rules or methodology approved under subsection (1)(e) may take into account contracts, relating to the management of financial risks, entered into in Tasmania by the Hydro-Electric Corporation that are not in an approved standard form.
- (3) The Regulator must, in an approval under subsection (1), declare to be an approved type of contract a load following swap contract.
- (4) The Regulator may revoke an approval under subsection (1).
- (5) Without limiting subsection (4), the Regulator may revoke an approval under subsection (1) if the Regulator is of the opinion that the approval has ceased to reflect any of the principles specified in section 43H.
- (6) The regulations may make provision in relation to –
 - (a) the approval by the Regulator of matters under subsection (1); and
 - (b) the revocation of an approval made under subsection (1); and

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

- (c) the charging to an electricity entity of costs incurred by the Regulator in exercising the Regulator's powers under this Division or regulations for the purposes of this Division.
- (7) If regulations are made in relation to the making of approvals or revocation under this section, such approvals or revocations must be made in accordance with the regulations.
- (8) If the Regulator makes or revokes an approval under this section –
 - (a) the Regulator is to provide a copy of the approval or revocation to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State; and
 - (b) the Regulator is to publish a copy of the approval or revocation on a website of the Regulator and to ensure such a copy remains on the website –
 - (i) while the approval remains in force; or
 - (ii) in the case of a revocation of an approval, for at least 6 months after the revocation comes into force.

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

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- (9) An approval under subsection (1) remains in force for the period determined in accordance with the regulations.
 - (10) The making of an approval under subsection (1) or a revocation under subsection (4) of such an approval does not affect the validity or operation of a contract, in an approved standard form, that was entered into before the approval or revocation came into force.

43H. Principles to be taken into account in approvals

- (1) In determining whether to approve a type of contract under section 43G(1), the Regulator must take into account the following principles:
 - (a) the principle that authorised retailers should have a choice of different types of contracts to enter into with the Hydro-Electric Corporation;
 - (b) the principle that a type of contract ought to be, as far as reasonably practicable, of a type of contract generally used in the national electricity market.
- (2) In determining whether to approve a standard form under section 43G(1) in relation to a type of contract to be

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

specified in an approval, the Regulator must take into account the following principles:

- (a) the principle that the terms and conditions of the approved standard form should be generally similar to those offered in contracts, of the type of contract, used in the national electricity market;
 - (b) the principle that the total period referred to in section 43G(1)(d) should be of a duration similar to that generally used, for the purpose specified in that paragraph, in contracts in the national electricity market.
- (3) In determining whether to approve a methodology to be used for the calculation of prices in contracts that are in an approved standard form in relation to an approved type of contract, the Regulator must take into account the principle that –
- (a) prices in such contracts should be based upon the price in contracts that –
 - (i) relate to managing the financial risks associated with the wholesale purchase of electricity in

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

the Victorian region of the
national electricity
market; and

- (ii) are of the approved type
of contract –

as adjusted to accommodate any
estimation by the Regulator of the
effect of the difference between
the supply of, and demand for,
electricity in Tasmania after the
approval is made; and

- (b) prices in such contracts should
reflect the risks, to an authorised
retailer that enters into a contract
that is in an approved standard
form in relation to an approved
type of contract, of variations in
the demand for, or supply of,
electricity in Tasmania that the
retailer is required to provide
under standard retail contracts
with small customers.

Subdivision 2 – Contracts

**43I. Approved standard form contracts to be
offered to authorised retailers**

The Hydro-Electric Corporation must –

- (a) offer, to each authorised retailer
that retails electricity in the State,

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

each approved financial risk contract; and

- (b) at the request of an authorised retailer that retails electricity in the State, enter into an approved financial risk contract with the retailer.

Penalty: Fine not exceeding 1 000 penalty units.

43J. Certain contracts not required to be offered, &c., if requirements as to risk not met

- (1) The Hydro-Electric Corporation may submit to the Regulator an instrument setting out the requirements, relating to the risk to the Corporation of financial loss arising from an authorised retailer failing to meet its obligations under a contract that may be entered into in accordance with section 43I, that are to be satisfied by an authorised retailer in order for section 43I to apply in relation to the authorised retailer.
- (2) The Regulator, by notice to the Hydro-Electric Corporation, may approve, or refuse to approve, the requirements set out in an instrument submitted to the Regulator under subsection (1).
- (3) It is a defence to a charge of an offence against section 43I of failing to offer to an authorised retailer an approved

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

financial risk contract, or failing to enter into an approved financial risk contract with an authorised retailer, if the Hydro-Electric Corporation establishes that the authorised retailer did not, at the time of the failure, satisfy the requirements set out in an instrument approved under subsection (2).

43K. Certain contracts not required to be offered, &c., if minimum volume would be exceeded

- (1) It is a defence to a charge of an offence against section 43I of failing, at a particular time –
 - (a) to offer to an authorised retailer an approved financial risk contract; or
 - (b) to enter into an approved financial risk contract with an authorised retailer –

if the Hydro-Electric Corporation establishes that the minimum electricity unit volume in relation to the contract would have been exceeded at the particular time.

- (2) For the purposes of subsection (1), the minimum electricity unit volume in relation to an approved financial risk contract would have been exceeded at a particular time if –

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

- (a) the contract would have been in one of the approved standard forms in relation to a type of contract specified in an approval under section 43G(1); and
- (b) the contract would have related to a period, specified in accordance with section 43G(1)(d), in the approval; and
- (c) had the contract been entered into at the particular time, it would have related to a number of units of electricity, that, if added together to the total number of units of electricity to which any other contracts that –
 - (i) were in any of the approved standard forms specified in the approval; and
 - (ii) had been entered into before the particular time and related to the period referred to in paragraph (b) –

related would have exceeded the minimum total quantity of units of electricity as determined in accordance with the formula, rules or methodology specified in

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

the approval in accordance with
section 43G(1)(e).

- (3) If a minimum total quantity of units of electricity is specified, in accordance with section 43G(1)(e), in an approval under section 43G(1) in relation to an approved type of contract, the Hydro-Electric Corporation must, at the request of an authorised retailer, provide to the authorised retailer accurate information as to the total number of units of electricity to which any other approved financial risk contracts that –
- (a) are in any of the approved standard forms in relation to that type of contract; and
 - (b) have been entered into with the Corporation in respect of the period specified, in accordance with section 43G(1)(d), in the approval –

relate at the time at which the request is made.

Penalty: Fine not exceeding 200 penalty units.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

Subdivision 3 – Price monitoring

43L. Application of approved methodologies

- (1) The Regulator must publish guidelines that set out the process to be followed by the Hydro-Electric Corporation in applying an approved methodology in a contract that is in an approved standard form.
- (2) The Hydro-Electric Corporation, in applying an approved methodology in a contract that is in an approved standard form, is to comply with any guidelines published under subsection (1).
- (3) The Regulator is to monitor and report on –
 - (a) the offering, and entering into, by the Hydro-Electric Corporation, of contracts in accordance with section 43I; and
 - (b) the calculation of prices, to be charged by the Hydro-Electric Corporation in accordance with an approved methodology, in a contract that is in an approved standard form.

43M. Regulator may approve fixing of prices in certain circumstances

- (1) If the Regulator is satisfied that there has been a significant, deliberate or repeated failure by the Hydro-Electric Corporation to correctly apply an approved methodology in the calculation of prices to be applied in contracts that –
 - (a) are in an approved standard form to which the approved methodology relates; and
 - (b) the Hydro-Electric Corporation is, in accordance with section 43I, required to offer to an authorised retailer –

the Regulator may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, approve the fixing by the Regulator, under the approval, of prices in such contracts.

- (2) If the Regulator is of the opinion that a supply disruption event has occurred, the Regulator, after consulting with the Treasurer, may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, approve the fixing by the Regulator, under the approval, of prices in contracts that the Hydro-Electric Corporation is, in

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

accordance with section 43I, required to offer to an authorised retailer.

- (3) For the purposes of subsection (2), a ***supply disruption event*** is an event (other than drought) that, in the opinion of the Regulator, is likely to cause a prolonged interruption to a substantial quantity of the electricity that would otherwise be supplied under normal circumstances by the Hydro-Electric Corporation.
- (4) The Regulator may revoke an approval under this section.
- (5) The regulations may make provision in relation to the making or revocation of an approval under this section.
- (6) If the regulations make provision in relation to the making or revocation of an approval under this section, an approval under this section, and a revocation of an approval under this section, must be made in accordance with the regulations.
- (7) An approval under this section, or the revocation of an approval under this section, does not affect the validity or operation of a contract that was entered into before the approval or revocation came into force.

43N. Fixing of prices by Regulator

- (1) If an approval is made under section 43M(1) in respect of prices in mandatory contracts that are in an approved standard form, the Regulator may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, fix the prices in respect of mandatory contracts that are in that approved standard form.
- (2) Prices fixed by the Regulator under subsection (1) in respect of mandatory contracts in an approved standard form are to be calculated by the Regulator in accordance with the approved methodology in relation to contracts that are in that approved standard form.
- (3) If an approval is made under section 43M(2) in respect of prices in mandatory contracts, the Regulator may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, fix the prices in respect of mandatory contracts.
- (4) Prices fixed by the Regulator under subsection (3) in respect of mandatory contracts are not required to be calculated by the Regulator in accordance with the approved methodology in relation to contracts that are in an approved standard form.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 18

Part 2 – Electricity Supply Industry Act 1995 Amended

- (5) The Regulator may revoke a notice issued under subsection (1) or (3).
- (6) If the Regulator, in accordance with an approval under section 43M, fixes, under subsection (1) or (3), the prices in respect of mandatory contracts, section 43I applies in relation to such contracts offered or entered into by the Hydro-Electric Corporation while the approval and the notice remain in force, as if any reference in this Division, including section 43I, to prices calculated in accordance with an approved methodology were a reference to the prices so fixed.
- (7) The regulations may make provision in relation to the fixing of prices under this section.
- (8) If regulations are made in relation to the fixing of prices under this section, the fixing of prices under this section must be made in accordance with the regulations.
- (9) The issue under this section of a notice fixing a price in contracts, or a revocation of such a notice, does not affect the validity or operation of a contract that was entered into before the issue or revocation.
- (10) In this section –

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 18

mandatory contract means a contract that –

- (a) is in an approved standard form; and
- (b) the Hydro-Electric Corporation is, in accordance with section 43I, required to offer to an authorised retailer.

Subdivision 4 – Transitional matters

43O. Transitional provisions in relation to approvals under this Division

- (1) The Minister may, in the first 6 months after this Division commences, make or revoke an approval under this Division as if the Minister were the Regulator.
- (2) The regulations may make provision in relation to the exercise by the Minister, as if the Minister were the Regulator, of the powers of the Regulator to make or revoke an approval under this Division.
- (3) If the regulations make provision in relation to the exercise by the Minister, as if the Minister were the Regulator, of the powers of the Regulator to make or revoke an approval under this Division, the Minister must exercise the power in accordance with those regulations.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 19

Part 2 – Electricity Supply Industry Act 1995 Amended

- (4) If regulations are made for the purposes of this section, regulations made for the purposes of another section in this Division, in relation to the exercise by the Regulator of the Regulator's powers under the section to make or revoke an approval under this Division, do not apply in relation to the Minister, except as may be provided in the regulations made for the purposes of this section.

19. Section 49B amended (Review, amendment and replacement of Code)

Section 49B(4) of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

- (ea) facilitating the application of the *Electricity Reform Act 2012* and the *Electricity Reform (Implementation) Act 2013*;

20. Section 49I inserted

After section 49H of the Principal Act, the following section is inserted in Division 10:

49I. Certain instruments not statutory rules

An instrument, declaration, determination, approval, notice or report made under this Part or under regulations made for the purposes of this Part, other than an order by the Minister, is not a

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 21

statutory rule for the purposes of the
Rules Publication Act 1953.

21. Section 119A inserted

After section 119 of the Principal Act, the following section is inserted in Division 6:

119A. Entry into certain agreements is authorised

Nothing in any law of Tasmania is to be taken to prevent a Minister entering into an agreement, arrangement or contract under which, or in relation to which, a Minister agrees to subsequently –

- (a) make an order or approval under Division 4 or 4A of Part 3; or
- (b) take steps for the making of regulations under this Act for the purposes of Division 4 or 4A of Part 3 –

and accordingly –

- (c) a Minister is, for the purpose of carrying out or giving effect to that agreement, arrangement or contract, authorised to make such an order or approval or take such steps for the making of regulations under this Act for the purposes of Division 4 or 4A of Part 3; and

Electricity Reform (Implementation) Act 2013
Act No. of

s. 22

Part 2 – Electricity Supply Industry Act 1995 Amended

- (d) the Governor is authorised to make any such regulations.

22. Section 121AA inserted

After section 121 of the Principal Act, the following section is inserted in Division 6A:

121AA. Costs of transfer of prepayment meter customers recoverable from distributor

- (1) An authorised retailer may give to the distributor in respect of the authorised retailer a notice specifying –
- (a) the costs incurred by the retailer in relation to the termination, under the National Energy Retail Law (Tasmania), of a prepayment meter market retail contract; and
 - (b) the day, not being a day that is less than 30 days after the day on which the notice is given, by which the distributor is to pay the costs to the retailer.
- (2) If a notice is given to a distributor under subsection (1), the costs specified in the notice in accordance with subsection (1)(a) are due and payable by the distributor on the day specified in the notice in accordance with subsection (1)(b).
- (3) In this section –

Electricity Reform (Implementation) Act 2013
Act No. of

Part 2 – Electricity Supply Industry Act 1995 Amended

s. 23

prepayment meter market retail contract has the same meaning as it has in the National Energy Retail Law (Tasmania).

23. Section 122 amended (Regulations)

Section 122 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2A)(a) “for the purposes of Division 4 or 4A of Part 3” after “retailers”;
- (b) by inserting in subsection (2A)(b) “, for the purposes of Division 4 or 4A of Part 3,” after “determinations”;
- (c) by omitting subsection (2BAA);
- (d) by omitting subsections (2BC) and (2BD);
- (e) by omitting from subsection (2BE) “referred to in subsection (2A)(b)”;
- (f) by inserting the following paragraph after paragraph (bd) in subsection (2C):
 - (be) the *Electricity Reform (Implementation) Act 2013*;

Electricity Reform (Implementation) Act 2013
Act No. of

s. 24

Part 3 – National Energy Retail Law (Tasmania) Act 2012 Amended

**PART 3 – NATIONAL ENERGY RETAIL LAW
(TASMANIA) ACT 2012 AMENDED**

24. Principal Act

In this Part, the *National Energy Retail Law (Tasmania) Act 2012** is referred to as the Principal Act.

25. Section 15 amended (Interpretation)

Section 15 of the Principal Act is amended by omitting the definition of *Aurora Retail*.

26. Section 17A inserted

After section 17 of the Principal Act, the following section is inserted in Part 4:

17A. Modification of provisions of Law to apply to regulated offer retailers

- (1) In section 2 of the South Australian Energy Retail Law, as that Law applies as a law of this jurisdiction, the definition of *designated retailer* is to be taken to be substituted by the following definition:

designated retailer for a small customer's premises means –

*No. 11 of 2012

Electricity Reform (Implementation) Act 2013
Act No. of

Part 3 – National Energy Retail Law (Tasmania) Act 2012 Amended

s. 26

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- (a) if there is no existing connection for the premises – the regulated offer retailer in respect of the premises; or
 - (b) if there is an existing connection for the premises (including where a connection alteration to an existing connection is required) –
 - (i) the financially responsible retailer for the premises; and
 - (ii) the regulated offer retailer in respect of the premises;
 - (2) In section 2 of the South Australian Energy Retail Law, as that Law applies as a law of this jurisdiction, the following definition is to be taken to be inserted after the definition of *regulated entity*:

regulated offer retailer, in respect of premises, means the authorised retailer that is the regulated offer retailer in respect of the premises by virtue of an order made under section 38B of the *Electricity Supply Industry Act 1995*;
 - (3) In section 11 of the South Australian Energy Retail Law, as that Law applies as a law of this jurisdiction, for

Electricity Reform (Implementation) Act 2013
Act No. of

s. 27

Part 3 – National Energy Retail Law (Tasmania) Act 2012 Amended

subsection (1) there is to be substituted the following subsection:

- (1) An order made under section 38C of the *Electricity Supply Industry Act 1995* must nominate a regulated offer retailer as a local area retailer for this jurisdiction for the purposes of this Law.
- (4) In section 54 of the South Australian Energy Retail Law, as that Law applies as a law of this jurisdiction, after subsection (6) there is to be inserted the following subsection:
 - (7) As soon as practicable after becoming aware that a small customer is consuming energy under a deemed customer retail arrangement, the financially responsible retailer for the premises must advise the customer of the customer's right to enter into, with the regulated offer retailer in respect of the premises, a standard retail contract containing standing offer prices.

Electricity Reform (Implementation) Act 2013
Act No. of

Part 3 – National Energy Retail Law (Tasmania) Act 2012 Amended

s. 27

27. Section 18 amended (Standing offer prices)

Section 18 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Aurora Retail” and substituting “a regulated offer retailer”;
- (b) by omitting from subsection (1) “tariffs and charges” and substituting “standing offer prices”;
- (c) by omitting from subsection (2)(b) “Aurora Retail” and substituting “a regulated offer retailer”;
- (d) by omitting from subsection (2)(c) “tariffs and charges” and substituting “standing offer prices”;
- (e) by omitting from subsection (2) “tariffs and charges” second occurring and substituting “standing offer prices”;
- (f) by inserting the following subsection after subsection (2):

(3) In this section –

regulated offer retailer means
a person declared to be a
regulated offer retailer in
an order made under
section 38A(1) of the
Electricity Supply
Industry Act 1995.

Electricity Reform (Implementation) Act 2013
Act No. of

s. 28

Part 4 – Concluding Provisions

PART 4 – CONCLUDING PROVISIONS

28. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.