

TASMANIA

ELECTRICITY SUPPLY INDUSTRY EXPERT PANEL BILL 2010

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SCHEDULE 1 – MEMBERSHIP OF ELECTRICITY SUPPLY INDUSTRY EXPERT PANEL

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ELECTRICITY SUPPLY INDUSTRY EXPERT PANEL BILL 2010

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

A BILL FOR

**An Act to establish the Electricity Supply Industry Expert
Panel to conduct a review into the electricity supply
industry and for related matters**

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 Supply
Industry Expert Panel Act 2010*.

2. Commencement

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

3. Interpretation

In this Act, unless the contrary intention
appears –

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Part 1 – Preliminary

“hearing” means a hearing referred to in section 7(2);

“Panel” means the Electricity Supply Industry Expert Panel established under section 4;

“review” means the review into the electricity supply industry in this State referred to in section 6;

“terms of reference” means the terms of reference issued by the Treasurer for the review.

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**PART 2 – ELECTRICITY SUPPLY INDUSTRY
EXPERT PANEL**

4. Electricity Supply Industry Expert Panel

The Electricity Supply Industry Expert Panel is established.

5. Membership of Panel

- (1) The Panel consists of 3 persons who have knowledge, expertise and experience in all or any of the following:
 - (a) the electricity supply industry;
 - (b) conducting regulatory investigations into the electricity supply industry;
 - (c) business and governance.
- (2) The members of the Panel are to be appointed by the Governor.
- (3) The Governor is to appoint a member of the Panel as chairperson of the Panel.
- (4) Schedule 1 has effect with respect to the membership of the Panel.
- (5) Schedule 2 has effect with respect to the meetings of the Panel to conduct the review.

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6. Function of Panel

The function of the Panel is to conduct a review into the electricity supply industry in this State in accordance with the terms of reference.

7. Powers of Panel

- (1) In addition to any other powers that are conferred on the Panel under this Act, the Panel has power to do all things reasonably necessary or convenient to be done in connection with the performance of its function.
- (2) For the purpose of carrying out the Panel's function, the Panel is to hold hearings.

8. Notice of review

- (1) The Panel is to give notice of the review in such daily newspapers published and circulating generally in the State as the Panel considers necessary.
- (2) The notice is to specify –
 - (a) the purpose of the review; and
 - (b) the period within which, and the form in which, submissions may be made to the Panel; and
 - (c) the matters that the Panel would like submissions to address; and

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- (d) how copies of the terms of reference may be obtained.

9. Conduct of review

- (1) The Panel is to conduct the review in accordance with the terms of reference.
- (2) The Panel is to consider any written or oral submissions received by it.
- (3) Subject to this Act and the terms of reference, the Panel may conduct the review in such manner as it considers necessary and may –
 - (a) consult with any person; and
 - (b) conduct such inquiries and investigations as it considers necessary.
- (4) In conducting the review, the Panel is not bound by the rules of evidence but may inform itself of any matter in such manner as it considers appropriate.

10. Hearings

- (1) Before holding a hearing, the Panel is to give reasonable notice of the hearing in such daily newspapers published and circulating generally in the State as the Panel considers necessary.
- (2) The notice of the hearing is to specify –
 - (a) the purpose of the hearing; and

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- (b) the times and place at which the hearing is to be held.
- (3) A hearing is to be held in public.
- (4) For the purposes of this Act, a hearing is taken to be a meeting of the Panel.
- (5) Despite subsection (3), if the Panel is satisfied that it would be in the public interest to do so or that evidence to be presented is, or is likely to be, of a confidential or commercially sensitive nature, the Panel is to –
 - (a) direct that a hearing or part of a hearing is to be held in private and give directions as to the persons who may be present; and
 - (b) give directions prohibiting or restricting the publication of evidence given, or documents produced, at the hearing.
- (6) A person must not contravene a direction given under subsection (5)(b).

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 6 months, or both.

11. Power to obtain information

- (1) The Panel may direct a person to do all or any of the following:

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- (a) to provide the Panel with any information or explanation that the Panel requires;
 - (b) to attend and give evidence before the Panel as may be required by the Panel;
 - (c) to produce to the Panel any documents in the custody or under the control of the person.
 - (2) The Panel may direct that –
 - (a) the information, explanation or answers to questions be given either orally or in writing (as the Panel requires); and
 - (b) the information, explanation or answers to questions be verified or given on oath or affirmation that the information or evidence the person will give will be true.
 - (3) The Panel may administer an oath or affirmation for the purposes of this section.
 - (4) A person who, without reasonable excuse, fails to comply with a direction under this section within 14 days of receiving it is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.
 - (5) A person who is required under subsection (1) to attend under this section is entitled to be paid such expenses (if any) as the Panel considers reasonable.

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12. General procedure

Except as provided by this Act, the Panel may regulate its own procedure.

13. Duty to give information overrides other duties and rights

- (1) A person is not excused from giving information or an explanation, answering a question or producing a document under section 11 on the ground that the information, explanation or answer, or the production of the document, might tend to incriminate the person.
- (2) A person must give information or an explanation, answer a question or produce a document as required under section 11 despite any duty of secrecy or confidentiality that the person has under any law of the State, and the person does not commit an offence under any law of the State by doing so.
- (3) If a person gives information or an explanation, answers a question or produces a document under section 11 –
 - (a) the giving of the information or explanation, answering of the question or production of the document; or
 - (b) anything obtained as a direct or indirect result of the giving of the information or explanation, answering of the question or production of the document –

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is not admissible in evidence against that person in any civil or criminal proceedings, except –

- (c) proceedings for an offence against this Act; or
- (d) proceedings under Chapter XII of Part III of the *Criminal Code*.

14. Panel not subject to direction or control of Minister of the Crown

The Panel is not subject to the direction or control of a Minister of the Crown in respect of the performance or exercise of its function or powers.

15. Persons to assist Panel

- (1) The Panel may make arrangements with the Secretary of the responsible Department in relation to the *Administrative Arrangements Act 1990* –
 - (a) for the provision of services and facilities for the review; and
 - (b) for persons to be engaged or made available to assist in the review.
- (2) A person employed under the *State Service Act 2000* may be made available under subsection (1) and may serve the Panel in conjunction with State Service employment.

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- (3) If a person is engaged or made available under subsection (1), the Panel, by written notice, is to authorise the person to perform the function and exercise the powers under this Act as specified in the notice.

PART 3 – MISCELLANEOUS

16. Confidential or commercially sensitive information

A member of the Panel or a person who has been a member of the Panel or any person who is, or has been, engaged or made available to assist the Panel (“an assistant”) must not disclose to any person information acquired in the course, or as a result, of carrying out the function of the Panel, if that information, in the opinion of the Panel, is confidential or commercially sensitive and, at the time it is provided to the Panel or an assistant, the person providing it states that it is of a confidential or commercially sensitive nature.

Penalty: Fine not exceeding 500 penalty units.

17. Protection from liability

- (1) A member of the Panel is not personally liable in respect of any act done or omitted to be done by the member in good faith in the performance or exercise, or purported performance or exercise, of any function or powers arising from his or her function as a member.
- (2) No civil or criminal proceedings lie in respect of any action done, or omission made, in good faith in the performance or exercise, or intended performance or exercise, by a member of the Panel or any person engaged or made available to assist the Panel, of any function or powers

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arising from his or her function as a member or such a person.

18. False or misleading statements

A person must not, in giving information to the Panel –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading; or
- (c) provide a document that the person knows to be false or misleading without informing the person to whom the document is provided of that knowledge.

Penalty: Fine not exceeding 100 penalty units.

19. Hindering, obstructing, &c., Panel

A person must not hinder, obstruct or interfere with the Panel or a member of the Panel in the performance or exercise of its, his or her function or powers under this Act.

Penalty: Fine not exceeding 100 penalty units.

20. Reports

- (1) The Panel is to prepare a draft report in respect of the review and make the draft report publicly available.
- (2) A person is entitled to make a submission to the Panel in respect of the draft report.
- (3) After considering any submission made to it, the Panel is to prepare a final report in respect of the review and give the final report to the Treasurer and the Minister administering the *Energy Co-ordination and Planning Act 1995*.
- (4) The final report of the Panel is to be consistent with the terms of reference.
- (5) The Treasurer is to cause a copy of the Panel's final report to be laid before each House of Parliament within 14 days of receiving the final report.
- (6) If the Treasurer is unable to comply with subsection (5) because a House of Parliament is not sitting, the Treasurer is to –
 - (a) within 14 days of receiving the final report, provide a copy of the final report to the clerk of that House; and
 - (b) within the first 6 sitting-days after the copy of the final report is given to the clerk under paragraph (a), cause a copy of the final report to be laid before that House.

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Part 3 – Miscellaneous

21. Right to Information Act does not apply

The *Right to Information Act 2009* does not apply to information, as defined in that Act, in the possession of the Panel.

22. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by any person specified in the regulations.

23. Administration of Act

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

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

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24. Repeal of Act

This Act is repealed 2 years from the day on which it commences.

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**SCHEDULE 1 – MEMBERSHIP OF ELECTRICITY
SUPPLY INDUSTRY EXPERT PANEL**

Section 5(4)

1. Interpretation

In this Schedule –

“member” means a member of the Panel.

2. Term of office

A member is appointed for such period, not exceeding 2 years, as is specified in the member’s instrument of appointment.

3. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the functions of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A State Service officer or State Service employee is not to be a member of the Panel.

5. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as are specified in the member's instrument of appointment.
- (2) A member holds office on such terms and conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Resignation

A member may resign office by written notice given to the Governor.

7. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns; or

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- (c) is removed from office under subclause (2) or (3).
- (2) The Governor may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Panel without the permission of the Panel; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 2 years or longer; or
 - (d) fails to disclose a pecuniary interest under clause 7 of Schedule 2.
- (3) The Governor may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

8. Filling of vacancies

If the office of a member becomes vacant, the Governor, by notice in the *Gazette*, may appoint a person to the vacant office for the remainder of the term of office of the member.

9. Validation of proceedings

- (1) An act or proceeding of the Panel or of a person acting under any direction of the Panel is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Panel or of a person acting under a direction of the Panel are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Panel had been fully constituted.

10. Presumptions

In any proceeding by or against the Panel, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Panel; or
- (b) the appointment of any member.

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**SCHEDULE 2 – MEETINGS OF ELECTRICITY
SUPPLY INDUSTRY EXPERT PANEL**

Section 5(5)

1. Interpretation

In this Schedule –

“member” means a member of the Panel.

2. Convening of meetings

The chairperson of the Panel is to convene such meetings of the Panel as are necessary for the efficient conduct of its function.

3. Presiding at meetings

- (1) The chairperson of the Panel is to preside at all meetings of the Panel at which he or she is present.
- (2) If the chairperson of the Panel is not present at a meeting of the Panel, another member is to preside.

4. Quorum and voting at meetings

- (1) Two members constitute a quorum at a meeting of the Panel.

- (2) A meeting of the Panel at which a quorum is present is competent to transact any business of the Panel.
- (3) The person presiding at a meeting of the Panel has a deliberative vote.

5. Conduct of meetings

- (1) Subject to this Act, the Panel may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Panel may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Panel.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Panel may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

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6. Minutes

The Panel is to keep accurate minutes of its meetings.

7. Disclosure of interests

- (1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the Panel at a meeting of the Panel, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Panel.
- (2) The disclosure is to be recorded in the minutes of the Panel and, unless the Panel otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –
 - (a) be present during any deliberation of the Panel in relation to the matter; or
 - (b) take part in any decision of the Panel in relation to the matter.
- (3) For the purpose of the making of a determination under subclause (2), the member to whom the matter relates must not –
 - (a) be present during any deliberation of the Panel for the purpose of making the determination; or
 - (b) take part in making the determination.

8. Presumptions

In any proceeding by or against the Panel, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Panel; and
- (b) the presence of a quorum at any meeting of the Panel.