

Notes on Clauses

**Electricity Reform Bill 2012**

**PART I PRELIMINARY**

- Clause 1 Specifies the title of the Act.
- Clause 2 The Act commences upon Royal Assent.
- Clause 3 Provides that the provisions of the Act override the provisions of other legislation that applies to State-owned electricity entities, if there are inconsistencies. This ensures that the reform process is not inadvertently constrained by the provisions of existing legislation.
- Clause 4 Defines key terms used in the Act.

**PART 2 ELECTRICITY REFORMS GENERALLY**

*Division 1 - Electricity reform objectives and measures*

This Division defines the objectives of the electricity reforms and the measures that can be taken to implement the reforms, which limits the Ministerial Powers prescribed in the Act to those actions required to achieve the electricity reform objectives and measures.

- Clause 5 Details the objectives of the electricity reforms.
- Clause 6 Outlines the measures that may be taken to achieve the electricity reform objectives and also provides for other measures, which may be required, to be taken to achieve the reform objectives.

*Division 2 - Ministerial responsibility for electricity reform*

This Division provides the necessary powers for the shareholding Ministers to take actions and give directions to the State-owned electricity entities only for the purpose of implementing the reforms. The powers cannot be exercised after 30 June 2015.

Directors, officers, employees and agents of a State-owned electricity entity are indemnified from any breach of duties in complying for the reforms, provided the action was taken in good faith.

- Clause 7 Allows the shareholding Ministers to take actions that are necessary to achieve the electricity reform objectives or implement the electricity reform measures. This Clause details the typical actions that may be taken by the shareholding Ministers under this Act to achieve the reform objectives.

- Clause 8 Authorises the shareholding Ministers to issue a direction to a State-owned electricity entity for the purpose of implementing the reforms. A direction can be in the form of requiring a State-owned electricity entity to undertake specific actions or to take any steps necessary to comply with the direction.
- A direction to a State-owned electricity entity may require that entity to direct a subsidiary to take, or cease taking, an action.
- Where the shareholding Ministers direct an State-owned electricity entity to direct one of its subsidiaries, the Board of the State-owned electricity entity may direct the subsidiary to take, or cease taking, an action as part of complying with a direction from the shareholding Ministers.
- A State-owned electricity entity, or a subsidiary, is to comply with any direction issued to it.
- The details of any direction given to a State-owned electricity entity is to be published in the Annual Report of the relevant entity.
- Clause 9 Subclause (1) defines that a person who receives information under this section must be authorised by the Treasurer.
- The Treasurer may direct a person to provide to the Electricity Reform Co-ordinator, which is established under Part 3 of this Act, any information in their possession that was provided to, or produced by, the Electricity Supply Industry Expert Panel. A person issued with a direction must comply with it.
- The Electricity Reform Co-ordinator can only provide any information obtained under this section to an authorised person/s for the purposes of assisting the implementation of the reforms.
- Authorised persons can only use information received for the purposes of implementing the reforms, and cannot provide the information to anyone other than another authorised person.
- Clause 10 Subclause (1) defines that a relevant person for the purpose of this Section includes Board members, the Chief Executive Officer, other officers, agents and employees of a State-owned electricity entity.
- Subclause (2) provides an indemnity to relevant persons for compliance with a direction from the shareholding Ministers.
- Subclause (3) provides an indemnity to a person who provides Expert Panel information to the Electricity Reform Co-ordinator under a direction from the shareholding Ministers.
- Subclause (4) indemnifies persons for using the Expert Panel information that has been provided to them following a direction from the shareholding Ministers.
- Clause 11 The period under which the shareholding Ministers can issue directions under the Act to State-owned electricity entities is limited to the period from commencement of the Act until 30 June 2015.

## **PART 3            ELECTRICITY REFORM CO-ORDINATOR**

Part 3 creates the Statutory office of Electricity Reform Co-ordinator. The Electricity Reform Co-ordinator will have the power to obtain information and assistance from the State-owned electricity entities in order to facilitate the implementation of the electricity reforms.

Clause 12            The office of Electricity Reform Co-ordinator is created and exists until 30 June 2015.

The office of Electricity Reform Co-ordinator is assigned to the Secretary of the Department of Treasury and Finance.

Clause 13            The functions of the Electricity Reform Co-ordinator are to:

- assist the shareholding Ministers to achieve the electricity reform objectives and implement the electricity reform measures;
- seek information, assistance and advice for the purpose of implementing the reforms;
- oversee the implementation of directions or decisions issued by the shareholding Ministers;
- take steps necessary to assist in the sale, transfer or disposal of a relevant State-owned electricity entity's assets, rights and liabilities as it relates to the electricity reforms; and
- take any other actions that are incidental to the electricity reforms.

Clause 14            This clause provides the Electricity Reform Co-ordinator with the powers necessary to perform the functions of the office.

Subclause (2) prescribes that the Electricity Reform Co-ordinator may examine any asset, right or liability of a State-owned electricity entity.

Clause 15            This Clause prescribes that the Electricity Reform Co-ordinator can request the State-owned electricity entities to provide information or access to information or provide advice and/or assistance for the purpose of implementing the reforms.

Officers, employees and agents of the State-owned electricity entities are to comply with a request of the Electricity Reform Co-ordinator.

Subclause (3) allows the Electricity Reform Co-ordinator to provide information or advice to another person to assist in implementing the reforms.

Subclause (4) provides that anyone who provides information to the Electricity Reform Co-ordinator, in compliance with a request, is not in breach of any contract.

Clause 16 This Clause provides that the Electricity Reform Co-ordinator may delegate any of the functions or powers of the office, apart from the power of delegation.

Clause 17 Subclause (1) defines that a relevant person for the purpose of this Section includes Board members, the Chief Executive Officer and other officers, agents and employees of a State-owned electricity entity.

Subclause (2) provides an indemnity to the Electricity Reform Co-ordinator for actions taken in good faith.

Subclause (3) indemnifies relevant persons for actions taken to comply with a request of the Electricity Reform Co-ordinator.

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

This Part provides the Treasurer with the power to transfer assets, rights, liabilities and employees from one State-owned electricity entity to another to facilitate the restructuring of the State-owned electricity entities. The contractual positions of the impacted businesses and the entitlements of any employees that may be transferred, are protected.

Clause 18 Defines key terms used in Part 4.

Clause 19 Subclause (1) provides that the Treasurer can transfer assets, rights and liabilities of one State-owned electricity entity to another, via a notice published in the Gazette.

A transfer notice can specify:

- the terms and conditions of any transfer;
- any consideration on which the transfer is made; and
- the value of assets, rights and liabilities included in the transfer notice.

A transfer notice takes effect on the date specified in the notice.

Subclause (6) provides that the Treasurer may amend or revoke a transfer notice.

Any amendment to a transfer notice is taken to have effect on the date the original transfer notice took effect.

If a transfer notice is revoked, the original transfer notice is deemed not to have been in force.

Subclause (9) clarifies which party has taken an action that has been taken between the time a transfer notice was issued and the time it was amended or revoked. In these cases, any action taken by the transferee is taken to have been done by the transferor.

A transfer notice is not a statutory rule.

Clause 20 Subclause (1) contains provisions relating to the transfer of any assets, rights and liabilities from one State-owned electricity entity to another, to give the transfer legal effect.

The remaining subclauses clarify that:

- no compensation is payable to any third parties as a result of any transfer, unless compensation to third parties is specified in the transfer notice;
- state tax is not payable in relation to any transfer;
- the contracts of a State-owned electricity entity are not breached because of a transfer; and
- any transfer notice has legal effect, despite any other laws or instruments.

Clause 21 Subclause (1) allows the Treasurer, by order, to transfer employees from one State-owned electricity entity to another.

In making a transfer, the Treasurer is to consult with affected employees prior to transferring their employment.

Subclause (3) and (4) specifies the manner in which the Treasurer may consult with transferring employees. This includes consultation with relevant employee unions and that any consultation must be in accordance with relevant employment awards, agreements and laws.

A State-owned electricity entity is to give written notice to any employees that are subject to a transfer.

Subclause (7) provides that the Treasurer may amend or revoke an order to transfer employees.

Any amendment to an order that transfers employees is taken to have effect on the date the original order took effect.

If an order to transfer employees is revoked, the original order is deemed not to have been in force.

Subclause (10) clarifies which party has taken an action that has been taken between the time an order to transfer employees was issued and the time it was amended or revoked.

An order transferring the employment of an employee, is not a statutory rule.

Clause 22 This Clause gives effect to the transfer of employment from one State-owned electricity entity to another, on the date specified in the order.

Employee entitlements are protected in subclause (2) (3) and (4) by prescribing that:

- a transferred employee retains the same entitlements with their new employer as they had with their previous employer prior to the transfer. It also prescribes that the employee is not entitled to any further compensation as part of any transfer;
- any employment award or agreement for a transferred employee continues with their new employer; and
- an employee's years of service with their employer, prior to the transfer, is taken to be the years of services with their new employer following the transfer.

Subclause (5) clarifies that a transfer does not prevent employment terms from being amended by future awards, agreements or law.

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

This Part provides the Treasurer with the necessary powers to sell Aurora Energy's retail customer base.

This Part places requirements on the Treasurer as part of any sale, including having regard to a fair and reasonable price and ensuring that sale proceeds are paid into the Consolidated Fund.

This Part also applies standard provisions to the transfer of rights, assets and liabilities as part of any sale.

Clause 23 Provides authorisation to the Treasurer to sell Aurora Energy's retail business, including any subsidiary of Aurora Energy that may be established to facilitate the sale of its retail business.

In undertaking a sale, the Treasurer may:

- set the terms of the sale; and
- do all things necessary to effect a sale, including entering into contracts, transferring shares and novating contracts.

Subclause (4) requires the Treasurer to have regard to a fair and reasonable price.

Subclause (5) requires sale proceeds to be paid into the Consolidated Fund.

Clause 24 Subclause (1) defines key terms used in this Section.

Subclauses (2) and (3) ensure that a sale contract in relation to Aurora's retail business can novate contracts, such as retail customer contracts, parts of contracts, rights or liabilities from Aurora to a purchasing retailer.

Subclause (4) provides that certain transfer provisions apply upon any sale of Aurora's retail customer base, unless specified in the sale contract.

## **PART 6                   TRANSFER TO CROWN OF REMAINING BUSINESS OF AURORA, TRANSEND AND SUBSIDIARIES**

Following the sale of Aurora Energy's retail customers and the merger of Aurora Energy's and Transend Networks' network businesses, there may be residual parts of those businesses that are best managed by the Crown. This Part authorises the Treasurer to transfer any residual business of Aurora Energy or Transend Networks to the Crown, following the sale of Aurora's retail customer base and the merger of the network businesses.

Similarly, this Part allows the Treasurer to deregister any companies following the merger of their network businesses if there are no longer any functions performed by either of the respective businesses.

Clause 25 Defines key terms for Part 6.

Clause 26 The Treasurer can transfer any remaining business of Aurora Energy or Transend Networks, or their subsidiaries, to the Crown after the sale of Aurora Energy's retail business and the merger of Aurora Energy's and Transend Networks' network businesses.

Any transfer under this section takes effect on the date specified in the order.

Subclause (5) provides that the transfer order can specify the terms of the transfer and Subclause (6) provides that the Treasurer may amend or revoke a transfer order.

Any amendment to a transfer order is taken to have effect on the date the original transfer order took effect.

If a transfer order is revoked, the original transfer order is deemed not to have been in force.

Subclause (9) clarifies which party has taken an action that has been taken between the time a transfer notice was issued and the time it was amended or revoked. In these cases, any action taken by the Crown is taken to have been done by the State-owned electricity entity.

A transfer order under this section is not a statutory rule.

Clause 27 This Clause provides that, on the transfer day, any transferred business vests in the Crown.

Subclause (2) contains standard provisions relating to the transfer of any business to the Crown, to give the transfer legal effect.

Clause 28 This Clause authorises the Treasurer to apply for, or require Aurora Energy, Transend Networks or a subsidiary of either company to apply for, the deregistration of the company if it no longer performs any functions.

Any requirement to deregister a company is to be in writing.

Aurora Energy, Transend Networks or their subsidiaries must comply with any requirement imposed under this Section.

## **PART 7 MISCELLANEOUS**

### *Division 1 - Relationship to certain Commonwealth matters*

Division 1 provides an exemption from relevant parts of the *Corporations Act 2001* and *Competition and Consumer Act 2010* (Commonwealth Acts) for the purposes of implementing the reforms.

In relation to the *Corporations Act 2001*, the declaration of any parts of this Act as a Corporations legislation displacement provision is required primarily in relation to things that may be necessary for the sale of Aurora Energy's retail customer base, such as the amendment of its Constitution.

The exemption from Part IV of the *Competition and Consumer Act 2010* protects the State-owned electricity entities and Shareholders from possible prosecution for any action which may be deemed to contravene the restrictive trade provisions of that Act.

Clause 29 This Clause declares any provisions of this Act that are inconsistent with the *Corporations Act 2001* as a Corporations legislation displacement provision for the purposes of the *Corporations Act 2001*. This is a standard provision for the sale of State-owned Companies.

Clause 30 This Clause exempts the Act from Part IV of the *Competition and Consumer Act 2010*. This is a standard provision for major Government portfolio restructures.

### *Division 2 - Provisions relating to transfers and sales*

This Division relates specifically to any transfer from one State-owned electricity entity to another, such as the merger of Aurora Energy's and Transend Networks' network businesses, and the sale of Aurora Energy's retail business.

This part authorises disclosure of information for the purpose of any transfer or sale, restricts the persons who can receive information and protects the contractual positions of Aurora Energy and Transend Networks.



- Clause 31 This Clause clarifies that the merger of Aurora Energy's and Transend Networks' network businesses and the sale of Aurora Energy's retail business is not a sale of a distribution network or a transmission system for the purposes of section 20 of the *Electricity Companies Act 1997*.
- Section 20 of the *Electricity Companies Act 1997* requires that any sale of the distribution network or transmission system be approved by a referendum. Clause 29 clarifies that the distribution network and transmission system are not being sold, as they are being merged and will remain under Government ownership.
- Clause 32 Subclause (1) authorises the persons that can disclose information for the purposes of facilitating the sale of Aurora Energy's retail customer base or transfer of one State-owned electricity entity's business into another.
- Subclause (2) restricts the persons that can receive information for the purposes of facilitating the sale of Aurora Energy's retail customer base or transfer of one State-owned electricity entity's business into another.
- Clause 33 This Clause authorises the disclosure or use of information for the purpose of facilitating the electricity reform process, despite any other law to the contrary.
- Subclause (2) clarifies that the disclosure of information that was produced by, or in the possession of, the Expert Panel, remains restricted as per clauses 9(5) and 9(7) of this Act.
- Clause 34 This Clause protects the State and the State-owned electricity entities from any claimed breach of contracts and associated remedies arising from actions taken in accordance with the Act.
- Clause 35 Provides for the Treasurer to exempt any sale transaction, relating to the sale of Aurora Energy's retail customer base, from State Tax.
- Any exemption from State Tax is to be specified in a certificate and provided to the person who would otherwise be liable to pay the State Tax.
- Subclause (3) clarifies that State Tax is not payable on any transfer between State-owned electricity entities.
- Clause 36 This Clause prescribes that the obligations of each State-owned electricity entity are not guaranteed by the Crown.
- Clause 37 This Clause allows the Treasurer to make a binding determination in relation to any disputes that arise in relation to any transfers under Parts 4 or 6.
- Any determination by the Treasurer is final and binding.
- Clause 38 Subclause 38(1) defines the term "amend" for the purpose of Section 38.
- Subclause 38(2) allows the Treasurer to amend the Constitution of a State-owned electricity entity for the purposes of any transfer or sale.

*Division 3 - Other Matters*

This Division contains other miscellaneous authorisations and provisions necessary to facilitate the reform process and protect the Government and the State-owned electricity entities.

- Clause 39      This Clause extends the operation of this Act outside the territorial limits of the State. This is highly relevant in relation to the contracts of Aurora Energy and Transend Networks that are governed by the laws of another jurisdiction. Those contracts are protected from any claimed breach of contract for actions such as the disclosure of those contracts to facilitate any sale or transfer.
- Clause 40      This Clause provides that any decision of the shareholding Ministers under this Act is not subject to review. This is required to provide certainty for any third parties, particularly potential buyers of Aurora Energy's retail customer base, that any decision as part of the reform process cannot be overturned.
- Clause 41      This Clause provides that the Governor can make regulations for the purposes of this Act.
- Regulations may apply differently, as specified in the regulations and may authorise a matter to be determined by the shareholding Ministers or the Electricity Reform Co-ordinator.
- Regulations may be made for savings or transitional matters.
- Clause 42      This Clause prescribes the responsible Minister and Department in relation to the administration of this Act.