

ELECTRICITY SUPPLY INDUSTRY EXPERT PANEL BILL 2010

NOTES ON CLAUSES

- Clause 1 This clause states the short title for the Act.
- Clause 2 This clause provides for the Act to commence on the day that it receives Royal Assent.
- Clause 3 This clause defines important terms in the Act.
- Clause 4 This clause establishes the Electricity Supply Industry Expert Panel.
- Clause 5 This clause sets out the composition of the Panel, and allows the Governor to appoint three persons to be members and one member as chairperson.
- Members are required to have experience and expertise in some or all of: the electricity supply industry; conducting relevant regulatory investigations; and in business and governance.
- This clause also calls up the arrangements for Panel members, as set out in Schedule 1, and the requirements for Panel meetings, as set out in Schedule 2.
- Clause 6 This clause establishes as the sole function of the Panel, the conducting of a review into the electricity supply industry in Tasmania in accordance with its terms of reference.
- Clause 7 This clause provides the Panel with a general power to perform its function and requires the Panel to hold hearings.
- Clause 8 This clause requires the Panel to give public notice of its review and to specify certain details to be contained in the notice.
- Clause 9 This clause sets out the way in which the Panel is to conduct its review. It requires the review to be undertaken in accordance with the terms of reference and the Panel to consider submissions made to it. The Panel may consult with persons and conduct inquiries or investigations as it considers appropriate.
- The clause provides that the Panel is not bound by the rules of evidence, which allows it to conduct the review and reach findings and recommendations without being limited to use only the information provided as evidence.

- Clause 10 This clause prescribes requirements in relation to how the Panel is to conduct hearings. The Panel is required to give reasonable notice to the public on the details of the hearing. The Panel must hold hearings in public unless it is in the public interest for a hearing, or a part of a hearing, to be held in private.
- The clause also allows the Panel to restrict the publication of evidence given at such a hearing if considered appropriate and creates an offence if this restriction is not followed.
- Clause 11 This clause provides the Panel with the power to obtain information for the review by directing a person to provide information or explanations, attend or give evidence, or produce documents.
- The clause allows the Panel to direct how the information, explanations or answers are to be given and whether under an affirmation or oath.
- The clause stipulates a penalty not exceeding 100 penalty units, or \$13 000 in 2010-11, for a person who fails to comply with such a direction. It also provides for an entitlement to expenses for persons required to give information.
- Clause 12 This clause states that the Panel may regulate its own procedures, except where they are set out in the Act, such as in relation to hearings, submissions and meetings. This will enable the Panel to conduct its review as it considers appropriate.
- Clause 13 This clause provides that the duty of a person to provide information overrides certain other duties and rights, including the risk that providing information might incriminate the person.
- The clause provides that a person providing information to the Panel does not commit an offence under any Tasmanian law that requires a duty of secrecy.
- The clause also protects persons who do give information from any civil or criminal proceedings against them, except in relation to an offence under this Act or under the section of the *Criminal Code* that deals with crimes against public authorities, such as making false declarations or statements, or using information to bargain for public office.
- Clause 14 This clause allows the Panel to operate independently in the exercise of its function and powers by not being under the direction of any Minister of the Crown.

- Clause 15 The clause allows the Panel to obtain services, facilities or persons to assist with the review by making arrangements with the Secretary of the Department of Premier and Cabinet.
- The clause allows persons employed in the State Service to assist the Panel.
- Clause 16 This clause provides that a Panel member or person assisting the Panel must not disclose confidential or commercially sensitive information acquired during the review.
- The clause provides that a condition for information to be confidential or commercially sensitive is that the person who provides this information declares it to be confidential or commercially sensitive.
- The clause makes it an offence to disclose confidential or commercially information, with a maximum penalty of 500 penalty units, or \$65 000 in 2010-11.
- Clause 17 This clause protects the Panel from liability for actions undertaken in good faith during the review.
- The clause also protects the Panel, and any person assisting the panel, from civil or criminal proceedings for such actions.
- Clause 18 This clause makes it an offence to provide false or misleading information to the Panel. The clause imposes a penalty not exceeding 100 penalty units, or \$13 000 in 2010-11.
- Clause 19 This clause prohibits a person from hindering, obstructing or interfering with the Panel, with a maximum penalty of 100 penalty units, or \$13 000 in 2010-11.
- Clause 20 This clause sets out the reporting requirements for the review. The clause requires the Panel to prepare a draft report that is publically available and open to submissions from the public. The Panel must consider the submissions received and provide a final report to the Treasurer.
- The clause requires the Treasurer to provide copies of the report to Parliament within two weeks, either by tabling copies of the reports if the Parliament is sitting or otherwise by providing copies to the Clerk of each House of Parliament.
- Clause 21 This clause provides that the *Right to Information Act 2009* does not apply to information possessed by the Panel.
- Clause 22 This clause allows the Governor to make regulations for the purposes of the Act.

- Clause 23 This clause assigns the Treasurer with the responsibility for the administration of the Act and the Department of Treasury and Finance in relation to its administration.
- Clause 24 This clause provides for the Act to be repealed after two years from the date of commencement. This will ensure that the Act does not remain on the statute books after the Panel has completed its review.

Schedule 1 – Membership of Electricity Supply Industry Expert Panel

- Item 1 This item defines a 'member' as member of the Panel.
- Item 2 This item provides that a member is appointed for up to two years.
- Item 3 This item allows a member of the Panel to continue employment in another office while a member of the Panel.
- Item 4 This item states that the provisions of the *State Service Act 2000* do not apply to members of the Panel.
- Item 5 This item allows for members of the Panel to be paid remuneration and allowances as set out in the instrument of appointment. Members hold their office on the terms in their instrument of appointment.
- Item 6 This item provides that a member may resign from the Panel by providing written notice to the Governor.
- Item 7 This item states that an office will be vacated if a member dies, resigns or is removed by the Governor. The Governor may remove under a range of circumstances that prevent a member from adequately performing his or responsibilities.
- Item 8 This item provides that the Governor may appoint a person to a vacancy on the Panel by way of notice in the *Gazette*.
- Item 9 This item ensures that any acts of the Panel are valid if there is a vacancy or if a panel member was found to be not properly appointed.
- Item 10 This item provides a presumption of the existence of the Panel, and of Panel members, unless the evidence is given to the contrary, in any proceedings involving the Panel.

Schedule 2 – Meetings of Electricity Supply Industry Expert Panel to Conduct Review

- Item 1 This item defines a 'member' as member of the Panel.

- Item 2 This item requires the chairperson of the Panel to convene meetings of the Panel.
- Item 3 This item requires the chairperson to preside at all meetings he or she attends, and for another member to preside if the chairperson is not present.
- Item 4 This item provides that two members of the Panel constitute a quorum at a meeting of the Panel and that the person presiding at a meeting has the deliberative vote.
- Under Item 8 below, a member who declares a direct or indirect interest in a matter to be considered by the Panel may not consider or make a decision on that matter. For this reason, and in the event of a vacancy, the quorum cannot constitute all three members of the Panel.
- Item 5 This item sets out the administrative arrangements relating to the conduct of meetings of the Panel.
- Item 6 This item requires the Panel to keep accurate minutes of its meetings.
- Item 7 This item requires a member to disclose direct or indirect interest in any matter considered by the Panel. Any such disclosure is to be made as soon as practicable and recorded in the minutes. Unless the Panel determines otherwise, that member is not to take any part in a deliberation or the decision on that matter.
- Item 8 This item provides that a resolution of the Panel is presumed to have been made and the Panel is presumed to be quorate in any proceedings involving the Panel, unless there is evidence to the contrary.