

TASMANIA

**ELECTRICITY SUPPLY INDUSTRY
AMENDMENT BILL 2003**

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 3A inserted
 - 3A. Meaning of distribution network, transmission network and electricity generating plant
6. Section 6 amended (Regulator's functions and powers)
7. Section 8 amended (Administrative fairness and independence)
8. Section 15 amended (Regulator's power to require information)
9. Part 2, Division 7 inserted
 - Division 7 – Conferral of Regulator's functions and powers on Australian Competition and Consumer Commission*
 - 16A. Conferral agreement
 - 16B. Conferral notice

- 16C. Conferral of transmission pricing functions and powers
- 16D. Termination of conferral agreement
- 10. Section 22 amended (Conditions of licence)
- 11. Section 34A inserted
 - 34A. Delegation of functions and powers
- 12. Section 35 amended (Remuneration of system controller)
- 13. Part 3, Division 3 substituted
 - Division 3 – Special provisions relating to Hydro-Electric Corporation*
 - 36. Ministerial notice relating to Basslink
 - 37. Compliance plan
 - 37A. Expiry of Division
- 14. Section 44 amended (Restrictions on re-supply)
- 15. Part 3, Division 7: Heading amended
- 16. Section 46 repealed
- 17. Section 49B amended (Review, amendment and replacement of Code)
- 18. Section 49F amended (Application of *Trade Practices Act 1974* and the Competition Code)
- 19. Section 114A amended (Compliance with direction, order, determination and requirement)
- 20. Sections 114C and 114D inserted
 - 114C. Institution of proceedings for offence
 - 114D. Injunction
- 21. Sections 120 and 121 substituted
 - 120. System controller's immunity from liability
- 22. Section 122 amended (Regulations)

**PART 3 – *ELECTRICITY SUPPLY INDUSTRY ACT 1995*
FURTHER AMENDED**

- 23. Principal Act
- 24. Section 3 amended (Interpretation)
- 25. Section 6 amended (Regulator's functions and powers)

- 26. Section 15 amended (Regulator's power to require information)
- 27. Section 22 amended (Conditions of licence)
- 28. Section 24 repealed
- 29. Section 26 amended (Obligation to supply)
- 30. Part 3, Division 2 repealed
- 31. Section 120 repealed
- 32. Section 122 amended (Regulations)

**PART 4 - *ELECTRICITY SUPPLY INDUSTRY ACT 1995*
FURTHER AMENDED**

- 33. Principal Act
- 34. Section 3 amended (Interpretation)
- 35. Section 19 amended (Consideration of application)
- 36. Section 22 amended (Conditions of licence)
- 37. Section 24A inserted
 - 24A. Licence condition relating to system security capability
- 38. Section 25 amended (Licences conferring exclusive retail franchise)
- 39. Section 39A repealed
- 40. Part 3, Division 8A inserted
 - Division 8A – Retailer of last resort*
 - 49AA. Retailer of last resort
- 41. Section 122 amended (Regulations)

PART 5 - *ELECTRICITY - NATIONAL SCHEME (TASMANIA) ACT 1999* AMENDED

- 42. Principal Act
- 43. Section 2 substituted
 - 2. Commencement
- 44. Section 3 amended (Interpretation)
- 45. Part 2: Heading amended

- 46. Section 8A inserted
 - 8A. Application of National Electricity Code

ELECTRICITY SUPPLY INDUSTRY AMENDMENT BILL 2003

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*
9 April 2003

*(Brought in by the Minister for Economic Development,
Energy and Resources, the Honourable Paul Anthony
Lennon)*

A BILL FOR

An Act to amend the *Electricity Supply Industry Act 1995* and the *Electricity - National Scheme (Tasmania) Act 1999*

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

Short title

1. This Act may be cited as the *Electricity Supply Industry Amendment Act 2003*.

Commencement

2. (1) Parts 1, 2 and 5 commence on the day on which this Act receives the Royal Assent.

(2) The provisions of Parts 3 and 4 commence –

- (a) on a day or days to be proclaimed; or
- (b) at a time or times to be proclaimed; or
- (c) on the occurrence of one or more events to be proclaimed; or
- (d) as otherwise proclaimed.

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

Principal Act

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

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “access”:

“Australian Competition and Consumer Commission” means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth;

- (b) by inserting the following definition after the definition of “authorised officer”:

“Basslink” means the interconnection between the electricity grids of the States of Tasmania and Victoria by means of –

- (a) a high voltage, direct current, submarine cable across Bass Strait; and

*No. 58 of 1995

- (b) converter stations in those States; and
 - (c) direct current connecting lines to those converter stations; and
 - (d) alternating current transmission connections to the transmission networks of those States; and
 - (e) related infrastructure;
- (c) by omitting “by the Regulator” from the definition of “Code”;
- (d) by omitting the definitions of “comply with”, “contestable customer”, “contravention” and “customer” and substituting the following definitions:

“Competition Code” has the same meaning as in the *Competition Policy Reform (Tasmania) Act 1996*;

“contestable customer” means –

- (a) a customer, or a customer of a class, prescribed by the regulations to be a contestable customer; and
- (b) if the regulations provide for the determination of a contestable customer by the Regulator, a customer determined by the Regulator in accordance with the

regulations to be a contestable customer;

“customer” means a person who has an electricity supply available from a transmission network or distribution network and includes (where the context requires) –

- (a) a person who has all necessary electrical installation for the supply of electricity from a transmission network or distribution network but that electrical installation has not been connected to that network; and
 - (b) a person whose electricity supply has been disconnected;
- (e) by omitting the definitions of “distribution” and “distribution network” and substituting the following definitions:

“distribution” of electricity means the carrying of electricity between different points using a distribution network;

“distribution network” has the meaning given by section 3A;

- (f) by inserting the following definition after the definition of “electricity entity”:

“electricity generating plant” has the meaning given by section 3A;

- (g) by inserting the following definition after the definition of “high voltage”:

“Jurisdictional Regulator” has the same meaning as in the National Electricity Code;

- (h) by omitting “in accordance with its terms and that Law” from paragraph (b) of the definition of “National Electricity Code”;

- (i) by omitting “agreed to be enacted by the States of New South Wales, Victoria, South Australia and Queensland and the Australian Capital Territory pursuant to an agreement between those jurisdictions made on 9 May 1996, being” from the definition of “National Electricity Law” and substituting “contained in”;

- (j) by inserting the following definitions after the definition of “National Electricity Law”:

“National Electricity Market” means the wholesale electricity market operated and administered by NEMMCO under the National Electricity Code;

“NEM entry time” means the time at which section 6 of the *Electricity - National Scheme (Tasmania) Act 1999* commences;

“NEMMCO” means the National Electricity Market Management Company Limited (ABN 94 072 010 327);

- (k) by omitting the definition of “non-contestable customer” and substituting the following definition:

“non-contestable customer” means –

- (a) a customer who is not a contestable customer; and
 - (b) if the regulations provide for the determination of a non-contestable customer by the Regulator, a customer determined by the Regulator in accordance with the regulations to be a non-contestable customer;
- (l) by omitting “Act” second occurring from the definition of “reviewable decision” and substituting “Act, the regulations”;
- (m) by inserting “non-contestable” after “electricity to” in the definition of “tariff”;
- (n) by inserting “non-contestable” after “classes of” in the definition of “tariff”;
- (o) by omitting the definitions of “transmission”, “transmission network”, “wholesale market” and “wholesale trading arrangements” and substituting the following definitions:

“transmission” of electricity means the carrying of electricity between different points using a transmission network;

“transmission network” has the meaning given by section 3A;

“vesting agreement” means –

- (a) an agreement (as amended from time to time by amendments approved by the Minister either before or after the making of the amendments) that –
 - (i) was entered into by an electricity entity during June or July in 1998; and
 - (ii) either before or after being entered into, has been approved by the Minister to be a vesting agreement; or
- (b) an agreement (as amended from time to time by amendments approved by the Minister either before or after the making of the amendments) that –
 - (i) is entered into as a consequence of the change in electricity trading arrangements which occurs due to the application of the National Electricity Law in Tasmania; and
 - (ii) is entered into in substitution for, and by the same parties as entered into, an

agreement referred to in paragraph (a); and

- (iii) has substantially the same effect as the agreement which it replaces; and
- (iv) either before or after being entered into, has been approved by the Minister to be a vesting agreement;

“wholesale market” for electricity means a market for electricity formed by trading in electricity between electricity entities.

Section 3A inserted

5. After section 3 of the Principal Act, the following section is inserted in Part 1:

Meaning of distribution network, transmission network and electricity generating plant

3A. (1) A distribution network is a system of powerlines, substations and associated equipment –

- (a) for the carrying of electricity at high or low voltage; and
- (b) for the conversion of electricity from high to low voltage.

(2) A transmission network is a system of powerlines, substations and associated equipment –

- (a) for the carrying of electricity at extra high voltage; and
- (b) for the conversion of electricity from extra high voltage to high voltage or from high voltage to extra high voltage.

(3) An electricity generating plant is a facility or plant that is or could be used to generate electricity, and includes all equipment at that facility or plant.

(4) The Regulator may declare that any equipment, or any equipment of a specified class, is to be treated as part of a specified distribution network, transmission network or electricity generating plant for the purposes of the Act, the regulations and the Code generally or for the purposes of a specified provision of the Act, the regulations or the Code.

(5) While a declaration under subsection (4) has effect, any equipment to which the declaration applies –

- (a) forms part of the specified distribution network, transmission network or electricity generating plant for the specified purpose; and
- (b) does not form part of any other distribution network, transmission network or electricity generating plant for the specified purpose.

(6) In subsections (3), (4) and (5) –

“equipment” means powerlines, substations, plant, structures or other equipment;

“specified” means specified in the relevant declaration made under subsection (4).

(7) The Regulator may amend or revoke a declaration under subsection (4).

(8) A declaration under subsection (4) or an amendment or revocation of such a declaration –

- (a) is to be made by notice published in the *Gazette*; and
- (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Section 6 amended (Regulator’s functions and powers)

6. Section 6 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) to monitor and enforce the compliance of electricity entities with their licence conditions; and
- (b) by inserting the following subsections after subsection (3):

(4) In performing and exercising his or her functions and powers, the Regulator is to have regard to the provisions of the National Electricity Code and the desirability of avoiding duplication of, or inconsistency with, regulatory arrangements under the National Electricity Code.

(5) In anticipation of the National Electricity Law applying in Tasmania, the

Regulator may do, before that Law so applies in Tasmania, any act that is necessary or expedient –

- (a) for the purpose of ensuring that the Regulator, after the National Electricity Law so applies in Tasmania, is able to perform and exercise the functions and powers of Jurisdictional Regulator in respect of Tasmania; or
- (b) for the purpose of giving full effect to the National Electricity Code in respect of Tasmania after the National Electricity Law so applies in Tasmania.

(6) If the Regulator does any act under subsection (5) that he or she would be required or empowered, after the NEM entry time, to do as Jurisdictional Regulator in respect of Tasmania under the National Electricity Code –

- (a) the Regulator is to do that act as far as reasonably practicable in accordance with that Code; and
- (b) after the NEM entry time, that act is taken to have been done under that Code.

Section 8 amended (Administrative fairness and independence)

7. Section 8 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) Subsection (2) does not apply in respect of the directions of the Minister properly contained in a notice under section 36 or the directions given in accordance with regulations of a kind specified in section 122(2A).

Section 15 amended (Regulator's power to require information)

8. Section 15(1) of the Principal Act is amended by omitting "Act." and substituting "Act, the regulations and the Code."

Part 2, Division 7 inserted

9. After section 16 of the Principal Act, the following Division is inserted in Part 2:

***Division 7 – Conferral of Regulator's functions
and powers on Australian Competition and
Consumer Commission***

Conferral agreement

16A. On behalf of the State, the Minister may enter into an agreement with the Commonwealth in respect of the performance and exercise of any or all of the functions and powers of the Regulator under this Act, the regulations or the Code by the Australian Competition and Consumer Commission.

Conferral notice

16B. (1) If the Minister has entered into an agreement under section 16A, the Minister may

specify, by notice published in the *Gazette*, the functions and powers of the Regulator under this Act, the regulations or the Code that are to be performed and exercised by the Australian Competition and Consumer Commission.

(2) A notice under subsection (1) –

- (a) is to be consistent with the agreement made under section 16A; and
- (b) may provide for all matters relating to the conferral of the functions and powers of the Regulator on the Australian Competition and Consumer Commission.

(3) The Minister may amend or repeal a notice under subsection (1) by notice published in the *Gazette*.

(4) A notice under subsection (1) or (3) takes effect –

- (a) on a day, or at a time, specified in it; or
- (b) on the happening of an event specified in it; or
- (c) if no day, time or event is so specified in it, on the day it is published in the *Gazette*.

(5) A notice under subsection (1) or (3) must not specify a day, time or event for the purposes of subsection (4)(a) or (b) that is earlier than the time at which the notice would take effect if no day, time or event were so specified.

(6) A notice under subsection (1) or (3) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Conferral of transmission pricing functions and powers

16C. (1) On the taking effect of a notice referred to in section 16B in respect of the conferral on the Australian Competition and Consumer Commission of a function or power of the Regulator, that function or power –

- (a) is conferred on the Australian Competition and Consumer Commission; and
- (b) at the discretion of that Commission, may be performed or exercised by that Commission.

(2) The Australian Competition and Consumer Commission may do all things necessary or convenient to be done in connection with, or incidental to, the performance or exercise of a function or power conferred on it by subsection (1).

(3) A function or power conferred on the Australian Competition and Consumer Commission by subsection (1) may be performed or exercised by the Regulator.

(4) Despite subsection (3), the Regulator may not perform or exercise a function or power conferred on the Australian Competition and Consumer Commission by subsection (1) in relation to any matter if –

- (a) that Commission is performing or exercising that function or power in respect of that matter; or
- (b) that Commission has performed or exercised that function or power in respect of that matter; or

- (c) the Regulator believes that that Commission intends to perform or exercise that function or power in respect of that matter.

(5) Despite section 16, the Regulator is to provide to the Australian Competition and Consumer Commission, for the purpose of enabling it to perform and exercise functions and powers conferred on it by this section, information that the Regulator has received under this Act, the regulations or the Code.

(6) Except as otherwise specified in a notice referred to in section 16B, the provisions of this Act, the regulations and the Code apply to the Australian Competition and Consumer Commission in the performance and exercise by it of functions and powers conferred on it by this section as if it were the Regulator.

Termination of conferral agreement

16D. On the termination of an agreement referred to in section 16A –

- (a) all notices under section 16B in respect of the conferral on the Australian Competition and Consumer Commission of a function or power of the Regulator are revoked; and
- (b) the conferral of that function or power on the Australian Competition and Consumer Commission ceases to have effect; and

- (c) that Commission is no longer entitled to perform or exercise that function or power.

Section 22 amended (Conditions of licence)

10. Section 22 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or amendment” after “issue”;
- (b) by inserting in subsection (1)(c) “this Act and” after “with”;
- (c) by inserting in subsection (2) “that the Regulator may determine” after “conditions of a licence”;
- (d) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) require an electricity entity to comply with the provisions of the National Electricity Code specified in the licence; and
- (e) by inserting the following subsection after subsection (2):

(3) The Regulator must not determine as a condition of a licence authorising the generation of electricity issued to the Hydro-Electric Corporation a condition that relates to a matter referred to in section 36(1).

Section 34A inserted

11. After section 34 of the Principal Act, the following section is inserted in Division 2:

Delegation of functions and powers

34A. (1) With the consent of NEMMCO, a system controller may delegate to NEMMCO any of its functions or powers under this Act, the regulations and the Code, other than this power of delegation.

(2) With the consent of the Hydro-Electric Corporation, a system controller may delegate to the Hydro-Electric Corporation any of its functions or powers under this Act, the regulations and the Code, other than this power of delegation.

(3) If a delegate does any act or omission in the performance or exercise, or the purported performance or exercise, of a function or power delegated under subsection (1) or (2) –

- (a) the delegate is taken to be the system controller in respect of that act or omission; and
- (b) the delegator is taken not to be the system controller, and is not liable, in respect of that act or omission.

(4) All courts and all persons acting judicially are to receive a document purporting to be executed by the delegate in pursuance of, or as a consequence of, a delegation under subsection (1) or (2) as if the delegate were the system controller.

(5) Section 23AA(4) and (8) and section 23AAB of the *Acts Interpretation Act 1931* do not apply in respect of a delegation under subsection (1) or (2).

Section 35 amended (Remuneration of system controller)

12. Section 35 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) This section does not apply to NEMMCO or the Hydro-Electric Corporation if it is exercising system control over a power system as the delegate of the system controller.

Part 3, Division 3 substituted

13. Division 3 of Part 3 of the Principal Act is repealed and the following Division is substituted:

***Division 3 – Special provisions relating to
Hydro-Electric Corporation***

Ministerial notice relating to Basslink

36. (1) After consulting with the Hydro-Electric Corporation, the Minister may establish, by written notice provided to the Hydro-Electric Corporation, principles to be followed by the Hydro-Electric Corporation in relation to –

- (a) the exercise by it of any rights it has under any agreement specified in that notice –
 - (i) to make, revise or amend; or
 - (ii) to request the making, revising or amending of; or
 - (iii) to control, approve or direct the content of –

network dispatch offers under the National Electricity Code in relation to Basslink; and

- (b) the making available by the Hydro-Electric Corporation of any moneys that –
 - (i) are payable to the Hydro-Electric Corporation under any agreement specified in that notice; and
 - (ii) are calculated by reference to, or relate to, moneys received or receivable under the National Electricity Code in respect of the transfer of electricity from Victoria to Tasmania by means of Basslink.

(2) A notice under subsection (1) may provide for any other matter related to, or necessary or convenient to be included in respect of, a matter referred to in that subsection including, but not limited to –

- (a) the day by which, in each year during which the notice is in force, the Hydro-Electric Corporation must prepare and provide a draft compliance plan under section 37; and
- (b) the functions of the Regulator in respect of the compliance by the Hydro-Electric Corporation with the principles established in the notice and a compliance plan under section 37; and
- (c) terms of reference and objectives for the Regulator in performing his or her functions; and

- (d) matters and information required to be included in a compliance plan under section 37; and
- (e) disclosure of information by the Hydro-Electric Corporation; and
- (f) the manner in which moneys referred to in subsection (1)(b) are to be made available; and
- (g) any process to be followed by the Hydro-Electric Corporation in giving effect to the principles established in the notice.

(3) The Minister, by written notice provided to the Hydro-Electric Corporation, may amend or revoke a notice under subsection (1) or this subsection.

(4) The Minister is to provide a copy of a notice under subsection (1) or (3) to the Regulator.

(5) A notice under subsection (1) or (3) –

- (a) takes effect on the day on which it is provided to the Hydro-Electric Corporation or on a later day specified in it; and
- (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Compliance plan

37. (1) In each year during which a notice under section 36(1) is in force, the Hydro-Electric Corporation must prepare and provide a draft compliance plan to the Minister on or before the day specified in the notice.

(2) The draft compliance plan is to –

- (a) specify details as to the manner in which, and when, the Hydro-Electric Corporation proposes to comply with the principles established in the notice under section 36(1); and
- (b) contain any matters and information required by that notice to be included in the compliance plan.

(3) On receipt of a draft compliance plan, the Minister may do any one or more of the following:

- (a) require the Hydro-Electric Corporation to provide further information;
- (b) require the Hydro-Electric Corporation to provide to the Minister within the time specified by the Minister an amended draft compliance plan;
- (c) amend the draft compliance plan or the amended draft compliance plan;
- (d) approve the draft compliance plan or an amended draft compliance plan as the compliance plan.

(4) If the Hydro-Electric Corporation fails to provide a draft compliance plan to the Minister by the day it is required to do so, the Minister may determine a compliance plan for the Hydro-Electric Corporation.

(5) The compliance plan –

- (a) takes effect when the Hydro-Electric Corporation receives –

- (i) notice of its approval under subsection (3)(d); or
 - (ii) notice of its determination under subsection (4) and a copy of the compliance plan; and
- (b) has effect until a further compliance plan so approved or determined by the Minister takes effect.

(6) The Hydro-Electric Corporation must –

- (a) comply with the compliance plan; and
- (b) publish the compliance plan on its website.

(7) Each year the Hydro-Electric Corporation must –

- (a) have its compliance with the compliance plan audited by a person approved by the Regulator; and
- (b) provide a copy of the report of that person on the audit to the Regulator.

Expiry of Division

37A. This Division expires on 31 December 2010.

Section 44 amended (Restrictions on re-supply)

14. Section 44 of the Principal Act is amended as follows:

- (a) by inserting in subsection (3) “and the Competition Code” after “Commonwealth”;

- (b) by inserting the following subsection after subsection (3):

(4) This section does not apply to a contract of a kind referred to in subsection (1) entered into by an electricity entity on or after 1 July 2001.

Part 3, Division 7: Heading amended

15. Division 7 of Part 3 of the Principal Act is amended by omitting “***Compliance obligations***” from the heading to that Division and substituting “***Effect of non-compliance with Act***”.

Section 46 repealed

16. Section 46 of the Principal Act is repealed.

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

17. Section 49B of the Principal Act is amended by inserting after subsection (3) the following subsections:

(4) By notice provided to the Regulator, the Minister may amend, or rescind and substitute, the Code as he or she considers necessary or convenient for any one or more of the following purposes:

- (a) facilitating participation of electricity entities in the National Electricity Market;

- (b) facilitating the application of the National Electricity Law and the National Electricity Code in Tasmania;
- (c) the performance and exercise by the Australian Competition and Consumer Commission of functions and powers conferred on it by section 16C;
- (d) ensuring that, after the NEM entry time, the Code is consistent with the National Electricity Law and the National Electricity Code.

(5) In amending or rescinding and substituting the Code under subsection (4), the Minister may consult with those persons the Minister considers appropriate and is not bound by any procedures relating to the amendment or rescission and substitution of the Code specified in the Code.

(6) After amending or rescinding and substituting the Code under subsection (4), the Minister is to publish in the *Gazette* notice of the making of that amendment or rescission and substitution.

Section 49F amended (Application of *Trade Practices Act 1974* and the Competition Code)

18. Section 49F of the Principal Act is amended by omitting subsection (1).

Section 114A amended (Compliance with direction, order, determination and requirement)

19. Section 114A of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “order,” after “direction,”;
- (b) by omitting from subsection (1) “by the Regulator”;
- (c) by inserting in subsection (2)(a) “order,” after “direction,”;
- (d) by omitting from subsection (2)(a) “of the Regulator” and substituting “referred to in that subsection”.

Sections 114C and 114D inserted

20. After section 114B of the Principal Act, the following sections are inserted in Division 3:

Institution of proceedings for offence

114C. Proceedings in respect of an offence against section 114A or 114B may only be instituted by the Regulator or a person authorised by the Regulator.

Injunction

114D. (1) If the Regulator considers that an electricity entity is contravening, has contravened or is proposing to contravene this Act, the regulations or the Code, he or she may apply to a magistrate for an injunction.

(2) If a magistrate is satisfied that an electricity entity is contravening, has contravened or is proposing to contravene this Act, the regulations or the Code, the magistrate may grant an injunction in terms the magistrate considers appropriate.

(3) Without limiting subsection (2), an injunction may require the electricity entity –

- (a) to refrain from engaging in any conduct specified in the injunction; and
- (b) to take the action specified in the injunction to remedy any consequences of the act of the electricity entity that contravened this Act, the regulations or the Code, including –
 - (i) the refunding of any amount wrongfully paid; and
 - (ii) the disclosure of information; and
 - (iii) the publication of advertisements relating to the contravention or the actions to remedy the contravention.

(4) An injunction may be granted –

- (a) in proceedings for an offence against this Act, the regulations or the Code; or
- (b) in proceedings brought for the purposes of obtaining the injunction.

(5) An injunction may be granted –

- (a) in the case where an electricity entity has contravened this Act, the regulations or the Code, whether or not it appears to a magistrate that the electricity entity intends to continue or repeat that contravention; and
- (b) whether or not the electricity entity has previously contravened this Act, the regulations or the Code; and
- (c) whether or not there is an imminent danger of substantial damage to any

person if the electricity entity contravenes this Act, the regulations or the Code.

(6) An injunction may be granted in addition to any order that a magistrate may make under this Act.

(7) An interim injunction may be granted under this section pending final determination of the application.

(8) With the consent of the parties, a final injunction may be granted without proof that proper grounds for the injunction exist.

(9) In proceedings for an injunction, the Regulator may not be required to enter into an undertaking as to damages.

(10) An injunction may be rescinded or varied at any time.

Sections 120 and 121 substituted

21. Sections 120 and 121 of the Principal Act are repealed and the following section is substituted:

System controller's immunity from liability

120. (1) A system controller, or an officer or employee of a system controller, incurs no liability for an act or omission done or made in good faith in the exercise, or purported exercise, of the system controller's functions under this Act.

(2) If a system controller is a body corporate, subsection (1) does not apply to any liability of an officer of the system controller to the system controller.

Section 122 amended (Regulations)

22. Section 122 of the Principal Act is amended as follows:

- (a) by omitting paragraph (f) from subsection (2);
- (b) by omitting paragraph (b) from subsection (2A) and substituting the following paragraph:
 - (b) the making by the Regulator of determinations regulating the prices that may be charged by electricity entities for the supply of electricity and the provision of other services; and
- (c) by omitting from subsection (2A)(c) “orders” and substituting “determinations”;
- (d) by inserting in subsection (2A)(d) “and determinations” after “investigations”;
- (e) by inserting in subsection (2A)(e) “and determinations” after “investigations”;
- (f) by omitting from subsection (2A)(f) “orders” and substituting “determinations”;
- (g) by omitting subsection (2B) and substituting the following subsections:

(2B) Without limiting the type of determinations that, under subsection (2A)(b), the regulations may require or permit the Regulator to make or the matters to be included in the determinations, the regulations may require or allow the prices regulated by the determinations to be regulated by specifying, or by reference to, one or more of the following:

- (a) maximum prices that may be charged by electricity entities for the supply of electricity and the provision of other services;
- (b) maximum revenues in respect of the supply of electricity and the provision of other services provided by electricity entities;
- (c) pricing policies or principles to be applied by electricity entities;
- (d) other price control mechanisms to be applied by electricity entities;
- (e) any other prescribed matter.

(2BA) Without limiting subsection (1), the regulations, for the purposes of the application of the National Electricity Code in Tasmania, may –

- (a) confer functions and powers on the Regulator; and
- (b) vary the functions and powers of the Regulator under this Act, the regulations or the Code; and
- (c) provide for any matter which the National Electricity Code contemplates will be provided for or dealt with by Tasmania as a participating jurisdiction within the meaning of the National Electricity Law.

(2BB) If the regulations provide for the making by the Regulator of determinations referred to in subsection (2A)(b) –

- (a) the determinations are not statutory rules for the purposes of the *Rules Publication Act 1953*; and
 - (b) the Treasurer may not declare such a determination to be subordinate legislation under section 3(2) of the *Subordinate Legislation Act 1992*.
- (h) by inserting the following paragraph after paragraph (b) in subsection (2C):
 - (ba) the *Electricity Supply Industry Amendment Act 2003* or a provision of that Act;

**PART 3 – *ELECTRICITY SUPPLY INDUSTRY ACT*
1995 FURTHER AMENDED**

Principal Act

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

Section 3 amended (Interpretation)

24. Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “access”;
- (b) by omitting “a wholesale market” from the definition of “retailing” and substituting “the National Electricity Market”;
- (c) by omitting the definition of “system controller”;
- (d) by omitting “agreement;” from paragraph (b)(iv) of the definition of “vesting agreement” and substituting “agreement.”;
- (e) by omitting the definition of “wholesale market”.

Section 6 amended (Regulator’s functions and powers)

25. Section 6 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:

*No. 58 of 1995

- (c) to perform and exercise the functions and powers of Jurisdictional Regulator in respect of Tasmania under the National Electricity Code; and
- (b) by inserting in subsection (2) “other than the powers and functions referred to in subsection (1)(c),” after “Act.”.

Section 15 amended (Regulator’s power to require information)

26. Section 15(1) of the Principal Act is amended by omitting “regulations and the Code.” and substituting “regulations, the Code and the National Electricity Code.”.

Section 22 amended (Conditions of licence)

27. Section 22 of the Principal Act is amended as follows:

- (a) by omitting paragraph (e) from subsection (1) and substituting the following paragraph:
 - (e) a condition that the electricity entity must comply with directions or requirements given or made by the Regulator under this Act, the regulations or the Code;
- (b) by omitting paragraph (a) from subsection (2).

Section 24 repealed

28. Section 24 of the Principal Act is repealed.

Section 26 amended (Obligation to supply)

29. Section 26 of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “(despite the obligations imposed by the conditions of its licence)”.

Part 3, Division 2 repealed

30. Division 2 of Part 3 of the Principal Act is repealed.

Section 120 repealed

31. Section 120 of the Principal Act is repealed.

Section 122 amended (Regulations)

32. Section 122(2) of the Principal Act is amended by omitting paragraph (d).

**PART 4 – *ELECTRICITY SUPPLY INDUSTRY ACT*
1995 FURTHER AMENDED**

Principal Act

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

Section 3 amended (Interpretation)

34. Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “customer”:

“customer retail services”, in relation to a customer, means –

- (a) the sale of electricity to the customer in respect of premises; and
- (b) the provision of any prescribed services in respect of premises;
- (b) by inserting the following definitions after the definition of “Regulator”:

“retailer” means an electricity entity holding a licence authorising the retailing of electricity;

“retailer of last resort” means a person appointed as retailer of last resort under section 49AA;

*No. 58 of 1995

Section 19 amended (Consideration of application)

35. Section 19(2) of the Principal Act is amended by omitting paragraph (f).

Section 22 amended (Conditions of licence)

36. Section 22 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(i) “body.” and substituting “body;”;
- (b) by inserting the following paragraph after paragraph (i) in subsection (1):
 - (j) in respect of a licence authorising the generation of electricity, a condition that the electricity entity publish information relating to the electricity entity’s energy production capability of the kind prescribed in the regulations.
- (c) by omitting from subsection (2)(b) “area.” and substituting “area; and”;
- (d) by inserting the following paragraphs after paragraph (b) in subsection (2):
 - (c) require participation in a scheme of a kind referred to in section 122(2BB)(a) in respect of a retailer of last resort; and
 - (d) in the case of a licence authorising retailing of electricity, require a retailer to have such agreements with one or more electricity entities that distribute electricity as the Regulator considers –

- (i) are necessary to ensure that electricity is supplied to the retailer's customers; or
 - (ii) are appropriate to ensure adequate coordination between the retailer and the electricity entities; and
- (e) in the case of a licence authorising the distribution of electricity, require the electricity entity to have such agreements with one or more retailers as the Regulator considers –
 - (i) are necessary to ensure that electricity is supplied to the retailers' customers; or
 - (ii) are appropriate to ensure adequate coordination between the electricity entity and the retailers; and
- (f) include conditions of a prescribed kind.

Section 24A inserted

37. After section 24 of the Principal Act, the following section is inserted in Subdivision 3:

Licence condition relating to system security capability

24A. (1) In this section, “**Transend**” means Transend Networks Pty Ltd (ABN 57 082 586 892).

(2) If a licence authorises Transend to operate a transmission network, it is a condition of the licence that Transend must ensure that it has the capability to maintain the security of the power system in mainland Tasmania.

Section 25 amended (Licences conferring exclusive retail franchise)

38. Section 25 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) If an electricity entity has an exclusive right under its licence to sell electricity to non-contestable customers within a particular supply area, the licence is subject to the following conditions:

- (a) on request by any person who is, or on the supply of electricity would be, a non-contestable customer, the electricity entity must offer to provide customer retail services to the person at an electrical installation in the area on reasonable terms and conditions;
- (b) on compliance by the person referred to in paragraph (a) with the terms and conditions offered by the electricity entity, the electricity entity must provide customer retail services to the person at the relevant electrical installation;

- (c) the electricity entity must –
 - (i) provide the information specified in a written direction of the Regulator to the person (including the Regulator), and in the manner and time, specified in that direction; and
 - (ii) otherwise comply with that direction.
- (b) by omitting from subsection (2) “supply electricity under subsection (1)” and substituting “provide customer retail services to a person under subsection (1)(a)”;
- (c) by omitting from subsection (2)(a) “sale of electricity” and substituting “provision of customer retail services”;
- (d) by omitting from subsection (2)(a) “negotiated contractual arrangements that are not based on the tariff” and substituting “the person entering into a contract under section 40 for the provision of those services that is not based on the tariff”;
- (e) by omitting from subsection (2)(b) “customer” and substituting “person”;
- (f) by omitting from subsection (2)(b) “power system” and substituting “distribution network or transmission network”;
- (g) by omitting subsection (3) and substituting the following subsections:

(3) Contracts between non-contestable customers and retailers that are not based on

the relevant tariff may require the customer to pay for, or contribute towards, the cost of network services.

(4) A direction referred to in subsection (1)(c) –

- (a) may only require the provision of information if the Regulator is of the opinion that the provision of that information is necessary to promote the development of the retail market in electricity supply; and
- (b) may require the electricity entity to do anything that the Regulator considers necessary or convenient for the purpose of facilitating the provision of the information.

(5) If a customer who was being provided with customer retail services by an electricity entity on the basis of the relevant tariff under this section or otherwise becomes a contestable customer, that customer is to continue to be provided with those services on the basis of that tariff until the first of the following occurs:

- (a) the customer enters into a contract with a retailer for the sale of electricity to the customer;
- (b) the period of 12 months commencing on the day the customer becomes a contestable customer ends.

Section 39A repealed

39. Section 39A of the Principal Act is repealed.

Part 3, Division 8A inserted

40. After section 49 of the Principal Act, the following Division is inserted in Part 3:

Division 8A – Retailer of last resort**Retailer of last resort**

49AA. (1) A person (who may, but need not be, an electricity entity) may be appointed under the regulations as retailer of last resort.

(2) The retailer of last resort has the following functions:

- (a) the provision of customer retail services to the customers of a retailer in any of the following circumstances:
 - (i) the retailer's licence under this Act is cancelled or surrendered or expires;
 - (ii) the retailer is suspended from trading in the National Electricity Market or ceases to be a Market Participant within the meaning of the National Electricity Code;
 - (iii) the retailer ceases retailing electricity in Tasmania;
 - (iv) any prescribed circumstances;
- (b) any prescribed functions;

- (c) any other functions imposed on that electricity entity in accordance with the regulations.

(3) The retailer of last resort has the prescribed powers and any other powers given to it in accordance with the regulations.

(4) This section and regulations of a kind contemplated by this section and section 122(2BB) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the Corporations legislation to which Part 1.1A of that Act applies.

Section 122 amended (Regulations)

41. Section 122 of the Principal Act is amended by omitting subsection (2BB) and substituting the following subsections:

(2BB) Without limiting subsection (1), the regulations may provide for all matters relating to the appointment of a retailer of last resort and its functions and powers including –

- (a) the establishment of a scheme in respect of the provision of customer retail services to the customers of a retailer in any of the following circumstances:
 - (i) the retailer's licence under this Act is cancelled or surrendered or expires;
 - (ii) the retailer is suspended from trading in the National Electricity Market or ceases to be a Market

Participant within the meaning of the National Electricity Code;

- (iii) the retailer ceases retailing electricity in Tasmania;
- (iv) any prescribed circumstances; and
- (b) the circumstances when that scheme will operate; and
- (c) the customers or class of customer to which the retailer of last resort must provide customer retail services and the period during which it must do so; and
- (d) the establishment, application and enforcement of one or more contractual relationships between the retailer of last resort and –
 - (i) an electricity entity; or
 - (ii) the customers to which the retailer of last resort must provide customer retail services; or
 - (iii) another person; and
- (e) the terms and conditions of a contractual relationship referred to in paragraph (d) or the manner of determining those terms and conditions; and
- (f) the functions and powers of the Regulator in respect of the functions and powers of the retailer of last resort or a scheme referred to in paragraph (a); and
- (g) the transfer of customers; and

- (h) the ending of contracts between a retailer and the customers to which the retailer of last resort must provide customer retail services; and
- (i) any other related matter.

(2BC) Without limiting subsection (1), the regulations may –

- (a) establish, apply and enforce one or more contractual relationships between electricity entities or between an electricity entity and customers; and
- (b) provide for the terms and conditions of a contractual relationship referred to in paragraph (a) or the manner of determining those terms and conditions; and
- (c) require an electricity entity to develop and publish standard contract terms and conditions that relate to the supply of electricity or the provision of services; and
- (d) require an electricity entity to have those standard contract terms and conditions approved in the prescribed manner; and
- (e) require an electricity entity to offer to enter into contracts with the same terms and conditions as those standard contract terms and conditions in the circumstances specified in the regulations; and
- (f) prohibit an electricity entity from entering into a contract in relation to the

supply of electricity or the provision of services if the contract –

- (i) does not include prescribed terms and conditions, terms and conditions of a prescribed type or terms and conditions determined by the Regulator; or
 - (ii) is not on prescribed terms and conditions, or terms and conditions of a prescribed type or terms and conditions determined by the Regulator; or
 - (iii) includes prescribed terms and conditions, terms and conditions of a prescribed type and terms and conditions determined by the Regulator; and
- (g) provide that the terms and conditions of a contractual relationship established and applied by the regulations are to be approved in the prescribed manner; and
 - (h) prescribe the functions and powers of the Regulator in relation to any matter referred to in this subsection; and
 - (i) provide for any matter relating to a matter referred to in this subsection.

(2BD) Without limiting subsection (1), the regulations may provide for –

- (a) the effects of a customer becoming a contestable customer; and
- (b) the making by the Regulator of determinations that a customer be a

contestable customer or a non-contestable customer, regardless of whether or not the customer is a customer, or a customer of a class, prescribed by the regulations to be a contestable customer; and

- (c) the power of the Regulator to delegate any functions and powers specified in the regulations with relation to a matter referred to in this subsection; and
- (d) any related matter.

(2BE) If the regulations provide for the making by the Regulator of determinations referred to in subsection (2A)(b) or (2BD)(b) –

- (a) those determinations are not statutory rules for the purposes of the *Rules Publication Act 1953*; and
- (b) the Treasurer may not declare such a determination to be subordinate legislation under section 3(2) of the *Subordinate Legislation Act 1992*.

**PART 5 – *ELECTRICITY - NATIONAL SCHEME*
(TASMANIA) ACT 1999 AMENDED**

Principal Act

42. In this Part, the *Electricity - National Scheme (Tasmania) Act 1999** is referred to as the Principal Act.

Section 2 substituted

43. Section 2 of the Principal Act is repealed and the following section is substituted:

Commencement

2. The provisions of this Act commence –

- (a) on a day or days to be proclaimed; or
- (b) at a time or times to be proclaimed; or
- (c) on the occurrence of one or more events to be proclaimed; or
- (d) as otherwise proclaimed.

Section 3 amended (Interpretation)

44. Section 3(1) of the Principal Act is amended by inserting before the definition of “National Electricity (Tasmania) Law” the following definitions:

“Australian Competition and Consumer Commission” means the Australian Competition and Consumer Commission

*No. 28 of 1999

established by section 6A of the *Trade Practices Act 1974* of the Commonwealth;

“National Electricity Code” means –

- (a) the code of conduct, called the National Electricity Code, approved by the Ministers of each of the States of New South Wales, Victoria, Queensland and South Australia for the time being in accordance with section 6(1) of the National Electricity Law; or
- (b) if that code is amended, that code as so amended;

Part 2: Heading amended

45. Part 2 of the Principal Act is amended by omitting “**NATIONAL ELECTRICITY (TASMANIA) LAW AND NATIONAL ELECTRICITY (TASMANIA) REGULATIONS**” from the heading to that Part and substituting “**NATIONAL ELECTRICITY (TASMANIA) LAW, NATIONAL ELECTRICITY (TASMANIA) REGULATIONS AND NATIONAL ELECTRICITY CODE**”.

Section 8A inserted

46. After section 8 of the Principal Act, the following section is inserted in Part 2:

Application of National Electricity Code

8A. In its application in and in respect of Tasmania, the National Electricity Code applies subject to any jurisdictional derogations for Tasmania authorised

2003 *Electricity Supply Industry Amendment* No. **s. 46**

by the Australian Competition and Consumer
Commission.