

Notes on Clauses

Electricity Reform (Implementation) Bill 2013

- Clause 1 This clause establishes the short title of the Act.
- Clause 2 This clause provides that the provisions of the Act commence upon proclamation.
- Clause 3 This clause provides that the amendments in Part 2 of the Bill relate to the *Electricity Supply Industry Act 1995*.
- Clause 4 This clause adds a number of new definitions to the *Electricity Supply Industry Act 1995*, including definitions necessary for the new wholesale regulatory arrangements and the definition of a Regulated Offer Retailer.
- It also removes a number of definitions that are no longer required in an FRC environment.
- Clause 5 This clause establishes a new function for the Tasmanian Economic Regulator to monitor and provide reports in relation to the development of competition in the Tasmanian electricity supply industry. The clause also provides that the Regulator must take into account the policy that it is desirable that electricity businesses operating in Tasmania are financially sustainable.
- Clause 6 This clause substitutes a new section relating to administrative fairness to ensure that the Regulator cannot discriminate between various parties in undertaking its functions under the Act.
- Clause 7 This clause substitutes a new clause 24A in the Act to replace specific mention of Transend Networks with the more general reference to the 'holder of a transmission licence'. This will enable the clause to operate effectively both pre and post the planned integration of the distribution and transmission network businesses.
- Clause 8 This clause establishes a new Subdivision in Part 3 of the Act that provides for a number of matters that are required for the transition to FRC.
- Clause 9 This clause automatically repeals Aurora's legislative monopoly on non-contestable customers in Tasmania immediately prior to the commencement of FRC on 1 January 2014.
- Clause 10 This clause establishes three new sections to deal with transition to FRC and to establish key concepts relating to retail price regulation that interact with existing provisions under the National Energy Retail Law (Tasmania)
- Section 38A provides for certain limitations on the retailers that customers may contract with during the period 1 January to 30 June 2014, and provides the head of power for the Minister to establish certain conditions relating to the transfer of customers, including

limitations of on the number of customers that can transfer between retailers in a specified time period. . These transitional provisions i are necessary to enable the necessary systems to be developed to support the move to unlimited customer transfer capacity under FRC;

- Section 38B provides for the Minister to declare, by Order, one or more retailers to be Regulated Offer Retailers. The Regulator will be empowered to set the maximum prices of the standard retail contracts offered by Regulated Offer Retailers. Every small customer on mainland Tasmania will have a designated Regulated Offer Retailer for their premises that will be obliged to offer them a standard retail contract at the prices set by the Regulator, should the customer request this;

The section also provides that the Aurora retail is taken to be the Regulated Offer Retailer for the entire State until such time as the retailers that purchase the retail customer bundles can be nominated as the new Regulated Offer Retailers from 1 January 2014;

The requirement for a retailer to have more than 50,000 small customers to be a Regulated Offer Retailer will ensure that the legislative framework is robust to changes in the Tasmanian retailers over time;

- Section 38C provides for the Minister, by order, to declare a Local Area Retailer. The role of Local Area Retailer is currently undertaken by Aurora Retail. One of the purchasing retailers will undertake this role from 1 January 2014. The Local Area Retailer will have financial responsibility for all electricity consumption that is unallocated when the market is settled, including non-contestable unmetered supply; and
- Aurora Retail will be taken to be nominated as the Local Area Retailer until the nomination of the new retailer to undertake this role takes effect.

Clause 11 This clause inserts a new heading into the Act after s39, to accommodate the new sections introduced by virtue of clause 12.

Clause 12 This clause establishes three new sections in the Act:

- Section 40AA relates to the determination by the Tasmanian Economic Regulator of the maximum prices for the standard retail contracts of Regulated Offer Retailers:
 - section 40AA(1) provides the head of power for the Regulator to undertake this role;
 - section 40AA(2) requires the Regulator to make a separate determination (pricing instrument) for each Regulated Offer Retailer;
 - section 40AA(3) provides that the Regulator may amend or revoke a determination.
 - section 40AA(4) limits the ability for the Regulator to amend a

determination where an amendment would be inconsistent with the principles that the Regulator is required to take into account when making a determination;

- section 40AA(5) provides for the making of regulations in relation to the price determination process;
 - section 40AA(6) provides that a determination made by the Regulator under this section remains in force for the period determined in accordance with the regulations; and
 - section 40AA(7) requires that if regulations are made then the making, amendment or revocation of a determination must be done in accordance with those regulations.
- Section 40AB specifies the principles that the Regulator must take into in making retail price determinations and specifies the range of operational costs of a Regulated Offer Retailer that are to be captured by a determination:
 - section 40AB(1) requires the Regulator to determine maximum prices for standard retail contracts by making an estimate of the operational costs incurred by Regulated Offer Retailers in supplying electricity to customers. It also establishes a number of other principles that the Regulator is to take into account in making a determination, including that customers should be protected from the adverse effects of market power, that there is a need for efficiency in retail service provision and that Regulated Offer Retailers should be able to make a return in providing retail services;
 - section 40AB(2) defines the relevant operational costs of Regulated Offer Retailers to be the purchase of wholesale electricity, transmission and distribution costs, retail costs and any other costs the Regulator considers relevant;
 - section 40AB(3) requires the Regulator to estimate the costs of purchasing wholesale electricity by adopting the price of the regulated load-following swap product offered by Hydro Tasmania. This product is the lowest risk financial product and would be purchased by a retailer with a low risk tolerance to movements in wholesale electricity prices;
 - section 40AB(4) provides that transmission and distribution costs are those established by the relevant determinations made by the Australian Energy Regulator; and
 - section 40AB(5) provides for the Regulator to determine the relevant retail cost to serve incurred by Regulated Offer Retailers in supplying electricity to customers on standard retail contracts.

- Section 40AC sets out arrangements for the making of the first retail price determination and deals with timing issues with regard to the making of price determinations prior to the nomination of the new, acquiring retailers as Regulated Offer Retailers.
 - Section 40AC(1) provides for the making of regulations to establish a process for the first determinations in relation to Regulated Offer Retailers, including that the Minister is to make submissions to the Regulator with regard to the structure and methodology, period and tariff structure that is to apply with regard to the first determinations;
 - Section 40AC(2) provides that if regulations are made which specify that the Minister is to make a submission with regard to the first determinations and the Minister specifies certain matters in his submission, then the determination must be done in accordance with this;
 - Section 40AC(3) provides that a first determination made in relation to Aurora Retail may effectively be transferred to apply to other authorised retailer(s) who are to become Regulated Offer Retailers once FRC commences; and
 - Section 40AC(4) provides that determination can be specified to apply to an authorised retailer prior to their nomination as a Regulated Offer Retailer, but that the determination does not apply with regard to that retailer until they formally become a Regulated Offer Retailer (from 1 January 2014).
- Section 40AD provides for the Regulator to declare and make determinations relating to other declared electrical services:
 - section 40AD(1) provides the head of power for the Regulator to undertake this role;
 - section 40AD(2) specifies that determinations under this section are not to include retail services to small customer or distribution or transmission services;
 - section 40AD(3) establishes the two tests that must be met before the Regulator can declare an electrical service. These are that an electricity entity or authorised retailer has substantial market power and the promotion of competition, efficiency of the public interest warrants declaration;
 - section 40AD(4) provides for the revocation or amendment of a declaration under this section;
 - section 40AD(5) provides that if the Regulator declares an electrical service, it can determine the maximum tariffs and charges for that service. This clause provides the head of power

for price regulation of declared services;

- section 40AD(6) provides that the relevant entity offering a service that has been declared by the Regulator must only charge for that service in accordance with the maximum prices set by the Regulator and establishes a penalty for non-compliance; and
- the remaining clauses in the new Section 40AB are administrative in nature and deal mainly with the making of regulations to support the operation of this section

Clause 13	This clause replaces references to Aurora Retail with references to Regulated Offer Retailers, for the purposes of determining maximum standing offer prices.
Clause 14	This clause replaces references to 'tariffs and charges' with references to 'standing offer prices' to reflect the appropriate terminology used elsewhere throughout the Bill
Clause 15	This clause replaces references to Aurora Retail with references to Regulated Offer Retailers, for the purposes of the Regulator recovering the costs of determining maximum prices for standard retail contracts.
Clause 16	This clause inserts a new heading into the Act after s43B to accommodate the new sections introduced by virtue of clause 17.
Clause 17	<p>This clause establishes a new Subdivision in Part 3, Division 4 of the Act relating to Community service obligation concessions:</p> <ul style="list-style-type: none"> • section 43C establishes a number of new definitions relating to the provision of electricity concession under FRC; • section 43D provides for the Minister to make a concession order, which will be the instrument that requires all authorised retailers to provide the Government's electricity concessions to eligible customers; <ul style="list-style-type: none"> ➤ section 43D(1) provides the head of power for the Minister to make a concession order in relation to specified eligible customers; ➤ section 43D(2) provides guidance on how a concession specified in a concession order may be expressed; ➤ section 43D(3) provides guidance on how a concession order may be expressed; ➤ section 43D(4) requires a retailer that is the subject of a concession order to provide that concession to an eligible person, and establishes a penalty for non-compliance; ➤ section 43D(7) provides for information regarding customer eligibility for concession to be transferred to the new retailers. This will provide for the seamless transition of concession from Aurora Retail to an FRC environment; and

➤ the remaining clauses in section 43D are administrative in nature.

- Section 43E provides for the Minister to enter into a community service obligation agreement with a retailer. The CSO agreement will establish the administrative arrangements under which concessions are provided by the retailers to customers, and reimbursed by the Government.
- Section 43F requires the Minister to ensure that a retailer is reimbursed by the State for providing a concession under a concession order.

Clause 18

This clause establishes a new Division 4A in Part 3 of the Act relating to the regulation of Hydro Tasmania's wholesale electricity contracts in Tasmania:

- Section 43G requires the Tasmanian Economic Regulator to make a number of approvals regarding the regulated contracts that Hydro Tasmania is to offer;
 - section 43(G)(1) requires the Regulator to approve:
 - the types of regulated contracts that Hydro Tasmania is required to offer (such as financial swaps and caps);
 - the standard forms for each approved contract. This will ensure that all retailers will have the same non-price terms and conditions for each approved contract;
 - the methodology that must be used to calculate prices for each approved contract;
 - the period over which Hydro Tasmania is to offer the approved contracts (for example: 12 quarters forward); and
 - the formula that is to be used to determine the volume of approved contracts that Hydro Tasmania is to make available;
 - section 43(G)(2) provides for the formula used to determine the volume of approved contracts that Hydro Tasmania must offer to take into account other (non-regulated) contracts that have been entered into by Hydro Tasmania in Tasmania. This is to ensure that Hydro Tasmania does not have to offer an unreasonable volume of contracts well in excess of that required to contract the Tasmanian load.
 - section 43(G)(3) mandates that the Regulator must declare a load-following swap product as an approved contract in any approval under section 43(H)(1). This product is the lowest risk financial product used in the National Electricity Market and will be used by the Regulator to set the wholesale allowance in the standard retail contracts that must be offered by Regulated Offer Retailers;
 - section 43(G)(4) provides for the revocation of an approval;
 - section 43(G)(5) provides that a revocation may be made if the Regulator believes an approval no longer reflects principles that

the Regulator must take into account when making an approval;

- section 43(G)(6) provides for the making of regulations to support the operation of this section, including the charging to an electricity entity of a cost relating to the making or revocation of an approval;
 - section 43(G)(7) specifies that if regulations are made then the making or revocation of approvals must be done in accordance with the regulations;
 - section 43(G)(8) requires the Regulator to inform Hydro Tasmania and authorised retailers if it makes or revokes an wholesale approval and publish a copy of the approval or revocation on its website. This will ensure that all relevant parties are made aware of changes to the wholesale instrument.
 - section 43G(9) provides that an approval remains in place for the period as determined by the regulations; and
 - section 43G(10) provides that the making or revocation of an approval does not retrospectively affect contracts made before the date of the approval or revocation. This is an avoidance of doubt provision that will provide confidence to retailers that any contracts they enter into will not become invalid by virtue of a change to the regulatory arrangements.
- Section 43H specifies the principles that the Regulator must take into account when approving contracts:
 - section 43(G)(1) outlines two principles that the Regulator must have regard to in deciding which contracts Hydro Tasmania is required to offer.;

The first principle is that authorised retailers should have a choice of different contracts to enter into with Hydro Tasmania. This will encourage retail competition by enabling authorised retailers to adopt different hedging strategies;

The second principle is that the types of contracts should be consistent with the contracts used in the National Electricity Market. This will ensure consistency with other NEM regions and prevent retailers from having different risk management arrangements across NEM jurisdictions;

- section 43(G)(2) outlines two principles that the Regulator must have regard to in determining the standard form of each approved contract.

The first principle is that the terms and conditions of the approved contracts should be similar to those offered in those contracts in the NEM.

The second principle is that the total period over which

Hydro Tasmania is required to offer the approved contracts should be of a similar duration to that offered in the NEM.

Again, these principles are aimed at ensuring consistency in the regulated contracts offered by Hydro Tasmania with other NEM regions; and

- section 43(H)(3) outlines two principles that the Regulator is to take into account in approving the methodology for determining the prices for the approved regulated products.

The first principle is that the pricing methodology reference electricity hedging contracts in the Victorian region of the NEM, adjusted to take into account the supply/demand balance for electricity in Tasmania. The Victorian region is both competitive and liquid and, due to Basslink, Tasmanian prices are heavily leveraged to the Victorian market.

The second principle is that the prices should reflect the risks that a retailer entering into a contract faces with regard to supply demand variations associated with retailing to small customers under standard retail contracts;

- Section 43I establishes the head of power that will require Hydro Tasmania to offer the approved regulated financial contracts to authorised retailers, and enter into these contracts at the request of an authorised retailer.
- Section 43J provides for the regulation of Hydro Tasmania's requirements of retailers with regard to credit risk:
 - section 43J(1) provides that Hydro Tasmania is to submit to the Regulator its proposed credit risk management requirements for retailers where Hydro Tasmania is compelled to enter into contracts under s43I
 - section 43J(2) provides the head of power to the Regulator to approve Hydro Tasmania's proposed requirements on retailers
 - section 43J(3) provides that it is defence against the offence by Hydro Tasmania of not offering a retailer a contract or contracts under 43H if the retailer has not met the minimum credit requirements approved by the Regulator. This is to ensure that Hydro Tasmania is not forced to contract with retailers that pose a financial risk to Hydro Tasmania by not being able to meet their obligations under the contract.
- Section 43K sets out arrangements where Hydro Tasmania is not required to offer a contract under section 43I because its minimum unit volume in relation that contract would be exceeded by offering the contract:
 - section 43K(1) provides that it is a defence against an offence under section 43I of failing to offer or enter into a contract with a

retailer if Hydro Tasmania determines its minimum volume would be exceeded by doing so;

- section 43K(2) prescribes the specific circumstances where the minimum volume limit are exceeded; and
 - section 43K(3) provides that Hydro Tasmania is required, at the request of a retailer., to provide information to that retailer regarding its contracted volumes in relation to its minimum total quantities.
- Section 43L deals with the application and monitoring of approved methodologies for setting prices under contracts offered by Hydro Tasmania:
 - section 43L(1) requires the Regulator to publish guidelines outlining how Hydro Tasmania is to apply the approved pricing methodology to the approved regulated contracts. The guidelines will specify matters such as when and how Hydro Tasmania is to publish the prices of its regulated contracts;
 - section 43L(2) requires Hydro Tasmania to comply with the guidelines; and
 - section 43L(3) provides the power to the Regulator for it to monitor and report on the offering and entering into by Hydro Tasmania of contracts under 43I, as well as Hydro Tasmania's application of an approved price-setting methodology under an approved contract.
 - Section 43M provides for the Regulator to step in and fix the prices for Hydro Tasmania's regulated contract products under certain circumstances:
 - section 43M(1) provides for the Regulator to approve the fixing the prices for regulated products if the Regulator is satisfied that there has been a significant, deliberate or repeated failure by Hydro Tasmania to correctly apply the approved pricing methodology. This clause could be invoked in the extreme event of mispricing by Hydro Tasmania;
 - sections 43M(2) and (3) provides for the Regulator to fix prices where there has been a 'supply disruption event', which could include, for example, a prolonged outage of Basslink or sustained failure of Hydro Tasmania's major generating plant. A 'supply disruption event' does not include a drought in Tasmania because this is a normal commercial risk for Hydro Tasmania that will be reflected in the methodology for pricing the approved contracts. The Regulator must consult with the Treasurer before invoking this clause;
 - section 43(M)(4) provides that an approval to fix prices may be revoked by the Regulator;

- section 43M(5) provides for the making of regulations to support the operation of this section; and
- section 43M(6) provides that an approval or revocation does not apply retrospectively to any contract entered into before the date of the approval or revocation. This is an avoidance of doubt provision that will provide confidence to retailers that any contracts they enter into will not become invalid by virtue of a change to the regulatory arrangements.
- Section 43N establishes the processes under which the Regulator may fix prices under an approval made under 43M(1):
 - section 43N(1) provides that the Regulator may fix prices where an approval to fix prices is made under 43M(1);
 - section 43N(2) provides that if the Regulator is to fix prices in response to an event of mispricing by Hydro Tasmania, it is to do so using the approved pricing methodology for those contracts. This will remove uncertainty for authorised retailers;
 - sections 43N(3) and (4) provides that where the Regulator is to fix prices in response to a supply disruption event, the Regulator does not have to use the approved pricing methodology for those contracts. This is because the supply disruption events are likely to cause the approved pricing methodology to be no longer valid (for example, a suspension of the Victorian contract market or a prolonged disruption to electricity supply);
 - section 43N(5) provides that the Regulator can revoke notices for the fixing of prices in response to either a mispricing event or a supply disruption event;
 - section 43N(6) requires Hydro Tasmania to continue to offer the approved regulated contracts to authorised retailers, regardless of how the Regulator decides to price those contracts;
 - section 43N(7) provides that if regulations are made relating to fixing prices, the regulations must be complied with;; and
 - section 43N(8) provides that the issuing or revocation of a notice an approval under this section does not apply retrospectively to any contract entered into before the date of the approval or revocation. This is an avoidance of doubt provision that will provide confidence to retailers that any contracts they enter into will not become invalid by virtue of a change to the regulatory arrangements.
- Section 43O provides for the Minister to make the initial approvals for the wholesale regulatory framework by providing the Minister with the necessary powers to make approvals as if it was the Regulator.

Once the initial wholesale pricing instrument is made by the Minister, the Regulator will be responsible for its administration.

- Clause 19 This clause amends section 49B, to allow for the amendment of the Tasmanian Electricity Code where it is required to facilitate the electricity reforms. The Act does not currently allow for amendment of the Code to support the reforms.
- Clause 20 This clause provides for a new section 49I to be included in the Act that clarifies that any instruments, determinations, approvals, notices or reports made under this Part are not statutory rules.
- Clause 21 This clause inserts a new section 119A, which provides that the Minister can make various agreements, arrangements, orders, and approvals for the relevant parts of the Act, notwithstanding any other law in Tasmania. This is an 'avoidance of doubt' provision relating to the Minister's authority to do certain things following the completion of the sale process, including nominating purchasing retailers as Regulated Offer Retailers.
- Clause 22 This clause inserts a new section 121AA, which provides that the costs incurred by a retailer in meeting its obligations under the National Energy Retail Law (Tasmania) to comply with a request from a Pay as You Go customer to revert to a standard metered product can be recovered by that retailer from the distribution network service provider. These costs are currently absorbed by Aurora, which is both retailer and distributor, but with the commencement of FRC provision needs to be made for the retailer to recover these costs from the distributor, as the owner of the PAYG meters.
- Clause 23 This clause makes a number of amendments to the regulation-making powers in section 122 of the Act to reflect the transition to a competitive market.
- Clause 24 This clause provides that the amendments in Part 3 relate to the *National Energy Retail Law (Tasmania) Act 2012*.
- Clause 25 This clause will remove the definition of Aurora Retail from the NERL (Tasmania) Act to reflect the transition to a competitive market.
- Clause 26 This clause will establish a new section 17A in the National Energy Retail Law (Tasmania) Act to modify the definition of 'designated retailer' and introduce a definition of Regulated Offer Retailer:
- section 17A(1) amends the definition of 'designated retailer' in order to 1) provide that the obligation to offer supply to customers seeking a new connection (e.g. home builders) is placed on the relevant Regulated Offer Retailer for that customers' premises and 2) ensure that small customers with an existing connection always have access to a designated Regulated Offer Retailer that is obliged to offer them a standard retail contract at regulated prices, even where their home is currently being supplied by non-price regulated retailer;

- section 17A(2) inserts a new definition of Regulated Offer Retailer to link the arrangements relating to retail price regulation under the Electricity Supply Industry Act to relevant provisions under the National Energy Retail Law (Tasmania)
- section 17A(3) provides that Tasmania may nominate a Local Area Retailer by way of Ministerial Order, consistent with the nomination process proposed new s38C of the Electricity Supply Industry Act. The current Law provides that the LAR must be nominated under regulations.

Ministerial Orders provide the necessary flexibility to nominate a purchasing retailer as a Regulated Offer Retailers and/or a Local Area Retailer in the period between the completion of the sale process and the commencement of FRC on 1 January 2014; and

- section 17A(4) provides that where a customer is on a deemed customer arrangement - which includes situations such as where a customer moves in to a new property or where a contract has expired, but electricity is still being supplied – the retailer supplying that customer must advise them as soon as practicable that they are entitled to enter into a standard retail contract at regulated prices with their Regulated Offer Retailer.

Clause 27

This clause amends section 18 to remove references to Aurora Retail and replace them with references to a Regulated Offer Retailer'. This has the effect of regulating the standing offer prices offered by the new Regulated Offer Retailers in the same manner to how Aurora's prices are currently regulated.

Clause 28

This clause repeals the Amendment Act one year after it commences. All amendments will remain captured in the relevant Principal Acts, removing the need to retain the Amendment Act itself.