

# Electricity Industry Act 2000

Act No. 68/2000

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Victoria

No. 68 of 2000

# Electricity Industry Act 2000<sup>†</sup>

[Assented to 21 November 2000]

**The Parliament of Victoria enacts as follows:**

## **PART 1—PRELIMINARY**

### **1. *Purpose***

The main purpose of this Act is to regulate the electricity supply industry.

### **2. *Commencement***

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.

- (2) Section 19(5) comes into operation on a day to be proclaimed.
- (3) Section 83 comes into operation on a day to be proclaimed.
- (4) The remaining provisions of this Act come into operation on 1 January 2001.
- (5) If section 83 does not come into operation before 31 December 2001, it comes into operation on that day.

### **3. Definitions**

In this Act—

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

**"company"** has the same meaning as in the Corporations Law of Victoria;

**"corporation"** has the same meaning as in the Corporations Law;

**"distribution company"** means a person who is the holder of a licence to distribute electricity;

**"enforcement officer"** means a person appointed as an enforcement officer under Part 11 of the **Electricity Safety Act 1998**;

**"generation company"** means a person who is the holder of a licence to generate electricity for supply or sale;

**"licence"** means a licence issued under Part 2;

**"licensee"**, except in Part 3, means the holder of a licence issued under Part 2;

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- "National Electricity Code"** has the same meaning as "Code" has in the National Electricity (Victoria) Law;
- "NEMMCO"** has the same meaning as in the National Electricity (Victoria) Law;
- "Office"** means the Office of the Regulator-General established under Part 2 of the **Office of the Regulator-General Act 1994**;
- "retailer"** means the holder of a licence to sell electricity otherwise than through the wholesale electricity market;
- "SEC"** means the State Electricity Commission of Victoria;
- "Tariff Order"** means the Order made under section 158A(1) of the **Electricity Industry Act 1993** on 20 June 1995 and published in the Government Gazette on 30 June 1995 as that Order is amended and in force from time to time;
- "transmission company"** means a person who is the holder of a licence to transmit electricity;
- "VENCorp"** means Victorian Energy Networks Corporation established under Part 2A of the **Gas Industry Act 1994**;
- "wholesale electricity market"** means the market for wholesale trading in electricity operated by NEMMCO.

#### **4. Crown to be bound**

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.



**5. *Extra-territorial operation***

It is the intention of the Parliament that the operation of this Act should, so far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
- (d) things, acts, transactions and matters, (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

**6. *Construction of Act***

This Act must be read and construed as one with the **Electricity Industry (Residual Provisions) Act 1993**.

**7. *Application of Act to certain distribution, transmission and generation companies***

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that a reference in specified provisions in Part 5 of this Act or specified provisions in another Act to a distribution company, transmission company or generation company does not include a reference to a specified distribution company, transmission company or generation company.
  - (2) A copy of an Order under sub-section (1) must be laid before each House of the Parliament on or before the sixth sitting day after it is made.
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- (3) An Order under sub-section (1) is subject to disallowance by a House of the Parliament, and section 23 of the **Subordinate Legislation Act 1994** applies as if the Order were a statutory rule.
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**PART 2—REGULATION OF ELECTRICITY INDUSTRY**

**Division 1—Introductory**

**8. *Application of Part***

This Part applies to any person, including SEC, VENCORP and any distribution company, transmission company, retailer and generation company.

**9. *Construction of Part***

This Part is relevant legislation for the purposes of the **Office of the Regulator-General Act 1994**.

**10. *Objectives of the Office***

The objectives of the Office under this Act are—

- (a) to promote competition in the generation, supply and sale of electricity;
- (b) to ensure the maintenance of an efficient and economic system for the generation, transmission, distribution, supply and sale of electricity;
- (c) to protect the interests of consumers with respect to electricity prices and the safety, reliability and quality of electricity supply;
- (d) to facilitate the maintenance of a financially viable electricity supply industry.

**11. *Conferral of power on ACCC in relation to transmission pricing***

- (1) The Minister, on behalf of the State, may enter into an agreement with the Commonwealth and the ACCC for the performance of such functions and the exercise of such powers as the Office has in relation to the regulation of charges for connection to, and the use of, the transmission
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system, whether under the Tariff Order or otherwise.

- (2) The ACCC, and the members of the ACCC, have power to perform such functions and exercise such powers as are conferred on the ACCC by an agreement under sub-section (1).
- (3) An agreement referred to in sub-section (1) shall be published in the Government Gazette.
- (4) An agreement under sub-section (1) comes into effect on publication of a copy in accordance with sub-section (3) or on such later date as is specified in the agreement.
- (5) Despite anything to the contrary in section 39A of the **Office of the Regulator-General Act 1994**, the Office may give to the ACCC such information as may be necessary or convenient for the ACCC to have in connection with carrying out the functions and powers of the Office that are conferred on the ACCC by an agreement under this section.

### **Division 2—Price Regulation**

#### **12. Powers in relation to price regulation**

- (1) For the purposes of Part 3 of the **Office of the Regulator-General Act 1994**—
  - (a) the electricity industry is a regulated industry; and
  - (b) the power to regulate prescribed prices in respect of prescribed goods and services is conferred on the Office in respect of the following—
    - (i) charges for connection to, and the use of, any distribution system;

- (ii) unless an Order is in force under sub-section (2), charges for connection to, and the use of, the transmission system;
  - (iii) tariffs for the sale of electricity regulated by Order under section 13, to the extent specified in such an Order.
- (2) The Governor in Council may, by Order published in the Government Gazette, declare that charges for connection to, and the use of, the transmission system are subject to the regulation of the ACCC under an agreement entered into under section 11 and are not subject to the regulation of the Office.

**13. Regulation of tariffs for prescribed customers**

- (1) The Governor in Council may, by Order published in the Government Gazette, regulate, in such manner and in relation to such period as the Governor in Council thinks fit, tariffs for the sale of electricity to prescribed customers or a class of prescribed customers.
- (2) Without limiting the generality of sub-section (1), the manner may include—
- (a) fixing the tariff or the rate of increase or decrease in a tariff;
  - (b) fixing a maximum tariff or maximum rate of increase or minimum rate of decrease in the maximum tariff;
  - (c) fixing an average tariff or an average rate of increase or decrease in the average tariff;
  - (d) specifying policies or principles for fixing tariffs;
  - (e) specifying a tariff determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
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- (f) specifying a tariff determined by reference to any one or more of the following—
- (i) a prescribed customer or a class of prescribed customers;
  - (ii) a person or a class of persons authorised to sell electricity;
  - (iii) the purpose for which the electricity is used;
  - (iv) the quantity of electricity used;
  - (v) the period of use;
  - (vi) the place of supply;
  - (vii) any other specified factor relevant to the sale of electricity.
- (3) An Order under sub-section (1) may direct the Office to make a determination under the **Office of the Regulator-General Act 1994** in respect of such factors and matters or in accordance with such procedures, matters or bases as are specified in the Order, or both.
- (4) An Order under sub-section (1) has effect as from the date specified in the Order as if the tariffs to which the Order applies were prices determined by the Office.
- (5) The Governor in Council may, by Order published in the Government Gazette, declare that a person or class of persons specified in the Order is, for the purposes of this section, a prescribed customer or class of prescribed customers.
- (6) In this section—
- "prescribed customer"** means a person, or a member of a class of persons, to whom an Order under sub-section (5) applies.
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- (7) This section, and any Order made under this section and in force immediately before that date, expire on 31 December 2003.

**14. *Tariff Order***

- (1) Subject to section 15, the Tariff Order cannot be amended or varied except as provided by this section.
- (2) The Governor in Council may, by Order published in the Government Gazette, revoke the Tariff Order.
- (3) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette, amend the Tariff Order—
- (a) to vary the provisions in clause 2.5 in relation to the giving of notices to customers and to extend the period of operation of that clause;
  - (b) to insert specified metering and data collection and processing services as excluded services for the purposes of clause 5.7;
  - (c) to insert as excluded services for the purposes of clause 5.7, specified services in connection with the implementation and operation of arrangements—
    - (i) under which a customer of a retailer may elect to become a customer of another retailer; or
    - (ii) relating to the settlement of the wholesale electricity market in respect of customers making such elections;
  - (d) to vary clause 5.7.5 to provide for regulation by the Office of terms and charges for excluded services to the extent that the terms
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- and charges for those excluded services are not regulated under the licenses referred to in clause 5.7.5;
- (e) to vary clause 6.3 of the Tariff Order to authorise the Office, at the request of a distribution company, to review and amend a price determination relating to that distribution company to address any matter arising from the implementation and operation of arrangements—
- (i) under which a customer of a retailer may elect to become a customer of another retailer; or
  - (ii) relating to the settlement of the wholesale electricity market in the case of customers making such elections—
- including any matter relating to the recovery by the distribution company of the costs of that implementation and operation;
- (f) to permit a distribution company, with the approval of the Office, to pass through to the retailers supplied by that distribution company additional costs to the distribution company of the implementation and operation of arrangements—
- (i) under which a customer of a retailer may elect to become a customer of another retailer; or
  - (ii) relating to the settlement of the wholesale electricity market in the case of customers making such elections;
- (g) in relation to public lighting.
- (4) An Order under sub-section (3) amending the Tariff Order may declare prices and goods and services to be prescribed prices and goods and
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services in respect of the electricity industry for the purposes of the **Office of the Regulator-General Act 1994**.

- (5) An Order under sub-section (3) amending the Tariff Order may direct the Office to make a determination under the **Office of the Regulator-General Act 1994** in respect of such factors and matters or in accordance with such procedures, matters or bases as are specified in the Order, or both.
- (6) The Tariff Order has effect as from the date specified in the Order as if the tariffs, charges and other matters to which the Order applies had been determined by the Office.
- (7) If a provision of the Tariff Order ceases to have effect, the remaining provisions of that Order continue to have effect, subject to that Order and this Act, according to their tenor and so to have effect, subject to that Order and this Act, as if—
  - (a) references in those provisions to a provision that has ceased to have effect were a reference to that provision as in force immediately before it ceased to have effect; and
  - (b) words and expressions used in those provisions that were defined by the provision that has ceased to have effect continue to have the same respective meanings as before the provision ceased to have effect.

**15. *Continuation of charges relating to distribution system***

- (1) This section applies if—
    - (a) the Office has made a determination under the **Office of the Regulator-General Act**
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- 1994** regulating charges for connection to, and the use of, any distribution system; and
- (b) proceedings are commenced in respect of the determination; and
  - (c) the determination is stayed or set aside.
- (2) If the decision to stay or set aside the determination is made before 1 January 2001, then, despite anything to the contrary in the Tariff Order, the provisions of the Tariff Order regulating charges for connection to, and the use of, a distribution system will continue to apply on and after that date to that distribution system until a determination of the Office is in effect regulating those charges.
- (3) If the decision to stay or set aside the determination is made on or after 1 January 2001, then despite the determination being stayed or set aside and despite anything to the contrary in the Tariff Order, the provisions of the determination regulating charges for connection to, and the use of, a distribution system will apply to that distribution system on and after the date of the decision to stay or set aside the determination until a determination of the Office is in effect regulating those charges.
- (4) Sub-sections (2) and (3) are subject to any order of the Court or the appeal panel under the **Office of the Regulator-General Act 1994** to the contrary.
- (5) The Governor in Council may, by Order published in the Government Gazette, provide for transitional arrangements between the operation of sub-section (2) or (3) and the operation of any determination of the Office that takes effect following the determination of the proceedings.
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- (6) An Order under sub-section (5) may direct the Office to make a determination under the **Office of the Regulator-General Act 1994** in respect of such factors and matters or in accordance with such procedures, matters or bases as are specified in the Order, or both.
- (7) In this section "**proceedings**", in relation to a determination, means—
- (a) proceedings on an appeal under section 37 of the **Office of the Regulator-General Act 1994** against the determination; or
  - (b) proceedings before a Court of a kind permitted by section 40 of the **Office of the Regulator-General Act 1994** in respect of the determination.

### **Division 3—Licences**

#### **16. Prohibition**

- (1) A person must not engage in the generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity unless the person—
- (a) is the holder of a licence authorising the relevant activity; or
  - (b) is exempted from the requirement to obtain a licence in respect of the relevant activity.

Penalty: 1000 penalty units and 100 penalty units for each day after the day on which a notice of contravention of this sub-section is served on the person by the Office.

- (2) This section does not prohibit the transmission, distribution or supply of electricity by and for the
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use of the Public Transport Corporation established under the **Transport Act 1983**.

**17. Exemptions**

- (1) The Governor in Council may by Order in Council published in the Government Gazette exempt a person from the requirement to obtain a licence in respect of the activity specified in the Order in Council.
- (2) An exemption may be of general or specific application.
- (3) An exemption is subject to such terms, conditions and limitations as are specified in the Order in Council.
- (4) An Order under sub-section (1) may confer powers and functions on, and leave any matter to be determined by, the Office.

**18. Application for licence**

- (1) A person may apply to the Office for the issue of a licence authorising one or more of the following activities—
  - (a) to generate electricity for supply or sale;
  - (b) to transmit electricity;
  - (c) to distribute or supply electricity;
  - (d) to sell electricity.
- (2) An application must be in a form approved by the Office and accompanied by such documents as may be determined by the Office.
- (3) An application must be accompanied by the application fee (if any) fixed by the Office.

**19. Determination of application**

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- (1) Subject to sub-sections (2) and (3) the Office may grant or refuse an application for the issue of a licence for any reason it considers appropriate, having regard to the objectives specified in section 10.
  - (2) The Office must not grant an application for the issue of a licence unless the Office is satisfied that—
    - (a) subject to sub-section (3), in the case of an application for a licence to sell electricity, the applicant is financially viable; and
    - (b) subject to sub-section (4), the applicant has the technical capacity to comply with the conditions of the licence.
  - (3) The Office does not have to be satisfied as to the applicant's financial viability, if the applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Code and the Code includes prudential requirements.
  - (4) The Office does not have to be satisfied as to the applicant's technical capacity to comply with the conditions of the licence at the time it is issued if—
    - (a) the activities specified in the licence are not likely to be commenced to be carried out within the next following 12 months; and
    - (b) the application is granted subject to such conditions as are determined by the Office relating to further approval of the applicant's technical capacity or approval of future facilities necessary for the carrying out of the activities.
  - (5) The Office does not have to be satisfied as to the applicant's technical capacity to comply with the
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conditions of the licence, if the applicant is the Snowy Hydro Company within the meaning of the **Snowy Hydro Corporatisation Act 1997**.

- (6) The Office must publish a notice in a daily newspaper generally circulating in Victoria—
- (a) specifying that an application for a licence in respect of the relevant activity has been lodged with the Office by the person specified in the notice; and
  - (b) inviting interested persons to make submissions to the Office in respect of the application within the period and in the manner specified in the notice.
- (7) Subject to this section and any requirements specified in regulations made for the purposes of this section under section 119, the Office may determine the procedures that are to apply in respect of the issue of licences.
- (8) The Office must notify an applicant in writing of its decision to grant or refuse to grant the application and, in the case of a decision to refuse to grant the application, of the reasons for its decision.

**20. Provisions relating to licences**

- (1) A licence is to be issued for such term (if any) as is determined by the Office and is specified in the licence.
  - (2) A licence is subject to such conditions as are determined by the Office.
  - (3) If a licence is issued to 2 or more persons for the purpose of the carrying on by those persons of the activities authorised by the licence in partnership or as an unincorporated joint venture, the licence may include conditions relating to the carrying on of those activities in that manner.
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**21. *Specific licence conditions***

Without limiting the generality of section 20, the conditions on a licence may include provisions—

- (a) requiring the licensee to pay specified fees and charges in respect of the licence to the Office;
- (b) requiring the licensee to enter into agreements on specified terms or on terms of a specified type;
- (c) requiring a retailer to have such agreements with one or more distribution companies as are necessary to ensure that, subject this Act, electricity is distributed or supplied to the extent necessary to enable the retailer to sell electricity to its customers;
- (d) requiring a distribution company to have such agreements with retailers as are necessary to ensure that, subject to this Act, electricity is distributed or supplied to the extent necessary to enable the retailers to sell electricity to their customers;
- (e) requiring a distribution company—
  - (i) to prepare standard agreements for the purposes of paragraphs (c) and (d); and
  - (ii) to submit those standard agreements to the Office for approval; and
  - (iii) to offer a standard agreement approved by the Office to a retailer for the purposes of paragraphs (c) and (d);
- (f) subject to section 47, requiring a retailer to enter into an agreement with the State for the provision of community services;

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- (g) requiring a distribution company to comply with requirements relating to the provision of public lighting;
  - (h) requiring the licensee to comply with customer load shedding arrangements agreed with VENCORP or with such arrangements as are determined by the Minister under section 80;
  - (i) requiring the licensee to supply information to VENCORP, when requested by VENCORP, to assist VENCORP to fulfil its functions in relation to the securing of supply of electricity;
  - (j) requiring the licensee to inform customers from time to time of the arrangements in place or proposed to be in place to allow them to elect to become a customer of another licensee;
  - (k) requiring a licensee to give notice to customers of the existence of deemed contracts under sections 39 and 40 and the methods by which those contracts may be terminated and requiring the licensee to provide for cooling-off periods approved by the Office for the termination of those contracts;
  - (l) requiring the licensee to observe specified Orders in Council, industry codes, standards, rules and guidelines, with such modifications or exemptions as may be determined by the Office;
  - (m) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
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- (n) specifying requirements about the ownership of real or personal property used in or in connection with the carrying on of the activities authorised by the licence;
- (o) preventing the licensee from engaging in or undertaking specified business activities;
- (p) specifying methods or principles to be applied by the licensee in determining prices or charges;
- (q) specifying methods or principles to be applied in the conduct of activities authorised by the licence;
- (r) specifying procedures for variation or revocation of the licence;
- (s) specifying the procedures to apply if an administrator is appointed under section 34;
- (t) requiring the licensee to provide, in the manner and form determined by the Office, such information as the Office may from time to time require;
- (u) requiring the licensee to develop, issue and comply with customer-related standards, procedures, policies and practices (including with respect to the payment of compensation to customers).

**22. Minister to determine fees**

For the purposes of section 21(a) the fees and charges to be specified in respect of a licence are to be determined by the Minister having regard to the proportion of the total costs of the Office that are incurred in the administration of this Part.

**23. Condition restricting sale to certain customers**

- (1) A licence to sell electricity is deemed to include a condition prohibiting the licensee from selling
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electricity to persons or classes of persons specified by Order under this section for the period or periods specified in the Order in respect of those persons.

- (2) The Governor in Council may by Order published in the Government Gazette specify persons or classes or persons and periods for the purposes of this section.
- (3) An Order under sub-section (2) may specify a class of persons by reference to all or any of the following—
  - (a) the person authorised to sell the electricity;
  - (b) the purpose for which the electricity is used;
  - (c) the quantity of electricity used;
  - (d) the period of use;
  - (e) the place of supply;
  - (f) any other specified factor relevant to the sale of electricity.
- (4) This section ceases to have effect on 31 December 2003.

**24. *Condition restricting generating capacity***

Subject to section 33, if the Office—

- (a) issues a single licence authorising each of the activities referred to in section 18(1)(a) and (c); or
  - (b) issues to the same person separate licences which together authorise each of those activities; or
  - (c) approves the transfer of a licence as a result of which the same person holds separate licences which together authorise each of those activities—
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the licence, or each such licence, must contain a condition prohibiting the person from having an entitlement to generating capacity within the meaning of Part 3 of more than 200 megawatts.

**25. *Condition specifying industry codes, standards, rules or guidelines***

- (1) If a licence is subject to a condition of a kind referred to in section 21(1), the Office—
  - (a) may, in accordance with procedures specified by the Office, amend the specified industry codes, standards, rules or guidelines, or a document referred to in any of them, for the purposes of their application under the licence;
  - (b) may resolve, or seek to resolve, disputes between the licensee and any other person relating to the specified industry codes, standards, rules or guidelines, or a document referred to in any of them, as they apply under the licence.
- (2) If the Office amends an industry code, standard, rule or guideline or a document under sub-section (1), the Office may at the same time, in accordance with procedures specified by the Office, amend that code, standard, rule, guideline or document for the purposes of their application otherwise than under the licence.

**26. *Condition relating to customer-related standards, procedures, policies and practices***

- (1) If a licence is subject to a condition of a kind referred to in section 21(u)—
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- (a) the Office must monitor the licensee's compliance with the customer-related standards, procedures, policies and practices developed by the licensee in accordance with the condition; and
  - (b) if the Office considers that any of the customer-related standards, procedures, policies and practices, or compliance by the licensee with any of them, disadvantages, or may disadvantage, any class of its customers, or all of its customers, the Office may make a determination requiring the licensee to modify or revoke any part of the standards, procedures, policies or practices that causes the disadvantage or possible disadvantage.
- (2) The Office, in making a determination under sub-section (1)(b), must have regard to the prices, risks and costs associated with or resulting from the modification or revocation which is the subject of the determination.
  - (3) The Office must not make a determination under sub-section (1)(b) unless the Office has given the licensee an opportunity to make representations on the matter.
  - (4) Section 27 of the **Office of the Regulator-General Act 1994** applies to the making of a determination under sub-section (1).

**27. *Supplier of last resort***

- (1) Without limiting the generality of section 20, the conditions to which a licence to distribute or supply, or to sell, electricity is subject may include a requirement that, in certain circumstances, the licensee, at tariffs and on terms and conditions approved by the Office, having regard to the matters referred to in sub-section (2), supply or sell electricity to customers to whom
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electricity is supplied or sold under another such licence (whether held by that licensee or another licensee).

- (2) In approving the tariffs and terms and conditions of a requirement referred to in sub-section (1), the Office must have regard to—
    - (a) the risks and costs associated with the requirement; and
    - (b) the extent to which the licensee or another licensee has developed systems to comply with such a requirement; and
    - (c) any tariffs and terms and conditions proposed by the licensee whether or not at the request of the Office.
  - (3) A requirement referred to in sub-section (1) does not apply so as to require the licensee to supply or sell electricity—
    - (a) if the licensee's licence provides for a distribution area, outside that area; or
    - (b) to a customer to whom electricity is supplied or sold under another licence if the customer elects, in writing given to the holder of that other licence, not to be a customer of that other licensee for the purposes of sub-section (1).
  - (4) If the conditions to which a licence of a licensee is subject include a requirement referred to in sub-section (1), the licensee is deemed to be the holder of a licence to sell electricity to the extent necessary to comply with the requirement.
  - (5) The obligation of a licensee ("the second licensee") to supply or sell electricity to a customer to whom electricity is supplied or sold by another licensee ("the first licensee") in
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accordance with the requirement referred to in sub-section (1) commences when—

- (a) the first licensee's licence is suspended or revoked; or
- (b) the right of the first licensee to acquire electricity from the wholesale electricity market is suspended or terminated—

whichever first occurs, and ends after 3 months or when the customer advises the second licensee in writing that the supply or sale is no longer required, whichever occurs first.

- (6) The Office must notify the second licensee under sub-section (5), as soon as practicable, of the commencement of the second licensee's obligation under that sub-section.
- (7) The tariffs and terms and conditions upon which, in the circumstances referred to in sub-section (5), a licensee will supply or sell electricity to customers of another licensee are—
  - (a) the tariffs and terms and conditions approved by the Office after proposed tariffs, terms and conditions have been submitted by the licensee for approval; or
  - (b) if—
    - (i) the licensee has submitted tariffs, terms and conditions for approval and any changes proposed by the Office are not adopted by the licensee within one month after being proposed; or
    - (ii) if the licensee, after being given at least one month's notice to submit proposed tariffs, terms and conditions to the Office, fails to comply with the request—

the tariffs, terms and conditions determined by the Office as the approved tariffs, terms and conditions.

- (8) The licensee or, if the Office determines the tariffs and terms and conditions, the Office, must cause notice of the approved tariffs, terms and conditions to be published in the Government Gazette.
- (9) The tariffs and terms and conditions of which notice has been published in accordance with sub-section (8) are binding on the licensee and the customers to which they apply and, when the licensee is acting in accordance with those tariffs, terms and conditions, they have effect despite any agreement or instrument to the contrary relating to the distribution or supply, or sale, of electricity to customers.
- (10) A licensee and a customer to whom the licensee has an obligation under sub-section (5) to supply or sell electricity are deemed to have entered into a contract on the relevant tariffs, terms and conditions published under sub-section (8).

### **28. *Customer dispute resolution***

- (1) A licence to—
    - (a) distribute or supply electricity; or
    - (b) sell electricity—must be issued subject to a condition requiring the licensee to enter into a customer dispute resolution scheme approved by the Office.
  - (2) In approving a customer dispute resolution scheme, the Office must have regard to—
    - (a) the objectives of the Office under this Act and under the **Office of the Regulator-General Act 1994**; and
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- (b) the need to ensure that the scheme is accessible to the licensee's customers and that there are no cost barriers to those customers using the scheme; and
  - (c) the need to ensure that the scheme is independent of the members of the scheme; and
  - (d) the need for the scheme to be fair and be seen to be fair; and
  - (e) the need to ensure that the scheme will publish decisions and information about complaints received by the scheme so as to be accountable to the members of the scheme and the customers of the scheme members; and
  - (f) the need for the scheme to undertake regular reviews of its performance to ensure that its operation is efficient and effective.
- (3) The Office may, in accordance with this Part, vary any existing licence to—
- (a) distribute or supply electricity; or
  - (b) sell electricity—
- to include a condition of a kind referred to in subsection (1).

### **29. *Variation or revocation of licence***

- (1) A licence or the licence conditions may be varied—
  - (a) in accordance with the procedures specified in the licence conditions; or



- (b) by agreement between the Office and the licensee; or
  - (c) by a notice in accordance with sub-section (2) served on the licensee.
- (2) The Office must not vary a licence or the licence conditions by a notice unless—
- (a) the Office is satisfied that the variation is necessary—
    - (i) having regard to the objectives specified in section 10; or
    - (ii) to give effect to Division 7; and
  - (b) the Office has given the licensee an opportunity to make representations on the matter.
- (3) The Office may revoke a licence in accordance with the procedures specified in the licence conditions.

### **30. *Gazettal requirement***

The Office must ensure that—

- (a) notice of the grant of a licence including—
  - (i) the name of the licensee;
  - (ii) the term of the licence;
  - (iii) the place where a copy of the licence may be inspected;
  
- (b) notice of a variation or revocation under section 29—

is published in the Government Gazette as soon as possible after the grant of a licence or the variation or revocation, as the case requires.

### **31. *Transfer of licence***

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- (1) The holder of a licence may apply to the Office for approval to transfer the licence.
  - (2) An application must be in a form approved by the Office and accompanied by such documents as may be determined by the Office.
  - (3) An application must be accompanied by the application fee (if any) fixed by the Office.
  - (4) The Office must publish in a daily newspaper generally circulating in Victoria a notice—
    - (a) specifying that an application for the transfer of the licence has been lodged with the Office for the transfer by the holder to a proposed transferee specified in the notice; and
    - (b) inviting interested persons to make submissions to the Office in respect of the application within the period and in the manner specified in the notice.
  - (5) Subject to this section, the Office may approve, or refuse to approve, the application for any reason it considers appropriate, having regard to the objectives specified in section 10.
  - (6) The Office must not approve the application unless the Office is satisfied that—
    - (a) the proposed transferee has the technical capacity to comply with the conditions of the licence or the conditions as varied by the Office under this section; and
    - (b) subject to sub-section (7), in the case of an application for the transfer of a licence to sell electricity, the proposed transferee is financially viable.
  - (7) The Office does not have to be satisfied as to the applicant's financial viability if the licence
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includes a condition requiring compliance with the National Electricity Code and the Code includes prudential requirements.

- (8) The Office may determine that, upon the transfer of the licence under this section, the conditions to which the licence is subject are varied as determined by the Office.
- (9) Subject to this section and any requirements specified in regulations made for the purposes of this section under section 119, the Office may determine the procedures that are to apply in respect of the transfer of the licences.
- (10) The Office must notify an applicant in writing of its decision to approve or refuse to approve the application and, in the case of a decision to refuse to approve the application, of the reasons for its decision.

**32. *Limitations on application for, or issue, transfer or variation of, licence***

- (1) Subject to section 33, the Office must not grant an application for the issue or transfer of a licence to a distribution company to generate electricity for supply or sale if the distribution company is entitled to generating capacity within the meaning of Part 3 of more than 200 megawatts.
  - (2) Subject to section 33, the Office must not grant an application for the issue or transfer of a licence to a generation company to distribute or supply electricity if the generation company is entitled to generating capacity within the meaning of Part 3 of more than 200 megawatts.
  - (3) Subject to section 33, the Office must not grant an application for the issue or transfer of a licence, and must not vary a licence, if the Office is satisfied—
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- (a) that the applicant for the licence or variation, or the transferee, proposes to use property and rights acquired from a person (being a corporation) who is or has been a licensee within the meaning of Part 3 for the purposes of a business proposed to be carried on by the applicant under the licence or by the transferee; and
  - (b) that the applicant, or the transferee, or another person, would have held a prohibited interest if—
    - (i) the applicant, transferee or other person had acquired all the shares in that corporation; and
    - (ii) the property and rights acquired had constituted the sole undertaking of that corporation.

**33. *Exceptions from prohibition***

A prohibition in section 24 or 32 does not apply if—

- (a) the prohibition arises as a result of an acquisition referred to in section 88(9)(a) or (b) of the Trade Practices Act 1974 of the Commonwealth; and
- (b) either—
  - (i) the acquisition was authorised under the Trade Practices Act 1974 of the Commonwealth; or
  - (ii) the Office has determined that it is satisfied that the ACCC has considered the acquisition and that the ACCC has notified the person that it does not intend to take action in relation to the acquisition under section 50 of that Act.

**Division 4—Appointment of Administrator**

**34. *Appointment of administrator***

- (1) This section applies if the Office considers that—
  - (a) the contravention by a licensee of the licence conditions threatens the security of electricity supply; and
  - (b) any other remedies to enforce compliance are not adequate.
- (2) The Office may appoint an administrator to the business in respect of which the licence is issued.
- (3) The administrator has such functions and powers in relation to the business in respect of which the licence is issued as are specified in the appointment of the administrator.
- (4) Unless sooner revoked by the Office, the appointment of an administrator has effect for a period of 28 days but the appointment may be renewed for a further period or periods, each period not exceeding 28 days.
- (5) The terms and conditions (including remuneration) of appointment of the administrator are to be determined by the Office.

**Division 5—Terms and Conditions of Sale and Supply of Electricity**

**35. *Offer to domestic or small business customers***

- (1) Without limiting the generality of section 20(2) or (3) or section 21, the conditions to which a licence
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to sell electricity, being a licence under which electricity may be sold to domestic or small business customers, is subject, include a condition requiring the licensee to offer to supply and sell electricity to domestic or small business customers, subject to this section and to any Order in force under section 13 and to the conditions of its licence—

- (a) at tariffs determined by the licensee and published by the licensee in the Government Gazette at least 2 months before they take effect; and
  - (b) on terms and conditions determined by the licensee and approved by the Office and published by the licensee in the Government Gazette at least 2 months before they take effect.
- (2) The terms and conditions determined by the licensee for the purposes of sub-section (1) must not be inconsistent with the terms and conditions determined by the Office under section 36(1).
  - (3) The tariffs determined by a licensee and published in the Government Gazette under sub-section (1) may be varied by notice published by the licensee in the Government Gazette not less than 2 months before the variation is to take effect.
  - (4) The terms and conditions determined by a licensee and published in the Government Gazette under sub-section (1) may, with the approval of the Office, be varied by notice published by the licensee in the Government Gazette not less than 2 months before the variation is to take effect.
  - (5) The Governor in Council may, by Order published in the Government Gazette, declare that a person or class of persons specified in the Order is, for the purposes of this section, a domestic or small
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business customer or class of domestic or small business customers.

- (6) An Order under sub-section (5) may specify a class of persons by reference to all or any of the following—
- (a) the person authorised to sell the electricity;
  - (b) the purpose for which the electricity is used;
  - (c) the quantity of electricity used;
  - (d) the period of use;
  - (e) the place of supply;
  - (f) any other specified factor relevant to the sale of electricity.
- (7) An Order under sub-section (5) may confer powers and functions on, and leave any matter to be determined by, the Office.
- (8) In this section—
- "domestic or small business customer"** means a person, or a member of a class of persons, to whom an Order under sub-section (5) applies.
- (9) This section expires on 31 December 2003.

**36. *Terms and conditions of contracts for sale of electricity to certain customers***

- (1) A term or condition in a contract for the supply or sale of electricity by a licensee to a relevant customer (whether entered into before or after the commencement of this section) is void to the extent that it is inconsistent with—
- (a) terms and conditions determined by the Office that—
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- (i) specify the circumstances in which the supply of electricity to premises may be disconnected; and
  - (ii) require the licensee to provide information specified by the Office about the rights and entitlements of customers; and
  - (iii) specify the circumstances in which the licensee requires access to premises of customers for the purpose of reading meters or otherwise; and
  - (iv) make provision for confidentiality of customer information; and
- (b) any other terms and conditions determined by the Office and provided for in the licence of the licensee.
- (2) If a term or condition of a contract is void pursuant to sub-section (1) because of an inconsistency with a term or condition referred to in sub-section (1)(a) or (b), that term or condition referred to in sub-section (1)(a) or (b) is deemed to form part of that contract in place of the void term or condition.
- (3) The Governor in Council may, by Order published in the Government Gazette, declare that a person or class of persons specified in the Order is, for the purposes of this section, a relevant customer or class of relevant customers.
- (4) An Order under sub-section (3) may specify a class of persons by reference to all or any of the following—
- (a) the person authorised to sell the electricity;
  - (b) the purpose for which the electricity is used;
  - (c) the quantity of electricity used;
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- (d) the period of use;
  - (e) the place of supply;
  - (f) any other specified factor relevant to the sale of electricity.
- (5) An Order under sub-section (3) may confer powers and functions on, and leave any matter to be determined by, the Office.
- (6) In this section—
- "relevant customer"** means a person, or a member of a class of persons, to whom an Order under sub-section (3) applies.
- (7) This section expires on 31 December 2003.

**37. Deemed contracts with former franchise customers**

- (1) If a person—
- (a) was a franchise customer within the meaning of the **Electricity Industry Act 1993** immediately before 1 January 2001; and
  - (b) has not entered into a new contract with a licensee which takes effect on or after that date—

there is deemed to be a contract between that person and the licensee of which the person was a customer immediately before that date for the supply and sale of electricity at the tariff determined by the licensee in accordance with any Order in force under section 13 or, if there is no such Order, at tariffs determined by the licensee and published by the licensee in the Government Gazette at least 2 months before they take effect and otherwise on the terms and conditions applying to that licensee under section 35 until—

- (c) the contract is terminated; or
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- (d) if the customer enters into a new contract for the purchase of electricity from the licensee in respect of the same premises, the date of taking effect of that new contract—

whichever first occurs.

- (2) This section expires on 31 December 2003.

**38. *Variation of contracts with former franchise customers***

A licensee may, subject to any Order in force under section 13, vary any tariffs determined by the licensee under section 37 and the terms and conditions of its contracts under section 37 by notice published—

- (a) in the Government Gazette; and  
(b) in a newspaper circulating generally in Victoria—

not less than 2 months before the variations take effect but not so that the terms and conditions, as varied, are inconsistent with the terms and conditions determined by the Office under section 36(1).

**39. *Deemed contracts for supply and sale for certain domestic or small business customers***

- (1) If—

- (a) a person commences to take a supply of electricity at premises from a licensee without notice being first given to the licensee who is responsible for the energy supplied at those premises for the purposes of settlement of the wholesale electricity market; and  
(b) that person is a domestic or small business customer within the meaning of section 35—
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there is deemed on the commencement of that supply to be a contract between the licensee and that person for the supply and sale of electricity at the tariffs and on the terms and conditions offered by the licensee in accordance with section 35 for the supply and sale of electricity by the licensee to domestic or small business customers at those premises.

- (2) The deemed contract continues until—
- (a) the contract is terminated; or
  - (b) if the domestic or small business customer enters into a new contract for the purchase of electricity from the licensee in respect of the same premises, the date of taking effect of that new contract—

whichever first occurs.

**40. *Deemed contracts for supply and sale for certain relevant customers***

- (1) If—
- (a) a person commences to take a supply of electricity at premises from a licensee without notice being first given to the licensee who is responsible for the energy supplied at those premises for the purposes of settlement of the wholesale electricity market; and
  - (b) that person is a relevant customer within the meaning of section 36—

there is deemed on the commencement of that supply to be a contract between the licensee and that person for the supply and sale of electricity at the tariffs and on the terms and conditions offered

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by the licensee in accordance with section 35 for the supply and sale of electricity by the licensee at those premises.

- (2) The deemed contract continues until—
- (a) the contract is terminated; or
  - (b) if the relevant customer enters into a new contract for the purchase of electricity from the licensee in respect of the same premises, the date of taking effect of that new contract—
- whichever first occurs.

#### **Division 6—Electricity Market Provisions**

##### **41. Definitions**

In this Division—

**"prescribed information"**, in relation to an Order under this Division, means information, or information of a class, relating to, and identifying, customers of retailers and records of the consumption of electricity by such customers and any other information specified in that Order;

**"prescribed person"** means—

- (a) a distribution company;
- (b) a retailer;
- (c) a customer of a distribution company or retailer;
- (d) NEMMCO;
- (e) the Office;
- (f) a person nominated in writing to the Office by a person referred to in

paragraph (a), (b) or (d) as its agent for the purposes of this Division.

**42. Metering installation identification and registration**

The Governor in Council—

- (a) may, by Order published in the Government Gazette, make a direction requiring a licensee to assign to each metering installation of a customer to whom it supplies electricity a unique identifying mark in accordance with the requirements specified in the Order; and
  - (b) may, by Order published in the Government Gazette, make a direction requiring a licensee to include that mark on each statement of charges for electricity given to a customer in accordance with the requirements so specified; and
  - (c) may, by Order published in the Government Gazette, appoint NEMMCO or another person to keep a register of unique identifying marks and of the metering installations to which they are assigned and of any changes to them; and
  - (d) may, by Order published in the Government Gazette, provide for or adopt processes and procedures for—
    - (i) the registration (including the time of registration) of unique identifying marks with NEMMCO or another person appointed under an Order under paragraph (c); and
    - (ii) the allocation of unique identifying marks by NEMMCO or another person; and
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- (iii) the provision from the register of unique identifying marks to prescribed persons; and
  - (iv) the provision of information from the register or the release of such other prescribed information by prescribed persons to other prescribed persons as is reasonably necessary to facilitate the transfer of a customer from one retailer to another retailer where the customer has elected to make such a transfer.

**43. *Arrangements facilitating election by customer of supply from another retailer***

The Governor in Council may, by Order published in the Government Gazette—

- (a) provide for or adopt processes and procedures to facilitate arrangements for the transfer of a customer from one retailer to another retailer where the customer has elected to make such a transfer; and
- (b) provide for or adopt processes and procedures providing for the administration of those arrangements and the customer transfers occurring under them; and
- (c) make a direction requiring the release of prescribed information by prescribed persons to other prescribed persons for those purposes.

**44. *Metrology procedures***

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- (1) The Governor in Council may, by Order published in the Government Gazette, make provision for the matters set out in this section.
  - (2) An Order may specify, or provide for the determination of, processes and procedures for the collection, creation and provision of access to data to be used—
    - (a) in order to facilitate arrangements under which a customer of a retailer may elect to become a customer of another retailer; or
    - (b) relating to the settlement of the wholesale electricity market in the case of customers making such elections.
  - (3) An Order—
    - (a) may authorise the Office or another person to approve a variation of the processes and procedures referred to in sub-section (2); and
    - (b) may specify the processes to be followed by the Office or that other person in approving the variation.
  - (4) An Order referred to in sub-section (3) must provide that the Office or other person in approving a variation to a process or procedure must have regard to—
    - (a) the reasonable costs incurred in complying with a process or procedure specified in sub-section (2); and
    - (b) the reasonable costs incurred in complying with the process or procedure as so varied.
  - (5) If the Office or other person approves a variation to a process or procedure, that variation takes
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effect on the approval being given or on such other date as is specified in the approval.

- (6) An Order may—
- (a) appoint NEMMCO or another person to carry out any function under the Order; and
  - (b) authorise a specified person or class of persons to carry out any function under or in connection with the processes and procedures referred to in sub-section (2).

**45. Cost recovery**

- (1) The Governor in Council may by Order published in the Government Gazette—
- (a) provide for the setting and regulation of the prices, fees and charges that a distribution company may charge for or in connection with the implementation and operation of arrangements—
    - (i) under which a customer of a retailer may elect to become a customer of another retailer; and
    - (ii) relating to the settlement of the wholesale electricity market in the case of customers making such elections;
  - (b) empower the recovery of those prices, fees and charges from all retailers or a class or classes of retailers supplied by the distribution company or all customers of a retailer or a class or classes of customers of a retailer so supplied.
- (2) An Order under sub-section (1) may direct the Office to make a determination under the **Office of the Regulator-General Act 1994** in respect of such factors and matters or in accordance with
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such procedures, matters or bases as are specified in the Order, or both.

**46. *General powers in relation to Orders***

- (1) An Order of the Governor in Council under this Division may make ancillary provision for any system, process or procedure required to be used or other matter required to be done—
    - (a) in order to facilitate arrangements under which a customer of a retailer may elect to become a customer of another retailer; or
    - (b) relating to the settlement of the wholesale electricity market in the case of customers making such elections.
  - (2) An Order of the Governor in Council under this Division may be made so as to apply, adopt or incorporate wholly or partially or as amended by the Order, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
    - (a) as formulated, issued, prescribed or published at the time the Order is made or at any time before the Order is made; or
    - (b) as amended from time to time.
  - (3) An Order of the Governor in Council under this Division may confer powers and functions on, and leave any matter to be determined by, the Office.
  - (4) An Order of the Governor in Council has effect as from the day specified in the Order for the period specified in the Order.
  - (5) An Order of the Governor in Council under this Division has effect according to its tenor despite anything to the contrary in any agreement or contract.
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**Division 7—Community Services Agreements**

**47. *Community services***

- (1) An agreement by a retailer with the State for the provision of community services is an agreement for a term of not less than 5 years for the provision by the retailer of electricity to a class of domestic customers specified by the Secretary to the Department of Human Services—
  - (a) at such concessional rates and in such manner and at such times as are determined by the Secretary; and
  - (b) on such other terms and conditions as are agreed between the retailer and the State or, in default of agreement, as are determined by the Secretary.
- (2) In determining terms and conditions under subsection (1)(b), the Secretary must have regard to the risks and costs associated with the obligations imposed on the retailer under the agreement.

**48. *Transitional provision relating to community services***

- (1) An agreement to which this section applies that, but for this section, would cease to have effect on 31 December 2000, continues in force until the expiration of the prescribed period or terminated upon the making of a new agreement by the retailer with the State for the provision of community services by way of the provision of electricity to certain customers, whichever first occurs.
- (2) The prescribed period is the period ending on 31 March 2001 or such other date, not later than 30 June 2001, as is agreed between the retailer and the Secretary to the Department of Human Services.

- (3) If a new agreement is not made between the retailer and the State before the expiration of the prescribed period, an agreement is deemed to have been entered into on terms and conditions determined by the Secretary in accordance with section 47.
- (4) This section applies to an agreement in force before 31 December 2000 under which a retailer agrees with the State to provide certain community services by way of the provision of electricity to customers.

**49. *Office may determine certain matters***

- (1) The Office, at the request of the Secretary to the Department of Human Services or a retailer, may—
    - (a) determine matters referred by the Secretary or retailer for determination for the purposes of making an agreement referred to in section 47 or 48; or
    - (b) if an agreement referred to in section 47 or 48 has been entered into or deemed to be entered into on terms and conditions determined by the Secretary under section 47, determine matters relating to those terms and conditions (including the variation of any of those terms and conditions) referred by the Secretary or retailer for determination.
  - (2) A request relating to a term or condition determined by the Secretary under section 47 must be made within one month after notice of the determination is given.
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- (3) A determination by the Office on matters referred under sub-section (1) is binding on the parties to the agreement.
- (4) If a determination of the Office on matters referred under sub-section (1) varies a term or condition of an agreement, that agreement is deemed to be so varied on that determination being made.
- (5) The matters which may be referred to the Office under this section do not include—
- (a) any matters relating to the class of domestic customers specified by the Secretary under section 47; or
  - (b) any matters determined by the Secretary under section 47.
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**PART 3—SEPARATION OF GENERATION TRANSMISSION  
AND DISTRIBUTION SECTORS**

**Division 1—Interpretation**

**50. Definitions**

In this Part—

**"associate"** has the meaning, in relation to a person, it would have under the Corporations Law if, in Division 2 of Part 1.2 of the Corporations Law—

(a) for paragraphs (b) and (c) of section 12(1) of that Law, there were substituted—

"or

(b) the primary person's voting power in a body corporate or whether the primary person is in a position to exercise certain powers in relation to a body corporate;" and

(b) sections 13, 14, 16(2) and 17 of that Law were repealed;

**"licensee"** means—

(a) a distribution company, generation company or transmission company; or

(b) a person that, under section 17, is exempt from the requirement to obtain a licence to generate electricity for supply or sale—

but does not include a person who—

(c) requires a licence under Part 2 or an exemption under section 17 only because the person generates electricity

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for supply or sale if the person is not entitled to generating capacity of more than 200 megawatts; or

- (d) is a statutory authority or a corporation all the shares in which are held by or on behalf of the State or by a statutory authority;

**"officer"**, in relation to a corporation, has the same meaning as in section 9 of the Corporations Law;

**"relevant agreement"** means an agreement, arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

**"share"** has the same meaning as in the Corporations Law;

**"voting share"**, in relation to a corporation, has the same meaning as in section 9 of the Corporations Law.

**51. *Relevant interest in a share***

For the purposes of this Part, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share because of sections 608 and 609 of the Corporations Law but a person does not have a relevant interest in a share in a corporation only because the person has a right of pre-emption in relation to that share if the corporation—

- (a) was formed by two or more persons for the purpose of enabling those persons to carry on an activity jointly by means of their joint control of, or by means of their ownership of shares in, that corporation; and
- (b) those persons, or persons who have acquired some or all of the shares in that corporation, continue to carry on that activity jointly by either of those means.

**52. *Voting power***

For the purposes of this Part, the voting power a person has in a corporation is the person's voting power determined in accordance with section 610 of the Corporations Law as if a reference in that section of that Law to a relevant interest were a reference to a relevant interest to which section 51 applies.

**53. *References to Corporations Law***

A reference in this Part to the Corporations Law is a reference to that Law as it would apply if references in that Law to a body corporate, corporation or company included references to—

- (a) a body corporate of any kind wherever formed or incorporated and whether formed or incorporated under that Law or any other law; and
  - (b) any unincorporated body, being a society, association, company of proprietors or other body, wherever formed, that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or some other officer of the society, association or body, or in the name of any trustee or trustees; and
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- (c) any unincorporated body, being a society, association, company of proprietors or other body or undertaking to which is applied, under the laws of the place of its formation, with or without exceptions, a law in force in that place relating to companies or corporations as if it were a company or corporation within the meaning of that law.

**54. *Unit trusts***

If—

- (a) assets used in, or liabilities of, the business carried on by a licensee under a licence under this Act; or
- (b) an entitlement of a licensee to generating capacity—

forms part of the trust estate of a unit trust, then, for the purposes of this Part, units in the unit trust are deemed to be shares in a corporation the business of which is the business of the trust estate of the unit trust.

**55. *Stock***

If the whole or a portion of the share capital of a licensee consists of stock, a reference in this Part to a number of shares in the licensee as a percentage is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

**56. *Controlling interest in a corporation***

For the purposes of this Part but subject to section 61, a person has a controlling interest in a corporation if—

- (a) the person's voting power in the corporation is more than 20%; or



- (b) the person and the person's associates have relevant interests in shares in the corporation that confer or, if a dividend were declared or a distribution of profits were made by the corporation, would confer a right to receive the benefit of more than 20% of the dividend or distribution; or
- (c) the person and the person's associates have relevant interests in shares in the corporation that confer or, in the event of any other distribution of property or rights by the corporation, whether on dissolution or otherwise, would confer an entitlement to receive the benefit of more than 20% of the property and rights; or
- (d) is able, whether alone or in concert with another, and whether by any act or omission or otherwise, to dominate or control—
  - (i) the corporation; or
  - (ii) the financial and operating policies or management of the corporation; or
  - (iii) the activities of the corporation as a licensee.

**57. *Substantial interest in a corporation***

For the purposes of this Part but subject to section 61, a person has a substantial interest in a corporation if—

- (a) the person's voting power in the corporation is more than 5%; or
  - (b) the person and the person's associates have relevant interests in shares in the corporation that confer or, if a dividend were declared or a distribution of profits were made by the corporation, would confer a right to receive
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the benefit of more than 5% of the dividend or distribution; or

- (c) the person and the person's associates have relevant interests in shares in the corporation that confer or, in the event of any other distribution of property or rights by the corporation, whether on dissolution or otherwise, would confer an entitlement to receive the benefit of more than 5% of the property and rights.

**58. Entitlement to generating capacity**

(1) For the purposes of this Part, a person is entitled to generating capacity if—

- (a) by virtue of ownership of, or an interest in, land or other property or rights, the person can generate electricity for supply or sale in Victoria; or
- (b) by virtue of a relevant agreement, the person can require electricity to be made available to it for supply or sale in Victoria (otherwise than through the wholesale electricity market); or
- (c) the person has a traced interest in generating capacity to which another person, being a corporation, is entitled as provided by paragraph (a) or (b)—

and the amount of generating capacity to which a person is entitled is—

- (d) in the case of paragraph (a), the installed or name-plate generating capacity of the relevant facilities which generate the electricity; and

- (e) in the case of paragraph (b), the amount that, under the relevant agreement, the person can require to be made available to it for supply or sale in Victoria; and
  - (f) in the case of paragraph (c), the aggregate of the entitlements to generating capacity of all corporations in whose entitlements to generating capacity the person has a traced interest as determined in accordance with section 59.
- (2) A person is not, under sub-section (1), entitled to generating capacity if the entitlement arises only because of the person's traced interest in generating capacity of a licensee or because the person and a licensee are parties to a relevant agreement.

**59. *Traced interest in generating capacity***

- (1) For the purposes of this Part, a person's traced interest in generating capacity to which a corporation is entitled is calculated as follows—
- (a) if the person has a direct interest in the corporation, the corporation's entitlement to generating capacity is multiplied by that direct interest;
  - (b) if the person holds an interest in the corporation through a chain of corporations each of which is referred to in this section as an "interposed entity"—
    - (i) the direct interest of the person in the first interposed entity is multiplied by the direct interests of each interposed entity in the next interposed entity in the chain until, and including, the last interposed entity's direct interest in the corporation; and
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- (ii) the product of that multiplication is multiplied by the corporation's entitlement to generating capacity;
  - (c) if the person holds an interest in the corporation through two or more chains of corporations, the person's traced interests in the corporation's entitlement to generating capacity calculated through each chain in accordance with paragraph (b) are added together;
  - (d) if the person holds a direct interest in the corporation and an interest in the corporation through one or more chains of corporations, the person's traced interest in the corporation's entitlement to generating capacity calculated in accordance with paragraph (a) and the person's traced interests in the corporation's entitlement to generating capacity calculated through each chain in accordance with paragraph (b) are added together.
- (2) For the purposes of this Part, in calculating the traced interest of a person in a corporation's entitlement to generating capacity, any direct interest of an interposed entity in that person must be disregarded.
  - (3) If the Office is of the opinion that the calculation of a person's traced interest in generating capacity of a corporation involves duplication, the Office may determine that any one or more specified interests must be disregarded.

**60. *Direct interest in a corporation***

- (1) For the purposes of this Part, the direct interest of a person in the corporation referred to in section 59(1)(a) or in the corporation that is the next interposed entity in a chain is—
- (a) the person's voting power in the corporation, expressed as a fraction; or
  - (b) if the person and the person's associates have relevant interests in shares in the corporation that confer, or if a dividend were declared or a distribution of profits were made by the corporation would confer, a right to receive a share of the dividend or distribution, that share of the dividend or distribution expressed as a fraction of the total dividend or distribution; or
  - (c) if the person and the person's associates have relevant interests in shares in the corporation that confer, or in the event of any other distribution of property or rights by the corporation, whether on dissolution or otherwise, would confer, an entitlement to receive a share of the property or rights, that share of the property or rights expressed as a fraction of the total property or rights; or
  - (d) if the person is able, whether alone or in concert with another, and whether by any act or omission or otherwise, to dominate or control—
    - (i) the corporation; or
    - (ii) the financial and operating policies or management of the corporation; or
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(iii) the activities of the corporation—  
the number 1—

whichever is the highest.

- (2) In calculating a person's direct interest in a corporation for the purposes of section 59(1)(a), the person's or the person's associate's relevant interest in shares in the corporation in which an interposed entity in the chain has a relevant interest must be disregarded.

**61. *Regulations relating to relevant interests and generating capacity***

Without derogating from section 62, the regulations—

- (a) may provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations; and
- (b) may provide that generating capacity, or a particular class of generating capacity, to which a person is entitled is, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations.

**62. *Certain shareholders agreements to be disregarded***

For the purposes of determining under this Part whether a person has a controlling interest or a substantial interest in a licensee, a relevant interest of an associate of the person must be disregarded if the Office certifies in writing that the Office is satisfied—

- (a) that the association arises solely under section 12(1)(e) or section 15(1) of the Corporations Law by virtue of provisions of the constitution or other constituent documents of a corporation or other entity, a shareholders' agreement or other consortium arrangements and that the provisions are not unusual having regard to conventional or usual investment considerations;
- (b) that the person or any related corporation does not have the power—
  - (i) to control or influence the composition of the board of directors of the licensee otherwise than by control of the exercise at a general meeting of the licensee of voting rights in respect of particular shares or a particular proportion of shares in the licensee or the exercise of powers of appointment of a specified number of directors of the licensee; or
  - (ii) to control or influence the conduct of affairs of the licensee otherwise than by control of the exercise at a general meeting of the licensee of voting rights in respect of particular shares or a particular proportion of shares in the licensee or by the actions of directors appointed by the person.

**63. *Certain "see-through" interests to be disregarded***

For the purpose of determining under this Part whether a person has a controlling interest or a substantial interest in a licensee, a relevant interest that the person has solely by virtue of section 608(3) of the Corporations Law must be disregarded if the Office certifies in writing—

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- (a) that the Office is satisfied that the person or any related corporation of the person does not have the power—
- (i) to control or influence the composition of the board of directors of the licensee otherwise than by having voting power in the licensee of not more than 20% or exercising powers of appointment of not more than one-fifth of the directors of the licensee; or
  - (ii) to control or influence the conduct of affairs of the licensee otherwise than by having voting power in the licensee of not more than 20% or by the actions of directors appointed by it being not more than one-fifth of the directors of the licensee; and
- (b) that the Office is satisfied that—
- (i) in the case of determining whether the person has a controlling interest, the person does not have—
    - (A) voting power of more than 20% in the licensee or the power to control the disposal of more than 20% of the voting shares in the licensee, not including a right of pre-emption whether direct or indirect in relation to those shares; or
    - (B) the right to receive directly or indirectly the benefit of more than 20% of the dividends declared or distribution of profits made by the licensee in respect of a financial year of the licensee; or
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- (C) the right to receive directly or indirectly the benefit of more than 20% of the property and rights of the licensee on a dissolution or otherwise; or
- (ii) in the case of determining whether the person has a substantial interest, the person does not have—
  - (A) voting power of more than 5% in the licensee or the power to control the disposal of more than 5% of the voting shares in the licensee, other than a right of pre-emption whether direct or indirect in relation to those shares; or
  - (B) the right to receive directly or indirectly the benefit of more than 5% of the dividends declared or distribution of profits made by the licensee in respect of a financial year of the licensee; or
  - (C) the right to receive directly or indirectly the benefit of more than 5% of the property and rights of the licensee on a dissolution or otherwise.

**64. *Effect of certificate under section 62 or 63***

A certificate of the Office under section 62 or 63 continues to have effect unless the Office determines that—

- (a) a change has occurred in respect of the matters to which the certificate relates; and
  - (b) the certificate ceases to have effect.
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**Division 2—Application of Part**

**65. *Application of Part***

This Part (including any provision of the Corporations Law referred to or applied for the purposes of this Part) applies in relation to any transaction, agreement, arrangement, understanding or undertaking—

- (a) whether the transaction, agreement, arrangement, understanding or undertaking is entered into, or made, in this State or elsewhere; and
- (b) whether the shares (if any) to which the transaction, agreement, arrangement, understanding or undertaking relates are registered in this State or elsewhere; and
- (c) whether the proper law of the transaction, agreement, arrangement, understanding or undertaking is the law of this State or not.

**66. *Application of Part to partnerships***

(1) In this section—

**"partner"** includes member of an unincorporated joint venture;

**"partnership"** includes unincorporated joint venture.

(2) This Part applies to partnerships, and partners, as if a partnership were a corporation and a partner were a member of a corporation.

(3) For the purposes of this Part—

(a) a partnership is deemed to be a corporation and a person;

(b) a partner is deemed—

- (i) to be a member of the corporation; and
  - (ii) to hold shares bearing the same proportion to all the shares in the corporation as the partner's right to receive a distribution of profits of the partnership bears to the sum of the rights of partners to receive such distributions;
  - (c) rights and powers of a partner in respect of the partnership, including voting rights and rights to dispose of interests in the partnership or the partnership property are deemed to be rights and powers of a member of a corporation attached to and conferred by that member's shares in the corporation;
  - (d) the committee of management (by whatever name called) of a partnership is deemed to be the board of directors of the partnership;
  - (e) a meeting of the partners of a partnership is deemed to be a general meeting of a corporation.
- (4) For the purposes of this Part and its application to a partnership, "**licensee**" includes a partnership the members of which are the holders of a licence to generate electricity for supply or sale or to distribute or supply electricity.

### **67. Part to be relevant legislation**

This Part is relevant legislation for the purposes of the **Office of the Regulator-General Act 1994**.

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**Division 3—Separation of Generation Transmission and  
Distribution Sectors**

**68. *Prohibited interests***

- (1) It is unlawful for a person to hold a prohibited interest.
- (2) Subject to sub-section (11), a licensee holds a prohibited interest if the licensee—
  - (a) has a controlling interest in one or more other licensees; or
  - (b) has a substantial interest in 2 or more other licensees.
- (3) Subject to sub-sections (5), (6), (7) and (8), a person, not being a licensee, holds a prohibited interest if the person—
  - (a) has a controlling interest in 2 or more licensees; or
  - (b) has a substantial interest in 3 or more licensees; or
  - (c) has a controlling interest in one licensee and a substantial interest in 2 licensees.
- (4) A distribution company or a person who has a controlling interest in a distribution company holds a prohibited interest if the company or person is entitled, whether or not through a traced interest, to generating capacity of more than 200 megawatts.
- (5) A person, not being a licensee, does not hold a prohibited interest within the meaning of sub-section (3) because the person has a controlling interest in 2 or more licensees or a substantial interest in 3 or more licensees if—

- (a) the Office is satisfied that each such interest is held only as a passive institutional investment; and
  - (b) the Office determines in writing that the person does not hold a prohibited interest.
- (6) At any time after a determination is made under sub-section (5) in relation to a person, the Office may, by notice in writing served on that person, determine that circumstances have changed so that it is no longer satisfied as to the matters set out in sub-section (5)(a) in relation to the person and that the person has a prohibited interest within the meaning of sub-section (3).
- (7) A person does not hold a prohibited interest by reason only of holding an interest to which a certificate given by the Office under section 173(6A) of the **Electricity Industry Act 1993** before 1 January 2001 applies.
- (8) A person does not hold a prohibited interest within the meaning of sub-section (2), (3) or (4) if—
- (a) the prohibited interest arises as a result of an acquisition referred to in section 88(9)(a) or (b) of the Trade Practices Act 1974 of the Commonwealth; and
  - (b) either—
    - (i) the acquisition was authorised under the Trade Practices Act 1974 of the Commonwealth; or
    - (ii) the Office has determined that it is satisfied that the ACCC has considered the acquisition and that the ACCC has notified the person that it does not intend to take action in relation to the acquisition under section 50 of that Act.
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- (9) For the purposes of this Part—
- (a) a licensee is not capable of having a prohibited interest in itself; and
  - (b) if 2 or more licensees are carrying on activities under their licences in the same business undertaking, one of those licensees is not capable of having a prohibited interest in another of those licensees.

**69. *Temporary exemption from prohibition***

- (1) The Office may, by notice published in the Government Gazette, declare that a specified person does not, by reason only of having a specified controlling interest or specified substantial interest, have a prohibited interest during a specified period ending not more than 6 months after the day on which the declaration is made.
- (2) A declaration under sub-section (1) may be made subject to such conditions as are specified in it.
- (3) A declaration under this section has effect according to its terms and ceases to have effect—
  - (a) at the end of the specified period; or
  - (b) on a breach of a condition to which it is expressed to be subject.
- (4) Only one declaration may be made under this section in respect of a specified controlling interest or a specified substantial interest.

**70. *Power to require information relating to interests***

- (1) The Office may, by notice in writing served on a person who is, or is suspected by the Office of—
  - (a) having a relevant interest in shares in a licensee; or

(b) being the holder of a controlling interest or substantial interest in a licensee; or

(c) being entitled to generating capacity—

require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited interest.

(2) A notice under sub-section (1) may require the person on whom the notice is served or, if that person is a corporation, 2 directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice.

(3) If—

(a) a person on whom a notice under sub-section (1) has been served fails to furnish, within the time allowed in the notice, the information required by the notice, verified as required by the notice; or

(b) information furnished by the person in response to the notice is, in the opinion of the Office, by reason of anything included in it or omitted from it, false or misleading in a material particular—

the Office may, by reason only of that fact, by notice in writing served on a person, do one or more of the following—

(c) determine that the person is an associate of another, or that another is an associate of that person;

(d) determine that the person, or another to whom a determination under paragraph (c)

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- relates, has a relevant interest in specified shares in a licensee;
- (e) determine that the voting rights attaching to all or any of the shares to which a determination under paragraph (d) relates are suspended;
  - (f) determine that a person is entitled to generating capacity;
  - (g) determine that the person, or another to whom a determination under paragraph (c) relates, has a prohibited interest.

**71. *Disposal of interest***

(1) If the Office—

- (a) makes a determination under section 70; or
- (b) forms the opinion—

that a person (in this section referred to as "the offender") has a prohibited interest, the Office may, by notice in writing served—

- (c) if the offender holds shares that cause the offender to have a prohibited interest (whether alone or together with shares held by any other person)—on the offender; or
- (d) on any other person who holds shares that cause the offender to have a prohibited interest (whether alone or together with shares held by any other person); or
- (e) if the offender is entitled to generating capacity, on the offender—

determine that the offender or that other person must dispose of the relevant shares otherwise than to an associate of the offender, within a period specified in the notice, being not less than 3 months after service of the notice, and that, until



those shares are disposed of, the voting rights attaching to all or to specified shares in a licensee in which the offender or an associate of the offender has a relevant interest are suspended.

- (2) For the purposes of sub-section (1), the relevant shares that a person may be required by a notice under that sub-section to dispose of otherwise than to an associate of the offender are—
- (a) subject to paragraph (b), any shares held by the person that would need to be so disposed of in order to cause the offender to cease to have a prohibited interest; or
  - (b) if, after all the shares held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited interest—the total number of those shares.
- (3) For the purposes of this section a person is not to be taken to have disposed of shares unless and until the person ceases to hold the shares and the offender and the offender's associates cease to have a relevant interest in the shares.
- (4) If a person served with a notice of a determination under sub-section (1) requiring the person to dispose of shares fails to comply with the notice within the period specified in the notice, the shares last registered in the name of that person that caused the person to have a prohibited interest and specified by the Office by notice in writing served on the person are, by force of this sub-section, forfeited to the State.
- (5) If—
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- (a) a person served with a notice of a determination under sub-section (1) requiring the person to dispose of shares fails to comply with the notice within the period specified in the notice; and
  - (b) the person is a member of a partnership and the shares are an interest in the partnership; and
  - (c) the person is one of 2 or more persons constituting a licensee—

the Office may, by notice in writing given to the licensee, revoke the licence.

- (6) The Office must cause written notice of—
  - (a) a determination under sub-section (1) requiring a person to dispose of shares in a licensee; or
  - (b) a determination under section 70(3)(e) that a person's voting rights are suspended—to be served on the relevant person.

- (7) If the Office—
  - (a) makes a determination under section 70(3); or
  - (b) forms the opinion—

that a person (in this section referred to as "the offender") has a prohibited interest because of the circumstances referred to in section 56(d), the Office may, by notice in writing served on the offender, determine that the offender—

- (c) must desist from dominating or controlling the relevant corporation, the financial and operating policies or management of the corporation or the activities of the corporation as a licensee; and

(d) must terminate a relevant agreement—  
to the extent necessary to prevent it having a prohibited interest, within a period specified in the notice, not being less than 3 months after service of the notice.

**72. *Voting rights in respect of certain shares***

If written notice is served on a licensee of a declaration of the Office under this Part—

- (a) that a person is an associate of another; or
- (b) that a person has a prohibited interest in a licensee; or
- (c) that voting rights are suspended—

the determination is binding and has effect for the purposes of the application of this Part in relation to any general meeting of the licensee held after receipt by the licensee of the notice.

**73. *Revocation of licence***

- (1) If the Office makes a determination under section 70(3), or forms the opinion under section 71, that a licensee has a prohibited interest because of its entitlement to generating capacity, the Office may by notice in writing served on the licensee determine that the licensee dispose of an interest in land or other property or rights, or terminate a relevant agreement, to the extent necessary to prevent it having a prohibited interest within a period specified in the notice, not being less than 3 months after the service of the notice.
- (2) If a licensee does not comply with a determination under sub-section (1), the Office may by notice in writing given to the licensee, revoke the licence.

**74. *Annulment of certain resolutions of licensee***

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- (1) If the Office is of the opinion that a resolution of a general meeting of the licensee has been passed as a result of the admission of votes that should not, by virtue of a declaration of the Office under section 70(3) or 71 have been admitted, the Office may, by notice in writing served on the licensee, declare the resolution to have been (at all times) null and void.
- (2) If notice of a declaration under sub-section (1) is served on a licensee, the Office must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on each person whose votes should not, in the opinion of the Office, have been admitted.
- (3) A notice under sub-section (1) does not have any effect unless it is served on the licensee within one month after the date of the resolution to which it relates.

**75. *Making, review and revocation of determination by Office***

- (1) A determination may be made by the Office under this Part on the basis of such information as the Office considers sufficient in the circumstances.
  - (2) A determination of the Office under this Part is effective when written notice is served on the relevant person.
  - (3) Despite an application being made under section 37 of the **Office of the Regulator-General Act 1994** for review of a determination of the Office under this Part, the determination continues to have effect pending determination of the application except as otherwise determined by the Office.
  - (4) The Office may, by notice in writing served on the person on whom notice of the determination was
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served, revoke or vary a determination of the Office under this Part with effect from the date of the determination or some other date determined by the Office.

**76. Appeal against determination of Office**

- (1) Despite anything to the contrary in the **Office of the Regulator-General Act 1994**, a person on whom notice of a determination of the Office is served under this Part may appeal to the Supreme Court against the determination.
- (2) An appeal under this section must be instituted within 21 days after notice of the determination under appeal is served on the appellant and that period of limitation may not be extended.
- (3) The Supreme Court may, on an appeal under this section, if satisfied that proper grounds for making the determination did not exist, quash or vary the determination, either conditionally or unconditionally and with effect from the date of the determination or some other date, as the Court thinks fit, and make any consequential or ancillary orders that may be just.
- (4) Despite any appeal under this section, a determination other than—
  - (a) a determination under section 71 requiring a person to dispose of shares in the licensee; or
  - (b) a determination under section 71 that shares in the licensee are forfeited to the State—continues to have effect pending determination of the appeal.
- (5) Except as provided in this Part, a determination of the Office under this Part may not be challenged or called into question.

**77. Sale of forfeited shares**

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*Electricity Industry Act 2000*

*Act No. 68/2000*

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- (1) The Office is to sell any shares forfeited to the State under this Part.
- (2) For the purposes of any such sale, the Office is not bound by any restriction on the sale of shares whether contained in the constitution of the licensee or in any other document.
- (3) Any money realised from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale be paid to the person from whom the shares were forfeited.

**78. Service**

A notice required or authorised by this Part to be served on a person may—

- (a) in the case of a natural person—
    - (i) be served personally on the person; or
    - (ii) be sent by post to the person at his or her last known place of residence, business or employment; or
  - (b) in the case of a company or other body—be left at, or sent by post to, its registered office or a place of business of the company or body whether within the State or elsewhere.
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## **PART 4—ELECTRICITY TRANSMISSION**

### **Division 1—Powers of VENCorp**

#### **79. Powers of VENCorp**

- (1) Without limiting any other functions of VENCorp, the functions of VENCorp in relation to the electricity industry are—
  - (a) to plan, and direct the augmentation of, the electricity transmission system;
  - (b) to provide information and other services to facilitate decisions for investment and the use of resources in the electricity industry;
  - (c) any other functions conferred on VENCorp under this Part or under a licence issued under Part 2.
- (2) This section has effect subject to the National Electricity (Victoria) Law and the National Electricity Code.

### **Division 2—Load Shedding in Situations of Emergency Supply Shortage**

#### **80. Determination of customer load shedding arrangements**

- (1) For the purposes of the National Electricity Code, VENCorp may enter into agreements with the holders of licences to distribute and supply or sell electricity to determine the arrangements to apply in respect of customer load shedding in circumstances where the available supply of electricity is, or is likely to become, less than is sufficient for the reasonable requirements of the community.

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- (2) If VENCORP is unable to reach agreement with a licensee about load shedding arrangements within 6 months after VENCORP offers to enter into an agreement with the licensee for that purpose, the Minister may determine those arrangements.
  - (3) The Minister may appoint a person to review and advise the Minister on any proposed arrangements under this section.
  - (4) The Minister must cause notice in writing to be given to a licensee of the arrangements determined under sub-section (2) in respect of that licensee's licence.
  - (5) The notice must be given not less than 14 days before the arrangements take effect in relation to that licensee.
  - (6) In determining load shedding arrangements, the Minister must take into account the need to—
    - (a) protect any undertaking of a distribution company, a transmission company or a generation company or a person who supplies electricity to another person; and
    - (b) ensure the safe, economical or effective supply of electricity; and
    - (c) ensure that the available electricity is fairly distributed to the community; and
    - (d) increase the available supply of electricity; and
    - (e) regulate the use of the available supply of electricity, having regard to the needs of the community.
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- (7) The Minister must inform VENC Corp of any arrangements determined under sub-section (2).
- (8) VENC Corp must from time to time publish a notice of any arrangements determined under this section.

**81. Powers in relation to load shedding**

- (1) If it appears to VENC Corp at any time that the available supply of electricity is, or is likely to become, less than is sufficient for the reasonable requirements of the community, VENC Corp may—
    - (a) inform the community in such manner as it thinks fit about that shortfall in supply; and
    - (b) subject to the directions of NEMMCO, give directions to a licensee to shed customer load in accordance with the arrangements applying to that licensee under section 80; and
    - (c) give directions to any person that are incidental to or consequential on a direction under paragraph (b).
  - (2) A direction—
    - (a) may operate generally, or may be limited in its operation according to specified times, places, circumstances, conditions or restrictions; and
    - (b) may, if so specified in the direction, allow VENC Corp to exempt a person or body from having to comply with the direction; and
    - (c) may be addressed or directed to people and bodies generally or particularly; and
    - (d) subject to sub-section (5), takes effect when made or, if a later time is specified in the direction, at that later time; and
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- (e) has effect as if enacted in this Act.
- (3) A direction including a direction under sub-section (4) must be published in the Government Gazette as soon as possible after it is made.
- (4) VENCORP may at any time by direction under this section amend or revoke a direction made, or purportedly made, under this section.
- (5) If a direction of VENCORP under sub-section (4) amending an earlier direction for the purpose of correcting a defect, mistake or omission—
- (a) includes the statement that the earlier direction is deemed to have been made as so amended; and
  - (b) is made not later than 3 months after the earlier direction was made—
- the earlier direction is deemed to have been made as so amended.
- (6) The amendment, revocation or expiry of a direction does not affect—
- (a) the previous operation of the direction; or
  - (b) the validity of any action taken under the direction before the amendment, revocation or expiry; or
  - (c) any penalty or punishment incurred in respect of any failure to comply with the direction before the amendment, revocation or expiry or any proceeding or remedy in respect of the penalty or punishment.
- (7) VENCORP must notify the Minister before taking any action under sub-section (1).
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## **82. Offences**

- (1) A person or body who is aware of a direction under section 81 must comply with the direction.
- (2) A person—
  - (a) to whom electricity is supplied; and
  - (b) who is aware of a direction restricting or prohibiting the use of electricity—must do everything reasonably possible to ensure that electricity is not used on the land or premises to which the electricity is supplied in contravention of the direction.
- (3) A person must not obstruct another person—
  - (a) exercising a power given to; or
  - (b) complying with an obligation imposed on—the other person under section 81 if the person has been shown a copy of the notice giving the power or imposing the obligation.
- (4) A person is deemed to be aware of a direction if VENCORP has caused—
  - (a) the direction to be published in a newspaper circulating throughout the area in which the direction applies; or
  - (b) details of the direction to be broadcast by means of radio or television transmission throughout the area in which the direction applies.
- (5) In any proceedings for an offence against this section, a certificate purporting to be signed by VENCORP to the effect that details of a direction were broadcast by means of radio or television transmission throughout a particular area on a

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specified day is evidence of the facts set out in the certificate.

- (6) In any proceedings for an offence against this section, if a direction was made in respect of part of a day and first broadcast on that day, it is sufficient defence for the defendant to prove that at the time of the commission of the offence, the defendant—
- (a) did not know; and
  - (b) could not reasonably have known—
- of the direction.
- (7) A person must not contravene sub-section (1), (2) or (3).

Penalty: in the case of a natural person,  
10 penalty units.

in the case of a body corporate,  
240 penalty units.

### **83. *Provision of information***

Subject to the regulations, VENCORP may give any information it receives from a licensee about any past or likely future insufficiency in the supply of electricity by the licensee to the Minister and to any other prescribed person.

### **84. *Immunity from suit***

A person acting in good faith in the execution of section 81 or any direction under that section is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained because of the operation of that section or of anything done or purporting to be done under that section or any direction under that section.

**PART 5—POWERS OF ELECTRICITY CORPORATIONS**

**85. *Definition***

In this Part "**electricity corporation**" means VENCORP, a distribution company, a transmission company or a generation company.

**86. *Power to acquire easements with approval of Governor in Council***

- (1) A corporation to which this section applies may, with the approval of the Governor in Council, acquire compulsorily an easement for the purpose of erecting and maintaining power lines.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this section and for that purpose—
  - (a) the **Electricity Industry Act 2000** is the special Act; and
  - (b) the corporation to which this section applies is the Authority.
- (3) In this section—

**"corporation to which this section applies"** means a distribution company, a transmission company or a generation company;

**"easement"** includes right, charge, power or privilege in, under, over, affecting or in connection with, land.

**87. *Acquisition of land within Latrobe area***

- (1) A generation company or an associated entity of a generation company may recommend to the Minister administering the **Mineral Resources Development Act 1990** the compulsory acquisition of any land within the Latrobe area which is or may be required by the generation
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company or associated entity for or in connection with, or as incidental to, carrying out operations under a licence issued to the company under Part 2.

- (2) The **Land Acquisition and Compensation Act 1986** applies to this section and for that purpose—
- (a) the **Electricity Industry Act 2000** is the special Act; and
  - (b) the Minister administering the **Mineral Resources Development Act 1990** is the Authority.
- (3) Despite anything to the contrary in the **Land Acquisition and Compensation Act 1986**, section 109(2) of that Act does not apply to land acquired in accordance with this section by the Minister administering the **Mineral Resources Development Act 1990**.
- (4) In this section—
- "**associated entity**", in relation to a generation company, means a person to whom an exemption under section 17 applies in respect of an activity relating to the generation of electricity for supply or sale, being an activity for which the generation company holds a licence under Part 2;
- "**Latrobe area**" means the municipal district of the Shire of LaTrobe.

**88. Making of easements in subdivisions**

- (1) If a proposal for subdivision or consolidation of land is referred to an electricity corporation under the **Planning and Environment Act 1987**, the corporation may require easements for the use of the corporation for any one or more of the purposes set out in the Schedule.

- (2) The creation of an easement for a purpose specified in Column 1 of the Schedule gives to the corporation the rights specified in relation to an easement created for that purpose in Column 2 of the Schedule.

**89. *Certain easements may be used for carriage service***

- (1) Despite anything to the contrary in any Act or instrument, an easement to which a transmission company is entitled may be used by a transmission company for the provision by it or another person of a carriage service within the meaning of the Telecommunications Act 1997 of the Commonwealth.
- (2) Nothing in this Act authorises a transmission company to acquire compulsorily land or an interest in land for the purposes only of a carriage service within the meaning of sub-section (1).

**90. *Easements over lands held by Crown licensees or lessees***

- (1) If an easement acquired by an electricity corporation for any of the purposes of this Act is an easement over land held or occupied by any licensee or lessee of the Crown, a description of the easement and a notification it has been so acquired must be forwarded without delay by the corporation to the Secretary to the Department of Natural Resources and Environment.
- (2) If an easement referred to in sub-section (1) is over land held or occupied under licence, the description and notification must be endorsed on the licence by the Secretary to the Department of Natural Resources and Environment and be registered in that Department.
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- (3) If a Crown grant is issued to a person of the land over which any such easement has been taken, the grant is subject to the easement.

**91. *Arrangements for joint use of easements***

Despite anything to the contrary in this Act—

- (a) any two or more of the electricity corporations, distribution companies, transmission companies and generation companies may enter into an agreement for the exercise of rights and privileges, and undertaking of obligations, by a party to the agreement in respect of any easement, right or privilege to which another party to the agreement is entitled; and
- (b) any such agreement takes effect according to its terms.

**92. *Cancellation of easements***

(1) If—

- (a) a generation company enters into an agreement to grant an easement over its land to any person; and
- (b) that easement is registered under the **Transfer of Land Act 1958**; and
- (c) that agreement provides for the termination of the easement or part of the easement on the giving of notice by the generation company to the person to whom the easement is granted or any successor in title of that person; and
- (d) the generation company gives that notice in accordance with the agreement—

the generation company may give written notice to the Registrar of Titles of the termination of the



easement, together with a copy of the agreement and of the notice under paragraph (d).

- (2) On being notified under sub-section (1), the Registrar of Titles must record in the Register the extinguishment of the easement or part.

**93. Powers as to works etc.**

- (1) For the purposes of this Act, an electricity corporation, subject to this Act—
- (a) may enter upon any lands and sink bores and make surveys and do any other acts or things necessary for sinking bores or making surveys; and
  - (b) may, with any equipment or devices, receive, store, transmit, or supply electricity, water, brown coal or products of brown coal over, or under, any land and may enter on any land upon either side of such equipment and fell or remove any tree or part of a tree or any obstruction which in the opinion of the electricity corporation it is necessary to fell or remove; and
  - (c) subject to the **Water Act 1989**, may divert water from any waterway, lake, lagoon, swamp or marsh, or alter the bed, course or channel of any waterway; and
  - (d) may enter upon any public or private land or roads and construct any works or place on under or over any such land or road any structure or equipment and may repair, alter or remove any such structure or equipment or any works under its control; and
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- (e) may do all other things necessary or convenient for constructing, maintaining, altering, or using any works or undertakings of, or under the control of, the electricity corporation.
- (2) In the exercise of the powers under sub-section (1), an electricity corporation must do as little damage as may be and, must, if required within 2 years from the exercise of the powers, make full compensation to the owner of and all parties interested in any land for any damage sustained by them in consequence of the exercise of the powers.
- (3) Compensation under sub-section (2) shall be either a gross sum or a yearly rent as may be agreed and, in default of agreement, shall be determined in the manner provided in the **Land Acquisition and Compensation Act 1986**.
- (4) An electricity corporation may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.
- (5) This section applies—
- (a) to a distribution company, transmission company and a generation company holding a licence under Part 2; and
  - (b) to the holder of any other licence under Part 2 as if a reference in this section to an electricity corporation included a reference to the holder—
- and so applies—
- (c) subject to the conditions of the licence in relation to the exercise of powers under this section; and
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- (d) subject to any access code applying in relation to the exercise of powers under this section issued by the Office of the Regulator-General under the **Office of the Regulator-General Act 1994**.

**94. Rateability of certain property**

- (1) Land of the Crown used by, or land vested in and unoccupied or used for the purposes of this Act by, VENCORP is not rateable land within the meaning of the **Local Government Act 1989**.
- (2) Despite anything to the contrary in the **Local Government Act 1989**, land is not occupied land for the purposes of that Act merely because any pole, wire or cable of a distribution company, transmission company or generation company is on, under or over that land.
- (3) The Loy Yang B land is rateable land and an agreement under section 27 of the **Loy Yang B Act 1992** in force immediately before 8 May 1997 has effect as if it had been entered into under sub-section (4)(a) of this section.
- (4) Despite anything in the **Local Government Act 1989**—
- (a) a generation company or an associated entity of a generation company that is liable to pay rates in respect of land used for generation functions may, instead of paying rates in respect of that land, elect by notice in writing given to the relevant council to pay amounts agreed or determined under sub-section (5);  
or
- (b) the relevant council may, by notice in writing given to a generation company or an associated entity of a generation company that is liable to pay rates in respect of land
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- used for generation functions, require that company or associated entity to pay, instead of rates in respect of that land, amounts agreed or determined under sub-section (5).
- (5) A generation company or associated entity that elects to, or is required to, pay amounts under this sub-section must pay to the relevant council—
- (a) such amount or amounts as are agreed between the generation company or associated entity and the relevant council, at such times as are so agreed; or
  - (b) if, at any time, the amount required to be paid is not the subject of an agreement under paragraph (a) or the prior determination of an arbitrator, such amount and at such times as are determined by an arbitrator jointly appointed by the generation company or associated entity and the relevant council or, if within a reasonable time they fail to agree on such an appointment, by the chairperson of the Victoria Grants Commission as arbitrator or by another arbitrator nominated by that chairperson.
- (6) In determining an amount under sub-section (5), an arbitrator must have regard to the methodology by which amounts payable under an agreement in force under section 27(2)(a) of the **Loy Yang B Act 1992** immediately before 8 May 1997 were determined.
- (7) The **Commercial Arbitration Act 1984** applies to arbitrations under this section.
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(8) Section 221 of the **Local Government Act 1989** does not apply in relation to land owned or occupied by a generation company or an associated entity of a generation company which is land used for generation functions.

(9) In this section—

**"associated entity"**, in relation to a generation company, means a person to whom an exemption under section 17 applies in respect of an activity relating to the generation of electricity for supply or sale, being an activity for which the generation company holds a licence under Part 2;

**"land used for generation functions"** means land on which a power station is situated;

**"Loy Yang B land"** means the land shown hatched on the plan in Schedule 2 to the **Loy Yang B Act 1992**;

**"relevant council"** means the council in whose municipal district the land used for generation functions is situated.

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**PART 6—ELECTRICITY SUPPLY EMERGENCY  
PROVISIONS**

**Division 1—Emergency Provisions**

**95. *Proclamation that this Part applies***

- (1) If it appears to the Governor in Council that—
  - (a) an event has occurred, or is about to occur, which may endanger an undertaking of a distribution company, a transmission company or a generation company or a person who supplies electricity to another person or materially affect the safe, economical or effective supply of electricity; or
  - (b) the available supply of electricity is, or is likely to become, less than is sufficient for the reasonable requirements of the community—

the Governor in Council may by proclamation declare that this Part is to apply.

- (2) The proclamation must be published in the Government Gazette.
- (3) The proclamation takes effect on the date of its publication.

**96. *Powers of Minister***

- (1) While a proclamation is in force, the Minister may give any directions that the Minister thinks necessary to—
  - (a) protect any undertaking of a distribution company, a transmission company or a generation company or a person who supplies electricity to another person; or

- (b) ensure the safe, economical or effective supply of electricity; or
  - (c) ensure that the available electricity is fairly distributed to the community; or
  - (d) increase the available supply of electricity; or
  - (e) regulate the use of the available supply of electricity, having regard to the needs of the community.
- (2) Without limiting sub-section (1), the Minister may, by notice in writing, do all or any of the following—
- (a) give any directions that are necessary to control, direct, authorise conduct in relation to, restrict or prohibit the supply, distribution, sale, use or consumption of electricity;
  - (b) direct a person or body to carry out any work required to ensure the generation, supply or distribution of electricity;
  - (c) direct a person or body to maintain or operate any services required to ensure the generation, supply or distribution of electricity;
  - (d) requisition the use of property of any kind which is used, or may be used, for or in connection with the generation, supply or distribution of electricity;
  - (e) operate, use, dispose of, distribute, store, repair and maintain any such property;
  - (f) authorise a person specified in the notice to enter any land, building or structure used for or in connection with the provision of electricity;
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- (g) authorise a person specified in the notice to withdraw the supply of electricity from any consumer the person reasonably believes is in breach of any direction given under paragraph (a);
- (h) provide, by direction, for any matter or thing incidental to the carrying into effect of the powers referred to in this section.
- (3) A direction—
- (a) may operate generally, or may be limited in its operation according to specified times, places, circumstances, conditions or restrictions; and
- (b) may, if so specified in the direction, allow the Minister to exempt a person or body from having to comply with the direction; and
- (c) may be addressed or directed to people and bodies generally or particularly; and
- (d) subject to sub-section (7), takes effect when made or, if a later time is specified in the direction, at that later time; and
- (e) has effect as if enacted in this Act.
- (4) A direction including a direction under sub-section (6) must be published in the Government Gazette as soon as possible after it is made.
- (5) Notice of a requisition relating to a class of property must be published in the Government Gazette as soon as possible after it is made.
- (6) The Minister may at any time by direction under this section amend or revoke a direction made, or purportedly made, under this section or may return requisitioned property.
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- (7) If a direction of the Minister under sub-section (6) amending an earlier direction for the purpose of correcting a defect, mistake or omission—
- (a) includes the statement that the earlier direction is deemed to have been made as so amended; and
  - (b) is made not later than 3 months after the earlier direction was made—
- the earlier direction is deemed to have been made as so amended.
- (8) If the Minister requisitions the use of property under sub-section (2)(d), the reasonable costs of compensating the owner of that property for the requisition and making good any damage resulting from the requisition must be determined by the Minister.
- (9) If there is a dispute as to the Minister's determination, the Minister must refer the matter for arbitration by a single arbitrator under the **Commercial Arbitration Act 1984**.
- (10) Requisitioned property that has not been disposed of must be returned as soon as it is safe to do so after the Governor in Council revokes a proclamation.
- (11) The amendment, revocation or expiry of a direction does not affect—
- (a) the previous operation of the direction; or
  - (b) the validity of any action taken under the direction before the amendment, revocation or expiry; or

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- (c) any penalty or punishment incurred in respect of any failure to comply with the direction before the amendment, revocation or expiry or any proceeding or remedy in respect of the penalty or punishment.

**97. Offences**

- (1) A person or body who is aware of a direction under section 96 must comply with the direction.
- (2) A person—
- (a) to whom electricity is supplied; and
  - (b) who is aware of a direction restricting or prohibiting the use of electricity—
- must do everything reasonably possible to ensure that electricity is not used on the land or premises to which the electricity is supplied in contravention of the direction.
- (3) A person must not obstruct another person—
- (a) exercising a power given to; or
  - (b) complying with an obligation imposed on—
- the other person under section 96 if the person has been shown a copy of the notice giving the power or imposing the obligation.
- (4) A person is deemed to be aware of a direction if the Minister has caused—
- (a) the direction to be published in a newspaper circulating throughout the area in which the direction applies; or
  - (b) details of the direction to be broadcast by means of radio or television transmission throughout the area in which the direction applies.
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- (5) In any proceedings for an offence against this section, a certificate purporting to be signed by the Minister to the effect that details of a direction were broadcast by means of radio or television transmission throughout a particular area on a specified day is evidence of the facts set out in the certificate.
- (6) In any proceedings for an offence against this section, if a direction was made in respect of part of a day and first broadcast on that day, it is sufficient defence for the defendant to prove that at the time of the commission of the offence, the defendant—
- (a) did not know; and
  - (b) could not reasonably have known—
- of the direction.
- (7) A person must not contravene sub-section (1), (2) or (3).
- Penalty: in the case of a natural person,  
100 penalty units.
- in the case of a body corporate,  
10 000 penalty units.
- (8) An offence by a body corporate under sub-section (7) is an indictable offence.
- (9) If an offence is committed by a person by reason of a failure to comply, within the period specified in a direction under sub-section (1), with the requirements specified in the direction, the offence, for the purposes of sub-section (10) is deemed to continue so long as any requirement specified in the direction remains undone, whether or not the period has elapsed.
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- (10) If, under sub-section (9), an offence is deemed to continue, the person who committed the offence commits an additional offence on each day during which the offence is deemed to continue and is liable, upon conviction for such an additional offence, to a penalty not exceeding one tenth of the penalty for the first-mentioned offence.
- (11) If a body corporate commits an offence against this section, any officer of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for it.
- (12) An offence under sub-section (11) is an indictable offence.
- (13) A person may be proceeded against and convicted under a provision in accordance with sub-section (11) whether or not the body corporate has been proceeded against or convicted under that provision.
- (14) If in a proceeding for an offence against this section it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.
- (15) In sub-section (11), "**officer**", in relation to a body corporate, means—
- (a) a director, secretary or executive officer of the body corporate; or
  - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
  - (c) a person concerned in the management of the body corporate.
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- (16) If this section provides that a person is guilty of an offence, that reference to a person must—
- (a) in the case of a partnership, be read as a reference to each member of the partnership; and
  - (b) in the case of an unincorporated body or association, be read as a reference to each member of the committee of management of the body or association.

**98. *Judicial notice***

All courts and any person acting judicially must take judicial notice of any proclamation, direction or general requisition made, given or imposed under this Part.

**99. *Immunity from suit***

A person acting in good faith in the execution of this Part or any proclamation or direction under this Part is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained because of the operation of this Part or of any thing done or purporting to be done under this Part or any proclamation or direction under this Part.

**Division 2—Enforcement**

**100. *Powers of entry—enforcement***

- (1) If an enforcement officer has reasonable grounds for suspecting that there is on any land or premises a particular thing that may be evidence of the commission of an offence against this Part, the enforcement officer may—
- (a) enter the land or premises; and
  - (b) search for the thing.
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- (2) An enforcement officer must not enter land or premises under this section except—
- (a) with the written consent of the occupier of the land or premises; or
  - (b) under the authority of a search warrant.

**101. Occupier to be given copy of consent**

- (1) An occupier who consents in writing to entry of his or her land or premises under section 100 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

**102. Search warrant**

- (1) An enforcement officer may apply to a magistrate for the issue of a search warrant in relation to particular land or premises if the enforcement officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the land or premises a particular thing that may be evidence of the commission of an offence against this Part.
- (2) A magistrate may issue a search warrant under this section if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on land or premises a particular thing that may be evidence of the commission of an offence against this Part.
- (3) The search warrant may authorise an enforcement officer named in the warrant and any assistants the enforcement officer considers necessary—

- (a) to enter the land or premises, or part of the land or premises, named or described in the warrant; and
  - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected; and
  - (b) the land or premises to be searched; and
  - (c) a description of the thing for which the search is to be made; and
  - (d) any conditions to which the warrant is subject; and
  - (e) whether entry is authorised to be made at any time or during stated hours; and
  - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

**103. *Announcement before entry***

- (1) Before executing a search warrant, the enforcement officer named in the warrant or a person assisting the enforcement officer named in the warrant must—
- (a) announce that he or she is authorised by the warrant to enter the land or premises; and
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(b) give any person at the land or premises an opportunity to allow entry to the land or premises.

(2) The enforcement officer or a person assisting the enforcement officer need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the land or premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

**104. *Copy of warrant to be given to occupier***

If the occupier or another person who apparently represents the occupier is present at the land or premises when a search warrant is being executed, the enforcement officer must—

(a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and

(b) give to that person a copy of the execution copy of the warrant.

**105. *Person authorised by Office of Chief Electrical Inspector can bring proceedings***

(1) A person authorised by the Office of the Chief Electrical Inspector either generally or in a particular case to bring proceedings for an offence against this Part, may bring those proceedings.

(2) If proceedings referred to in sub-section (1) are brought by a person authorised to do so, the proceedings may be conducted by any other person authorised by the Office of the Chief Electrical Inspector to bring proceedings of that kind.



- (3) All courts must take judicial notice of the fact that a person is authorised by the Office of the Chief Electrical Inspector to bring proceedings referred to in sub-section (1) or conduct proceedings under sub-section (2), as the case requires.
- (4) In this section "**Office of the Chief Electrical Inspector**" means the Office of the Chief Electrical Inspector established under Part 2 of the **Electricity Safety Act 1998**.

### **Division 3—Infringement Notices**

#### **106. Definition**

In this Division—

**"prescribed offence"** means an offence against section 97(7) constituted by the use of electricity by a person in contravention of a direction under section 96—

- (a) of which the person is aware or is deemed under section 97 to be aware; and
- (b) which applies to the person—

but does not include an offence by a body corporate.

#### **107. Power to serve a notice**

- (1) An enforcement officer may serve an infringement notice on any person that he or she has reason to believe has committed a prescribed offence.
- (2) An infringement notice may be served on a person—
- (a) by delivering it personally to the person; or

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- (b) by sending it by post addressed to the person's last known place of residence or business.

**108. *Form of notice***

An infringement notice must state—

- (a) the date of the notice;
- (b) that the alleged offence is a prescribed offence within the meaning of section 106;
- (c) the nature, and a brief description, of the alleged offence;
- (d) the date, time and place of the alleged offence;
- (e) the infringement penalty for the alleged offence;
- (f) the manner in which the infringement penalty may be paid;
- (g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;
- (h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, the matter will not be brought before the Magistrates' Court unless the notice is withdrawn within 28 days after the date on which it was served;
- (i) that the person is entitled to disregard the notice and defend any proceedings in respect of the offences in the Magistrates' Court;
- (j) any other prescribed particulars.

**109. *Infringement penalties***

The infringement penalty for an offence against a prescribed offence is \$500 in the case of a natural person and \$1000 in the case of a body corporate.

**110. *Late payment of penalty***

An enforcement officer may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

- (a) neither a charge has been filed nor a courtesy letter served under Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** in respect of the offence to which the infringement penalty relates; and
- (b) the infringement notice has not been withdrawn.

**111. *Withdrawal of notice***

- (1) An enforcement officer may withdraw an infringement notice at any time within 28 days after the date on which the notice was served by serving a withdrawal notice on the person served with the infringement notice.
  - (2) A withdrawal notice may be served on a person—
    - (a) by delivering it personally to the person; or
    - (b) by sending it by post addressed to the person's last known place of residence or business.
  - (3) An infringement notice may be withdrawn even if the infringement penalty has been paid.
  - (4) If an infringement notice is withdrawn, the amount of any infringement penalty paid must be refunded and the Consolidated Fund is, to the necessary extent, appropriated accordingly.
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**112. *Payment expiates offence***

If an infringement notice is not withdrawn and the infringement penalty is paid within the time for payment stated in the notice or is accepted in accordance with section 110 then—

- (a) the person on whom the notice was served has expiated the offence by that payment; and
- (b) no proceedings may be taken against that person in respect of that offence; and
- (c) no conviction is to be taken to have been recorded against that person for that offence.

**113. *Payment not to have certain consequences***

- (1) The payment of an infringement penalty under this Division is not and must not be taken to be—
  - (a) an admission of guilt in relation to the offence; or
  - (b) an admission of liability for the purpose of any civil claim or proceeding arising out of the same occurrence and the payment does not in any way affect or prejudice any such claim or proceeding.
- (2) The payment of an infringement penalty under this Division must not be referred to in any report provided to a court for the purpose of determining sentence for an offence.

**114. *Prosecution after service of infringement notice***

A charge may be filed in respect of an offence to which an infringement notice relates if—

- (a) the infringement penalty has not been paid within the time for payment stated in the notice or in accordance with section 110; or
  - (b) the notice is withdrawn.
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**115. *Enforcement of infringement penalty***

Payment of the infringement penalty may be enforced in accordance with Part 2 of Schedule 7 of the **Magistrates' Court Act 1989** if—

- (a) the infringement notice is an infringement notice within the meaning of Schedule 7 to that Act; and
  - (b) the infringement penalty has not been paid within the time stated in the notice or in accordance with section 110; and
  - (c) the notice has not been withdrawn; and
  - (d) a charge has not been filed in accordance with section 114.
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**PART 7—GENERAL**

**116. *Delegation by Minister***

The Minister may, by instrument, delegate to any person any function or power of the Minister under this Act, other than this power of delegation.

**117. *Liability for failure to supply electricity***

- (1) VENCORP, a distribution company, a transmission company, a generation company or a retailer, is not liable to any penalty or damages for not supplying electricity under any contract if the failure arises through accident, drought or unavoidable cause.
- (2) VENCORP, a distribution company, a transmission company, a generation company or a retailer is not liable in damages to any person for any partial or total failure to supply electricity arising through any cause that is not due to the fault of the corporation or the company.
- (3) VENCORP, a distribution company, a transmission company, a generation company or a retailer may enter into an agreement with a person varying or excluding the operation of sub-section (2) or (3) and, to the extent of that agreement, those sub-sections do not apply.

**118. *Supreme Court—limitation of jurisdiction***

It is the intention of sections 84 and 99 to alter or vary section 85 of the **Constitution Act 1975**.

**119. *Regulations***

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or

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necessary to be prescribed to give effect to this Act.

- (2) The regulations are subject to disallowance by a House of the Parliament.
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**SCHEDULE**

**EASEMENTS SET APART FOR ELECTRICITY  
CORPORATIONS**

Easements set apart or appropriated for the use of an electricity corporation under section 88.

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Column 1	Column 2
Power Line	Full and free right and liberty to and for an electricity corporation and its transferees and its and their contractors, servants agents and workmen at all times hereafter to enter in and upon the land to which the easement applies and to take onto or remove from such land any plant machines vehicles equipment or materials and to clear and to keep free such land of any buildings whatsoever and of anything which is or may be an obstruction to the rights hereby described including trees more than 2.7 metres in height or any structure more than 2.7 metres in height for every overhead electric cable or wire and including all trees and structures for every cable or wire laid underground and to construct lay or place one or more poles cables wires, marker posts, service pillars, stays or guy wires and to lay underground and fix and cover in such cables wires pipes ducts outlets galvanised iron pipe conduits poly vinyl chloride conduits and other apparatus appliances and protective coverings as may be required or desired for the transmission of electricity (all of which are hereinafter called "the said appliances") but so always that every overhead electric cable or wire shall be erected at least 4.6 metres above the then surface of such land and every cable or wire laid underground shall be laid at least 0.45 metres below the said then surface except when entering or leaving the ground of such land and also to carry out thereon such digging, cutting and excavating as may be reasonably necessary for the said appliances and keeping the said excavations free of the injurious accumulation of water but so that every excavation will be covered in as soon as possible and also to use such land and the said appliances for all purposes of and incidental to transmitting electricity safely and economically across such land at any time hereinafter and also to inspect maintain in good and efficient working order repair renew and remove

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Column 1

Column 2

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the said appliances and also from time to time to go pass  
and repass for all purposes aforesaid either with or without  
plant machines vehicles equipment or material through  
over and along such land.

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**ENDNOTES**

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 7 September 2000*

*Legislative Council: 25 October 2000*

The long title for the Bill for this Act was "to regulate the electricity supply industry and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 7 September 2000*

*Legislative Council: 25 October 2000*

*Absolute majorities:*

*Legislative Assembly: 24 October 2000*

*Legislative Council: 14 November 2000*