



New South Wales

Electricity Retained Interest Corporations Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Electricity Network Assets (Authorised Transactions) Bill 2015*.

Overview of Bill

The object of this Bill is to provide for the effective stewardship and oversight of the interest in electricity network assets of the State that the State will retain following the proposed transfer of assets authorised by the proposed *Electricity Network Assets (Authorised Transactions) Act 2015*. This *retained interest* is the interest of the State in a lease of assets comprising or including network infrastructure assets (other than the interests of the State as lessor under such a lease) and the interest of the State as a lessee under such a lease.

The Bill provides for this by:

- (a) constituting a separate Corporation for each separate part of the retained interest (each part being referable to the distribution system previously controlled and operated by a particular electricity network SOC), and
- (b) providing for each of those Corporations to hold the part of the retained interest for which it is responsible on behalf of the State, and
- (c) requiring each of those Corporations to provide effective stewardship and oversight of the relevant part of the retained interest for the purpose of protecting the value to the State of that part of the retained interest and seeking to maximise returns to the State from that part of the retained interest, and
- (d) providing that each Corporation has power to invest in the business of a transacted distribution system or transacted transmission system, and

- (e) making provisions for the governance of each Corporation, including the duties of members of the Board of Governors and officers, financial arrangements and obligations relating to the administration and audit of finances and to annual reporting.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 defines *retained interest* to mean the interests of the State in a lease of assets comprising or including network infrastructure assets (other than the interests of the State as lessor under such a lease) or the interests of the State as a lessee under such a lease. For the purposes of the proposed Act, the retained interest is considered to be made up of separate parts that are referable to the distribution system or transmission system previously controlled and operated by a particular electricity network SOC constituting a separate part of the retained interest. (Accordingly, the part of the retained interest that is referable to Ausgrid's distribution system is considered to be separate from the part of the retained interest that is referable to Endeavour Energy's distribution system.)

Part 2 The Corporations

Clause 5 constitutes a separate corporation for each separate part of the retained interest and provides that all decisions relating to the operation of a Corporation are to be made by or under the authority of the Board of Governors of the Corporation (*the Board*).

Clause 6 provides that the part of the retained interest for which a Corporation is constituted is to be held by the Corporation (either directly or through one or more interposed entities) and is to be held for and on behalf of the State.

Clause 7 provides that the functions of a Corporation, which can be exercised by the Corporation or its subsidiary, are to provide effective stewardship and oversight of the part of the retained interest for which it is responsible for the purpose of protecting the value to the State of that part of the retained interest and seeking to maximise returns to the State from that part of the retained interest. Each Corporation may do all things necessary or convenient to be done for or in connection with the exercise of its functions and each Corporation has power to invest money in connection with the exercise of its functions, including by investing in the business of a transacted distribution system or transacted transmission system.

Clause 8 provides that a Corporation is not subject to the control or direction of the Government or any Minister on behalf of the Government in the exercise of the Corporation's functions. In particular, the Treasurer is not authorised by or under the proposed *Electricity Network Assets (Authorised Transactions) Act 2015* to act for or on behalf of a Corporation or a subsidiary of a Corporation or to give directions to, or to a member of the Board of, a Corporation or subsidiary of a Corporation.

Clause 9 provides that the Board of a Corporation may, after consulting the Treasurer, appoint a General Manager of the Corporation to be responsible for the day-to-day management of the operation of the Corporation in accordance with the general policies and specific directions of the Board.

Clause 10 provides for the Treasurer to give directions to a Corporation imposing accountability and reporting requirements on the Corporation, including requirements for the corporate planning to be undertaken, for reporting on the operation and performance of the Corporation and the disclosure of matters that may have a material effect on the value of that part of the retained interest for which the Corporation is responsible.

Clause 11 gives a Corporation the power to form, participate in the formation of or acquire subsidiaries.

Clause 12 requires the Treasurer to ensure that a Corporation and any of its subsidiaries are provided with administrative support, including staff and facilities.

Part 3 Board of Governors

Clause 13 provides that each Corporation is to have a Board of Governors consisting of 3 members appointed by the Treasurer as either part-time or full-time members.

Clause 14 specifies the qualifications of Board members (that is, having substantial experience or expertise, and professional credibility and significant standing, in at least one of the fields of the management of investments in financial assets, corporate governance and the management or operation of regulated public utility assets or infrastructure assets). The provision also disqualifies the holders of full-time offices under a law of the State, public servants and certain other persons employed by bodies exercising public functions from membership of a Board.

Clause 15 provides that the Treasurer is to determine the term of office of members of a Board (which is not to exceed 4 years).

Clause 16 provides that a Board may delegate the exercise of any of its functions to a member or committee of the Board.

Clause 17 specifies when a vacancy in the office of a member of a Board arises.

Clause 18 provides that the Treasurer may remove a member of a Board from office if satisfied that the performance of the Board member has been unsatisfactory for a significant period, or on the recommendation of the Board.

Clause 19 provides for a Board to determine the procedure for the calling of meetings of the Board and for the conduct of business at those meetings.

Clause 20 provides for the transaction of business outside meetings of the Board.

Clause 21 provides for the remuneration of Board members.

Clause 22 requires each Board to have a Chairperson and provides for the appointment, term of office and vacation of office of the Chairperson.

Part 4 Duties of Board members and officers

Clause 23 provides that the Treasurer may determine and notify to a Board corporate governance guidelines containing recommendations designed to assist the Board to minimise risks concerning governance and to optimise performance and accountability of the Board.

Clause 24 requires a member of a Board who has a material personal interest in a matter being considered, or about to be considered, by the Board to disclose the nature of the interest to a meeting of the Board as soon as practicable after the relevant facts come to the member's knowledge.

Clause 25 prevents a member of a Board who has a material personal interest in a matter being considered by the Board from taking part in any decision of the Board on the matter, including voting on the matter, voting on a proposed resolution in relation to the matter, being present while the matter, or a related resolution, is being considered by the Board or otherwise taking part in any decision of the Board in relation to the matter or a related resolution.

Clause 26 requires an officer of a Corporation to act honestly in the exercise of functions as an officer of the Corporation, to exercise the degree of care and diligence in the exercise of functions that a reasonable person in a like position would exercise, not to make improper use of information acquired because of his or her position and not to make improper use of his or her position as an officer of the Corporation.

Clause 27 prevents a Corporation from indemnifying a person who is or has been an officer of the Corporation against a liability incurred as an officer and prevents a Corporation from exempting a person who is or has been an officer of the Corporation from liability incurred as an officer.

Clause 28 prevents a Corporation from paying insurance premiums for certain liabilities of officers (those incurred by the person as an officer and arising out of conduct involving a wilful breach of duty in relation to the Corporation, making improper use of information acquired because of his or her position as an officer of the Corporation or making improper use of his or her position as an officer of the Corporation).

Clause 29 provides that a Corporation may enter into an agreement that confers a right of access to documents held by the Corporation in connection with any claim, investigation or other proceedings relating to a person's term of office as an officer of the Corporation.

Clause 30 provides that reliance by a Board member on the advice of others is taken to be reasonable for the purposes of proceedings brought to determine whether the Board member has performed a duty under the proposed Part or an equivalent general law duty.

Clause 31 provides that a court may grant relief from liability for negligence, default, breach of trust or breach of duty as an officer or member of staff of a Corporation.

Part 5 Financial provisions

Clause 32 provides for the establishment, in the Special Deposits Account, of a Fund for each Corporation and makes each Corporation responsible for the administration of the Fund established for it.

Clause 33 specifies the amounts that are payable into the Fund established for a Corporation, including all financial returns (including dividend income, return of capital and any other financial distribution) derived by the Corporation or any subsidiary of the Corporation from that part of the retained interest for which the Corporation is responsible.

Clause 34 specifies the amounts that are payable from the Fund established for a Corporation, including such amounts as the Treasurer directs for payment into the Consolidated Fund.

Clause 35 requires a Corporation to produce an annual report on the Fund established for the Corporation, detailing the payments made to and from the Fund.

Clause 36 allows a Corporation to invest money in the Fund established for the Corporation in such manner as may be authorised by the Treasurer.

Part 6 Miscellaneous

Clause 37 makes provision for proceedings for offences under the proposed Act.

Clause 38 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Amendment of Acts

Schedule 1.1 inserts Corporations constituted by the proposed Act in the list of statutory bodies that are subject to the requirements of the *Public Finance and Audit Act 1983* relating to the administration and audit of public finances.

Schedule 1.2 includes the full-time or part-time members of the Board of Governors of a Corporation constituted by the proposed Act in the list of public office holders in relation to whose remuneration the Statutory and Other Offices Remuneration Tribunal may make determinations.