



NSW Legislative Assembly Hansard

Electricity Supply Amendment (Protection of Electricity Works) Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 2 May 2006.

Second Reading

Mr JOSEPH TRIPODI (Fairfield—Minister for Energy, Minister for Ports and Waterways, and Minister Assisting the Treasurer on Business and Economic Regulatory Reform) [8.17 p.m.]: I move:

That this bill be now read a second time.

The amendments in this bill arise from the need to protect existing electricity infrastructure. Electricity works in New South Wales are owned by the three electricity network operators: Country Energy, Energy Australia and Integral Energy. Around 44 per cent of the electricity network in New South Wales was built decades ago on land over which network operators now do not have a formal easement or ownership. During this time electricity distribution was undertaken by county councils, under local government control. Under the local government laws in place at the time, these councils had the power to undertake works on private land with the consent of the owner without having an easement or other interest over the property. These laws were widely relied upon by councils to construct electricity works on private land at a reduced cost to benefit local communities. The rapid extension of the electricity network throughout this time delivered enormous benefits to residents and businesses across the State.

Landholders generally welcomed the extension of electricity infrastructure over their land, as it allowed the area to be powered for the first time. Easements were rarely negotiated or registered as this would have added time and cost to the process of providing new electricity supplies. At the time it seemed unthinkable that a landholder would object to the benefits of electricity connection. Generally speaking, the existing infrastructure was constructed with the original landholders' consent and has remained visible to the subsequent purchasers of that land. Owner consent to the presence, operation and use of electricity works on private land does not, however, legally bind subsequent purchasers of the property, despite the fact that they have paid a reduced price for the property. Today we live in a more litigious society and the former legal regime has been forgotten.

There is a real risk that opportunistic individuals may jeopardise the future of electricity infrastructure by taking legal action in relation to the presence of electricity infrastructure on their land. Such actions may be commenced even where the original landholder gave consent to the installation of the equipment. Other States in Australia have passed legislation in the past 10 years to protect electricity works on land over which network operators hold no formal interest. It is appropriate that New South Wales does the same. Electricity is an essential service. Electricity infrastructure requires the benefit of solid legal protection to ensure that power can be practically and affordably provided to homes and businesses across New South Wales. Without such protection investments in electricity infrastructure could be put at risk. In most cases, network operators have been operating these electricity works for decades. The long-term use of these works, combined with the statutory rights and responsibilities of network operators to operate, maintain and repair essential electricity infrastructure, may provide a defence to any legal action. This, however, is by no means certain.

There is no clear provision in the Electricity Supply Act to protect the presence, operation and use of electricity works on land not owned by the network operator. This ongoing uncertainty needs to be addressed in order to protect the public interest in a safe and reliable supply of electricity at affordable prices. Item [3] of schedule 1 inserts new section 53 into the Electricity Supply Act so that no legal proceedings may be taken against network operators due to the presence, operation or use of pre-existing electricity works on land not owned by the network operator. This provision will prevent actions in trespass or nuisance being taken against network operators for the presence, operation or use of electricity works on land that they do not own. This protection applies only to pre-existing electricity works and any works subsequently erected on the same site to repair, replace, modify or upgrade those works.

Network operators will be required to obtain formal easements and compensate landholders in accordance with the Land Acquisition (Just Terms Compensation) Act if they wish to protect future electricity works constructed on private land. This will provide certainty for both landholders and network operators. Actions in negligence against network operators are expressly preserved by the bill. The bill does not seek to discontinue or affect any legal proceedings already commenced against network operators, except to prevent the court from making an order requiring a network operator to remove electricity works. This provision will help ensure the security and reliability of supply of electricity for residential and business customers who are not party to these proceedings.

The bill also clarifies the power of a network operator to remove dangerous structures that interfere with its electricity works. Section 49 of the Electricity Supply Act enables network operators to take action to remove structures that endanger their electricity works. Under the existing provisions, the cost of carrying out the work

and repairing any damage to the electricity works is borne by the owner of the dangerous structure, not the network operator. The bill amends section 49 to ensure that network operators may remove dangerous structures even if the electricity works are situated on land owned or occupied by the person having control of the structure. This will ensure that network operators can take action to remove structures that pose safety risks to the public.

Where the electricity structure is covered by new section 53, network operators will be required to pay for the removal of these structures as long as they were lawfully installed before these amendments commence. The network operator will also be required to pay for the removal of structures built by a landowner after these amendments commence where the structure was built with the agreement of the network operator. The bill also expressly provides that in the above circumstances the network operator must compensate the owner of the structure for any loss or damage arising from its removal. These amendments to section 49 of the Electricity Supply Act will ensure that electricity works are protected from dangerous hazards in a fair and equitable manner. I trust honourable members will support the protection of existing electricity infrastructure that is provided by this bill. I commend the bill to the House.