



New South Wales

Electricity Industry Restructuring Bill 2008 (No 2)

Explanatory note

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

The *Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008* is cognate with this Bill.

Overview of Bill

The object of this Bill is to provide for the restructuring of part of the State's electricity industry by authorising and facilitating any of the following transfers of assets to the private sector:

- (a) the lease of the power stations of an electricity generator and the transfer of the rest of its business,
- (b) the transfer of the retail business of an electricity distributor,
- (c) the transfer by initial public offer of the business of an electricity generator (including power stations).

The Bill specifically provides that the distribution and transmission assets (the "poles and wires") of an electricity distributor must remain in public ownership.

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 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines *authorised restructuring* to mean the transfer of State electricity assets authorised by Part 2.

Part 2 Restructuring of State electricity industry

Clause 4 authorises the transfer to the private sector of State electricity assets as described in the Overview.

Clause 5 provides that the distribution and transmission assets of an electricity distributor and the transmission system of TransGrid must remain in public ownership.

Clause 6 authorises the transfer of State electricity assets between public sector agencies.

Clause 7 provides that the proceeds of the transfer of State electricity assets to the private sector pursuant to the authorised restructuring belong to and are payable directly to the State.

Part 3 Facilitating the authorised restructuring

Division 1 Functions of public sector agencies

Clause 8 provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised restructuring.

Clause 9 provides for the establishment of statutory State owned corporations as *restructure SOC*s for the purposes of the authorised restructuring.

Clause 10 provides for the establishment of companies as *restructure companies* for the purposes of the authorised restructuring (including by means of the corporate conversion of a State electricity corporation or restructure SOC).

Clause 11 provides that each State electricity corporation and *restructure entity* (a restructure SOC or restructure company) has and may exercise all such functions as are necessary or convenient for the purposes of the authorised restructuring. The clause also authorises the Treasurer to act for and on behalf of and in the name of a State electricity corporation or restructure entity in the exercise of any of its functions for the purposes of the authorised restructuring.

Clause 12 provides that State electricity corporations and restructure entities are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of the authorised restructuring.

Clause 13 establishes the Electricity Assets Ministerial Holding Corporation to hold State electricity assets acquired by it or transferred to it and to carry on any activities or business that relate to any State electricity assets held by it.

Division 2 Arrangements for transfer of assets, staff and functions

Clause 14 authorises the Treasurer to make vesting orders under Schedule 4 for the purposes of the authorised restructuring.

Clause 15 activates Schedule 5 which provides for the transfer of employment of employees of electricity distributors and electricity generators as a consequence of the authorised restructuring.

Clause 16 deals with the transfer of State electricity assets between public sector agencies and provides that a public sector agency to which State electricity assets are transferred is, as the new operator of those assets, deemed to be an electricity distributor or electricity generator (as appropriate to the assets transferred) and is entitled to be issued with any relevant operating licence.

Clause 17 provides for the Treasurer to give directions for the issue of any relevant authorisation under various laws to a person who becomes or is proposed to become the new operator of State electricity assets pursuant to the authorised restructuring.

Clause 18 authorises the Electricity Assets Ministerial Holding Corporation to acquire land for the purposes of the authorised restructuring by agreement or compulsory acquisition that the Corporation determines to be land on which State electricity assets of an electricity generator are situated or land used or occupied by an electricity generator.

Division 3 Operation of other laws

Clause 19 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised restructuring and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with the authorised restructuring.

Clause 20 authorises the release of information by the Auditor-General for the purposes of the authorised restructuring.

Clause 21 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of the authorised restructuring.

Clause 22 confers exemption from the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales* for agreements entered into by a State electricity corporation or restructure entity in connection with the management of electricity trading risks.

Clause 23 activates the maximum shareholding restriction provided for by Schedule 6 when the authorised restructuring is effected by the sale of a restructure company by an initial public offer of securities in the company.

Part 4 Miscellaneous

Clause 24 authorises the Treasurer to delegate any function of the Treasurer under the proposed Act to the Secretary of the Treasury or any other officer of the Government Service prescribed by the regulations.

Clause 25 provides for the Act to bind the State and all other Australian jurisdictions.

Clause 26 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.

Clause 27 provides for the operation of the proposed Act outside the State.

Clause 28 provides for the interpretation of the proposed Act so as not to exceed the legislative power of the State.

Clause 29 authorises the making of regulations to exclude the operation of provisions of the Corporations legislation to matters arising under the proposed Act.

Clause 30 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

Clause 31 protects the validity of provisions of leases of State electricity assets entered into for the purposes of the authorised restructuring.

Clause 32 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Clause 33 provides for the issue of evidentiary certificates by the Treasurer.

Clause 34 provides for how documents are to be given or served for the purposes of the proposed Act.

Clause 35 provides for the director of a corporation to be guilty of an offence committed by the corporation if the director knowingly authorised or permitted the corporation's contravention.

Clause 36 provides for proceedings for offences to be dealt with summarily before a Local Court or before the Supreme Court in its summary jurisdiction.

Clause 37 is a general regulation-making power.

Clause 38 activates Schedule 7 which contains savings and transitional provisions.

Clause 39 activates Schedule 8 which contains amendments to other legislation.

Schedule 1 Interpretative provisions

Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Provisions concerning restructure SOC

Schedule 2 contains special provisions for the board of directors, chief executive officer, dividends scheme and other procedures of a restructure SOC.

Schedule 3 Corporate conversion of State electricity corporations and restructure SOC

Schedule 3 provides the procedure for the corporate conversion of a State electricity corporation or restructure SOC to a restructure company.

Schedule 4 Vesting of assets, rights and liabilities

Schedule 4 provides for the making of vesting orders by the Treasurer for the purposes of the authorised restructuring. Vesting orders operate to vest assets, rights and liabilities of a State electricity corporation or restructure entity in the transferee specified in the order.

Schedule 5 Transfer of electricity employees

Schedule 5 provides a mechanism for the transfer of employment of employees of electricity distributors and electricity generators and for the terms and conditions of the transferred employment.

Schedule 6 Ownership restrictions in floated restructure companies

Schedule 6 provides for the maximum shareholding restriction that is to be applicable to a restructure company that is sold by means of an initial public offer of shares in the company.

Schedule 7 Savings, transitional and other provisions

Schedule 7 enacts a savings and transitional regulation-making power and contains special provisions for the transfer of power stations and associated assets operated by Eraring Energy.

Schedule 8 Amendment of Acts and Regulation

Schedule 8 makes consequential amendments to various Acts and a Regulation.



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New South Wales

Electricity Industry Restructuring Bill 2008 (No 2)

No , 2008

A Bill for

An Act to provide for the restructuring of part of the State electricity industry.

See also the *Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008*.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Electricity Industry Restructuring Act 2008*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6

3 Interpretation 7

(1) Key definitions 8

In this Act: 9

authorised restructuring means the transfer of State electricity assets authorised by Part 2. 10
11

distribution and transmission assets means electricity power lines and associated equipment and electricity structures that form part of a transmission or distribution system (as defined in the *Electricity Supply Act 1995*). 12
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electricity distributor means a statutory State owned corporation constituted by the *Energy Services Corporations Act 1995* as an energy distributor under that Act. 16
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Note. A public sector agency to which the business of an electricity distributor is transferred is deemed to be an electricity distributor. See section 16. 19
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electricity generator means a statutory State owned corporation constituted by the *Energy Services Corporations Act 1995* as an electricity generator under that Act. 21
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Note. A public sector agency to which the business of an electricity generator is transferred is deemed to be an electricity generator. See section 16. 24
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retail business of an electricity distributor means the business of an electricity distributor other than its distribution and transmission assets. 26
27

State electricity assets means assets, rights and liabilities of State electricity corporations. 28
29

State electricity corporation means an electricity generator or electricity distributor. 30
31

(2) Other interpretative provisions 32

Schedule 1 has effect. 33

Part 2 Restructuring of State electricity industry

4 Authority for transfer of State electricity assets to the private sector

This Act authorises the transfer to the private sector of State electricity assets in any of the following ways (and in no other way):

- (a) the lease of the power stations of an electricity generator and the transfer of the rest of its business,
- (b) the transfer of the retail business of an electricity distributor,
- (c) the transfer by initial public offer of the business of an electricity generator (including its power stations).

Note. This is the **authorised restructuring** for transfers of State electricity assets to the private sector. No other transfer of State electricity assets to the private sector is authorised by this Act.

5 Restrictions on transfer of State electricity assets

- (1) Distribution and transmission assets of an electricity distributor must remain in the ownership of a public sector agency.
- (2) Assets that form part of the transmission system (as defined in the *Electricity Supply Act 1995*) of TransGrid must remain in the ownership of a public sector agency.
Note. Assets of TransGrid are not State electricity assets and TransGrid is not part of the authorised restructuring.
- (3) This Act does not prevent an electricity distributor, electricity generator or TransGrid from dealing with or disposing of any of its assets in the ordinary course of its business.

6 Transfer of State electricity assets between public sector agencies

This Act authorises the transfer of State electricity assets between public sector agencies (whereby State electricity assets are divested from a public sector agency and vested in another public sector agency).

7 Proceeds of restructuring

The proceeds of the transfer of State electricity assets to the private sector pursuant to the authorised restructuring belong to and are payable directly to the State.

Part 3	Facilitating the authorised restructuring	1
Division 1	Functions of public sector agencies	2
8	Treasurer's functions for the purposes of the authorised restructuring	3
	The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised restructuring. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.	4 5 6 7
9	Restructure SOC's	8
(1)	A statutory State owned corporation may be established under this Act as a restructure SOC for the purposes of the authorised restructuring.	9 10
(2)	The Governor may by order published in the Gazette:	11
(a)	create a corporation under a corporate name specified in the order, and	12 13
(b)	specify the functions of the corporation, and	14
(c)	direct that the corporation is established as a statutory State owned corporation and as a restructure SOC.	15 16
(3)	On the day on which the order takes effect:	17
(a)	a corporation is constituted with the corporate name and functions specified in the order, and	18 19
(b)	the <i>State Owned Corporations Act 1989</i> is amended by inserting in Schedule 5, in alphabetical order, the corporate name specified in the order (to establish the corporation as a statutory State owned corporation under that Act), and	20 21 22 23
(c)	the State owned corporation thereby established is a restructure SOC for the purposes of this Act.	24 25
(4)	The portfolio Minister of a SOC established under this section is the Minister administering section 13 (Creation of additional energy services corporations) of the <i>Energy Services Corporations Act 1995</i> .	26 27 28
(5)	Schedule 2 has effect with respect to a restructure SOC. The provisions of that Schedule are in addition to and (except to the extent to which that Schedule otherwise provides) do not derogate from the provisions of the <i>State Owned Corporations Act 1989</i> .	29 30 31 32
10	Restructure companies	33
(1)	The Treasurer may for the purposes of the authorised restructuring establish, or direct the establishment of, companies as restructure companies in any of the following ways:	34 35 36

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| <ul style="list-style-type: none"> (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both), (b) the formation or acquisition of a company as a wholly owned subsidiary company of a restructure company, (c) the conversion of a State electricity corporation or restructure SOC into a company limited by shares as provided by Schedule 3. <ul style="list-style-type: none"> (2) A restructure company that is a public sector agency may be converted from one kind of company to any other kind of company. (3) Except by express agreement with the Treasurer: <ul style="list-style-type: none"> (a) a restructure company is not and does not represent the State, and (b) the debts, liabilities and obligations of a restructure company are not guaranteed by the State. (4) The Treasurer may act for or on behalf of the State, a SOC or a restructure company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations of the State, a SOC or restructure company as the holder of shares or other securities in a restructure company. (5) Shares and other securities in a restructure company that is a public sector agency may be issued, sold or transferred in accordance with the directions of the Treasurer. The Treasurer may on behalf of the State, a SOC or a restructure company that is a public sector agency enter into and carry out restructure arrangements for the issue, sale or transfer of shares and other securities in a restructure company. (6) An electricity distributor or electricity generator that becomes a restructure company remains an electricity distributor or electricity generator, as appropriate, for the purposes of this Act (despite ceasing to be a statutory State owned corporation constituted by the <i>Energy Services Corporations Act 1995</i>). | 1
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- 11 Functions of State electricity corporations and restructure entities**
- (1) Each State electricity corporation and restructure entity has and may exercise all such functions as are necessary or convenient for the purposes of the authorised restructuring.
 - (2) The functions conferred by this section are in addition to any other functions that a State electricity corporation or restructure entity has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
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(3)	The Treasurer may act for and on behalf of and in the name of a State electricity corporation or restructure entity in the exercise of any of its functions for the purposes of the authorised restructuring while it is a public sector agency.	1 2 3 4
12	Direction and control of State electricity corporations and restructure entities	5 6
(1)	Each State electricity corporation and restructure entity is subject to the direction and control of the Treasurer in the exercise of any of its functions for the purposes of the authorised restructuring while it is a public sector agency.	7 8 9 10
(2)	The Treasurer may give directions to a State electricity corporation or restructure entity that is a public sector agency (and its directors or other officers) for the purposes of the authorised restructuring. A State electricity corporation or restructure entity (and its directors and other officers) must comply with any such directions while it is a public sector agency.	11 12 13 14 15 16
(3)	The power to give directions under this section extends to directions with respect to the way in which a State electricity corporation or restructure entity is to conduct its business and other affairs.	17 18 19
(4)	Action taken by a State electricity corporation or restructure SOC to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of the corporation.	20 21 22 23
(5)	Anything done or omitted to be done by a director or other officer of a State electricity corporation or restructure entity in complying with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.	24 25 26 27
13	Establishment of Electricity Assets Ministerial Holding Corporation	28
(1)	There is constituted by this Act a corporation with the corporate name of the Electricity Assets Ministerial Holding Corporation.	29 30
(2)	The affairs of the Corporation are to be managed by the Treasurer who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.	31 32 33
(3)	Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Treasurer or a Minister authorised by the Treasurer, or with the authority of the Treasurer or any such Minister, is taken to have been done by the Corporation.	34 35 36 37
(4)	The Corporation has the functions conferred or imposed on it by or under this or any other Act.	38 39

(5)	The functions of the Corporation are:	1
(a)	to hold, on behalf of the Crown, State electricity assets acquired by it or transferred to it by or under this or any other Act, and	2
		3
(b)	to carry on any activities or business that relate to any State electricity assets held by it, including demanding, collecting and receiving charges, levies, rates and fees, and	4
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(c)	such other functions for the purposes of the authorised restructuring as may be prescribed by the regulations.	7
		8
Division 2	Arrangements for transfer of assets, staff and functions	9
		10
14	Vesting orders	11
	The Treasurer may make vesting orders under Schedule 4 for the purposes of the authorised restructuring.	12
		13
15	Transfer of electricity employees	14
	Schedule 5 has effect for the purposes of the authorised restructuring.	15
16	Effect of transfer of electricity assets between public sector agencies	16
(1)	When the business of an electricity generator or electricity distributor is transferred to another public sector agency for the purposes of the authorised restructuring:	17
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		19
(a)	the public sector agency becomes the <i>new operator</i> of the business and that business is to be conducted as the <i>electricity business</i> of the new operator, and	20
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(b)	the new operator is deemed to be an electricity generator or electricity distributor (as appropriate) for the purposes of this Act in respect of the business that comprises its electricity business as conducted by the new operator from time to time, but only while the new operator is a public sector agency and not in respect of any other business of the new operator, and	23
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(c)	the new operator has and may exercise all such functions as may be necessary or convenient for the purpose of the carrying on of its electricity business, and	29
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(d)	the new operator has the benefit of any relevant operating licence for the purpose of the carrying on of its electricity business, and	32
		33
(e)	a public sector agency responsible for the issue of any such relevant operating licence must, at the request of the new operator, re-issue the licence in the name of the new operator and subject to terms, conditions and endorsements that are the same	34
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	(or to substantially the same effect) as those to which it was subject before its re-issue.	1 2
(2)	If the business comprising the electricity business of the new operator is transferred to another public sector agency, this section also operates in respect of that transfer (and any further transfer for the purposes of the authorised restructuring).	3 4 5 6
(3)	If the businesses of an electricity generator and an electricity distributor are transferred to a public sector agency, this section operates to deem the new operator to be both an electricity generator in respect of the transferred business of the electricity generator and an electricity distributor in respect of the transferred business of the electricity distributor.	7 8 9 10 11 12
(4)	This section applies to the transfer of part of, or an interest in, a business in the same way as it applies to a transfer of the whole business.	13 14
(5)	In this section: <i>relevant operating licence</i> , in relation to a transferred business of an electricity generator or electricity distributor, means any licence, permit, entitlement, accreditation or other authority that was held by the electricity generator or electricity distributor before the transfer and that is necessary or convenient for the carrying on of any aspect of the electricity business of the new operator.	15 16 17 18 19 20 21
17	Grant of relevant authorisations	22
(1)	The Treasurer may give directions to a public sector agency for or with respect to the grant of any relevant authorisation to a person who becomes or who it is proposed will become the new operator of any State electricity assets pursuant to the authorised restructuring, including directions for or with respect to any of the following:	23 24 25 26 27
	(a) requiring the grant of any such relevant authorisation without the necessity for the making or determination of any application,	28 29
	(b) the displacement or modification of any provision of a relevant law in its application to the grant of any such relevant authorisation,	30 31 32
	(c) the conditions or endorsements subject to which any such relevant authorisation is to be granted or that are to be attached to any such relevant authorisation.	33 34 35
(2)	A direction may only be given under this section for the grant of a relevant authorisation that:	36 37
	(a) operates to transfer or replace an existing relevant authorisation that is currently in force, and	38 39

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- (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that existing relevant authorisation is subject. 1
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- (3) The Treasurer must consult with a public sector agency before giving a direction to the public sector agency under this section. 4
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- (4) A public sector agency exercising functions under a relevant law must comply with a direction of the Treasurer under this section. 6
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- (5) Anything done by a State electricity corporation in compliance with a condition or endorsement of a relevant authorisation in relation to State electricity assets of which a person is the new operator is taken to have been done by the new operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new operator pursuant to a direction under this section. 8
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- (6) A relevant authorisation granted to a State electricity corporation or to the new operator of State electricity assets may not be suspended or cancelled on the ground of the conversion of the State electricity corporation or new operator to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to a restructure arrangement. 14
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- (7) In this section: 20
grant includes issue and transfer. 21
new operator of State electricity assets means: 22
- (a) a public sector agency to which any State electricity assets are transferred for the purposes of the authorised restructuring, or 23
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- (b) a person (or the nominee of a person) in whom State electricity assets are vested, or to whom State electricity assets are transferred, pursuant to the authorised restructuring. 25
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- relevant authorisation* means a licence, permit, consent, entitlement, accreditation or other authorisation under a relevant law. 28
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- relevant law* means any of the following Acts and any regulations or instruments under those Acts: 30
31
- Electricity Supply Act 1995* 32
- Energy Services Corporations Act 1995* 33
- Gas Supply Act 1996* 34
- Protection of the Environment Operations Act 1997* 35
- Water Act 1912* 36
- Water Management Act 2000* 37
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18 Acquisition of land by Electricity Assets Ministerial Holding Corporation	1
(1) The Electricity Assets Ministerial Holding Corporation may, for the purposes of the authorised restructuring, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> that the Corporation determines to be:	2
(a) land on which State electricity assets of an electricity generator were situated on the date of assent to this Act and continue to be situated, or	3
(b) land that on the date of assent to this Act was used or occupied by an electricity generator for or in connection with the exercise of any function of the electricity generator and that continues to be so used or occupied.	4
(2) In the case of land used (but not occupied) by an electricity generator for or in connection with the exercise of any function of the electricity generator, such as land used for the purposes of access, the power conferred by this section to acquire the land is limited to a power to acquire an interest in the land sufficient to allow that use of the land to continue.	5
(3) A public sector agency is not entitled to compensation under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> as the owner of land acquired pursuant to this section.	6
(4) Land acquired by the Corporation pursuant to this section is deemed to be an asset of an electricity generator for the purposes of this Act and the Corporation is deemed to be an electricity generator for the purposes of this Act while it holds the land.	7
Note. Land acquired pursuant to this section is a State electricity asset for the purposes of the authorised restructuring (whether or not it was a State electricity asset before it was acquired).	8
Division 3 Operation of other laws	9
19 State taxes	10
(1) In this section:	11
relevant matter means any of the following:	12
(a) the transfer of State electricity assets for the purposes of the authorised restructuring,	13
(b) a vesting of assets, rights or liabilities by operation of Schedule 4 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),	14

(c)	the issue, disposal or purchase of shares or other securities in a company for the purposes of the authorised restructuring,	1
(d)	any matter connected with the corporate conversion of a State electricity corporation or restructure SOC for the purposes of the authorised restructuring,	2
(e)	such other matters for the purposes of the authorised restructuring as may be prescribed by the regulations.	3
	<i>State tax</i> means application or registration fees, duty under the <i>Duties Act 1997</i> or any other tax, duty, fee or charge imposed by any Act or law of the State.	4
(2)	State tax is not payable by a public sector agency in relation to a relevant matter.	5
(3)	State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.	6
(4)	An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.	7
(5)	The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.	8
20	Release of information by Auditor-General	9
	Section 38 (Secrecy) of the <i>Public Finance and Audit Act 1983</i> does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of the authorised restructuring.	10
21	Contracts for sale of land	11
	Section 52A (Contracts for sale of land) of the <i>Conveyancing Act 1919</i> does not apply to a contract for the sale of land that is entered into for the purposes of the authorised restructuring.	12
22	Management of electricity trading risks—Trade Practices exemption	13
(1)	The following are specifically authorised by this Act for the purposes of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> :	14
(a)	any agreement (including any electricity derivative agreement) entered into by a State electricity corporation or restructure entity in connection with the management of electricity trading risks and certified by the Treasurer for the purposes of this section to	15

	be an agreement entered into with the approval of or at the direction of the Treasurer,	1
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(b)	the conduct of the parties in negotiating and entering into any such agreement,	3
		4
(c)	the conduct of the parties (and of the successors, substitutes or assigns of the parties) in performing any such agreement.	5
		6
(2)	Anything authorised to be done by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> .	7
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23	Transfer by IPO—ownership restrictions	11
(1)	If State electricity assets are transferred for the purposes of the authorised restructuring by means of an initial public offer of shares in a restructure company, Schedule 6 applies to impose ownership restrictions in relation to the company.	12
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(2)	For the purposes of Schedule 6, the <i>maximum ownership level</i> is set at 10 percent or such greater percentage as may be fixed by the Treasurer under this section.	16
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(3)	Schedule 6 ceases to apply in relation to a restructure company at the end of the period of 3 years (or such longer period as the Treasurer may fix under this section as the period for which that Schedule is to apply to the company) beginning on the day on which the company is first listed on a stock exchange that is a prescribed financial market under the Corporations Act.	19
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(4)	The Treasurer may, by order published in the Gazette, do either or both of the following:	25
		26
(a)	fix a percentage of up to 15 percent as the maximum ownership level in a company for the purposes of Schedule 6,	27
		28
(b)	fix a period of up to 5 years as the period for which Schedule 6 is to apply to a company.	29
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(5)	The Treasurer may not make an order under this section in respect of a company after the commencement of the period during which an offer of shares in the company (for the purposes of the initial public offer concerned) can be accepted.	31
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Part 4 Miscellaneous

24 Delegation

The Treasurer may delegate to the Secretary of the Treasury, or to any other officer of the Government Service prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

25 Act to bind State and other jurisdictions

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

26 General relationship of Act with other State legislation

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of the authorised restructuring or the exercise of a function for the purposes of the authorised restructuring:
 - (a) any provision of the *State Owned Corporations Act 1989*,
 - (b) any provision of the constitution of a statutory SOC or a subsidiary of a statutory SOC,
 - (c) section 11 (Prohibition on privatisation of energy services corporations) of the *Energy Services Corporations Act 1995*.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes the transfer of State electricity assets for the purposes of the authorised restructuring is satisfied by the enactment of this Act.

27	Extraterritorial operation of Act	1
(1)	It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:	2
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(a)	things situated in or outside the territorial limits of the State,	5
(b)	acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,	6
		7
(c)	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 another State, a Territory, the Commonwealth or a foreign country.	8
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(2)	Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.	12
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28	Construction of this Act and instruments so as not to exceed legislative power	18
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(1)	Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:	20
		21
(a)	would, apart from this section, have an invalid application, but	22
(b)	also has at least one valid application,	23
	it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.	24
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		26
(2)	Despite subsection (1), the provision is not to have a particular valid application if:	27
		28
(a)	apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or	29
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(b)	the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.	35
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(3)	Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).	1 2
(4)	This section is in addition to, and not in derogation of, section 31 of the <i>Interpretation Act 1987</i> .	3 4
(5)	In this section:	5
	application means an application in relation to:	6
(a)	one or more particular persons, things, matters, places, circumstances or cases, or	7 8
(b)	one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.	9 10
	invalid application , in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.	11 12 13
	valid application , in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.	14 15 16
29	Displacement and exclusion of Corporations legislation	17
(1)	Corporations displacement provisions	18
	The following provisions of this Act are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act:	19 20 21
(a)	section 12 (Direction and control of State electricity corporations and restructure entities) in relation to the provisions of the Corporations legislation generally,	22 23 24
(b)	section 23 (Transfer by IPO—ownership restrictions) and Schedule 6 (and section 35 in its application to contraventions of those provisions by corporations) in relation to the provisions of the Corporations legislation generally,	25 26 27 28
(c)	section 31 (Leases of State electricity assets) in relation to section 553C, Division 7A of Part 5.6 and Division 2 of Part 5.7B of the Corporations Act.	29 30 31
	Note. Section 5G of the Corporations Act enables a State to displace the operation of provisions of the Corporations legislation in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section. See, in particular, section 5G (4), (5), (7), (8) and (11) of the Corporations Act in relation to the displacement effected by this subsection.	32 33 34 35 36 37
(2)	Declarations under section 5F of Corporations Act	38
	The regulations may declare any matter referred to in, or arising under or in connection with, this Act or the regulations to be an excluded	39 40

matter for the purposes of section 5F of the Corporations Act in relation to:

- (a) the whole of the Corporations legislation, or
- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(3) **Further declarations under section 5G of Corporations Act**

The regulations may declare any provision of this Act (other than a provision referred to in subsection (1)) to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act (either generally or specifically in relation to a provision of the Corporations legislation).

(4) **Definition**

In this section:

matter includes act, omission, body, person or thing.

30 Protection of contractual and other obligations

(1) This section applies to the following:

- (a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),
- (b) the transfer of State electricity assets for the purposes of the authorised restructuring,
- (c) the entering into or performance of obligations under a restructure arrangement by a public sector agency,
- (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised restructuring.

(2) None of the matters or things to which this section applies are to be regarded as:

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or

	transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or	1 2
(c)	giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or	3 4 5
(d)	an event of default under any contract or other instrument, or	6
(e)	giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or	7 8
(f)	releasing a surety or other obligee wholly or in part from an obligation.	9 10
(3)	Subsection (2) does not affect the rights and obligations of the parties to a restructure arrangement in respect of the performance of obligations under the restructure arrangement.	11 12 13
(4)	In this section:	14
	<i>instrument</i> means an instrument (other than an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.	15 16 17 18 19
31	Leases of State electricity assets	20
(1)	The provisions of a lease of State electricity assets by a public sector agency entered into for the purposes of the authorised restructuring (or of any agreement or arrangement entered into in connection with such a lease) dealing with the following matters have effect according to their terms despite any law or rule to the contrary:	21 22 23 24 25
(a)	the payment of any amount by way of premium under the lease and the retention of any such amount by the lessor,	26 27
(b)	the circumstances or conditions under which the lease may be terminated by the lessor or lessee,	28 29
(c)	the application of a security provided in relation to the lease,	30
(d)	the payment of a sum that is in the nature of a penalty,	31
(e)	the forfeiture of property on the occurrence of a specified event or other thing,	32 33
(f)	the pre-payment of amounts payable by way of rent under the lease and the retention of any such amounts by the lessor,	34 35
(g)	the continuance of the lease despite the occurrence of unintended or unforeseen circumstances,	36 37
(h)	the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances,	38 39

(i)	the amount payable in consequence of a breach or early termination of the lease,	1
(j)	the liability of the lessor or lessee in relation to the leased assets,	2
(k)	the non-refundability of any payment made on account of rent, premium, option fee, outgoings, security deposit or otherwise,	3
(l)	the operation of any set-off.	4
(2)	The lease of a power station for the purposes of the authorised restructuring may include provision for the removal by the lessee of any fixture severable from the land of the power station.	5
(3)	A scheme of arrangement, receivership, winding up or other external administration of a company is to be carried out in a manner that gives effect to the provisions of a lease referred to in subsection (1).	6
32	Compensation not payable	7
(1)	Compensation is not payable by or on behalf of the State:	8
(a)	because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or	9
(b)	because of any statement or conduct relating to the enactment of this Act.	10
(2)	This section does not extend to compensation payable under a restructure arrangement to a party to the restructure arrangement in connection with the performance of obligations under the restructure arrangement.	11
(3)	In this section:	12
	compensation includes damages or any other form of monetary compensation.	13
	conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.	14
	operation of this Act includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.	15
	statement includes a representation of any kind:	16
(a)	whether made verbally or in writing, and	17
(b)	whether negligent, false, misleading or otherwise.	18
	the State means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.	19

33	Certificate evidence	1
	A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made by the Treasurer under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.	2 3 4 5 6
34	Service or giving of documents	7
(1)	A document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given:	8 9
(a)	in the case of a natural person:	10
(i)	by delivering it to the person personally, or	11
(ii)	by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	12 13 14 15 16
(iii)	by sending it by facsimile transmission to the facsimile number of the person, or	17 18
(b)	in the case of a body corporate:	19
(i)	by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	20 21 22 23 24
(ii)	by sending it by facsimile transmission to the facsimile number of the body corporate.	25 26
(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	27 28 29
35	Offences by corporations	30
(1)	If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	31 32 33 34 35
(2)	A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.	36 37 38

(3)	Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.	1 2 3
36	Proceedings for offences	4
(1)	Proceedings for an offence under this Act may be dealt with summarily before a Local Court or before the Supreme Court in its summary jurisdiction.	5 6 7
(2)	If proceedings for an offence to which this section applies are brought in a Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any other provision of this Act, \$25,000 or the maximum penalty provided by this Act, whichever is the lesser.	8 9 10 11 12
(3)	If proceedings for an offence to which this section applies are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.	13 14 15 16
37	Regulations	17
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	18 19 20 21
38	Savings, transitional and other provisions	22
	Schedule 7 has effect.	23
39	Amendment of Acts and Regulation	24
	The Acts and Regulation specified in Schedule 8 are amended as set out in that Schedule.	25 26

Schedule 1 Interpretative provisions

(Section 3)

1 Definitions

In this Act:

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

authorised restructuring—see section 3.

business of a body means all of the assets, rights and liabilities of the body.

corporate conversion, in relation to a State electricity corporation or restructure SOC, means the registration of the corporation as a company under the Corporations Act.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

Corporations legislation means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

distribution and transmission assets—see section 3.

Electricity Assets Ministerial Holding Corporation or **the Corporation** means the Electricity Assets Ministerial Holding Corporation constituted by this Act.

electricity distributor—see section 3.

electricity generator—see section 3.

exercise a function includes perform a duty.

function includes a power, authority or duty.

general law means the common law and equity (as modified from time to time by legislation).

initial public offer means the offer to the public of securities quoted or to be quoted on a stock exchange that is a prescribed financial market under the Corporations Act.

lease includes sublease.

legislation includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).	1
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modification includes addition, exception, omission or substitution.	4
power station means electricity generating plant and the land on which that plant is situated. A power station of an electricity generator is a power station that is owned, controlled or operated by the electricity generator.	5
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private sector means any person other than a public sector agency.	9
Note. A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.	10
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public sector agency means any of the following:	12
(a) the State (including the Crown in right of the State),	13
(b) a Minister,	14
(c) the Ministerial Holding Corporation constituted by the <i>State Owned Corporations Act 1989</i> ,	15
	16
(d) the Electricity Assets Ministerial Holding Corporation,	17
(e) a SOC,	18
(f) a public authority of the State,	19
(g) any other person acting on behalf of the State (or the Crown in right of the State),	20
	21
(h) a restructure company, but only while all the shares in the restructure company are held by or on behalf of the State or a SOC or the restructure company is the subsidiary of another restructure company all the shares in which are held by or on behalf of the State or a SOC.	22
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restructure arrangement means a transaction, agreement or other arrangement entered into by a public sector agency for the purposes of the authorised restructuring.	27
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restructure company means a company established as a restructure company pursuant to this Act.	30
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restructure entity means a restructure SOC or a restructure company.	32
restructure SOC means a SOC established as a restructure SOC pursuant to this Act.	33
	34
rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).	35
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	37
SOC means a State owned corporation within the meaning of the <i>State Owned Corporations Act 1989</i> .	38
	39
State electricity assets —see section 3.	40

<i>State electricity corporation</i> —see section 3.	1
<i>State legislation</i> means any legislation of the State.	2
<i>the State</i> means the State of New South Wales.	3
<i>transfer</i> of State electricity assets includes the sale or lease of State electricity assets.	4
	5

2 Functions for the purposes of the authorised restructuring 6

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of the authorised restructuring if it is done or has effect for the purpose of effecting or facilitating the authorised restructuring or is done or has effect for any purpose that is ancillary or incidental to or consequential on the authorised restructuring.	7
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3 Transfer of State electricity assets—interpretation 12

(1) A transfer of State electricity assets to the private sector for the purposes of the authorised restructuring may be effected by any means, including:	13
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(a) direct sale or lease to the private sector,	16
(b) sale to the private sector of a sale or lease entity,	17
(c) any other transaction whereby any one or more persons in the private sector become an owner or lessee of State electricity assets,	18
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(d) a partial sale or lease to the private sector (which is a sale or lease whereby one or more public sector agencies obtain or retain any interest in a sale or lease entity).	21
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Note. This clause only applies to a transfer that is for the purposes of the authorised restructuring (under section 4) and does not extend the authorised restructuring or authorise any transfer that is outside the authorised restructuring.	24
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(2) For the purposes of this Act, the transfer of State electricity assets by initial public offer is a transfer effected by means of an initial public offer of securities in a sale or lease entity, including such a transfer that results in a public sector agency obtaining or retaining any interest in the sale or lease entity.	28
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(3) If State electricity assets are transferred to the private sector for the purposes of the authorised restructuring by means of a partial sale or lease, this Act also authorises the subsequent transfer to the private sector by a public sector agency of any retained interest in the sale or lease entity concerned. Any such subsequent transfer is taken to be for the purposes of the authorised restructuring.	33
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Note. Subclause (3) makes it clear that when a transfer of assets to the private sector is carried out initially as a partial transfer any interest that the State	39
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Schedule 1 Interpretative provisions

retains can be transferred subsequently to complete the full transfer to the private sector.	1 2
(4) In this clause:	3
<i>entity</i> includes a restructure entity.	4
<i>sale</i> of an entity includes a sale of securities in the entity (including by means of an initial public offer of securities in the entity).	5 6
<i>sale or lease entity</i> means:	7
(a) an entity that holds State electricity assets (in the case of sale) or that is an entity to which State electricity assets have been leased (in the case of lease), or	8 9 10
(b) an entity that is the holding company of an entity referred to in paragraph (a), or	11 12
(c) an entity that has control (within the meaning of the Corporations Act) of an entity referred to in paragraph (a), or	13 14
(d) any other entity the sale of which to the private sector results in State electricity assets being vested in or leased to the private sector.	15 16 17
4 State electricity assets not limited by electricity functions	18
The operation of this Act is not limited to State electricity assets that relate to electricity.	19 20
Note. The functions of a State electricity corporation are not limited to electricity and extend to other forms of energy. State electricity assets can relate to other forms of energy also.	21 22 23
5 Words and expressions defined in Corporations Act	24
Words and expressions used in this Act that are defined in section 9 of the Corporations Act have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.	25 26 27 28
6 When events occur	29
If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.	30 31
7 Notes	32
Notes included in this Act do not form part of this Act.	33

Schedule 2 Provisions concerning restructure SOC's

(Section 9)

1 Board of directors

- (1) Each restructure SOC is to have a board of directors.
- (2) The board is to consist of:
 - (a) the chief executive officer, and
 - (b) at least 3 and not more than 5 other directors appointed by the voting shareholders.
- (3) Of the directors appointed under subclause (2) (b), one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the Board.
- (4) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the restructure SOC.
- (5) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (6) Except as provided by this clause, Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (7) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2), 4 and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to a restructure SOC or to the chairperson.
- (8) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director.

2 Chief executive officer

- (1) The chief executive officer of a restructure SOC is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.

Electricity Industry Restructuring Bill 2008 (No 2)

Schedule 2 Provisions concerning restructure SOC's

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|----------|---|----------------|
| (3) | The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine. | 1
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| (4) | The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law. | 4
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6 |
| (5) | The <i>Public Sector Employment and Management Act 2002</i> (Chapter 5 included) does not apply to the chief executive officer. | 7
8 |
| (6) | Subject to subclause (7), Schedule 9 to the <i>State Owned Corporations Act 1989</i> has effect with respect to the chief executive officer. | 9
10 |
| (7) | The provisions of section 20K of the <i>State Owned Corporations Act 1989</i> , and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer. | 11
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| 3 | Acting chief executive officer | 14 |
| (1) | The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer. | 15
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17 |
| (2) | The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice. | 18
19 |
| (3) | A person, while acting in the office of chief executive officer: | 20 |
| (a) | has all the functions of the chief executive officer and is taken to be the chief executive officer, and | 21
22 |
| (b) | is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine. | 23
24 |
| (4) | For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office. | 25
26 |
| (5) | Clause 5 of Schedule 9 to the <i>State Owned Corporations Act 1989</i> does not apply to an acting chief executive officer of a restructure SOC. | 27
28 |
| 4 | Dividends | 29 |
| (1) | The voting shareholders of a restructure SOC, in consultation with the board, are to determine the corporation's share dividends scheme. | 30
31 |
| (2) | The dividends to be paid by a restructure SOC are to be declared by the board in accordance with the share dividends scheme so determined. | 32
33 |
| (3) | The provisions of section 20S (1) of the <i>State Owned Corporations Act 1989</i> do not apply to a restructure SOC. | 34
35 |

5 Supply of information to portfolio Minister

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to a restructure SOC.

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Schedule 3	Corporate conversion of State electricity corporations and restructure SOC's	1
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	(Section 10)	3
1	Direction for corporate conversion of State electricity corporation	4
(1)	The Treasurer may direct by order in writing (<i>a corporate conversion direction</i>) that a State electricity corporation or restructure SOC be converted into a company limited by shares of a specified type.	5
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		7
(2)	A State electricity corporation cannot be the subject of a corporate conversion direction unless it is a State electricity corporation on the date of assent to this Act or is a restructure SOC.	8
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2	Application for conversion to company	11
(1)	A State electricity corporation to which a corporate conversion direction has been given is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.	12
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(2)	That application can only be made if the Treasurer has issued a certificate to the corporation that certifies that the Treasurer is satisfied that the provisions of this Act have been complied with concerning the transfer of its incorporation to the Corporations Act.	16
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(3)	A certificate issued by the Treasurer for the purposes of this clause:	20
(a)	cannot be challenged, reviewed or called into question in proceedings before any court or tribunal, and	21
		22
(b)	is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of the corporation to the Corporations Act.	23
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3	Effect of conversion	27
(1)	The following provisions are taken to have had effect immediately before a State electricity corporation to which a corporate conversion direction has been given is registered as a company under the Corporations Act:	28
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(a)	the corporation ceases to be a statutory State owned corporation for the purposes of the <i>State Owned Corporations Act 1989</i> or any other State legislation,	32
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(b)	the corporation ceases to be an energy services corporation under the <i>Energy Services Corporations Act 1995</i> unless the regulations provide otherwise,	35
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| (c) | the voting shareholders (within the meaning of the <i>State Owned Corporations Act 1989</i>) of the corporation cease to be members of the corporation, | 1
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| (d) | the board of directors of the corporation is dissolved and each member (including any acting member) of the board ceases to hold office as such, | 4
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| (e) | any person who holds a statutory office of the corporation ceases to hold that office, subject to Schedule 5 (Transfer of electricity employees), | 7
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| (f) | any person who ceases to be a member of the corporation or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office. | 10
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| (2) | Nothing in this clause prevents any person from becoming an officer of the company into which the corporation is being converted in accordance with its constitution and the provisions of the Corporations Act. | 14
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| (3) | A State electricity corporation to which a corporate conversion direction has been given becomes a restructure company for the purposes of this Act only when it is registered as a company under the Corporations Act. | 18
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Schedule 4	Vesting of assets, rights and liabilities	1
	(Section 14)	2
1	Definitions	3
	In this Schedule:	4
	<i>transferee</i> means the person or body in whom any assets, rights or liabilities are vested by a vesting order.	5
		6
	<i>transferor</i> means the person or body from whom any assets, rights or liabilities are divested by a vesting order.	7
		8
	<i>vesting order</i> means a vesting order under this Schedule.	9
2	Making of vesting order	10
	The Treasurer may, by order (<i>a vesting order</i>), vest assets, rights and liabilities of a public sector agency that is a State electricity corporation or restructure entity in a person specified in the order as the transferee.	11
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3	Vesting of assets, rights and liabilities in transferee	14
(1)	When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect (subject to the vesting order):	15
		16
(a)	the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,	17
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		19
(b)	the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,	20
		21
(c)	all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,	22
		23
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(d)	any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,	25
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(e)	a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.	30
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(2)	No attornment to the transferee by a lessee from the transferor is required.	35
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4	Terms and conditions of vesting	1
	A vesting order may be made on such terms and conditions as are specified in the order.	2 3
5	Consideration for vesting	4
	A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.	5 6 7
6	Date of vesting	8
	A vesting order takes effect on the date it is made or on such other date as may be specified in the order.	9 10
7	Vesting of interests in land	11
(1)	A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.	12 13 14
(2)	If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.	15 16
(3)	This clause does not limit any other provision of this Schedule.	17
8	Confirmation of vesting	18
(1)	The Treasurer may by order in writing confirm a vesting of particular assets, rights or liabilities by operation of this Schedule.	19 20
(2)	Such an order is evidence of that vesting.	21
9	Determinations by Treasurer	22
	For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise assets, rights or liabilities of a State electricity corporation or restructure entity at a particular time, and such a determination is conclusive as to the matters determined.	23 24 25 26 27
10	Certification to registration authorities	28
(1)	In this clause: <i>registration authority</i> means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.	29 30 31 32
(2)	A public sector agency that is the transferee or transferor under a vesting order may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration	33 34 35

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Schedule 4 Vesting of assets, rights and liabilities

authority to enable the registration authority to exercise any function of the authority arising in connection with the vesting of any asset, right or liability pursuant to the vesting order.	1 2 3
(3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.	4 5 6 7
(4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability by a vesting order.	8 9 10 11
11 Evidence of orders and certificates	12
A document purporting to be a vesting order or an order or certificate given under a provision of this Schedule is, unless the contrary is established, taken to be such an order or certificate and to have been properly made or given.	13 14 15 16
12 Public sector accounting policies	17
The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities of a State electricity corporation or restructure entity for the purposes of the authorised restructuring (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).	18 19 20 21 22 23 24

Schedule 5 Transfer of electricity employees

(Section 15)

1 Transfer of electricity employees within public sector

The Treasurer may by order in writing transfer the employment of an employee of an electricity distributor or electricity generator from a public sector agency that employs the employee to the employment of another public sector agency.

2 Transfer of generator employees to private sector

The employment of an employee of an electricity generator may be transferred from a public sector agency that employs the employee to the employment of an employer in the private sector by order in writing of the Treasurer.

3 Transfer of retail employees to private sector

(1) The employment of an employee of an electricity distributor may be transferred from a public sector agency that employs the employee to the employment of an employer in the private sector by agreement in writing (*an employment transfer agreement*) entered into between the employee and the public sector agency with the concurrence of the private sector employer.

(2) An agreement is not an employment transfer agreement unless the agreement is expressed to be made in connection with the operation of this Act.

4 Effect of transfer by order

On the transfer by order under this Schedule of an employee's employment from one employer (*the current employer*) to another employer (*the new employer*):

- (a) the employee ceases to be an employee of the current employer and becomes an employee of the new employer on the same terms and conditions of employment as applied to the employee immediately before the transfer of employment, and those terms and conditions are to continue to have effect until varied either by agreement or otherwise in accordance with law, and
- (b) without limiting paragraph (a), the employee is entitled to continue as a contributor and employee for the purposes of any superannuation scheme to which he or she was a contributor as an employee of the current employer immediately before the transfer, and to any benefits in respect of employer contributions to superannuation that applied to the employee pursuant to the

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Schedule 5 Transfer of electricity employees

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- terms and conditions of employment immediately before the transfer (and remains so entitled until those terms and conditions are varied either by agreement or otherwise in accordance with law), and 1
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- (c) the new employer is taken to be an employer for the purposes of any superannuation scheme to which the employee continues to contribute pursuant to an entitlement under this clause, and 5
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- (d) the continuity of the employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is taken for all purposes to be service with the new employer, and 8
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- (e) the employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee), and 14
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- (f) without affecting any entitlement to a transfer payment under clause 6, the employee is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy compensation) merely because the employee ceased to be an employee of the current employer as a result of the transfer of employment. 19
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5 Effect of transfer by employment transfer agreement 25

On the transfer by an employment transfer agreement of an employee's employment from one employer (*the current employer*) to another employer (*the new employer*): 26
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- (a) the employee becomes an employee of the new employer on the terms and conditions specified in the agreement, and 29
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- (b) the employee is entitled to continue as a contributor and employee for the purposes of any superannuation scheme to which he or she was a contributor as an employee of the current employer immediately before the transfer, and to any benefits in respect of employer contributions to superannuation that applied to the employee pursuant to the terms and conditions of employment immediately before the transfer (and remains so entitled until those terms and conditions are varied by agreement with the new employer), and 31
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- (c) the new employer is taken to be an employer for the purposes of any superannuation scheme to which the employee continues to contribute pursuant to an entitlement under this clause, and 40
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| (d) | for the purpose of the accrual of sick leave, annual leave or long service leave in respect of service with the new employer, the continuity of the employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is taken to be service with the new employer, and | 1
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| (e) | the employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee), and | 9
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| (f) | without affecting any entitlement to a transfer payment under clause 6, the employee is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy compensation) merely because the employee ceased to be an employee of the current employer as a result of the transfer of employment. | 14
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6 Transfer payments | |
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| (1) | The Treasurer or another public sector agency may enter into agreements or other arrangements with respect to the making of transfer payments to employees in connection with the transfer of employment of employees under this Schedule or otherwise in connection with the operation of this Act. | 21
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| (2) | Any such arrangements may provide for the payment of any such transfer payments to be payments on the occasion of the termination of employment with the current employer despite any provision of clause 4 or 5. | 26
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7 Payment of monetary value of leave | |
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| | Nothing in the <i>Industrial Relations Act 1996</i> , the <i>Long Service Leave Act 1955</i> or the <i>Annual Holidays Act 1944</i> prevents payment in connection with the operation of this Act of the monetary value of annual leave or long service leave in lieu of an entitlement to that leave accrued by a person as an employee of a public sector agency before the transfer of the employee's employment under this Schedule. | 31
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8 Workplace relations | |
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| | The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of the State or a public sector agency in connection with the operation of this Act. | 38
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Schedule 6 Ownership restrictions in floated restructure companies

(Section 23)

Part 1 Ownership restrictions

Note. Some of the terms and expressions used in this Part are defined in Part 5 (Interpretative provisions) of this Schedule.

1 Meaning of “prohibited ownership situation”

For the purposes of this Schedule, a *prohibited ownership situation* exists in relation to a floated restructure company and in relation to a particular person if the person holds a particular type of stake in the company of more than the maximum ownership level set by section 23.

Note. Section 23 sets a maximum ownership level of 10 percent (or such greater percentage as may be fixed by the Treasurer under that section). A person’s *stake* includes the interests of the person’s associates—see Part 5 of this Schedule.

2 Acquisition of shares that result in prohibited ownership situation

A person, or 2 or more persons under an arrangement, who acquire shares in a floated restructure company are each guilty of an offence if:

- (a) the acquisition has any of the following results:
 - (i) a prohibited ownership situation comes into existence in relation to the company and in relation to a person,
 - (ii) if a prohibited ownership situation already exists in relation to the company and in relation to a person—there is an increase in any type of stake held by the person in the company, and
- (b) the person or persons under the arrangement knew, or were reckless as to whether, the acquisition would have that result.

Maximum penalty: 400 penalty units.

3 Floated restructure company to take reasonable steps to prevent contraventions of ownership restrictions

- (1) A floated restructure company must take all reasonable steps to ensure that a prohibited ownership situation does not exist in relation to the company.

- (2) A floated restructure company is guilty of an offence if it engages in conduct that contravenes a requirement of subclause (1).

Maximum penalty: 500 penalty units.

Note. If a floated restructure company contravenes this subclause, section 35 operates to make each person who is a director of the company or who is

concerned in the management of the company liable for the offence if the person knowingly authorised or permitted the contravention.	1 2
(3) An offence under subclause (2) is a strict liability offence.	3
4 Contravention of Part does not affect validity of acts	4
An act is not invalidated only because it constitutes an offence under this Part.	5 6
Part 2 Location of Member Registers of floated restructure companies	7 8
5 Member Register to be within the State	9
A floated restructure company must not, without the written approval of the Treasurer:	10 11
(a) change the location where any Member Register of the company is kept to a location that is outside of the territorial limits of the State, or	12 13 14
(b) keep any Member Register of the company at a location that is outside of the territorial limits of the State.	15 16
Maximum penalty: 500 penalty units.	17
Note. If a floated restructure company contravenes this clause, section 35 operates to make each person who is a director of the company or who is concerned in the management of the company liable for the offence if the person knowingly authorised or permitted the contravention.	18 19 20 21
Part 3 Records and information	22
6 Record-keeping and information giving	23
(1) The regulations may make provision for or with respect to requiring a person:	24 25
(a) to keep and retain records, where the records are relevant to an ownership matter, and	26 27
(b) to give information to the Treasurer or a floated restructure company that is relevant to:	28 29
(i) an ownership matter, or	30
(ii) ascertaining whether Part 1 of this Schedule has been or is being complied with.	31 32
(2) The regulations may provide that information given in accordance with a requirement of regulations made for the purposes of subclause (1) (b) must be verified by statutory declaration.	33 34 35

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- (3) A person is not excused from giving information in accordance with a requirement of regulations made for the purposes of subclause (1) (b) on the ground that the information may tend to incriminate the person or expose the person to a penalty. 1
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- (4) However, any information obtained from a natural person in compliance with a requirement of regulations made for the purposes of subclause (1) (b) is not admissible against the person in criminal proceedings other than proceedings for an offence under this clause. 5
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- (5) A person must keep records, and provide information, in compliance with any requirements of regulations made for the purposes of subclause (1) (b). 9
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Maximum penalty: 50 penalty units. 12
- (6) In this clause: 13
control includes control as a result of, or by means of, trusts, 14
agreements, arrangements, understandings and practices, whether or 15
not having legal or equitable force and whether or not based on legal or 16
equitable rights. 17
ownership matter means any of the following matters: 18
- (a) whether a person holds a particular type of stake in a floated 19
restructure company and, if so, the level of that stake, 20
- (b) whether the directors of a floated restructure company are 21
accustomed or under an obligation, whether formal or informal, 22
to act in accordance with the directions, instructions or wishes of 23
a person (either alone or together with associates), 24
- (c) whether a person (either alone or together with associates) is in a 25
position to exercise control over a floated restructure company. 26

Part 4 Remedial orders 27

7 Applications to Supreme Court for remedial orders 28

- (1) If a prohibited ownership situation exists in relation to a floated 29
restructure company, the company or the Treasurer (or both) may apply 30
to the Supreme Court to make such orders as the Court considers 31
appropriate for the purpose of ensuring that the situation ceases to exist. 32
- (2) Without limiting subclause (1), the Court may make any of the 33
following orders on any such application: 34
- (a) an order directing the disposal of shares, 35
- (b) an order restraining the exercise of any rights attached to shares, 36
- (c) an order prohibiting or deferring the payment of any sums due to 37
a person in respect of shares held by the person, 38

(d) an order that any exercise of rights attached to shares be disregarded.	1 2
(3) The Supreme Court may, before making an order under this clause, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.	3 4 5
(4) A floated restructure company and its directors and secretary are specifically authorised and required to ensure that any rights attached to shares are not exercised in contravention of an order made under this clause (including ensuring that meetings of the company are conducted in accordance with requirements of any such order).	6 7 8 9 10
8 Injunctions	11
If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Schedule, the Supreme Court may, on the application of a floated restructure company or the Treasurer (or both), grant an injunction:	12 13 14 15
(a) restraining the person from engaging in the conduct, or	16
(b) requiring the person to do something.	17
Part 5 Interpretative provisions	18
9 Definitions	19
In this Schedule:	20
acquisition includes an agreement to acquire, but does not include:	21
(a) an acquisition by will or by devolution by operation of law, or	22
(b) an acquisition by way of enforcement of a loan security.	23
aggregate substantial interest , in relation to a trust estate, has the meaning given by clause 19.	24 25
arrangement has the meaning given by clause 10.	26
associate has the meaning given by clause 11.	27
company means a body corporate.	28
constituent document , in relation to a company, means:	29
(a) the constitution of the company, or	30
(b) any rules or other documents constituting the company or governing its activities.	31 32
contravene includes fail to comply with.	33
direct control interest has the meaning given by clause 18.	34
director includes any person occupying the position of director of a company, by whatever name called.	35 36

<i>discretionary trust</i> means a trust where:	1
(a) a person (who may include the trustee) is empowered (either	2
unconditionally or on the fulfilment of a condition) to exercise	3
any power of appointment or other discretion, and	4
(b) the exercise of the power or discretion, or the failure to exercise	5
the power or discretion, has the effect of determining, to any	6
extent, either or both of the following:	7
(i) the identities of those who may benefit under the trust,	8
(ii) how beneficiaries are to benefit, as between themselves,	9
under the trust.	10
<i>engage in conduct</i> means do an act or omit to do an act.	11
<i>floated restructure company</i> means a restructure company in relation	12
to which the ownership restrictions set out in this Schedule apply by	13
reason of section 23.	14
<i>increase</i> , in relation to a stake in a company, includes an increase from	15
a starting point of nil.	16
<i>interest in a share</i> has the meaning given by clause 14.	17
<i>lender</i> , in relation to a loan security, means the person who is entitled	18
to enforce the security.	19
<i>lending money</i> includes providing non equity finance where the	20
provision of the finance may reasonably be regarded as equivalent to	21
lending money.	22
<i>loan security</i> means a security held solely for the purposes of a	23
moneylending agreement.	24
<i>Member Register</i> of a company means a register of members of the	25
company kept under Chapter 2C of the Corporations Act.	26
<i>moneylending agreement</i> means an agreement entered into in good	27
faith in the ordinary course of carrying on a business of lending money,	28
but does not include an agreement dealing with any matter unrelated to	29
the carrying on of that business.	30
<i>officer</i> , in relation to a company, includes:	31
(a) a director, secretary or employee of the company, or	32
(b) a receiver and manager of any part of the undertaking of the	33
company appointed under a power contained in any instrument,	34
or	35
(c) a liquidator of the company appointed in a voluntary winding up.	36
<i>power to appoint a director of a company</i> has a meaning affected by	37
clause 12.	38

relative, in relation to a person, means:

- (a) the person's spouse or the person's de facto partner (being the other party to a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the person), or
- (b) a parent or remoter lineal ancestor of the person, or
- (c) a child or remoter issue of the person, or
- (d) a sibling of the person.

share, in relation to a company, means a share in the share capital of the company, and includes an interest in such a share.

stake, in relation to a company, has the meaning given by clause 17.

substantial interest, in relation to a trust estate, has the meaning given by clause 19.

voting power has the meaning given by clause 16.

10 Entering into an agreement or arrangement

- (1) For the purposes of this Schedule, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in this Schedule to **entering into an agreement or arrangement** includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in this Schedule to **entering into an arrangement** is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
 - (a) entering into an agreement, or
 - (b) creating a trust, whether express or implied, or
 - (c) entering into a transaction,
 and a reference in this Schedule to an arrangement is to be construed accordingly.
- (4) A reference in this Schedule to an **arrangement** does not include a reference to a moneylending agreement.

11 Associates

- (1) For the purposes of this Schedule, the following persons are, subject to subclause (3), **associates** of a person:
 - (a) a relative of the person,
 - (b) a partner of the person,

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Schedule 6 Ownership restrictions in floated restructure companies

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| (c) | a company of which the person is an officer, | 1 |
| (d) | if the person is a company—an officer of the company, | 2 |
| (e) | an employee or employer of the person, | 3 |
| (f) | an officer of a company of which the person is an officer, | 4 |
| (g) | an employee of an individual of whom the person is an employee, | 5 |
| (h) | the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts, | 6
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| (i) | a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person, | 12
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| (j) | a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company, | 15
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| (k) | a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15 percent, | 18
19 |
| (l) | if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15 percent, | 20
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22 |
| (m) | a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph). | 23
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| (2) | If a person (<i>the first person</i>) enters, or proposes to enter, into an arrangement with another person (<i>the second person</i>) that relates to any of the following matters: | 27
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| (a) | the first person and the second person being in a position, by acting together, to control any of the voting power in a company, | 30
31 |
| (b) | the power of the first person and the second person, by acting together, to appoint or remove a director of a company, | 32
33 |
| (c) | the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together, | 34
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| | the second person is taken to be an associate of the first person for the purposes of the application of a provision of this Schedule in relation to the matter concerned. | 38
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(3)	The regulations may provide that, for the purposes of this Schedule, a specified person (or class of persons) is not an associate of another specified person (or class of persons).	1 2 3
12	Power to appoint director	4
(1)	A reference in this Schedule to a <i>power to appoint a director</i> includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.	5 6 7
(2)	For the purposes of this Schedule, a person is taken to have the power to appoint a director if:	8 9
(a)	the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment, or	10 11 12
(b)	a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first mentioned person.	13 14 15
13	Meaning of entitled to acquire	16
	For the purposes of this Schedule, a person is <i>entitled to acquire</i> anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.	17 18 19 20
14	Meaning of interest in a share	21
(1)	Subject to this clause, a person holds an <i>interest in a share</i> if the person has any legal or equitable interest in the share.	22 23
(2)	Without limiting subclause (1), a person is taken to hold an interest in a share if:	24 25
(a)	the person has entered into a contract to purchase the share, or	26
(b)	the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or	27 28 29 30 31
(c)	the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition), or	32 33 34 35
(d)	the person is otherwise entitled to acquire the share or an interest in the share, or	36 37

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| <ul style="list-style-type: none"> (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share. (3) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person. (4) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share. (5) An interest in a share is not to be disregarded only because of: <ul style="list-style-type: none"> (a) its remoteness, or (b) the manner in which it arose, or (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction. | 1
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- 15 Certain interests and stakes to be disregarded** 15
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| <ul style="list-style-type: none"> (1) For the purposes of this Schedule, the following interests and stakes must be disregarded: <ul style="list-style-type: none"> (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security, (b) an interest in a share held by a person, being an interest held by the person because the person holds an office (or an office belonging to a class of offices) prescribed by the regulations, (c) an interest of a prescribed kind in a share, being an interest held by such persons (or persons belonging to a class of persons) as are prescribed by the regulations, (d) an interest in a share held by the State or a public sector agency, (e) a stake of a kind prescribed by the regulations in a company, being a stake held by a person (or person belonging to a class of persons) prescribed by the regulations. (2) For the purposes of this Schedule, if: <ul style="list-style-type: none"> (a) a person holds an interest in a share as a loan security, and (b) the ordinary business of the person includes the lending of money, and (c) the loan security is enforced, and (d) as a result of the enforcement of the loan security, the person becomes the holder of the share, and | 16
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| <p>(e) the person holds the share for a continuous period (<i>the holding period</i>) beginning at the time when the security was enforced,</p> <p>the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:</p> <p>(f) the period of 90 days beginning when the security was enforced,</p> <p>(g) if the Treasurer, by written notice given to the person, allows a longer period—the end of that longer period.</p> <p>(3) For the purposes of this Schedule, if:</p> <p>(a) a person acquires an interest in a share in a floated restructure company, and</p> <p>(b) the interest was acquired in the person's capacity as an underwriter or a sub-underwriter in connection with the sale or issue of shares in the company by or on behalf of a public sector agency or the company (whether under an initial public offer of the company or otherwise),</p> <p>the person's interest in the share must be disregarded at all times during whichever of the following periods is applicable:</p> <p>(c) the period of 90 days beginning when the person acquired the interest,</p> <p>(d) if the Treasurer, by written notice given to the person, allows a longer period—that longer period.</p> <p>16 Voting power</p> <p>(1) A reference in this Schedule to the <i>voting power</i> in a company is a reference to the total rights of shareholders to vote, or participate in any decision making, concerning any of the following:</p> <p>(a) the making of distributions of capital or profits of the company to its shareholders,</p> <p>(b) the constituent document of the company,</p> <p>(c) any variation of the share capital of the company.</p> <p>(2) A reference in this Schedule to <i>control of the voting power</i> in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:</p> <p>(a) whether or not having legal or equitable force, and</p> <p>(b) whether or not based on legal or equitable rights.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> |
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(3)	If the percentage of total rights to vote or participate in decision making differs as between different types of voting or decision making, the highest of those percentages applies for the purposes of this clause.	1 2 3
(4)	If a company:	4
(a)	is limited both by shares and by guarantee, or	5
(b)	does not have a share capital,	6
	this clause has effect as if the members or policy holders of the company were shareholders in the company.	7 8
17	Stake in a company	9
(1)	A particular type of <i>stake</i> that a person holds in a company at a particular time is the aggregate of:	10 11
(a)	the direct control interests in the company of that type that the person holds at that time, and	12 13
(b)	the direct control interests in the company of that type held at that time by associates of the person.	14 15
(2)	In calculating the stake that a person holds in a company, a direct control interest held because of clause 18 (5) is not to be counted under subclause (1) (a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subclause (1) (b).	16 17 18 19 20
18	Direct control interests in a company	21
(1)	A person holds a <i>direct control interest</i> in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.	22 23 24
(2)	A person also holds a <i>direct control interest</i> in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.	25 26 27
(3)	A person also holds a <i>direct control interest</i> in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding up.	28 29 30 31
(4)	A person also holds a <i>direct control interest</i> in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding up.	32 33 34 35 36

(5) If:	1
(a) a person holds a particular type of direct control interest	2
(including a direct control interest that is taken to be held because	3
of one or more previous applications of this subclause) in a	4
company (<i>the first level company</i>), and	5
(b) the first level company holds the same type of direct control	6
interest in another company (<i>the second level company</i>),	7
the person is taken to hold that type of direct control interest in the	8
second level company equal to the percentage worked out using the	9
formula:	10
first level percentage × second level percentage	
where:	11
<i>first level percentage</i> means the percentage of the direct control interest	12
held by the person in the first level company.	13
<i>second level percentage</i> means the percentage of the direct control	14
interest held by the first level company in the second level company.	15
19 Substantial interests in trust estates	16
(1) For the purposes of this Schedule:	17
(a) a person is taken to hold a <i>substantial interest</i> in a trust estate if	18
the person, alone or together with an associate or associates,	19
holds a beneficial interest in not less than 15 percent of the corpus	20
or income of the trust estate, and	21
(b) 2 or more persons are taken to hold an <i>aggregate substantial</i>	22
<i>interest</i> in a trust estate if the persons, together with an associate	23
or associates, hold, in the aggregate, beneficial interests in not	24
less than 40 percent of the corpus or income of the trust estate.	25
(2) For the purposes of subclause (1), if, under the terms of a trust, a trustee	26
has a power or discretion as to the distribution of the income or corpus	27
of the trust estate to beneficiaries, each beneficiary is taken to hold a	28
beneficial interest in the maximum percentage of income or corpus of	29
the trust estate that the trustee is empowered to distribute to that	30
beneficiary.	31

Schedule 7	Savings, transitional and other provisions	1
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	(Section 38)	3
Part 1	General	4
1	Regulations	5
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	6 7 8
(2)	For the avoidance of doubt, any such provision may, if the regulations so provide, have effect despite any specified provision of this Schedule.	9 10
(3)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	11 12
(4)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	13 14 15
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	16 17 18
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	19 20 21
Part 2	Provisions consequent on enactment of this Act	22 23
2	Provisions relating to Shoalhaven or Warragamba electricity assets	24
(1)	In this clause:	25
	<i>private person</i> means any person other than the Sydney Catchment Authority, TransGrid or any other public sector agency.	26 27
	<i>Shoalhaven or Warragamba electricity assets</i> means:	28
(a)	any power stations or pumping stations located at or within Kangaroo Valley by means of which Eraring Energy generates electricity (including any associated pipelines, switching stations, substations and transmission lines) but excluding all other assets (including dams, pipelines, tunnels and channels) owned, maintained and operated by the Sydney Catchment Authority at or within Kangaroo Valley, or	29 30 31 32 33 34 35

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| (b) | any power station located at or within Warragamba Dam by means of which Eraring Energy generates electricity (including any associated pipelines, switching stations and substations). | 1
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| (2) | The Treasurer may: | 4 |
| (a) | certify, by order in writing (<i>a certification order</i>), that any specified assets, rights or liabilities that the Treasurer considers are used for the purposes of, or in connection with, any Shoalhaven or Warragamba electricity assets are the assets, rights or liabilities of a State electricity corporation, TransGrid or other public sector agency (<i>a nominated public sector agency</i>), and | 5
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| (b) | without limiting paragraph (a)—acquire, on behalf of the Crown, any land (including any interest in land) by agreement or compulsory process in accordance with the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> that the Treasurer considers is land that is used for the purposes of, or in connection with, any Shoalhaven or Warragamba electricity assets. | 11
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| (3) | The following provisions apply in relation to any assets, rights or liabilities that the Treasurer, by certification order, certifies to be the assets, rights or liabilities of a nominated public sector agency: | 17
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| (a) | any of the assets, rights or liabilities that are not already the assets, rights or liabilities of the agency (other than any assets, rights or liabilities of a private person) are transferred to the agency and, for this purpose, Schedule 4 (Vesting of assets, rights and liabilities) applies in relation to the certification order as if it were a vesting order under that Schedule having effect on the day on which the certification order has effect, | 20
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| (b) | the certification order is evidence that the assets, rights or liabilities specified in the order are the assets, rights or liabilities of the agency. | 27
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| (4) | The following provisions apply in relation to any acquisition of land by the Treasurer that is authorised by this clause: | 30
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| (a) | Division 1 (Pre-acquisition procedures) of Part 2 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> does not apply to such an acquisition, | 32
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| (b) | any owner of an interest in the land is not entitled to be paid compensation (whether under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> or otherwise) if the land is acquired by compulsory process and the owner is the Sydney Catchment Authority or any other public sector agency, | 35
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| (c) | the land may be acquired even if any consent or permission required under State legislation (other than under the <i>Land</i> | 40
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Electricity Industry Restructuring Bill 2008 (No 2)

Schedule 7 Savings, transitional and other provisions

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- Acquisition (Just Terms Compensation) Act 1991*) has not been
obtained or granted, 1
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- (d) land that is acquired may be transferred, by order of the Treasurer
in writing, to a State electricity corporation, TransGrid or other
public sector agency and Schedule 4 (Vesting of assets, rights and
liabilities) applies in relation to such an order. 3
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- (5) Without limiting section 26 (General relationship of Act with other
State legislation), the provisions of this clause (including the provisions
of any order made under this clause) have effect despite the following: 7
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- (a) the *Crown Lands Act 1989* or any statutory rule or order made
under that Act (whether made before or after the commencement
of this clause), 10
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- (b) the *Energy Services Corporations Act 1995* or any statutory rule
or order made under that Act (whether made before or after the
commencement of this clause), 13
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- (c) the *Sydney Water Catchment Management Act 1998* (including,
without limitation, Division 2 of Part 5 of that Act) or any
statutory rule or order made under that Act (whether made before
or after the commencement of this clause). 16
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- (6) Nothing in this clause limits section 14 (Vesting orders). 20

Schedule 8 Amendment of Acts and Regulation

(Section 39)

8.1 Electricity Supply Act 1995 No 94

[1] Section 43EA Referrals for determinations

Omit section 43EA (1) and (2). Insert instead:

- (1) The Minister may refer to the Tribunal, for investigation and report, the determination of new regulated retail tariffs or regulated retail charges, or both, to replace an existing determination:
 - (a) on the expiry of the period to which the existing determination relates, or
 - (b) before the existing determination expires, but only if the existing determination was in force immediately before the commencement of this subsection.

[2] Section 43EA (5)

Omit the subsection. Insert instead:

- (5) If the Minister has given a reference to the Tribunal, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal if all of the retail suppliers in relation to which the determination will apply consent in writing to the withdrawal or amendment of the reference.

[3] Section 43EA (7) and (8)

Insert after section 43EA (6):

- (7) Despite anything in the *Independent Pricing and Regulatory Tribunal Act 1992* or any other law, the Minister may refer to the Tribunal, for investigation and report, the determination of regulated retail tariffs or regulated retail charges, or both, only as provided by this section.
- (8) Except as provided by subsection (1), the amendments made to this section by the *Electricity Industry Restructuring Act 2008* do not affect the continued operation of any determination made by the Tribunal under this section that was in force immediately before the commencement of this subsection.

[4] Section 43EJ Division to cease to have effect	1
Omit section 43EJ (1). Insert instead:	2
(1) The provisions of this Division (other than this section) cease to have effect on 30 June 2013 or on such later day as may be prescribed by the regulations.	3 4 5
[5] Section 43EL Definitions	6
Omit the definition of <i>electricity generator</i> . Insert instead:	7
<i>electricity generator</i> means:	8
(a) a corporation whose corporate name is listed in Part 1 of Schedule 1 to the <i>Energy Services Corporations Act 1995</i> , or	9 10 11
(b) a public sector agency that is an electricity generator for the purposes of the <i>Electricity Industry Restructuring Act 2008</i> , or	12 13 14
(c) a person who is the owner, lessee or sublessee of a power station that comprised State electricity assets of an electricity generator under the <i>Electricity Industry Restructuring Act 2008</i> immediately before the transfer of the power station to the private sector pursuant to the authorised restructuring under that Act.	15 16 17 18 19 20
[6] Section 43EL, definition of “Snowy Hydro Limited”	21
Omit the definition.	22
[7] Section 43EN Electricity Tariff Equalisation Fund	23
Omit section 43EN (2) (c) and (3) (c).	24
[8] Section 43EN (4)	25
Insert “except as may be specifically authorised or required by the rules” after “electricity industry”.	26 27
[9] Section 43EO Rules for payments to and from Fund	28
Omit section 43EO (2) (d).	29
[10] Section 43EO (2) (h)	30
Insert “, and penalties for late payment” after “made”.	31
[11] Section 43EO (4)	32
Omit the subsection.	33

[12] Section 43EO (7A)	1
Insert after section 43EO (7):	2
(7A) The rules may include provision (<i>an entrenchment provision</i>)	3
that limits the circumstances in which the rules or specified	4
provisions of the rules may be amended or revoked. The power	5
of the Treasurer to approve the amendment or revocation of the	6
rules is subject to the requirements of any entrenchment	7
provision. The amendment or revocation of an entrenchment	8
provision cannot be approved except with the unanimous	9
agreement of all electricity generators and standard retail	10
suppliers or as provided by the entrenchment provision itself.	11
[13] Section 43ES Division to cease to have effect	12
Omit section 43ES (1). Insert instead:	13
(1) The provisions of this Division (other than this section) cease to	14
have effect on 30 June 2010 or on such later day as may be	15
prescribed by the regulations.	16
[14] Part 7, Division 4A	17
Insert after Division 4 of Part 7:	18
Division 4A Collection and use of information	19
91A Interpretation	20
In this Division:	21
<i>information requirement notice</i> means a notice under section	22
91B.	23
<i>regulatory authority</i> means any of the following:	24
(a) the Minister,	25
(b) the Tribunal.	26
<i>regulatory function</i> means any function of a regulatory authority	27
that is imposed or conferred by or under this Act.	28
91B General power of regulatory authority to obtain information	29
(1) If a regulatory authority has reason to believe that a person has	30
information or a document that may assist the authority in the	31
exercise of any of its regulatory functions, the authority may, by	32
notice in writing served on the person, require the person to give	33
the information or document to the authority.	34

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- (2) A notice under this section must: 1
- (a) specify the manner in which information or documents are 2
to be provided and a reasonable time by which the 3
information or documents are to be provided, and 4
 - (b) state that it is being given under this section. 5
- (3) If documents are given to a regulatory authority under this 6
section, the authority: 7
- (a) may take possession of, and make copies of or take 8
extracts from, the documents, and 9
 - (b) may keep possession of the documents for the period 10
necessary for those purposes, and 11
 - (c) during that period must permit them to be inspected at all 12
reasonable times by persons who would be entitled to 13
inspect them if they were not in the possession of the 14
authority. 15
- 91C Restriction on disclosure of confidential or commercially sensitive 16
information 17**
- (1) This section applies to information or a document if: 18
- (a) the information or document is given to a regulatory 19
authority in compliance with an information requirement 20
notice, and 21
 - (b) at the time the information or document is given, the 22
person giving it states that it is of a confidential or 23
commercially sensitive nature. 24
- (2) A regulatory authority must not disclose to any person any 25
information or the contents of any document to which this section 26
applies unless: 27
- (a) the authority is of the opinion that: 28
 - (i) the disclosure of the information or document 29
would not cause detriment to the person from whom 30
it was obtained (*the affected person*), or 31
 - (ii) although the disclosure of the information or 32
document would cause detriment to an affected 33
person, the public benefit in disclosing it outweighs 34
that detriment, 35

and the authority has notified the affected person in writing 36
of the authority's intention to disclose the information or 37
document and afforded the person at least the period of 38
7 days to make representations to the authority as to why 39
the disclosure would not be appropriate, or 40

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| (b) | the disclosure is made with the consent of the affected person, or | 1
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| (c) | the disclosure is made in connection with the administration or execution of this Act, or | 3
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| (d) | the disclosure is made for the purposes of any legal proceedings arising out of this Act (or any other Act) or of a report of any such proceedings, or | 5
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| (e) | the disclosure is made in accordance with the <i>Freedom of Information Act 1989</i> , or | 8
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| (f) | the disclosure is made in accordance with a requirement imposed under the <i>Ombudsman Act 1974</i> , or | 10
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| (g) | the disclosure is made with other lawful excuse. | 12 |
| | Note. Clause 7 (Documents affecting business affairs) of Schedule 1 to the <i>Freedom of Information Act 1989</i> provides that certain commercially sensitive documents are exempt documents for the purposes of that Act. Section 32 of that Act provides that an agency must not give a person access to a document relating to the business, professional, commercial or financial affairs of another person unless the agency has taken such steps as are reasonably practicable to obtain the views of that other person as to whether or not the document is an exempt document by virtue of clause 7 of Schedule 1 to that Act. | 13
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| (3) | The following persons may apply to the Administrative Decisions Tribunal for a review of a decision of a regulatory authority to disclose any information or a document to which this section applies: | 22
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| (a) | an affected person, | 26 |
| (b) | any other person who might be detrimentally affected if the information or document is disclosed. | 27
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| 91D | Failure to comply with information requirement notice and related offences | 29
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| (1) | A person must not: | 31 |
| (a) | without reasonable excuse, refuse or fail to comply with an information requirement notice, or | 32
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| (b) | give to a regulatory authority, in purported compliance with an information requirement notice, any information that the person knows to be false or misleading in a material particular, or | 34
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| (c) | threaten, intimidate or coerce another person because that other person complied, or intends to comply, with an information requirement notice, or | 38
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(d)	take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage because that other person complied, or intends to comply, with an information requirement notice.	1 2 3 4
	Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.	5 6
(2)	It is a reasonable excuse for the purposes of subsection (1) (a) that to comply with the notice might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.	7 8 9
91E	Protection from liability	10
(1)	Anything done, or omitted to be done, by a person in purported compliance with an information requirement notice does not subject the person personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of complying with the notice.	11 12 13 14 15
(2)	Without limiting subsection (1), the giving of any information or a document in compliance with an information requirement notice is not to be regarded as:	16 17 18
(a)	a breach of contract or confidence or otherwise as a civil wrong, or	19 20
(b)	a breach of any instrument, or	21
(c)	an event of default under any contract or other instrument, or	22 23
(d)	giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.	24 25 26 27
91F	Relationship with other information gathering powers	28
	The powers conferred by this Division on a regulatory authority to obtain information or documents are in addition to, and not in derogation of, any other power to obtain information or documents conferred on the authority by or under this Act or any other law.	29 30 31 32 33
[15]	Section 106 Regulations	34
	Omit section 106 (1) (f1). Insert instead:	35
(f1)	facilitating the Government's social programs for energy, including (without limitation):	36 37

(i)	the establishment and administration of programs that provide for energy services to be available to those who are in need (including, for example, those who suffer financial hardship or other hardship and those who live in remote areas), and	1 2 3 4 5
(ii)	the implementation of payment plans and other plans and policies by retail suppliers to assist small retail customers who are experiencing financial or other hardship, and	6 7 8 9
(iii)	the making of provision for the circumstances in which retail suppliers are permitted or required to disconnect, discontinue or reconnect a supply of electricity to the premises of their small retail customers (and the persons who are to bear any associated costs), and	10 11 12 13 14 15
(iv)	the giving, and enforcement, of directions by the Minister, or agreements, with respect to implementation of any social program for energy in relation to a specified class or specified classes of customers, and	16 17 18 19 20
(v)	the payment and assessment of the costs of giving effect to any such directions, and	21 22
(vi)	the publication of directions and agreements,	23
8.2	Electricity Supply (General) Regulation 2001	24
	Clause 121A Date on which Divisions 5 and 6 of Part 4 of Act cease to have effect	25 26
	Omit the clause.	27
8.3	Subordinate Legislation Act 1989 No 146	28
	Schedule 4 Excluded instruments	29
	Insert at the end of the Schedule (with appropriate item number):	30
	Regulations under the <i>Electricity Industry Restructuring Act 2008</i> .	31 32

8.4 Water Management Act 2000 No 92

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Section 281 Major utilities

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Insert after section 281 (2):

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- (3) Without limiting subsection (2), Schedule 2 may be amended under that subsection to add, vary or omit the corporate name of any body (including a body incorporated under the law of another jurisdiction or a body that is not a public authority).

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