

Explanatory note

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

The Community Infrastructure (Intergenerational) Fund 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.

The Bill requires the net proceeds of the restructuring to be paid into the NSW Community Infrastructure (Intergenerational) Fund to be established by the proposed Community Infrastructure (Intergenerational) Fund Act 2008.

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 requires the proceeds of the transfer of State electricity assets pursuant to the authorised restructuring, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the NSW Community Infrastructure (Intergenerational) Fund under the proposed Community Infrastructure (Intergenerational) Fund Act 2008.

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 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 SOCs

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 SOCs

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.