



New South Wales

# Gas and Electricity (Consumer Safety) Bill 2017

## Explanatory note

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

## Overview of Bill

The *Electricity (Consumer Safety) Act 2004* (the **2004 Act**) and the *Gas Supply (Consumer Safety) Regulation 2012* (the **2012 Regulation**) provide the main framework for regulation of consumer safety in relation to gas appliances and electrical articles, and gas and electrical installations and related work.

The objects of this Bill are as follows:

- (a) to repeal the 2004 Act and 2012 Regulation and to consolidate the provisions of the Act and the primary provisions of the Regulation into one piece of legislation,
- (b) to provide for a consistent compliance and enforcement regime for both energy sources (including by extending certain compliance mechanisms currently available for electricity safety, to gas safety),
- (c) to align the maximum penalties for offences relating to gas safety with those relating to electricity safety,
- (d) to enable authorised officers to prohibit the misuse of electrical articles, gas appliances or electrical or gas installations if the misuse presents a significant risk of death or injury to any person or significant damage to property,
- (e) to enable certain rechargeable battery articles that are declared by the Secretary to be high risk battery articles to be regulated as electrical articles under the proposed Act,
- (f) to enable regulations to be made to provide for the issue and enforcement of notices to rectify non-compliant electrical installation work and gasfitting work,
- (g) to make consequential amendments to various other Acts and Regulations,

- (h) to provide for other minor, consequential and ancillary matters,
- (i) to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

## 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** sets out the broad object of the proposed Act.

**Clause 4** defines certain words and expressions and interprets certain references in the proposed Act and contains other matters of interpretation.

In particular, the extended definition of *sell* that applies to electrical articles under the 2004 Act is re-enacted to apply to both electrical articles and gas appliances under the proposed Act. The proposed section also re-enacts and extends section 6 of the 2004 Act to require electrical articles (whether declared or not) to be treated as being displayed for sale for the purposes of the Act if they are displayed for advertising or in connection with the sale of other electrical articles of the same model. Corresponding provision is made in relation to the display of gas appliances.

**Clause 5** re-enacts clause 4 of the 2012 Regulation to disapply the proposed Act in relation to certain gas and autogas installations and gas appliances regulated under other legislation.

**Clause 6** enables rechargeable batteries and associated items that are declared by the Secretary to be high risk battery articles, to be regulated under the proposed Act as electrical articles.

**Clause 7** provides that the proposed Act binds the Crown.

### Part 2 Electrical articles

#### Division 1 Restrictions on sale of electrical articles

**Clause 8** re-enacts section 16 of the 2004 Act to make it an offence for a person to sell a declared electrical article that is not of a class, model or description that has relevant approval from the Secretary or another recognised authority or any electrical article that does not comply with relevant specifications or requirements or is not marked in accordance with the regulations.

The maximum penalties for the offences are unchanged, being:

- (a) for an individual—500 penalty units (\$55,000) for a first offence or 750 penalty units (\$82,500) or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) for a corporation—5,000 penalty units (\$550,000) for a first offence or 7,500 penalty units (\$825,000) for a second or subsequent offence.

The Secretary may exempt persons or classes of persons from the operation of any or all of the provisions of the proposed section.

An offence against proposed section 8 committed by a corporation is an executive liability offence under proposed section 63.

**Clauses 9–11** provide for acquisition guarantees and substantially re-enact sections 17–20 of the 2004 Act.

**Clause 9** defines an *acquisition guarantee* as, essentially, a written guarantee given by a person (an *acquisition guarantor*) in respect of an electrical article to the effect that, at the time it was given, the model of electrical article had relevant approval and the article complied with any relevant specifications or requirements and was marked as prescribed by the regulations.

Proposed section 9 provides for a defence to a prosecution for an offence against proposed section 8 if the defendant proves that the person from whom the defendant obtained the electrical

article concerned gave the defendant an acquisition guarantee in respect of the article and the defendant had no reason to believe that, at the time of the alleged offence, the article did not comply with the requirements of proposed section 8.

The defendant must notify the prosecutor and acquisition guarantor in writing of the defendant's intention to rely on the guarantee, and provide the prosecutor with a copy of the guarantee, within 7 days after being served with the process commencing the criminal proceedings.

**Clause 10** provides that an acquisition guarantor may be convicted of an offence against proposed section 8 instead of a defendant who succeeds in establishing the defence under proposed section 9 unless the guarantor proves that the guarantor had reasonable grounds for believing the guarantee was correct.

**Clause 11** makes it an offence for a person to make a false statement or give a false description in relation to an electrical article or model of electrical article in any acquisition guarantee, or purported acquisition guarantee, given by the person.

The maximum penalty for the offence is unchanged, being 500 penalty units (\$55,000) in the case of a corporation and 150 penalty units (\$16,500) for an individual.

An offence against proposed section 11 committed by a corporation is an executive liability offence under proposed section 63.

## **Division 2      Declared electrical articles and specifications for electrical articles**

**Clause 12** re-enacts section 5 of the 2004 Act to enable the Secretary, by order published in the Gazette, to declare electrical articles of a specified class to be declared electrical articles for the purposes of the proposed Act and declare the specifications that are to apply to that class of electrical article. A *specification* is defined in proposed section 4 (1) to include a standard, code, rule, testing requirement or other specification that is approved, recommended, adopted or published by Standards Australia or that is prescribed by the regulations.

**Clause 13** re-enacts section 7 of the 2004 Act to define a *class specification* for a declared electrical article as being a specification declared by an order under proposed section 12 to apply to articles of the class to which the article belongs.

**Clause 14** re-enacts section 9 of the 2004 Act to provide that if a class specification or model specification requires an electrical article or part of an electrical article to be tested, then an article or part is to be treated as complying with that requirement even if it is not tested, if it would have so complied if it had actually been tested.

**Clause 15** re-enacts section 10 of the 2004 Act to require the Secretary to publish details of the current classes of declared electrical articles and the current class specifications for such articles on an internet website or by other appropriate means.

## **Division 3      Model approvals for electrical articles**

**Clause 16** substantially re-enacts section 11 of the 2004 Act to enable the Secretary, on application, to approve a model of electrical article (a *model approval*). The proposed section includes provisions in relation to the notification of approvals and refusal of approvals.

**Clause 17** substantially re-enacts section 12 of the 2004 Act to provide for the duration of model approvals. The proposed section also makes it clear that a model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.

**Clause 18** substantially re-enacts section 13 of the 2004 Act to provide for the suspension and cancellation of model approvals by the Secretary.

**Clause 19** re-enacts section 14 of the 2004 Act to enable a person whose application for a model approval has been refused, or whose model approval has been suspended or cancelled, to apply to the Civil and Administrative Tribunal for a review of the Secretary's decision.

## **Division 4      Recognised external approval schemes**

**Clause 20** re-enacts section 15 of the 2004 Act to enable the Minister, by order published in the Gazette, to declare any scheme for the approval or certification of models of electrical articles to be a recognised external approval scheme for the purposes of the proposed Act. The proposed section enables the regulations to make provision with respect to the declaration of schemes.

## **Part 3      Gas appliances**

### **Division 1      Restrictions on sale of gas appliances**

**Clause 21** substantially re-enacts clause 5 of the 2012 Regulation (but with increased maximum penalties) to make it an offence to sell a gas appliance or type of gas appliance unless it is certified by the holder of a certification authority under the proposed Act and labelled in accordance with the regulations.

The maximum penalties for the offence are the same as those referred to above for proposed section 8. The maximum penalties under clause 5 of the 2012 Regulation for the corresponding offence are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 21 committed by a corporation is an executive liability offence under proposed section 63.

### **Division 2      Certification of gas appliances**

**Clause 22** re-enacts clause 7 of the 2012 Regulation (but with increased maximum penalties) to make it an offence for a person to certify a gas appliance or type of gas appliance unless the person is the holder of a certification authority under the proposed Act or authorised to certify gas appliances on behalf of the holder.

The maximum penalties for the offence are 500 penalty units (\$55,000) for a corporation or 250 penalty units (\$27,500) for an individual. The maximum penalties under clause 7 of the 2012 Regulation for the corresponding offence are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

**Clause 23** substantially re-enacts clause 8 of the 2012 Regulation to enable the Secretary, on application, to grant an authority to certify a gas appliance or type of gas appliance (a **certification authority**) or to refuse to grant an authority. The proposed section also provides for the form of a certification authority.

**Clause 24** substantially re-enacts clause 9 of the 2012 Regulation (but with increased maximum penalties) to provide that a certification authority is subject to any conditions prescribed by the regulations or imposed by the Secretary in accordance with the regulations and to make it an offence not to comply with any condition to which a certification authority is subject.

The maximum penalties for the offence are 2,500 penalty units (\$275,000) for a corporation or 500 penalty units (\$55,000) for an individual. The maximum penalties under clause 9 of the 2012 Regulation for the corresponding offence are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

**Clause 25** re-enacts clause 10 of the 2012 Regulation to provide for the duration of a certification authority.

**Clause 26** substantially re-enacts clauses 11 and 12 of the 2012 Regulation to provide for the suspension and cancellation of certification authorities by the Secretary.

## **Part 4      Unsafe electrical articles and gas appliances**

This Part substantially re-enacts Division 8 of Part 2 (sections 21–25) of the 2004 Act but extends its provisions to gas appliances and types of gas appliances. Similar provision is made in clauses 15–18 of the 2012 Regulation in relation to gas appliances. The maximum penalties for offences under the proposed Part are the same as those for the corresponding offences under the

2004 Act relating to electrical articles, but are higher than those for similar offences relating to gas appliances under the 2012 Regulation.

**Clause 27** is an interpretative provision that provides that references in the proposed Part to electrical articles include a reference to a model of electrical article and references to gas appliances include a reference to a type of gas appliance.

**Clause 28** enables the Secretary or the Minister, by notice published in the Gazette, to prohibit the sale generally of a specified electrical article or gas appliance if the Secretary or the Minister believes on reasonable grounds that the article or appliance is or may become unsafe to use and that the prohibition is warranted because of the risk of death, injury or property damage. The Secretary or the Minister may also prohibit a particular person from selling an electrical article or a gas appliance by notice served on the person on the same grounds.

**Clause 29** enables the Secretary, by notice served on the seller of electrical articles or gas appliances, to require that person to take specified remedial action to make an electrical article or gas appliance safe to use if the Secretary believes on reasonable grounds that the article or appliance is or may become unsafe to use and that such action is necessary to make it safe to use.

**Clause 30** enables the Secretary, by notice served on the seller of electrical articles or gas appliances, to require that person to carry out specified safety testing or provide other evidence of the safety of an electrical article or gas appliance that the person sells if the Secretary believes on reasonable grounds that the article or appliance is or may become unsafe to use. There is no similar provision in the 2012 Regulation.

**Clause 31** makes it an offence for a person:

- (a) to sell an electrical article or gas appliance if its sale by the person is prohibited by a notice under proposed section 28, or
- (b) not to comply with any requirement to take action in respect of an article or appliance made of the person under a notice under proposed section 29, or
- (c) not to comply with any requirement to test or provide evidence in respect of an article or appliance under a notice under proposed section 30.

The maximum penalties for these offences are the same as those for the corresponding offences under section 24 of the 2004 Act (being the same as those referred to above for proposed section 8). The maximum penalties for similar offences under clause 18 of the 2012 Regulation relating to gas appliances are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 31 committed by a corporation is an executive liability offence under proposed section 63.

**Clause 32** provides that the proposed Part operates in addition to, and not in derogation of, the provisions of the *Fair Trading Act 1987* or the regulations made under that Act.

## **Part 5 Installations—electrical, gas and autogas**

### **Division 1 Electrical installation work, gasfitting work and autogas work**

**Clause 33** substantially re-enacts clauses 21 and 23 of the 2012 Regulation (but with increased maximum penalties) to make it an offence for a person to carry out gasfitting work or autogas work, or to employ any other person to carry out that work, unless the person who carries out the work does so under the authority of an appropriate certificate or under the supervision of the holder of an appropriate certificate.

The maximum penalties for an offence against proposed section 33 are 1,000 penalty units (\$110,000) for a corporation or 200 penalty units (\$22,000) for an individual. The maximum penalties for corresponding offences under clauses 21 and 23 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

(Section 14 of the *Home Building Act 1989* makes it an offence for a person to carry out electrical wiring work unless the person is authorised to do so under that Act.)

**Clause 34** substantially re-enacts section 31 of the 2004 Act and clauses 22 and 24 of the 2012 Regulation (but with increased maximum penalties in relation to the latter) to make it an offence for a person to carry out electrical installation work, gasfitting work, or autogas work on an autogas installation, otherwise than in accordance with the standards or requirements prescribed by the regulations.

The maximum penalties for an offence against proposed section 34 are the same as those for a corresponding offence under section 31 of the 2004 Act relating to electrical installation work (being the same as those referred to above for proposed section 8). The maximum penalties for corresponding offences relating to gasfitting work or autogas work in clauses 22 and 24 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 34 committed by a corporation is an executive liability offence under proposed section 63.

## **Division 2      Electrical, gas and autogas installations**

**Clause 35** substantially re-enacts section 32 of the 2004 Act and clause 50 of the 2012 Regulation (but with increased maximum penalties in relation to the latter) to make it an offence for a person responsible for a gas or electrical installation (being the occupier or owner of the place where the installation is located) to fail to ensure that any parts of the installation that are prescribed by the regulations are maintained in accordance with the regulations while the installation remains connected to its source of supply of electricity or gas.

Proposed section 35 also makes it an offence for a person responsible for an electrical installation to connect it to a source of supply of electricity if the installation has been lawfully disconnected for safety reasons.

The maximum penalties for an offence against proposed section 35 are 500 penalty units (\$55,000) for a corporation or 150 penalty units (\$16,500) for an individual. Section 32 of the 2004 Act provides for the same maximum penalties for corresponding offences relating to electrical installations. The maximum penalties for the corresponding offence in clause 50 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

**Clause 36** makes it an offence for a person who carries out work for fee or reward at or near an electrical, gas or autogas installation to fail to ensure that the work does not interfere with the installation in a way that adversely affects its safety. Proposed section 36 also makes it an offence for a person carrying out work at or near an installation, without fee or reward, in a way that adversely affects the safety of the installation to fail to take reasonable steps to make the installation safe after becoming aware that it has been adversely affected. The maximum penalties for the offences are 500 penalty units (\$55,000) for a corporation or 200 penalty units (\$22,000) for an individual.

Clause 38 of the *Electricity (Consumer Safety) Regulation 2015* contains corresponding offences with the same penalties in relation to electrical installations. There are no similar offences in the 2012 Regulation.

**Clause 37** substantially re-enacts (but with increased maximum penalties) clauses 6 and 37 of the 2012 Regulation. Proposed section 37 makes it an offence for a person to connect a gas appliance to, or modify a gas appliance connected to, a gas installation to which gas is supplied from a gas network, unless the appliance or appliance as modified is a certified gas appliance under the proposed Act. Proposed section 37 also makes it an offence for a person to connect a gas appliance to any other gas installation (other than in the course of gasfitting work or certain testing) unless the appliance is a certified gas appliance that is labelled in accordance with the regulations and is suitable and safe for use with the gas with which it is designed to be used.

The maximum penalties for the offences are 500 penalty units (\$55,000) for a corporation or 250 penalty units (\$27,500) for an individual. The maximum penalties for the corresponding

offences under clauses 6 and 37 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

**Clause 38** provides for specific regulation-making powers for or with respect to electrical, gas or autogas installations.

## **Part 6 Accident reporting and investigations**

**Clause 39** defines *serious electrical accident* and *serious gas accident* for the purposes of the proposed Part.

**Clause 40** substantially re-enacts section 33 of the 2004 Act and clause 53 of the 2012 Regulation (but with increased maximum penalties in relation to the latter) to require the occupier of a place in which a serious electrical accident or a serious gas accident occurs (or any other person prescribed by the regulations) to notify the Secretary of the accident within 7 days after the accident. A failure to notify the Secretary is an offence, the maximum penalty for which is 5 penalty units (\$550) if the accident occurred in residential premises and 100 penalty units (\$11,000) in any other case. Section 33 of the 2004 Act provides for the same maximum penalties for the corresponding offence relating to serious electrical accidents. The maximum penalties for the corresponding offence in clause 53 of the 2012 Regulation is 2 penalty units (\$220).

**Clause 41** enables the Secretary to arrange for an authorised officer to investigate and report to the Secretary concerning a serious electrical accident or a serious gas accident. Section 34 of the 2004 Act is a corresponding provision relating to serious electrical accidents.

**Clause 42** makes it an offence for a person to disturb or interfere with the site of a serious electrical accident or a serious gas accident before it has been inspected by an authorised officer, except to make it safe or with the permission of an authorised officer or as provided by the regulations. The maximum penalties for the offence are 500 penalty units (\$55,000) for a corporation or 250 penalty units (\$27,500) for an individual.

Section 36 of the 2004 Act contains a corresponding offence with the same penalties in relation to serious electrical accidents. There is no similar offence in the 2012 Regulation.

**Clause 43** enables the Secretary to publish the details of serious electrical accidents or serious gas accidents that the Secretary considers necessary in the interests of public information and safety. Section 37 of the 2004 Act is a corresponding provision relating to serious electrical accidents.

**Clause 44** enables the Secretary, SafeWork NSW and the Secretary of the Department of Planning and Environment to enter into arrangements concerning the exercise of their respective functions in relation to the investigation of accidents and other incidents involving electricity and gas. Section 38 of the 2004 Act is a corresponding provision relating to accidents and incidents involving electricity.

## **Part 7 Enforcement**

### **Division 1 Offences and associated provisions relating to investigations and inspections**

**Clause 45** makes it an offence to refuse or fail to comply with a requirement made, or to answer a question asked, by an authorised officer, or intentionally to delay or obstruct an authorised officer or falsely to represent oneself to be an authorised officer. The maximum penalty for an offence against proposed section 45 is 500 penalty units (\$55,000) for a corporation or 150 penalty units (\$16,500) for an individual. Section 40 of the 2004 Act is a corresponding provision with the same maximum penalties.

### **Division 2 Investigation and inspection powers**

**Clause 46** defines *possession* as including custody or control in the proposed Division.

**Clause 47** provides that the powers of entry and inspection conferred by the proposed Act cannot be exercised in relation to a part of any premises being used for residential purposes except with

the permission of the occupier of that part of the premises or under the authority of a search warrant. Sections 26, 30 and 35 of the 2004 Act contain corresponding provisions.

**Clause 48** enables an authorised officer (with the written authority of the Secretary) to enter any place and inspect and copy documents in the place if the Secretary believes on reasonable grounds that there are in that place documents evidencing conduct in connection with an electrical article or gas appliance, an electrical or gas installation or a serious electrical or gas accident, in contravention of the proposed Act or the regulations. Sections 26, 30 and 35 of the 2004 Act contain corresponding provisions.

**Clause 49** substantially re-enacts section 26 of the 2004 Act and extends it to gas appliances. Proposed section 49 enables an authorised officer, at any reasonable time, to enter any place that the officer suspects on reasonable grounds to be a place in which the manufacture or sale of electrical articles or gas appliances is being, or may be, carried on. It also confers certain search and investigation powers while in the place. These include the power to seize, detain or remove an electrical article or gas appliance (or any container or package containing an electrical article or gas appliance) if the officer has reasonable cause to believe that an offence has been committed against the proposed Act or the regulations in respect of the article or appliance, or the article or appliance is or is likely to be unsafe.

**Clause 50** substantially re-enacts section 27 of the 2004 Act and extends it to gas appliances. Clauses 14 and 18 of the 2012 Regulation make similar provision, but with lower maximum penalties, in relation to gas appliances. Proposed section 50 enables an authorised officer who believes on reasonable grounds that an electrical article or more than one electrical article of a particular model, or a gas appliance or more than one gas appliance of a particular type, is or may become unsafe:

- (a) to prohibit a person who has possession of the electrical article or gas appliance or articles or appliances of that model or type from selling it or them, and
- (b) to affix a label on an electrical article or a gas appliance (or container or package containing an article or appliance) indicating that it is to be considered dangerous and must not be sold or used until specified repairs necessary to make it safe to use have been carried out.

The proposed section makes it an offence for a person to sell an electrical article or a gas appliance in contravention of a notice or to remove or alter a label affixed to an article or appliance or a container or package under the proposed section unless directed to do so by an authorised officer.

The maximum penalties for these offences are the same as those for the corresponding offences under section 27 of the 2004 Act (being the same as those referred to above for proposed section 8). The maximum penalties for similar offences under clause 18 of the 2012 Regulation are 100 penalty units (\$11,000) for a corporation or 25 penalty units (\$2,750) for an individual.

An offence against proposed section 50 committed by a corporation is an executive liability offence under proposed section 63.

**Clause 51** is a new power to enable an authorised officer, at any reasonable time, to enter any place that the officer suspects on reasonable grounds to be a place in which an electrical article or a gas appliance, or an electrical installation or a gas installation, is being, or is likely to be, used in a manner that presents a significant risk of the death of, or injury to, any person, or significant damage to any property. Proposed section 51 also confers certain search and investigation powers while in the place, and a power to disconnect an electrical article or gas appliance, or take appropriate measures to have an electrical or a gas installation disconnected, if the officer has reasonable cause to believe it is being or is likely to be used in that manner.

**Clause 52** is a new power to enable an authorised officer who believes on reasonable grounds that an electrical article or a gas appliance, or an electrical installation or a gas installation, is being, or is likely to be, used in a manner that presents a significant risk of the death of, or injury to, any person, or significant damage to any property, to prohibit the use of the article, appliance or installation in such a manner.

Proposed section 52 makes it an offence for a person to use an electrical article or a gas appliance, or an electrical installation or a gas installation, in contravention of a notice under the proposed section.



The maximum penalties for the offence are:

- (a) for an individual—100 penalty units (\$11,000) for a first offence or 150 penalty units (\$16,500) for a second or subsequent offence, or
- (b) for a corporation—1,000 penalty units (\$110,000) for a first offence or 1,500 penalty units (\$165,000) for a second or subsequent offence.

An offence against proposed section 52 committed by a corporation is an executive liability offence under proposed section 63.

**Clause 53** substantially re-enacts section 35 of the 2004 Act and extends it to serious gas accidents. Proposed section 53 enables an authorised officer to enter any place where a serious electrical or gas accident has or may reasonably be expected to have occurred and to exercise certain investigative powers in that place.

**Clause 54** substantially re-enacts section 30 (1) and (2) of the 2004 Act and extends the provisions to gas installations. Proposed section 54 enables an authorised officer to enter any place at any reasonable time for the purpose of inspecting any electrical or gas installation in the place. On entering such a place, the authorised officer may require a person carrying out electrical wiring work or gasfitting work to produce evidence of the person's authority to carry out such work under the *Home Building Act 1989* or the proposed Act, respectively.

Proposed section 54 also enables regulations to be made for or with respect to the issue of directions or notices by authorised officers to rectify electrical installation work or gasfitting work that is found on inspection to be non-compliant, and the enforcement of those directions or notices.

**Clause 55** re-enacts section 30A of the 2004 Act to make it clear that an authorised officer may inspect an electrical installation that includes the installation of an electricity meter to ensure compliance with the applicable standards and requirements and that a fee may be charged for the inspection.

### **Division 3      Seizure and forfeiture of electrical articles and gas appliances**

**Clause 56** defines an expression used in the proposed Division.

**Clause 57** substantially re-enacts (with modifications) section 28 of the 2004 Act and extends it to gas appliances seized under proposed section 49 (d). Proposed section 57 requires the Secretary to return an electrical article or gas appliance seized under proposed section 49 (d) no later than 12 months (or other period prescribed by the regulations) after seizure unless, within that period, the Secretary determines that the article or appliance is unsafe and applies for its forfeiture under proposed section 58 or proceedings for an offence involving that article or appliance are brought. (The period by which the Secretary is to return a seized item under section 28 of the 2004 Act is no later than 60 days or such greater period as the regulations may prescribe.)

The Secretary is to provide compensation for returned seized articles or appliances in accordance with the regulations.

If proceedings for an offence are commenced within the relevant period, the Secretary may retain the article or appliance until the proceedings are finally determined.

**Clause 58** substantially re-enacts section 29 of the 2004 Act, and extends it to gas appliances, to enable the Secretary to apply to the Local Court for the forfeiture of an electrical article or gas appliance if a court has found a person guilty of an offence against the proposed Act or the regulations in connection with the article or appliance or if the article or appliance was seized under section 49 (d) and the Secretary determines that it is unsafe.

### **Division 4      Search warrants**

**Clause 59** substantially re-enacts section 42 of the 2004 Act, and extends it to gas installations and serious gas accidents, to enable an authorised officer to apply for a search warrant for a place if the officer has reasonable grounds for believing that an unsafe electrical or gas installation is in the place, or a serious electrical or gas accident has occurred in the place or a provision of the proposed Act or the regulations has been or is being contravened in the place.

## Division 5 Undertakings

**Clause 60** provides that section 218 of the *Australian Consumer Law (NSW)* applies in connection with a matter in relation to which the Secretary has a function under the proposed Act as if the function were a function under that Law. Section 218 enables the Secretary to accept a written undertaking given by a person in connection with a matter in relation to which the Secretary has a function under that Law. Any such undertaking is enforceable by the Supreme Court. Costs incurred by the Secretary in taking action under section 218 are recoverable from the person who gave the undertaking, as a debt due to the Crown, in a court of competent jurisdiction. Section 43 of the 2004 Act contains a corresponding provision relating to functions of the Secretary under that Act.

## Division 6 Authorised officers

**Clause 61** enables the Secretary to appoint any person (other than an investigator under the *Fair Trading Act 1987*) to be an authorised officer for the purposes of any or all of the provisions of the proposed Act or the regulations. (Proposed section 4 (1) defines **authorised officer** to include investigators under the *Fair Trading Act 1987*.) Section 39 of the 2004 Act is a corresponding provision.

**Clause 62** provides that the powers conferred by the proposed Act or the regulations on persons who are authorised officers by reason of being investigators are in addition to, and not in derogation of, the powers conferred on investigators by Division 1 of Part 2A of the *Fair Trading Act 1987*. Section 41 of the 2004 Act is a corresponding provision.

## Division 7 Proceedings for offences

**Clause 63** establishes an offence against proposed section 8 (1) or (2), 11 (1), 21, 31 (1)–(3), 34, 50 (3) or 52 (3) as an **executive liability offence** for directors and managers of corporations. An executive liability offence is an offence where the onus is on the prosecution to prove that the director or manager knows or ought reasonably to know that the offence (or an offence of the same type) would be or is being committed and fails to take all reasonable steps to prevent or stop the commission of that offence.

**Clause 64** provides that for any offence committed by a corporation (whether or not an executive liability offence), the onus is on the prosecution to prove that the director or manager aids, abets, counsels or procures the commission of the corporate offence, or induces, whether by threats or promises or otherwise, the commission of the corporate offence, or conspires with others to effect the commission of the corporate offence, or is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Sections 45 and 45A of the 2004 Act are provisions corresponding with proposed sections 63 and 64. Section 80 of the *Gas Supply Act 1996* makes similar provision in relation to offences against the 2012 Regulation.

**Clause 65** re-enacts section 46 of the 2004 Act to enable the Secretary (or a departmental employee authorised by the Secretary) to certify certain matters relating to electrical articles. A certificate is admissible in any proceedings and is evidence of the matters certified.

**Clause 66** enables authorised officers to issue penalty notices for alleged offences against the proposed Act or the regulations that are prescribed by the regulations as penalty notice offences. Section 47 of the 2004 Act contains a corresponding provision but no power exists for the issue of penalty notices for offences against the 2012 Regulation.

**Clause 67** provides that proceedings for an offence against the proposed Act or the regulations may be dealt with summarily by the Local Court or the Supreme Court. However, if dealt with by the Local Court, the maximum monetary penalty that the Local Court may impose is 200 penalty units (\$22,000). Section 48 of the 2004 Act contains a corresponding provision. Section 81 of the *Gas Supply Act 1996* provides that the maximum monetary penalty that the Local Court may impose for an offence against the 2012 Regulation is the lesser of the maximum monetary penalty provided for in the Regulation, or 100 penalty units (\$11,000) for a corporation and 50 penalty units (\$5,500) for an individual.

**Clause 68** requires proceedings for an offence against the proposed Act or the regulations to be commenced within 2 years after the date on which the offence is alleged to have been committed. Proposed section 68 also provides that proceedings may be commenced within 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer. However, this will not enable proceedings to be commenced if more than 5 years has elapsed since the date on which the offence is alleged to have been committed. Section 49 of the 2004 Act is a corresponding provision. Section 81 of the *Gas Supply Act 1996* requires offences against the 2012 Regulation to be commenced within 2 years after the commission of the offence.

## **Part 8    Miscellaneous**

**Clause 69** provides for registers that are to be kept under the proposed Act. The registers correspond with those that are kept under the 2004 Act and the 2012 Regulation.

**Clause 70** makes it an offence for a person to disclose certain information relating to any manufacturing or commercial secrets or working processes obtained by the person in connection with the administration or execution of the proposed Act. The maximum penalty for the offence is 100 penalty units (\$11,000). Section 50 of the 2004 Act contains a corresponding offence with the same maximum penalty relating to information obtained in connection with the administration or execution of that Act. There is no similar offence in the 2012 Regulation.

**Clause 71** excludes the Minister, the Secretary, an authorised officer or a person acting under direction from the Minister or Secretary from any personal civil liability for any act done, or omitted to be done, in good faith for the purpose of executing the proposed Act. However, any such liability attaches instead to the Crown. Section 51 of the 2004 Act is a corresponding provision.

**Clause 72** provides for how documents may be served on, or given to, a person for the purposes of the proposed Act. Section 52 of the 2004 Act is a corresponding provision.

**Clause 73** provides for how documents may be served on, given to, or lodged with, the Secretary for the purposes of the proposed Act. Section 53 of the 2004 Act is a corresponding provision.

**Clause 74** enables the Minister and the Secretary to delegate the exercise of certain of their functions under the proposed Act or the regulations. Section 54 of the 2004 Act is a corresponding provision.

**Clause 75** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 76** repeals the 2004 Act, the Regulation made under that Act and the 2012 Regulation.

**Clause 77** provides for the review of the proposed Act in 5 years.

## **Schedule 1    Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 2    Amendment of Acts and Regulations**

**Schedule 2** makes consequential amendments to the Acts and Regulations specified in the Schedule.