

Legislative Council Hansard – 18 October 2017 – Proof

ELECTRICITY SUPPLY AMENDMENT (EMERGENCY MANAGEMENT) BILL 2017*First Reading*

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Don Harwin.

Second Reading

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (17:49): I move:

That this bill be now read a second time.

I am pleased to introduce the Electricity Supply Amendment (Emergency Management) Bill 2017. Energy security is a high priority for the New South Wales Government. The New South Wales electricity supply in February 2017 demonstrated that we need simple and speedy options to manage electricity shortages. The people of New South Wales responded immediately and with great effect to my request to voluntarily restrict their electricity usage during the February heatwave. This cooperative approach from the community can often be the simplest way to address problems quickly. Again I thank everyone for their assistance. However, it is also clear that we need a more thorough review of our electricity supply emergency management, and that is what we have done.

I appointed the NSW Chief Scientist and Engineer, Professor Mary O'Kane, to examine the resilience of the New South Wales electricity system and to consider prevention, preparation, response and recovery arrangements to deal with energy security events such as extreme weather. The NSW Energy Security Taskforce made a number of recommendations. A key issue was the concern that the New South Wales energy Minister is unable to act with speed and efficiency under the current New South Wales electricity emergency legislation. This bill implements the recommendation of the NSW Energy Security Taskforce to simplify and update the existing New South Wales-specific electricity emergency powers in time for the 2018 summer period. It is only part of the regulatory picture, with the Australian Energy Market Operator [AEMO] the primary manager of the electricity system and emergencies. However, it is about ensuring that all the necessary New South Wales regulatory tools are available to support AEMO and New South Wales energy security.

The current New South Wales electricity emergency legislation in the Energy and Utilities Administration Act is out of date. It was designed in the 1980s before the start of the national electricity market and before the role of the Australian Energy Market Operator existed. At that time New South Wales had a standalone electricity grid and electricity supply emergencies had to be managed within State boundaries. The Government had direct control in the 1980s over statutory electricity authorities. This is no longer the case. The Australian Energy Market Operator now does most of the heavy lifting in maintaining power system security and managing electricity supply emergencies across the interconnected grid that supplies the south-eastern States of Australia. Since the start of the national electricity market in 1998, the Australian Energy Market Operator and the New South Wales energy Minister have managed electricity supply emergencies cooperatively. Fortunately we have not had a major disruption in New South Wales.

The bill aims to provide the New South Wales Government with the streamlined and updated tools needed to take action in the management of an electricity supply emergency. As I have said before, in the majority of situations, the Australian Energy Market Operator can take the necessary action and does not require intervention from the New South Wales Minister. However, if the Australian Energy Market Operator is not able to do what is needed because of limits on its powers, AEMO may require assistance from within New South Wales. Some examples where a New South Wales energy Minister may be asked to assist include: where directions must be given to persons other than registered participants in the national electricity market and AEMO requests that New South Wales declare an electricity supply emergency and exercise its local emergency powers; or where a power supply disruption is likely to have an extended duration requiring mandatory restrictions for the broader community, including exemptions for vulnerable consumers. The powers needed by the New South Wales Minister for energy are not likely to be used frequently, but when they are needed, they must operate quickly and effectively.

The key feature of the bill is to have a simpler and faster process to respond effectively to electricity emergencies in New South Wales rather than expanding and extending the powers of the New South Wales Minister for energy. Under the bill, the Premier rather than the Governor must declare an electricity supply emergency in New South Wales by an order in writing. The Premier can specify a time for the order to remain in force. The Premier may do so if satisfied there is a disruption or a real risk of disruption to electricity supply to a significant degree to all or any part of the State.

In practice, the Premier would be advised by the New South Wales Minister for energy who is in continuous communication with the Australian Energy Market Operator if a significant electricity supply disruption is anticipated or identified. The bill provides the Premier with flexibility as to how to publicise the electricity supply emergency order to the community. This will depend on the circumstances, but the Government can choose the best media options available. The order must be published in the *Gazette* or on the NSW Legislation website to give it the necessary formality.

The bill replaces the current process of the Governor making emergency regulations with ministerial electricity supply emergency directions. This allows more effective responses during an electricity supply emergency. These direction powers are no broader than those available to make emergency regulations. As Minister, I would be able to give directions that are "reasonably necessary to respond to the electricity supply emergency". Electricity supply emergency directions can only be given while an order of the Premier is in force. The bill requires full transparency on any direction. A direction that applies to the general public or a section of the community is required to be published in the New South Wales *Gazette*. A direction that applies to a particular person can be given verbally if circumstances require this and must be confirmed in writing as soon as practicable, and a copy of the notice must be published in the New South Wales *Gazette*. The Minister would also have flexibility as to which media options he or she uses in communicating directions to the public.

The bill enables me as Minister to require production of information. Information may be required during or immediately prior to a supply disruption or to plan and prepare for possible future electricity emergencies. An information notice is not restricted to the electricity sector alone. The bill provides some examples of the types of information that may be required, including the location and availability of coal, gas and liquid fuel stocks and water storage reserves. Importantly, an information notice does not depend on a Premier's declaration being in place. This is to assist the energy Minister to obtain information for electricity emergency planning purposes.

The bill recognises that the types of information sought may need to be treated confidentially. The bill seeks to balance concerns about confidentiality with the need to have access to key information relevant to emergency management. The Minister can disclose information, including to persons engaged in the administration of the part 7A electricity supply emergency regime and to AEMO. If the person providing the information indicates that it is confidential, and the Minister agrees, he or she can direct those to whom it is given not to disclose the information. This attracts a penalty for non-compliance.

The bill also provides safeguards for persons providing information, where information provided may contain incriminating material. Again, the bill strikes a balance between the need to have the information provided and a person's right to object if they consider information may incriminate or make the person liable to a penalty.

Other emergency regimes in New South Wales provide strong powers for on-ground enforcement in emergencies. This bill recognises that the main focus in an electricity supply emergency is to ensure that electricity supply emergency directions are implemented. The bill contains minimal but clear enforcement provisions that are proportionate for an electricity supply emergency. The bill does not seek to duplicate existing enforcement regimes or create additional heavy-handed enforcement powers. The bill enables me as Minister to appoint authorised officers to provide on-ground support in an electricity supply emergency. Authorised officers are subject to ministerial direction and control, and they must have approved identification. The on-ground powers given to authorised officers to enter premises do not include residential premises.

The bill includes key offences for failure to comply with an electricity supply direction; failure to provide information required by the Minister; and obstruction of an authorised officer. The penalty levels in the bill are set at an equivalent level to existing maximum limits in the Electricity Supply Act 1995. Proceedings can be taken in court for offences committed under the existing powers in the Electricity Supply Act 1995. The bill does not include a spot fine infringement notice regime. This is not effective for large businesses that are most likely to be given specific directions. We do not consider a spot fine regime appropriate for individuals and households in the context of managing electricity demand. The bill contains a number of other provisions that include exclusion of personal liability for the Minister, an authorised officer or a person acting under the direction of the Minister for action carried out in good faith.

The State is not liable to pay compensation for actions taken under the new part 7A electricity supply emergency regime, such as the giving of any direction under part 7A. The Minister's powers to issue directions cannot be delegated. These directions may have broad community-wide operation and the potential to curtail the rights of members of the public. I consider it appropriate that they be exercisable only by the Minister. The Minister's power to delegate to an "eligible person" is to be expanded to expressly enable delegation to Public Service employees. This allows agency officials in New South Wales to do administrative tasks to support the implementation of the Minister's directions. Lastly, the bill amends part 6 of the Energy and Utilities Administration Act to remove electricity from that emergency framework without disturbing the operation in relation to gas or fuel emergencies. I commend this bill to the House.

Debate adjourned.