



New South Wales

Electricity Supply Amendment (Protection of Electricity Works) Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Electricity Supply Act 1995* (*the Principal Act*) so as:

- (a) to protect the presence, operation and use of certain electricity works, and
- (b) to clarify the powers of a network operator with respect to the removal of dangerous structures or things from land on which certain electricity works are situated, and
- (c) to specify circumstances in which the costs of removing any dangerous structure or thing are payable by the relevant network operator, and in which the relevant network operator is liable for loss or damage suffered by the owner of any structure or thing as a result of its removal.

Outline of provisions

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Electricity Supply Act 1995* set out in Schedule 1.

Clause 4 is a formal provision for the repeal of the proposed Act after its effect is spent.

Schedule 1 Amendments

Protection of electricity works

Schedule 1 [3] inserts proposed section 53 into the Principal Act. The new section applies to electricity works situated in, on or over land as at the commencement of the proposed Act, together with any repairs, replacements, modifications and upgrades of those works, but does not apply to works whose presence in, on or over the land is protected by a registered easement. The proposed section prevents legal action from being taken against a network operator by reason of the presence, operation or use of any such works, and states that, as between the owner of the land and the network operator, the presence, operation and use of any such works is taken to be lawful. However, the proposed section preserves any civil liability for negligence that may arise from the operation, use, maintenance, repair, replacement, modification, upgrade or removal of any such works.

Removal of dangerous structures and things

Section 49 of the Principal Act enables a network operator to take action to remove structures and things that endanger its electricity works.

Schedule 1 [2] inserts new subsections (7), (8) and (9) into section 49.

Proposed subsection (7) ensures that such action may be taken even if the works concerned are situated on land owned or occupied by the person having control of the structure or thing concerned.

Proposed subsection (8) provides that subsection (5) (which would otherwise enable a network operator to recover the cost of removing a structure or thing from the person having control of it) does not apply, in relation to certain classes of structure or thing, where the person having control of the structure or thing owns or occupies the land on which the works are situated.

Proposed subsection (9) provides that, in the circumstances in which proposed subsection (8) applies, the network operator must bear the costs of removing the structure or thing, and is liable to the owner of the structure or thing for any loss or damage suffered by the owner as a consequence of its removal.

Schedule 1 [1] substitutes section 49 (1) so as to align its wording with that of section 48 (1) (an analogous provision dealing with the hazards to electricity works that are posed by trees).

Savings and transitional provisions

Schedule 1 [4] amends clause 1 of Schedule 6 so as to enable regulations under the principal Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [5] inserts a new Part 7 into Schedule 6. The proposed Part contains the following clauses:

- (a) a definitions clause (**proposed clause 47**),
- (b) a clause that prevents a court that is hearing proceedings commenced before this Bill was introduced into Parliament from ordering the modification or removal of existing electricity works of the kind to which proposed section 53 applies (**proposed clause 48**),
- (c) a clause that applies proposed section 53 to legal proceedings commenced after this Bill was introduced into Parliament, so precluding any action based on the presence, operation or use of existing electricity works of the kind to which proposed section 53 applies (**proposed clause 49**).

First print



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New South Wales

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No. , 2006

A Bill for

An Act to amend the *Electricity Supply Act 1995* so as to protect the presence, operation and use of certain electricity works and clarify the provisions of that Act with respect to the removal of structures and things that may endanger electricity works; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Electricity Supply Amendment (Protection of Electricity Works) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Electricity Supply Act 1995 No 94	7
The <i>Electricity Supply Act 1995</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 49 Obstruction of electricity works	3
	Omit section 49 (1). Insert instead:	4
	(1) This section applies if a network operator has reasonable cause to believe that any structure or thing situated in, on or near its electricity works:	5
	(a) could destroy, damage or interfere with those works, or	6
	(b) could make those works become a potential cause of bush fire or a potential risk to public safety.	7
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[2]	Section 49 (7)–(9)	11
	Insert after section 49 (6):	12
	(7) A network operator may take action under this section even if the person having control of the structure or thing owns or occupies the land in, on or over which the network operator’s electricity works are situated.	13
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	(8) Subsection (5) does not enable the network operator to recover any costs referred to in that subsection from a person referred to in subsection (7):	17
	(a) where the electricity works are works to which section 53 applies, if the structure or thing had been lawfully placed in its present position:	18
	(i) before the commencement of the <i>Electricity Supply Amendment (Protection of Electricity Works) Act 2006</i> , or	19
	(ii) after the commencement of that Act, but with the agreement of the network operator, or	20
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	(b) in any other case, if the existence of the structure or thing in its present position does not contravene the terms of any easement, agreement or other authority that supports the presence of the electricity works in, on or over the land.	26
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	(9) In the circumstances referred to in subsection (8):	32
	(a) the costs referred to in subsection (5) are to be borne by the network operator, and	33
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	(b) the network operator is liable to the owner of the structure or thing for any loss or damage suffered by the owner as a consequence of the work referred to in subsection (4).	35
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[3] Section 53	1
Insert after section 52:	2
53 Protection of certain electricity works	3
(1) This section applies to all electricity works that, immediately before the commencement of the <i>Electricity Supply Amendment (Protection of Electricity Works) Act 2006</i> , were situated in, on or over land not owned by the network operator having control of those works, whether or not their presence, operation or use is supported by an agreement or other authority:	4 5 6 7 8 9
(a) including any electricity works that, since that commencement, have been erected or installed on the same site for the purpose of repairing, replacing, modifying or upgrading those works, and	10 11 12 13
(b) excluding any electricity works whose presence in, on or over the land is supported by a registered easement in favour of the network operator.	14 15 16
(2) No action by the owner or occupier of the land lies against the network operator by reason of:	17 18
(a) the presence in, on or over the land of electricity works to which this section applies, or	19 20
(b) the operation or use of electricity works to which this section applies that are present in, on or over the land,	21 22
and, as between the owner or occupier of the land and the network operator, the presence of those works, and their operation and use, are taken to be lawful for all purposes.	23 24 25
(3) Nothing in subsection (2) relieves a person from any civil liability for negligence (as defined by section 5 of the <i>Civil Liability Act 2002</i>) to which the person becomes subject as a consequence of the way in which any electricity works to which this section applies are operated or used, are maintained, repaired, replaced, modified or upgraded or are removed.	26 27 28 29 30 31
(4) In this section, registered easement means an easement that is registered:	32 33
(a) in the Register kept under the <i>Real Property Act 1900</i> , in the case of land under the provisions of that Act, or	34 35
(b) in the General Register of Deeds kept under the <i>Conveyancing Act 1919</i> , in the case of any other land.	36 37

[4] Schedule 6 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Electricity Supply Amendment (Protection of Electricity Works) Act 2006</i>	3
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[5] Schedule 6, Part 7	5
Insert after Part 6:	6
Part 7 Provisions consequent on enactment of Electricity Supply Amendment (Protection of Electricity Works) Act 2006	7
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47 Definitions	10
In this Part:	11
<i>the 2006 amending Act</i> means the <i>Electricity Supply Amendment (Protection of Electricity Works) Act 2006</i> .	12
<i>the relevant time</i> means the time the Bill for the 2006 amending Act was first introduced into Parliament.	13
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48 Pending proceedings commenced before relevant time	16
In proceedings commenced before the relevant time in respect of a cause of action of the kind referred to in section 53 (2), as inserted by the 2006 amending Act, the court before which the proceedings are being heard may not make any order requiring modification or removal of works to which section 53 applies.	17
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49 Pending proceedings commenced after relevant time	22
Section 53, as inserted by the 2006 amending Act, applies for the purposes of legal proceedings commenced since the relevant time, and so applies as if it had commenced at that time.	23
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