



New South Wales

Electricity Generator Assets (Authorised Transactions) Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to authorise and provide for the transfer of the State's electricity generator assets.

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 the date of assent except for Schedule 5 (Ownership restrictions in floated transaction companies) which is to commence on a day 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 transaction* to mean the transfer of electricity generator assets authorised by Part 2.

Part 2 Authorised transfers of electricity generator assets

Clause 4 authorises the transfer to the private sector of the State's electricity generator assets.

Clause 5 authorises the transfer of electricity generator assets between public sector agencies.

Clause 6 requires the proceeds of the transfer of the State's electricity generator assets, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the Restart NSW Fund.

Part 3 Facilitating authorised transactions

Clause 7 provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction.

Clause 8 provides for the establishment of statutory State owned corporations as *transaction SOC*s for the purposes of an authorised transaction.

Clause 9 provides for the establishment of companies as *transaction companies* for the purposes of an authorised transaction (including by means of the corporate conversion of an electricity generator or transaction SOC).

Clause 10 provides that each electricity generator and *transaction entity* (a transaction SOC or transaction company) has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The clause also authorises the Treasurer to act for or on behalf of an electricity generator or transaction entity in the exercise of any of its functions for the purposes of an authorised transaction.

Clause 11 provides that electricity generators and transaction entities are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of an authorised transaction.

Clause 12 establishes the Electricity Assets Ministerial Holding Corporation to hold electricity generator assets acquired by it or transferred to it and to carry on any activities or business that relate to any electricity generator assets held by it.

Part 4 Arrangements for transfer of assets, staff and functions

Clause 13 authorises the Treasurer to make vesting orders under Schedule 4 for the purposes of an authorised transaction.

Clause 14 provides a power for the Treasurer to transfer the employment of an employee of an electricity generator to the employment of another public sector agency for the purposes of an authorised restructuring.

Clause 15 deals with the transfer of electricity generator assets between public sector agencies and provides that a public sector agency to which electricity generator

assets are transferred is, as the new operator of those assets, deemed to be an electricity generator and is entitled to be issued with any relevant operating licence.

Clause 16 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 electricity generator assets pursuant to an authorised transaction.

Clause 17 authorises the Electricity Assets Ministerial Holding Corporation to acquire land for the purposes of an authorised transaction by agreement or compulsory acquisition that the Corporation determines to be land on which electricity generator assets of an electricity generator are situated or land used or occupied by an electricity generator.

Part 5 Operation of other laws

Clause 18 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of an authorised transaction and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with an authorised transaction.

Clause 19 confers exemption from the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales* for agreements entered into by an electricity generator or transaction entity in connection with the management of electricity trading risks.

Clause 20 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 21 authorises the release of information by the Auditor-General for the purposes of an authorised transaction.

Clause 22 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of an authorised transaction.

Clause 23 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 24 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Part 6 Miscellaneous

Clause 25 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 26 provides for the proposed Act to bind the State and all other Australian jurisdictions.

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 provides for the issue of evidentiary certificates by the Treasurer.

Clause 30 provides for how documents are to be given or served for the purposes of the proposed Act.

Clause 31 is a general regulation-making power.

Schedule 1 Interpretative provisions

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

Schedule 2 Provisions concerning transaction SOC

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

Schedule 3 Corporate conversion of electricity generators and transaction SOC

Schedule 3 provides the procedure for the corporate conversion of an electricity generator or transaction SOC to a transaction 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 an authorised transaction. Vesting orders operate to vest assets, rights and liabilities of an electricity generator or transaction entity in the transferee specified in the order.

Schedule 5 Ownership restrictions in floated transaction companies

Schedule 5 provides for a maximum shareholding restriction to be applicable to a transaction company that is sold by means of an initial public offer of shares in the company.

Schedule 6 Savings, transitional and other provisions

Schedule 6 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.

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**Schedule 7 Amendment of Subordinate Legislation
Act 1989 No 146**

Schedule 7 makes an amendment that will exempt regulations under the proposed Act from being stage repealed.