

LEGISLATIVE COUNCIL

Electricity Network Assets (Authorised Transactions) Bill 2015

First print

Proposed amendments

No. 1 **Independent review of economic impact report**

Page 6. Insert after line 35:

9 Independent review of economic impact report

As soon as reasonably practicable after the commencement of this Act, the Treasurer must commission and publish an independent review of the Deloitte Access Economics report entitled “Economic Impact of State Infrastructure Strategy—Rebuilding NSW” published in November 2014.

No. 2 **Post-transaction independent review**

Page 6. Insert after line 35:

9 Post-transaction independent review

Within 12 months after completion of the last authorised transaction under this Act, the Treasurer is to commission and publish an independent review that:

- (a) reviews the powers of the Price Commissioner under this Act (with the review to include consultation with stakeholders), and
- (b) determines whether network charges have increased as a result of the authorised transactions.

No. 3 **Consequential**

Pages 11 and 12, clause 20, line 30 on page 11 to line 26 on page 12. Omit all words on those lines. Insert instead:

20 Arrangements for transferred employees

- (1) On the transfer by order under this Part of an employee’s employment from one employer (the *current employer*) to another employer (the *new employer*) the provisions of this section have effect.
- (2) If the employee is an apprentice or trainee under the *Apprenticeship and Traineeship Act 2001*:
 - (a) the new employer must apply under section 20 of that Act for approval to the transfer of the apprenticeship or traineeship to the new employer, and

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- (b) consent to the transfer is not required to be given by the apprentice or trainee or the current employer (despite section 20 (4) of the *Apprenticeship and Traineeship Act 2001*).
 - (3) An employee is not entitled in respect of the same period of service to claim a benefit under this Act and another law or instrument.
 - (4) The Treasurer may in connection with the operation of Schedule 4 give a certificate in writing as to the extent of the accrued rights to annual leave, extended or long service leave or sick leave that are retained by the employee under that Schedule, and such a certificate is evidence of the matters certified.
 - (5) Nothing in the *Long Service Leave Act 1955* prevents payment in connection with the transfer under this Act of the employment of an employee to the employment of a private sector entity of the monetary value of long service leave in lieu of an entitlement to that leave accrued as a networks employee before the transfer of the employee's employment.

No. 4 **Employment guarantee period**

Page 36. Insert after line 7:

Schedule 4 Employment guarantees

1 Employment guarantee period

For the purposes of this Schedule, there is a 5-year *employment guarantee period* starting on 1 July 2015 and ending on 30 June 2020.

No. 5 **Salary**

Page 36. Insert after line 7:

2 Salary

A continuing employee's salary under an enterprise agreement cannot be varied during the employment guarantee period except in accordance with the *Fair Work Act 2009* of the Commonwealth.

No. 6 **Minimum number of employees**

Page 36. Insert after line 7:

3 Minimum number of employees

- (1) For each relevant period during the employment guarantee period, the number of full time equivalent employees of a network operator must not be less than the appropriate staffing level for the relevant electricity network SOC.
- (2) The *appropriate staffing level* for an electricity network SOC is the number of full time equivalent employees that is sustainable in the context of business revenue resulting from the AER Final Determination for the SOC as determined in accordance with the business practices of the SOC, being:
 - (a) for Ausgrid—3,570 full time equivalent employees, or
 - (b) for Endeavour Energy—2,100 full time equivalent employees, or
 - (c) for TransGrid—1,000 full time equivalent employees.
- (3) For a network operator that is not an electricity network SOC, the *relevant electricity network SOC* is the electricity network SOC whose former distribution or transmission system is controlled or operated by the network operator.
- (4) If a relevant amendment is made to the AER Final Determination for an electricity network SOC, the Treasurer must engage a suitably qualified and

independent person (*the independent expert*) to determine whether any adjustment to operating expenditure allowance or capital expenditure allowance resulting from the relevant amendment would be applied in accordance with the business practices of the SOC as an adjustment to the appropriate staffing level of the SOC.

- (5) The Treasurer must give effect to any determination of the independent expert for any adjustment to the appropriate staffing level for the SOC by notifying the adjustment by order published in the Gazette. The adjustment then has effect for the purposes of this Schedule at the beginning of the next relevant period.
- (6) A *relevant amendment* is:
- (a) a change to the AER Final Determination resulting from a merits review or judicial review of the AER Final Determination (including any appeal from such a review) that changes the operational expenditure allowance or capital expenditure allowance for the network operator, or
 - (b) a new determination of the AER for the regulatory control period following the regulatory control period to which the AER Final Determination applies that results in a change to the operational expenditure allowance or capital expenditure allowance in the AER Final Determination for the network operator.

Note. This clause does not override or otherwise interfere with the rights of any individual employee in relation to termination of employment or redundancy that arise under a law of the Commonwealth or an industrial instrument made under a law of the Commonwealth.

No. 7 **Voluntary redundancies**

Page 36. Insert after line 7:

4 Voluntary redundancies

A continuing employee may be offered voluntary redundancy in accordance with the terms and conditions of an enterprise agreement or a redundancy policy that applies to the employee.

No. 8 **Forced redundancies**

Page 36. Insert after line 7:

5 Forced redundancies

There are to be no forced redundancies of continuing employees during the employment guarantee period, except by agreement between the affected employees (or a person authorised to act on their behalf or on behalf of a majority of them) and the employer, or in accordance with the *Fair Work Act 2009* of the Commonwealth.

No. 9 **Leave entitlements**

Page 36. Insert after line 7:

6 Leave entitlements

An employee whose employment is transferred under this Act retains any rights to annual leave, extended or long service leave or sick leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).

No. 10 **Recognition of service**

Page 36. Insert after line 7:

7 Recognition of service

The continuity of the employment of a continuing employee is taken not to have been broken by a transfer of employment under this Act, and service of the employee with the employee's current employer (including service deemed to be service with that employer) that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer.

No. 11 Enforcement of obligations

Page 36. Insert after line 7:

8 Enforcement of obligations

- (1) The Independent Pricing and Regulatory Tribunal is responsible for monitoring and enforcing the obligations of an employer under this Schedule.
- (2) In addition, a relevant employee guarantee is enforceable by an affected employee or a person authorised to act on behalf of an affected employee or a majority of affected employees. A **relevant employee guarantee** is a guarantee provided by this Schedule (except clauses 3, 9 and 15).
- (3) The Tribunal may direct an employer to take, within a specified time, any action that the Tribunal determines to be necessary to remedy any failure by the employer to comply with its obligations under this Schedule or to prevent the continuance or recurrence of such a failure.
- (4) An employer must comply with a direction of the Tribunal under this clause.
Maximum penalty: 5,000 penalty units.
- (5) This section does not limit the persons who are entitled to enforce the terms and conditions of an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth.

No. 12 Existing locations

Page 36. Insert after line 7:

9 Existing locations

- (1) A network operator must, for the duration of the employment guarantee period, maintain an administrative office, depot or other administrative centre within the vicinity of an existing administrative location that is in the area of operations of its distribution or transmission system.
- (2) An **existing administrative location** is an area in which an existing administrative office, depot or other administrative centre is operated by an electricity network SOC on the commencement of this Act.

No. 13 Relocation policies

Page 36. Insert after line 7:

10 Relocation policies

- (1) Any employee relocation policy (**the existing policy**) that was applicable to continuing employees on the commencement of the employment guarantee period must be maintained in its application to those employees for the duration of the employment guarantee period.
- (2) The existing policy cannot be amended during the employment guarantee period except by agreement between the affected employees (or a person authorised to act on their behalf or on behalf of a majority of them) and the employer, or in accordance with the *Fair Work Act 2009* of the Commonwealth.

No. 14 **Enterprise agreements**

Page 36. Insert after line 7:

11 Enterprise agreements

An enterprise agreement cannot be varied in its application to a continuing employee during the employment guarantee period except in accordance with the *Fair Work Act 2009* of the Commonwealth.

No. 15 **Superannuation**

Page 36. Insert after line 7:

12 Superannuation

- (1) A continuing employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee as an employee of an electricity network SOC on the commencement of this Act and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law.
- (2) The employer of the continuing employee is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this clause.
- (3) The employer of a continuing employee is not entitled to access funds deposited in a superannuation account of the employee unless that access is permitted by a law of the State or the Commonwealth.
- (4) The operation of this clause is not limited to the employment guarantee period.

No. 16 **Disputes**

Page 36. Insert after line 7:

13 Disputes

Any dispute that concerns a relevant employee guarantee may be resolved in accordance with the *Fair Work Act 2009* of the Commonwealth or any dispute resolution process applicable to the employee. A **relevant employee guarantee** is a guarantee provided by this Schedule (except clauses 3, 9 and 15).

No. 17 **Existing apprentices**

Page 36. Insert after line 7:

14 Existing apprentices

- (1) An apprentice who completes their training while a continuing employee during the employment guarantee period and who meets reasonable business hiring standards of the employer must be offered suitable employment.
- (2) Employment is **suitable** employment if it is employment in a trade that is relevant to the training in which the person was engaged as an apprentice.
- (3) The employment of a person pursuant to an offer of employment under this clause cannot be terminated for a period of 2 years after that employment commences (even if that 2 year period extends beyond the employment guarantee period), except:
 - (a) for serious misconduct, or
 - (b) pursuant to the proper application of reasonable disciplinary procedures, or

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- (c) by agreement with the employee.

No. 18 **Future apprentices**

Page 36. Insert after line 7:

15 Future apprentices

- (1) If the number of full time equivalent employees of a network operator for the final relevant period of a financial year within the employment guarantee period is less than or equal to 110% of the appropriate staffing level for the network operator, a sufficient number of apprentices must be employed during the following financial year (as new employees of the network operator) to achieve the guaranteed apprenticeship intake for the relevant electricity network SOC.
- (2) The *guaranteed apprenticeship intake* is:
 - (a) for Ausgrid—25 apprentices, or
 - (b) for Endeavour Energy—10 apprentices, or
 - (c) for TransGrid—5 apprentices.
- (3) For a network operator that is not an electricity network SOC, the *relevant electricity network SOC* is the electricity network SOC whose former distribution or transmission system is controlled or operated by the network operator.
- (4) The following financial year to which a guaranteed apprenticeship intake applies need not be within the employment guarantee period.

No. 19 **Cadets, trainees and graduate engineers**

Page 36. Insert after line 7:

16 Cadets, trainees and graduate engineers

A person employed as a cadet, trainee or graduate engineer is an employee for the purposes of this Schedule (including for the purposes of employee guarantees under this Schedule).

No. 20 **Fixed term employees**

Page 36. Insert after line 7:

17 Fixed term employees

- (1) A fixed term employee is an employee for the purposes of this Schedule (including for the purposes of employee guarantees under this Schedule).
- (2) In this clause, *fixed term employee* means an employee whose terms and conditions of employment are provided by an individual contract that provides for a fixed term of employment and not by an award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees.

No. 21 **Contract employees**

Page 36. Insert after line 7:

18 Contract employees

- (1) A contract employee is an employee for the purposes of this Schedule (including for the purposes of employee guarantees under this Schedule).
- (2) In this clause, *contract employee* means an employee whose terms and conditions of employment are provided by an individual contract and not by an award, agreement or other industrial instrument (under a law of the State or

the Commonwealth) that provides for the terms and conditions of employment of employees.

No. 22

Machinery provisions

Page 36. Insert after line 7:

19 Proceedings for offences

- (1) Proceedings for an offence under this Schedule may be dealt with summarily before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence to which this clause applies are brought in the Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any other provision of this Schedule, \$50,000 or the maximum penalty provided by this Schedule, whichever is the lesser.
- (3) If proceedings for an offence to which this clause applies are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Schedule in respect of the offence.

20 Interpretation—employees of network operator

- (1) A person is an employee of a network operator for the purposes of this Schedule if the person carries out work solely or primarily in connection with the business of the network operator and is employed by:
 - (a) the network operator, or
 - (b) an associated entity of the network operator, or
 - (c) an entity that provides the services of the person exclusively to the network operator on an ongoing basis.
- (2) An entity is an *associated entity* of a network operator if:
 - (a) the network operator has an ownership interest in the entity or the entity has an ownership interest in the network operator, or
 - (b) another entity has an ownership interest in both the entity and the network operator.

21 Calculation of number of full time equivalent employees

- (1) The number of full time equivalent employees of a network operator for a relevant period is to be calculated for the purposes of this Schedule as $F + A/B$, where:

F is the average number of full time employees of the network operator during the relevant period.

A is the total number of hours worked during the relevant period by all part time employees of the network operator.

B is the average number of hours worked during the relevant period by all full time employees of the network operator.
- (2) To calculate the average number of hours worked by full time employees of an employer, overtime is to be excluded.
- (3) In this clause:

full time employee means an employee whose standard or average hours of work per week is 35 hours or more.

part time employee means an employee who is not a full time employee.

22 Obligations of controller and operator as single entity

If the controller and operator of a distribution or transmission system are separate entities (with the result that each is a network operator of the distribution or transmission system), an obligation of the network operator under this Schedule is an obligation of the controller and operator combined, as if they were a single entity.

Note. For example, the minimum number of employees provided for by this Schedule applies to the total employee numbers of both the controller and the operator.

23 Definitions

In this Schedule:

AER Final Determination for an electricity network SOC means the determination of the AER for the electricity network SOC published on 30 April 2015.

continuing employee means:

- (a) an employee of an electricity network SOC, or
- (b) an employee whose employment is transferred under this Act.

employment guarantee period means the period of 5 years starting on 1 July 2015 and ending on 30 June 2020.

network operator means each of the following:

- (a) Ausgrid,
- (b) Endeavour Energy,
- (c) TransGrid,
- (d) any public sector agency that becomes a network operator of the distribution system or transmission system of Ausgrid, Endeavour Energy or TransGrid for the purposes of an authorised transaction,
- (e) an authorised network operator (meaning an entity that controls or operates a transacted distribution system or transacted transmission system).

relevant period means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April in each year.