

LEGISLATIVE COUNCIL

Electricity Network Assets (Authorised Transactions) Bill 2015

First print

Proposed amendments

No. 1 **Price guarantee - the environment**

Page 5, clause 8 (1) (b), line 44. Insert “and for the long term interests of the environment” after “electricity”.

No. 2 **Price guarantee - clean energy**

Page 5, clause 8 (1). Insert after line 44:

- (c) the authorised network operator will promote investment in and the operation and use of renewable energy technology, energy storage technologies, energy efficiency, demand management and demand responsiveness, and

No. 3 **Price guarantee - no disconnection charge**

Page 6, clause 8 (1). Insert after line 2:

- (d) the authorised network operator will not charge any customer a fee for the disconnection of a service (despite any determination of the AER or any other regulator), and

No. 4 **Price guarantee - no unreasonable charges in connection with renewable energy**

Page 6, clause 8 (1). Insert before line 3:

- (e) the authorised network operator will not impose any unreasonable charge on any customer that is detrimental to the customer for the installation or use of any lawfully connected renewable energy source or renewable energy storage, and

No. 5 **Price guarantee - no additional charges for connection of generator**

Page 6, clause 8 (1). Insert before line 3:

- (f) the authorised network operator will not impose an additional charge on a customer for any connection of a generator of less than 10 kilowatt capacity to the grid beyond the reasonable fees associated with metering and the physical work of creating the connection, as determined by the Independent Pricing and Regulatory Tribunal (despite any determination of the AER or any other regulator).

No. 6 **Transaction arrangements not to seek to prevent, or create right to compensation for, certain changes**

Page 6. Insert after line 35:

9 Transaction arrangements not to seek to prevent, or create right to compensation for, certain changes

The Treasurer must ensure that the transaction arrangements for an authorised transaction are such that they do not seek to prevent, or create any right to compensation for, any of the following future changes or developments:

- (a) changes to laws of the State with respect to the regulation of electricity supply (including for the purposes of any free trade or other international agreement to which Australia is a party),
- (b) changes to licences or other regulatory instruments relating to electricity supply under the laws of the State,
- (c) changes to the environment protection legislation (within the meaning of the *Protection of the Environment Administration Act 1991*),
- (d) changes in the demand for electricity in the State,
- (e) technological developments that reduce the amount of energy used in the State,
- (f) changes in Government policies that have the effect of changing the demand for, or the usage of, electricity in the State,
- (g) changes in costs or other economic inputs, whether or not they are affected by Government policy.

No. 7 **Transaction arrangements to prevent use of investor-state dispute settlement**

Page 6. Insert before line 36:

10 Transaction arrangements to prevent use of investor-state dispute settlement

The Treasurer must ensure that the transaction arrangements for an authorised transaction are such that they prevent any claim that a party to the transaction arrangements might otherwise have to attempt to settle a dispute with the Government over any matter arising under the transaction arrangements using an investor-state dispute settlement (ISDS) mechanism contained in an international free trade or other agreement to which Australia is a party.

No. 8 **Transfer of employment to private sector requires consent**

Page 11, clause 19 (2), lines 25 and 26. Omit all words on those lines. Insert instead:

- (2) A transfer of employment under this section cannot be made without the consent of the networks employee transferred.

No. 9 **Employment guarantee for employees transferred to private sector**

Page 11, clause 19 (3), lines 27–29. Omit all words on those lines. Insert instead:

- (3) The employment of a transferred employee with the new employer is to be on the same terms and conditions as applied to the employee as a networks employee immediately before the transfer of employment, until those terms and conditions are varied in accordance with law.
- (4) Those terms and conditions cannot be varied during any employment guarantee period for the transferred employee to reduce the salary (including allowances) or other employment benefits of the transferred employee except by agreement entered into by or on behalf of the transferred employee.
- (5) The employment of a transferred employee with the new employer cannot be terminated by the new employer during any employment guarantee period for the transferred employee, except:

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- (a) for serious misconduct, or
 - (b) pursuant to the proper application of reasonable disciplinary procedures, or
 - (c) by agreement with the employee.
- (6) A transferred employee has an **employment guarantee period** of 5 years (starting on the employee's transfer date) but only if the transferred employee was a networks employee on the date of introduction into Parliament of the Bill for this Act and was on that date:
- (a) a permanent employee, or
 - (b) a casual employee, or
 - (c) a temporary employee.

In the case of a transferred employee who is a temporary employee whose existing term of employment would otherwise expire during that period of 5 years, the employment guarantee period of that temporary employee is the balance of the term of his or her employment on the employee's transfer date.

Note. There is no employment guarantee period for contract employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

- (7) In this section:

casual employee means an employee whose employment is in a category of employment that is described in or classified under a relevant award as casual employment or who is otherwise engaged as a casual employee.

contract employee means an employee whose terms and conditions of employment are provided by an individual contract and not by a relevant award.

permanent employee means an employee whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.

relevant award means any 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.

temporary employee means an employee (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a relevant award as temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

transfer date of a transferred employee means the date on which the employment of the transferred employee is transferred under this section to the new employer.

No. 10 **Apprenticeship guarantee**

Page 11. Insert after line 29:

20 Apprenticeship guarantee

The Treasurer is to develop a plan that ensures that a sufficient number of apprenticeships are maintained in the electricity distribution or transmission businesses of private sector entities to meet the projected future needs of the electricity industry in the State, having regard to training provided by other organisations and the projected future needs of the electricity industry and related industries.

No. 11 **Transfer payments**

Page 12. Insert after line 26:

21 Payments to employees leaving public sector employment

- (1) The Treasurer (or another public sector agency designated by the Treasurer) is required to enter into agreements or other arrangements with respect to the making of transfer payments to the persons who were employed by electricity network SOC on 1 January 2015, who had at least 1 year of service as at that date and who cease to be employed by an electricity network SOC because of a transfer of employment under this Part or any other cessation of employment other than:
 - (a) for serious misconduct, or
 - (b) pursuant to the proper application of reasonable disciplinary procedures, or
 - (c) by agreement with the employee.
- (2) A transfer payment is an amount equivalent to:
 - (a) if the employee has at least 1 year of service but less than 2 years—7.5 weeks of the employee's salary, or
 - (b) if the employee has at least 2 years of service but less than 3 years—13.125 weeks of the employee's salary, or
 - (c) if the employee has at least 3 years of service but less than 4 years—18.75 weeks of the employee's salary, or
 - (d) if the employee has at least 4 years of service but less than 5 years—22.25 weeks of the employee's salary, or
 - (e) if the employee has at least 5 years of service but less than 6 years—26.25 weeks of the employee's salary, or
 - (f) if the employee has at least 6 or more years of service—30 weeks of the employee's salary.
- (3) A transfer payment is in addition to any other payment to which the person is entitled.
- (4) In this section, **salary** does not include allowances.

No. 12 Termination payments—Essential Energy

Page 12. Insert before line 27:

21 Termination payments to employees leaving employment by Essential Energy

- (1) The Treasurer (or another public sector agency designated by the Treasurer) is required to enter into agreements or other arrangements with respect to the making of payments to the persons who were employed by Essential Energy on 1 January 2015, who had at least 1 year of service as at that date and who cease to be employed by Essential Energy for any reason other than:
 - (a) for serious misconduct, or
 - (b) pursuant to the proper application of reasonable disciplinary procedures, or
 - (c) by agreement with the employee.
- (2) A payment under this section is an amount equivalent to:
 - (a) if the employee has at least 1 year of service but less than 2 years—7.5 weeks of the employee's salary, or
 - (b) if the employee has at least 2 years of service but less than 3 years—13.125 weeks of the employee's salary, or
 - (c) if the employee has at least 3 years of service but less than 4 years—18.75 weeks of the employee's salary, or
 - (d) if the employee has at least 4 years of service but less than 5 years—22.25 weeks of the employee's salary, or

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- (e) if the employee has at least 5 years of service but less than 6 years—26.25 weeks of the employee’s salary, or
 - (f) if the employee has at least 6 or more years of service—30 weeks of the employee’s salary.
- (3) A payment under this section is in addition to any other payment to which the person is entitled.
 - (4) In this section, **salary** does not include allowances.

No. 13 **Transfer payments**

Page 12, clause 21, line 36. Insert “(but without affecting any entitlement to a transfer payment under section 21)” after “transfer”.

No. 14 **Protection of certain electricity works**

Page 15. Insert after line 15:

27 Protection of certain electricity works

- (1) In this section:
 - registered easement** means an easement that is registered:
 - (a) in the Register kept under the *Real Property Act 1900*, in the case of land under the provisions of that Act, or
 - (b) in the General Register of Deeds kept under the *Conveyancing Act 1919*, in the case of any other land.
 - relevant electricity works** means electricity works situated in, on or over land not owned by the authorised network operator having control of those works, whether or not their presence, operation or use is supported by an agreement or other authority, but not any electricity works whose presence in, on or over the land is supported by a registered easement for the benefit of the authorised network operator.
- (2) An authorised network operator is required to send a written notice to each owner of land in, on or over which any relevant electricity works over which the operator has control are situated.
- (3) That notice must:
 - (a) inform the owner that the presence in, on or over the land of the relevant electricity works is not supported by a registered easement in favour of the authorised network operator, and
 - (b) inform the owner of the potential consequences under the ES Act of the presence of those electricity works including, but not limited to, the potential consequences under the following sections of that Act:
 - (i) section 49 (Obstruction of electricity works),
 - (ii) section 49A (Excavation work affecting electricity works),
 - (iii) section 51 (Ownership of electricity works), and
 - (c) contain an offer to pay the owner fair market value to create and register an easement for the benefit of the network operator that supports the presence, in, on or over the land of the relevant electricity works.
- (4) An owner of land in, on or over which relevant electricity works are situated that has not been given a notice under this section within a period of 5 months after the authorised network operator assumes control of works is entitled to recover rent from the authorised network operator for the presence of the electricity works in, on or over the land.
- (5) Any such rent recoverable is to be at a fair market rate and is to include any arrears in rent accruing from the time at which the authorised network operator assumed control of the electricity works.

Page 25. Insert after line 1:

49 Leases, orders and other documents to be released to Legislative Council

- (1) An order is taken to have been made under Standing Order No 52 of the Legislative Council for the tabling in the Legislative Council by the Government of the following documents under this Act, subject to any claim of privilege made and dealt with in accordance with that Standing Order:
 - (a) any lease of network infrastructure assets to the private sector,
 - (b) any licence granted by the Minister under the ES Act in accordance with a request of the Treasurer under section 36,
 - (c) any order made by the Treasurer under this Act that has not been made public by the Treasurer,
 - (d) any other documents relating to an authorised transaction that have not been made public.
- (2) That order is taken to require the tabling of the documents:
 - (a) in the case of a lease—no later than 7 days after the lease is signed, or
 - (b) in the case of a licence—no later than 7 days after the licence is granted, or
 - (c) in the case of an order made by the Treasurer—no later than 7 days after the order is made, or
 - (d) in any other case—no later than 7 days after the document comes into existence.