

**ELECTRICITY COMMISSION (AMENDMENT) ACT  
1994 No. 22**

NEW SOUTH WALES

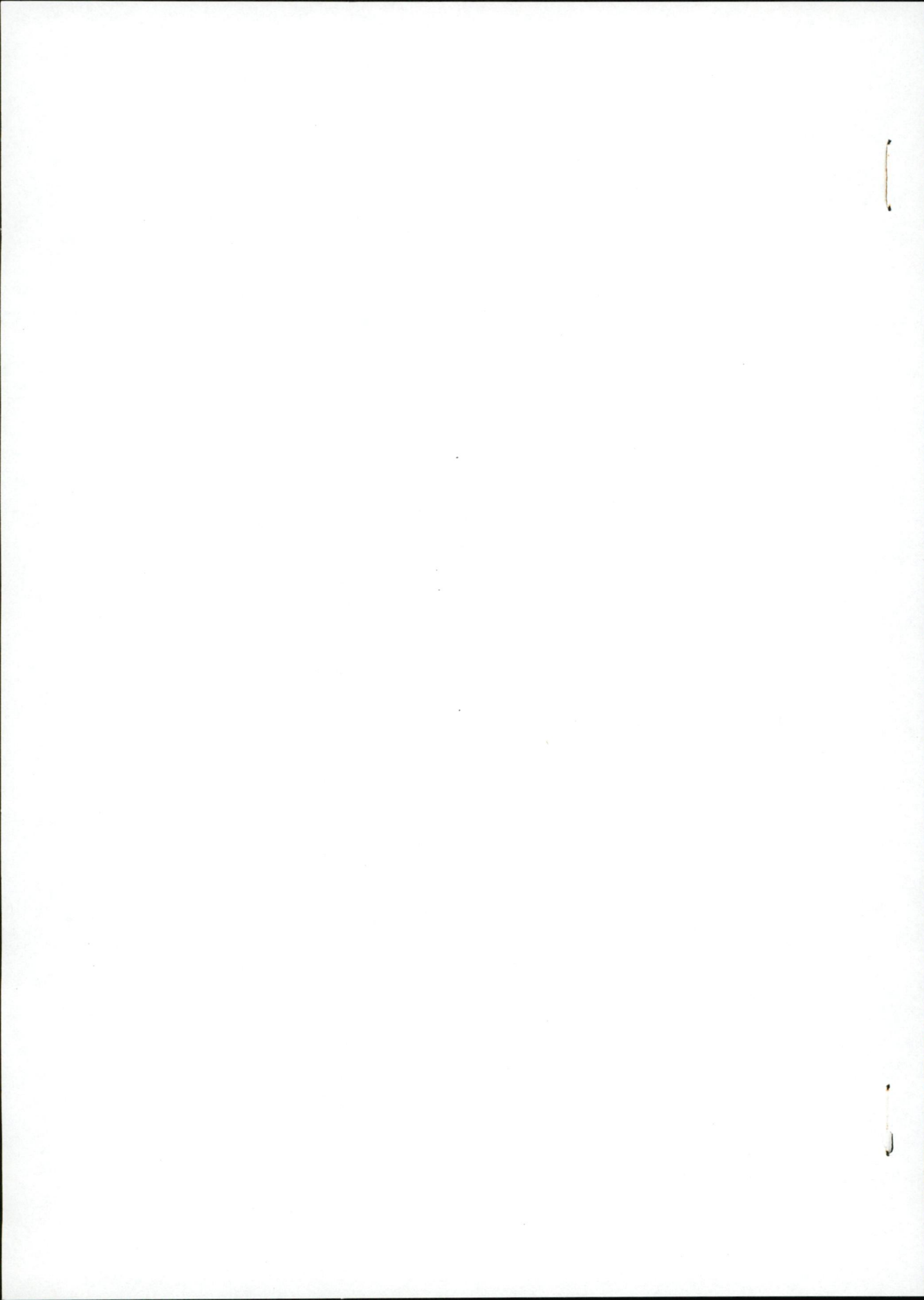


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Electricity Commission Act 1950 No. 22

**SCHEDULE 1—AMENDMENTS**

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**ELECTRICITY COMMISSION (AMENDMENT) ACT  
1994 No. 22**

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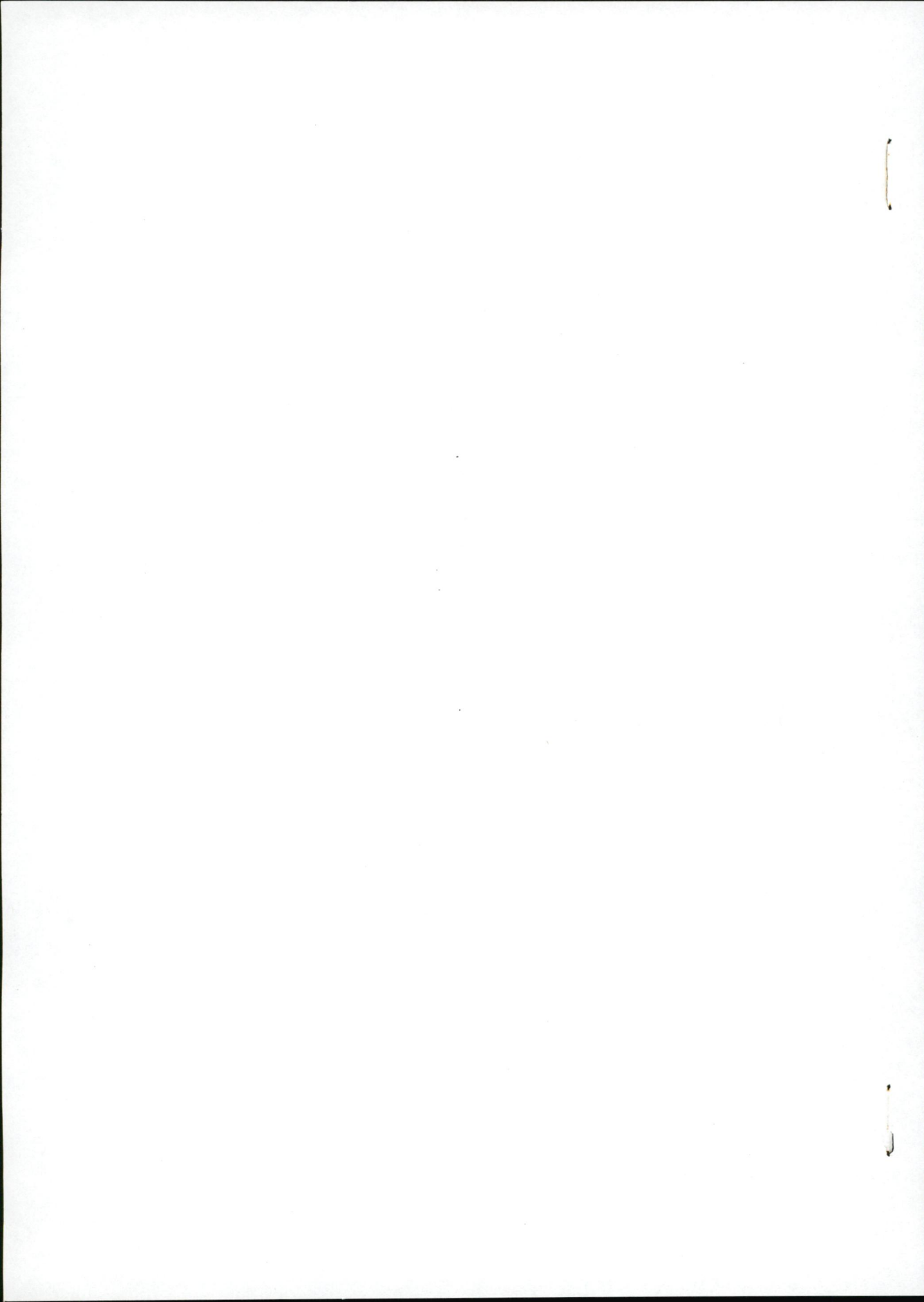


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SCHEDULE 1—AMENDMENTS

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**ELECTRICITY COMMISSION (AMENDMENT) ACT  
1994 No. 22**

**NEW SOUTH WALES**



**Act No. 22, 1994**

An Act to amend the Electricity Commission Act 1950 to provide for the establishment of subsidiary companies by the Electricity Commission.  
[Assented to 30 May 1994]

*Electricity Commission (Amendment) Act 1994 No. 22*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Electricity Commission (Amendment) Act 1994.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Electricity Commission Act 1950 No. 22**

3. The Electricity Commission Act 1950 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**Subsidiary company**” means a company in which the Commission has a controlling interest (as referred to in Division 2A of Part 3).

(2) Section 5B (**Delegation**):

(a) From section 5B (1) (d), omit “or” where lastly occurring.

(b) At the end of section 5B (1) (e), insert:

; or

(f) a subsidiary company,

(3) Part 3, Division 2A:

After Division 2, insert:

**Division 2A—Subsidiary companies**

**Definitions**

8A. In this Division:

“**company**” means a company incorporated or taken to be incorporated under the Corporations Law of New South Wales;

SCHEDULE 1—AMENDMENTS—*continued*

“**exercise**” a function includes perform a duty;

“**function**” includes a power, authority or duty.

**Subsidiary companies**

8B. (1) Any function of the Commission may be exercised by a company in which the Commission has a controlling interest. Such a company is referred to in this Act as a “**subsidiary company**”.

(2) For that purpose, the Commission may, with the approval of the Minister:

(a) form, or participate in the formation of, a subsidiary company; or

(b) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company.

(3) The Commission must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.

(4) A subsidiary company represents the Crown to the same extent (if any) as the Commission. However, a subsidiary company formed for a commercial purpose in connection with functions under Division 4A is not and does not represent the Crown.

**Delegations**

8C. (1) A function of the Commission may not be exercised by a subsidiary company unless it is duly delegated to the company under this Act. Such a delegation is automatically revoked if the company ceases to be a subsidiary company.

(2) A function so delegated may be exercised in the name of the subsidiary company.

(3) The subsidiary company may subdelegate any functions delegated to it, unless this is forbidden in the instrument of delegation to the company.

SCHEDULE 1—AMENDMENTS—*continued*

(4) The Minister may direct the Commission to delegate to one or more subsidiary companies all or any of its functions (other than its power of delegation, and as indicated in the direction) or to revoke or vary any such delegation. Nothing in this subsection limits the power of the Minister to give directions to the Commission under section 7.

(5) While the memorandum or articles of association of a subsidiary company do not provide that one of the directors of the company is to be a member of the staff of the company and elected by staff of the company in accordance with regulations under this Act:

- (a) any existing delegation to the company under this section is automatically revoked; and
- (b) no delegation may be made to the company under this section.

For the purposes of this subsection, staff of a subsidiary company include staff employed by the company or staff of the Commission seconded to the company. Regulations may be made for the purposes of elections referred to in this subsection.

**Stamp duty**

8D. Stamp duty is not payable in relation to:

- (a) the formation of, or the acquisition of shares in, a company that is or is anticipated to be a subsidiary company; or
- (b) the registration of such a company; or
- (c) the issue or transfer of shares in such a company; or
- (d) a document or instrument evidencing any delegation to such a company under this Act.

**Application of certain provisions to subsidiary companies**

8E. (1) Except as provided by the regulations, a reference to the Commission in:

- (a) section 14, 77, 78, 79, 80, 81, 82, 83, 84, 85 or 86 of this Act; or



SCHEDULE 1—AMENDMENTS—*continued*

(b) section 14A, 27, 27AA or 27AC of the Electricity Act 1945; or

(c) the prescribed provisions of those or any other Acts, includes a reference to a subsidiary company.

(2) Except as provided by the regulations, the following provisions apply to a subsidiary company in the same way and to the same extent (only) as they apply to the Commission:

(a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962;

(b) the Freedom of Information Act 1988;

(c) Chapter 7 of the Local Government Act 1993;

(d) the prescribed provisions of those or any other Acts.

(3) For the purposes of sections 88 and 88A of the Conveyancing Act 1919, a subsidiary company is taken to be a public authority constituted by Act of Parliament.

(4) For the purposes of:

(a) the Public Sector Management Act 1988; and

(b) the Independent Commission Against Corruption Act 1988; and

(c) the prescribed provisions of any other Acts, a subsidiary company is taken to be a public authority.

(5) A subsidiary company is taken to be a public authority for the purposes of the Environmental Planning and Assessment Act 1979 and a prescribed person for the purposes of section 91A of that Act.

(6) For the purposes of an instrument under the Environmental Planning and Assessment Act 1979:

(a) a subsidiary company is taken to be a public authority; and

(b) the carrying on by a subsidiary company of an undertaking for the supply of electricity is taken to be a public utility undertaking, and a reference to the person carrying on that undertaking is to be construed as a reference to the subsidiary company.

SCHEDULE 1—AMENDMENTS—*continued*

(7) The reference to the Commission in Schedule 1 to the Government Pricing Tribunal Act 1992 includes a reference to a subsidiary company, but only in relation to the transmission and supply of electricity.

**Transfer of staff**

8F. (1) The Minister may by order transfer the employment of specified staff of the Commission to a subsidiary company.

(2) The staff remain staff of the Commission, and are merely seconded to the subsidiary company.

(4) Section 13A (**Definitions**):

(a) In section 13A (1), omit the definition of “affiliate”.

(b) Insert in section 13A (1) in alphabetical order:

“**subsidiary company**” includes a corporation with which the Commission has made an arrangement under section 34C and in which the Commission retains a controlling interest.

(5) Section 13C (**Subsidiary companies, partnerships, joint ventures etc.**):

Omit “an affiliate” wherever occurring, insert instead “a subsidiary company”.

(6) Section 13D (**Acquisition of shares by the Commission**):

Omit the section.

(7) Section 13E (**Guarantee by the Commission**):

From section 13E (a), omit “an affiliate”, insert instead “a subsidiary company”.

(8) Section 78 (**Assignment of certain easements**):

(a) In section 78 (1), after “assign to”, insert “a subsidiary company,”.

(b) In section 78 (3), after “Commission,”, insert “the subsidiary company,”.

*Electricity Commission (Amendment) Act 1994 No. 22*

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SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 87 (**Regulations**):

At the end of section 87, insert:

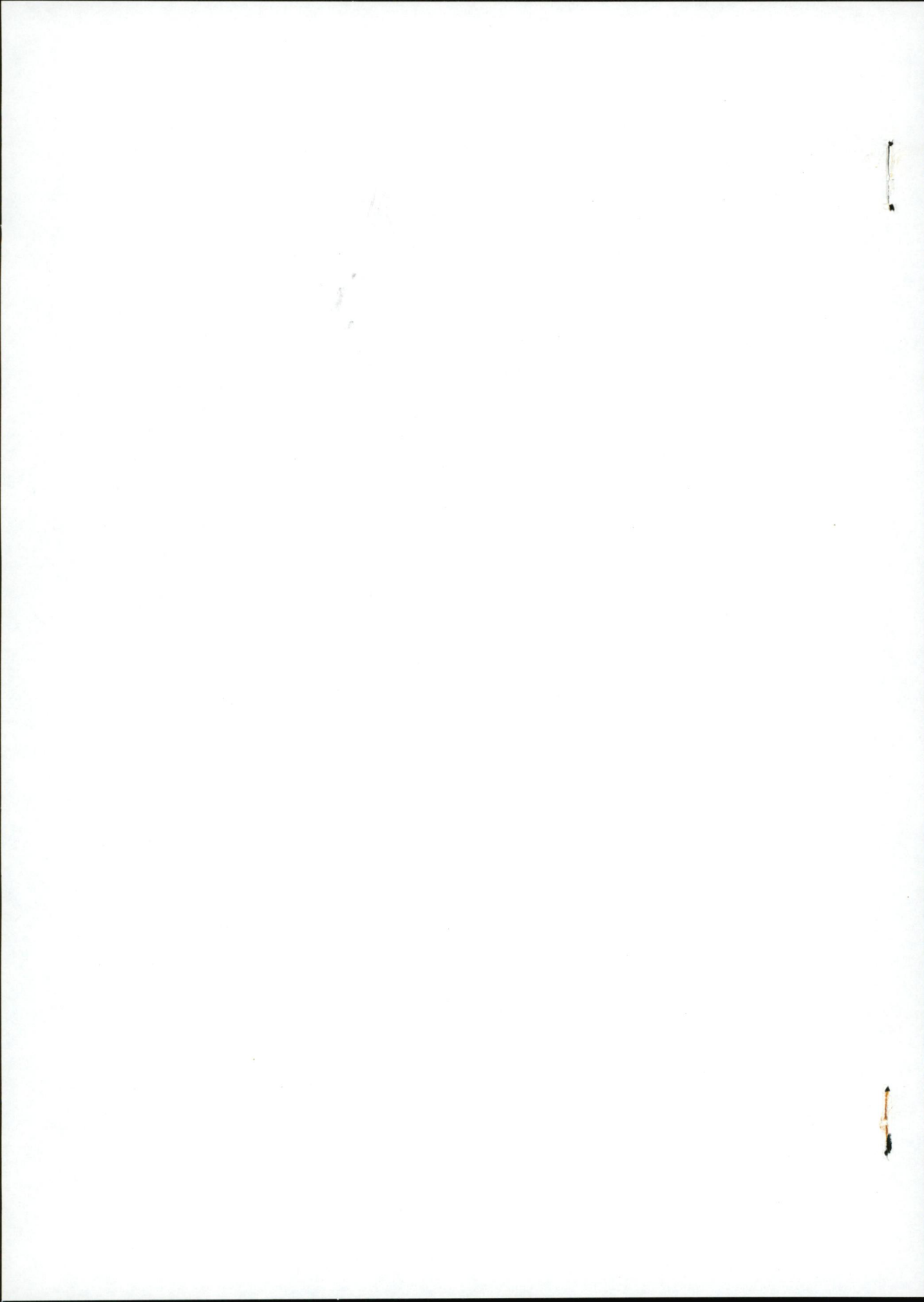
(2) The regulations may contain provisions of a savings or transitional nature consequential on a company becoming or ceasing to be a subsidiary company or on the delegation or the revocation or variation of a delegation of functions to a subsidiary company.

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from a date that is earlier than the date of publication of the provision in the Gazette.

(4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a subsidiary company), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the State, an authority of the State or a subsidiary company) in respect of anything done or omitted to be done before the date of its publication.
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[*Minister's second reading speech made in—  
Legislative Assembly on 21 April 1994  
Legislative Council on 5 May 1994*]





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SECOND PRINT

**ELECTRICITY COMMISSION (AMENDMENT) BILL 1994**

NEW SOUTH WALES

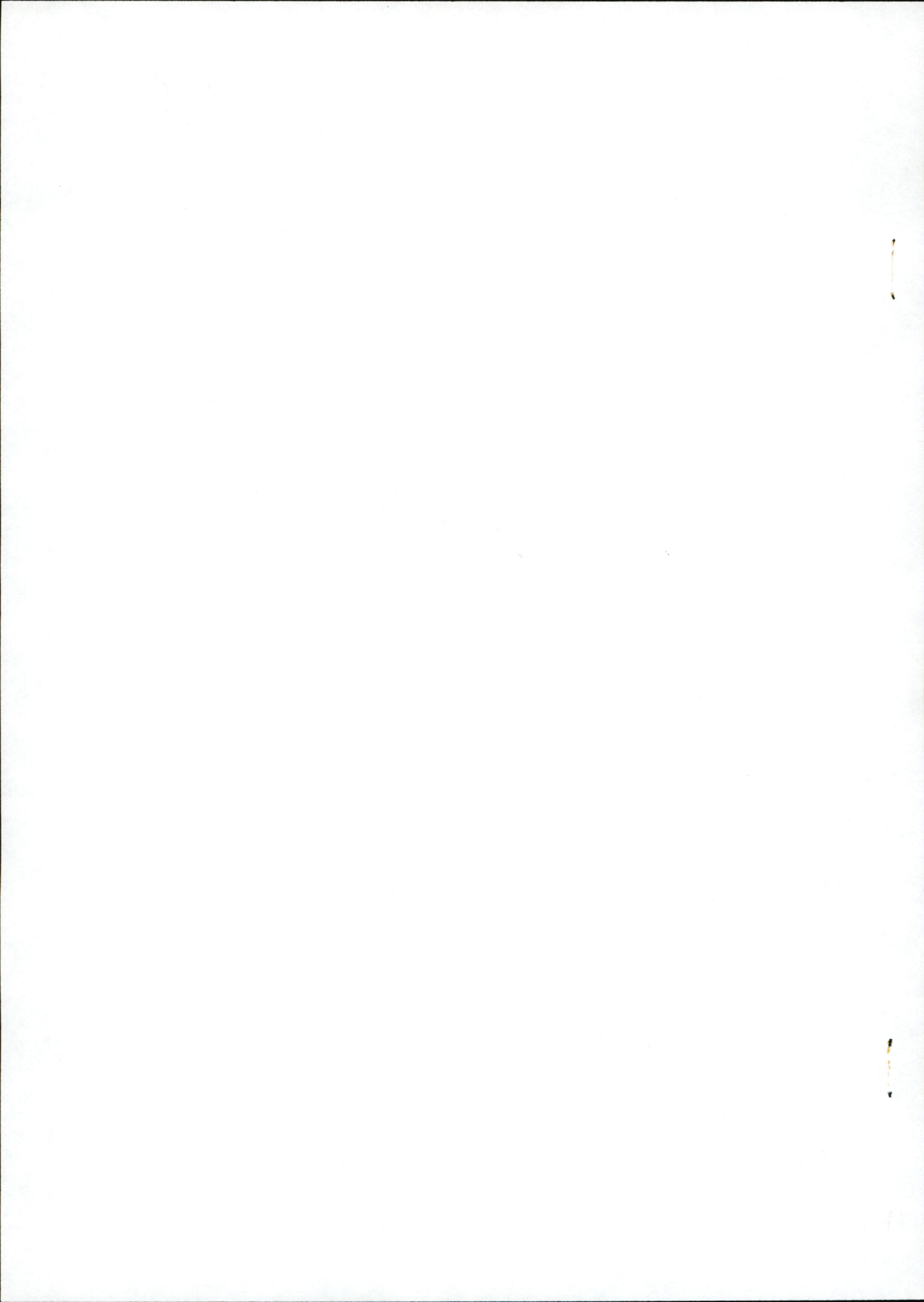


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Electricity Commission Act 1950 No. 22

SCHEDULE 1—AMENDMENTS

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No.           , 1994

An Act to amend the Electricity Commission Act 1950 to provide for the establishment of subsidiary companies by the Electricity Commission.

*Electricity Commission (Amendment) 1994*

---

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Electricity Commission (Amendment) Act 1994.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Electricity Commission Act 1950 No. 22**

3. The Electricity Commission Act 1950 is amended as set out in Schedule 1.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

15        “**Subsidiary company**” means a company in which the Commission has a controlling interest (as referred to in Division 2A of Part 3).

(2) Section 5B (**Delegation**):

(a) From section 5B (1) (d), omit “or” where lastly occurring.

20        (b) At the end of section 5B (1) (e), insert:

          ; or

          (f) a subsidiary company,

(3) Part 3, Division 2A:

After Division 2, insert:

25                               **Division 2A—Subsidiary companies**

**Definitions**

8A. In this Division:

30        “**company**” means a company incorporated or taken to be incorporated under the Corporations Law of New South Wales;

*Electricity Commission (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

“**exercise**” a function includes perform a duty;  
 “**function**” includes a power, authority or duty.

**Subsidiary companies**

8B. (1) Any function of the Commission may be exercised by a company in which the Commission has a controlling interest. Such a company is referred to in this Act as a “**subsidiary company**”. 5

(2) For that purpose, the Commission may, with the approval of the Minister: 10

(a) form, or participate in the formation of, a subsidiary company; or

(b) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company. 15

(3) The Commission must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.

(4) A subsidiary company represents the Crown to the same extent (if any) as the Commission. However, a subsidiary company formed for a commercial purpose in connection with functions under Division 4A is not and does not represent the Crown. 20

**Delegations** 25

8C. (1) A function of the Commission may not be exercised by a subsidiary company unless it is duly delegated to the company under this Act. Such a delegation is automatically revoked if the company ceases to be a subsidiary company. 30

(2) A function so delegated may be exercised in the name of the subsidiary company.

(3) The subsidiary company may subdelegate any functions delegated to it, unless this is forbidden in the instrument of delegation to the company. 35



*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

5 (4) The Minister may direct the Commission to delegate to one or more subsidiary companies all or any of its functions (other than its power of delegation, and as indicated in the direction) or to revoke or vary any such delegation. Nothing in this subsection limits the power of the Minister to give directions to the Commission under section 7.

10 (5) While the memorandum or articles of association of a subsidiary company do not provide that one of the directors of the company is to be a member of the staff of the company and elected by staff of the company in accordance with regulations under this Act:

15 (a) any existing delegation to the company under this section is automatically revoked; and

(b) no delegation may be made to the company under this section.

20 For the purposes of this subsection, staff of a subsidiary company include staff employed by the company or staff of the Commission seconded to the company. Regulations may be made for the purposes of elections referred to in this subsection.

**Stamp duty**

8D. Stamp duty is not payable in relation to:

25 (a) the formation of, or the acquisition of shares in, a company that is or is anticipated to be a subsidiary company; or

(b) the registration of such a company; or

(c) the issue or transfer of shares in such a company; or

30 (d) a document or instrument evidencing any delegation to such a company under this Act.

**Application of certain provisions to subsidiary companies**

8E. (1) Except as provided by the regulations, a reference to the Commission in:

35 (a) section 14, 77, 78, 79, 80, 81, 82, 83, 84, 85 or 86 of this Act; or

*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) section 14A, 27, 27AA or 27AC of the Electricity Act 1945; or
- (c) the prescribed provisions of those or any other Acts, includes a reference to a subsidiary company. 5
- (2) Except as provided by the regulations, the following provisions apply to a subsidiary company in the same way and to the same extent (only) as they apply to the Commission:
- (a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962; 10
- (b) the Freedom of Information Act 1988;
- (c) Chapter 7 of the Local Government Act 1993;
- (d) the prescribed provisions of those or any other Acts.
- (3) For the purposes of sections 88 and 88A of the Conveyancing Act 1919, a subsidiary company is taken to be a public authority constituted by Act of Parliament. 15
- (4) For the purposes of:
- (a) the Public Sector Management Act 1988; and
- (b) the Independent Commission Against Corruption Act 1988; and 20
- (c) the prescribed provisions of any other Acts, a subsidiary company is taken to be a public authority.
- (5) A subsidiary company is taken to be a public authority for the purposes of the Environmental Planning and Assessment Act 1979 and a prescribed person for the purposes of section 91A of that Act. 25
- (6) For the purposes of an instrument under the Environmental Planning and Assessment Act 1979:
- (a) a subsidiary company is taken to be a public authority; and 30
- (b) the carrying on by a subsidiary company of an undertaking for the supply of electricity is taken to be a public utility undertaking, and a reference to the person carrying on that undertaking is to be construed as a reference to the subsidiary company. 35

*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

(7) The reference to the Commission in Schedule 1 to the Government Pricing Tribunal Act 1992 includes a reference to a subsidiary company, but only in relation to the transmission and supply of electricity.

**Transfer of staff**

8F. (1) The Minister may by order transfer the employment of specified staff of the Commission to a subsidiary company.

(2) The staff remain staff of the Commission, and are merely seconded to the subsidiary company.

(4) Section 13A (**Definitions**):

(a) In section 13A (1), omit the definition of “affiliate”.

(b) Insert in section 13A (1) in alphabetical order:

“**subsidiary company**” includes a corporation with which the Commission has made an arrangement under section 34C and in which the Commission retains a controlling interest.

(5) Section 13C (**Subsidiary companies, partnerships, joint ventures etc.**):

Omit “an affiliate” wherever occurring, insert instead “a subsidiary company”.

(6) Section 13D (**Acquisition of shares by the Commission**):

Omit the section.

(7) Section 13E (**Guarantee by the Commission**):

From section 13E (a), omit “an affiliate”, insert instead “a subsidiary company”.

(8) Section 78 (**Assignment of certain easements**):

(a) In section 78 (1), after “assign to”, insert “a subsidiary company,”.

(b) In section 78 (3), after “Commission,”, insert “the subsidiary company,”.



*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 87 (**Regulations**):

At the end of section 87, insert:

(2) The regulations may contain provisions of a savings or transitional nature consequential on a company becoming or ceasing to be a subsidiary company or on the delegation or the revocation or variation of a delegation of functions to a subsidiary company. 5

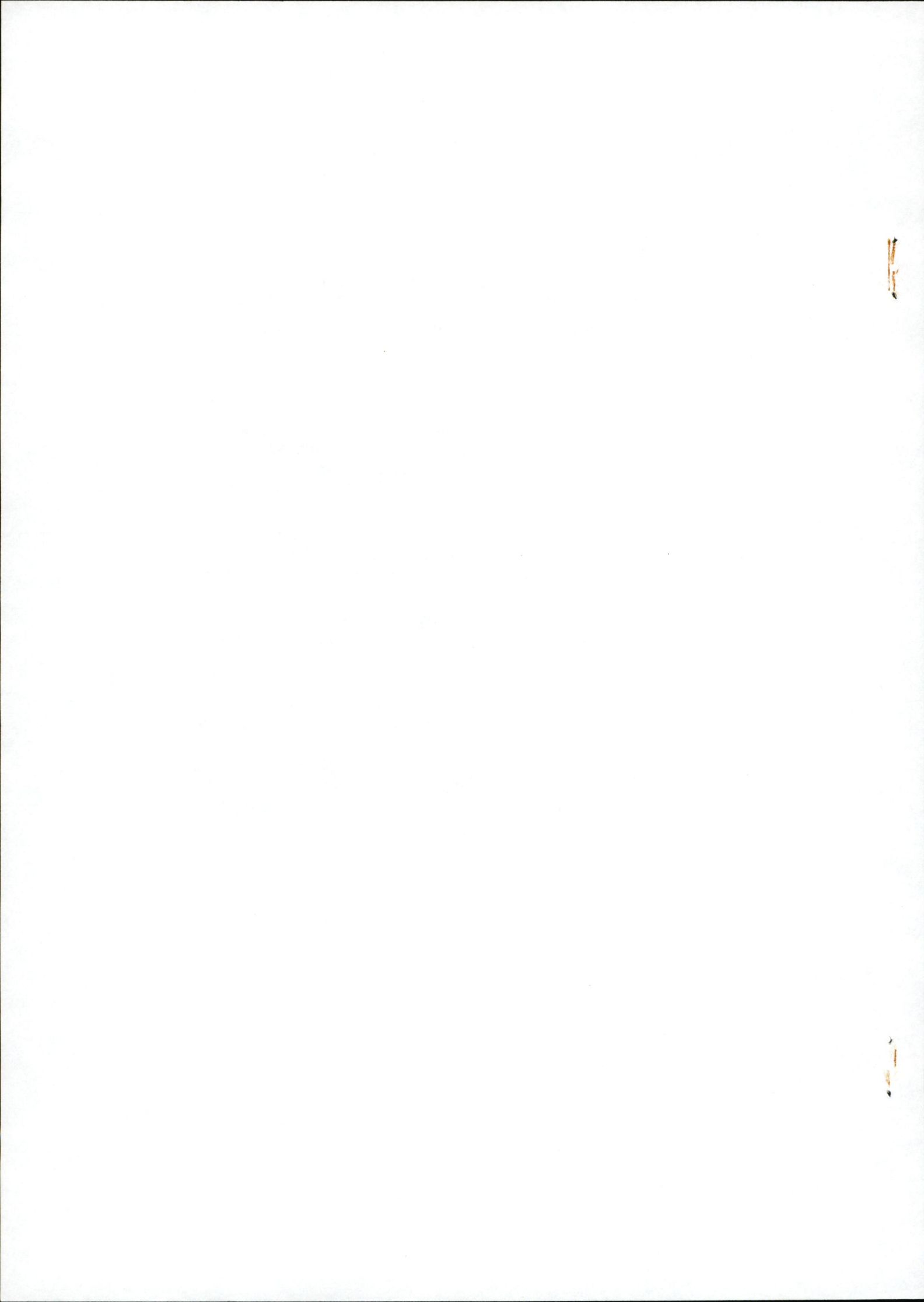
(3) Any such savings or transitional provision may, if the regulations so provide, take effect from a date that is earlier than the date of publication of the provision in the Gazette. 10

(4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15

(a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a subsidiary company), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State, an authority of the State or a subsidiary company) in respect of anything done or omitted to be done before the date of its publication. 20

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**ELECTRICITY COMMISSION (AMENDMENT) BILL 1994**

NEW SOUTH WALES



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*Clerk of the Legislative Assembly.*

*Legislative Assembly*

NEW SOUTH WALES



Act No.           , 1994

An Act to amend the Electricity Commission Act 1950 to provide for the establishment of subsidiary companies by the Electricity Commission.

*Electricity Commission (Amendment) 1994*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Electricity Commission (Amendment) Act 1994.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Electricity Commission Act 1950 No. 22**

3. The Electricity Commission Act 1950 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

15                   “**Subsidiary company**” means a company in which the Commission has a controlling interest (as referred to in Division 2A of Part 3).

(2) Section 5B (**Delegation**):

(a) From section 5B (1) (d), omit “or” where lastly occurring.

20                   (b) At the end of section 5B (1) (e), insert:

; or

(f) a subsidiary company,

(3) Part 3, Division 2A:

After Division 2, insert:

25   **Division 2A—Subsidiary companies**

**Definitions**

8A. In this Division:

30                   “**company**” means a company incorporated or taken to be incorporated under the Corporations Law of New South Wales;



*Electricity Commission (Amendment) 1994*

---

SCHEDULE 1—AMENDMENTS—*continued*

“**exercise**” a function includes perform a duty;

“**function**” includes a power, authority or duty.

**Subsidiary companies**

8B. (1) Any function of the Commission may be exercised by a company in which the Commission has a controlling interest. Such a company is referred to in this Act as a “**subsidiary company**”.

(2) For that purpose, the Commission may, with the approval of the Minister:

(a) form, or participate in the formation of, a subsidiary company; or

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(3) The Commission must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.

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**Delegations**

8C. (1) A function of the Commission may not be exercised by a subsidiary company unless it is duly delegated to the company under this Act. Such a delegation is automatically revoked if the company ceases to be a subsidiary company.

(2) A function so delegated may be exercised in the name of the subsidiary company.

(3) The subsidiary company may subdelegate any functions delegated to it, unless this is forbidden in the instrument of delegation to the company.

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*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

5 (4) The Minister may direct the Commission to delegate to one or more subsidiary companies all or any of its functions (other than its power of delegation, and as indicated in the direction) or to revoke or vary any such delegation. Nothing in this subsection limits the power of the Minister to give directions to the Commission under section 7.

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8D. Stamp duty is not payable in relation to:

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(c) the issue or transfer of shares in such a company; or

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**Application of certain provisions to subsidiary companies**

8E. (1) Except as provided by the regulations, a reference to the Commission in:

35 (a) section 14, 77, 78, 79, 80, 81, 82, 83, 84, 85 or 86 of this Act; or



*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) section 14A, 27, 27AA or 27AC of the Electricity Act 1945; or
- (c) the prescribed provisions of those or any other Acts, includes a reference to a subsidiary company. 5
- (2) Except as provided by the regulations, the following provisions apply to a subsidiary company in the same way and to the same extent (only) as they apply to the Commission:
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*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

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**Transfer of staff**

8F. (1) The Minister may by order transfer the employment of specified staff of the Commission to a subsidiary company.

(2) The staff remain staff of the Commission, and are merely seconded to the subsidiary company.

(4) Section 13A (**Definitions**):

(a) In section 13A (1), omit the definition of “affiliate”.

(b) Insert in section 13A (1) in alphabetical order:

“**subsidiary company**” includes a corporation with which the Commission has made an arrangement under section 34C and in which the Commission retains a controlling interest.

(5) Section 13C (**Subsidiary companies, partnerships, joint ventures etc.**):

Omit “an affiliate” wherever occurring, insert instead “a subsidiary company”.

(6) Section 13D (**Acquisition of shares by the Commission**):

Omit the section.

(7) Section 13E (**Guarantee by the Commission**):

From section 13E (a), omit “an affiliate”, insert instead “a subsidiary company”.

(8) Section 78 (**Assignment of certain easements**):

(a) In section 78 (1), after “assign to”, insert “a subsidiary company,”.

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*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 87 (**Regulations**):

At the end of section 87, insert:

(2) The regulations may contain provisions of a savings or transitional nature consequential on a company becoming or ceasing to be a subsidiary company or on the delegation or the revocation or variation of a delegation of functions to a subsidiary company. 5

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from a date that is earlier than the date of publication of the provision in the Gazette. 10

(4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15

(a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a subsidiary company), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State, an authority of the State or a subsidiary company) in respect of anything done or omitted to be done before the date of its publication. 20

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ELECTRICITY COMMISSION (AMENDMENT) BILL

SECOND READING

Hon. R J Webster - Minister for Housing and Minister for Planning:

I move:

That this bill be now read a second time.

My colleague the Minister for Energy on 15 September 1993 indicated to Parliament that the transmission assets of the Electricity Commission of New South Wales, which trades as Pacific Power, would be transferred to a legally separate network subsidiary.

This is an integral part of the ongoing micro-economic reform of the electricity supply industry in New South Wales, a major focus of which is the setting up of the pre-conditions for a competitive electricity market.

The New South Wales Government has agreed, along with the Governments of Victoria, Queensland, South Australia, Tasmania and the ACT, and the Commonwealth Government, to seek to have in place the necessary structural changes to allow the implementation of a competitive electricity market in South Eastern Australia from 1 July 1995.

Further to this objective, the Council of Australian Governments, at its meeting in June 1993, endorsed the creation of an interstate electricity transmission network through the adoption of separate Network Corporations in participating States.

What is proposed is that the monopoly "wires", that is transmission, be separated from generation to form the national grid.

I understand it is Australian Labor Party policy to support legislation to enable the national grid to be established.

To this end it is proposed to create a legally separated transmission element within Pacific Power by 1 July 1994. This will be the initial step towards formal separation of Pacific Power's transmission and generation businesses.

Honourable Members may not be aware that Pacific Power is already structured so that the Grid is a separate business unit, financially ring-fenced from generation so that its costs are separately recorded from generation.

The proposals contained in the bill before the House are aimed at expanding the role of competition and improving the efficiency of the industry, thereby securing the considerable efficiency gains which have been achieved to date.





It is intended that competition will be progressively introduced by means of market arrangements which permit customers to buy power from whichever generator they choose. This requires that all customers and generators of a certain minimum size have guaranteed access to the wires network so that trading can take place. In essence a system of non discriminatory access to the network is essential. This involves separation from both generation and distribution.

Unfortunately the Electricity Commission Act 1950 makes no provision for the establishment of subsidiary companies in relation to the core activities. The bill which I have introduced will remedy this.

The bill before the House will permit the Electricity Commission, with the approval of the Minister, to form subsidiary companies. Such companies will represent the Crown. They will be incorporated under the Corporations Law of New South Wales.

The Commission will be empowered to delegate its functions to a subsidiary company. Furthermore and most importantly, the Minister will be empowered to direct the Commission to delegate functions to a subsidiary company.

The bill does not create a specific transmission subsidiary nor does it transfer assets. Essentially at this stage, it is enabling legislation.

I propose to direct the Commission to delegate to a subsidiary company the transmission and supply of electricity, and relevant aspects of system control.

For the information of the House, system control is the management of the system by which the dispatch of electrical generators is integrated with the transmission network.

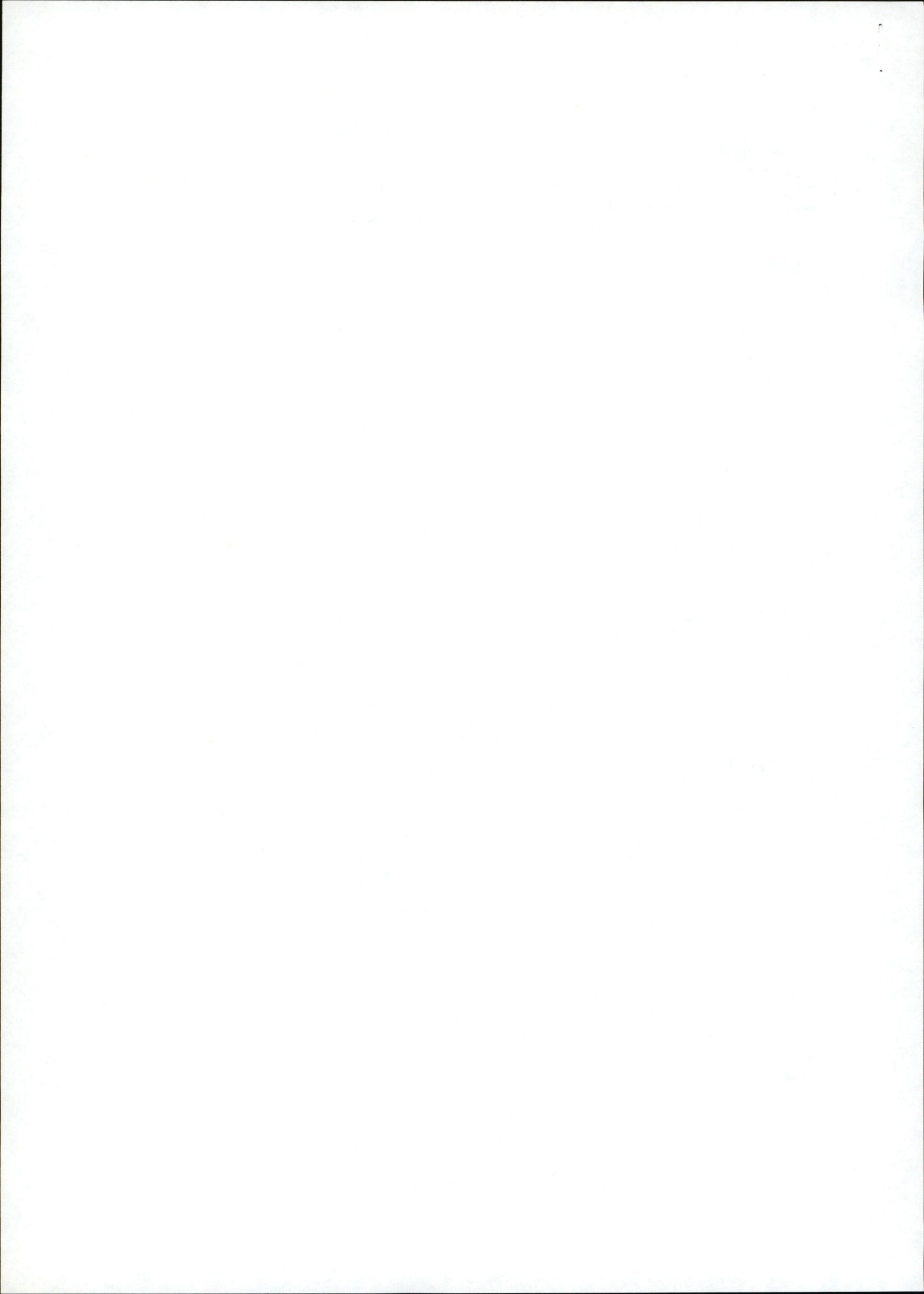
I will also issue a direction in relation to the transfer of assets to the subsidiary company, and for the formation of a separate Board within Pacific Power to manage the activities of the subsidiary.

The bill includes a provision for the secondment of staff to a subsidiary company.

Stamp duty will not be payable on the formation of the subsidiary company, registration of such a company or the issue or transfer of shares.

References to the Electricity Commission in various statutes will apply to a subsidiary company. For example, a subsidiary company will be able to create easements in the same manner as does the Commission. The subsidiary company will be subject to FOI legislation as is the Electricity Commission.

As I indicated this is the first stage in the separation of the transmission and generation functions of Pacific Power. The second stage will involve the creation of a network



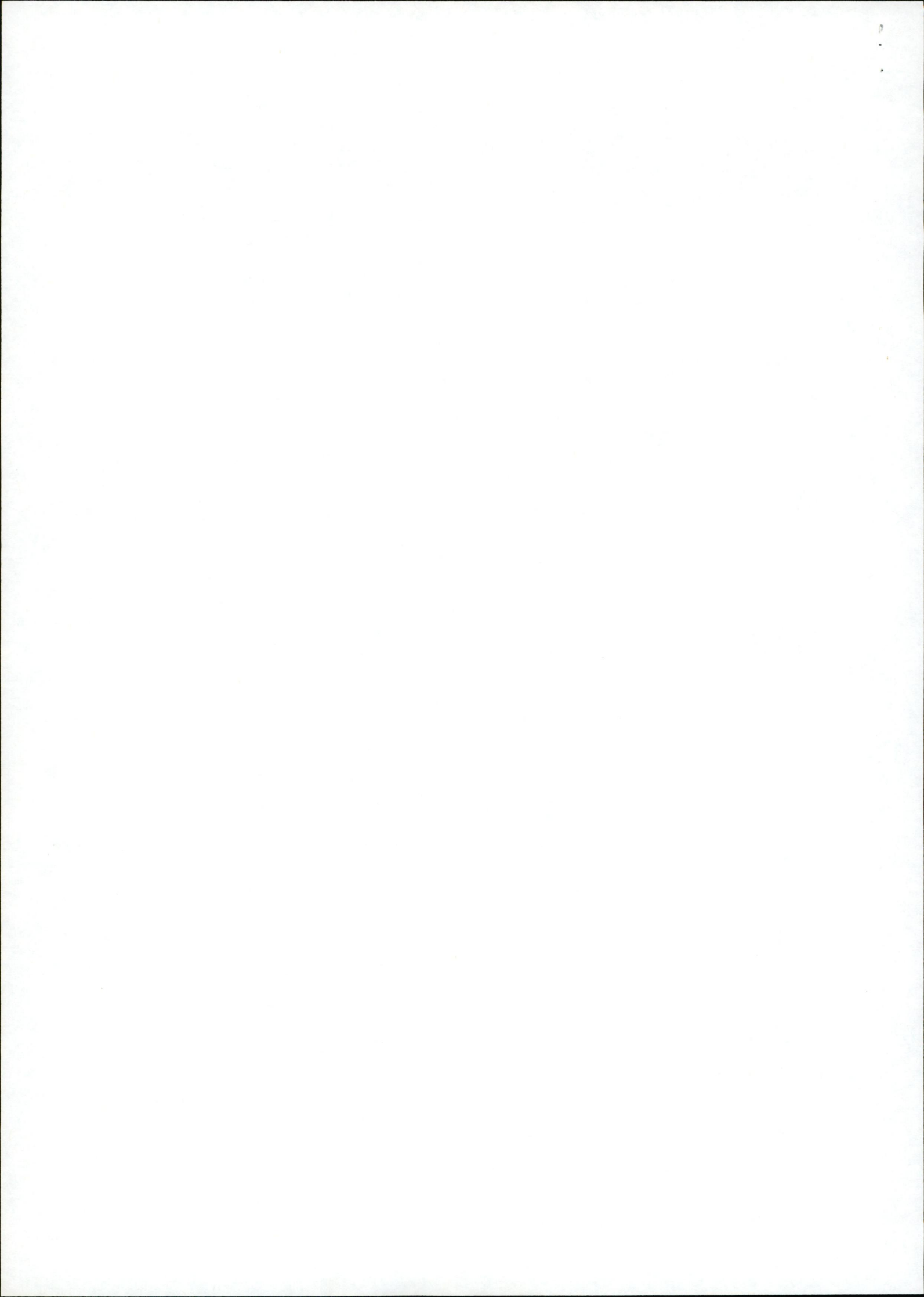


statutory authority independent of Pacific Power. The Government is currently considering its options and expects to introduce legislation to give effect to this during the Budget Session this year.

This bill is an important step forward in the restructuring of an industry which affects every one of us in our daily lives.

I believe that this bill will not only improve managerial efficiency but will also enable appropriate industry structures to be put in place.

I commend the bill to the House.



FIRST PRINT

## ELECTRICITY COMMISSION (AMENDMENT) BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Electricity Commission Act 1950 to enable the Electricity Commission to establish subsidiary companies in connection with the exercise of its functions.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be proclaimed by the Governor-in-Council.

**Clause 3** is a formal provision giving effect to the schedule of amendments.

#### SCHEDULE 1—AMENDMENTS

**Schedule 1 (1)** inserts a definition of “subsidiary company”.

**Schedule 1 (2)** enables the Electricity Commission to delegate functions to a subsidiary company.

**Schedule 1 (3)** inserts a new Division 2A into Part 3, containing the following proposed sections:

**Proposed section 8A** contains definitions. The word “company” is defined so as to be limited to companies incorporated in New South Wales.

**Proposed section 8B** enables the Electricity Commission to be involved in the establishment of subsidiary companies, with ministerial approval.

**Proposed section 8C** provides that a subsidiary company can exercise functions of the Electricity Commission if they have been delegated to it by the Commission. Such functions can be exercised in the company’s name and can be subdelegated, unless this is forbidden in the instrument of delegation. The Minister can direct delegations to be made, revoked or varied, but this is not to affect the Minister’s general power to give directions.

*Electricity Commission (Amendment) 1994*

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**Proposed section 8D** provides that stamp duty is not payable in connection with the setting up of these arrangements.

**Proposed section 8E** makes it clear that a subsidiary company is generally dealt with in legislation in the same way as the Electricity Commission.

**Proposed section 8F** provides for ministerial orders to be made for the transfer of staff from the Electricity Commission to a subsidiary company. Existing awards, agreements and determinations continue in force until other provision is made, and accrued rights to leave are protected.

**Schedule 1 (4)–(7)** bring existing provisions for affiliate companies established in connection with coal mining activities into line with the new arrangements.

**Schedule 1 (8)** enables easements vested in the Electricity Commission to be assigned to a subsidiary company.

**Schedule 1 (9)** enables regulations to be made of a savings or transitional nature consequent on a company becoming or ceasing to be a subsidiary company or on the delegation (or revocation or variation of a delegation) of functions to a subsidiary company.

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FIRST PRINT

**ELECTRICITY COMMISSION (AMENDMENT) BILL 1994**

NEW SOUTH WALES



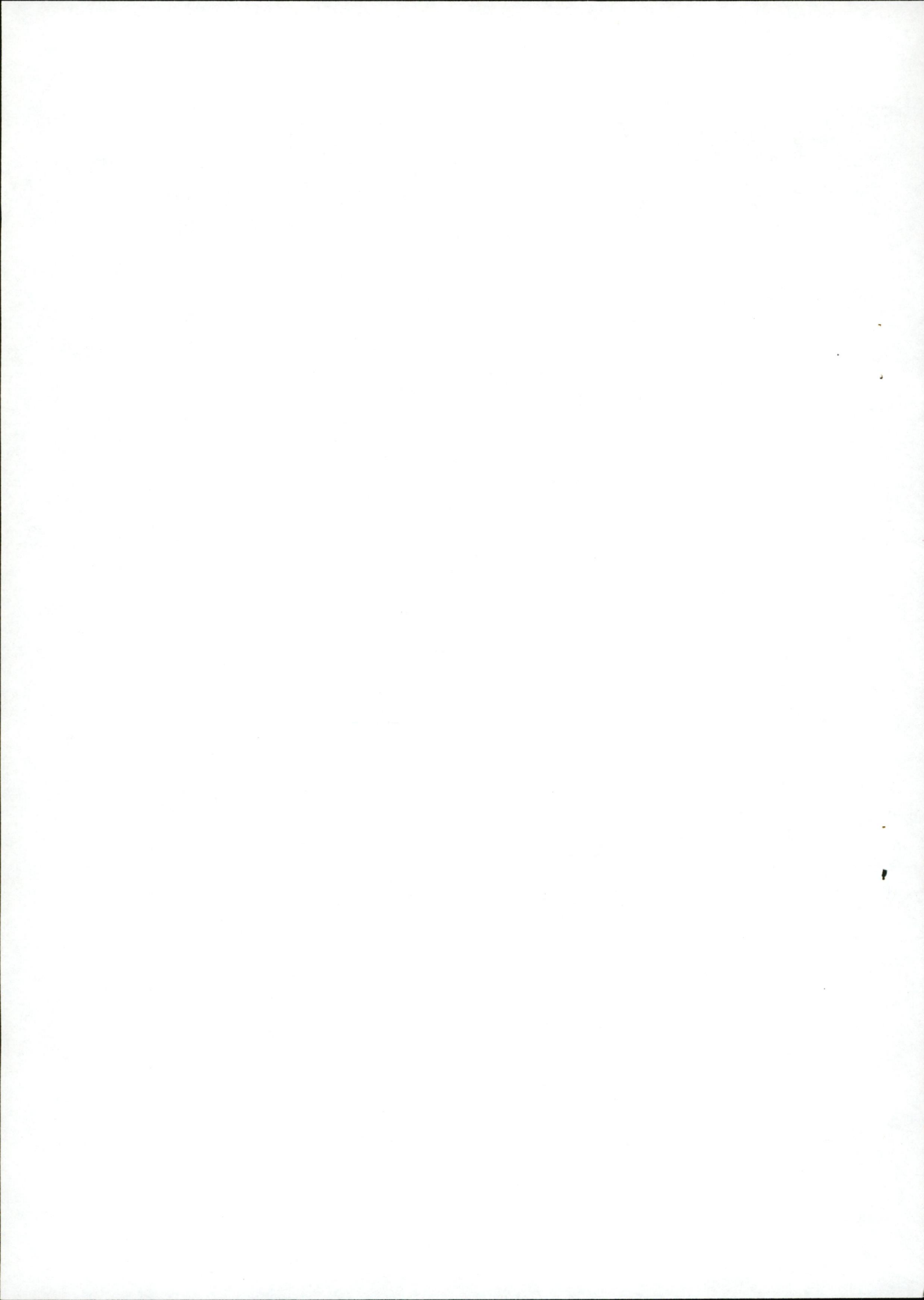
**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Electricity Commission Act 1950 No. 22

SCHEDULE 1—AMENDMENTS

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**ELECTRICITY COMMISSION (AMENDMENT) BILL 1994**

NEW SOUTH WALES



No. , 1994

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**A BILL FOR**

An Act to amend the Electricity Commission Act 1950 to provide for the establishment of subsidiary companies by the Electricity Commission.

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*Electricity Commission (Amendment) 1994*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Electricity Commission (Amendment) Act 1994.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Electricity Commission Act 1950 No. 22**

3. The Electricity Commission Act 1950 is amended as set out in  
10 Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

15                   “**Subsidiary company**” means a company in which the  
                          Commission has a controlling interest (as referred to in  
                          Division 2A of Part 3).

(2) Section 5B (**Delegation**):

20                   (a) From section 5B (1) (d), omit “or” where lastly occurring.

                          (b) At the end of section 5B (1) (e), insert:

; or

(f) a subsidiary company,

(3) Part 3, Division 2A:

After Division 2, insert:

25   **Division 2A—Subsidiary companies**

**Definitions**

8A. In this Division:

30                   “**company**” means a company incorporated or taken to be  
                          incorporated under the Corporations Law of New South  
                          Wales;

*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

“**exercise**” a function includes perform a duty;

“**function**” includes a power, authority or duty.

**Subsidiary companies**

8B. (1) Any function of the Commission may be exercised by a company in which the Commission has a controlling interest. Such a company is referred to in this Act as a “**subsidiary company**”. 5

(2) For that purpose, the Commission may, with the approval of the Minister: 10

(a) form, or participate in the formation of, a subsidiary company; or

(b) acquire an interest in a company so that, as a result of the acquisition, the company becomes a subsidiary company. 15

(3) The Commission must not, without the approval of the Minister, sell or otherwise dispose of any interest in a subsidiary company so that, as a result of the sale or disposal, it ceases to be a subsidiary company.

(4) A subsidiary company represents the Crown to the same extent (if any) as the Commission. However, a subsidiary company formed for a commercial purpose in connection with functions under Division 4A is not and does not represent the Crown. 20

**Delegations** 25

8C. (1) A function of the Commission may not be exercised by a subsidiary company unless it is duly delegated to the company under this Act. Such a delegation is automatically revoked if the company ceases to be a subsidiary company. 30

(2) A function so delegated may be exercised in the name of the subsidiary company.

(3) The subsidiary company may subdelegate any functions delegated to it, unless this is forbidden in the instrument of delegation to the company. 35



*Electricity Commission (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (4) The Minister may direct the Commission to delegate to one or more subsidiary companies all or any of its functions (other than its power of delegation, and as indicated in the direction) or to revoke or vary any such delegation. Nothing in this subsection limits the power of the Minister to give directions to the Commission under section 7.

**Stamp duty**

- 10 8D. Stamp duty is not payable in relation to:
- (a) the formation of, or the acquisition of shares in, a company that is or is anticipated to be a subsidiary company; or
  - (b) the registration of such a company; or
  - (c) the issue or transfer of shares in such a company; or
  - 15 (d) a document or instrument evidencing any delegation to such a company under this Act.

**Application of certain provisions to subsidiary companies**

- 20 8E. (1) Except as provided by the regulations, a reference to the Commission in:
- (a) section 14, 77, 78, 79, 80, 81, 82, 83, 84, 85 or 86 of this Act; or
  - (b) section 14A, 27, 27AA or 27AC of the Electricity Act 1945; or
  - (c) the prescribed provisions of those or any other Acts,
  - 25 includes a reference to a subsidiary company.

- (2) Except as provided by the regulations, the following provisions apply to a subsidiary company in the same way and to the same extent (only) as they apply to the Commission:

- 30 (a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962;
- (b) Chapter 7 of the Local Government Act 1993;
  - (c) the prescribed provisions of those or any other Acts.

- 35 (3) For the purposes of sections 88 and 88A of the Conveyancing Act 1919, a subsidiary company is taken to be a public authority constituted by Act of Parliament.



*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

- (4) For the purposes of:
- (a) the Public Sector Management Act 1988; and
  - (b) the Independent Commission Against Corruption Act 1988; and
  - (c) the prescribed provisions of any other Acts,
- a subsidiary company is taken to be a public authority. 5
- (5) A subsidiary company is taken to be a public authority for the purposes of the Environmental Planning and Assessment Act 1979 and a prescribed person for the purposes of section 91A of that Act. 10
- (6) For the purposes of an instrument under the Environmental Planning and Assessment Act 1979:
- (a) a subsidiary company is taken to be a public authority; and
  - (b) the carrying on by a subsidiary company of an undertaking for the supply of electricity is taken to be a public utility undertaking, and a reference to the person carrying on that undertaking is to be construed as a reference to the subsidiary company.
- 15 20
- (7) The reference to the Commission in Schedule 1 to the Government Pricing Tribunal Act 1992 includes a reference to a subsidiary company, but only in relation to the transmission and supply of electricity.
- Transfer of staff** 25
- 8F. (1) The Minister may by order transfer the employment of specified staff of the Commission to a subsidiary company.
- (2) Each member of the staff concerned becomes after the order takes effect a member of the staff of the subsidiary company. The awards, agreements and determinations applying, immediately before the order takes effect, to such members of the staff of the Commission continue to apply to each member of the staff concerned until other provision is duly made. 30 35

*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

5 (3) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Division for the purposes of any law, award or agreement relating to the employment of that member of staff.

10 (4) Without limiting this section, this Division does not affect any accrued rights that the member of the staff concerned had immediately before the transfer in relation to any kind of leave.

(5) A member of the staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the Commission.

15 (4) Section 13A (**Definitions**):

(a) In section 13A (1), omit the definition of "affiliate".

(b) Insert in section 13A (1) in alphabetical order:

20 "subsidiary company" includes a corporation with which the Commission has made an arrangement under section 34C and in which the Commission retains a controlling interest.

(5) Section 13C (**Subsidiary companies, partnerships, joint ventures etc.**):

Omit "an affiliate" wherever occurring, insert instead "a subsidiary company".

25 (6) Section 13D (**Acquisition of shares by the Commission**):

Omit the section.

(7) Section 13E (**Guarantee by the Commission**):

From section 13E (a), omit "an affiliate", insert instead "a subsidiary company".

30 (8) Section 78 (**Assignment of certain easements**):

(a) In section 78 (1), after "assign to", insert "a subsidiary company,".

(b) In section 78 (3), after "Commission,", insert "the subsidiary company,".

*Electricity Commission (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 87 (**Regulations**):

At the end of section 87, insert:

(2) The regulations may contain provisions of a savings or transitional nature consequential on a company becoming or ceasing to be a subsidiary company or on the delegation or the revocation or variation of a delegation of functions to a subsidiary company. 5

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from a date that is earlier than the date of publication of the provision in the Gazette. 10

(4) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15

(a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a subsidiary company), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State, an authority of the State or a subsidiary company) in respect of anything done or omitted to be done before the date of its publication. 20

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