

ELECTRICITY TRANSMISSION AUTHORITY ACT 1994
No. 64

NEW SOUTH WALES



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ELECTRICITY TRANSMISSION AUTHORITY ACT 1994
No. 64

NEW SOUTH WALES



Act No. 64, 1994

An Act to establish the New South Wales Electricity Transmission Authority and to provide for its functions; to make consequential amendments to certain Acts; and for other purposes. [Assented to 23 November 1994]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Electricity Transmission Authority Act 1994.

Commencement

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

Definitions

3. In this Act:

“**Authority**” means the Electricity Transmission Authority constituted by this Act;

“**Authority’s transmission system**” means the transmission system vested in or under the control of the Authority;

“**Board**” means the Board of the Authority established by this Act;

“**Chief Executive**” means the Chief Executive of the Authority;

“**ELCOM**” means the Electricity Commission and includes any subsidiary company within the meaning of the Electricity Commission Act 1950;

“**electricity supply authority**” means ELCOM and any other electricity supply authority within the meaning of the Electricity Act 1945;

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

“**function**” includes power, authority or duty;

“**subsidiary company**” means a company in which the Authority has a controlling interest (as referred to in Part 5);

“**transmission system**” means the transmission lines, substations and associated structures, equipment and works used to carry electricity between electricity supply authorities.

PART 2—CONSTITUTION AND FUNCTIONS OF THE AUTHORITY

The Authority

4. (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Electricity Transmission Authority.

(2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

(3) In any Act or instrument, the Authority may be referred to as the Electricity Transmission Authority or the NSW Electricity Transmission Authority.

Ministerial control

5. (1) The Minister may give the Board written directions in relation to the exercise of the Authority's functions.

(2) Subject to this section, the Board and the Chief Executive must ensure that the Authority complies with any such direction.

(3) The Board may request the Minister to review a direction if they consider that:

- (a) the Authority would suffer a significant financial loss as a result of complying with the direction; and
- (b) the direction is not in the commercial interests of the Authority.

(4) A request for a review is to contain an estimate of the financial loss the Board considers the Authority would suffer and must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.

(5) If the Board requests a review, the direction need not be complied with until the Board is notified of the Minister's decision following the review.

(6) Following the review, the Minister may confirm or revoke the direction.

(7) For the purposes of this section, the amount of the financial loss that the Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.

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- (8) Subsection (3) does not apply to the following directions:
- (a) a direction under section 15 (2) (a) of the Electricity Act 1945;
 - (b) a direction given in relation to a requirement of the Treasurer under section 59B of the Public Finance and Audit Act 1983.

Principal functions of the Authority

6. The Authority has the following functions:
- (a) the management, operation, control and maintenance of the Authority's transmission system (including the balancing of supply and demand, the dispatch of generating units and ensuring the reliability and security of supply);
 - (b) the enlargement of the Authority's transmission system in response to present and expected future demand and generally for the purpose of increasing the availability of electricity;
 - (c) the investigation of and planning for future needs in relation to the transmission of electricity, including interconnection with other transmission systems;
 - (d) the co-ordination of the transmission of electricity between transmission systems;
 - (e) the protection of the public from dangers arising from the transmission of electricity;
 - (f) such other functions as are conferred or imposed on it by or under this Act or any other law.

Directions to electricity supply authorities

7. (1) The Authority may give directions to any electricity supply authority as to how that supply authority is to exercise its functions with respect to the commitment and dispatch of generating units, but may only give such a direction if the Authority is satisfied that the direction is necessary for:

- (a) ensuring a balancing of the supply of and demand for electricity;
or
- (b) ensuring the reliability and security of the supply of electricity; or
- (c) giving effect to any protocol on the operation of a competitive market for electricity, as endorsed by the Minister for the purposes of this section.

(2) An electricity supply authority is subject to any direction of the Authority under this section and is required to exercise its functions so as to give effect to any such direction.

(3) Nothing done by an electricity supply authority for the purpose of giving effect in good faith to a direction by the Authority under this section, and no failure by an electricity supply authority to supply electricity as a result of its giving effect to such a direction, is to be regarded:

- (a) as a breach of contract or otherwise as a civil wrong; or
- (b) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any instrument; or
- (c) as an event of default under any contract or instrument.

Non-discriminatory access to transmission system

8. The Authority is required to exercise its functions so as to ensure that as far as reasonably practicable access to the Authority's transmission system and electricity transmission network services is provided on a non-discriminatory basis.

Ancillary functions of the Authority

9. (1) In the exercise of its functions, the Authority may:

- (a) conduct any business and, for that purpose, use any property or the services of any staff of the Authority; and
- (b) acquire, develop and dispose of land or any interest in land; and
- (c) acquire or build, and maintain and dispose of, any buildings, plant, machinery, transmission lines, equipment or vehicles; and
- (d) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
- (e) make charges and impose fees for services performed and goods and materials supplied by it; and
- (f) appoint agents, and act as agent for other persons.

(2) The Authority may do all such things as are supplemental or incidental to, or consequential on, the exercise of its other functions.

(3) The Authority may exercise its functions within the State and, with the approval of the Minister, outside the State.

Acquisition of land

10. (1) The Authority may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

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(2) The Authority may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

(3) For the purposes of the Public Works Act 1912, any acquisition of land under this Act is taken to be for an authorised work, and the Authority is, in relation to that authorised work, taken to be the Constructing Authority.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply to or in respect of works constructed under this Act.

Delegation of functions

11. (1) The Authority may delegate to an authorised person any of its functions, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.

(3) In this section, “**authorised person**” means:

- (a) a member of staff of the Authority or any other person of whose services the Authority makes use; or
- (b) a subsidiary company; or
- (c) a person of a class prescribed by the regulations.

Authority to supply information to Minister

12. The Authority must:

- (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person may require; and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

Corporate plans

13. (1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of the Authority, a draft corporate plan for the financial year.

(2) The Authority must:

- (a) consider any comments on the draft corporate plan that are made by the Minister (being comments made within 2 months after the draft plan is delivered to the Minister); and
- (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

(3) The Authority is, as far as practicable, to exercise its functions in accordance with the relevant corporate plan.

(4) A corporate plan must specify:

- (a) the objectives of the activities of the Authority for the financial year concerned and for the following 2 financial years (or such other number of financial years as the Minister directs); and
- (b) the strategies, policies and budgets for achieving those objectives; and
- (c) targets and criteria for assessing the Authority's performance.

(5) This section is subject to the requirements of any direction of the Minister under section 5.

Performance agreements

14. (1) The Minister and the Authority may, after consultation between them and with the Treasurer, enter into a performance agreement.

(2) A performance agreement is to set operational performance targets for the Authority in the exercise of specified functions during a financial year and is to provide for the evaluation and review of results in relation to those targets.

(3) The Authority must, as far as practicable, exercise its functions in accordance with the performance agreement.

(4) The results of the Authority's performance under a performance agreement during a financial year are to be included in the Authority's annual report relating to that year.

Authority not to be privatised without Parliamentary approval

15. (1) The Authority must not be privatised unless a proposal for the privatisation has first been approved by resolution of both Houses of Parliament.

(2) The Authority is taken to be privatised when any transaction or series of transactions is entered into by which 25% or more of the assets, rights and liabilities of the Authority relating to its systems and services for the transmission of electricity are transferred to any private person for operation by that or any other private person.

(3) In this section:

“private person” means any person other than:

- (a) the Government; or
- (b) a public or local authority (including a state owned corporation);
or

- (c) a public employee or other person or body acting in an official capacity on behalf of the Government or any such public or local authority.

PART 3—CONSTITUTION AND FUNCTIONS OF THE BOARD

Establishment of Board

16. (1) There is to be a Board of the Authority.

(2) The Board is to consist of 7 directors appointed by the Governor on the recommendation of the Minister. The persons appointed are to be selected for their relevant expertise and one is to be a person (not being an employee of the Authority) selected from a panel of 3 persons nominated by the Labor Council of New South Wales.

(3) One of the directors is to be appointed Chairperson of the Board and another is to be appointed Deputy Chairperson of the Board, whether in and by the relevant instrument of appointment as a director or in and by some other instrument executed by the Governor.

(4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Board to determine policies and strategic plans

17. (1) The Board has the function of determining the policies and strategic plans of the Authority.

(2) In exercising that function, the Board must, as far as practicable, ensure that the activities of the Authority are carried out properly and efficiently and in accordance with sound commercial practice.

PART 4—THE CHIEF EXECUTIVE OF THE AUTHORITY

Appointment of Chief Executive

18. (1) The Governor may appoint a Chief Executive of the Authority.

(2) The employment of the Chief Executive is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(3) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief

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Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.

(4) The Minister may, at any time, remove a person from office as acting Chief Executive.

(5) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) A director of the Board is not to be appointed as Chief Executive or acting Chief Executive.

Chief Executive to manage and control affairs of the Authority

19. (1) The affairs of the Authority are to be managed and controlled by the Chief Executive in accordance with the policies determined by the Board, but subject to any directions of the Minister to the Board under this Act.

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by or with the authority of the Chief Executive is taken to have been done by the Authority.

Right of Chief Executive to attend meetings of Board

20. (1) The Chief Executive is entitled to attend and to participate in discussions at meetings of the Board but is not entitled to vote at any such meeting.

(2) The Chief Executive must not, without the consent of the Board, be present at a meeting of the Board during the discussion and determination of a matter relating to the Chief Executive or the office of the Chief Executive.

PART 5—SUBSIDIARY COMPANIES

Definitions

21. In this Division:

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

Subsidiary companies

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

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(2) For that purpose, the Authority 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 Authority 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 Authority. However, a subsidiary company formed for any purpose prescribed by the regulations for the purposes of this subsection is not and does not represent the Crown.

Delegations

23. (1) A function of the Authority 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.

(4) The Minister may direct the Authority 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 Authority under section 5.

Stamp duty

24. Stamp duty is not chargeable 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

25. (1) Except as provided by the regulations, a reference to the Authority in:

- (a) sections 10 and 38–45 of this Act; and
- (b) sections 14A, 27 and 27AA of the Electricity Act 1945; and
- (c) such provisions of those or any other Acts as may be prescribed by the regulations,

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 Authority:

- (a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962;
- (b) the Freedom of Information Act 1989;
- (c) Chapter 7 of the Local Government Act 1993;
- (d) such provisions of those or any other Acts as may be prescribed by the regulations.

(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) such provisions of any other Acts as may be prescribed by the regulations,

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 if the Authority is a prescribed person for the purposes of that section.

(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 transmission 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.

(7) The reference to the Authority 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

26. (1) The Minister may by order transfer the employment of specified employees of the Authority to a subsidiary company.

(2) The transferred employees remain employees of the Authority, and are merely seconded to the subsidiary company.

PART 6—STAFF

Employment of staff

27. The Authority may employ such staff as it requires to exercise its functions.

Terms of employment

28. The Authority may determine salary, wages and conditions of employment of its staff in so far as they are not determined by or under any other Act or law.

Regulations relating to staff

29. (1) The regulations may make provision for or with respect to the employment of the staff of the Authority, including the conditions of employment and the discipline of any such staff.

(2) Any such regulations relating to the conditions of employment or the discipline of staff:

- (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the Authority is a party; and
- (b) have effect despite any determination of the Authority under section 28; and
- (c) have effect subject to Part 2A of the Public Sector Management Act 1988.

Using the services of others

30. The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority. A person whose services are made use of by secondment is considered to be a member of the staff of the Authority.

Consultants

31. The Authority may engage such consultants as it requires to exercise its functions.

PART 7—FINANCE**Establishment of funds**

32. The Authority is required to establish the following funds:

- (a) a fund to be known as the Transmission Authority General Fund;
- (b) a fund to be known as the System Control Fund.

Transmission Authority General Fund

33. (1) There is to be paid into the Transmission Authority General Fund:

- (a) all money received by or on account of the Authority, other than money that is required to be paid into the System Control Fund; and
- (b) all interest and other amounts received in respect of the investment of money belonging to the General Fund; and
- (c) all money borrowed by or advanced to the Authority or appropriated by Parliament for the purposes of the Authority; and
- (d) all money required to be paid into the General Fund by or under this or any other Act.

(2) There may be paid from the Transmission Authority General Fund:

- (a) the remuneration (including allowances) of the directors of the Board, Chief Executive and staff of the Authority (other than staff engaged in system control); and
- (b) all payments made on account of the Authority or otherwise required to meet expenditure incurred in relation to the functions of the Authority; and
- (c) all other payments required by or under this or any other Act to be paid from the General Fund.

System Control Fund

34. (1) There is to be paid into the System Control Fund:

- (a) all money received by or on account of the Authority and payable to the Authority as management fees by users of the Authority's transmission system; and
- (b) all money required to be paid into the System Control Fund by or under this or any other Act.

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- (2) There may be paid from the System Control Fund:
- (a) the remuneration of staff of the Authority engaged in system control; and
 - (b) all other payments required by or under this or any other Act to be paid from the System Control Fund.

Investment

35. (1) The Authority may invest money held by it in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987.

(2) If that Act does not confer power to invest money held by the Authority, the Authority may invest money held by it:

- (a) in any manner authorised for the time being for the investment of trust funds; or
- (b) in any other manner approved by the Minister with the concurrence of the Treasurer.

Banking

36. All money received on account of the Transmission Authority General Fund or the System Control Fund is to be paid into a bank or banks in New South Wales.

Financial year

37. (1) The financial year of the Authority is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

PART 8—MISCELLANEOUS

No liability for failure to supply

38. (1) The Authority is not liable in damages to any person by reason of any partial or total failure of the supply of electricity from any cause, except to the extent (if any) that the Authority otherwise agrees.

(2) The Authority may at any time temporarily discontinue the transmission of electricity whenever in its opinion that action is necessary or desirable for the purpose of ensuring the safe or efficient operation of the Authority's transmission system.

Power to break up roads

39. (1) The Authority may, for the purpose of exercising its functions and after giving the notice required by this section:

- (a) open and break up the soil and pavement of a public road or public reserve; and
- (b) open and break up any thing in or under a public road or public reserve; and
- (c) place structures on, over or beneath a public road or public reserve; and
- (d) erect an electric line or other thing relating to the transmission of electricity on, over or beneath a public road or public reserve.

(2) The Authority must give not less than 1 month's notice in writing to the statutory body having the control and management of the public road or public reserve with respect to which the Authority proposes to exercise functions under this section. Notice need not be given to a statutory body in a case of emergency but in such a case the Authority must inform the statutory body as soon as practicable in the circumstances.

(3) The statutory body may, in accordance with any regulations, require the Authority to comply with conditions in exercising functions under this section, including conditions for restoration of the surface and removal of rubbish.

(4) If the Authority fails to comply with a condition imposed by a statutory body under this section, the statutory body may remedy the failure and recover the cost of doing so as a debt owed to it by the Authority.

(5) The Authority is not required to comply with a condition imposed by a statutory body if the Minister has, on the application of the Authority and after consultation with the statutory body concerned, directed that the Authority need not comply with the condition on the basis that the condition is not reasonable.

Assignment of certain easements

40. (1) The Authority may, by notification published in the Gazette, assign to a subsidiary company any easement vested in the Authority.

(2) The assignment takes effect on publication of the notification in the Gazette or on a later date specified in the notification, and takes effect without the need for execution or registration of any other instrument.

(3) The Registrar-General may make such recordings in the Register kept under the Real Property Act 1900 or other records kept or maintained by the Registrar-General as appear to the Registrar-General to be proper to be made in order to record the assignment of an easement under this section and, if need be, may for that purpose require any further particulars of the easement to be furnished by the Authority or the subsidiary company.

Altering position of conduit of another person

41. (1) The Authority may require the alteration of the position of a conduit owned by another person if the Authority needs the alteration to be made to exercise its functions and the alteration will not permanently damage the conduit or adversely affect its operation.

(2) To impose such a requirement, the Authority must serve on the person concerned a notice in writing which:

- (a) specifies the alteration needed; and
- (b) requires the alteration to be made within a reasonable time stated in the notice; and
- (c) includes an undertaking by the Authority to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Authority may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) In this section, “conduit” means anything that is in or under a public road or public reserve and is used for the conveyance of a substance, energy or signals.

Proprietary rights in works and materials

42. (1) All works and every part of works vested in the Authority remain the property of the Authority despite having been constructed in any road or place.

(2) Any electric line, pole, meter, fitting, apparatus, building or work that is vested in the Authority and placed in or upon any place or building for the purpose of the transmission of electricity by the Authority cannot be taken in execution under the process of any court, except in proceedings at the suit of the Authority.

Destruction, damage, interference with works and other property

43. Unless authorised to do so by the Authority, a person must not wilfully destroy, damage or interfere with any metering equipment,

service equipment, line, post, pillar, lamp fitting, installation, works or other thing that is the property of the Authority and relates to electricity transmission.

Maximum penalty: 50 penalty units.

Theft of electricity

44. (1) A person must not abstract, cause to be wasted or diverted, consume or use any electricity from the Authority's transmission system unless the person is authorised to do so by the Authority or does so with other lawful authority.

Maximum penalty: 50 penalty units.

(2) A person must not, unless authorised to do so by the Authority, alter, or attempt to alter, the register of any meter, or otherwise interfere with any meter, belonging to the Authority and connected to the Authority's transmission system.

Maximum penalty: 50 penalty units.

(3) The existence of artificial means of abstracting, wasting, diverting, consuming or using electricity, as referred to in subsection (1), is evidence that the abstraction, waste, diversion, consumption or use has been caused without the permission of the Authority.

(4) The existence of artificial means of altering or interfering with any meter belonging to the Authority, as referred to in subsection (2), when the meter is in the custody or under the control of a particular person is evidence that the alteration or interference has been caused by that person.

Personal liability

45. A matter or thing done by:

- (a) the Authority; or
- (b) the Chief Executive; or
- (c) any director of the Board; or
- (d) any person acting under the direction of the Authority or the Board,

does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Chief Executive, director or person so acting personally to any action, liability, claim or demand.

Disclosure and misuse of information

46. A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974, the Independent Commission Against Corruption Act 1988 or the Freedom of Information Act 1989; or
- (e) as permitted by the regulations; or
- (f) with other lawful excuse.

Maximum penalty: 50 penalty units.

Service of documents

47. (1) A document may be served on the Authority by leaving it at, or by sending it by post to, any office of the Authority.

(2) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

Custody and use of seal

48. The seal of the Authority is to be kept by the Chief Executive, or by an employee of the Authority authorised in that behalf by the Chief Executive, and may be affixed to a document only:

- (a) in the presence of the Chief Executive or that employee; and
- (b) with an attestation by the signature of the Chief Executive or that employee of the fact of the affixing of the seal.

Recovery of money

49. Any charge, fee or money due to the Authority may be recovered as a debt in a court of competent jurisdiction.

Proceedings for offences

50. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Act binds the Crown

51. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Regulations

52. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Savings and transitional provisions

53. Schedule 2 has effect.

Amendment of other Acts

54. The Acts specified in Schedule 3 are amended as set out in that Schedule.

Review of Act

55. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD**

(Sec. 16)

Part 1—Constitution**Definition**

1. In this Schedule:

“**director**” means a director of the Board.

Terms of office of directors

2. Subject to this Schedule, a director holds office for such period (not exceeding 5 years) as is specified in the director’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of directors

3. A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

Deputies for directors

4. (1) The Minister may, from time to time, appoint a person to be the deputy of a director, and the Minister may revoke any such appointment.

(2) In the absence of a director, the director’s deputy:

(a) may, if available, act in the place of the director; and

(b) while so acting, has all the functions of the director and is taken to be a director.

(3) The deputy of a director who is Chairperson or Deputy Chairperson of the Board does not have the director’s functions as Chairperson or Deputy Chairperson.

(4) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Vacancy in office of appointed directors

5. (1) The office of a director becomes vacant if the director:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

Electricity Transmission Authority Act 1994 No. 64

SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

- (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (i) in the case of a director selected from a panel nominated by the Labor Council of New South Wales (as referred to in section 16 (2)), becomes an employee of the Authority.
- (2) The Minister may remove a director from office at any time.

Filling of vacancy in office of director

6. If the office of any director becomes vacant, a person must be appointed, subject to this Act, to fill the vacancy.

Chairperson and Deputy Chairperson

7. A person who is a director and Chairperson or Deputy Chairperson of the Board vacates office as Chairperson or Deputy Chairperson if the person ceases to be a director.

SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

Disclosure of pecuniary interests by directors

8. (1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

- (a) is a director, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

(5) For the purpose of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a director.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director.

(3) The office of a director is not, for the purposes of any Act, an office or place of profit under the Crown.

Part 2—Procedure

General procedure

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

11. The quorum for a meeting of the Board is 4 directors, of whom one must be the Chairperson or Deputy Chairperson of the Board.

**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*****Presiding director**

12. (1) The Chairperson of the Board (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone

14. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the Board, and a resolution in writing approved in writing by a majority of the directors is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if a director who speaks on a matter at the meeting can be heard by the other directors.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each other director have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

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SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

First meeting

15. The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 53)

Part 1—Preliminary

Definitions

1. In this Schedule:

“**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

“**instrument**” means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

“**liabilities**” means any liabilities, debts and obligations (whether present or future and whether vested or contingent);

“**rights**” means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent);

“**transfer day**” means:

- (a) in relation to any asset, right or liability transferred by or under this Schedule—the day on which the transfer occurs;
or
- (b) in relation to an employee of ELCOM who becomes an employee of the Authority by operation of this Schedule—the day on which that occurs.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Regulations**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later day.

(3) To the extent to which any such savings or transitional provision takes effect on 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 or any authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2—Establishment Board**First Board to be Establishment Board**

3. (1) The first Board of the Authority is to be an Establishment Board, that is, it is to hold office on a transitional basis as determined by the Minister and is responsible for achieving implementation goals set by the Minister by direction to the Board.

(2) The first Board is required to enter into a Statement of Financial Performance within 12 months after the first Board's establishment. A Statement of Financial Performance is an agreement entered into by the Board on behalf of the Authority with the Treasurer and the Minister setting out financial targets to be achieved by the Authority.

Part 3—Transfer of assets, rights and liabilities**Transfer of ELCOM's transmission system**

4. (1) Such of the assets, rights and liabilities of ELCOM as comprise or relate to the transmission system vested in ELCOM immediately before the commencement of this clause are transferred to the Authority.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

(2) The transfer effected by this clause is without consideration or compensation.

(3) A determination by the Minister as to whether or not particular assets, rights or liabilities comprise or relate to the transmission system vested in ELCOM at a particular time is conclusive as to the matters determined.

Transfer of other assets etc. by agreement

5. (1) The Authority and ELCOM are to enter into discussions and negotiations for the purpose of arranging the transfer to the Authority, on such terms and conditions as may be agreed on between them, of such of ELCOM's assets, rights and liabilities as may be necessary, convenient or desirable for the effectual exercise of the Authority's functions (and which are not transferred under clause 4).

(2) The Minister may give directions to ELCOM and the Authority for the transfer of assets, rights and liabilities for the purpose referred to in subclause (1), but is not to give such a direction unless satisfied that the parties have failed to come to an agreement concerning the assets, rights and liabilities concerned within 6 months after the commencement of this clause.

(3) A direction by the Minister under this clause is to specify the terms and conditions of transfer and ELCOM and the Authority are to give effect to the terms and conditions of transfer. The direction operates to transfer the assets, rights and liabilities in accordance with the terms of the direction.

(4) A transfer of any assets, rights or liabilities pursuant to an agreement reached following discussions and negotiations under this clause, or pursuant to a direction by the Minister under this clause, is considered to be a transfer by operation of this Part.

Effect of transfer

6. (1) The following provisions have effect with respect to any asset, right or liability transferred by operation of this Part:

- (a) the asset vests in the Authority by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance;

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (b) the right or liability becomes by virtue of this clause the right or liability of the Authority;
 - (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or against ELCOM and pending immediately before the transfer day are taken to be proceedings pending by or against the Authority;
 - (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer day by, to or in respect of ELCOM is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Authority;
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to ELCOM is (to the extent that it relates to the asset, right or liability but subject to regulations under clause 2), to be read as, or as including, a reference to the Authority.
- (2) The operation of this Part is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (d) as an event of default under any contract or instrument.
- (4) No attornment to the Authority by a lessee from ELCOM is required.

Stamp duty and fees

7. An instrument executed only for a purpose ancillary to or consequential on the operation of this Part or the purpose of giving effect to this Part:

- (a) is not chargeable with stamp duty; and

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (b) is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

Confirmation of vesting

8. The Minister may, by instrument in writing, certify the transfer to the Authority of particular assets, rights or liabilities by the operation of this Part. Such a certificate is evidence of that transfer.

Part 4—Transfer of staff

Definitions

9. In this Part:

“**ELCOM employee**” means a person who is an employee of ELCOM immediately before the commencement of clause 4 (including any person who is the holder of a chief executive or senior executive position under Part 2A of the Public Sector Management Act 1988).

Transfer of staff

10. (1) The Minister may, by order in writing, provide that such ELCOM employees as are specified or described in the order (being employees employed in connection with the control, management, operation or maintenance of the transmission system vested in ELCOM immediately before the commencement of clause 4) are transferred to the Authority.

(2) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an employee of the Authority, in accordance with the terms of the order, on the transfer day.

(3) Except as provided by this Part or the regulations, the terms and conditions on which a person becomes an employee of the Authority under this clause are the same as those on which he or she was an ELCOM employee immediately before the transfer day.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Remuneration and tenure**

11. (1) An ELCOM employee who becomes an employee of the Authority pursuant to this Part becomes such an employee on the same terms and conditions (including as to remuneration and duration of appointment) as those on which he or she was employed by ELCOM immediately before the transfer day.

(2) Such part of the remuneration referred to in subclause (1) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the Industrial Relations Act 1991 until the salary is, or the wages are, lawfully varied.

Annual leave, long service leave and sick leave

12. (1) An ELCOM employee who becomes an employee of the Authority pursuant to this Part retains any rights to:

- (a) annual leave; and
- (b) leave in the nature of long service leave; and
- (c) sick leave,

accrued or accruing to the person as an ELCOM employee.

(2) A person's entitlement to any such leave is to be calculated:

- (a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day—at the rate for the time being applicable to the person (as an ELCOM employee) before that day; and
- (b) for such part of that period as occurred after the transfer day—at the rate for the time being applicable to the person (as an employee of the Authority) after that day.

(3) Service with ELCOM is taken to be service with the Authority for the purposes of the accrual of leave as an employee of the Authority.

No payment out on transfer or dual benefits

13. An ELCOM employee who becomes an employee of the Authority pursuant to this Part:

- (a) is not entitled to receive any payment or other benefit merely because the person ceases to be an ELCOM employee; and
- (b) is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

Preservation of Pacific Power enterprise agreement

14. (1) In this clause:

“the Enterprise Agreements” means the Pacific Power Enterprise Agreement and the Pacific Power Treasury Officer Enterprise Agreement entered into by ELCOM and taking effect on 17 June 1994 and 12 April 1994 respectively (as in force on the commencement of this clause) or, if either agreement expires or is replaced before the commencement of this clause, any new enterprise agreement entered into by ELCOM to replace the agreement.

(2) The provisions of the Enterprise Agreements apply to the employees of the Authority during the term of those agreements.

(3) The Authority is, for the purposes of this clause, taken to be a party to the Enterprise Agreements.

SCHEDULE 3—AMENDMENT OF ACTS

(Sec. 54)

Electricity Act 1945 (1946 No. 13)

(1) Section 4 (**Definitions**):

After paragraph (a) of the definition of “electricity supply authority” in section 4 (1), insert:

(a1) the Electricity Transmission Authority; or

(2) Section 14A (**Application of Part**):

After “Electricity Commission” wherever occurring, insert “or the Electricity Transmission Authority”.

(3) Section 15 (**Electricity Development Fund**):

From section 15 (2) (a), omit “and the Commission”, insert instead “, the Electricity Commission and the Electricity Transmission Authority”.

(4) Section 16 (**Application of Electricity Development Fund**):

In section 16 (1) (c), after “Electricity Commission”, insert “, the Electricity Transmission Authority”.

Electricity Transmission Authority Act 1994 No. 64

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

(5) Section 19AB (**Directions to contribute to Electricity Development Fund**):

Omit section 19AB (1), insert instead:

(1) An electricity distributor, Sydney Electricity, the Electricity Commission and the Electricity Transmission Authority are required to make contributions to the Electricity Development Fund when directed to do so by the Minister, despite the provisions of any other Act or instrument.

(6) Section 27 (**Restrictions on supply of electricity**):

After “Electricity Commission” wherever occurring, insert “or the Electricity Transmission Authority”.

(7) Section 27AA (**Restrictions on certain works**):

In section 27AA (2) (a), after “Electricity Commission”, insert “or the Electricity Transmission Authority”.

Electricity Commission Act 1950 No. 22

Part 3, Division 1A:

After Division 1 of Part 3, insert:

Division 1A—Transfer of transmission functions

Commission not to exercise transmission functions

7A. The Commission is not to exercise a function that is for the time being a function of the Electricity Transmission Authority except to the extent (if any) that the regulations otherwise provide. A determination of the Minister as to whether or not a particular function is a function of the Electricity Transmission Authority is conclusive for the purposes of this section.

First State Superannuation Act 1992 No. 100

Schedule 1 (**Employers**):

In Part 1, after the matter relating to the Electricity Commission, insert:

Electricity Transmission Authority

SCHEDULE 3—AMENDMENT OF ACTS—*continued***Government Pricing Tribunal Act 1992 No. 39**

Schedule 1 (**Government agencies for which Tribunal has standing reference**):

After the matter relating to the Electricity Commission, insert:

Electricity Transmission Authority

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Schedule 4 (**Employing authorities**):

Insert in alphabetical order “Electricity Transmission Authority”.

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (**Authorities**):

After the matter relating to the Darling Harbour Authority, insert:

Electricity Transmission Authority.

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory bodies**):

Insert in alphabetical order:

Electricity Transmission Authority.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (**Declared authorities**):

After the matter relating to the Electricity Commission, insert:

Electricity Transmission Authority.

Electricity Transmission Authority Act 1994 No. 64

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

(2) Schedule 3A (**Chief executive positions**):

In Part 3 in alphabetical order of Offices, insert “Chief Executive of the Electricity Transmission Authority”.

State Authorities Non-contributory Superannuation Act 1987 No. 212

Schedule 1 (**Employers**):

At the end of Part 1, insert:

Electricity Transmission Authority

State Authorities Superannuation Act 1987 No. 211

Schedule 1 (**Employers**):

At the end of Part 1, insert:

Electricity Transmission Authority

Superannuation Act 1916 No. 28

Schedule 3 (**List of employers**):

At the end of Part 1, insert:

Electricity Transmission Authority

[*Minister's second reading speech made in—
Legislative Council on 13 October 1994
Legislative Assembly on 28 October 1994 a.m.*]

SECOND PRINT

ELECTRICITY TRANSMISSION AUTHORITY BILL 1994

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION AND
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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

SCHEDULE 3—AMENDMENT OF ACTS

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

Legislative Council

Clerk of the Parliaments

NEW SOUTH WALES



Act No. , 1994

An Act to establish the New South Wales Electricity Transmission Authority and to provide for its functions; to make consequential amendments to certain Acts; and for other purposes.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

5 **1.** This Act may be cited as the Electricity Transmission Authority Act 1994.

Commencement

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

Definitions

10 **3.** In this Act:

 “**Authority**” means the Electricity Transmission Authority constituted by this Act;

 “**Authority’s transmission system**” means the transmission system vested in or under the control of the Authority;

15 “**Board**” means the Board of the Authority established by this Act;

 “**Chief Executive**” means the Chief Executive of the Authority;

 “**ELCOM**” means the Electricity Commission and includes any subsidiary company within the meaning of the Electricity Commission Act 1950;

20 “**electricity supply authority**” means ELCOM and any other electricity supply authority within the meaning of the Electricity Act 1945;

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

 “**function**” includes power, authority or duty;

25 “**subsidiary company**” means a company in which the Authority has a controlling interest (as referred to in Part 5);

 “**transmission system**” means the transmission lines, substations and associated structures, equipment and works used to carry electricity between electricity supply authorities.

**PART 2—CONSTITUTION AND FUNCTIONS OF THE
AUTHORITY****The Authority**

4. (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Electricity Transmission Authority. 5

(2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

(3) In any Act or instrument, the Authority may be referred to as the Electricity Transmission Authority or the NSW Electricity Transmission Authority. 10

Ministerial control

5. (1) The Minister may give the Board written directions in relation to the exercise of the Authority's functions.

(2) Subject to this section, the Board and the Chief Executive must ensure that the Authority complies with any such direction. 15

(3) The Board may request the Minister to review a direction if they consider that:

(a) the Authority would suffer a significant financial loss as a result of complying with the direction; and 20

(b) the direction is not in the commercial interests of the Authority.

(4) A request for a review is to contain an estimate of the financial loss the Board considers the Authority would suffer and must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines. 25

(5) If the Board requests a review, the direction need not be complied with until the Board is notified of the Minister's decision following the review.

(6) Following the review, the Minister may confirm or revoke the direction. 30

(7) For the purposes of this section, the amount of the financial loss that the Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo. 35

Electricity Transmission Authority 1994

(8) Subsection (3) does not apply to the following directions:

- (a) a direction under section 15 (2) (a) of the Electricity Act 1945;
- (b) a direction given in relation to a requirement of the Treasurer under section 59B of the Public Finance and Audit Act 1983.

5 **Principal functions of the Authority**

6. The Authority has the following functions:

- 10 (a) the management, operation, control and maintenance of the Authority's transmission system (including the balancing of supply and demand, the dispatch of generating units and ensuring the reliability and security of supply);
- (b) the enlargement of the Authority's transmission system in response to present and expected future demand and generally for the purpose of increasing the availability of electricity;
- 15 (c) the investigation of and planning for future needs in relation to the transmission of electricity, including interconnection with other transmission systems;
- (d) the co-ordination of the transmission of electricity between transmission systems;
- 20 (e) the protection of the public from dangers arising from the transmission of electricity;
- (f) such other functions as are conferred or imposed on it by or under this Act or any other law.

Directions to electricity supply authorities

25 7. (1) The Authority may give directions to any electricity supply authority as to how that supply authority is to exercise its functions with respect to the commitment and dispatch of generating units, but may only give such a direction if the Authority is satisfied that the direction is necessary for:

- 30 (a) ensuring a balancing of the supply of and demand for electricity;
or
- (b) ensuring the reliability and security of the supply of electricity; or
- (c) giving effect to any protocol on the operation of a competitive market for electricity, as endorsed by the Minister for the purposes of this section.

35 (2) An electricity supply authority is subject to any direction of the Authority under this section and is required to exercise its functions so as to give effect to any such direction.

Electricity Transmission Authority 1994

(3) Nothing done by an electricity supply authority for the purpose of giving effect in good faith to a direction by the Authority under this section, and no failure by an electricity supply authority to supply electricity as a result of its giving effect to such a direction, is to be regarded:

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- (a) as a breach of contract or otherwise as a civil wrong; or
- (b) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any instrument; or
- (c) as an event of default under any contract or instrument.

Non-discriminatory access to transmission system

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8. The Authority is required to exercise its functions so as to ensure that as far as reasonably practicable access to the Authority's transmission system and electricity transmission network services is provided on a non-discriminatory basis.

Ancillary functions of the Authority

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9. (1) In the exercise of its functions, the Authority may:

- (a) conduct any business and, for that purpose, use any property or the services of any staff of the Authority; and
- (b) acquire, develop and dispose of land or any interest in land; and
- (c) acquire or build, and maintain and dispose of, any buildings, plant, machinery, transmission lines, equipment or vehicles; and
- (d) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
- (e) make charges and impose fees for services performed and goods and materials supplied by it; and
- (f) appoint agents, and act as agent for other persons.

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(2) The Authority may do all such things as are supplemental or incidental to, or consequential on, the exercise of its other functions.

(3) The Authority may exercise its functions within the State and, with the approval of the Minister, outside the State.

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Acquisition of land

10. (1) The Authority may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

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(2) The Authority may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

5 (3) For the purposes of the Public Works Act 1912, any acquisition of land under this Act is taken to be for an authorised work, and the Authority is, in relation to that authorised work, taken to be the Constructing Authority.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply to or in respect of works constructed under this Act.

10 **Delegation of functions**

11. (1) The Authority may delegate to an authorised person any of its functions, other than this power of delegation.

15 (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.

(3) In this section, “authorised person” means:

- 20 (a) a member of staff of the Authority or any other person of whose services the Authority makes use; or
(b) a subsidiary company; or
(c) a person of a class prescribed by the regulations.

Authority to supply information to Minister

12. The Authority must:

- 25 (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person may require; and
(b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

Corporate plans

30 13. (1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of the Authority, a draft corporate plan for the financial year.

(2) The Authority must:

- 35 (a) consider any comments on the draft corporate plan that are made by the Minister (being comments made within 2 months after the draft plan is delivered to the Minister); and
(b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

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- (3) The Authority is, as far as practicable, to exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan must specify:
- (a) the objectives of the activities of the Authority for the financial year concerned and for the following 2 financial years (or such other number of financial years as the Minister directs); and 5
 - (b) the strategies, policies and budgets for achieving those objectives; and
 - (c) targets and criteria for assessing the Authority's performance. 10
- (5) This section is subject to the requirements of any direction of the Minister under section 5. 10

Performance agreements

14. (1) The Minister and the Authority may, after consultation between them and with the Treasurer, enter into a performance agreement.
- (2) A performance agreement is to set operational performance targets for the Authority in the exercise of specified functions during a financial year and is to provide for the evaluation and review of results in relation to those targets. 15
- (3) The Authority must, as far as practicable, exercise its functions in accordance with the performance agreement. 20
- (4) The results of the Authority's performance under a performance agreement during a financial year are to be included in the Authority's annual report relating to that year.

Authority not to be privatised without Parliamentary approval

15. (1) The Authority must not be privatised unless a proposal for the privatisation has first been approved by resolution of both Houses of Parliament. 25
- (2) The Authority is taken to be privatised when any transaction or series of transactions is entered into by which 25% or more of the assets, rights and liabilities of the Authority relating to its systems and services for the transmission of electricity are transferred to any private person for operation by that or any other private person. 30
- (3) In this section:
- “private person” means any person other than:
- (a) the Government; or 35
 - (b) a public or local authority (including a state owned corporation); or
 - (c) a public employee or other person or body acting in an official capacity on behalf of the Government or any such public or local authority. 40

PART 3—CONSTITUTION AND FUNCTIONS OF THE BOARD

Establishment of Board

16. (1) There is to be a Board of the Authority.

5 (2) The Board is to consist of 7 directors selected for their relevant expertise, to be appointed by the Governor on the recommendation of the Minister.

10 (3) One of the directors is to be appointed Chairperson of the Board and another is to be appointed Deputy Chairperson of the Board, whether in and by the relevant instrument of appointment as a director or in and by some other instrument executed by the Governor.

(4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Board to determine policies and strategic plans

15 17. (1) The Board has the function of determining the policies and strategic plans of the Authority.

(2) In exercising that function, the Board must, as far as practicable, ensure that the activities of the Authority are carried out properly and efficiently and in accordance with sound commercial practice.

PART 4—THE CHIEF EXECUTIVE OF THE AUTHORITY

Appointment of Chief Executive

18. (1) The Governor may appoint a Chief Executive of the Authority.

25 (2) The employment of the Chief Executive is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

30 (3) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.

(4) The Minister may, at any time, remove a person from office as acting Chief Executive.

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(5) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) A director of the Board is not to be appointed as Chief Executive or acting Chief Executive. 5

Chief Executive to manage and control affairs of the Authority

19. (1) The affairs of the Authority are to be managed and controlled by the Chief Executive in accordance with the policies determined by the Board, but subject to any directions of the Minister to the Board under this Act. 10

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by or with the authority of the Chief Executive is taken to have been done by the Authority.

Right of Chief Executive to attend meetings of Board

20. (1) The Chief Executive is entitled to attend and to participate in discussions at meetings of the Board but is not entitled to vote at any such meeting. 15

(2) The Chief Executive must not, without the consent of the Board, be present at a meeting of the Board during the discussion and determination of a matter relating to the Chief Executive or the office of the Chief Executive. 20

PART 5—SUBSIDIARY COMPANIES

Definitions

21. In this Division:

“company” means a company incorporated or taken to be incorporated under the Corporations Law of New South Wales. 25

Subsidiary companies

22. (1) Any function of the Authority may be exercised by a company in which the Authority has a controlling interest. Such a company is referred to in this Act as a “subsidiary company”. 30

(2) For that purpose, the Authority 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. 35

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(3) The Authority 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.

5 (4) A subsidiary company represents the Crown to the same extent (if any) as the Authority. However, a subsidiary company formed for any purpose prescribed by the regulations for the purposes of this subsection is not and does not represent the Crown.

Delegations

10 23. (1) A function of the Authority 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.

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

20 (4) The Minister may direct the Authority 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 Authority under section 5.

Stamp duty

25 24. Stamp duty is not chargeable in relation to:

- 30 (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

35 25. (1) Except as provided by the regulations, a reference to the Authority in:

- (a) sections 10 and 38–45 of this Act; and
(b) sections 14A, 27 and 27AA of the Electricity Act 1945; and
(c) such provisions of those or any other Acts as may be prescribed by the regulations,

includes a reference to a subsidiary company.

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(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 Authority:

- (a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962; 5
- (b) the Freedom of Information Act 1989;
- (c) Chapter 7 of the Local Government Act 1993;
- (d) such provisions of those or any other Acts as may be prescribed by the regulations.

(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. 10

(4) For the purposes of:

- (a) the Public Sector Management Act 1988; and
- (b) the Independent Commission Against Corruption Act 1988; and 15
- (c) such provisions of any other Acts as may be prescribed by the regulations,

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 if the Authority is a prescribed person for the purposes of that section. 20

(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 25
- (b) the carrying on by a subsidiary company of an undertaking for the transmission 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. 30

(7) The reference to the Authority 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

26. (1) The Minister may by order transfer the employment of specified employees of the Authority to a subsidiary company. 35

(2) The transferred employees remain employees of the Authority, and are merely seconded to the subsidiary company.

PART 6—STAFF**Employment of staff**

27. The Authority may employ such staff as it requires to exercise its functions.

5 **Terms of employment**

28. The Authority may determine salary, wages and conditions of employment of its staff in so far as they are not determined by or under any other Act or law.

Regulations relating to staff

10 29. (1) The regulations may make provision for or with respect to the employment of the staff of the Authority, including the conditions of employment and the discipline of any such staff.

(2) Any such regulations relating to the conditions of employment or the discipline of staff:

- 15 (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the Authority is a party; and
- (b) have effect despite any determination of the Authority under section 27; and
- 20 (c) have effect subject to Part 2A of the Public Sector Management Act 1988.

Using the services of others

25 30. The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority. A person whose services are made use of by secondment is considered to be a member of the staff of the Authority.

Consultants

30 31. The Authority may engage such consultants as it requires to exercise its functions.

PART 7—FINANCE**Establishment of funds**

32. The Authority is required to establish the following funds:

- 35 (a) a fund to be known as the Transmission Authority General Fund;
- (b) a fund to be known as the System Control Fund.

Transmission Authority General Fund

33. (1) There is to be paid into the Transmission Authority General Fund:

- (a) all money received by or on account of the Authority, other than money that is required to be paid into the System Control Fund; and 5
- (b) all interest and other amounts received in respect of the investment of money belonging to the General Fund; and
- (c) all money borrowed by or advanced to the Authority or appropriated by Parliament for the purposes of the Authority; and 10
- (d) all money required to be paid into the General Fund by or under this or any other Act.

(2) There may be paid from the Transmission Authority General Fund:

- (a) the remuneration (including allowances) of the directors of the Board, Chief Executive and staff of the Authority (other than staff engaged in system control); and 15
- (b) all payments made on account of the Authority or otherwise required to meet expenditure incurred in relation to the functions of the Authority; and
- (c) all other payments required by or under this or any other Act to be paid from the General Fund. 20

System Control Fund

34. (1) There is to be paid into the System Control Fund:

- (a) all money received by or on account of the Authority and payable to the Authority as management fees by users of the Authority's transmission system; and 25
- (b) all money required to be paid into the System Control Fund by or under this or any other Act.

(2) There may be paid from the System Control Fund:

- (a) the remuneration of staff of the Authority engaged in system control; and 30
- (b) all other payments required by or under this or any other Act to be paid from the System Control Fund.

Investment

35. (1) The Authority may invest money held by it in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987. 35

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(2) If that Act does not confer power to invest money held by the Authority, the Authority may invest money held by it:

- (a) in any manner authorised for the time being for the investment of trust funds; or
- 5 (b) in any other manner approved by the Minister with the concurrence of the Treasurer.

Banking

10 **36.** All money received on account of the Transmission Authority General Fund or the System Control Fund is to be paid into a bank or banks in New South Wales.

Financial year

37. (1) The financial year of the Authority is the year commencing on 1 July.

15 (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

PART 8—MISCELLANEOUS

No liability for failure to supply

20 **38. (1)** The Authority is not liable in damages to any person by reason of any partial or total failure of the supply of electricity from any cause, except to the extent (if any) that the Authority otherwise agrees.

(2) The Authority may at any time temporarily discontinue the transmission of electricity whenever in its opinion that action is necessary or desirable for the purpose of ensuring the safe or efficient operation of the Authority's transmission system.

25 **Power to break up roads**

39. (1) The Authority may, for the purpose of exercising its functions and after giving the notice required by this section:

- (a) open and break up the soil and pavement of a public road or public reserve; and
- 30 (b) open and break up any thing in or under a public road or public reserve; and
- (c) place structures on, over or beneath a public road or public reserve; and
- 35 (d) erect an electric line or other thing relating to the transmission of electricity on, over or beneath a public road or public reserve.

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(2) The Authority must give not less than 1 month's notice in writing to the statutory body having the control and management of the public road or public reserve with respect to which the Authority proposes to exercise functions under this section. Notice need not be given to a statutory body in a case of emergency but in such a case the Authority must inform the statutory body as soon as practicable in the circumstances. 5

(3) The statutory body may, in accordance with any regulations, require the Authority to comply with conditions in exercising functions under this section, including conditions for restoration of the surface and removal of rubbish. 10

(4) If the Authority fails to comply with a condition imposed by a statutory body under this section, the statutory body may remedy the failure and recover the cost of doing so as a debt owed to it by the Authority. 15

(5) The Authority is not required to comply with a condition imposed by a statutory body if the Minister has, on the application of the Authority and after consultation with the statutory body concerned, directed that the Authority need not comply with the condition on the basis that the condition is not reasonable. 20

Assignment of certain easements

40. (1) The Authority may, by notification published in the Gazette, assign to a subsidiary company any easement vested in the Authority.

(2) The assignment takes effect on publication of the notification in the Gazette or on a later date specified in the notification, and takes effect without the need for execution or registration of any other instrument. 25

(3) The Registrar-General may make such recordings in the Register kept under the Real Property Act 1900 or other records kept or maintained by the Registrar-General as appear to the Registrar-General to be proper to be made in order to record the assignment of an easement under this section and, if need be, may for that purpose require any further particulars of the easement to be furnished by the Authority or the subsidiary company. 30

Altering position of conduit of another person

41. (1) The Authority may require the alteration of the position of a conduit owned by another person if the Authority needs the alteration to be made to exercise its functions and the alteration will not permanently damage the conduit or adversely affect its operation. 35

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(2) To impose such a requirement, the Authority must serve on the person concerned a notice in writing which:

- (a) specifies the alteration needed; and
- (b) requires the alteration to be made within a reasonable time stated in the notice; and
- (c) includes an undertaking by the Authority to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Authority may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) In this section, "conduit" means anything that is in or under a public road or public reserve and is used for the conveyance of a substance, energy or signals.

Proprietary rights in works and materials

42. (1) All works and every part of works vested in the Authority remain the property of the Authority despite having been constructed in any road or place.

(2) Any electric line, pole, meter, fitting, apparatus, building or work that is vested in the Authority and placed in or upon any place or building for the purpose of the transmission of electricity by the Authority cannot be taken in execution under the process of any court, except in proceedings at the suit of the Authority.

Destruction, damage, interference with works and other property

43. Unless authorised to do so by the Authority, a person must not wilfully destroy, damage or interfere with any metering equipment, service equipment, line, post, pillar, lamp fitting, installation, works or other thing that is the property of the Authority and relates to electricity transmission.

Maximum penalty: 50 penalty units.

Theft of electricity

44. (1) A person must not abstract, cause to be wasted or diverted, consume or use any electricity from the Authority's transmission system unless the person is authorised to do so by the Authority or does so with other lawful authority.

Maximum penalty: 50 penalty units.

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(2) A person must not, unless authorised to do so by the Authority, alter, or attempt to alter, the register of any meter, or otherwise interfere with any meter, belonging to the Authority and connected to the Authority's transmission system.

Maximum penalty: 50 penalty units. 5

(3) The existence of artificial means of abstracting, wasting, diverting, consuming or using electricity, as referred to in subsection (1), is evidence that the abstraction, waste, diversion, consumption or use has been caused without the permission of the Authority.

(4) The existence of artificial means of altering or interfering with any meter belonging to the Authority, as referred to in subsection (2), when the meter is in the custody or under the control of a particular person is evidence that the alteration or interference has been caused by that person. 10

Personal liability 15

45. A matter or thing done by:

- (a) the Authority; or
- (b) the Chief Executive; or
- (c) any director of the Board; or
- (d) any person acting under the direction of the Authority or the Board, 20

does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Chief Executive, director or person so acting personally to any action, liability, claim or demand.

Disclosure and misuse of information 25

46. A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or 30
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974, the Independent Commission Against Corruption Act 1988 or the Freedom of Information Act 1989; or 35
- (e) as permitted by the regulations; or
- (f) with other lawful excuse.

Maximum penalty: 50 penalty units.

Service of documents

47. (1) A document may be served on the Authority by leaving it at, or by sending it by post to, any office of the Authority.

5 (2) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

Custody and use of seal

10 48. The seal of the Authority is to be kept by the Chief Executive, or by an employee of the Authority authorised in that behalf by the Chief Executive, and may be affixed to a document only:

(a) in the presence of the Chief Executive or that employee; and

(b) with an attestation by the signature of the Chief Executive or that employee of the fact of the affixing of the seal.

Recovery of money

15 49. Any charge, fee or money due to the Authority may be recovered as a debt in a court of competent jurisdiction.

Proceedings for offences

20 50. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Act binds the Crown

51. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Regulations

25 52. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

30 (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Savings and transitional provisions

53. Schedule 2 has effect.

Amendment of other Acts

54. The Acts specified in Schedule 3 are amended as set out in that Schedule.

5

Review of Act

55. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

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(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD**

(Sec. 16)

Part 1—Constitution5 **Definition**

1. In this Schedule:

“director” means a director of the Board.

Terms of office of directors

10 2. Subject to this Schedule, a director holds office for such period (not exceeding 5 years) as is specified in the director’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of directors

15 3. A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

Deputies for directors

4. (1) The Minister may, from time to time, appoint a person to be the deputy of a director, and the Minister may revoke any such appointment.

(2) In the absence of a director, the director’s deputy:

- 20 (a) may, if available, act in the place of the director; and
-
- (b) while so acting, has all the functions of the director and is taken to be a director.

25 (3) The deputy of a director who is Chairperson or Deputy Chairperson of the Board does not have the director’s functions as Chairperson or Deputy Chairperson.

(4) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Vacancy in office of appointed directors

30 5. (1) The office of a director becomes vacant if the director:

- (a) dies; or
-
- (b) completes a term of office and is not re-appointed; or

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SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or 5
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings; or 10
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 15
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 20
- (2) The Minister may remove a director from office at any time.
- Filling of vacancy in office of director** 25
6. If the office of any director becomes vacant, a person must be appointed, subject to this Act, to fill the vacancy.
- Chairperson and Deputy Chairperson**
7. A person who is a director and Chairperson or Deputy Chairperson of the Board vacates office as Chairperson or Deputy Chairperson if the person ceases to be a director. 30

Electricity Transmission Authority 1994

SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

Disclosure of pecuniary interests by directors

8. (1) If:

- 5 (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,
- 10

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

15

- (a) is a director, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,
- 20

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

25

(4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:

30

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

Electricity Transmission Authority 1994

**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued***

(5) For the purpose of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 5

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board. 10

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a director.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or 15

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director. 20

(3) The office of a director is not, for the purposes of any Act, an office or place of profit under the Crown.

Part 2—Procedure

General procedure 25

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

11. The quorum for a meeting of the Board is 4 directors, of whom one must be the Chairperson or Deputy Chairperson of the Board. 30

**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*****Presiding director**

5 12. (1) The Chairperson of the Board (or, in the absence of the
Chairperson, the Deputy Chairperson) is to preside at a meeting of the
Board.

(2) The person presiding at any meeting of the Board has a deliberative
vote and, in the event of an equality of votes, has a second or casting
vote.

10 Voting

13. A decision supported by a majority of the votes cast at a meeting
of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone

15 14. (1) The Board may, if it thinks fit, transact any of its business by
the circulation of papers among all the directors of the Board, and a
resolution in writing approved in writing by a majority of the directors is
taken to be a decision of the Board.

20 (2) The Board may, if it thinks fit, transact any of its business at a
meeting at which directors (or some directors) participate by telephone,
closed-circuit television or other means, but only if a director who speaks
on a matter at the meeting can be heard by the other directors.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

25 the Chairperson and each other director have the same voting rights as
they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the
regulations, to be recorded in the minutes of the meetings of the Board.

30 (5) Papers may be circulated among directors for the purposes of
subclause (1) by facsimile or other transmission of the information in the
papers concerned.

Electricity Transmission Authority 1994

SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

First meeting

15. The Minister may call the first meeting of the Board in such manner as the Minister thinks fit. 5

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 53)

Part 1—Preliminary

Definitions

1. In this Schedule: 10
- “**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;
- “**instrument**” means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court; 15
- “**liabilities**” means any liabilities, debts and obligations (whether present or future and whether vested or contingent); 20
- “**rights**” means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent);
- “**transfer day**” means:
- (a) in relation to any asset, right or liability transferred by or under this Schedule—the day on which the transfer occurs; 25
or
- (b) in relation to an employee of ELCOM who becomes an employee of the Authority by operation of this Schedule—the day on which that occurs.

Electricity Transmission Authority 1994

 SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued
Regulations

5 2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later day.

10 (3) To the extent to which any such savings or transitional provision takes effect on 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 or any authority of the State), the rights of that person existing before the date of its publication; or

15 (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2—Establishment Board**First Board to be Establishment Board**

20 3. (1) The first Board of the Authority is to be an Establishment Board, that is, it is to hold office on a transitional basis as determined by the Minister and is responsible for achieving implementation goals set by the Minister by direction to the Board.

25 (2) The first Board is required to enter into a Statement of Financial Performance within 12 months after the first Board's establishment. A Statement of Financial Performance is an agreement entered into by the Board on behalf of the Authority with the Treasurer and the Minister setting out financial targets to be achieved by the Authority.

Part 3—Transfer of assets, rights and liabilities**Transfer of ELCOM's transmission system**

30 4. (1) Such of the assets, rights and liabilities of ELCOM as comprise or relate to the transmission system vested in ELCOM immediately before the commencement of this clause are transferred to the Authority.

Electricity Transmission Authority 1994

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

(2) The transfer effected by this clause is without consideration or compensation.

(3) A determination by the Minister as to whether or not particular assets, rights or liabilities comprise or relate to the transmission system vested in ELCOM at a particular time is conclusive as to the matters determined. 5

Transfer of other assets etc. by agreement

5. (1) The Authority and ELCOM are to enter into discussions and negotiations for the purpose of arranging the transfer to the Authority, on such terms and conditions as may be agreed on between them, of such of ELCOM's assets, rights and liabilities as may be necessary, convenient or desirable for the effectual exercise of the Authority's functions (and which are not transferred under clause 4). 10 15

(2) The Minister may give directions to ELCOM and the Authority for the transfer of assets, rights and liabilities for the purpose referred to in subclause (1), but is not to give such a direction unless satisfied that the parties have failed to come to an agreement concerning the assets, rights and liabilities concerned within 6 months after the commencement of this clause. 20

(3) A direction by the Minister under this clause is to specify the terms and conditions of transfer and ELCOM and the Authority are to give effect to the terms and conditions of transfer. The direction operates to transfer the assets, rights and liabilities in accordance with the terms of the direction. 25

(4) A transfer of any assets, rights or liabilities pursuant to an agreement reached following discussions and negotiations under this clause, or pursuant to a direction by the Minister under this clause, is considered to be a transfer by operation of this Part. 30

Effect of transfer

6. (1) The following provisions have effect with respect to any asset, right or liability transferred by operation of this Part:

(a) the asset vests in the Authority by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance; 35

Electricity Transmission Authority 1994

 SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (b) the right or liability becomes by virtue of this clause the right or liability of the Authority;
- 5 (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or against ELCOM and pending immediately before the transfer day are taken to be proceedings pending by or against the Authority;
- 10 (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer day by, to or in respect of ELCOM is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Authority;
- 15 (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to ELCOM is (to the extent that it relates to the asset, right or liability but subject to regulations under clause 2), to be read as, or as including, a reference to the Authority.
- (2) The operation of this Part is not to be regarded:
- 20 (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- 25 (c) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (d) as an event of default under any contract or instrument.
- 30 (4) No attornment to the Authority by a lessee from ELCOM is required.

Stamp duty and fees

- 35 7. An instrument executed only for a purpose ancillary to or consequential on the operation of this Part or the purpose of giving effect to this Part:
- (a) is not chargeable with stamp duty; and

Electricity Transmission Authority 1994

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (b) is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument. 5

Confirmation of vesting

8. The Minister may, by instrument in writing, certify the transfer to the Authority of particular assets, rights or liabilities by the operation of this Part. Such a certificate is evidence of that transfer.

Part 4—Transfer of staff

10

Definitions

9. In this Part:

“**ELCOM employee**” means a person who is an employee of ELCOM immediately before the commencement of clause 4 (including any person who is the holder of a chief executive or senior executive position under Part 2A of the Public Sector Management Act 1988). 15

Transfer of staff

10. (1) The Minister may, by order in writing, provide that such ELCOM employees as are specified or described in the order (being employees employed in connection with the control, management, operation or maintenance of the transmission system vested in ELCOM immediately before the commencement of clause 4) are transferred to the Authority. 20

(2) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an employee of the Authority, in accordance with the terms of the order, on the transfer day. 25

(3) Except as provided by this Part or the regulations, the terms and conditions on which a person becomes an employee of the Authority under this clause are the same as those on which he or she was an ELCOM employee immediately before the transfer day. 30

Electricity Transmission Authority 1994

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

Remuneration and tenure

5 11. (1) An ELCOM employee who becomes an employee of the Authority pursuant to this Part becomes such an employee on the same terms and conditions (including as to remuneration and duration of appointment) as those on which he or she was employed by ELCOM immediately before the transfer day.

10 (2) Such part of the remuneration referred to in subclause (1) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the Industrial Relations Act 1991 until the salary is, or the wages are, lawfully varied.

Annual leave, long service leave and sick leave

15 12. (1) An ELCOM employee who becomes an employee of the Authority pursuant to this Part retains any rights to:

- (a) annual leave; and
- (b) leave in the nature of long service leave; and
- (c) sick leave,

20 accrued or accruing to the person as an ELCOM employee.

(2) A person's entitlement to any such leave is to be calculated:

- 25 (a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day—at the rate for the time being applicable to the person (as an ELCOM employee) before that day; and
- (b) for such part of that period as occurred after the transfer day—at the rate for the time being applicable to the person (as an employee of the Authority) after that day.

30 (3) Service with ELCOM is taken to be service with the Authority for the purposes of the accrual of leave as an employee of the Authority.

Electricity Transmission Authority 1994

 SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued
No payment out on transfer or dual benefits

13. An ELCOM employee who becomes an employee of the Authority pursuant to this Part: 5

- (a) is not entitled to receive any payment or other benefit merely because the person ceases to be an ELCOM employee; and
- (b) is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

Preservation of Pacific Power enterprise agreement 10

14. (1) In this clause:

“the Enterprise Agreements” means the Pacific Power Enterprise Agreement and the Pacific Power Treasury Officer Enterprise Agreement entered into by ELCOM and taking effect on 17 June 1994 and 12 April 1994 respectively (as in force on the commencement of this clause) or, if either agreement expires or is replaced before the commencement of this clause, any new enterprise agreement entered into by ELCOM to replace the agreement. 15

(2) The provisions of the Enterprise Agreements apply to the employees of the Authority during the term of those agreements. 20

(3) The Authority is, for the purposes of this clause, taken to be a party to the Enterprise Agreements.

SCHEDULE 3—AMENDMENT OF ACTS

(Sec. 54) 25

Electricity Act 1945 (1946 No. 13)

(1) Section 4 (Definitions):

After paragraph (a) of the definition of “electricity supply authority” in section 4 (1), insert:

(a1) the Electricity Transmission Authority; or 30

*Electricity Transmission Authority 1994*SCHEDULE 3—AMENDMENT OF ACTS—*continued*(2) Section 14A (**Application of Part**):

After “Electricity Commission” wherever occurring, insert “or the Electricity Transmission Authority”.

5 (3) Section 15 (**Electricity Development Fund**):

From section 15 (2) (a), omit “and the Commission”, insert instead “, the Electricity Commission and the Electricity Transmission Authority”.

10 (4) Section 16 (**Application of Electricity Development Fund**):

In section 16 (1) (c), after “Electricity Commission”, insert “, the Electricity Transmission Authority”.

(5) Section 19AB (**Directions to contribute to Electricity Development Fund**):

Omit section 19AB (1), insert instead:

15 (1) An electricity distributor, Sydney Electricity, the Electricity Commission and the Electricity Transmission Authority are required to make contributions to the Electricity Development Fund when directed to do so by the Minister, despite the provisions of any other Act or
20 instrument.

(6) Section 27 (**Restrictions on supply of electricity**):

After “Electricity Commission” wherever occurring, insert “or the Electricity Transmission Authority”.

25 (7) Section 27AA (**Restrictions on certain works**):

In section 27AA (2) (a), after “Electricity Commission”, insert “or the Electricity Transmission Authority”.

Electricity Commission Act 1950 No. 22

Part 3, Division 1A:

After Division 1 of Part 3, insert:

30 **Division 1A—Transfer of transmission functions**
Commission not to exercise transmission functions

7A. The Commission is not to exercise a function that is for the time being a function of the Electricity

Electricity Transmission Authority 1994

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

Transmission Authority except to the extent (if any) that the regulations otherwise provide. A determination of the Minister as to whether or not a particular function is a function of the Electricity Transmission Authority is conclusive for the purposes of this section. 5

First State Superannuation Act 1992 No. 100

Schedule 1 (**Employers**):

In Part 1, after the matter relating to the Electricity Commission, insert: 10

Electricity Transmission Authority

Government Pricing Tribunal Act 1992 No. 39

Schedule 1 (**Government agencies for which Tribunal has standing reference**):

After the matter relating to the Electricity Commission, insert: 15

Electricity Transmission Authority

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Schedule 4 (**Employing authorities**): 20

Insert in alphabetical order “Electricity Transmission Authority”.

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (**Authorities**):

After the matter relating to the Darling Harbour Authority, insert: 25

Electricity Transmission Authority.

Electricity Transmission Authority 1994

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory bodies**):

Insert in alphabetical order:

5 Electricity Transmission Authority.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (**Declared authorities**):

After the matter relating to the Electricity Commission,
insert:

10 Electricity Transmission Authority.

(2) Schedule 3A (**Chief executive positions**):

In Part 3 in alphabetical order of Offices, insert “Chief
Executive of the Electricity Transmission Authority”.

State Authorities Non-contributory Superannuation Act 1987 No. 212

15 Schedule 1 (**Employers**):

At the end of Part 1, insert:

Electricity Transmission Authority

State Authorities Superannuation Act 1987 No. 211

Schedule 1 (**Employers**):

20 At the end of Part 1, insert:

Electricity Transmission Authority

Electricity Transmission Authority 1994

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

Superannuation Act 1916 No. 28

Schedule 3 (**List of employers**):

At the end of Part 1, insert:

Electricity Transmission Authority

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FIRST PRINT

ELECTRICITY TRANSMISSION AUTHORITY 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 constitute an Electricity Transmission Authority as a public authority having functions with respect to the transmission of electricity throughout the State. The Authority's functions are broadly similar to the electricity transmission functions that are currently exercised by the Electricity Commission. The Bill will transfer the Electricity Commission's transmission functions to the new Authority (together with associated assets, rights, liabilities and staff).

The Bill provides for the following:

- (a) the establishment of the Authority and its functions;
 - (b) the constitution and functions of the Board of directors of the Authority (which is to determine the policies and strategic plans of the Authority);
 - (c) the appointment and functions of the Chief Executive of the Authority;
 - (d) the establishment of subsidiary companies by the Authority;
 - (e) the employment of staff by the Authority;
 - (f) financial arrangements;
 - (g) miscellaneous powers and protections of the Authority;
 - (h) the procedures of the Board of the Authority;
 - (i) savings and transitional provisions providing for the transfer of assets, rights, liabilities and staff from the Electricity Commission to the Authority and the duties of the first Board of the Authority;
 - (j) consequential amendments to other Acts.
-

Electricity Transmission Authority 1994

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 contains definitions of terms used in the proposed Act.

PART 2—CONSTITUTION AND FUNCTIONS OF THE AUTHORITY

Clause 4 constitutes the Authority as a body corporate. The Authority is a statutory body representing the Crown.

Clause 5 provides for Ministerial control of the Authority by means of directions by the Minister to the Board of the Authority. The Board can request a review of certain directions that would affect the financial performance of the Authority.

Clause 6 lists the principal functions of the Authority (which include the management, operation, control and maintenance of the Authority's transmission system). Control of the system includes the balancing of supply and demand, the commitment and dispatch of generating units (that is, the commissioning and bringing of generating plant "on line") and ensuring the reliability and security of supply.

Clause 7 gives the Authority power to give directions to the Electricity Commission and other electricity supply authorities for ensuring a balancing of supply and demand, ensuring the reliability and security of supply and giving effect to a competitive market protocol endorsed by the Minister.

Clause 8 requires the Authority to exercise its functions so as to ensure non-discriminatory access to the Authority's transmission system and transmission network services.

Clause 9 provides for some general ancillary functions of the Authority.

Clause 10 gives the Authority power to acquire land by compulsory acquisition.

Clause 11 allows the Authority to delegate its functions to certain persons, including any subsidiary company of the Authority.

Clause 12 imposes obligations on the Authority to provide the Minister with certain information.

Clause 13 requires the Authority to prepare corporate plans.

Clause 14 provides for the entering into of performance agreements between the Minister and the Authority.

PART 3—CONSTITUTION AND FUNCTIONS OF THE BOARD

Clause 15 establishes a 7 member Board of directors of the Authority.

Clause 16 provides that the Board is to determine the policies and strategic plans of the Authority and requires the Board to ensure that the functions of the Authority are carried out properly and efficiently and in accordance with sound commercial practice.

Electricity Transmission Authority 1994

PART 4—THE CHIEF EXECUTIVE OF THE AUTHORITY

Clause 17 provides for the appointment of the Chief Executive of the Authority under Part 2A of the Public Sector Management Act 1988, and also provides for the appointment of an acting Chief Executive.

Clause 18 provides that the Chief Executive is to manage and control the affairs of the Authority in accordance with the policies determined by the Board (subject to any directions of the Minister).

Clause 19 provides that the Chief Executive is entitled to attend and participate in discussions at meetings of the Board but is not entitled to vote at those meetings.

PART 5—SUBSIDIARY COMPANIES

Clause 20 defines “company” as meaning a company incorporated under the Corporations Law of New South Wales.

Clause 21 provides for the establishment of subsidiary companies of the Authority.

Clause 22 provides for the delegation of functions of the Authority to a subsidiary company of the Authority.

Clause 23 creates an exemption from stamp duty for certain matters involving the establishment of subsidiary companies of the Authority.

Clause 24 deals with the application to subsidiary companies of certain provisions of the proposed Act and certain other Acts.

Clause 25 empowers the Authority to transfer staff to a subsidiary company by way of secondment.

PART 6—STAFF

Clause 26 authorises the Authority to employ staff.

Clause 27 authorises the Authority to determine the salary, wages and conditions of employment of its staff.

Clause 28 provides for the making of regulations with respect to the employment of staff.

Clause 29 provides for arrangements to be made whereby the Authority makes use of the staff of a government department, administrative office or a public or local authority.

Clause 30 authorises the Authority to engage consultants.

PART 7—FINANCE

Clause 31 requires the Authority to establish a Transmission Authority General Fund and a System Control Fund.

Electricity Transmission Authority 1994

Clause 32 provides for the payments to be made into and the payments authorised to be made from the Transmission Authority General Fund.

Clause 33 provides for the payments to be made into and the payments authorised to be made from the System Control Fund.

Clause 34 confers powers of investment on the Authority.

Clause 35 provides for banking by the Authority.

Clause 36 provides for the financial year of the Authority.

PART 8—MISCELLANEOUS

Clause 37 protects the Authority from any liability resulting from failure of supply and authorises the Authority to temporarily discontinue transmission in certain circumstances.

Clause 38 gives the Authority certain powers (such as the power to break up roads and interfere with public reserves) for the purpose of exercising its functions. The clause contains safeguards in the form of the power of statutory bodies to impose conditions (such as conditions as to reinstatement) on the exercise by the Authority of the powers conferred by the clause.

Clause 39 empowers the Authority to assign easements to a subsidiary company of the Authority.

Clause 40 provides for the relocation of conduits belonging to other persons, if the Authority requires that relocation.

Clause 41 makes it clear that the property vested in the Authority remains the property of the Authority even if it is constructed or placed on public or private land.

Clause 42 makes it an offence to wilfully destroy, damage or interfere with electricity transmission property of the Authority.

Clause 43 creates an offence in respect of the theft of electricity from the Authority's transmission system.

Clause 44 protects persons engaged in the administration of the proposed Act from personal liability.

Clause 45 imposes restrictions on the disclosure of information obtained under the proposed Act.

Clause 46 provides for the address for service of documents on the Authority.

Clause 47 provides for the custody and use of the seal of the Authority.

Clause 48 provides for the recovery of money owed to the Authority.

Clause 49 provides for the way in which proceedings for offences are to be taken.

Clause 50 provides that the proposed Act binds the Crown.

Clause 51 is a general regulation making power.

Electricity Transmission Authority 1994

Clause 52 gives effect to the Schedule of savings and transitional provisions (Schedule 2).

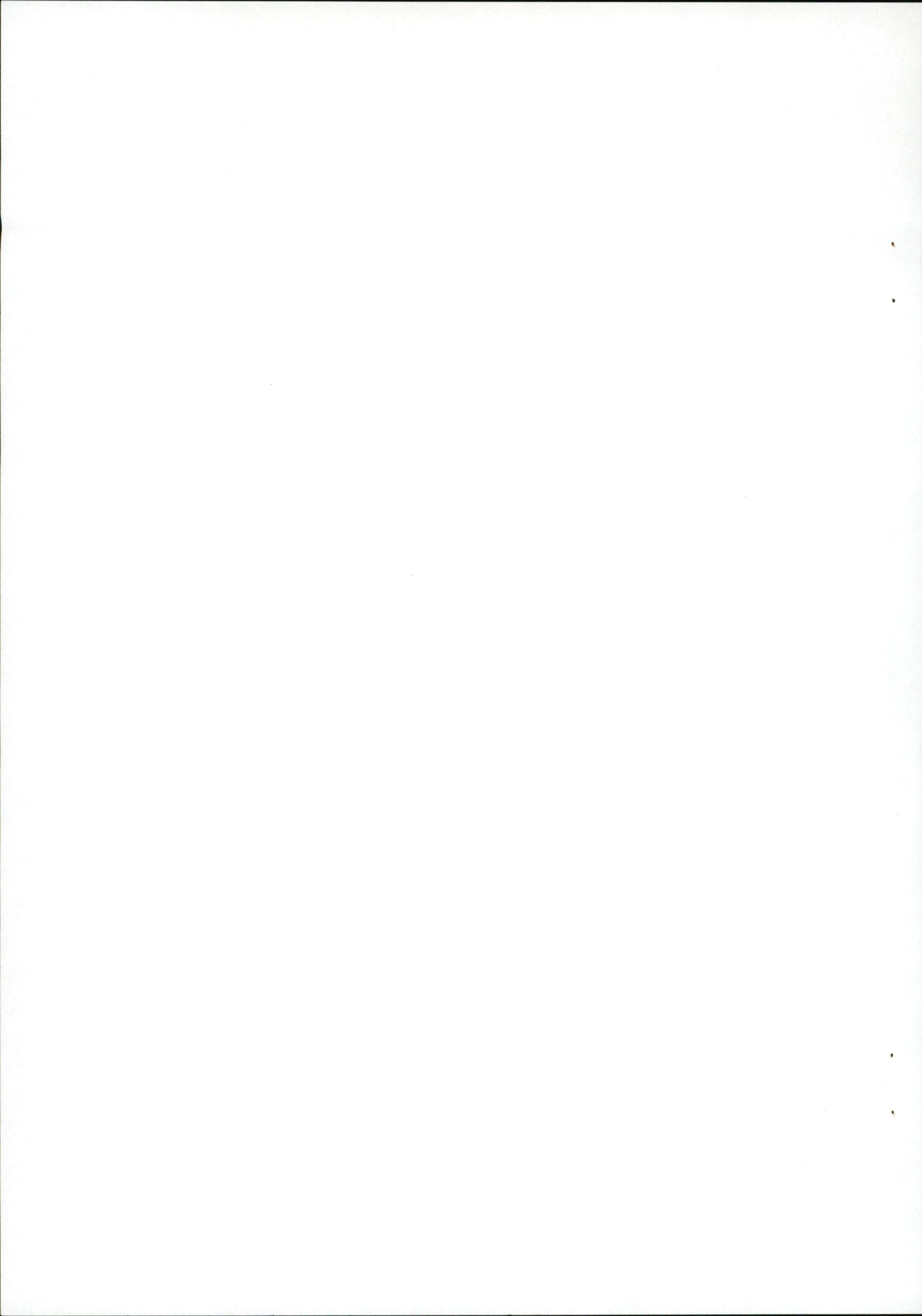
Clause 53 gives effect to the Schedule of consequential amendments to other Acts (Schedule 3).

Clause 54 provides for a review of the proposed Act by the Minister after 5 years.

Schedule 1 contains provisions with respect to the constitution and procedures of the Board of directors of the Authority.

Schedule 2 provides for the transfer of assets, rights, liabilities and staff from the Electricity Commission to the Authority, and for certain transitional functions of the first Board of the Authority.

Schedule 3 makes consequential amendments to other Acts.



FIRST PRINT

ELECTRICITY TRANSMISSION AUTHORITY BILL 1994

NEW SOUTH WALES



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ELECTRICITY TRANSMISSION AUTHORITY BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to establish the New South Wales Electricity Transmission Authority and to provide for its functions; to make consequential amendments to certain Acts; and for other purposes.

Electricity Transmission Authority 1994

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the Electricity Transmission Authority Act 1994.

Commencement

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

Definitions

- 10 3. In this Act:

“**Authority**” means the Electricity Transmission Authority constituted by this Act;

“**Authority’s transmission system**” means the transmission system vested in or under the control of the Authority;

- 15 “**Board**” means the Board of the Authority established by this Act;

“**Chief Executive**” means the Chief Executive of the Authority;

“**ELCOM**” means the Electricity Commission and includes any subsidiary company within the meaning of the Electricity Commission Act 1950;

- 20 “**electricity supply authority**” means ELCOM and any other electricity supply authority within the meaning of the Electricity Act 1945;

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

“**function**” includes power, authority or duty;

- 25 “**subsidiary company**” means a company in which the Authority has a controlling interest (as referred to in Part 5);

“**transmission system**” means the transmission lines, substations and associated structures, equipment and works used to carry electricity between electricity supply authorities.

**PART 2—CONSTITUTION AND FUNCTIONS OF THE
AUTHORITY****The Authority**

4. (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Electricity Transmission Authority. 5

(2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

(3) In any Act or instrument, the Authority may be referred to as the Electricity Transmission Authority or the NSW Electricity Transmission Authority. 10

Ministerial control

5. (1) The Minister may give the Board written directions in relation to the exercise of the Authority's functions.

(2) Subject to this section, the Board and the Chief Executive must ensure that the Authority complies with any such direction. 15

(3) The Board may request the Minister to review a direction if they consider that:

(a) the Authority would suffer a significant financial loss as a result of complying with the direction; and 20

(b) the direction is not in the commercial interests of the Authority.

(4) A request for a review is to contain an estimate of the financial loss the Board considers the Authority would suffer and must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines. 25

(5) If the Board requests a review, the direction need not be complied with until the Board is notified of the Minister's decision following the review.

(6) Following the review, the Minister may confirm or revoke the direction. 30

(7) For the purposes of this section, the amount of the financial loss that the Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo. 35

Electricity Transmission Authority 1994

(8) Subsection (3) does not apply to the following directions:

- (a) a direction under section 15 (2) (a) of the Electricity Act 1945;
- (b) a direction given in relation to a requirement of the Treasurer under section 59B of the Public Finance and Audit Act 1983.

5 **Principal functions of the Authority**

6. The Authority has the following functions:

- 10 (a) the management, operation, control and maintenance of the Authority's transmission system (including the balancing of supply and demand, the dispatch of generating units and ensuring the reliability and security of supply);
- (b) the enlargement of the Authority's transmission system in response to present and expected future demand and generally for the purpose of increasing the availability of electricity;
- 15 (c) the investigation of and planning for future needs in relation to the transmission of electricity, including interconnection with other transmission systems;
- (d) the co-ordination of the transmission of electricity between transmission systems;
- 20 (e) the protection of the public from dangers arising from the transmission of electricity;
- (f) such other functions as are conferred or imposed on it by or under this Act or any other law.

Directions to electricity supply authorities

25 7. (1) The Authority may give directions to any electricity supply authority as to how that supply authority is to exercise its functions with respect to the commitment and dispatch of generating units, but may only give such a direction if the Authority is satisfied that the direction is necessary for:

- 30 (a) ensuring a balancing of the supply of and demand for electricity;
or
- (b) ensuring the reliability and security of the supply of electricity; or
- (c) giving effect to any protocol on the operation of a competitive market for electricity, as endorsed by the Minister for the purposes of this section.

35 (2) An electricity supply authority is subject to any direction of the Authority under this section and is required to exercise its functions so as to give effect to any such direction.

Electricity Transmission Authority 1994

(3) Nothing done by an electricity supply authority for the purpose of giving effect in good faith to a direction by the Authority under this section, and no failure by an electricity supply authority to supply electricity as a result of its giving effect to such a direction, is to be regarded:

5

- (a) as a breach of contract or otherwise as a civil wrong; or
- (b) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any instrument; or
- (c) as an event of default under any contract or instrument.

Non-discriminatory access to transmission system

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8. The Authority is required to exercise its functions so as to ensure that as far as reasonably practicable access to the Authority's transmission system and electricity transmission network services is provided on a non-discriminatory basis.

Ancillary functions of the Authority

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9. (1) In the exercise of its functions, the Authority may:

- (a) conduct any business and, for that purpose, use any property or the services of any staff of the Authority; and
- (b) acquire, develop and dispose of land or any interest in land; and
- (c) acquire or build, and maintain and dispose of, any buildings, plant, machinery, transmission lines, equipment or vehicles; and
- (d) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
- (e) make charges and impose fees for services performed and goods and materials supplied by it; and
- (f) appoint agents, and act as agent for other persons.

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(2) The Authority may do all such things as are supplemental or incidental to, or consequential on, the exercise of its other functions.

(3) The Authority may exercise its functions within the State and, with the approval of the Minister, outside the State.

30

Acquisition of land

10. (1) The Authority may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

35

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(2) The Authority may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

5 (3) For the purposes of the Public Works Act 1912, any acquisition of land under this Act is taken to be for an authorised work, and the Authority is, in relation to that authorised work, taken to be the Constructing Authority.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply to or in respect of works constructed under this Act.

10 **Delegation of functions**

11. (1) The Authority may delegate to an authorised person any of its functions, other than this power of delegation.

15 (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.

(3) In this section, "authorised person" means:

- (a) a member of staff of the Authority or any other person of whose services the Authority makes use; or
- (b) a subsidiary company; or
- 20 (c) a person of a class prescribed by the regulations.

Authority to supply information to Minister

12. The Authority must:

- 25 (a) supply the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person may require; and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

Corporate plans

30 13. (1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of the Authority, a draft corporate plan for the financial year.

(2) The Authority must:

- 35 (a) consider any comments on the draft corporate plan that are made by the Minister (being comments made within 2 months after the draft plan is delivered to the Minister); and

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- (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
- (3) The Authority is, as far as practicable, to exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan must specify: 5
- (a) the objectives of the activities of the Authority for the financial year concerned and for the following 2 financial years (or such other number of financial years as the Minister directs); and
- (b) the strategies, policies and budgets for achieving those objectives; 10
and
- (c) targets and criteria for assessing the Authority's performance.
- (5) This section is subject to the requirements of any direction of the Minister under section 5.

Performance agreements

14. (1) The Minister and the Authority may, after consultation between them and with the Treasurer, enter into a performance agreement. 15
- (2) A performance agreement is to set operational performance targets for the Authority in the exercise of specified functions during a financial year and is to provide for the evaluation and review of results in relation to those targets. 20
- (3) The Authority must, as far as practicable, exercise its functions in accordance with the performance agreement.
- (4) The results of the Authority's performance under a performance agreement during a financial year are to be included in the Authority's annual report relating to that year. 25

PART 3—CONSTITUTION AND FUNCTIONS OF THE BOARD

Establishment of Board

15. (1) There is to be a Board of the Authority.
- (2) The Board is to consist of 7 directors selected for their relevant expertise, to be appointed by the Governor on the recommendation of the Minister. 30
- (3) One of the directors is to be appointed Chairperson of the Board and another is to be appointed Deputy Chairperson of the Board, whether in and by the relevant instrument of appointment as a director or in and by some other instrument executed by the Governor. 35

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(4) Schedule 1 has effect with respect to the constitution and procedure of the Board.

Board to determine policies and strategic plans

5 **16. (1)** The Board has the function of determining the policies and strategic plans of the Authority.

(2) In exercising that function, the Board must, as far as practicable, ensure that the activities of the Authority are carried out properly and efficiently and in accordance with sound commercial practice.

PART 4—THE CHIEF EXECUTIVE OF THE AUTHORITY

10 **Appointment of Chief Executive**

17. (1) The Governor may appoint a Chief Executive of the Authority.

(2) The employment of the Chief Executive is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

15 **(3)** The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive (or during a vacancy in the office of Chief Executive) and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.

20 **(4)** The Minister may, at any time, remove a person from office as acting Chief Executive.

(5) An acting Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

25 **(6)** A director of the Board is not to be appointed as Chief Executive or acting Chief Executive.

Chief Executive to manage and control affairs of the Authority

30 **18. (1)** The affairs of the Authority are to be managed and controlled by the Chief Executive in accordance with the policies determined by the Board, but subject to any directions of the Minister to the Board under this Act.

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by or with the authority of the Chief Executive is taken to have been done by the Authority.

Right of Chief Executive to attend meetings of Board

19. (1) The Chief Executive is entitled to attend and to participate in discussions at meetings of the Board but is not entitled to vote at any such meeting.

(2) The Chief Executive must not, without the consent of the Board, be present at a meeting of the Board during the discussion and determination of a matter relating to the Chief Executive or the office of the Chief Executive.

5

PART 5—SUBSIDIARY COMPANIES**Definitions**

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20. In this Division:

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

Subsidiary companies

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

15

(2) For that purpose, the Authority 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.

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(3) The Authority 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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(4) A subsidiary company represents the Crown to the same extent (if any) as the Authority. However, a subsidiary company formed for any purpose prescribed by the regulations for the purposes of this subsection is not and does not represent the Crown.

Delegations

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22. (1) A function of the Authority 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.

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(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.

(4) The Minister may direct the Authority 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 Authority under section 5.

Stamp duty

23. Stamp duty is not chargeable 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

24. (1) Except as provided by the regulations, a reference to the Authority in:

- (a) sections 10 and 37–44 of this Act; and
- (b) sections 14A, 27 and 27AA of the Electricity Act 1945; and
- (c) such provisions of those or any other Acts as may be prescribed by the regulations,

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 Authority:

- (a) Division 2 of Part 3 of the Factories, Shops and Industries Act 1962;
- (b) the Freedom of Information Act 1989;
- (c) Chapter 7 of the Local Government Act 1993;
- (d) such provisions of those or any other Acts as may be prescribed by the regulations.

(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.

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(4) For the purposes of:

- (a) the Public Sector Management Act 1988; and
- (b) the Independent Commission Against Corruption Act 1988; and
- (c) such provisions of any other Acts as may be prescribed by the regulations,

5

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 if the Authority is a prescribed person for the purposes of that section.

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 transmission 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.

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(7) The reference to the Authority 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.

20

Transfer of staff

25. (1) The Minister may by order transfer the employment of specified employees of the Authority to a subsidiary company.

(2) The transferred employees remain employees of the Authority, and are merely seconded to the subsidiary company.

25

PART 6—STAFF

Employment of staff

26. The Authority may employ such staff as it requires to exercise its functions.

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Terms of employment

27. The Authority may determine salary, wages and conditions of employment of its staff in so far as they are not determined by or under any other Act or law.

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Regulations relating to staff

28. (1) The regulations may make provision for or with respect to the employment of the staff of the Authority, including the conditions of employment and the discipline of any such staff.

5 (2) Any such regulations relating to the conditions of employment or the discipline of staff:

(a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the Authority is a party; and

10 (b) have effect despite any determination of the Authority under section 27; and

(c) have effect subject to Part 2A of the Public Sector Management Act 1988.

Using the services of others

15 29. The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority. A person whose services are made use of by secondment is considered to be a member of the staff of the Authority.

20 Consultants

30. The Authority may engage such consultants as it requires to exercise its functions.

PART 7—FINANCE**Establishment of funds**

25 31. The Authority is required to establish the following funds:

(a) a fund to be known as the Transmission Authority General Fund;

(b) a fund to be known as the System Control Fund.

Transmission Authority General Fund

30 32. (1) There is to be paid into the Transmission Authority General Fund:

(a) all money received by or on account of the Authority, other than money that is required to be paid into the System Control Fund; and

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- (b) all interest and other amounts received in respect of the investment of money belonging to the General Fund; and
 - (c) all money borrowed by or advanced to the Authority or appropriated by Parliament for the purposes of the Authority; and
 - (d) all money required to be paid into the General Fund by or under this or any other Act. 5
- (2) There may be paid from the Transmission Authority General Fund:
- (a) the remuneration (including allowances) of the directors of the Board, Chief Executive and staff of the Authority (other than staff engaged in system control); and 10
 - (b) all payments made on account of the Authority or otherwise required to meet expenditure incurred in relation to the functions of the Authority; and
 - (c) all other payments required by or under this or any other Act to be paid from the General Fund. 15

System Control Fund

33. (1) There is to be paid into the System Control Fund:
- (a) all money received by or on account of the Authority and payable to the Authority as management fees by users of the Authority's transmission system; and 20
 - (b) all money required to be paid into the System Control Fund by or under this or any other Act.
- (2) There may be paid from the System Control Fund:
- (a) the remuneration of staff of the Authority engaged in system control; and 25
 - (b) all other payments required by or under this or any other Act to be paid from the System Control Fund.

Investment

34. (1) The Authority may invest money held by it in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987. 30
- (2) If that Act does not confer power to invest money held by the Authority, the Authority may invest money held by it:
- (a) in any manner authorised for the time being for the investment of trust funds; or 35
 - (b) in any other manner approved by the Minister with the concurrence of the Treasurer.

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Banking

35. All money received on account of the Transmission Authority General Fund or the System Control Fund is to be paid into a bank or banks in New South Wales.

5 **Financial year**

36. (1) The financial year of the Authority is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

10

PART 8—MISCELLANEOUS

No liability for failure to supply

37. (1) The Authority is not liable in damages to any person by reason of any partial or total failure of the supply of electricity from any cause, except to the extent (if any) that the Authority otherwise agrees.

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(2) The Authority may at any time temporarily discontinue the transmission of electricity whenever in its opinion that action is necessary or desirable for the purpose of ensuring the safe or efficient operation of the Authority's transmission system.

Power to break up roads

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38. (1) The Authority may, for the purpose of exercising its functions and after giving the notice required by this section:

(a) open and break up the soil and pavement of a public road or public reserve; and

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(b) open and break up any thing in or under a public road or public reserve; and

(c) place structures on, over or beneath a public road or public reserve; and

(d) erect an electric line or other thing relating to the transmission of electricity on, over or beneath a public road or public reserve.

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(2) The Authority must give not less than 1 month's notice in writing to the statutory body having the control and management of the public road or public reserve with respect to which the Authority proposes to exercise functions under this section. Notice need not be given to a

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statutory body in a case of emergency but in such a case the Authority must inform the statutory body as soon as practicable in the circumstances.

(3) The statutory body may, in accordance with any regulations, require the Authority to comply with conditions in exercising functions under this section, including conditions for restoration of the surface and removal of rubbish. 5

(4) If the Authority fails to comply with a condition imposed by a statutory body under this section, the statutory body may remedy the failure and recover the cost of doing so as a debt owed to it by the Authority. 10

(5) The Authority is not required to comply with a condition imposed by a statutory body if the Minister has, on the application of the Authority and after consultation with the statutory body concerned, directed that the Authority need not comply with the condition on the basis that the condition is not reasonable. 15

Assignment of certain easements

39. (1) The Authority may, by notification published in the Gazette, assign to a subsidiary company any easement vested in the Authority.

(2) The assignment takes effect on publication of the notification in the Gazette or on a later date specified in the notification, and takes effect without the need for execution or registration of any other instrument. 20

(3) The Registrar-General may make such recordings in the Register kept under the Real Property Act 1900 or other records kept or maintained by the Registrar-General as appear to the Registrar-General to be proper to be made in order to record the assignment of an easement under this section and, if need be, may for that purpose require any further particulars of the easement to be furnished by the Authority or the subsidiary company. 25

Altering position of conduit of another person 30

40. (1) The Authority may require the alteration of the position of a conduit owned by another person if the Authority needs the alteration to be made to exercise its functions and the alteration will not permanently damage the conduit or adversely affect its operation.

(2) To impose such a requirement, the Authority must serve on the person concerned a notice in writing which: 35

(a) specifies the alteration needed; and

(b) requires the alteration to be made within a reasonable time stated in the notice; and

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(c) includes an undertaking by the Authority to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Authority may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) In this section, "conduit" means anything that is in or under a public road or public reserve and is used for the conveyance of a substance, energy or signals.

Proprietary rights in works and materials

41. (1) All works and every part of works vested in the Authority remain the property of the Authority despite having been constructed in any road or place.

(2) Any electric line, pole, meter, fitting, apparatus, building or work that is vested in the Authority and placed in or upon any place or building for the purpose of the transmission of electricity by the Authority cannot be taken in execution under the process of any court, except in proceedings at the suit of the Authority.

Destruction, damage, interference with works and other property

42. Unless authorised to do so by the Authority, a person must not wilfully destroy, damage or interfere with any metering equipment, service equipment, line, post, pillar, lamp fitting, installation, works or other thing that is the property of the Authority and relates to electricity transmission.

Maximum penalty: 50 penalty units.

Theft of electricity

43. (1) A person must not abstract, cause to be wasted or diverted, consume or use any electricity from the Authority's transmission system unless the person is authorised to do so by the Authority or does so with other lawful authority.

Maximum penalty: 50 penalty units.

(2) A person must not, unless authorised to do so by the Authority, alter, or attempt to alter, the register of any meter, or otherwise interfere with any meter, belonging to the Authority and connected to the Authority's transmission system.

Maximum penalty: 50 penalty units.

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(3) The existence of artificial means of abstracting, wasting, diverting, consuming or using electricity, as referred to in subsection (1), is evidence that the abstraction, waste, diversion, consumption or use has been caused without the permission of the Authority.

(4) The existence of artificial means of altering or interfering with any meter belonging to the Authority, as referred to in subsection (2), when the meter is in the custody or under the control of a particular person is evidence that the alteration or interference has been caused by that person. 5

Personal liability 10

44. A matter or thing done by:

- (a) the Authority; or
- (b) the Chief Executive; or
- (c) any director of the Board; or
- (d) any person acting under the direction of the Authority or the Board, 15

does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Chief Executive, director or person so acting personally to any action, liability, claim or demand.

Disclosure and misuse of information 20

45. A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or 25
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974, the Independent Commission Against Corruption Act 1988 or the Freedom of Information Act 1989; or 30
- (e) as permitted by the regulations; or
- (f) with other lawful excuse.

Maximum penalty: 50 penalty units.

Service of documents

46. (1) A document may be served on the Authority by leaving it at, or by sending it by post to, any office of the Authority.

5 (2) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

Custody and use of seal

10 47. The seal of the Authority is to be kept by the Chief Executive, or by an employee of the Authority authorised in that behalf by the Chief Executive, and may be affixed to a document only:

- (a) in the presence of the Chief Executive or that employee; and
- (b) with an attestation by the signature of the Chief Executive or that employee of the fact of the affixing of the seal.

Recovery of money

15 48. Any charge, fee or money due to the Authority may be recovered as a debt in a court of competent jurisdiction.

Proceedings for offences

20 49. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Act binds the Crown

50. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Regulations

25 51. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

30 (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Savings and transitional provisions

52. Schedule 2 has effect.

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Amendment of other Acts

53. The Acts specified in Schedule 3 are amended as set out in that Schedule.

Review of Act

54. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 5

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 10

**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD**

(Sec. 15)

Part 1—Constitution**5 Definition**

1. In this Schedule:

“**director**” means a director of the Board.

Terms of office of directors

10 2. Subject to this Schedule, a director holds office for such period (not exceeding 5 years) as is specified in the director’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of directors

15 3. A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

Deputies for directors

4. (1) The Minister may, from time to time, appoint a person to be the deputy of a director, and the Minister may revoke any such appointment.

(2) In the absence of a director, the director’s deputy:

20 (a) may, if available, act in the place of the director; and

(b) while so acting, has all the functions of the director and is taken to be a director.

25 (3) The deputy of a director who is Chairperson or Deputy Chairperson of the Board does not have the director’s functions as Chairperson or Deputy Chairperson.

(4) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Vacancy in office of appointed directors

30 5. (1) The office of a director becomes vacant if the director:

(a) dies; or

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**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued***

- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or 5
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings; or 10
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 15
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 20
- (2) The Minister may remove a director from office at any time. 25

Filling of vacancy in office of director

6. If the office of any director becomes vacant, a person must be appointed, subject to this Act, to fill the vacancy.

Chairperson and Deputy Chairperson

7. A person who is a director and Chairperson or Deputy Chairperson of the Board vacates office as Chairperson or Deputy Chairperson if the person ceases to be a director. 30

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SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

Disclosure of pecuniary interests by directors

8. (1) If:

- 5 (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- 10 (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

15 (2) A disclosure by a director at a meeting of the Board that the director:

- (a) is a director, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- 20 (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

25 (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

30 (4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

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**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued***

- (5) For the purpose of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 5
- (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board. 10

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a director.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or 15
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director. 20
- (3) The office of a director is not, for the purposes of any Act, an office or place of profit under the Crown.

Part 2—Procedure

General procedure 25

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

11. The quorum for a meeting of the Board is 4 directors, of whom one must be the Chairperson or Deputy Chairperson of the Board. 30

Electricity Transmission Authority 1994

SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued*

Presiding director

5 12. (1) The Chairperson of the Board (or, in the absence of the
Chairperson, the Deputy Chairperson) is to preside at a meeting of the
Board.

(2) The person presiding at any meeting of the Board has a deliberative
vote and, in the event of an equality of votes, has a second or casting
vote.

10 **Voting**

13. A decision supported by a majority of the votes cast at a meeting
of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone

15 14. (1) The Board may, if it thinks fit, transact any of its business by
the circulation of papers among all the directors of the Board, and a
resolution in writing approved in writing by a majority of the directors is
taken to be a decision of the Board.

20 (2) The Board may, if it thinks fit, transact any of its business at a
meeting at which directors (or some directors) participate by telephone,
closed-circuit television or other means, but only if a director who speaks
on a matter at the meeting can be heard by the other directors.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

25 the Chairperson and each other director have the same voting rights as
they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the
regulations, to be recorded in the minutes of the meetings of the Board.

30 (5) Papers may be circulated among directors for the purposes of
subclause (1) by facsimile or other transmission of the information in the
papers concerned.

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**SCHEDULE 1—PROVISIONS RELATING TO CONSTITUTION
AND PROCEDURE OF THE BOARD—*continued***

First meeting

15. The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 52)

Part 1—Preliminary

Definitions

1. In this Schedule: 10
- “**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;
- “**instrument**” means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court; 15
- “**liabilities**” means any liabilities, debts and obligations (whether present or future and whether vested or contingent); 20
- “**rights**” means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent);
- “**transfer day**” means:
- (a) in relation to any asset, right or liability transferred by or under this Schedule—the day on which the transfer occurs; 25
or
- (b) in relation to an employee of ELCOM who becomes an employee of the Authority by operation of this Schedule—the day on which that occurs.

*Electricity Transmission Authority 1994***SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—**
*continued***Regulations**

5 2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later day.

10 (3) To the extent to which any such savings or transitional provision takes effect on 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 or any authority of the State), the rights of that person existing before the date of its publication; or

15 (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2—Establishment Board**First Board to be Establishment Board**

20 3. (1) The first Board of the Authority is to be an Establishment Board, that is, it is to hold office on a transitional basis as determined by the Minister and is responsible for achieving implementation goals set by the Minister by direction to the Board.

25 (2) The first Board is required to enter into a Statement of Financial Performance within 12 months after the first Board's establishment. A Statement of Financial Performance is an agreement entered into by the Board on behalf of the Authority with the Treasurer and the Minister setting out financial targets to be achieved by the Authority.

Part 3—Transfer of assets, rights and liabilities**Transfer of ELCOM's transmission system**

30 4. (1) Such of the assets, rights and liabilities of ELCOM as comprise or relate to the transmission system vested in ELCOM immediately before the commencement of this clause are transferred to the Authority.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

(2) The transfer effected by this clause is without consideration or compensation.

(3) A determination by the Minister as to whether or not particular assets, rights or liabilities comprise or relate to the transmission system vested in ELCOM at a particular time is conclusive as to the matters determined. 5

Transfer of other assets etc. by agreement

5. (1) The Authority and ELCOM are to enter into discussions and negotiations for the purpose of arranging the transfer to the Authority, on such terms and conditions as may be agreed on between them, of such of ELCOM's assets, rights and liabilities as may be necessary, convenient or desirable for the effectual exercise of the Authority's functions (and which are not transferred under clause 4). 10 15

(2) The Minister may give directions to ELCOM and the Authority for the transfer of assets, rights and liabilities for the purpose referred to in subclause (1), but is not to give such a direction unless satisfied that the parties have failed to come to an agreement concerning the assets, rights and liabilities concerned within 6 months after the commencement of this clause. 20

(3) A direction by the Minister under this clause is to specify the terms and conditions of transfer and ELCOM and the Authority are to give effect to the terms and conditions of transfer. The direction operates to transfer the assets, rights and liabilities in accordance with the terms of the direction. 25

(4) A transfer of any assets, rights or liabilities pursuant to an agreement reached following discussions and negotiations under this clause, or pursuant to a direction by the Minister under this clause, is considered to be a transfer by operation of this Part. 30

Effect of transfer

6. (1) The following provisions have effect with respect to any asset, right or liability transferred by operation of this Part:

(a) the asset vests in the Authority by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance; 35

Electricity Transmission Authority 1994

 SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (b) the right or liability becomes by virtue of this clause the right or liability of the Authority;
- 5 (c) all proceedings relating to the asset, right or liability commenced before the transfer day by or against ELCOM and pending immediately before the transfer day are taken to be proceedings pending by or against the Authority;
- 10 (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer day by, to or in respect of ELCOM is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Authority;
- 15 (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to ELCOM is (to the extent that it relates to the asset, right or liability but subject to regulations under clause 2), to be read as, or as including, a reference to the Authority.
- (2) The operation of this Part is not to be regarded:
- 20 (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- 25 (c) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (d) as an event of default under any contract or instrument.
- 30 (4) No attornment to the Authority by a lessee from ELCOM is required.

Stamp duty and fees

- 35 7. An instrument executed only for a purpose ancillary to or consequential on the operation of this Part or the purpose of giving effect to this Part:
- (a) is not chargeable with stamp duty; and

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (b) is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument. 5

Confirmation of vesting

8. The Minister may, by instrument in writing, certify the transfer to the Authority of particular assets, rights or liabilities by the operation of this Part. Such a certificate is evidence of that transfer.

Part 4—Transfer of staff

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Definitions

9. In this Part:

“**ELCOM employee**” means a person who is an employee of ELCOM immediately before the commencement of clause 4 (including any person who is the holder of a chief executive or senior executive position under Part 2A of the Public Sector Management Act 1988). 15

Transfer of staff

10. (1) The Minister may, by order in writing, provide that such ELCOM employees as are specified or described in the order (being employees employed in connection with the control, management, operation or maintenance of the transmission system vested in ELCOM immediately before the commencement of clause 4) are transferred to the Authority. 20

(2) A person who is the subject of an order under this clause is to be regarded for all purposes as having become an employee of the Authority, in accordance with the terms of the order, on the transfer day. 25

(3) Except as provided by this Part or the regulations, the terms and conditions on which a person becomes an employee of the Authority under this clause are the same as those on which he or she was an ELCOM employee immediately before the transfer day. 30

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

Remuneration and tenure

5 11. (1) An ELCOM employee who becomes an employee of the Authority pursuant to this Part becomes such an employee on the same terms and conditions as to remuneration, and duration of appointment, as those on which he or she was employed by ELCOM immediately before the transfer day.

10 (2) Such part of the remuneration referred to in subclause (1) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the Industrial Relations Act 1991 until the salary is, or the wages are, lawfully varied.

Annual leave, long service leave and sick leave

15 12. (1) An ELCOM employee who becomes an employee of the Authority pursuant to this Part retains any rights to:

- (a) annual leave; and
- (b) leave in the nature of long service leave; and
- (c) sick leave,

20 accrued or accruing to the person as an ELCOM employee.

(2) A person's entitlement to any such leave is to be calculated:

25 (a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day—at the rate for the time being applicable to the person (as an ELCOM employee) before that day; and

(b) for such part of that period as occurred after the transfer day—at the rate for the time being applicable to the person (as an employee of the Authority) after that day.

30 (3) Service with ELCOM is taken to be service with the Authority for the purposes of the accrual of leave as an employee of the Authority.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued
No payment out on transfer or dual benefits

13. An ELCOM employee who becomes an employee of the Authority pursuant to this Part: 5

- (a) is not entitled to receive any payment or other benefit merely because the person ceases to be an ELCOM employee; and
- (b) is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

Preservation of Pacific Power enterprise agreement 10

14. (1) In this clause:

“the Enterprise Agreements” means the Pacific Power Enterprise Agreement and the Pacific Power Treasury Officer Enterprise Agreement entered into by ELCOM and taking effect on 17 June 1994 and 12 April 1994 respectively (as in force on the commencement of this clause) or, if either agreement expires or is replaced before the commencement of this clause, any new enterprise agreement entered into by ELCOM to replace the agreement. 15

(2) The provisions of the Enterprise Agreements apply to the employees of the Authority during the term of those agreements. 20

(3) The Authority is, for the purposes of this clause, taken to be a party to the Enterprise Agreements.

SCHEDULE 3—AMENDMENT OF ACTS

(Sec. 53) 25

Electricity Act 1945 (1946 No. 13)

(1) Section 4 (**Definitions**):

After paragraph (a) of the definition of “electricity supply authority” in section 4 (1), insert:

(a1) the Electricity Transmission Authority; or 30

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SCHEDULE 3—AMENDMENT OF ACTS—*continued*

(2) Section 14A (**Application of Part**):

After “Electricity Commission” wherever occurring, insert “or the Electricity Transmission Authority”.

5 (3) Section 15 (**Electricity Development Fund**):

From section 15 (2) (a), omit “and the Commission”, insert instead “, the Electricity Commission and the Electricity Transmission Authority”.

(4) Section 16 (**Application of Electricity Development Fund**):

10 In section 16 (1) (c), after “Electricity Commission”, insert “, the Electricity Transmission Authority”.

(5) Section 19AB (**Directions to contribute to Electricity Development Fund**):

Omit section 19AB (1), insert instead:

15 (1) An electricity distributor, Sydney Electricity, the Electricity Commission and the Electricity Transmission Authority are required to make contributions to the Electricity Development Fund when directed to do so by the Minister, despite the provisions of any other Act or
20 instrument.

(6) Section 27 (**Restrictions on supply of electricity**):

After “Electricity Commission” wherever occurring, insert “or the Electricity Transmission Authority”.

(7) Section 27AA (**Restrictions on certain works**):

25 In section 27AA (2) (a), after “Electricity Commission”, insert “or the Electricity Transmission Authority”.

Electricity Commission Act 1950 No. 22

Part 3, Division 1A:

After Division 1 of Part 3, insert:

30 **Division 1A—Transfer of transmission functions**
Commission not to exercise transmission functions

7A. The Commission is not to exercise a function that is for the time being a function of the Electricity

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SCHEDULE 3—AMENDMENT OF ACTS—*continued*

Transmission Authority except to the extent (if any) that the regulations otherwise provide. A determination of the Minister as to whether or not a particular function is a function of the Electricity Transmission Authority is conclusive for the purposes of this section. 5

First State Superannuation Act 1992 No. 100

Schedule 1 (**Employers**):

In Part 1, after the matter relating to the Electricity Commission, insert: 10

Electricity Transmission Authority

Government Pricing Tribunal Act 1992 No. 39

Schedule 1 (**Government agencies for which Tribunal has standing reference**):

After the matter relating to the Electricity Commission, insert: 15

Electricity Transmission Authority

Government and Related Employees Appeal Tribunal Act 1980 No. 39

Schedule 4 (**Employing authorities**): 20

Insert in alphabetical order "Electricity Transmission Authority".

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (**Authorities**):

After the matter relating to the Darling Harbour Authority, insert: 25

Electricity Transmission Authority.

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SCHEDULE 3—AMENDMENT OF ACTS—*continued*

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory bodies**):

Insert in alphabetical order:

5 Electricity Transmission Authority.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (**Declared authorities**):

After the matter relating to the Electricity Commission,
insert:

10 Electricity Transmission Authority.

(2) Schedule 3A (**Chief executive positions**):

In Part 3 in alphabetical order of Offices, insert “Chief
Executive of the Electricity Transmission Authority”.

State Authorities Non-contributory Superannuation Act 1987 No. 212

15 Schedule 1 (**Employers**):

At the end of Part 1, insert:

Electricity Transmission Authority

State Authorities Superannuation Act 1987 No. 211

Schedule 1 (**Employers**):

20 At the end of Part 1, insert:

Electricity Transmission Authority

Electricity Transmission Authority 1994

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

Superannuation Act 1916 No. 28

Schedule 3 (List of employers):

At the end of Part 1, insert:

Electricity Transmission Authority

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