



New South Wales

# **Energy Services Corporations Bill 1995**

## **Explanatory note**

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

This Bill is cognate with the *Electricity Supply Bill 1995*.

## **Overview of Bill**

The objects of this Bill are:

- (a) to establish certain statutory State owned corporations as electricity generators and to set out their principal objectives and functions, and
  - (b) to establish certain statutory State owned corporations as energy distributors and to set out their principal objectives and functions, and
  - (c) to repeal and amend various Acts and instruments, and
  - (d) to enact consequential savings and transitional provisions.
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## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** defines certain words and expressions for the purposes of the proposed Act (*electricity generator*, *energy distributor* and *energy services corporation*) and provides for certain other words and expressions to be given the same meanings as they have in the *State Owned Corporations Act 1989*.

### Part 2 Electricity generators

**Clause 4** and **Schedule 1** establish 2 electricity generator corporations under the names of First State Power and Macquarie Generation. These corporations are to be the offspring of Pacific Power. The clause amends the *State Owned Corporations Act 1989* so as to make these corporations statutory State owned corporations within the meaning of that Act.

**Clause 5** sets out the principal objectives of an electricity generator, which are:

- (a) to be a successful business, and
- (b) to protect the environment, and
- (c) to be responsive to regional development and decentralisation, and
- (d) to operate efficient, safe and reliable facilities for the generation of electricity, and
- (e) to be an efficient and responsible supplier of electricity, and
- (f) to be a successful participant in the wholesale market for electricity.

**Clause 6** sets out the functions of an electricity generator, the principal of which are:

- (a) to establish, maintain and operate facilities for the generation of electricity and other forms of energy, and
- (b) to supply electricity and other forms of energy to other persons and bodies.

### **Part 3 Energy distributors**

**Clause 7** and **Schedule 1** establish 6 energy distributor corporations under the names of the 6 electricity distributors which currently exist under the *Electricity Act 1945*: being Energy South, Far West Energy, MetNorth Energy, MetSouth Energy, MidState Energy and NorthPower Energy. These corporations are to be the successors of those electricity distributors. The clause amends the *State Owned Corporations Act 1989* so as to make these corporations statutory State owned corporations within the meaning of that Act.

**Clause 8** sets out the principal objectives of an energy distributor, which are:

- (a) to be a successful business, and
- (b) to protect the environment, and
- (c) to be responsive to regional development and decentralisation, and
- (d) to operate efficient, safe and reliable facilities for the distribution of electricity and other forms of energy, and
- (e) to be an efficient and responsible supplier of electricity and other forms of energy and of services relating to the use and conservation of energy, and
- (f) to be a successful participant in the wholesale and retail markets for electricity and other forms of energy and for services relating to the use and conservation of energy.

**Clause 9** sets out the functions of an energy distributor, the principal of which are:

- (a) to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and
- (b) to supply electricity and other forms of energy, and services relating to the use and conservation of energy, to other persons and bodies.

### **Part 4 Miscellaneous**

**Clause 10** and **Schedule 2** modify the application of the *State Owned Corporations Act 1989* in its application to energy services corporations.

**Clause 11** ensures that energy services corporations cannot be privatised and, so as to prevent conflicts of Ministerial interests, prohibits certain Ministers from becoming shareholders in energy services corporations.



**Clause 12** enables the name of an energy services corporation to be varied by regulation.

**Clause 13** enables additional energy services corporations to be created by regulation.

**Clause 14** enables existing energy services corporations to be dissolved by regulation.

**Clause 15** and **Schedule 3** provide for the transfer by regulation (to another energy services corporation or to the Crown) of the staff, assets, rights and liabilities of a dissolved energy services corporation.

**Clause 16** provides for the service of documents on an energy services corporation.

**Clause 17** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 18** repeals certain regulations under the *Electricity Act 1945* as a consequence of the corporatisation by the proposed Act of the electricity distributors under that Act.

**Clause 19** and **Schedule 4** amend various Acts and instruments as a consequence of the enactment of the proposed Act.

**Clause 20** and **Schedule 5** enact provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

**Clause 21** provides for the review of the proposed Act at the end of 5 years after its date of assent.

## **Schedules**

**Schedule 1** sets out the names of the electricity generators (Part 1) and energy distributors (Part 2) that are being constituted by the proposed Act.

**Schedule 2** sets out the modifications to the *State Owned Corporations Act 1989* that are to apply to energy services corporations.

**Schedule 3** sets out the provisions that are to apply to the transfer of staff, assets, rights and liabilities under the proposed Act.



**Schedule 4** amends the following Acts:

*Attachment of Wages Limitation Act 1957 No 28*  
*Capital Debt Charges Act 1957 No 1*  
*Clean Air Act 1961 No 69*  
*Clean Waters Act 1970 No 78*  
*Conveyancing Act 1919 No 6*  
*Electricity Act 1945 (1946 No 13)*  
*Electricity (Pacific Power) Act 1950 No 22*  
*Electricity Transmission Authority Act 1994 No 64*  
*Environmental Planning and Assessment Act 1979 No 203*  
*Environmental Planning and Assessment Regulation 1994*  
*First State Superannuation Act 1992 No 100*  
*Freedom of Information Act 1989 No 5*  
*Government and Related Employees Appeal Tribunal Act 1980 No 39*  
*Government Pricing Tribunal Act 1992 No 39*  
*Government Telecommunications Act 1991 No 77*  
*Lake Illawarra Authority Act 1987 No 285*  
*Land Development Contribution Management Act 1970 No 22*  
*Local Government Associations Incorporation Act 1974 No 20*  
*New South Wales Retirement Benefits Act 1972 No 70*  
*Public Authorities (Financial Arrangements) Act 1987 No 33*  
*Public Authorities Superannuation Act 1985 No 41*  
*Public Finance and Audit Act 1983 No 152*  
*Public Sector Executives Superannuation Act 1989 No 106*  
*Public Sector Management Act 1988 No 33*  
*Stamp Duties Act 1920 No 47*  
*State Authorities Non-contributory Superannuation Act 1987 No 212*  
*State Authorities Superannuation Act 1987 No 211*  
*State Public Service Superannuation Act 1985 No 45*  
*Superannuation Act 1916 No 28*  
*Traffic Act 1909 No 5*  
*Unclaimed Money Act 1982 No 174*  
*Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 No 194.*  
**Schedule 5** sets out provisions of a savings or transitional nature consequent on the enactment of the proposed Act.





New South Wales

# Energy Services Corporations Bill 1995

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New South Wales

# **Energy Services Corporations Bill 1995**

No      , 1995

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## **A Bill for**

An Act to establish certain statutory State owned corporations to exercise functions relating to the generation and distribution of electricity and other forms of energy; to make consequential amendments to other legislation; and for other purposes.

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The Legislature of New South Wales enacts:

## Part 1      Preliminary

### 1    Name of Act

This Act is the *Energy Services Corporations Act 1995*.

### 2    Commencement

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

### 3    Definitions

(1)    In this Act:

***electricity generator*** means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 1 of Schedule 1. 10

***energy distributor*** means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 2 of Schedule 1. 15

***energy services corporation*** means an electricity generator or an energy distributor.

(2)    Words and expressions used in this Act and also in the *State Owned Corporations Act 1989* have the same meanings in this Act as they have in that Act. 20



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## Part 2 Electricity generators

### 4 Establishment of statutory State owned corporations

On the day on which this section commences:

- (a) corporations are constituted by this Act under each of the corporate names listed in Part 1 of Schedule 1, and 5
- (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names listed in Part 1 of Schedule 1.

### 5 Principal objectives of electricity generators

- (1) The principal objectives of an electricity generator are as follows: 10
  - (a) to be a successful business and, to this end:
    - (i) to operate at least as efficiently as any comparable businesses,
    - (ii) to maximise the net worth of the State's investment in it, 15
    - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, 20
  - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates, 25
  - (d) to operate efficient, safe and reliable facilities for the generation of electricity,
  - (e) to be an efficient and responsible supplier of electricity,
  - (f) to be a successful participant in the wholesale market for electricity. 30

- (2) Each of the principal objectives of an electricity generator is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an electricity generator.

**6 Functions of electricity generators**

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- (1) An electricity generator has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of an electricity generator are:
  - (a) to establish, maintain and operate facilities for the generation of electricity and other forms of energy, and 10
  - (b) to supply electricity and other forms of energy to other persons and bodies.
- (3) An electricity generator:
  - (a) may also provide facilities or services that are ancillary or incidental to its principal functions, and 15
  - (b) may also conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (4) This section does not limit the functions of an electricity generator apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law. 20

## Part 3      Energy distributors

### 7   Establishment of statutory State owned corporations

On the day on which this section commences:

- (a) corporations are constituted by this Act under each of the corporate names listed in Part 2 of Schedule 1, and 5
- (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names listed in Part 2 of Schedule 1.

### 8   Principal objectives of energy distributors

- (1) The principal objectives of an energy distributor are as follows: 10
  - (a) to be a successful business and, to this end:
    - (i) to operate at least as efficiently as any comparable businesses,
    - (ii) to maximise the net worth of the State's investment in it, 15
    - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, 20
  - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates, 25
  - (d) to operate efficient, safe and reliable facilities for the distribution of electricity and other forms of energy,
  - (e) to be an efficient and responsible supplier of electricity and other forms of energy and of services relating to the use and conservation of electricity and other forms of energy, 30
  - (f) to be a successful participant in the wholesale and retail markets for electricity and other forms of energy and for services relating to the use and conservation of electricity and other forms of energy.



- (2) Each of the principal objectives of an energy distributor is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an energy distributor.

**9   Functions of energy distributors** 5

- (1) An energy distributor has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of an energy distributor are:
  - (a) to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and 10
  - (b) to supply electricity and other forms of energy, and services relating to the use and conservation of electricity and other forms of energy, to other persons and bodies.
- (3) An energy distributor:
  - (a) may also provide facilities or services that are ancillary or incidental to its principal functions, and 15
  - (b) may also conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (4) In seeking to obtain electricity and other forms of energy, an energy distributor should consider: 20
  - (a) all sources of energy, with particular regard to energy that has been produced from renewable energy reserves, and
  - (b) the likely impact on the environment of the means by which energy from each such source is produced. 25
- (5) An energy distributor should encourage users of electricity and other forms of energy:
  - (a) to use energy safely, efficiently and in a manner that minimises the adverse effects on the environment of their activities in their use of energy, and 30
  - (b) in particular, to observe safe procedures in the operation of electrical installations and electrical articles.

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- (6) An energy distributor should promote public awareness of the dangers that can arise from damaging or coming into contact with works used in connection with the distribution of electricity and other forms of energy.
- (7) This section does not limit the functions of an energy distributor apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

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## **Part 4        Miscellaneous**

### **10    Constitution and procedure of energy services corporations**

- (1)    Schedule 2 has effect with respect to the constitution and procedure of an energy services corporation.
- (2)    The provisions of Schedule 2 are in addition to and (except to the extent to which that Schedule provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.     5

### **11    Prohibition on privatisation of energy services corporations**

- (1)    Shares in an energy services corporation may not be sold or otherwise disposed of except to eligible Ministers.     10
- (2)    The following Ministers may not be nominated as eligible Ministers for an energy services corporation:
  - (a)    the Minister administering the *Environmental Planning and Assessment Act 1979*,
  - (b)    the Minister administering the *Protection of the Environment Administration Act 1991*.     15

### **12    Variation of names of energy services corporations**

The Governor may, by regulation, amend Part 1 or 2 of Schedule 1 so as to vary the name of an energy services corporation.     20

### **13    Creation of additional energy services corporations**

- (1)    The Governor may, by regulation, amend Part 1 or 2 of Schedule 1 so as to add the corporate names of one or more additional corporations to be constituted by this Act.
- (2)    A regulation under this section takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subsection (3)) or on such later day as may be specified in the regulation.     25



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- (3) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this section does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act. 5
- (4) On the day on which a regulation under this section takes effect:
- (a) corporations are constituted by this Act under each of the corporate names given to them by the regulation, and
  - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names given to the corporations by the regulation. 10

#### 14 Dissolution of existing energy services corporations

- (1) The Governor may, by regulation, amend Part 1 or 2 of Schedule 1 by omitting the corporate names of one or more energy services corporations to be dissolved by this Act. 15
- (2) A regulation under this section takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subsection (3)) or on such later day as may be specified in the regulation. 20
- (3) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this section does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act. 25
- (4) On the day on which a regulation under this section takes effect:
- (a) the energy services corporations whose corporate names are omitted by the regulation are dissolved, and 30
  - (b) the *State Owned Corporations Act 1989* is amended by omitting those names from Schedule 5.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the dissolution of an energy services corporation under this section. 35

- (6) Any such provision may, if the regulations so provide, take effect from the day on which the energy services corporation is dissolved or a later day.
- (7) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an 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 an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**15    Transfer of staff, assets, rights and liabilities of dissolved energy services corporations**

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of an energy services corporation that has been dissolved by this Act be transferred to such other energy services corporation, or to such other person or body acting on behalf of the Crown, as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this section.

**16    Service of documents on energy services corporations**

- (1) A document may be served on an energy services corporation by leaving it at, or by sending it by post to:
  - (a) the office of the energy services corporation, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any other Act or law, or of any rules of court, that authorise a document to be served on an energy services corporation in any other manner.

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**17 Regulations**

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.

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**18 Repeals**

The following Regulations are repealed:

- (a) *Electricity (Accounts) Regulation 1994,*
- (b) *Electricity Distributors (Contract Tendering) Regulation 1994,*
- (c) *Electricity (Dismissal of Boards) Regulation 1995,*
- (d) *Electricity (Amalgamation of Electricity Distributors) Regulation 1995.*

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**19 Amendment of other Acts and instruments**

Each Act and instrument referred to in Schedule 4 is amended as set out in that Schedule.

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**20 Savings, transitional and other provisions**

Schedule 5 has effect.

**21 Review of Act**

- (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.

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Energy Services Corporations Bill 1995

Schedule 1 Energy services corporations

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**Schedule 1 Energy services corporations**

(Sections 4, 7, 12, 13, 14)

**Part 1 Electricity generators**

First State Power

Macquarie Generation

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**Part 2 Energy distributors**

Energy South

Far West Energy

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

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## Schedule 2    Supplementary provisions concerning constitution and procedure

(Section 10)

### 1    Board of directors

- (1)    Each energy services corporation is to have a board of directors.    5
- (2)    The board is to consist of:
  - (a)    the chief executive officer, and
  - (b)    one director, to be appointed by the voting shareholders on the recommendation of a selection committee comprising:
    - (i)    2 persons nominated by the portfolio Minister, and
    - (ii)   2 persons nominated by the Labor Council of New South Wales,being a person selected by the committee from a panel of 3 persons nominated by the Labor Council, and    10
  - (c)    at least 2 and not more than 5 other directors, to be appointed by the voting shareholders at their discretion.    15
- (3)    The procedures for constituting a selection committee for the purposes of subclause (2) (b), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders.    20
- (4)    One of the directors referred to in subclause (2) (c) is (in and by the director's instrument of appointment or in and by another instrument executed by the voting shareholders) to be appointed as chairperson of the board.    25
- (5)    The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the energy services corporation.
- (6)    The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.    30  
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Schedule 2 Supplementary provisions concerning constitution and procedure

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- (7) Subject to subclauses (8) and (9), Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
  - (8) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2) and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to an energy services corporation or to the chairperson. 5
  - (9) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director. 10
- 2 Chief executive officer**
- (1) The chief executive officer of an energy services corporation is to be appointed by the board after consultation with the voting shareholders. 15
  - (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.
  - (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine. 20
  - (4) The *Public Sector Management Act 1988* (Part 8 included) does not apply to the chief executive officer.
  - (5) Subject to subclause (6), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer. 25
  - (6) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer. 30
- 3 Acting chief executive officer**
- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.

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- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
- (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and 5
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office. 10
- (5) The provisions of clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* do not apply to a person appointed to act in the office of chief executive officer under this clause.

**4 Dividends** 15

- (1) The voting shareholders of an energy services corporation, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by an energy services corporation are to be declared by the board in accordance with the share dividends scheme so determined. 20
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to an energy services corporation.

**5 Supply of information to portfolio Minister** 25

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to an energy services corporation.



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## **Schedule 3 Transfer of staff, assets, rights and liabilities**

(Section 15, clauses 3, 7 and 12 of Schedule 5)

### **1 Application and interpretation**

- (1) This Schedule applies to any transfer of staff, assets, rights or liabilities under section 15 or clause 3, 7 or 12 of Schedule 5. 5
- (2) In this Schedule, the person or body from which any staff, assets, rights or liabilities are transferred is called the transferor and the person or body to which they are transferred is called the transferee. 10

### **2 Transfer of staff**

A member of staff who is transferred by a transfer to which this Schedule applies is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred but remained a member of staff of the transferor. 15

### **3 Vesting of undertaking in transferee**

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect: 20
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee, 25
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee, 30



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- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee, 5
      - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee. 10
    - (2) The operation of this clause 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 15
      - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 20
    - (3) The operation of this clause is not to be regarded as an event of default under any contract or other instrument.
    - (4) No attornment to the transferee by a lessee from the transferor is required. 25
    - (5) A transfer is subject to the terms and conditions of the order by which it is effected.
    - (6) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides. 30
    - (7) Subclause (6) does not affect the rights of any member of staff who is the subject of a transfer to which this Schedule applies.
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**4 Date of vesting**

A transfer to which this Schedule applies takes effect on the date specified in the order by which it is effected.

**5 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred. 5

**6 Stamp duty**

Stamp duty is not chargeable for or in respect of: 10

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

**7 Confirmation of vesting** 15

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

**8 Definitions** 20

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. 25

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

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

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## **Schedule 4    Amendment of other Acts and instruments**

(Section 19)

### **4.1    Attachment of Wages Limitation Act 1957 No 28**

#### **Schedule**

5

Omit "Pacific Power."

### **4.2    Capital Debt Charges Act 1957 No 1**

#### **Schedule**

Omit the matter relating to Pacific Power.

### **4.3    Clean Air Act 1961 No 69**

10

#### **Section 5 Definitions**

Omit "Pacific Power" from the definition of *statutory body* in section 5 (1).

### **4.4    Clean Waters Act 1970 No 78**

#### **Section 5 Definitions**

15

Omit "the Electricity Authority of New South Wales, Pacific Power" from the definition of *statutory authority*.

### **4.5    Conveyancing Act 1919 No 6**

#### **[1]    Section 88 Limitation of enforceability of easements and restrictions of user of land**

20

Insert "or by or for an energy distributor within the meaning of the *Energy Services Corporations Act 1995*" after "*Water Board (Corporatisation) Act 1994*," in section 88 (4).



**[2] Section 88A Easements in gross and restrictions appurtenant to easements**

Insert after section 88A (6):

- (7) For the purposes of this section, an energy distributor within the meaning of the *Energy Services Corporations Act 1995* is taken to be a public authority constituted by an Act of Parliament. 5

**4.6 Electricity Act 1945 (1946 No 13)**

**[1] Section 4 Definitions**

Omit the definition of *electricity distributor* from section 4 (1). 10  
Insert instead:

*electricity distributor* means an energy distributor constituted by the *Energy Services Corporations Act 1995*.

**[2] Section 6 Distribution districts of electricity distributors 15**

Omit section 6 (1) and (3).

**[3] Section 6A Amendment of Schedule 7**

Omit section 6A (1) and (2). Insert instead:

- (1) The Governor may, by proclamation, change the distribution district of an electricity distributor named in Schedule 7. 20
- (2) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of an electricity distributor whose distribution district is changed be transferred to such person or body as is specified in the order. 25



---

**[4] Sections 6B, 6BA, 6C, 6D, 6E, 6F, 6G and 6K**

Omit the sections.

**[5] Part 2A, Divisions 4, 5 and 6**

Omit the Divisions.

**[6] Schedule 11 Savings, transitional and other provisions**

5

Insert at the end of clause 1 (1):

*Energy Services Corporations Act 1995.*

**4.7 Electricity (Pacific Power) Act 1950 No 22**

**[1] Section 4**

Omit the section. Insert instead:

10

**4 Application of Act to electricity generators**

An electricity generator within the meaning of the *Energy Services Corporations Act 1995*, for the purpose only of enabling it to exercise its functions under that Act, may exercise the functions conferred or imposed on Pacific Power by this Act and, for that purpose, a reference in this Act to Pacific Power extends to an electricity generator within the meaning of that Act.

15

**[2] Schedule 7 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

20

*Energy Services Corporations Act 1995.*

**4.8 Electricity Transmission Authority Act 1994 No 64**

**Section 3 Definitions**

Omit the definition of *electricity supply authority*.

Insert instead:

*electricity generator* has the same meaning as it has in the *Energy Services Corporations Act 1995*. 5

*electricity supply authority* means an electricity generator or an energy distributor.

*energy distributor* has the same meaning as it has in the *Energy Services Corporations Act 1995*. 10

**4.9 Environmental Planning and Assessment Act 1979 No 203**

**Section 4 Definitions**

Insert “(and its subsidiaries)” after “statutory State owned corporation” in the definition of *public authority* in section 4 (1). 15

**4.10 Environmental Planning and Assessment Regulation 1994**

**Clause 91A**

Omit the clause.

**4.11 First State Superannuation Act 1992 No 100** 20

**[1] Schedule 1 Employers**

Insert at the end of Part 1:

Energy South

Far West Energy

First State Power 25

---

Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

5

**[2] Schedule 1, Part 1**

Omit "Sydney Electricity".

**[3] Schedule 1, Part 2**

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*".

10

**4.12 Freedom of Information Act 1989 No 5**

**[1] Section 6 Definitions**

Insert "(and its subsidiaries)" after "statutory State owned corporation" in paragraph (i) of the definition of *responsible Minister* in section 6 (1).

15

**[2] Section 7 Public authorities**

Insert "(and its subsidiaries)" after "statutory State owned corporation" in section 7 (1) (f).

**4.13 Government and Related Employees Appeal Tribunal Act 1980 No 39**

20

**Schedule 4 Employing Authorities**

Omit "Sydney Electricity".

**4.14 Government Pricing Tribunal Act 1992 No 39**

**[1] Schedule 1 Government agencies for which Tribunal has standing reference**

Insert at the end of the Schedule:

Energy South	5
Far West Energy	
First State Power	
Macquarie Generation	
MetNorth Energy	
MetSouth Energy	10
MidState Energy	
NorthPower Energy	

**[2] Schedule 1**

Omit "Pacific Power" and "Sydney Electricity".

**[3] Schedule 1** 15

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*, and Broken Hill City Council and Tenterfield Shire Council in relation to their exercise of the functions of an electricity distributor under that Act".

**4.15 Government Telecommunications Act 1991 No 77** 20

**[1] Section 32 Establishment of the Board**

Omit "responsible for Pacific Power" from section 32 (3) (g).  
Insert instead "administering Part 2 of the *Energy Services Corporations Act 1995*".



---

**[2] Section 32**

Omit "responsible for Sydney Electricity" from section 32 (3) (h).  
Insert instead "administering Part 3 of the *Energy Services Corporations Act 1995*".

**4.16 Lake Illawarra Authority Act 1987 No 285**

5

**Schedule 1 Development area**

Insert "as at the commencement of this Act" after "Pacific Power".

**4.17 Land Development Contribution Management Act 1970  
No 22**

**[1] Section 7 Time when declared land becomes liable for contribution**

10

Omit "Pacific Power" from section 7 (6).  
Insert instead "an electricity generator within the meaning of the  
*Energy Services Corporations Act 1995*".

**[2] Section 7 (6)**

15

Omit "an electricity distributor within the meaning of the *Electricity Act 1945* or Broken Hill City Council or Tenterfield Shire Council (in the exercise of the functions of an electricity distributor within the meaning of that Act)".

Insert instead "an energy distributor within the meaning of the  
*Energy Services Corporations Act 1995*".

20

**4.18 Local Government Associations Incorporation Act 1974  
No 20**

**Section 5 Members of corporation**

Omit section 5 (2).

25

Energy Services Corporations Bill 1995

Schedule 4 Amendment of other Acts and instruments

---

**4.19 New South Wales Retirement Benefits Act 1972 No 70**

**Schedule 2**

Omit the matter relating to Pacific Power.

**4.20 Public Authorities (Financial Arrangements) Act 1987  
No 33**

5

**[1] Schedule 1 Authorities**

Insert in alphabetical order of authorities:

Energy South

Far West Energy

First State Power

10

Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

15

**[2] Schedule 1**

Omit "Sydney Electricity."

**[3] Schedule 1**

Omit "An electricity distributor constituted under the *Electricity Act 1945*."

20

---

**4.21 Public Authorities Superannuation Act 1985 No 41**

**Schedule 3 Employers**

Omit the matter relating to Pacific Power in Part 2.

**4.22 Public Finance and Audit Act 1983 No 152**

**[1] Schedule 2 Statutory Bodies**

5

Omit "Sydney Electricity."

**[2] Schedule 2**

Omit "An electricity distributor constituted under the *Electricity Act 1945*."

**4.23 Public Sector Executives Superannuation Act 1989  
No 106**

10

**Schedule 1 Additional employers**

Insert in alphabetical order of authorities:

Energy South

Far West Energy

15

First State Power

Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

20

NorthPower Energy

**4.24 Public Sector Management Act 1988 No 33**

**[1] Schedule 3 Declared Authorities**

Omit "Sydney Electricity."

**[2] Schedule 3A Chief Executive positions**

Omit "Chief Executive of Sydney Electricity" from Part 3. 5

**[3] Schedule 3B Senior Executive positions**

Omit the matter relating to Sydney Electricity.

**4.25 Stamp Duties Act 1920 No 47**

**Second Schedule Stamp duties and exemptions**

Omit "or an electricity distributor constituted under Part 2A of the *Electricity Act 1945*" from item (14) under the heading "General exemptions from stamp duty under Part 3". 10

**4.26 State Authorities Non-contributory Superannuation Act 1987 No 212**

**[1] Schedule 1 Employers 15**

Insert at the end of Part 1:

Energy South

Far West Energy

First State Power

Macquarie Generation 20



---

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

**[2] Schedule 1, Part 1**

5

Omit "Sydney Electricity".

**[3] Schedule 1, Part 2**

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*".

**4.27 State Authorities Superannuation Act 1987 No 211**

10

**[1] Schedule 1 Employers**

Insert at the end of Part 1:

Energy South

Far West Energy

First State Power

Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

15

20

Energy Services Corporations Bill 1995

Schedule 4 Amendment of other Acts and instruments

---

**[2] Schedule 1, Part 1**

Omit "Sydney Electricity".

**[3] Schedule 1, Part 2**

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*".

5

**4.28 State Public Service Superannuation Act 1985 No 45**

**Schedule 3 Employers**

Omit "Pacific Power.".

**4.29 Superannuation Act 1916 No 28**

**[1] Schedule 3 List of employers**

10

Insert at the end of Part 1:

Energy South

Far West Energy

First State Power

Macquarie Generation

15

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

**[2] Schedule 3, Part 1**

20

Omit "Sydney Electricity".

---

**[3] Schedule 3, Part 2**

Omit "An electricity distributor constituted under the *Electricity Act 1945*".

**4.30 Traffic Act 1909 No 5**

**Section 10ZA Definitions**

5

Omit the definition of *electricity distributor*.

Insert instead:

*electricity distributor* means an energy distributor within the meaning of the *Energy Services Corporations Act 1995*.

10

**4.31 Unclaimed Money Act 1982 No 174**

**Section 3 Definitions**

Omit "*Electricity Act 1945*" from paragraph (g) of the definition of *business* in section 3 (1).

Insert instead "*Energy Services Corporations Act 1995*".

15

**4.32 Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 No 194**

**Section 9**

Omit the section. Insert instead:

**9 State authorities not to construct or operate nuclear reactors to generate electricity**

20

Without affecting the generality of this Act, nothing in any other Act authorises an authority of the State (including an electricity generator within the meaning of the *Energy Services Corporations Act 1995*) to construct or operate, or to approve or permit the construction or operation of, a nuclear reactor for the purpose of generating electricity or any other form of energy.

25

---

## Schedule 5 Savings, transitional and other provisions

(Section 20)

### Part 1 Preliminary

- 1 Regulations** 5
- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
*Energy Services Corporations Act 1995*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an 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 an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

### Part 2 Provisions consequent on the enactment of the Energy Services Corporations Act 1995

#### Division 1 Provisions relating to Pacific Power

- 2 Definitions** 25
- In this Division:
- former Act* means the *Electricity (Pacific Power) Act 1950*.
- new generator* means an electricity generator constituted under this Act.
- Pacific Power* means the corporation constituted by section 5 of the former Act. 30



**3 Transfer of staff, assets, rights and liabilities of Pacific Power**

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of Pacific Power be transferred to such new generator as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order. 5
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this clause.

**4 References in other Acts and instruments**

- In any other Act or instrument, a reference to Pacific Power extends to a new generator. 10

**5 Pending environmental impact statements**

- (1) If, before the commencement of this clause:
  - (a) the Director of Planning has notified Pacific Power of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of Pacific Power in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, being a matter relating to the affairs of a new generator, or 15
  - (b) Pacific Power, or a person on its behalf, has commenced the preparation of an environmental planning impact statement under that Part in connection with the affairs of a new generator, or 20
  - (c) an environmental impact statement has been prepared by or on behalf of Pacific Power under that Part in connection with the affairs of a new generator, 25

that Part applies in relation to the activity concerned as if the Minister were Pacific Power.
- (2) This clause is subject to the regulations under clause 1. 30

**Division 2 Provisions relating to former distributors****6 Definitions**

In this Division:

*former Act* means the *Electricity Act 1945*.

*former distributor* means an electricity distributor constituted under the former Act.

*new distributor* means an energy distributor constituted under this Act.

**7 Transfer of staff, assets, rights and liabilities of former distributors** 5

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of a former distributor be transferred to such new distributor, or to such other person or body acting on behalf of the Crown, as is specified in the order. 10
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this clause.

**8 First board of directors** 15

The directors for each former distributor become the directors for the new distributor of the same name for the residue of their terms of office as, and subject to the same conditions (including conditions as to remuneration) as those of their appointment as, directors of the former distributor. 20

**9 First chief executive officer**

The chief executive officer of each former distributor becomes the chief executive officer for the new distributor of the same name for the residue of his or her term of office as, and subject to the same conditions (including conditions as to remuneration) as those of his or her appointment as, chief executive officer of the former distributor. 25

**10 General managers**

- (1) The office of general manager is abolished in relation to each former distributor. 30
- (2) This clause does not affect any contract of employment under which any such general manager is employed.

---

**11 Pending environmental impact statements**

- (1) If, before the commencement of this clause:
- (a) the Director of Planning has notified a former distributor of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the former distributor in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, or 5
  - (b) a former distributor, or a person on its behalf, has commenced the preparation of an environmental planning impact statement under that Part, or 10
  - (c) an environmental impact statement has been prepared by or on behalf of a former distributor under that Part,
- that Part applies in relation to the activity concerned as if the former distributor had continued in existence and the Minister were the former distributor. 15
- (2) This clause is subject to the regulations under clause 1.

**12 Dissolution of former distributors**

- (1) Each former distributor is dissolved.
- (2) The assets, rights and liabilities (if any) of a former distributor immediately before its dissolution are by this clause transferred to the Ministerial Holding Corporation established under section 37B of the *State Owned Corporations Act 1989*. 20
- (3) On and from the dissolution of a former distributor, each new distributor of the same name is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the former distributor. 25
- (4) This clause does not affect any transfer of assets, rights and liabilities by or under this clause or clause 7.

**13 References in other Acts and instruments**

30

In any other Act or instrument, a reference to a former distributor extends to a new distributor.



### **Division 3      General**

#### **14   Transitional vesting arrangements**

- (1)    The voting shareholders for an energy services corporation may declare any specified arrangements for the wholesale supply of electricity to or by the energy services corporation, or any specified class of such arrangements, to be transitional vesting arrangements for the purposes of this clause. 5
- (2)    Transitional vesting arrangements to which this clause applies must be in the terms approved for the time being by the voting shareholders. 10
- (3)    This clause expires on the fifth anniversary of the day on which it commences.

#### **15   Timetable for first statement of corporate intent**

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of an energy services corporation may be extended by the voting shareholders of the corporation. 15



C-085  
DEM (Jones)

**LEGISLATIVE COUNCIL**

**Energy Services Corporations Bill 1995**

**First Print**

**Amendment to be moved in Committee**

- 
- No 1      Page 8, clause 11. After line 10, insert:  
(2) Shares in a subsidiary of an energy services corporation may not be sold or otherwise disposed of otherwise than to an eligible Minister or to a State owned corporation or a subsidiary of such a corporation.
- No 2      Page 8, clause 11. Before line 11, insert:  
(3) None of the main undertakings of an energy services corporation, and none of the main undertaking of any of its subsidiaries, may be sold or disposed of except to a state owned corporation or to a subsidiary of such a corporation.
- No 3      Page 13, Schedule 2, clause 1 (2) (b), lines 8-15. Omit all words on those lines, insert instead:  
(b) one staff director elected in the manner prescribed by this clause, and
- No 4      Page 13, Schedule 2, clause 1 (3), lines 18-22. Omit all words on those lines, insert instead:  
(3) Regulations may be made for or with respect to the election of a staff director referred to in subclause (2) (b).  
(4) Employees of an energy services corporation are entitled to vote at an election of the staff director of the board of the corporation in accordance with the regulations under subclause (3). A person is not entitled to be elected as the staff director of the board of the corporation unless the person is an employee of the corporation at the date of the person's nomination for election.  
(5) The Electoral Commissioner of New South Wales, or a person nominated by the Electoral Commissioner, is to be the returning



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officer and has all the functions conferred or imposed on the returning officer by the regulations under subclause (3). An energy services corporation is required to re-imburse the Electoral Commissioner for the costs incurred by the Electoral Commissioner in conducting an election for the staff director of that corporation.

- (6) A person may be, at the same time, both a staff director and an employee of the energy services corporation concerned. Nothing in any law, rule, direction or other requirement that:
- (a) is applicable to a staff director in the person's capacity as an employee of the corporation, and
  - (b) would not be so applicable if the person were not such an employee,
- operates so as to prevent or restrict the exercise by the person of his or her functions as a staff director.
- (7) The office of a staff director becomes vacant if the director ceases to be an employee of the energy services corporation concerned.
- (8) In this clause, **employee** of an energy services corporation means any member of the staff of the corporation, but (unless the regulations under subclause (3) otherwise provide) does not include a person who is employed on a temporary or casual basis.

No 5

Page 21, Schedule 4.7, item [1], line 16. After "by this Act", insert "(except section 8B)".

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C-060  
GOVT

LEGISLATIVE COUNCIL

Energy Services Corporations Bill 1995

First Print

Amendments to be moved in Committee

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- 1 Page 11, clause 18. After line 11, insert:  

(d) *Electricity (Senior Staff Positions) Regulation 1995,*
  - 2 Page 19, Schedule 4, line 21. Omit "distributor", insert instead "services corporation".
  - 3 Page 20, Schedule 4, line 4. Omit "distributor", insert instead "services corporation".
  - 4 Page 26, Schedule 4, lines 1-3. Omit all words on those lines.
  - 5 Page 27, Schedule 4, lines 1-3. Omit all words on those lines.
  - 6 Page 30, Schedule 4, lines 6-8. Omit all words on those lines.
  - 7 Page 33, Schedule 5, line 4. Omit "new generator", insert instead "energy services corporation, or to such other person or body acting on behalf of the Crown,".
  - 8 Page 34, Schedule 5, line 9. Omit "new distributor", insert instead "energy services corporation".
-



LEGISLATIVE COUNCIL

Energy Services Corporations Bill 1995

First Print

Amendments to be moved in Committee

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PART 4

DEMO NO. 1

No 1

Page 8, clause 11. After line 10, insert:

- (2) Shares in a subsidiary of an energy services corporation may not be sold or otherwise disposed of otherwise than to an eligible Minister or to a State owned corporation or a subsidiary of such a corporation.

PART 4

DEMO NO. 2

No 2

Page 8, clause 11. Before line 11, insert:

- (3) None of the main undertakings of an energy services corporation, and none of the main undertaking of any of its subsidiaries, may be sold or disposed of except to a state owned corporation or to a subsidiary of such a corporation.

PART 4

GREEN NO. 1

no. 1 Page 8, clause 11. After line 12, insert:

- (a) the Minister administering the *Electricity Supply Act 1995*,



(a) the portfolio Minister for the corporation,

Page 8, clause 11. After line 12, insert:



PART 4

GOVT NO. 1

1 Page 11, clause 18. After line 11, insert:

(d) *Electricity (Senior Staff Positions) Regulation 1995,*

~~SCHEDULE 2~~

~~DEMO NO. 3~~

~~No 3~~

Page 13, Schedule 2, clause 1 (2) (b), lines 8-15. Omit all words on those lines, insert instead:

(b) one staff director elected in the manner prescribed by this clause, and

~~SCHEDULE 2~~

~~DEMO NO. 4~~

~~No 4~~

Page 13, Schedule 2, clause 1 (3), lines 18-22. Omit all words on those lines, insert instead:

- (3) Regulations may be made for or with respect to the election of a staff director referred to in subclause (2) (b).
- (4) Employees of an energy services corporation are entitled to vote at an election of the staff director of the board of the corporation in accordance with the regulations under subclause (3). A person is not entitled to be elected as the staff director of the board of the corporation unless the person is an employee of the corporation at the date of the person's nomination for election.
- (5) The Electoral Commissioner of New South Wales, or a person nominated by the Electoral Commissioner, is to be the returning

officer and has all the functions conferred or imposed on the returning officer by the regulations under subclause (3). An energy services corporation is required to re-imburse the Electoral Commissioner for the costs incurred by the Electoral Commissioner in conducting an election for the staff director of that corporation.

- (6) A person may be, at the same time, both a staff director and an employee of the energy services corporation concerned. Nothing in any law, rule, direction or other requirement that:

(a) is applicable to a staff director in the person's capacity as an employee of the corporation, and

(b) would not be so applicable if the person were not such an employee,

operates so as to prevent or restrict the exercise by the person of his or her functions as a staff director.

- (7) The office of a staff director becomes vacant if the director ceases to be an employee of the energy services corporation concerned.



- (8) In this clause, **employee** of an energy services corporation means any member of the staff of the corporation, but (unless the regulations under subclause (3) otherwise provide) does not include a person who is employed on a temporary or casual basis.

SCHEDULE ~~2~~ 4

GOVT NO. 2

- 2 Page 19, Schedule 4, line 21. Omit "distributor", insert instead "services corporation".

SCHEDULE ~~2~~ 4

GOVT NO. 3

- 3 Page 20, Schedule 4, line 4. Omit "distributor", insert instead "services corporation".

SCHEDULE ~~2~~ 4

DEMO NO. 5

- No 5 Page 21, Schedule 4.7, item [1], line 16. After "by this Act", insert "(except section 8B)".

SCHEDULE ~~2~~ 4

GOVT NO. 4

- 4 Page 26, Schedule 4, lines 1-3. Omit all words on those lines.

SCHEDULE ~~2~~ 4

GOVT NO. 5

- 5 Page 27, Schedule 4, lines 1-3. Omit all words on those lines.





SCHEDULE 4

GOVT NO. 6

- 6 Page 30, Schedule 4, lines 6-8. Omit all words on those lines.

Yes SCHEDULE 5

GOVT NO. 7

- 7 Page 33, Schedule 5, line 4. Omit "new generator", insert instead "energy services corporation, or to such other person or body acting on behalf of the Crown,".

SCHEDULE 5

GOVT NO. 8

- 8 Page 34, Schedule 5, line 9. Omit "new distributor", insert instead "energy services corporation".



REVISED.

C-081  
IND (Cohen)

LEGISLATIVE COUNCIL

Energy Services Corporations Bill 1995

First Print

Amendment to be moved in Committee

Page 8, clause 11. After line 12, insert:

(a) the Minister administering the *Electricity Supply Act 1995*,







New South Wales

# Energy Services Corporations Act 1995 No 95

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New South Wales

# **Energy Services Corporations Act 1995 No 95**

Act No 95, 1995

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An Act to establish certain statutory State owned corporations to exercise functions relating to the generation and distribution of electricity and other forms of energy; to make consequential amendments to other legislation; and for other purposes. [Assented to 21 December 1995]

---

The Legislature of New South Wales enacts:

## Part 1      Preliminary

### 1    Name of Act

This Act is the *Energy Services Corporations Act 1995*.

### 2    Commencement

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

### 3    Definitions

- (1)    In this Act:

***electricity generator*** means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 1 of Schedule 1.

***energy distributor*** means a corporation constituted by this Act, being a corporation whose corporate name is listed in Part 2 of Schedule 1.

***energy services corporation*** means an electricity generator or an energy distributor.

- (2)    Words and expressions used in this Act and also in the *State Owned Corporations Act 1989* have the same meanings in this Act as they have in that Act.



## **Part 2      Electricity generators**

### **4    Establishment of statutory State owned corporations**

On the day on which this section commences:

- (a) corporations are constituted by this Act under each of the corporate names listed in Part 1 of Schedule 1, and
- (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names listed in Part 1 of Schedule 1.

### **5    Principal objectives of electricity generators**

- (1) The principal objectives of an electricity generator are as follows:
  - (a) to be a successful business and, to this end:
    - (i) to operate at least as efficiently as any comparable businesses,
    - (ii) to maximise the net worth of the State's investment in it,
    - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
  - (d) to operate efficient, safe and reliable facilities for the generation of electricity,
  - (e) to be an efficient and responsible supplier of electricity,
  - (f) to be a successful participant in the wholesale market for electricity.

- (2) Each of the principal objectives of an electricity generator is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an electricity generator.

## **6 Functions of electricity generators**

- (1) An electricity generator has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of an electricity generator are:
  - (a) to establish, maintain and operate facilities for the generation of electricity and other forms of energy, and
  - (b) to supply electricity and other forms of energy to other persons and bodies.
- (3) An electricity generator:
  - (a) may also provide facilities or services that are ancillary or incidental to its principal functions, and
  - (b) may also conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (4) This section does not limit the functions of an electricity generator apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

## **Part 3      Energy distributors**

### **7   Establishment of statutory State owned corporations**

On the day on which this section commences:

- (a) corporations are constituted by this Act under each of the corporate names listed in Part 2 of Schedule 1, and
- (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names listed in Part 2 of Schedule 1.

### **8   Principal objectives of energy distributors**

- (1) The principal objectives of an energy distributor are as follows:
  - (a) to be a successful business and, to this end:
    - (i) to operate at least as efficiently as any comparable businesses,
    - (ii) to maximise the net worth of the State's investment in it,
    - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
  - (d) to operate efficient, safe and reliable facilities for the distribution of electricity and other forms of energy,
  - (e) to be an efficient and responsible supplier of electricity and other forms of energy and of services relating to the use and conservation of electricity and other forms of energy,
  - (f) to be a successful participant in the wholesale and retail markets for electricity and other forms of energy and for services relating to the use and conservation of electricity and other forms of energy.



- (2) Each of the principal objectives of an energy distributor is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to an energy distributor.

## **9 Functions of energy distributors**

- (1) An energy distributor has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of an energy distributor are:
  - (a) to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and
  - (b) to supply electricity and other forms of energy, and services relating to the use and conservation of electricity and other forms of energy, to other persons and bodies.
- (3) An energy distributor:
  - (a) may also provide facilities or services that are ancillary or incidental to its principal functions, and
  - (b) may also conduct any business (whether or not related to its principal functions) that it considers will further its objectives.
- (4) In seeking to obtain electricity and other forms of energy, an energy distributor should consider:
  - (a) all sources of energy, with particular regard to energy that has been produced from renewable energy reserves, and
  - (b) the likely impact on the environment of the means by which energy from each such source is produced.
- (5) An energy distributor should encourage users of electricity and other forms of energy:
  - (a) to use energy safely, efficiently and in a manner that minimises the adverse effects on the environment of their activities in their use of energy, and
  - (b) in particular, to observe safe procedures in the operation of electrical installations and electrical articles.



- (6) An energy distributor should promote public awareness of the dangers that can arise from damaging or coming into contact with works used in connection with the distribution of electricity and other forms of energy.
- (7) This section does not limit the functions of an energy distributor apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

## **Part 4 Miscellaneous**

### **10 Constitution and procedure of energy services corporations**

- (1) Schedule 2 has effect with respect to the constitution and procedure of an energy services corporation.
- (2) The provisions of Schedule 2 are in addition to and (except to the extent to which that Schedule provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

### **11 Prohibition on privatisation of energy services corporations**

- (1) Shares in an energy services corporation may not be sold or otherwise disposed of except to eligible Ministers.
- (2) The following Ministers may not be nominated as eligible Ministers for an energy services corporation:
  - (a) the Minister administering the *Electricity Supply Act 1995*,
  - (b) the Minister administering the *Environmental Planning and Assessment Act 1979*,
  - (c) the Minister administering the *Protection of the Environment Administration Act 1991*.

### **12 Variation of names of energy services corporations**

The Governor may, by regulation, amend Part 1 or 2 of Schedule 1 so as to vary the name of an energy services corporation.

### **13 Creation of additional energy services corporations**

- (1) The Governor may, by regulation, amend Part 1 or 2 of Schedule 1 so as to add the corporate names of one or more additional corporations to be constituted by this Act.
- (2) A regulation under this section takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subsection (3)) or on such later day as may be specified in the regulation.

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- (3) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this section does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act.
  - (4) On the day on which a regulation under this section takes effect:
    - (a) corporations are constituted by this Act under each of the corporate names given to them by the regulation, and
    - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, each of the corporate names given to the corporations by the regulation.

#### **14 Dissolution of existing energy services corporations**

- (1) The Governor may, by regulation, amend Part 1 or 2 of Schedule 1 by omitting the corporate names of one or more energy services corporations to be dissolved by this Act.
- (2) A regulation under this section takes effect on the day following the last day on which it is capable of being disallowed under section 41 of the *Interpretation Act 1987* (as modified by subsection (3)) or on such later day as may be specified in the regulation.
- (3) Despite section 41 of the *Interpretation Act 1987*, a resolution by a House of Parliament to disallow a regulation under this section does not have effect unless the resolution is passed within 15 sitting days of the House after written notice of the making of the regulation is laid before that House under section 40 of that Act.
- (4) On the day on which a regulation under this section takes effect:
  - (a) the energy services corporations whose corporate names are omitted by the regulation are dissolved, and
  - (b) the *State Owned Corporations Act 1989* is amended by omitting those names from Schedule 5.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the dissolution of an energy services corporation under this section.



- (6) Any such provision may, if the regulations so provide, take effect from the day on which the energy services corporation is dissolved or a later day.
- (7) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an 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 an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

#### **15 Transfer of staff, assets, rights and liabilities of dissolved energy services corporations**

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of an energy services corporation that has been dissolved by this Act be transferred to such other energy services corporation, or to such other person or body acting on behalf of the Crown, as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this section.

#### **16 Service of documents on energy services corporations**

- (1) A document may be served on an energy services corporation by leaving it at, or by sending it by post to:
  - (a) the office of the energy services corporation, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any other Act or law, or of any rules of court, that authorise a document to be served on an energy services corporation in any other manner.



**17 Regulations**

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.

**18 Repeals**

The following Regulations are repealed:

- (a) *Electricity (Accounts) Regulation 1994*,
- (b) *Electricity Distributors (Contract Tendering) Regulation 1994*,
- (c) *Electricity (Dismissal of Boards) Regulation 1995*,
- (d) *Electricity (Senior Staff Positions) Regulation 1995*,
- (e) *Electricity (Amalgamation of Electricity Distributors) Regulation 1995*.

**19 Amendment of other Acts and instruments**

Each Act and instrument referred to in Schedule 4 is amended as set out in that Schedule.

**20 Savings, transitional and other provisions**

Schedule 5 has effect.

**21 Review of Act**

- (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 Energy services corporations**

(Sections 4, 7, 12, 13, 14)

### **Part 1 Electricity generators**

First State Power

Macquarie Generation

### **Part 2 Energy distributors**

Energy South

Far West Energy

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

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## **Schedule 2    Supplementary provisions concerning constitution and procedure**

(Section 10)

### **1    Board of directors**

- (1) Each energy services corporation is to have a board of directors.
- (2) The board is to consist of:
  - (a) the chief executive officer, and
  - (b) one director, to be appointed by the voting shareholders on the recommendation of a selection committee comprising:
    - (i) 2 persons nominated by the portfolio Minister, and
    - (ii) 2 persons nominated by the Labor Council of New South Wales,  
being a person selected by the committee from a panel of 3 persons nominated by the Labor Council, and
  - (c) at least 2 and not more than 5 other directors, to be appointed by the voting shareholders at their discretion.
- (3) The procedures for constituting a selection committee for the purposes of subclause (2) (b), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders.
- (4) One of the directors referred to in subclause (2) (c) is (in and by the director's instrument of appointment or in and by another instrument executed by the voting shareholders) to be appointed as chairperson of the board.
- (5) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the energy services corporation.
- (6) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.

Schedule 2 Supplementary provisions concerning constitution and procedure

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- (7) Subject to subclauses (8) and (9), Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (8) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2) and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to an energy services corporation or to the chairperson.
- (9) The provisions of clause 6 of Schedule 8 to the *State Owned Corporations Act 1989* do not apply to the chief executive officer, and the chief executive officer is not entitled to remuneration under that clause, in his or her capacity as a director.

**2 Chief executive officer**

- (1) The chief executive officer of an energy services corporation is to be appointed by the board after consultation with the voting shareholders.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) The *Public Sector Management Act 1988* (Part 8 included) does not apply to the chief executive officer.
- (5) Subject to subclause (6), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (6) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

**3 Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.



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- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
  - (3) A person, while acting in the office of chief executive officer:
    - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
    - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
  - (4) For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office.
  - (5) The provisions of clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* do not apply to a person appointed to act in the office of chief executive officer under this clause.

#### **4 Dividends**

- (1) The voting shareholders of an energy services corporation, in consultation with the board, are to determine the corporation's share dividends scheme.
- (2) The dividends to be paid by an energy services corporation are to be declared by the board in accordance with the share dividends scheme so determined.
- (3) The provisions of section 20S (1) of the *State Owned Corporations Act 1989* do not apply to an energy services corporation.

#### **5 Supply of information to portfolio Minister**

The provisions of section 29 (2) of the *State Owned Corporations Act 1989* do not apply to an energy services corporation.

## **Schedule 3 Transfer of staff, assets, rights and liabilities**

(Section 15, clauses 3, 7 and 12 of Schedule 5)

### **1 Application and interpretation**

- (1) This Schedule applies to any transfer of staff, assets, rights or liabilities under section 15 or clause 3, 7 or 12 of Schedule 5.
- (2) In this Schedule, the person or body from which any staff, assets, rights or liabilities are transferred is called the transferor and the person or body to which they are transferred is called the transferee.

### **2 Transfer of staff**

A member of staff who is transferred by a transfer to which this Schedule applies is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred but remained a member of staff of the transferor.

### **3 Vesting of undertaking in transferee**

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,

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- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
    - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
  - (2) The operation of this clause 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 an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
  - (3) The operation of this clause is not to be regarded as an event of default under any contract or other instrument.
  - (4) No attornment to the transferee by a lessee from the transferor is required.
  - (5) A transfer is subject to the terms and conditions of the order by which it is effected.
  - (6) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides.
  - (7) Subclause (6) does not affect the rights of any member of staff who is the subject of a transfer to which this Schedule applies.
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#### **4 Date of vesting**

A transfer to which this Schedule applies takes effect on the date specified in the order by which it is effected.

#### **5 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

#### **6 Stamp duty**

Stamp duty is not chargeable for or in respect of:

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

#### **7 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

#### **8 Definitions**

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.

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

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).



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## **Schedule 4    Amendment of other Acts and instruments**

(Section 19)

### **4.1    Attachment of Wages Limitation Act 1957 No 28**

#### **Schedule**

Omit "Pacific Power."

### **4.2    Capital Debt Charges Act 1957 No 1**

#### **Schedule**

Omit the matter relating to Pacific Power.

### **4.3    Clean Air Act 1961 No 69**

#### **Section 5 Definitions**

Omit "Pacific Power" from the definition of *statutory body* in section 5 (1).

### **4.4    Clean Waters Act 1970 No 78**

#### **Section 5 Definitions**

Omit "the Electricity Authority of New South Wales, Pacific Power" from the definition of *statutory authority*.

### **4.5    Conveyancing Act 1919 No 6**

#### **[1]    Section 88 Limitation of enforceability of easements and restrictions of user of land**

Insert "or by or for an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*" after "*Water Board (Corporatisation) Act 1994*," in section 88 (4).

**[2] Section 88A Easements in gross and restrictions appurtenant to easements**

Insert after section 88A (6):

- (7) For the purposes of this section, an energy services corporation within the meaning of the *Energy Services Corporations Act 1995* is taken to be a public authority constituted by an Act of Parliament.

**4.6 Electricity Act 1945 (1946 No 13)**

**[1] Section 4 Definitions**

Omit the definition of *electricity distributor* from section 4 (1).

Insert instead:

*electricity distributor* means an energy distributor constituted by the *Energy Services Corporations Act 1995*.

**[2] Section 6 Distribution districts of electricity distributors**

Omit section 6 (1) and (3).

**[3] Section 6A Amendment of Schedule 7**

Omit section 6A (1) and (2). Insert instead:

- (1) The Governor may, by proclamation, change the distribution district of an electricity distributor named in Schedule 7.
- (2) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of an electricity distributor whose distribution district is changed be transferred to such person or body as is specified in the order.

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**[4] Sections 6B, 6BA, 6C, 6D, 6E, 6F, 6G and 6K**

Omit the sections.

**[5] Part 2A, Divisions 4, 5 and 6**

Omit the Divisions.

**[6] Schedule 11 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Energy Services Corporations Act 1995.*

**4.7 Electricity (Pacific Power) Act 1950 No 22**

**[1] Section 4**

Omit the section. Insert instead:

**4 Application of Act to electricity generators**

An electricity generator within the meaning of the *Energy Services Corporations Act 1995*, for the purpose only of enabling it to exercise its functions under that Act, may exercise the functions conferred or imposed on Pacific Power by this Act (except section 8B) and, for that purpose, a reference in this Act to Pacific Power extends to an electricity generator within the meaning of that Act.

**[2] Schedule 7 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Energy Services Corporations Act 1995.*

#### **4.8 Electricity Transmission Authority Act 1994 No 64**

##### **Section 3 Definitions**

Omit the definition of *electricity supply authority*.

Insert instead:

*electricity generator* has the same meaning as it has in the *Energy Services Corporations Act 1995*.

*electricity supply authority* means an electricity generator or an energy distributor.

*energy distributor* has the same meaning as it has in the *Energy Services Corporations Act 1995*.

#### **4.9 Environmental Planning and Assessment Act 1979 No 203**

##### **Section 4 Definitions**

Insert “(and its subsidiaries)” after “statutory State owned corporation” in the definition of *public authority* in section 4 (1).

#### **4.10 Environmental Planning and Assessment Regulation 1994**

##### **Clause 91A**

Omit the clause.

#### **4.11 First State Superannuation Act 1992 No 100**

##### **[1] Schedule 1 Employers**

Insert at the end of Part 1:

Energy South  
Far West Energy  
First State Power



Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

**[2] Schedule 1, Part 1**

Omit "Sydney Electricity".

**[3] Schedule 1, Part 2**

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*".

**4.12 Freedom of Information Act 1989 No 5**

**[1] Section 6 Definitions**

Insert "(and its subsidiaries)" after "statutory State owned corporation" in paragraph (i) of the definition of *responsible Minister* in section 6 (1).

**[2] Section 7 Public authorities**

Insert "(and its subsidiaries)" after "statutory State owned corporation" in section 7 (1) (f).

**4.13 Government and Related Employees Appeal Tribunal Act 1980 No 39**

**Schedule 4 Employing Authorities**

Omit "Sydney Electricity".

#### **4.14 Government Pricing Tribunal Act 1992 No 39**

**[1] Schedule 1 Government agencies for which Tribunal has standing reference**

Insert at the end of the Schedule:

Energy South

Far West Energy

First State Power

Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

**[2] Schedule 1**

Omit "Pacific Power" and "Sydney Electricity".

**[3] Schedule 1**

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*, and Broken Hill City Council and Tenterfield Shire Council in relation to their exercise of the functions of an electricity distributor under that Act".

#### **4.15 Government Telecommunications Act 1991 No 77**

**[1] Section 32 Establishment of the Board**

Omit "responsible for Pacific Power" from section 32 (3) (g).

Insert instead "administering Part 2 of the *Energy Services Corporations Act 1995*".

**[2] Section 32**

Omit "responsible for Sydney Electricity" from section 32 (3) (h).  
Insert instead "administering Part 3 of the *Energy Services Corporations Act 1995*".

**4.16 Lake Illawarra Authority Act 1987 No 285**

**Schedule 1 Development area**

Insert "as at the commencement of this Act" after "Pacific Power".

**4.17 Land Development Contribution Management Act 1970  
No 22**

**[1] Section 7 Time when declared land becomes liable for  
contribution**

Omit "Pacific Power" from section 7 (6).  
Insert instead "an electricity generator within the meaning of the  
*Energy Services Corporations Act 1995*".

**[2] Section 7 (6)**

Omit "an electricity distributor within the meaning of the *Electricity Act 1945* or Broken Hill City Council or Tenterfield Shire Council (in the exercise of the functions of an electricity distributor within the meaning of that Act)".  
Insert instead "an energy distributor within the meaning of the  
*Energy Services Corporations Act 1995*".

**4.18 Local Government Associations Incorporation Act 1974  
No 20**

**Section 5 Members of corporation**

Omit section 5 (2).

**4.19 Public Authorities (Financial Arrangements) Act 1987  
No 33**

**[1] Schedule 1 Authorities**

Insert in alphabetical order of authorities:

Energy South  
Far West Energy  
First State Power  
Macquarie Generation  
MetNorth Energy  
MetSouth Energy  
MidState Energy  
NorthPower Energy

**[2] Schedule 1**

Omit "Sydney Electricity."

**[3] Schedule 1**

Omit "An electricity distributor constituted under the *Electricity Act 1945*."

**4.20 Public Finance and Audit Act 1983 No 152**

**[1] Schedule 2 Statutory Bodies**

Omit "Sydney Electricity."

**[2] Schedule 2**

Omit "An electricity distributor constituted under the *Electricity Act 1945*."



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**4.21 Public Sector Executives Superannuation Act 1989  
No 106**

**Schedule 1 Additional employers**

Insert in alphabetical order of authorities:

Energy South  
Far West Energy  
First State Power  
Macquarie Generation  
MetNorth Energy  
MetSouth Energy  
MidState Energy  
NorthPower Energy

**4.22 Public Sector Management Act 1988 No 33**

**[1] Schedule 3 Declared Authorities**

Omit "Sydney Electricity."

**[2] Schedule 3A Chief Executive positions**

Omit "Chief Executive of Sydney Electricity" from Part 3.

**[3] Schedule 3B Senior Executive positions**

Omit the matter relating to Sydney Electricity.

#### **4.23 Stamp Duties Act 1920 No 47**

##### **Second Schedule Stamp duties and exemptions**

Omit “or an electricity distributor constituted under Part 2A of the *Electricity Act 1945*” from item (14) under the heading “General exemptions from stamp duty under Part 3”.

#### **4.24 State Authorities Non-contributory Superannuation Act 1987 No 212**

##### **[1] Schedule 1 Employers**

Insert at the end of Part 1:

Energy South

Far West Energy

First State Power

Macquarie Generation

MetNorth Energy

MetSouth Energy

MidState Energy

NorthPower Energy

##### **[2] Schedule 1, Part 1**

Omit “Sydney Electricity”.

##### **[3] Schedule 1, Part 2**

Omit “An electricity distributor within the meaning of the *Electricity Act 1945*”.

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#### **4.25 State Authorities Superannuation Act 1987 No 211**

**[1] Schedule 1 Employers**

Insert at the end of Part 1:

Energy South  
Far West Energy  
First State Power  
Macquarie Generation  
MetNorth Energy  
MetSouth Energy  
MidState Energy  
NorthPower Energy

**[2] Schedule 1, Part 1**

Omit "Sydney Electricity".

**[3] Schedule 1, Part 2**

Omit "An electricity distributor within the meaning of the *Electricity Act 1945*".

#### **4.26 Superannuation Act 1916 No 28**

**[1] Schedule 3 List of employers**

Insert at the end of Part 1:

Energy South  
Far West Energy  
First State Power  
Macquarie Generation

MetNorth Energy  
MetSouth Energy  
MidState Energy  
NorthPower Energy

**[2] Schedule 3, Part 1**

Omit “Sydney Electricity”.

**[3] Schedule 3, Part 2**

Omit “An electricity distributor constituted under the *Electricity Act 1945*”.

**4.27 Traffic Act 1909 No 5**

**Section 10ZA Definitions**

Omit the definition of *electricity distributor*.  
Insert instead:

*electricity distributor* means an energy distributor within the meaning of the *Energy Services Corporations Act 1995*.

**4.28 Unclaimed Money Act 1982 No 174**

**Section 3 Definitions**

Omit “*Electricity Act 1945*” from paragraph (g) of the definition of *business* in section 3 (1).

Insert instead “*Energy Services Corporations Act 1995*”.



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**4.29 Uranium Mining and Nuclear Facilities (Prohibitions) Act  
1986 No 194**

**Section 9**

Omit the section. Insert instead:

**9 State authorities not to construct or operate nuclear  
reactors to generate electricity**

Without affecting the generality of this Act, nothing in any other Act authorises an authority of the State (including an electricity generator within the meaning of the *Energy Services Corporations Act 1995*) to construct or operate, or to approve or permit the construction or operation of, a nuclear reactor for the purpose of generating electricity or any other form of energy.

## Schedule 5 Savings, transitional and other provisions

(Section 20)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Energy Services Corporations Act 1995*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an 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 an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on the enactment of the Energy Services Corporations Act 1995

#### Division 1 Provisions relating to Pacific Power

##### 2 Definitions

In this Division:

**former Act** means the *Electricity (Pacific Power) Act 1950*.

**new generator** means an electricity generator constituted under this Act.

**Pacific Power** means the corporation constituted by section 5 of the former Act.

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**3 Transfer of staff, assets, rights and liabilities of Pacific Power**

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of Pacific Power be transferred to such energy services corporation, or to such other person or body acting on behalf of the Crown, as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this clause.

**4 References in other Acts and instruments**

In any other Act or instrument, a reference to Pacific Power extends to a new generator.

**5 Pending environmental impact statements**

- (1) If, before the commencement of this clause:
  - (a) the Director of Planning has notified Pacific Power of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of Pacific Power in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, being a matter relating to the affairs of a new generator, or
  - (b) Pacific Power, or a person on its behalf, has commenced the preparation of an environmental planning impact statement under that Part in connection with the affairs of a new generator, or
  - (c) an environmental impact statement has been prepared by or on behalf of Pacific Power under that Part in connection with the affairs of a new generator,that Part applies in relation to the activity concerned as if the Minister were Pacific Power.
- (2) This clause is subject to the regulations under clause 1.

**Division 2 Provisions relating to former distributors****6 Definitions**

In this Division:

*former Act* means the *Electricity Act 1945*.

*former distributor* means an electricity distributor constituted under the former Act.

*new distributor* means an energy distributor constituted under this Act.

## **7 Transfer of staff, assets, rights and liabilities of former distributors**

- (1) The Minister may direct, by order in writing, that any specified staff, assets, rights or liabilities of a former distributor be transferred to such energy services corporation, or to such other person or body acting on behalf of the Crown, as is specified in the order.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 3 applies to the transfer of staff, assets, rights or liabilities under this clause.

## **8 First board of directors**

The directors for each former distributor become the directors for the new distributor of the same name for the residue of their terms of office as, and subject to the same conditions (including conditions as to remuneration) as those of their appointment as, directors of the former distributor.

## **9 First chief executive officer**

The chief executive officer of each former distributor becomes the chief executive officer for the new distributor of the same name for the residue of his or her term of office as, and subject to the same conditions (including conditions as to remuneration) as those of his or her appointment as, chief executive officer of the former distributor.

## **10 General managers**

- (1) The office of general manager is abolished in relation to each former distributor.
- (2) This clause does not affect any contract of employment under which any such general manager is employed.



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**11 Pending environmental impact statements**

- (1) If, before the commencement of this clause:
- (a) the Director of Planning has notified a former distributor of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the former distributor in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, or
  - (b) a former distributor, or a person on its behalf, has commenced the preparation of an environmental planning impact statement under that Part, or
  - (c) an environmental impact statement has been prepared by or on behalf of a former distributor under that Part,

that Part applies in relation to the activity concerned as if the former distributor had continued in existence and the Minister were the former distributor.

- (2) This clause is subject to the regulations under clause 1.

**12 Dissolution of former distributors**

- (1) Each former distributor is dissolved.
- (2) The assets, rights and liabilities (if any) of a former distributor immediately before its dissolution are by this clause transferred to the Ministerial Holding Corporation established under section 37B of the *State Owned Corporations Act 1989*.
- (3) On and from the dissolution of a former distributor, each new distributor of the same name is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the former distributor.
- (4) This clause does not affect any transfer of assets, rights and liabilities by or under this clause or clause 7.

**13 References in other Acts and instruments**

In any other Act or instrument, a reference to a former distributor extends to a new distributor.

## **Division 3      General**

### **14 Transitional vesting arrangements**

- (1) The voting shareholders for an energy services corporation may declare any specified arrangements for the wholesale supply of electricity to or by the energy services corporation, or any specified class of such arrangements, to be transitional vesting arrangements for the purposes of this clause.
- (2) Transitional vesting arrangements to which this clause applies must be in the terms approved for the time being by the voting shareholders.
- (3) This clause expires on the fifth anniversary of the day on which it commences.

### **15 Timetable for first statement of corporate intent**

A period within which any matter is required to be done under section 21 of the *State Owned Corporations Act 1989* in connection with the first statement of corporate intent of an energy services corporation may be extended by the voting shareholders of the corporation.

[Minister's second reading speech made in—  
Legislative Assembly on 23 November 1995  
Legislative Council on 12 December 1995]

BY AUTHORITY



