



Legislative Council

**A PRACTICAL GUIDE TO
COMMITTEE OF THE WHOLE**

May 2023

FOREWORD

It is in Committee of the whole House that much of the interesting and significant work of the Legislative Council takes place. The opportunity for members to speak more than once in debate on a question and the free flowing debates that follow, facilitate effective scrutiny, and ultimately also the improvement, of legislation.

This guide has been prepared for the information of the Deputy President and Chair of Committees and other members who chair a Committee of the whole House, members responsible for bills and amendments to bills, and their advisors, and Clerks-at-the-Table.

This document is intended as a practical guide to practice and procedure in a Committee of the whole House. It particularly focusses on practice and procedure relevant to the new standing orders that came into effect at the end of the 57th Parliament.

This guide should be read in conjunction with a number of other publications. The *Guide to Occupants of the Chair*, published in May 2021, contains a wealth of practical guidance material for members who will be required to take the chair in the House or Committee of the whole House and it is commended for their use. Likewise, the document entitled *Procedure in Committee of the Whole House*, published in December 2004, remains relevant, and will be particularly useful where the nature of a bill may necessitate recourse to the traditional forms of consideration of a bill. *New South Wales Legislative Council Practice* (first published in 2007 followed by a second edition in 2021) also includes a wealth of information, including about the even more traditional, previous practice for the putting of questions on clauses and amendments, which forms may be useful in dealing with a very complex bill.

If any reader is in any doubt about any of the matters outlined in this document, they are encouraged to seek the advice of the Clerks-at-the-Table.

David Blunt
Clerk of the Parliaments

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1. Introduction

- 1.1 The Council resolves into a Committee of the whole House when there is a need to consider a matter in detail, where the opportunity for members to speak more than once to a question or where more free-flowing debate would be beneficial. The most common business conducted in Committee of the whole House is the consideration of bills and proposed amendments, although a Committee of the whole House may also be used for other matters (e.g. the consideration of messages).
- 1.2 A committee of the whole House consists of all members of the House and is presided over by the Chair of Committees instead of the President (SO 18(5)). In the first session of each Parliament the House elects one of its members to be the Deputy President and Chair of Committees of the whole House (SO 18(2)).
- 1.3 In Committee of the whole House, the Chair of Committees has the same authority as the President (SO 18(4)) although objections to decisions of the Chair (SO 185) and disorder in committee (SO 182) are generally resolved in the House. When the Chair is absent or wishes to leave the chair, any of the Temporary Chairs may take the Chair (SO 181).
- 1.4 This guide focuses on the practice for considering a bill as a whole, by leave (SO 150), a practice introduced in the Council in September 2014 and formalised via the adoption of new standing orders at the end of the 57th Parliament. Information on the rules and practice for considering a bill under the traditional methods is provided in the Legislative Council guide entitled 'Procedure in Committee of the whole House', dated December 2004.

Amendments to bills can only be made in Committee of the whole House

- 1.5 A Committee of the whole House can only consider those matters that have been referred to it by the House (SO 180 (1)). On occasion, matters other than bills have been referred for consideration in a Committee of the whole House, however the principal function of a Committee of the whole House over time has been the consideration of bills in detail.
- 1.6 Amendments to bills can only be made in Committee of the whole House (SO 152(6)).

Consideration of bills in a Committee of the whole House

- 1.7 Under SO 149, after the second reading of a bill has been agreed to, the House will either immediately resolve into a Committee of the whole House or order that a later hour or a future day be appointed for consideration in Committee of the whole House, unless leave is granted to bypass the committee stage and proceed directly to the third reading.
- 1.8 On the House resolving to consider a bill in a Committee of the whole House or on the order of the day being read for consideration in a Committee of the whole House, the President leaves the Chair and the Chair of Committees takes the Chair at the centre of the Clerk's Table (SO 179(2)).

Consideration of a bill as a whole

- 1.9 Under SO 150(1), the Chair may seek the leave of a committee for the bill to be taken as a whole. If leave is granted, the whole of the bill is considered, and amendments may be put to any part of it. If leave is not granted to take the bill as a whole, then the Chair will guide the committee to consider each clause sequentially (SO 151). Set out in Appendix One is an example of a bill marked up with the amendments 'marshalled'.
- 1.10 While consideration of a bill as a whole enables members to consider amendments in any order and occurring at any place in a bill, the default position is that amendments to a bill are generally considered in the order they occur in a bill from beginning to end, in the absence of a compelling reason to proceed otherwise.

- 1.11 The decision to consider a bill as a whole does not override the other standing orders governing the committee stage of a bill. For example, rules about the admissibility of amendments, rules of debate and rules reconsidering decisions of the committee continue to apply.
- 1.12 Under the practice for the consideration of a bill as a whole, on the House resolving into a Committee of the whole House, the Chair announces the short title of the bill and asks whether leave is granted to consider the bill as a whole.
- 1.13 If the committee agrees, the Chair will call on the member in whose name the first amendment occurring in the bill stands, or the member whose amendment has been listed first on the running sheet. (running sheets are discussed at paragraph 3.1). The committee then continues its consideration of the amendments to the bill, guided by the order set out in the running sheet.
- 1.14 If the committee does not agree to consider the bill as a whole, the committee will consider the bill clause by clause, and the Chair will propose the question on the first clause of the bill. The committee then continues its consideration of the bill in the traditional manner.

Cognate bills

- 1.15 The procedure for the consideration of cognate bills in a Committee of the whole House is the same as for individual bills. Cognate bills are considered separately in Committee of the whole House, unless there is unanimous consent given to deal with them together (SO 147 (3)), or an instruction is given before going into committee (SO 186(2)).
- 1.16 If there are no amendments proposed to one of the cognate bills, the Chair puts the question on the bill as a whole, with leave of the committee (SO 150 (8)).

2. Amendments to bills

Drafting of amendments

- 2.1 Since May 1988, the Government has made available the service of the Parliamentary Counsel to assist members of the House in drafting amendments. Staff of the Parliamentary Counsel's Office act on the instruction of members in drafting bills and amendments.
- 2.2 The admissibility of amendments is a matter for the Chair of committees on advice of the Clerk.
- 2.3 The Parliamentary Counsel's Office can be contacted on (02) 9321 3333.

Lodging amendments

- 2.4 Rulings of the Chair have consistently maintained that amendments should be lodged prior to the House resolving into a Committee of the whole House. This enables the Minister, other members and the Clerks-at-the-Table to examine the effect of the amendments and to assist in the orderly and efficient consideration of bills, particularly complex or controversial bills.
- 2.5 Amendments received after the House has resolved into a Committee of the whole House will only be accepted at the discretion of the Chair.
- 2.6 Amendments can be lodged either with a Clerk in the Chamber or with the Procedure Office. When amendments are received they are stamped and signed by the Clerk with the date and time of receipt. When two members have amendments at the same clause in the bill, this time stamp assists the Chair to determine which amendment is to be moved and debated first (further information on order of priority can be found at 2.13).

Amendments must be in writing

- 2.7 Chairs of Committees have consistently ruled that amendments in a Committee of the whole House must be lodged in written form (SO 152(1) referring to SO 113 (7)).
- 2.8 On occasion members have sought to move amendments, or moved amendments to amendments, without first circulating a written amendment. It is for the Chair to decide whether to accept such an amendment. At a minimum, it would be expected that proceedings in committee would be paused while the amendment is put in writing and circulated for the information of members.

Admissibility of amendments

- 2.9 A number of key principles guide the Chair in determining the admissibility of amendments circulated by members:
- *Amendments must not reverse the principles of the bill:* The committee is bound by the decision of the House on the second reading to agree to a bill in principle. It is therefore out of order to amend a bill in a manner that is destructive of or reverses the principle of the bill, or equates to a negative of the bill (SO 152(3)).
 - *Amendments must be relevant to the subject matter of the bill:* The subject matter of a bill is determined by reference to the long title. The long title sets out the purpose of the bill and reflects its contents. When leave is given to bring in a bill, the House is agreeing to a bill with the limited purpose as set out in the long title to be introduced in the House. All amendments must be within the leave originally given (SO 152 (1)). However, while the long title can be taken as an indication of the subject matter, it does not conclusively determine the question. The question of relevance is interpreted liberally to ensure members have maximum freedom to move amendments. Amendments outside the leave of the bill can be considered if the House agrees to an instruction to the committee. This is discussed at paragraph 2.10.
 - *Inadmissible amendments can only be considered following an instruction from the House:* Amendments that are outside the leave of a bill are not admissible unless the House gives a committee the power to consider such amendments by way of an instruction (SO 186). This procedure discussed at paragraph 2.10.
 - *Content of amendments:* Rulings of the Chair state that amendments which are vague, trifling, or tendered in a spirit of mockery, are out of order.
 - *Amendments imposing a tax or impost or new clauses creating public charges can be proposed:* From time to time, issues arise in relation to the powers of the Council to amend ‘money bills’, meaning appropriation bills appropriating public revenue and taxation bills imposing any new tax, rate or impost. The Council does not admit any limitation on its powers in respect of money bills other than that such bills must originate in the Assembly, that the Council may only suggest amendments (by way of a message to the Legislative Assembly) to a ‘bill appropriating revenue or moneys for the ordinary annual services of the Government’, and that a ‘bill appropriating revenue or moneys for the ordinary annual services of the Government’ may be presented to the Governor for assent under section 5A of the Constitution Act 1902, notwithstanding that the Legislative Council has not consented to the bill. Deadlocks between the Houses on all other appropriation bills and all taxation bills may be dealt with by the Council in the normal way under section 5B of the Constitution Act 1902. In June 2015, the Chair of Committees gave a comprehensive ruling on the Council’s ability to amend ‘money bills’.¹ This is reproduced as Appendix Two.
 - *The content of amendments must be complete:* Amendments are inadmissible if they refer to, or are not intelligible without, subsequent amendments, or if they are otherwise incomplete.

¹ Hansard, Legislative Council, 24/6/2015 p. 1727-1728.

Instruction to a Committee of the whole House

- 2.10 The House can instruct a committee to consider amendments outside the leave of a bill either by moving an instruction, according to SO 186, before the House resolves into a Committee of the whole House for consideration of the bill, or as an amendment to the motion for the adoption of the report of the committee (SO 187(2)). An example of an instruction to a Committee of the whole House is reproduced as Appendix Three.

Omitting a clause

- 2.11 SO 151(4) provides that on each clause the question will be put – ‘That the clause, as read, stand a clause of the bill’. Traditionally, an amendment to omit a clause has therefore been considered out of order, as the proper procedure is to vote against the clause standing part of the bill. An amendment proposing to omit the effective words of a clause or offer another amendment equating to a direct negative of the clause would similarly have been ruled out of order.
- 2.12 However, in circumstances where leave has been granted to take a bill as a whole, amendments to omit clauses, parts or divisions of or schedules to a bill have been allowed by the Chair and committees. The motion to omit a clause can be put at the time amendments to the clause are moved and debated or at the conclusion of consideration of the bill.

Conflicting amendments

- 2.13 Where there are conflicting amendments which occur at the same point in a bill, the practice is to allow the amendments to be moved and debated concurrently, to give members the maximum opportunity to debate their merits.
- 2.14 When debate has concluded, the Chair observes established rules in putting the question on the conflicting amendments:
- Where two or more amendments overlap, the Chair puts the question on the amendments in the order in which they occur in the bill. In certain circumstances, if the first amendment is agreed to, the second amendment may lapse.
 - Where two or more conflicting amendments occur at the exact same point in a bill, the Chair first puts the question on any amendments from the member with carriage of the bill, and then the question on any other amendments according to the order in which they were received by the clerks. Once again, if the first amendment is agreed to, the second amendment may lapse (see SO 152(2)).
- 2.15 Whilst it is established practice that conflicting amendments are moved and debated concurrently before being put according to the arrangements outlined above, under the alternative procedures for the consideration of bills in place since 2014, a committee may allow a package of amendments to be moved and determined even if their adoption would prevent other amendments being moved. Such an approach is only possible when supported by all members present.

Amendments that reverse a decision of a committee

- 2.16 Under SO 152 (2), a new clause or amendment cannot be proposed which is substantially the same as one already negated by the committee, or which is inconsistent with one that has been agreed to by the committee, unless the bill is reconsidered or recommitted at the conclusion of consideration by the committee. This also reflects the provisions of SO 180(3), which states that a motion contradictory to the previous decision of a Committee of the whole House may not be entertained in the same committee.
- 2.17 Where the will of a committee has changed over the course of debate, or members wish to correct an unintended consequence of amendments agreed to or negated, the bill can be reconsidered or recommitted. The procedure for reconsidering or recommitting a bill with a view to further considering a decision made by the committee is discussed at paragraphs 4.4 to 4.11.

- 2.18 If there is confusion as to the question being put, or an error occurs in voting or in counting out a division, the vote can be taken again. This is discussed at paragraphs 4.2 to 4.3.

Withdrawing an amendment

- 2.19 Once an amendment has been moved, it can only be withdrawn on the authority of the mover and by the unanimous leave of the committee (SO 113 (5)).
- 2.20 A member who has circulated amendments is not obligated to move the amendments and is not required to withdraw them.

Amendments to bills to give effect to Commonwealth/State agreements

- 2.21 On occasion, the House is required to consider a bill to give effect to an agreement between the Commonwealth and State governments. While the Council does not concede any limitation to its power to amend intergovernmental legislation, questions have arisen as to the power of state legislatures to amend the terms of the agreement (usually attached as a schedule to the bill), due to the inherent risk that an amendment may result in the legislation in one state being inconsistent with the legislation passed in other jurisdictions. It is clear that members may vote against the clause or schedule to reject the agreement, however if a member intends to propose an amendment to the terms of an intergovernmental agreement, members should first consult the Clerks-at-the-Table for advice.

3. Running Sheets

- 3.1 To assist in determining the order and priority of amendments and the consequences of other amendments being agreed to or negated, the Clerks-at-the-Table, with the assistance of the Procedure Office, may prepare a running sheet. Running sheets generally list amendments in the order in which they occur in the bill, grouping related amendments together, and noting those amendments that share a similar theme or subject matter, where conflicts occurs, and any other relevant procedural considerations.
- 3.2 As a general rule, running sheets are prepared when there is more than one sheet of amendments circulated by more than one member or party.
- 3.3 Running sheets are only a guide and do not prescribe the order in which amendments must be taken by the committee. Appendix Four is an example of a running sheet prepared to assist the Chair and members in the consideration of amendments to a bill.

4. Reconsidering amendments and decisions

- 4.1 If a vote is taken in error, or there is confusion concerning a question, vote or division, the question can be put again. If the Committee or the House wishes to reverse a decision made, or propose amendments to a bill after the conclusion of consideration of the bill, the bill can be reconsidered, or recommitted. These procedures are outlined below.

Rectifying a decision made in error

- 4.2 Under the standing orders, the established procedure for reconsidering a decision of the committee is to progress to the end of the committee stage and then reconsider the bill, or recommit the bill for further consideration. However, a different practice applies where an amendment has been agreed to in error or by accident.

- 4.3 If an error occurs in the counting of a division, or misunderstanding as the result of confusion amongst the committee, and it can be established at that time that the vote does not reflect the will of the committee, the vote may be taken again. A member objecting to a vote being taken again could seek the ruling of the Chair that the vote was in accordance with the rules of the committee.

Reconsideration of a bill

- 4.4 When the committee has concluded its consideration of a bill, a member may move an amendment to the motion "That you do now leave the Chair and report the bill to the House with/without amendment", for reconsideration of any clause or clauses in the bill. This allows the committee to reconsider a clause without having to report back to the House first (SO 154 (2)).
- 4.5 A bill can be reconsidered in whole or in part by specifying the clause or schedule to be reconsidered.

Recommitting a bill

- 4.6 Once the committee has reported to the House, the House can recommit the bill in whole or in part by moving a motion in accordance with SO 155.
- 4.7 If the House wishes to recommit the bill when the order of the day for the third reading is called on and before the motion for the third reading is carried, the bill may, on motion, be recommitted in whole or in part (SO 157).
- 4.8 This procedure is used where the House wishes a committee to reconsider changes made to a bill or where new amendments are to be proposed in the bill. For example, clauses which have been omitted from a bill may be re-inserted on recommitment.
- 4.9 Any member may move to recommit or partially recommit a bill but priority is given to the member with carriage of the bill. A bill may be recommitted as often as the House thinks fit. Bills have been recommitted twice and even three or four times.
- 4.10 On the motion for recommitment, debate is restricted to the amendment or the clause/s proposed to be recommitted.
- 4.11 Once the committee has concluded its consideration of the recommitted bill, the bill is reported to the House for a second time with or without further amendments.

5. Reports from a Committee of the whole House on bills

- 5.1 When all amendments before the committee have been determined and members have concluded their consideration of a bill, the final question put by the Chair is:

That the bill, as read/as amended, be agreed to.

- 5.2 If the question is agreed to, the member with carriage of the bill moves a motion for the Chair to report the bill to the House with or without amendment/s.
- 5.3 If proceedings on the bill in a Committee of the whole House have not concluded, the Chair may report progress and seek leave to sit again at a later hour or the next sitting day.

Reporting progress

- 5.4 When a committee wishes to report progress and resume consideration of a bill at a later time, a motion may be moved by any member during committee proceedings (SO 184):

Mr/Madam Chair:

I move: That you do now leave the Chair, report progress and seek leave to sit again (on a stated day or at a later hour).

- 5.5 If the motion is agreed to, the Chair of Committees turns to the President, who has resumed the Chair in the House, and says:

Mr/Madam President, the committee reports progress and seeks leave to sit again (on a stated day or a later hour).

- 5.6 The President restates the report of the Chair to the House. The member in charge of the bill then says:

Mr/Madam President:

I move: That the report be now adopted.

- 5.7 If the motion is agreed to the bill is set down on the Notice Paper for further consideration in a Committee of the whole House (SO 184).

Interruption of business

- 5.8 If a Committee of the Whole House is interrupted by the operation of any standing order or other order of the House, with the exception of the interruption for the adjournment, the business may be dealt with at a later hour of the same sitting day, or will be set down on the Notice Paper for the next sitting day (SO 48).

- 5.9 Where an interruption occurs, the Chair is to interrupt proceedings and report progress to the House in the following terms:

Mr/Madam President, the committee reports progress.

- 5.10 Further consideration of the business before the committee is to be made an order of the day for a later hour of the sitting without any question being put (SO 48(3)(b)). The member speaking when proceedings are interrupted may continue speaking when proceedings are resumed (SO 48(4)).

Report of bill with or without amendment

- 5.8 When consideration of a bill in a Committee of the whole House has concluded the Chair signs a certificate, provided by the Clerk to the Chair, that the bill is in accordance with the bill as reported from the Committee of the whole House (SO 156(4)). The member with carriage of the bill then says:

Mr/Madam Chair

I move: That you do now leave the Chair and report the bill to the House with/without amendment(s).

- 5.9 If necessary, the Chair will also report that the amendments include an amendment to the long title (SO 152(5)).

- 5.10 In the case of amendments to cognate bills the Chair says:

I report the bill with amendment(s), and the remaining cognate bills without amendment(s).

- 5.11 If the motion is agreed to, the Chair of Committees turns to the President, who has resumed the Chair in the House, and says:

Mr/Madam President, the committee reports the bill to the House with/without amendment.

- 5.12 The President restates the report of the Chair to the House (SO 154(1)). The member in charge of the bill then says:

Mr/Madam President:

I move: That the report be now adopted.

or

I move: That consideration of the adoption of the report stand an order of the day (for a stated day or later hour)

No report

- 5.13 The proceedings of a Committee of the whole House may be terminated by agreeing to a motion “That you do now leave the Chair” (SO 184 (4)). In such a case the Chair has no instructions from the committee and makes no report to the House, which results in the proceedings of the committee being terminated. The Chair leaves the Chair and the President resumes the Chair of the House. The order of the day for the bill is removed from the Notice Paper and can only be revived by motion on notice. For this reason, in order that it be clear what the effect of this motion will be, the Chair could restate the question by reference to SO 184(5).

6. Rules of debate and order in committee

Speaking in a Committee of the whole House

- 6.1 In a Committee of the whole House, members may speak more than once to any question before the Chair (SO 90(2)). This provides for more free-flowing debate than occurs in the House where members can generally only speak once to any question. Members’ freedom to speak more than once also allows for detailed discussion and negotiation on matters of particular complexity or contention.
- 6.2 The President, like any other member, may take part in debate and vote in a Committee of the whole House.
- 6.3 Rulings of the Chair maintain that debate on a clause or an amendment must be confined to the matter of the clause or amendment under discussion (SO 180(5)) and may not canvass the principles of the bill itself. In discussing a clause, other clauses should not be debated, except to illustrate to the committee the probable working of the clause.

Objection to decisions of the Chair of Committees

- 6.4 If a member wishes to object to a decision of the Chair, the objection must be taken at once. The member must give their reasons in writing to the Chair (SO 185), then a motion to report the matter to the House is put to the committee. If the committee agrees, the Chair leaves the Chair and reports the matter to the President. If the Committee disagrees, the Chair’s decision stands. The Clerk to the committee keeps a pro forma of the procedures to be followed when an objection is made.

Quorum in committee

- 6.5 Quorum in a Committee of the whole House is 8 members and the Chair. If a member takes notice in a Committee of the whole House that there is no quorum and a quorum is not formed after ringing the division bells for five minutes, or if it appears, upon a division in committee, that a quorum is not present, the Chair leaves the Chair without any question being put and reports an absence of a quorum in committee to the President. The President then proceeds to count the House and if a quorum is present the House again resolves itself into a Committee of the whole House without any question being put (SO 183). However, if there is not a quorum, the bells will ring for a further five minutes. The President will then count the House again, and if a quorum is still not present, will adjourn the House until a later hour of the day or the next sitting day. If a quorum is present, the President will leave the chair and the committee will resume.
- 6.6 If, in the unlikely event that proceedings in a Committee of the whole House is interrupted and the House is adjourned for want of a quorum (count out), the resumption of the committee is made an order of the day for the

next sitting day. When the order is called on, proceedings are resumed at the point where they were interrupted (SO 183(4)).

Disorder in committee

- 6.7 Where a member conducts themselves in a disorderly manner, and is called to order three times, the Chair may deal with the member immediately under SO 196 and order that they be removed from the chamber by the Usher of the Black Rod for a period of time as the Chair may decide, but not beyond the termination of the sitting.
- 6.8 In cases of gross disorder, the Chair may name a member for being guilty of a wilful or vexatious breach of any of the standing orders or for interrupting the orderly conduct of the business of a committee. When the Chair names a member, the Chair will leave the Chair and report such action to the House. The matter will then be dealt with under SO 196 and 197.

Appendix One: Marshalling Amendments

Electricity Network Assets (Authorised Transactions) Bill 2015 [NSW]
Part 2 The authorised transactions

transacted business of a SOC means the business of a SOC that becomes a business controlled and operated by the private sector as a result of an authorised transaction. 1
2
transacted electricity network SOC means an electricity network SOC the business of which becomes a business controlled and operated by the private sector as a result of an authorised transaction. 3
4
5

7 Protection of State's interest in transferred network infrastructure assets 6

(1) A public sector agency must not transfer any network retained interest held by the public sector agency. 7
8

(2) This section does not prevent: 9

- (a) the granting or enforcement of a security interest over any network retained interest, or 10
- (b) the conferral or enforcement of a security interest over any interest in a network infrastructure assets lease, being a security interest that arises by operation of law, or 11
- (c) a transfer by or at the direction or under the authority of a liquidator, receiver, receiver and manager, administrator or the like in the course of a winding-up, receivership or other external administration, or 12
- (d) a transfer by way of lease (a *new lease*) created by a sublease under, or surrender and regrant of, an existing network infrastructure assets lease (the *existing lease*) where the transfer does not result in the level of the public sector's interest in the entity that is the lessee under the new lease being less than it was for the existing lease, or 13
- (e) any transfer to a public sector agency, or 14
- (f) a transfer authorised by the regulations. 15

(3) In this section: 16

network infrastructure assets lease means a lease of assets comprising or including network infrastructure assets. 17

network retained interest means any interest of a public sector agency in: 18

- (a) a network infrastructure assets lease (other than as the lessor of a transacted distribution system or transacted transmission system), or 19
- (b) a public sector agency that is a lessee of such a lease or that is a partner in a partnership that is a lessee of such a lease. 20

transfer includes surrender. 21

8 Electricity price guarantee 22

(1) The Treasurer must ensure that an authorised network operator of a transacted distribution system or transacted transmission system provides a guarantee (its *electricity price guarantee*) to the effect that: 23

- (a) the authorised network operator's total network charges for the financial year ending 30 June 2019 will be lower than the network operator's total network charges for the financial year ending 30 June 2014, and 24
- (b) the authorised network operator will promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, safety, reliability and security of supply of electricity, and 25
- (c) the authorised network operator will comply with any Efficiency Benefit Sharing Scheme developed by the AER for the sharing of efficiency gains and 26

Gms amdt on sheet 015 conflict with Opp amdt 3 and should be moved with Opp 3 and 4 and Gms amdt to Opp 3.

Gms1 -012E
Gms2 -012E

Gms 1 to 5 all relate to the price guarantee and do not conflict with any other amdts so could be moved together, by leave

Page 5

Opp 2
-009B
omit
+ insert

Opp 3 seeks to omit all words on lines 38-40 and insert new words. Gms amdt on sheet 016A seeks to amdt Opp 3. Opp 3 and 4 are related and could be moved together, by leave. If they are, Gms 3 should then be moved together by the question on Opp 3

Opp 3
-010H/
Gms amdt to opp amdt.

Gms 3012E
 Gms 402E
 Gms 502E

Opp 4 - 010H

Opp 5 - 010H

Opp 4 and 5 relate to the
 Price Commissioner so could
 be moved together

Opp 6 - 010H
 Opp 7 - 010H
 CDP - 008H 1#2
 Gms 6 - 012E
 Gms 7 - 012E

Opp 6 and 7, CDP 1 and 2
 and Gms 6 all propose a
 new clause 9 to be inserted
 after line 35. These are options
 for the committee - they could
 all be agreed to. Gms 7 inserts
 a new clause 10 before line 36.
 It is related to Gms 6 so could
 be moved with Gms 6 by leave.
 This would not affect the other
 amendments and could be
 allowed.

- losses between network operators and their customers that is applicable to the network operator. 1
- (2) The Treasurer is to request the Price Commissioner to provide the following reports: 2
- (a) a report, for each proposed authorised transaction, as to whether the amount of the private sector investment for the purpose of acquiring an interest in electricity network assets pursuant to the authorised transaction (including costs incurred for that purpose) is likely to result in an increase in network charges, 3
- (b) an annual report, for each completed authorised transaction, on compliance by the authorised network operator with its obligations under its electricity price guarantee. 4
- (3) A public sector agency must comply with any reasonable request by the Price Commissioner that the agency provide information to the Price Commissioner for the purposes of reports under this section (with any dispute as to the reasonableness of a request to be decided by the Secretary of the Department of Premier and Cabinet). 5
- (4) The Price Commissioner is not subject to control or direction by or on behalf of the Government in connection with any report of the Price Commissioner. 6
- (5) An authorised network operator must within 2 months after the end of each financial year provide to the Price Commissioner such information as the Price Commissioner may reasonably require to enable the Price Commissioner to report on compliance by the authorised network operator with its obligations under its electricity price guarantee. 7
- (6) In this section: 8
- network charges** means revenue collected by a network operator in respect of regulated services provided by the network operator. 9
- Price Commissioner** means the person engaged by the Secretary of the Department of Premier and Cabinet as a consultant to provide services as the NSW Electricity Price Commissioner. 10
- regulated services** means the following direct control network services (within the meaning of the *National Electricity (NSW) Law*): 11
- (a) a standard control service or prescribed transmission service, 12
- (b) any other service prescribed by the regulations. 13
- total network charges** for a period means the total revenue collected by a network operator at any time (whether or not during the period concerned) in respect of regulated services provided by the network operator during that period. 14
- Payment and application of proceeds of transactions** 15
- (1) The proceeds of the transfer of electricity network assets to the private sector pursuant to an authorised transaction (**the transaction proceeds**) belong to and are payable directly to the State. 16
- (2) The transaction proceeds include any payment to a public sector agency that is a periodic lease payment under a lease of electricity network assets to the private sector pursuant to an authorised transaction. 17
- (3) The transaction proceeds paid to the State are to be paid in such proportions as the Treasurer directs into: 18
- (a) the Restart NSW Fund (**the Restart Fund**) established under the *Restart NSW Fund Act 2011*, and 19
- (b) the Residual Liabilities Fund established under this Part. 20

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Part 3 Facilitating the authorised transactions

11 Treasurer's functions

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

12 Manner of effecting authorised transaction

- (1) An authorised transaction is to be effected as directed by the Treasurer and can be effected in any manner considered appropriate by the Treasurer.
- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of an authorised transaction.
- (3) Electricity network assets can be transferred pursuant to this Act whether or not the land in, on or over which they are situated is owned by the owner of the assets.
Note. Section 51 of the ES Act provides that electricity works are owned separately from the land in, on or over which they are situated and ownership of land in, on or over which electricity works are situated does not constitute ownership of those works.
- (4) The provisions of this Act for the establishment of various kinds of transaction entity do not limit the nature of the entities or arrangements that can be used for the purposes of an authorised transaction.

13 Transaction SOCs

- (1) A statutory State owned corporation may be established under this Act as a transaction SOC for the purposes of an authorised transaction.
- (2) The Governor may by order published in the Gazette:
 - (a) create a corporation under a corporate name specified in the order, and
 - (b) specify the functions of the corporation, and
 - (c) direct that the corporation is established as a statutory State owned corporation and as a transaction SOC.
- (3) On the day on which the order takes effect:
 - (a) a corporation is constituted with the corporate name and functions specified in the order, and
 - (b) the *State Owned Corporations Act 1989* is amended by inserting in Schedule 5 the corporate name specified in the order (to establish the corporation as a statutory State owned corporation under that Act), and
 - (c) the State owned corporation thereby established is a transaction SOC for the purposes of this Act.
- (4) The portfolio Minister of a SOC established under this section is the Minister administering the *Energy Services Corporations Act 1995*.
- (5) Schedule 2 has effect with respect to a transaction SOC. The provisions of that Schedule are in addition to and (except to the extent to which that Schedule otherwise provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

Opp 8 or 10

Opp 8 stands on its own

Part 4 Arrangements for transfer of staff

17 Interpretation

In this Part, *networks employee* means an employee of an electricity network SOC and includes a person who was an employee of an electricity network SOC immediately before the person's employment was transferred under this Part to the employment of another public sector agency.

18 Transfers within public sector

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of a networks employee to the employment of another public sector agency.
- (2) A transfer of employment under this section does not require the consent of the person transferred.
- (3) An employee whose employment is transferred under this section 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 employee had the employee remained an employee of the electricity network SOC concerned.
- (4) The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency in connection with the operation of this section.

Opp 9 omits all words starting at the beginning of line 21, and inserts new words. Grns 8 and 9 conflict with this amendment. Opp 9 should be moved first as it occurs first in the bill. Then Grns 8 and 9 can be moved. The question is put first on Opp 9 - if agreed to, Grns 8 & 9 lapse. If negatived, the questions on Grns 8 and 9 can be put.

19 Transfers to private sector employment

- (1) The Treasurer may, for the purposes of an authorised transaction, by order in writing transfer the employment of a networks employee (a *transferred employee*) to the employment of a private sector entity (the *new employer*).
- (2) A transfer of employment under this section does not require the consent of the networks employee transferred.
- (3) The employment of a transferred employee with the new employer is to be on the same terms and conditions as applied to the employee as a networks employee immediately before the transfer of employment.

Grns 8-12E omit + insert
 Grns 9-12E omit + insert

Opp 9 omit + insert

20 Continuity of entitlements of transferred employees

- (1) On the transfer by order under this Part of an employee's employment from one employer (the *current employer*) to another employer (the *new employer*) the following provisions have effect:
 - (a) the employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of the current employer) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law,
 - (b) the new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this section,
 - (c) the continuity of the employee's employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer)

Grns 10-12E

Grns 10 stands on its own.

CDP 3 proposed to omit all words from line 30 on this page to line 26 on the next page, and to insert a new clause 20. The proposed new clause 20 refers to Schedule 4 proposed to be inserted by CDP amds 4 to 22. CDP 3 is consequential on CDP 4 to 22. They would probably be moved together, by leave.

CDP 3 to line 26 p12. omit + insert

COP 3

OMIT +
insert

Opp 10 and 13 are related and
 Gms 11 and 13 are related. Opp 13 relies
 on Opp 10 being agreed to, same
 with Gms 13 and 11, because the latter
 refers to the earlier amndt.
 They all relate to the issue of
 transfer payments. They are
 very similar amendments. they
 should be moved together and the
 order of positions in which they would be
 dependent on which amendments
 were received first.

Gms 12 stands alone.

Opp 11 - 010H

Opp 12 - 010H

Opp 13 - 010H
 Gms - 012E

Opp 14 - 010H

- that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer,
- (d) the employee retains any rights to annual leave, sick leave, extended or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) If the employee is an apprentice or trainee under the *Apprenticeship and Traineeship Act 2001*:
- (a) the new employer must apply under section 20 of that Act for approval to the transfer of the apprenticeship or traineeship to the new employer, and
- (b) consent to the transfer is not required to be given by the apprentice or trainee or the current employer (despite section 20 (4) of the *Apprenticeship and Traineeship Act 2001*).
- (3) An employee is not entitled in respect of the same period of service to claim a benefit under this section and another law or instrument.
- (4) The Treasurer may in connection with the transfer of an employee's employment under this Part give a certificate in writing as to the extent of the accrued rights to annual leave, sick leave, extended or long service leave that are retained by the employee under this section, and such a certificate is evidence of the matters certified.
- (5) Nothing in the *Long Service Leave Act 1955* prevents payment in connection with the transfer under this Part of the employment of an employee to the employment of a private sector entity of the monetary value of long service leave in lieu of an entitlement to that leave accrued as a networks employee before the transfer of the employee's employment.

21 Operation of other laws and entitlements

The following provisions apply in relation to the transfer of a person's employment under this Part:

- (a) the transfer has effect despite any other law, contract or instrument under a law,
- (b) the transfer does not constitute a retrenchment, redundancy or termination of employment at the initiative of the Crown or any other public sector agency,
- (c) the person transferred is not entitled to any payment or other benefit by reason only of having ceased to be an employee of a public sector agency as a result of the transfer,
- (d) a public sector agency is not required to make any payment to the transferred person in relation to the transferred person's accrued rights in respect of annual leave, sick leave or extended or long service leave.

22 Operation of Commonwealth law

A provision of this Part (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the *Fair Work Act 2009* of the Commonwealth or of any instrument under that Act.

If Opp 10 or Gms 13 is agreed to
 clause 21 in the bill is
 renumbered clause 22.

Opp 11, 12 and 14 relate to the
 same matter and do not conflict
 with other amnds so could be
 considered together, by leave.

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insert.

- (4) The Treasurer may direct a public sector agency as to how the public sector agency must exercise any function of the agency in connection with the acquisition of land from the agency under this section. If a public sector agency fails to exercise a function in compliance with a direction under this section within 1 month after it is given, the Treasurer may exercise the function for or on behalf of the agency to give effect to the direction. 1
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- (5) A public sector agency is not entitled to compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* as the owner of land acquired pursuant to this section. 7
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- (6) Land acquired under this section is deemed to be an asset of an electricity network SOC for the purposes of this Act and the acquiring authority is deemed to be an electricity network SOC for the purposes of this Act while it holds the land. 10
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Note. Land acquired pursuant to this section is an electricity network asset for the purposes of an authorised transaction whether or not it was an electricity network asset before it was acquired. 13
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Grns 14 012E

27 Adjustment of electricity network SOC objectives and functions 16

Grns 14 stands alone.

- (1) The Treasurer may by direction in writing to an electricity network SOC adjust the objectives and functions of the electricity network SOC in such manner as the Treasurer considers appropriate to ensure that the objectives and functions of the electricity network SOC remain appropriate, having regard to: 17
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- (a) the capacity of the electricity network SOC to give effect to or exercise its existing objectives and functions following the transfer of any of its electricity network assets for the purposes of an authorised transaction, and 21
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- (b) the objectives and functions that would be appropriate for any remaining electricity network assets of the electricity network SOC. 24
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- (2) The objectives and functions of an electricity network SOC may be adjusted under this section by being limited or dispensed with but not by being broadened. 26
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Opp 15. Olat

Opp 15 stands alone.

(b)	any function that concerns the creation, assurance or extinguishment of an interest in land.	1 2
35	Protection of electricity works	3
(1)	Section 53 of the ES Act applies in respect of electricity works that form part of a transacted distribution system or transacted transmission system as if:	4 5
(a)	a reference in that section to the commencement of the <i>Electricity Supply Amendment (Protection of Electricity Works) Act 2006</i> were a reference to the completion of the authorised transaction as a result of which the electricity works form part of that transacted distribution system or transacted transmission system, and	6 7 8 9 10
(b)	a reference to the network operator included a reference to a network operator after the completion of that authorised transaction.	11 12
(2)	Section 53 of the ES Act does not apply to prevent an action lying by the owner of a transacted distribution system or transacted transmission system against a network operator that controls or operates the system.	13 14 15
36	Licensing	16
(1)	The Treasurer may for the purposes of an authorised transaction request the Minister under the ES Act to grant a licence under section 13 or 93A of that Act to an entity nominated by the Treasurer as the new operator of a transacted distribution system or transacted transmission system.	17 18 19 20
(2)	The Minister under the ES Act is to grant a licence in accordance with the Treasurer's request. The licence is to be granted on terms and conditions approved by the Treasurer and as may be required by or under the ES Act.	21 22 23
(3)	Clauses 2, 3 and 4 of Schedule 2 to the ES Act do not apply in respect of the grant of a licence pursuant to a request under this section.	24 25
37	Boundaries of distribution districts	26
(1)	The boundaries of the distribution district for a transacted distribution system cannot be varied under section 84 of the ES Act except with the consent in writing of the authorised distributor.	27 28 29
(2)	If the boundaries of the distribution district for a transacted distribution system are varied under section 84 of the ES Act, the power of the Minister under section 85 (Transfer of staff, assets, rights and liabilities) of the ES Act to order the transfer of staff, assets, rights or liabilities of a distributor includes the power to order the transfer of staff, assets, rights or liabilities of the owner or controller of the distribution system concerned.	30 31 32 33 34 35
38	Land tax	36
(1)	The exception provided for a sublessee in section 21C of the <i>Land Tax Management Act 1956</i> does not apply to a sublessee under an authorised transaction sublease and the sublessee is liable for land tax accordingly.	37 38 39
(2)	An <i>authorised transaction sublease</i> is a sublease entered into for the purposes of an authorised transaction.	40 41
39	Planning laws	42
(1)	For the purposes of any environmental planning instrument, the supply of electricity by an authorised network operator is a public utility undertaking carried on by the authorised network operator as an electricity supply authority.	43 44 45

- (2) For the purposes of any relevant planning law provision, the carrying out of development by or on behalf of an authorised network operator for the purpose of an electricity transmission or distribution network (within the meaning of *State Environmental Planning Policy (Infrastructure) 2007*) constitutes the carrying out of that development by the authorised network operator as an electricity supply authority and public authority. 1
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- (3) After a distribution system or transmission system becomes a transacted distribution system or transacted transmission system, a reference in an environmental planning instrument to the former network operator is to be read as a reference to the authorised network operator that operates the transacted distribution system or transacted transmission system. 7
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- (4) In this section: 12
environmental planning instrument has the same meaning as in the Planning Act. 13
former network operator means the electricity network SOC that was the network operator of the distribution or transmission system concerned before the authorised network operator became the network operator. 14
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Planning Act means the *Environmental Planning and Assessment Act 1979*. 17
relevant planning law provision means: 18
- (a) any provision of an environmental planning instrument that permits specified development to be carried out with or without development consent, or 19
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- (b) any provision of an environmental planning instrument that deals with the obligations of a public authority in connection with the carrying out of development by or on behalf of the public authority that may be carried out without development consent (including the carrying out of an activity to which Part 5 of the Planning Act applies). 21
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40 Coastal protection

Nothing done for the purposes of an authorised transaction requires the concurrence of the Minister under section 38 or 39 of the *Coastal Protection Act 1979*.

Opp 16 stands alone.

26] opp 16
27 - 610H
28] omit

Grms 15 OZE

Part 8 Miscellaneous

49 Functions of Electricity Assets Ministerial Holding Corporation

Grms 15 stands alone

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| (1) The functions of the Electricity Assets Ministerial Holding Corporation include: | 3 |
| (a) to hold, on behalf of the Crown, electricity network assets acquired by it or transferred to it, and | 4 |
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| (b) to carry on any activities or business that relate to any electricity network assets held by it, including demanding, collecting and receiving charges, levies, rates and fees, and | 6 |
| | 7 |
| | 8 |
| (c) such other functions for the purposes of an authorised transaction under this Act as may be prescribed by the regulations. | 9 |
| | 10 |
| (2) There is to be established in the Special Deposits Account a fund called the Electricity Assets Ministerial Holding Corporation Fund (<i>the EAMHC Fund</i>), which is to be administered by the Treasurer. | 11 |
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| (3) There is payable into the EAMHC Fund: | 14 |
| (a) all money received by the Corporation in the exercise of its functions under this or any other Act, and | 15 |
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| (b) all money standing to the credit of any working account established for the Corporation under section 13A of the <i>Public Finance and Audit Act 1983</i> on the commencement of this section. | 17 |
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| (4) There is payable from the EAMHC Fund such amounts as the Treasurer directs from time to time for: | 20 |
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| (a) payment of expenditure by the Corporation in the exercise of its functions under this or any other Act, or | 22 |
| | 23 |
| (b) payment of expenses incurred in relation to the administration of the EAMHC Fund, or | 24 |
| | 25 |
| (c) payment to the Consolidated Fund. | 26 |
| (5) The Treasurer may invest money in the EAMHC Fund in such manner as may be authorised by the <i>Public Authorities (Financial Arrangements) Act 1987</i> . | 27 |
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50 Functions of New South Wales Treasury Corporation

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| (1) New South Wales Treasury Corporation (<i>TCorp</i>) has the object of providing financial services for the purposes of an authorised transaction at the direction of the Treasurer. | 30 |
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| (2) The Treasurer may direct TCorp to do any one or more of the following for the purposes of an authorised transaction on terms and conditions determined by the Treasurer: | 33 |
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| | 35 |
| (a) provide financial accommodation (including by the lending of money) to or for the benefit of a private sector entity, | 36 |
| | 37 |
| (b) effect a financial adjustment for the benefit of or on behalf of a private sector entity, | 38 |
| | 39 |
| (c) participate in any other arrangement or transaction approved by the Treasurer for the purposes of an authorised transaction. | 40 |
| | 41 |
| (3) TCorp is authorised and required to comply with a direction of the Treasurer under this section. | 42 |
| | 43 |
| (4) Words and expressions used in this section that are defined in the <i>Public Authorities (Financial Arrangements) Act 1987</i> have the same meanings as in that Act. | 44 |
| | 45 |

- (3) A SOC to which a corporate conversion direction has been given becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act. 1
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- (4) When a SOC is registered as a company under the Corporations Act pursuant to a corporate conversion direction, section 43A (General audit of former statutory bodies) of the *Public Finance and Audit Act 1983* applies as if the SOC had been abolished. 4
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CDP 4-22 ———
insert

CDP 4 - 22 insert amdt after line 7.
CDP 4 on p 11 is consequential on
schedule 4, proposed by CDP 4 -22
being agreed to. These amdt
could be moved earlier in proceedings
with CDP 4 on p 11.

[17] Section 63R Notification of serious electricity works accidents	1
Omit “owns or controls” from section 63R (1). Insert instead “owns, controls or operates”.	2
[18] Section 63V Publication of details of serious electricity works accidents	3
Omit “Secretary, a member of staff of the Secretary” from section 63V (2).	4
Insert instead “Tribunal, a member or officer of the Tribunal”.	5
[19] Part 6A	6
Insert after Part 6:	7
Part 6A Step-in rights—Network Administration Orders	8
76A Definition	9
In this Part:	10
<i>network operations</i> means any activity carried on for or in connection with the operation, or control of the operation, of a distribution or transmission system.	11 12
76B Grounds for issue of Network Administration Order	13
(1) The Minister may issue a Network Administration Order for a network operator’s distribution or transmission system if:	14 15
(a) the network operator’s licence has been cancelled, or	16
(b) the Minister is satisfied that the network operator has contravened a provision of this Act or the regulations or a condition of the network operator’s licence and the contravention requires the issue of a Network Administration Order.	17 18 19 20
(2) A contravention by a network operator of a provision of this Act or the regulations or a condition of the network operator’s licence is considered to require the issue of a Network Administration Order only if the Minister is satisfied that:	21 22 23 24
(a) the contravention threatens the safe, secure or reliable supply of electricity and it is necessary to take control of the distribution or transmission system concerned under such an Order to ensure the continued safe, secure and reliable supply of electricity, and	25 26 27 28
(b) alternative action to remedy the contravention that could reasonably be taken by or at the direction of the Minister either would not adequately remedy the contravention or has been taken but has failed to adequately remedy the contravention.	29 30 31 32
76C What a Network Administration Order authorises	33
(1) A Network Administration Order authorises the Tribunal to take control, in accordance with the terms of the Order, of the operation of the distribution or transmission system concerned for the purpose of ensuring the continued safe, secure and reliable supply of electricity.	34 35 36 37
(2) The Tribunal is to appoint a step-in operator on terms and conditions determined by the Tribunal to operate the distribution or transmission system concerned in accordance with the terms and conditions of the step-in operator’s appointment and the directions of the Tribunal.	38 39 40 41

Opp 17-010H

Opp 18 - 010H
omit

Opp 19 - 010H

Opp 17, 18 and 19 relate to the same issue and do not conflict with other amnds. They could be moved together, by leave.

- (3) Without limitation, an approved Code may include provision for or with respect to any of the matters listed in section 111A (2) of the Act. 1
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- (4) An approved Code may specify the period for which the approved Code is in force. 3
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- (5) The Minister may by notice in writing to an authorised network operator exempt a specified activity of the operator from the operation of an approved Code. Such an exemption may be made subject to conditions and may be revoked or varied at any time by notice in writing to the operator. 5
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244L Procedure for approval of Code 9

- (1) The Minister may approve a Code for the purposes of this Division and may vary or revoke an approved Code. 10
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- (2) An approval of a Code, or a variation or revocation of an approved Code, takes effect when notice of it is published in the Gazette or on such later date as is specified in the approval, variation or revocation. 12
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- (3) The Minister must, before varying or revoking a Code or approving a Code as a replacement for an existing Code, give each authorised network operator who will be affected by it notice of the proposal and an opportunity to make submissions on the proposal. The Minister must take into account any submission made by an authorised network operator within 20 business days after the operator was given notice of the proposal. 15
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[2] Clause 277 Public authorities 21

Insert as clause 277 (5): 22

- (5) For the purpose of the definition of *public authority* in section 4 (1) of the Act, an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015* is prescribed, but only so as to allow the authorised network operator to be a determining authority within the meaning of Part 5 of the Act for development for the purposes of an electricity transmission or distribution network (within the meaning of *State Environmental Planning Policy (Infrastructure) 2007*) operated or to be operated by the authorised network operator and that is: 23
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 - (a) permitted without consent by a public authority under that Policy, or 31
 - (b) permitted without consent under any other environmental planning instrument. 32
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7.14 Government Information (Public Access) Act 2009 No 52 34

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure 35
36

Insert at the end of the Schedule: 37

14 Information about authorised transactions under Electricity Network Assets (Authorised Transactions) Act 2015 38
39

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any document prepared for the purposes of or in connection with an authorised transaction under the *Electricity Network Assets (Authorised Transactions) Act 2015* other than a document the public disclosure of which has been approved by the Treasurer. 40
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Opp 20 stands alone.

Opp 2
- ODH

omit
+ insert

Appendix Two: Chair's Ruling: The Council's Power to Amend Money Bills

On a point of order being taken, pursuant to section 5 of the Constitution Act 1902, that certain amendments were out of order because they purport to have material effect on a money bill—

The CHAIR (The Hon. Trevor Khan): Order! There being no further contributions to the point of order, I note that this matter has been the subject of extensive commentary in *New South Wales Legislative Council Practice* by Lovelock and Evans. I refer members to the section commencing on page 401 through to approximately page 412. I think the relevant matters commence on page 401, and they are as follows. First, as the Government Whip points out, these are matters dealt with in part 2 of the Constitution Act 1902. Section 5 of the Act provides that legislatures shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever provided that—and these are the relevant words—“all bills for appropriating any part of the public revenue or for imposing any new rate, tax or impost shall originate in the Legislative Assembly”. Section 5A was introduced into the Constitution Act in 1933 pursuant to the Constitution Amendment (Legislative Council) Act 1932. I will come to that later. Section 5A (1) provides that:

If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

I will not read out sections 5A (2) and 5A (3). Lovelock and Evans note in the third paragraph on page 401:

However, since the beginning of responsible government in New South Wales in 1856, there has been dispute between the two Houses on the question of the Council's powers over money bills.

I editorialise here and observe that this is a money bill for this purpose. Lovelock and Evans continue:

The Assembly places a wide interpretation on the provisions of the *Constitution Act 1902*, jealously guarding its authority under the proviso in section 5 that money bills originate in the Assembly, and its authority under section 46 with respect to appropriations recommended by the Governor.

The Assembly's claims lie in “the financial initiative of the Crown” and the belief that sections 5 and 46 of the *Constitution Act 1902* incorporate the principle that the government has control of public revenue. The basis of the Assembly's claims lies in the long history of struggle between the Commons and the Monarch for control of the financial affairs of the kingdom, particularly during the Tudor and Stuart period.

In the following paragraph Lovelock and Evans go on to observe:

This claim is not admitted by the Council, which has adopted a much narrower construction of sections 5A and 5B of the Act than the Assembly. The Council regards only those bills that fall within the terms of section 5A as not capable of amendment. This issue is discussed below.

Before I go on to refer to specific cases, I observe that comment was made at the time the Constitution Amendment (Legislative Council) Act 1932 was debated. The Hon. Henry Manning, the then Attorney General, stated:

I should like to point out ... the essential difference between a bill appropriating revenue or moneys for the ordinary annual services of the Government and a taxation measure ... An Appropriation Bill appropriates money for the ordinary services of the Crown, whereas a taxation bill does not appropriate money, but merely affirms that there shall be charged, levied, collected and paid a tax upon the incomes or whatever it may be of certain individuals. It may provide that incomes from personal exertion or incomes from property shall be subject to a tax. But it does not appropriate any money derived from such tax. That money is paid into consolidated revenue, and an Act of Parliament is required to appropriate it for the annual services of the Crown. [T]he language used in proposed new s 5A(1) has been employed for the express purpose of differentiating between those two things.

There was also comment in 1943 on the same matter by the Hon. William McKell, who was Premier at the time. It is dealt with at the bottom of page 503 of Lovelock and Evans. I do not wish to go through all the various examples contained in Lovelock and Evans. However, I will refer to the Consumer Protection Bill 1969, which is dealt with on pages 406 and 407. In that debate the then Leader of the Government, the Hon. John Fuller, said:

For many years there has been dispute between the Legislative Assembly and the Legislative Council on the powers of the Council, especially in relation to money bills. Almost every bill that comes before this Council from the Assembly has expenses associated with it in some way. It is almost impossible to say that a bill has no public expense associated with it. Even if a bill authorizes the employment of one extra individual in the public service it could be said to be to that extent a money bill ... Section 5A is a long provision with three subsections which, in brief, provide that the Legislative Council's powers to make any amendments whatever in the annual Budget or in any Supply Bill are very limited. However, to my mind section 5B covers the sort of money provision with which we are now concerned, which is not a straight-out Budget or Supply Bill. This provision refers to general bills that involve expenditure, as this one does, but are not vital and do not impose new taxes or new imposts upon citizens of New South Wales. I consider that the Legislative Council can amend in any way that it deems fit any bill covered by section 5B of the Constitution Act.

The then Leader of the Opposition in the Council, the Hon. Reg Downing, claimed:

It seems to me that, as the Minister said, section 46 of the Constitution Act applies to the Legislative Assembly and that, subject to sections 5, 5A and 5B of that Act, this House is empowered to do what it desires in respect of any legislation, with the exception of a bill appropriating revenue for the ordinary annual services of the Crown ... Since the reconstitution of this House in 1934, the Legislative Council

has very wide powers indeed, limited only by section 46 of the Constitution Act regarding the initiation of expenditure ...

However, once the Legislative Assembly sends a bill such as this to the Legislative Council for its view, it is within the power of this Chamber to do what it will.

However, I have strongly taken the view, both when in Government and in Opposition, that this Chamber should not reject any taxation measure, and this is a convention that should be observed by a House that is not directly elected by the people. However, my view, which has been held consistently is that there is no legal bar to the Council's rejecting, for example, the turnover tax.

Lovelock and Evans refer to a variety of bills that have come before this House, including the Government Railways (Free Passes) Amendment Bill 1934, the Stamp Duties (Amendment) Bills 1939 and 1952, the Fire Brigades (Amendment) Bill 1955, the State Planning Authority Bill 1963 and, as I referred to earlier, the Consumer Protection Bill 1969, and the Business Franchise Licences (Tobacco) Further Amendment Bill 1989 amongst others. There is precedent for rejecting consideration of the amendments. In particular, I note that that occurred in respect of the Business Franchise Licences (Tobacco) Further Amendment Bill 1989. The Deputy-President and Chair of Committees at that stage was Sir Adrian Solomons, who was my first employer. I have considered his counsel in the matter very carefully. However, on balance I am of the view that the position taken by the Hon. John Fuller and the Hon. Reg Downing in the Consumer Protection Bill 1969 is correct. I do not uphold the point of order.

Appendix Three: Instruction to a Committee of the Whole House



LEGISLATIVE COUNCIL

Public Health (Tobacco) Amendment (E-cigarettes) Bill 2015

Instruction to committee of the whole

On the Clerk reading the order of the day -

Member says—

Mr PRESIDENT:

I move, according to sessional order: That it be an instruction to the committee of the whole that they have power to consider amendments to regulate the sale, packaging, advertising and display of e-cigarettes.

Debate may ensue.

Question put.

Appendix Four: Running Sheet

Running Sheet - Electricity Network Assets (Authorised Transactions) Bill 2015 (First Print)

Version 2, 3 June 2015, 11.35 am

NB: in all cases the question will be 'That the amendment/s be agreed to', unless otherwise stated.

Party, amdt no	Sheet No	Theme	Amdt	Notes or instructions
<u>Oppn (1)</u>	c2015-010H	<i>Authorisation for transfer of electricity network assets</i>	Page 4, Clause 5 (1). Insert after line 6:	
<u>Oppn (2)</u>	c2015-010H	<i>Authorisation for transfer of electricity network assets</i>	Page 4, Clause 5 (1). Insert after line 9:	
Opp 1	C2015-009B	<i>Parliamentary approval for authorised transactions</i>		
Opp 2	C2015-009B	<i>Parliamentary approval for transfer of network retained interest</i>		
<u>Oppn (3)</u>	c2015-010H	<i>Electricity price guarantee by authorised network operator</i>	Page 5, Clause 8 (1) (a), lines 38–40. Omit all words on those lines. Insert instead:	Opp 3 to be moved with Opp 4
<u>Grns (1)</u>	c2015-016A	<i>Electricity price guarantee by authorised network operator</i>	Insert after paragraph (1) in Oppn amendment no. 3	Grns (1) -016A is amdt to Oppn (3)
<u>Grns (1)</u>	c2015-015	<i>Electricity price guarantee</i>	Page 5, clause 8, line 39. Omit and insert.	Grns (1)-015 conflicts with Oppn (3) Oppn (3) , (4) and Grns (1)-016A and Grns (1)-015 to be moved together Question on Grns (1)-016a to Oppn (3) Then Oppn (3) if Oppn (3) neg'd, then Q on Grns (1)-015 Then Q on Oppn (4).

Grns (1)	c2015-012E	<i>Price guarantee - the environment</i>	Page 5, clause 8 (1) (b), line 44. Insert “and for the long term interests of the environment” after “electricity”.	Likely to be moved in globo
Grns (2)	c2015-012E	<i>Price guarantee - clean energy</i>	Page 5, clause 8 (1). Insert after line 44:	
Grns (3)	c2015-012E	<i>Price guarantee - no disconnection charge</i>	Page 6, clause 8 (1). Insert after line 2:	
Grns (4)	c2015-012E	<i>Price guarantee - no unreasonable charges in connection with renewable energy</i>	Page 6, clause 8 (1). Insert before line 3:	Likely to be moved in globo
Grns (5)	c2015-012E	<i>Price guarantee - no additional charges for connection of generator</i>	Page 6, clause 8 (1). Insert before line 3:	
Oppn (4)	c2015-010H	<i>Electricity price guarantee—report of Price Commissioner</i>	Page 6, Schedule 1. Insert before line 10.	
<u>Oppn (5)</u>	c2015-010H	<i>Electricity price guarantee—referral by Price Commissioner</i>	Page 6. Clause 8. Insert after line 11:	
Oppn (6)	c2015-010H	<i>No review of AER final determination</i>	Page 6. Insert after line 35:	
Oppn (7)	c2015-010H	<i>Independent review of Deloitte Access Economics report</i>	Page 6. Insert after line 35:	
CDP (1)	c2015-008H	<i>Independent review of economic impact report</i>	Page 6. Insert after line 35:	
CDP (2)	c2015-008H	<i>Post-transaction independent review</i>	Page 6. Insert after line 35:	
Grns (6)	c2015-012E	<i>Transaction arrangements not to seek to prevent, or create right to compensation for, certain changes</i>	Page 6. Insert after line 35:	
Grns (7)	c2015-012E	<i>Transaction arrangements to prevent use of investor-state dispute settlement</i>	Page 6. Insert before line 36:	

Oppn (8)	c2015-010H	<i>Manner of effecting authorised transaction</i>	Page 8. Clause 12. Insert after line 19:	
Oppn (9)	c2015-010H	<i>Transfer of staff to private sector employment—employment guarantee</i>	Page 11, clause 19, lines 21–29. Omit all words on those lines. Insert instead	Oppn (9) in conflict with Grns (8) and (9)
Grns (8)	c2015-012E	<i>Transfer of employment to private sector requires consent</i>	Page 11, clause 19 (2), lines 25 and 26. Omit all words on those lines. Insert instead:	Put Q on Oppn (9), if agreed to then Grns (8) and (9) lapse
Grns (9)	c2015-012E	<i>Employment guarantee for employees transferred to private sector</i>	Page 11, clause 19 (3), lines 27–29. Omit all words on those lines. Insert instead:	
Grns (10)	c2015-012E	<i>Apprenticeship guarantee</i>	Page 11. Insert after line 29:	Related to Grns (8) and (9) but not contingent on (8) and (9) being agreed to
CDP (3)	c2015-008H	<i>Consequential</i>	Pages 11 and 12, clause 20, line 30 on page 11 to line 26 on page 12. Omit all words on those lines. Insert instead:	

Oppn (10)	c2015-010H	<i>Transfer payments</i>	Page 12. Insert after line 26:	Options occurring at same point
Grns (11)	c2015-012E	<i>Transfer payments</i>	Page 12. Insert after line 26:	Oppn (10) and Oppn (13) are related; and Grns (11) and Grns (13) are related. See note below
Oppn (13)	c2015-010H	<i>Transfer payments</i>	Page 12, clause 21 (c), line 36. Insert “(but without affecting any entitlement to a transfer payment under section 21)” after “transfer	Opp 10 to be moved with opp 11, 12, 13, 14
Grns (13)	c2015-012E	<i>Transfer payments</i>	Page 12, clause 21 (c), line 36. Insert “(but without affecting any entitlement to a transfer payment under section 21)” after “transfer	SAME, Oppn received first
Grns (12)	c2015-012E	<i>Termination payments — Essential Energy</i>	Page 12. Insert before line 27:	
Oppn (11)	c2015-010H	<i>Operation of other laws and entitlements regarding employment</i>	Page 12, clause 21 (b), line 33. Insert “unless the new employment does not constitute adequate alternative employment within the public sector or with a private sector employer” after “agency”.	
Oppn (12)	c2015-010H	<i>Operation of other laws and entitlements regarding employment</i>	Page 12, clause 21 (c), line 34. Insert “except as provided by paragraph (b),” before “the person”.	
Oppn (14)	c2015-010H	<i>Operation of other laws and entitlements regarding employment</i>	Page 12, clause 21 (d), line 39. Insert “unless there is no payment to a new employer to meet all outstanding accumulated entitlements in respect of a particular employee” after “long service leave”.	
Grns (14)	c2015-012E	<i>Protection of certain electricity works</i>	Page 15. Insert after line 15:	

Oppn (15)	c2015-010H	<i>Licensing</i>		Page 19, clause 36. Insert after line 23:	
Oppn (16)	c2015-010H	<i>Coastal protection—concurrence required</i>		Page 20, clause 40, lines 26–28. Omit all words on those lines.	
Grns (15)	c2015-012E	<i>Leases, orders and other documents to be released to Legislative Council</i>		Page 25. Insert after line 1:	
CDP (4)	c2015-008H	<i>Employment guarantee period</i>		Page 36. Insert after line 7:	
CDP (5)	c2015-008H	<i>Salary</i>		Page 36. Insert after line 7:	
CDP (6)	c2015-008H	<i>Minimum number of employees</i>		Page 36. Insert after line 7:	
CDP (7)	c2015-008H	<i>Voluntary redundancies</i>		Page 36. Insert after line 7:	
CDP (8)	c2015-008H	<i>Forced redundancies</i>		Page 36. Insert after line 7:	
CDP (9)	c2015-008H	<i>Leave entitlements</i>		Page 36. Insert after line 7:	
CDP (10)	c2015-008H	<i>Recognition of service</i>		Page 36. Insert after line 7:	
CDP (11)	c2015-008H	<i>Enforcement of obligations</i>		Page 36. Insert after line 7:	
CDP (12)	c2015-008H	<i>Existing locations</i>		Page 36. Insert after line 7:	
CDP (13)	c2015-008H	<i>Relocation policies</i>		Page 36. Insert after line 7:	
CDP (14)	c2015-008H	<i>Enterprise agreements</i>		Page 36. Insert after line 7:	
CDP (15)	c2015-008H	<i>Superannuation</i>		Page 36. Insert after line 7:	
CDP (16)	c2015-008H	<i>Disputes</i>		Page 36. Insert after line 7:	
CDP (17)	c2015-008H	<i>Existing apprentices</i>		Page 36. Insert after line 7:	
CDP (18)	c2015-008H	<i>Future apprentices</i>		Page 36. Insert after line 7:	
CDP (19)	c2015-008H	<i>Cadets, trainees and graduate engineers</i>		Page 36. Insert after line 7:	
CDP (20)	c2015-008H	<i>Fixed term employees</i>		Page 36. Insert after line 7:	
CDP (21)	c2015-008H	<i>Contract employees</i>		Page 36. Insert after line 7:	
CDP (22)	c2015-008H	<i>Machinery provisions</i>		Page 36. Insert after line 7:	

Oppn (17)	c2015-010H	<i>Step-in rights</i>	Page 60, Schedule 7.7 [19], clause 76B (1). Insert after line 16:	To be moved in globo
Oppn (18)	c2015-010H	<i>Step-in rights</i>	Page 60, Schedule 7.7 [19], clause 76B (1) (b), lines 19 and 20. Omit “and the contravention requires the issue of a Network Administration Order”.	
Oppn (19)	c2015-010H	<i>Step-in rights</i>	Page 60, Schedule 7.7 [19], clause 76B (2), lines 22 and 23. Omit “is considered to require”. Insert instead “requires”.	
Oppn (20)	c2015-010H	<i>Public access to government information</i>	Page 75, Schedule 7.14, lines 35–44. Omit all words on those lines. Insert instead:	