

ELECTRICITY (AMENDMENT) BILL 1993*

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Electricity Act 1945 to constitute electricity distributors as bodies corporate.

Electricity distributors will perform essentially the same electricity supply functions as are now performed by the county councils that supply electricity, some of which the Bill proposes to abolish. The policies of an electricity distributor will be determined by a board of directors whose composition will vary depending on the distributor concerned. All the electricity distributors are to be governed by Ministerial directions and may enter into performance agreements with the Minister.

The proposed Act also:

- (a) amends the Traffic Act 1909 with respect to the funding and administration of the Traffic Route Lighting Subsidy Account and the Hazardous Poles Relocation Program; and
- (b) repeals the County Districts Reconstitution Act 1979; and
- (c) makes minor and consequential amendments to other Acts.

Clause 1 states 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 is a formal provision that gives effect to Schedules 1 and 2 containing amendments to the Electricity Act 1945.

Clause 4 is a formal provision that gives effect to Schedule 3 containing consequential amendments to other Acts.

Clause 5 repeals the County Districts Reconstitution Act 1979.

* Amended in committee—see table at end of volume.

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**SCHEDULE 1—AMENDMENT OF THE ELECTRICITY ACT 1945
RELATING TO ELECTRICITY DISTRIBUTORS**

Schedule 1 (3) and (4) remove provisions relating to electricity councils and insert a new Part 2A which constitutes electricity distributors. The provisions of that Part are as follows:

PART 2A—ELECTRICITY DISTRIBUTORS

Division 1—Constitution

Proposed section 6 constitutes electricity distributors as bodies corporate. Proposed Schedule 7 also specifies the operating districts for the electricity distributors (called “distribution districts”).

Proposed section 6 8 allows for amendment of Schedule 7 to the proposed Act by regulation.

Proposed section 6B allows Broken Hill City Council and Tenterfield Shire Council to exercise the functions of electricity distributors if the Minister approves. In the exercise of such functions, they are subject to the Act.

Division 2—Functions of an electricity distributor

Proposed section 6C sets out the principal functions of the electricity distributors. Their main business is to purchase electricity and to supply and distribute it within their respective districts. They have a duty to promote the safe and efficient use, and the conservation, of electricity.

Proposed section 6D gives the electricity distributors certain ancillary functions, for example, powers to acquire land, construct plant etc.

Proposed section 6E specifies certain duties of an electricity distributor, including carrying out its duties efficiently and economically, promoting standardisation of systems and equipment for the supply of electricity and supplying electricity on equitable terms and rates to customers.

Proposed section 6F provides that an electricity distributor may exercise its functions outside the distribution district on certain conditions.

Proposed section 6G allows an electricity distributor to delegate its functions to authorised persons and permits sub-delegation with the written consent of the distributor.

Division 3—Electricity distributor policy and practice

Proposed section 6H provides that the principal function of the board of directors of an electricity distributor is to determine the policies of the distributor. In discharging this function, the board has a duty to see that the electricity distributor functions properly and efficiently and in accordance with sound commercial practice.

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Proposed section 6I provides for Ministerial control and direction of electricity distributors. The Minister may give the board of a distributor written directions in relation to the exercise of the distributor's functions. The board may request the Minister to review the direction if it considers that the distributor would suffer a significant financial loss as a result of complying with the direction and if the direction is contrary to a performance agreement or is not in the distributor's commercial interests. After review, the Minister may confirm or revoke the direction.

Proposed section 6J requires an electricity distributor to supply the Minister from time to time with information concerning its activities.

Proposed section 6K requires an electricity distributor to invite tenders before entering into certain contracts.

Proposed section 6L requires an electricity distributor to invite tenders, and prepare a tender itself, for the provision of goods, materials, services, facilities or works costing \$250,000 or more or such greater amount as is prescribed by the regulations. The provision does not apply in the case of an emergency or to goods, materials, services, facilities or works exempted by the Minister by order published in the Gazette.

Proposed section 6M provides for performance agreements to be entered into between the Minister and an electricity distributor. These are agreements that set operational performance targets for the distributor. A performance agreement will require a distributor to prepare and submit to the Minister a corporate plan. The corporate plan is to guide the distributor in the conduct of its activities. It must specify the objectives of the distributor in relation to each aspect of its business affairs.

Division 4—Constitution of boards

Proposed section 6N provides for the constitution of a board of directors for each electricity distributor and gives effect to proposed Schedules 8 and 9, which relate to directors and meetings of the board.

Proposed section 6O describes the composition of a board of directors of an electricity distributor. It consists of persons elected or nominated, by the relevant local government councils, as prescribed by the regulations and persons appointed by the Minister.

Division 5—General manager and staff

Proposed section 6P provides that there is to be a general manager of each electricity distributor and specifies the functions of the general manager. The general manager is to be generally responsible for the efficient and effective operation of the distributor's organisation.

Proposed section 6Q enables an electricity distributor to employ staff and gives effect to proposed Schedule 10 which contains provisions relating to the employment of staff.

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Division 6—Finance

Proposed section 6R requires an electricity distributor to establish a General Fund and a Trust Fund.

Proposed section 6S provides for payment of non-trust money received by an electricity distributor into its General Fund and for payment out of that fund of the ordinary operating expenses (including salaries etc.) of the distributor.

Proposed section 6T provides for payment into an electricity distributor's Trust Fund of trust money received by the distributor.

Proposed section 6U provides for the investment by an electricity distributor of money held by it.

Proposed section 6V enables regulations to be made with respect to accounting methods to be employed by an electricity distributor.

Proposed section 6W requires the receipts of an electricity distributor to be banked in New South Wales.

Proposed section 6X prescribes the financial year of an electricity distributor as the year commencing on 1 July, unless the Treasurer determines another financial year under the Public Finance and Audit Act 1983.

Division 7—Entry and inspection

Proposed section 6Y defines "authorised person" for the purposes of the proposed Part.

Proposed section 6Z provides for the appointment by an electricity distributor of authorised persons and for the issue to them of a certificate of their authority, which they are obliged to produce to the occupiers of premises and other interested parties when exercising their functions under the proposed Act,

Proposed section 7 gives an authorised person a right to enter premises at reasonable hours to install or read a meter or do other things necessary to ascertain that an electricity distributor's tariff conditions etc. are being observed.

Proposed section 7A requires advance notice to be served on the occupier of premises when an authorised person enters land or a building in the exercise of his or her functions.

Proposed section 7B authorises the use of reasonable force by an authorised person to gain entry, if necessary, in accordance with the powers conferred on the person.

Proposed section 7C requires notification to be given to interested parties whenever force has been used to enter any premises and advance notice has not been given.

Proposed section 7D requires an authorised person to do as little damage as possible in the exercise of functions conferred on the person and to provide alternative means of access to premises where this is necessary.

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Proposed section 7E allows an electricity distributor in certain cases to recover the costs of entry from the owner or occupier of land that it has had to enter by force.

Proposed section 7F requires an electricity distributor to pay compensation for damage caused by it under the proposed Part, except damage from work done for the purposes of an inspection.

Proposed section 7G enables an electricity distributor to discontinue supply to any person who will not give the distributor access to his or her premises for checking the meter or installing any necessary equipment or for similar purposes.

Division 8—Miscellaneous

Proposed section 7H confers power on an electricity distributor to acquire land. The power is exercisable under the Land Acquisition (Just Terms Compensation) Act 1991.

Proposed section 7I provides for the formation by two or more electricity distributors of companies, known as special purpose companies, in order to carry out joint ventures in relation to any of their functions.

Proposed section 7J allows an electricity distributor to discontinue supply to a person who will not pay the charge for electricity supplied.

Proposed section 7K confers on an electricity distributor the power to dig up roads, put up structures and erect power lines.

Proposed section 7L provides that, for the purposes of any building approval required under the Local Government Act 1919 for the erection or placement of an electricity distributor's electrical wires, poles and other equipment, the distributor is to be the approving authority.

Proposed section 7M exonerates an electricity distributor from liability for any charge by a local government council in connection with its placement of wires, poles and other equipment within a local government area.

Proposed section 7N authorises an electricity distributor to require the owner of a conduit (for example, a pipe or cable) in or under a road or reserve to make an alteration to the conduit. Such alterations are to be made at the distributor's expense.

Proposed section 7O empowers an electricity distributor to abate any nuisance in the nature of an obstruction to any of its works, to repair damage caused by any such obstruction and to recover the cost of doing so from the person responsible for the obstruction.

Proposed section 7P prevents any structure or fitting of an electricity distributor that is erected or fixed on land from being taken in execution of a judgment against the owner of the land (unless it is the distributor itself).

Proposed section 7Q permits an electricity distributor to waive or refund the whole or part of any charge or other money due to it.

Proposed section 7R provides that a function exercised by an electricity distributor or a delegate of the distributor is not invalidated if it is exercised contrary to a direction of the Minister.

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Proposed section 7S exonerates from personal liability the directors of an electricity distributor and persons duly acting under direction for any matter or thing done in good faith in the execution of official duties.

Proposed section 7T permits an electricity distributor to join an industry association.

Proposed section 7U permits an electricity distributor, with the approval of the Minister, to adopt a trading name.

Proposed section 7V makes provision for the custody and use of the seal of an electricity distributor.

Proposed section 7W provides for the service of documents on an electricity distributor.

Proposed section 7X enables an electricity distributor to recover charges etc. as debts.

Proposed section 7Y enables the Minister to transfer any assets, rights and liabilities of an electricity distributor whose distribution district is changed by regulation under proposed section 6A to another electricity distributor.

Proposed section 7Z provides that the Governor-in-Council may by proclamation dissolve a county council established under the Local Government Act 1919 that has electricity supply functions or declare, in relation to other county councils and local government councils that at present have electricity supply and other functions, that they no longer have electricity supply functions.

Schedule 1 (18) inserts proposed Part 5A. The provisions of that Part are as follows:

PART 5A—CONDITIONS OF ELECTRICITY SUPPLY

Proposed section 26A defines certain terms for the purposes of the proposed Part.

Proposed section 26B gives a person a right to be provided with electricity supply or capacity increase from an electricity distributor if the person meets the cost of connection or makes a contribution to the cost in accordance with guidelines issued from time to time by the Energy Corporation in consultation with the Government Pricing Tribunal. A right of appeal is provided in accordance with the regulations.

Proposed section 26C requires an electricity distributor to formulate general conditions of supply that are not inconsistent with the Act. A copy of the conditions is to be made available for inspection free of charge.

Proposed section 26D treats a person who applies for or receives supply from an electricity distributor as having entered into an agreement containing the general conditions of supply. An electricity distributor may enter an alternative agreement with a person. An electricity distributor is entitled to refuse, suspend or discontinue supply if a person contravenes the conditions of an agreement.

Proposed section 26E allows an electricity distributor to require security from a customer.

Proposed section 26F permits an electricity distributor to require the installation of metering equipment in connection with the supply of electricity.

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Proposed section 26G permits an electricity distributor to require the installation of service equipment necessary or ancillary to the supply of electricity.

Proposed section 26H enables an electricity distributor to affix seals to a customer's installation.

Proposed section 26I provides for the estimation of the quantity of electricity used in cases where the metering equipment has not properly registered the quantity.

Proposed section 26J enables an electricity distributor to install service lines.

Proposed section 26K allows an electricity distributor to impose certain requirements on customers relating to the installation and use of electrical appliances and equipment, the location and accessibility of metering and service equipment and other matters in connection with the use and supply of electricity.

Proposed section 26L permits an electricity distributor to discontinue supply to a person who connects an installation to the electricity distributor's mains without permission or causes the person's supply of electricity to be incorrectly metered.

Proposed section 26M enables an electricity distributor to make certain requirements as to the installation of equipment in cases where the supply required is in excess of that which can be provided by service line from its street mains.

Proposed section 26N allows an electricity distributor to require a person to pay for the whole or a part of the costs incurred for supplying electricity or increasing the supply of electricity to the person.

Proposed section 26O entitles an electricity distributor to interrupt supply at reasonable times for the purpose of maintenance work, repairs or testing.

Proposed section 26P exonerates an electricity distributor from liability for loss suffered through a failure to supply or a defect in supply caused by a breakdown in machinery or by other causes not within the control of the distributor.

Proposed section 26Q requires a customer to give an electricity distributor 48 hours' notice that the supply be discontinued otherwise the customer remains liable for all charges for supply until 48 hours after the distributor is informed or until the supply can be discontinued or transferred, whichever happens first.

Proposed section 26R creates offences for damaging or tampering with equipment and installations of an electricity distributor.

Proposed section 26S enables an electricity distributor to refuse, suspend or discontinue supply to any person who contravenes the Part.

Proposed section 26T applies the Part to Sydney, Electricity.

Schedule 1 (24) extends the regulation making power under the Act to certain matters, including matters relating to the transmission, distribution and use of electricity and the restriction or regulation of the removal or trimming of trees by electricity distributors or Sydney Electricity.

Schedule 1 (26) inserts Schedules 7-11. Those Schedules contain the following provisions:

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SCHEDULE 7—ELECTRICITY DISTRIBUTORS

Schedule 7 names the electricity distributors and specifies their distribution districts.

SCHEDULE 8—BOARDS OF DIRECTORS

Schedule 8 contains provisions relating to the directors of an electricity distributor, including the terms of office of directors and a requirement for a disclosure of pecuniary interests.

SCHEDULE 9—BOARD MEETINGS

Schedule 9 contains provisions relating to the procedure at meetings of a board of directors of an electricity distributor.

SCHEDULE 10—STAFF OF ELECTRICITY DISTRIBUTORS

Part 1—Staff generally

Clause 1 provides that an electricity distributor may employ staff and has power, subject to any industrial awards or agreements, to determine the wages and conditions of its staff.

Clause 2 provides for regulations to be made as to the conditions of employment and discipline of an electricity distributor's staff. The regulations are subject to awards and agreements.

Clause 3 allows an electricity distributor to obtain the services of other public sector employees by secondment or otherwise.

Clause 4 allows an electricity distributor to engage consultants.

Part 2—Organisation structure

Clause 5 requires an electricity distributor to determine an organisation structure.

Clause 6 allows an electricity distributor to re-determine its organisation structure from time to time.

Part 3—The general manager and senior staff

Clause 7 provides for the appointment of the general manager of an electricity distributor and of an acting general manager if the need should arise. The general manager is to be appointed by the Governor, on the recommendation of the Minister and the nomination of the distributor.

Clause 8 requires consultation with the electricity distributor when the general manager of an electricity distributor is appointing or dismissing its senior management staff.

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Clause 9 provides that the appointment and terms of employment of senior staff of an electricity distributor are, subject to the proposed Act, to be in accordance with any guidelines issued by the Minister.

Clause 10 requires senior staff of an electricity distributor to be appointed on performance-based contracts.

Clause 11 requires the general manager of an electricity distributor to report annually on the contractual conditions of the distributor's senior staff.

Clause 12 provides that the employment of the general manager and senior staff of an electricity distributor, since it is to be on a contract basis, is not subject to any industrial award or agreement.

Clause 13 imposes a duty on the general manager and senior staff members of an electricity distributor to report bankruptcy.

Part 4—Equal employment opportunity

Clause 14 states the objects of the proposed Division.

Clause 15 requires an electricity distributor to prepare and implement an equal employment opportunity management plan.

Clause 16 provides that the terms of an equal employment opportunity management plan prevail over the provisions of the Anti-Discrimination Act 1977 to the extent of any inconsistency.

Clause 17 allows the Minister to refer any aspect of an electricity distributor's equal employment opportunity management plan to the Anti-Discrimination Board if the Minister is not satisfied with it.

Part 5—Other provisions concerning staff

Clause 18 requires advertising of staff positions to be filled in an electricity distributor.

Clause 19 requires appointments of staff to be made on a merit basis.

Clause 20 states that clauses 18 and 19 do not apply to appointment by way of demotion or lateral transfer unless the electricity distributor otherwise decides.

Clause 21 provides that a member of staff of an electricity distributor is not subject to directions of the distributor in relation to the contents of any advice or recommendation made by the member.

Clause 22 prohibits employees of an electricity distributor from taking on outside employment except with the approval of the general manager of the distributor or, in the case of the general manager, except with the approval of the board of directors of the distributor.

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SCHEDULE 11—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Schedule 11 contains savings, transitional and other provisions.

Schedule 1 (1), (2), (5)-(17), (19)-(23) and (25) contain consequential amendments.

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO ELECTRICITY ACT 1945

Amendments relating to stray current sources

The Act currently provides for the regulation of cathodic protection systems and confers certain rights of entry onto premises in which they are located. Cathodic protection systems are devices that inhibit the electrolytic corrosion of metallic structures that are attached to, or embedded in, the earth. The need to regulate those systems arises from their propensity to exacerbate the electrolytic corrosion of metallic structures in the vicinity of the structures they protect. Similar problems arise with other devices, commonly known as “stray current sources”.

Schedule 2 (1) defines the expression “stray current source”. Schedule 2 (10) provides for the regulation of stray current sources. Schedule 2 (8) confers certain rights of entry onto premises in which stray current sources are located. The effect of those amendments will be to put stray current sources on the same footing as cathodic protection systems.

Constitution of the Electricity Council

Schedule 2 (2) reduces the membership of the Electricity Council of New South Wales from 17 to 16 members by removing the Secretary of the Department of Local Government from the list of official members.

Lighting of traffic routes etc.

Schedule 2 (3) removes from the list of specified powers of the Energy Corporation of New South Wales the promotion of the installation, extension and improvement of the lighting of public roads.

Schedule 2 (6) removes provisions which establish a Traffic Route Lighting Subsidy Account funded by the Energy Corporation from the Electricity Development Fund and the Roads and Traffic Authority. The power of the Energy Corporation to grant subsidies to local government councils, county councils and Sydney Electricity for the lighting of traffic routes is also removed, as well as a similar power in relation to the granting of subsidies from the Subsidy Account towards the cost of removing or relocating electricity structures for the purposes of traffic safety (Schedule 2 (7)).

Schedule 2 (6) also omits a provision which links the annual contribution of electricity supply authorities in relation to the lighting of traffic routes in their area with the subsidies paid to the councils of those areas from the Traffic Route Lighting Subsidy Account. A new provision is included which enables the Minister in consultation with the Minister administering the Traffic Act 1909 to determine the annual contributions by electricity distributors and Sydney Electricity for the lighting of traffic routes.

Amendments made to the Traffic Act 1909 by Schedule 3 provide for the Roads and Traffic Authority to make available money for annual subsidies to councils for traffic route lighting and removal or relocation of electricity structures for traffic purposes.

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Insurance

Schedule 2 (4) enables the Energy Corporation to enter into, or arrange for an electricity supply authority to enter into, a self-insurance scheme in which money is set aside to indemnify the authority against any prescribed liability, loss or damage (specified in the scheme) that is incurred or sustained by the authority.

Schedule 2 (5) gives the Corporation power to invest, in certain authorised securities, money in the Electricity Development Fund which was paid for insurance or self-insurance purposes and is not required for the payment of premiums.

Delegation of functions

Schedule 2 (9) enables the Minister to delegate the functions of the Minister under the Act.

SCHEDULE 3—AMENDMENT OF OTHER ACTS

Schedule 3 contains amendments to other Acts consequent on the enactment of the proposed amendments to the Electricity Act 1945.
