



New South Wales

Electricity (Consumer Safety) Bill 2003

Explanatory note

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

Overview of Bill

The *Electricity Safety Act 1945* (the **current Act**) makes provision for the safe use of electricity and certain electrical equipment and for the reporting and investigation of serious electrical accidents. It also empowers the Energy Corporation of New South Wales constituted under the *Energy Administration Act 1987* to promote and encourage the safety of persons and property in relation to electricity.

The current Act is jointly administered by the Minister for Energy and Utilities, the Minister for Commerce and the Minister for Fair Trading. The Minister for Commerce and the Minister for Fair Trading jointly administer the provisions of the current Act to the extent that they relate to electrical installations and electrical articles. The Minister for Energy and Utilities administers the current Act to the extent that it relates to other matters.

The current Act confers a number of functions on the Director of the Department of Energy. That position no longer exists. However, the combined effect of the *Public Sector Management (Electricity Safety) Order 1997*, the *Public Sector Management (General) Order 1999*, the *Public Sector Management (Ministry of Energy and Utilities) Order 2000 (No 2)* and the *Public Sector Employment and Management (General) Order 2003* is that:

- (a) references in provisions of the current Act (other than to the extent that they relate to electrical installations or electrical articles) to the Director or the Department of Energy are to be read as references to the Director-General of the Ministry of Energy and Utilities and the Ministry of Energy and Utilities respectively, and
- (b) references in provisions of the current Act to the Director or the Department of Energy are to be read as references to the Commissioner for Fair Trading and the Department of Commerce respectively to the extent that they relate to electrical installations and electrical articles.

The objects of this Bill are:

- (a) to repeal the current Act, and
- (b) to re-enact (with modifications) the provisions of the current Act concerning electrical articles, electrical installations and the investigation and reporting of electrical accidents to the extent that they are currently administered by the Minister for Commerce and the Minister for Fair Trading, and
- (c) to amend the *Electricity Supply Act 1995* to re-enact (with modifications) the provisions of the current Act concerning electrical structures, corrosion protection systems, stray current sources and the investigation and reporting of electrical accidents to the extent that they are currently administered by the Minister for Energy and Utilities, and
- (d) to amend the *Energy Administration Act 1987* to re-enact (with modifications) the provisions of the current Act concerning energy efficiency for electrical articles and the functions of the Energy Corporation of New South Wales in relation to electricity safety to the extent that they are currently administered by the Minister for Energy and Utilities, and
- (e) to make consequential amendments to various other Acts and Regulations, and
- (f) to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation (except as provided by the proposed section).

Clause 3 defines certain words and expressions used in the proposed Act.

In particular, the following central concepts are defined:

The ***Director-General*** is defined to have the same meaning as it has in the *Fair Trading Act 1987*. In that Act, the Director-General is defined to mean the Commissioner for Fair Trading, or if there is no such position, the Director-General of the Department of Commerce.

An ***electrical article*** is defined to mean any appliance, wire, fitting, cable, conduit, meter, insulator, apparatus, material or other electrical equipment intended or designed for use in, or for the purposes of, or for connection to, any electrical installation.

An ***electrical installation*** is defined to mean any fixed appliances, wires, fittings, apparatus or other electrical equipment used for (or for purposes incidental to) the conveyance, control and use of electricity in a particular place, but does not include any of the following:

- (a) any electrical equipment used, or intended for use, in the generation, transmission or distribution of electricity that is:
 - (i) owned or used by an electricity supply authority, or
 - (ii) located in a place that is owned or occupied by such an authority,
- (b) any electrical article connected to, and extending or situated beyond, any electrical outlet socket,
- (c) any electrical equipment in or about a mine,
- (d) any electrical equipment operating at not more than 50 volts alternating current or 120 volts ripple-free direct current,
- (e) any other electrical equipment, or class of electrical equipment, prescribed by the regulations.

However, the proposed section also provides that the regulations may make provision for when electrical equipment (or any part of electrical equipment) of the kind referred to in paragraph (a) of the definition of ***electrical installation*** is taken to form part of an electrical installation in a place for the purposes of that definition. For instance, the regulations might provide that the part of a power

line of an electricity supply authority supplying electricity to an electrical installation that is located on land owned by a consumer of electricity forms part of the consumer's electrical installation.

The proposed section substantially re-enacts the definition of *electrical article* in section 4 (1) of the current Act.

However, the definition of *electrical installation* in section 4 (1) of the current Act has been modified to exclude any electrical equipment operating at not more than 50 volts alternating current or 120 volts ripple-free direct current and any other electrical equipment (or class of electrical equipment) prescribed by the regulations. The current definition does not permit the exclusion of matters from the definition by regulation and excludes any electrical installation operating at not more than 32 volts alternating current or 115 volts direct current. The new definition will now also extend to free-standing installations that are not part of the electricity grid.

Clause 4 provides that the proposed Act binds the Crown.

Part 2 Electrical articles

Division 1 Declared electrical articles

Clause 5 enables the Director-General, by order published in the Gazette, to declare that electrical articles of a class described in the order to be declared electrical articles for the purposes of proposed Part 2 and declare the specifications that are to apply to that class of electrical article. A *specification* is defined in proposed section 3 (1) to include a standard, code, rule, testing requirement or other specification that is approved, recommended, adopted or published by Standards Australia or that is prescribed by the regulations.

The proposed section also defines a *declared electrical article* to mean an electrical article that belongs to any such class of electrical articles.

The proposed section re-enacts (with modifications) the provisions of section 21 of the current Act. However, section 21 of the current Act empowers the Governor rather than the Director-General to make declarations of this kind.

Clause 6 provides that a declared electrical article that is displayed for advertising or in connection with the sale of other declared electrical articles of the same class is to be treated as being displayed for sale.

The proposed section substantially re-enacts the provisions of section 20 (2) (b) of the current Act.

Division 2 Specifications for electrical articles

Clause 7 defines the concept of a *class specification* for declared electrical articles. A class specification is a specification described in an order under proposed section 5 that declares a class of electrical articles to be declared electrical articles.

The proposed section substantially re-enacts the definition of *class specification* in section 20 (1) of the current Act.

Clause 8 defines the concept of a *model specification* for an electrical article. A model specification is a specification that the Director-General has determined under proposed section 11 (1) (c) should be applicable to electrical articles of the model to which the electrical article belongs.

The proposed section also provides that a reference in the proposed Part to a *model* of electrical article is a reference to each electrical article of the same design, material and construction.

The proposed section re-enacts (with modifications) the definition of *type specification* in section 20 (1) and the provisions of section 20 (2) (a) of the current Act. The major difference between the new concept and the old concept is the substitution of the word “model” for “type”. Also, the new concept makes it clear that a model specification is determined by the Director-General in the context of an application for the approval of a model of electrical article under proposed section 11.

Clause 9 provides that if a class specification or model specification requires an electrical article or part of an electrical article to be tested, then an article or part is to be treated as having complied with that requirement even if it is not tested provided that it would have so complied if it had actually been tested.

The proposed section substantially re-enacts the provisions of section 20 (3) of the current Act.

Division 3 Information concerning electrical articles

Clause 10 requires the Director-General to publish details of the current classes of declared electrical articles and the current class specifications for such articles on an Internet website or by such other printed or electronic means as the Director-General considers appropriate.

There is no similar requirement in the current Act.

Division 4 Model approvals for electrical articles

Clause 11 enables the Director-General, on application, to approve a model of electrical article (a *model approval*).

The proposed section re-enacts (with modifications) the provisions of section 21C (1)–(5) of the current Act. The major differences between the proposed section and the current provisions are as follows:

- (a) the proposed section enables approvals to be given both for models of declared and non-declared electrical articles and not only for declared electrical articles as in the current provisions,
- (b) the current provisions that require a declaration of compliance to be lodged with the Director-General with the application are not re-enacted,
- (c) the proposed section includes provisions in relation to the notification of approvals and the rejection of approvals that are currently prescribed by the *Electricity Safety (Equipment Safety) Regulation 1999*,
- (d) the proposed section uses the concept of a model instead of a type of electrical article.

Clause 12 provides that a model approval remains in force for the period specified by the Director-General in the approval (not exceeding 5 years), subject to any cancellation or suspension of the approval or any extension or renewal of the approval in accordance with the regulations.

The proposed section also makes it clear that a model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.

The duration of a type approval for the purposes of the current Act is specified in similar terms to the proposed section in clause 12 of the *Electricity Safety (Equipment Safety) Regulation 1999*.

Clause 13 provides for the suspension and cancellation of model approvals by the Director-General.

The proposed section re-enacts (with additions) the provisions of section 21C (7) and (8) of the current Act. The additional provisions relate to the particulars of which a model approval holder is to be notified and the grounds on which an approval may be suspended or cancelled. These additional provisions are drawn from clauses 20 and 21 of the *Electricity Safety (Equipment Safety) Regulation 1999*.

Clause 14 enables a person whose application for a model approval has been refused by the Director-General to apply to the Administrative Decisions Tribunal for a review of that refusal. It also enables a person to apply to the Administrative Decisions Tribunal for a review of a decision of the Director-General suspending or cancelling a model approval given to the person.

The proposed section departs from the provisions in the current Act for the review of such decisions. Under section 21C (9) of the current Act, such decisions in relation to type approvals are only appealable to the Minister in the manner prescribed by the regulations under that Act.

Division 5 Recognised external approval schemes

Clause 15 enables the Minister, by order published in the Gazette, to declare any scheme for the approval or certification of models of electrical articles to be a recognised external approval scheme for the purposes of the proposed Part. The proposed section also provides that the regulations may make provision with respect to the declaration of schemes.

Under sections 21A (1) (a) (iii) and 21D (1) (a) and (2) (b) (i) of the current Act, the Minister has the power to approve a certification scheme for types of electrical articles for the purposes of Part 4C of that Act. The effect of certification under any such scheme is that a person will be treated as having relevant approval for the sale of the type of electrical article for the purposes of the offences in sections 21A and 21D of the current Act.

The proposed section differs from the current provisions in the following respects:

- (a) the Minister is required formally to declare a scheme by order published in the Gazette rather than simply to approve a scheme,
- (b) the regulations may prescribe criteria to assist the Minister in making declarations.

Division 6 Sale of electrical articles

Clause 16 makes it an offence for a person to sell an electrical article if:

- (a) in the case of a declared electrical article—the article is not of a class, model or description that has received relevant approval from the Director-General or another recognised authority, or
- (b) the article is not marked in accordance with the regulations, or
- (c) the article does not comply with any relevant class or model specifications or other prescribed specifications or requirements for the article.

The maximum penalties for such an offence will be:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units (currently, \$825,000), or
- (b) in the case of a first offence by a corporation—5,000 penalty units (currently, \$550,000), or

- (c) in the case of a second or subsequent offence by an individual—750 penalty units (currently, \$82,500) or imprisonment for 2 years, or both, or
- (d) in the case of a first offence by an individual—500 penalty units (currently, \$55,000).

The proposed section substantially re-enacts the provisions of sections 21A and 21DA of the current Act, but in a single section and with increased penalties. The current Act creates two separate offences depending on whether the electrical article is or is not a declared article. The proposed section also enables the Director-General to exempt persons, or classes of persons, from the operation of any or all of the provisions of the proposed section. The current provisions only permit an exemption from all of the provisions of section 21A of the current Act.

Division 7 Acquisition guarantees

Clause 17 defines the concepts of *acquisition guarantor* and *acquisition guarantee*.

An *acquisition guarantee* is, essentially, a written guarantee given by a person in respect of an electrical article to the effect that, at the time it was given, the model of electrical article had relevant approval, the article complied with any relevant specifications or requirements and was marked as prescribed by the regulations. An *acquisition guarantor* is simply a person who gives an acquisition guarantee.

The proposed section substantially re-enacts the requirements for a prescribed guarantee set out in section 21D (2) of the current Act. However, the proposed section uses the term *acquisition guarantee* rather than *prescribed guarantee*.

Clause 18 provides that proceedings for an offence against proposed section 16 are to be dismissed if it is proved that:

- (a) the defendant received an acquisition guarantee in respect of the electrical article to which the offence relates from the person from whom the defendant obtained the electrical article, and
- (b) the defendant had no reason to believe that, at the time of the alleged offence, the model of electrical article did not have relevant approval or the article did not comply with the relevant specifications or requirements for the article.

The proposed section also provides that the defendant must, within 7 days after being served with the process commencing the criminal proceedings, give the prosecutor and acquisition guarantor written notice of the defendant's intention to rely on the guarantee. The defendant will also be required to provide the prosecutor with a copy of the guarantee within that period.

The proposed section re-enacts (with modifications) the provisions of section 21D (1), (3) and (4) of the current Act. The proposed section differs from the current provisions in that it enables proceedings for an offence relating to the sale of any electrical article (whether declared or not) to be dismissed. However, the current provisions are limited to offences relating to the sale of declared electrical articles. The proposed section also imposes the additional requirement that a defendant provide the prosecutor with a copy of the acquisition guarantee being relied on.

Clause 19 provides that an acquisition guarantor may be convicted of an offence under proposed section 16 instead of the defendant who succeeds in having proceedings against the defendant dismissed under proposed section 18 unless the guarantor proves that the guarantor had reasonable grounds for believing the guarantee was correct.

The proposed section substantially re-enacts the provisions of section 21D (5) of the current Act.

Clause 20 makes it an offence for a person to make a false statement or give a false description in relation to an electrical article or model of electrical article in any acquisition guarantee, or purported acquisition guarantee, given by the person.

The maximum penalty for any such offence will be 500 penalty units (currently, \$55,000) in the case of a corporation and 150 penalty units (currently, \$16,500) in any other case.

The proposed section substantially re-enacts the provisions of section 21D (6) of the current Act, but with increased penalties.

Division 8 Unsafe electrical articles

Clause 21 enables the Director-General, by notice published in the Gazette, to prohibit the sale generally of a specified electrical article or model of electrical article if the Director-General believes on reasonable grounds that the article or model is or may become unsafe to use and that the prohibition is warranted because of the risk of death, injury or property damage. The Director-General may also prohibit a particular person from selling an electrical article, or model of electrical article, by notice served on the person on the same grounds.

The proposed section re-enacts (with modifications) the provisions of section 21E (2) and (4) of the current Act. The proposed section differs from the current provisions in that it requires a notice that generally prohibits the sale of electrical articles to be published in the Gazette and then requires copies of that notice to be published in newspapers prescribed by the regulations. A failure to publish a

copy in such newspapers will not affect the validity of the notice published in the Gazette. However, under the current provisions, such a notice must be published both in the Gazette and in such newspapers.

Clause 22 enables the Director-General, by notice served on the seller of electrical articles, to require that person to take specified remedial action to make an electrical article, or model of electrical article, safe to use if the Director-General believes on reasonable grounds that the article or model is or may become unsafe to use and that such action is necessary to make it safe to use.

The proposed section substantially re-enacts the provisions of section 21E (3) and (5) of the current Act.

Clause 23 enables the Director-General, by notice served on the seller of electrical articles, to require that person to carry out specified safety testing or provide other evidence of the safety of an electrical article or model of electrical article that the person sells if the Director-General believes on reasonable grounds that the article or model is or may become unsafe to use.

There is no comparable provision to the proposed section in the current Act.

Clause 24 makes it an offence for a person:

- (a) to sell an electrical article if the sale of that article by the person is prohibited by a notice in force under proposed section 21, or
- (b) not to comply with any requirement to take action in respect of an electrical article made of the person under a notice in force under proposed section 22, or
- (c) not to comply with any requirement to test or provide evidence in respect of an electrical article or model of electrical article under a notice in force under proposed section 23.

The maximum penalties for such an offence will be:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units (currently, \$825,000), or
- (b) in the case of a first offence by a corporation—5,000 penalty units (currently, \$550,000), or
- (c) in the case of a second or subsequent offence by an individual—750 penalty units (currently, \$82,500) or imprisonment for 2 years, or both, or
- (d) in the case of a first offence by an individual—500 penalty units (currently, \$55,000).

The proposed section re-enacts (with increased penalties) the offence provisions in section 21E (6), (7) and (8) of the current Act.

Clause 25 provides that the proposed Division operates in addition to, and not in derogation of, the provisions of the *Fair Trading Act 1987* or the regulations made under that Act.

The proposed section substantially re-enacts the provisions of section 21E (11) of the current Act.

Division 9 Investigation powers

Clause 26 provides that an authorised officer may, at any reasonable time, enter any place that the officer suspects on reasonable grounds to be a place in which the manufacture or sale of electrical articles is being, or may be, carried on. It also confers certain search and investigation powers while in such a place. One such power is the power to seize, detain or remove an electrical article (or any container or package containing an electrical article) if the officer has reasonable cause to believe that an offence has been committed against the proposed Act or the regulations in respect of the electrical article or the article is or is likely to be unsafe.

The proposed section enables an authorised officer (with the written authority of the Director-General) to enter any place and inspect and copy documents in the place if the Director-General believes on reasonable grounds that there are in that place documents evidencing conduct in connection with an electrical article in contravention of the proposed Act or the regulations. This new power is similar to that conferred on investigators by section 19 (4) of the *Fair Trading Act 1987*.

The proposed section also provides that an authorised officer may not exercise the authorised officer's functions under the proposed section in relation to a part of any premises being used for residential purposes except with the permission of the occupier of that part of the premises or under the authority of a search warrant.

The proposed section re-enacts (with modifications) the provisions of section 21F (2) of the current Act. However, the power to enter premises to locate documents evidencing a contravention of the proposed Act or the regulations in connection with an electrical article is a new power.

Clause 27 enables an authorised officer, if the officer believes on reasonable grounds that an electrical article or more than one electrical article of a particular model is or may become unsafe:

- (a) to prohibit a person who has the custody, control or possession of such an article or articles from selling it or them, and
- (b) to affix a label on an electrical article (or container or package containing an electrical article) indicating that the electrical article is to be considered dangerous and must not be sold or used until specified repairs necessary to make the electrical article safe to use have been carried out.

The proposed section also makes it an offence for a person to sell an electrical article in contravention of such a notice or to remove or alter a label affixed to an electrical article or a container or package under the proposed section unless directed to do so by an authorised officer. The maximum penalties for any such offence will be:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units (currently, \$825,000), or
- (b) in the case of a first offence by a corporation—5,000 penalty units (currently, \$550,000), or
- (c) in the case of a second or subsequent offence by an individual—750 penalty units (currently, \$82,500) or imprisonment for 2 years, or both, or
- (d) in the case of a first offence by an individual—500 penalty units (currently, \$55,000).

The proposed section re-enacts (with increased penalties and other modifications) the provisions of section 21F (3), (4), (5) and (7) of the current Act. The proposed section differs from the current provisions in two important respects. Firstly, the proposed section extends the current provisions by enabling an authorised officer to affix a label to a container or package for an electrical article as well as on the electrical article itself. Secondly, the proposed section also makes it an offence to remove or alter a label that has been affixed by an authorised officer.

Division 10 Seizure and forfeiture of electrical articles

Clause 28 requires the Director-General to return an electrical article seized by an authorised officer under proposed section 26 no later than 60 days (or such greater period as may be prescribed by the regulations) after seizure.

The only exceptions to this general rule are if, within that period, the Director-General has determined that the article is unsafe and proceedings for its forfeiture are brought or proceedings for an offence involving that article are brought.

The Director-General is to provide compensation for returned seized articles in accordance with the regulations.

If proceedings for an offence are commenced within the relevant period, the article may be retained until the proceedings are finally determined.

The proposed section re-enacts (with modifications) the provisions of section 21F (11) of the current Act. The proposed section differs from the current provisions in that it enables the retention of a seized article for the purposes of criminal proceedings and not just in cases where the Director-General determines the article to be unsafe. The proposed section requires the return of

an article within 60 days or a greater prescribed period instead of just within the prescribed period specified by the current provisions. A 60 day period is currently prescribed by clause 49 (1) (a) of the *Electricity Safety (Equipment Safety) Regulation 1999*.

Clause 29 enables the Director-General to apply to a Local Court for the forfeiture of an electrical article to the Crown if the Director-General has determined that it is unsafe or a court has found a person guilty of an offence under the proposed Act or the regulations in connection with the article.

The proposed section re-enacts (with modifications) the provisions of section 21G of the current Act. The proposed section extends the scope of the current provisions by enabling the forfeiture of an electrical article if a court has found a person guilty of an offence under the proposed Act or the regulations in connection with the article. The current provisions are limited to forfeiture of articles that the Director-General has determined are unsafe.

Part 3 Electrical installations

Clause 30 enables an authorised officer to enter any place at any reasonable time for the purpose of inspecting any electrical installation in the place. On entering such a place, the authorised officer may require a person carrying out electrical wiring work to produce evidence of the person's authority to carry out such work under the *Home Building Act 1989*.

The proposed section enables an authorised officer (with the written authority of the Director-General) to enter any place and inspect and copy documents in the place if the Director-General believes on reasonable grounds that there are in that place documents evidencing conduct in connection with an electrical installation in contravention of the proposed Act or the regulations. This new power is similar to that conferred on investigators by section 19 (4) of the *Fair Trading Act 1987*.

The proposed section also provides that an authorised officer may not exercise the authorised officer's functions under the proposed section in relation to a part of any premises being used for residential purposes except with the permission of the occupier of that part of the premises or under the authority of a search warrant.

The proposed section re-enacts (with modifications) the provisions of section 25 (1) and (4) of the current Act. The power to enter any premises to locate documents evidencing a contravention of the proposed Act or the regulations is a new power. Also, the proposed section confines the exercise of the powers it confers in relation to parts of premises that are being used for residential purposes.

Clause 31 makes it an offence for a person not to carry out electrical installation work in accordance with such standards or requirements as may be prescribed by the regulations. Electrical installation work is the work of installing, adding to, altering, disconnecting, reconnecting or replacing an electrical installation.

The maximum penalties for such an offence will be:

- (a) in the case of a second or subsequent offence by a corporation—7,500 penalty units (currently, \$825,000), or
- (b) in the case of a first offence by a corporation—5,000 penalty units (currently, \$550,000), or
- (c) in the case of a second or subsequent offence by an individual—750 penalty units (currently, \$82,500) or imprisonment for 2 years, or both, or
- (d) in the case of a first offence by an individual—500 penalty units (currently, \$55,000).

The current Act contains no such offence. However, clause 7 of the *Electricity Safety (Electrical Installations) Regulation 1998* provides for a similar offence.

Clause 32 makes it an offence for the responsible person for an electrical installation:

- (a) not to ensure that such parts of the installation as are prescribed by the regulations are maintained in accordance with the regulations while the installation is connected to its source of electricity, or
- (b) to connect an electrical installation to a source of supply of electricity if the installation has been lawfully disconnected for safety reasons.

The responsible person for an electrical installation is the occupier of the place where the installation is located or, if there is no such occupier, an owner of the place.

The maximum penalties for such offences will be 500 penalty units (currently, \$55,000) in the case of a corporation or 150 penalty units (currently, \$16,500) in any other case.

The proposed section re-enacts (with modifications and increased penalties) the provisions of section 29 of the current Act. However, the proposed section differs from the current section in that it is not limited to consumers.

Part 4 Accident reporting and investigations

Clause 33 requires the occupier of a place in which a serious electrical accident occurs (or any other person prescribed by the regulations) to notify the Director-General of the accident within 7 days of the accident.

A serious electrical accident is defined in proposed section 3 (1) to mean an accident:

- (a) in which an electrical article or electrical installation is involved, and
- (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a health care professional or is unable to attend work for any period of time.

However, it does not include an accident in which only electricity works (within the meaning of the *Electricity Supply Act 1995*) are involved. Electricity works are any electricity power lines or associated equipment or electricity structures that form part of a transmission or distribution system within the meaning of the *Electricity Supply Act 1995*.

A failure to notify the Director-General will be an offence. The maximum penalty for the offence will be 5 penalty units (currently, \$550) where the accident occurred in residential premises and 100 penalty units (currently, \$11,000) in any other case.

The proposed section re-enacts (with modifications) the provisions of section 27E of the current Act. The proposed section confines notifiable accidents to serious electrical accidents that do not involve electricity works only. The current section is not so confined. Serious electricity accidents involving electricity works will be notifiable under proposed section 63R of the *Electricity Supply Act 1995* (to be inserted by Schedule 2 [4] to the proposed Act). Also, the current provisions leave the period for notification to be prescribed by the regulations. However, the proposed section specifies the relevant time frame for reporting accidents. The proposed section requires the Director-General to be notified of such accidents instead of the Energy Corporation of New South Wales (as is currently the case). Finally, the proposed section also enables the regulations to exclude persons or classes or persons from its operation. There is no similar power in the current provisions.

Clause 34 enables the Director-General to arrange for an authorised officer to investigate and report to the Director-General concerning a serious electrical accident.

The proposed section re-enacts the provisions of section 27G of the current Act.

Clause 35 enables an authorised officer to enter any place where a serious electrical accident has or may reasonably be expected to have occurred and to exercise certain investigative powers in that place.

The proposed section re-enacts (with modifications) the provisions of section 27H of the current Act. The proposed section extends the investigative powers of authorised officers in relation to such an accident to include a power (with the written authority of the Director-General) to enter any place and inspect and

copy documents in the place if the Director-General believes on reasonable grounds that there are in that place documents evidencing conduct in connection with a serious electrical accident in contravention of the proposed Act or the regulations. This new power is similar to that conferred on investigators by section 19 (4) of the *Fair Trading Act 1987*.

Clause 36 makes it an offence for a person to disturb or interfere with the site of a serious electrical accident before it has been inspected by an authorised officer other than for the purpose of making it safe or with the permission of an authorised officer or as provided by the regulations.

The maximum penalty for the offence will be 500 penalty units (currently, \$55,000) in the case of corporations or 250 penalty units (currently, \$27,500) in any other case.

The proposed section re-enacts (with modifications and increased penalties) the provisions of section 27K of the current Act. The proposed section differs from the current provisions by also enabling the regulations to provide when a site may be disturbed or interfered with.

Clause 37 enables the Director-General to publish such details of serious electrical accidents as the Director-General considers necessary in the interests of public information and safety.

The proposed section substantially re-enacts the provisions of section 27L (1) of the current Act.

Clause 38 enables the Director-General, the WorkCover Authority and the Director-General of the Ministry of Energy and Utilities to enter into arrangements concerning the exercise of their respective functions in relation to the investigation of accidents and other incidents involving electricity.

There are no similar provisions in the current Act.

Part 5 Enforcement

Division 1 Authorised officers

Clause 39 enables the Director-General to appoint any person (other than an investigator under the *Fair Trading Act 1987*) to be an authorised officer for the purposes of any or all of the provisions of the proposed Act or the regulations. Investigators under the *Fair Trading Act 1987* will be authorised officers for the purposes of the proposed Act without further need for appointment under the proposed section by reason of their inclusion in the definition of *authorised officer* in proposed section 3 (1).

The power to appoint authorised officers and inspectors under the current Act is contained in sections 21F (2), 25 (1) and 27F of that Act. The proposed section collects the power to make such appointments in one place.

Clause 40 makes it an offence to refuse or fail to comply with a requirement made, or to answer a question asked by, an authorised officer, or wilfully delay, hinder, or obstruct an authorised officer or falsely to represent oneself to be an authorised officer.

Similar offences are created in sections 21F (6), 25 (5) and (8) and 27J of the current Act.

Clause 41 provides that the powers conferred by the proposed Act or the regulations on persons who are authorised officers by reason of being investigators are in addition to, and not in derogation of, the powers conferred on investigators by Division 3 of Part 2 of the *Fair Trading Act 1987*.

There is no similar provision in the current Act.

Division 2 Search warrants

Clause 42 enables an authorised officer to apply for a search warrant for a place if the authorised officer has reasonable grounds for believing that:

- (a) an unsafe electrical installation is in the place, or
- (b) a serious electrical accident has occurred in the place, or
- (c) a provision of the proposed Act or the regulations has been or is being contravened in the place.

Similar provision is made in sections 21I and 27I of the current Act for search warrants to investigate contraventions of Part 4C (Electrical articles) and Part 6B (Accident reporting and investigation) of that Act. The proposed section differs from the current provisions in that it also enables a search warrant to be obtained if there are reasonable grounds for believing that an unsafe electrical installation is located in a place.

Division 3 Undertakings

Clause 43 provides that section 73A (Enforcement of undertakings) of the *Fair Trading Act 1987* applies in connection with a matter in relation to which the Director-General has a function under the proposed Act as if the function were a function under the *Fair Trading Act 1987*. Section 73A of the *Fair Trading Act 1987* enables the Director-General to accept a written undertaking given by a person in connection with a matter in relation to which the Director-General has a function under that Act. Any such undertaking is enforceable by the Supreme Court.

The proposed section also provides that costs incurred by the Director-General in taking action under section 73A of the *Fair Trading Act 1987* to enforce an undertaking are recoverable from the person who gave the undertaking, as a debt due to the Crown, in a court of competent jurisdiction.

There are no similar provisions in the current Act.

Division 4 Proceedings for offences

Clause 44 provides that a person is not excused from providing information that the person is required to provide under the proposed Act or regulations on the grounds of self-incrimination. However, any such information is generally not admissible in any criminal proceedings against a natural person.

Similar provision is made in section 21F (9) of the current Act in relation to information that is required to be provided to authorised officers in respect of electrical articles.

Clause 45 provides for the circumstances in which directors and managers of corporations will be taken to be liable for offences under the proposed Act or regulations committed by corporations.

The proposed section also re-enacts the provisions of section 21F (10) of the current Act, which relate to when any information concerning electrical articles provided by an officer of a corporation will be taken to have been provided by the corporation. The proposed section generalises these provisions so that they apply to any information provided to an authorised officer under the Act or the regulations.

Clause 46 enables the Director-General (or a staff member of the Department of Commerce authorised by the Director-General) to certify certain matters relating to electrical articles. Any such certificate is admissible in any proceedings and is evidence of the matters certified.

The proposed section re-enacts (with some modifications) the provisions of section 21H of the current Act. In addition to the matters that the Director-General may currently certify, the proposed section also enables the Director-General to certify that a scheme for the approval or certification of models of electrical articles was a recognised external approval scheme for the purposes of the proposed Act.

Clause 47 enables authorised officers to issue penalty notices for alleged offences against the proposed Act or the regulations that are prescribed by regulations as penalty notice offences.

There are no similar provisions in the current Act.

Clause 48 provides that proceedings for an offence against the proposed Act or the regulations may be dealt with summarily by a Local Court or the Supreme Court. However, if dealt with by a Local Court, the maximum monetary penalty that the Local Court may impose is 200 penalty units (currently, \$22,000).

The proposed section re-enacts (with modifications) the provisions of section 33 of the current Act. The proposed section differs from the current section in that it enables the Supreme Court to deal summarily with offences under the proposed Act. The current section requires all offences to be dealt with by a Local Court.

Clause 49 requires proceedings for an offence against the proposed Act or the regulations to be commenced within the period of 2 years after the date on which the offence is alleged to have been committed.

The proposed section also provides that such proceedings may be commenced within the period of 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer. However, this will not enable proceedings to be commenced if a period of more than 5 years has elapsed since the date on which the offence is alleged to have been committed.

Section 31A of the current Act provides that proceedings for an offence under that Act are to be commenced within 2 years after the commission of the offence. The only exception to that general rule is provided by section 21D (8) of the current Act in relation to offences under section 21D (6) of that Act, which enables proceedings to be commenced at any time.

Part 6 Miscellaneous

Clause 50 makes it an offence for a person to disclose certain information relating to any manufacturing or commercial secrets or working processes obtained by the person in connection with the administration or execution of the proposed Act.

The maximum penalty for the offence will be 100 penalty units (currently \$11,000).

The new offence generalises the provisions of section 21K of the current Act (with increased penalties), which are limited at the moment to information obtained in connection with the administration or execution of Part 4C (Electrical articles) of that Act.

Clause 51 excludes the Minister, the Director-General, an authorised officer or a person acting under direction from the Minister or Director-General from any personal civil liability for any act done, or omitted to be done, in good faith for the purpose of executing the proposed Act.

A more limited protection from civil liability relating to information published about unsafe electrical articles is contained in section 27L (2) of the current Act.

Clause 52 provides for how documents may be served on, or given to, a person for the purposes of the proposed Act.

Similar provision is made in section 21E (9) of the current Act in respect of the service of notices under that section.

Clause 53 provides for how documents may be served on, given to, or lodged with, the Director-General for the purposes of the proposed Act.

There are no similar provisions in the current Act.

Clause 54 enables the Minister to delegate the exercise of certain of the Minister's functions under the proposed Act or the regulations. It also enables the Director-General to delegate the exercise of certain of the Director-General's functions under the proposed Act or the regulations.

The proposed section re-enacts (with modifications) the provisions of section 28 of the current Act. The current section is confined to the delegation of functions by the Minister.

Clause 55 enables regulations to be made by the Governor for the purposes of the proposed Act.

The proposed section substantially re-enacts a number of regulation-making powers contained in section 37 of the current Act that are administered by the Minister for Commerce and the Minister for Fair Trading.

Clause 56 gives effect to proposed Schedule 1, which contains savings, transitional and other provisions.

Clause 57 repeals the current Act.

Clause 58 gives effect to proposed Schedules 2–4, which contain consequential amendments to the *Electricity Supply Act 1995*, the *Energy Administration Act 1987* and certain other Acts and Regulations.

Clause 59 provides for the review of the proposed Act after 5 years of its date of assent to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains provisions enabling the Governor to make regulations of a savings and transitional nature. It also contains certain savings and transitional provisions that are consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Electricity Supply Act 1995 No 94

Schedule 2 [1] amends section 3 of the *Electricity Supply Act 1995* to specify that one of the objects of that Act is to promote and encourage the safety of persons and property in relation to the generation, transmission, distribution and use of electricity.

Schedule 2 [2] amends section 54 of the Act to enable an authorised officer of a network operator to enter premises for the purpose of inspecting or disconnecting an electrical installation if the network operator is required or permitted to inspect or disconnect the installation by or under the Act or any other Act or law.

Schedule 2 [3] inserts a new Part 5C in the Act that enables the Director-General of the Ministry of Energy and Utilities (the *Energy Director-General*) to direct distribution network service providers to remove or relocate certain electricity structures that are on or adjacent to public roads that are traffic routes or that the Energy Director-General determines have such a volume of traffic as to require the removal or relocation of such structures.

The new Part 5C substantially re-enacts the provisions of Part 4B of the current Act.

Schedule 2 [4] inserts a new Part 5D in the Act relating to electricity safety. The proposed Part re-enacts (with modifications) the provisions of Parts 5 (Electrical apparatus and appliances) and 6B (Accident reporting and investigation) of the current Act that are currently administered either exclusively or jointly by the Minister for Energy and Utilities.

Division 1 of the new Part 5D contains definitions and other interpretative provisions for the new Part.

Division 2 of the new Part 5D consolidates the provisions in sections 25 (1) and 27F of the current Act to enable the Energy Director-General to appoint inspectors for the purposes of the new Part.

Division 3 of the new Part 5D re-enacts (with modifications) the provisions of sections 25 and 26 of the current Act to the extent that they are administered by the Minister for Energy and Utilities. These provisions deal with the inspection of cathodic protection systems (to be renamed corrosion protection systems) and stray current sources and the safety of certain electricity delivery equipment. However, the new Division will also enable the Energy Director-General to authorise the inspection of electrical installations and for inspectors to require the disconnection of installations that are unsafe.

Division 4 of the new Part 5D makes provision for the reporting and investigation of serious electricity works accidents. See clause 33 above for an explanation of electricity works accidents. The new provisions confine reporting requirements to distribution network service providers or transmission operators (within the meaning of the Act).

Division 5 of the new Part 5D enables an inspector to apply for a search warrant for a place if the inspector has reasonable grounds for believing that:

- (a) an unsafe electrical installation is in the place, or
- (b) a serious electricity works accident has occurred in the place, or
- (c) a provision of the new Part 5D or the regulations made for the purposes of that Part has been or is being contravened in the place.

Schedule 2 [5] amends section 106 of the Act to re-enact certain regulation-making powers contained in section 37 (2) of the current Act that are administered by the Minister for Energy and Utilities.

Schedule 2 [6] amends section 106 of the Act to re-enact the provisions of section 37 (2A), (4) and (5) of the current Act to enable the regulations:

- (a) to apply, adopt or incorporate (with or without modification) any publication as in force at a particular time or from time to time, and
- (b) to prevail over a regulation made under the *Local Government Act 1993*, to the extent of any inconsistency, and
- (c) to bind the Crown.

Schedule 2 [7] repeals Schedule 5.1 to the Act. Schedule 5.1 would have abolished the Electricity Development Fund established by section 15 of the current Act. Transitional provisions in respect of the Fund enacted by Schedule 5.1 have been re-enacted in Division 3 of Part 2 of Schedule 1 to the proposed Act.

Schedule 2 [8] amends clause 1 of Schedule 6 to the Act to enable the regulations to make provision for matters of a savings or transitional nature consequent on the amendment of the Act.

Schedule 2 [9] amends Schedule 6 to the Act to insert a number of savings and transitional provisions consequent on the amendment of the Act.

Schedule 2 [10] inserts several new definitions in the Act consequent on the amendments made to the Act. In particular, the definition of *cathodic protection system* in the current Act is re-enacted (with modifications) as the new definition of *corrosion protection system*. The new definition reflects the fact that a cathodic protection system is but one kind of corrosion protection system.

Schedule 3 Amendment of Energy Administration Act 1987 No 103

Schedule 3 [1] amends section 3 of the *Energy Administration Act 1987* to insert definitions for some terms used in provisions to be inserted in the Act by Schedule 3.

Schedule 3 [2] amends section 12 of the Act to re-enact certain functions of the Energy Corporation of New South Wales specified in Part 3 (The Corporation) of the current Act.

Schedule 3 [3] amends section 38 of the Act to augment the regulation-making power in that section in relation to the energy efficiency of electrical equipment. The amended section 38 will enable the making of regulations like the *Electricity Safety (Equipment Efficiency) Regulation 1999* made under the current Act.

Schedule 3 [4] amends section 38 of the Act to re-enact the provisions of section 37 (4) and (5) of the current Act to enable the regulations:

- (a) to prevail over a regulation made under the *Local Government Act 1993*, to the extent of any inconsistency, and
- (b) to bind the Crown.

Schedule 3 [5] inserts a new section 46A in the Act to enable penalty notices to be issued in respect of offences under the Act or the regulations.

Schedule 3 [6] amends section 47 of the Act to require proceedings for an offence against the Act or the regulations to be instituted within 2 years after the commission of the offence. The amendment re-enacts the similar requirement in section 31A of the current Act.

Schedule 3 [7] inserts a new section 49 in the Act, which gives effect to Schedule 2 containing savings and transitional provisions.

Schedule 3 [8] amends section 53 of the Act to increase the maximum penalty that the regulations may prescribe for an offence under the regulations from 10 penalty units (currently, \$1,100) to 20 penalty units (currently, \$2,200).

Schedule 3 [9] amends section 53 of the Act to enable the regulations to apply, adopt or incorporate (with or without modification) any publication as in force at a particular time or from time to time. Section 37 (2A) of the current Act contains a similar power.

Schedule 3 [10] inserts a new Schedule 2 in the Act containing provisions of a savings or transitional nature, including a provision to enable the regulations to make provision for matters of a savings or transitional nature consequent on the amendment of the Act.

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Explanatory note

Schedule 4 Consequential amendment of other Acts and Regulations

Schedule 4 makes amendments to certain other Acts and Regulations that are consequential on the enactment of the proposed Act.