

Energy Administration Amendment (Water and Energy Savings) Act 2005

As at 20 May 2005

Long Title

An Act to amend the *Energy Administration Act 1987* to promote savings in water and energy use; to make consequential amendments to certain other Acts and Regulations; and for other purposes.

1 Name of Act

This Act is the *Energy Administration Amendment (Water and Energy Savings) Act 2005* .

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, subject to this section.

(2) A day may not be appointed under subsection (1) for the commencement of:

(a) Schedule 1 [13] on a day that is earlier than the day on which Schedule 3 [5] to the *Electricity (Consumer Safety) Act 2004* commences, or

(b) Schedule 2.3 on a day that is earlier than the day on which Schedule 4.3 [2] to the *Electricity (Consumer Safety) Act 2004* commences, or

(c) Schedule 2.6 on a day that is earlier than the day on which Schedule 4.8 to the *Electricity (Consumer Safety) Act 2004* commences.

3 Amendment of Energy Administration Act 1987 No 103

The *Energy Administration Act 1987* is amended as set out in Schedule 1.

4 Consequential amendment of other Acts and Regulations

The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Energy Administration Act 1987

(Section 3)

[1] Section 1 Name of Act

Omit "*Energy Administration Act 1987*". Insert instead "*Energy and Utilities Administration Act 1987*".

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

area of operations , in relation to Sydney Water Corporation, has the same meaning as it has in the *Sydney Water Act 1994* .

designated energy users --see section 34B.

designated water users --see section 34A.

distribution network service provider has the same meaning as it has in the *Electricity Supply Act 1995* .

energy savings action plan means a savings action plan relating to the use of energy.

Energy Savings Fund means the Energy Savings Fund established under section 34K.

energy service includes the supply or distribution of energy.

financial year means the year commencing 1 July.

local government area , in relation to a local council, means the area within the meaning of the *Local Government Act 1993* of the council.

savings action plan means a savings action plan prepared under Division 4 of Part 6A.

savings measure , in relation to energy or water, means a program, project or other measure:

- (a) to reduce the use of, or demand for, energy or water, or
- (b) to promote awareness or acceptance of the need to reduce the use of energy or water.

savings order means an order made under section 34D.

State agency means:

- (a) a public or local authority constituted by or under an Act (including a local council), or
- (b) a Government Department, or
- (c) a statutory body representing the Crown, or
- (d) a State owned corporation (including any subsidiary of a State owned corporation) within the meaning of the *State Owned Corporations Act 1989* .

State water agency means:

- (a) Sydney Water Corporation, or
- (b) any other State agency prescribed by the regulations that provides any water service in a water savings area.

water savings action plan means a savings action plan relating to the use of water.

water savings area means:

- (a) the area of operations of Sydney Water Corporation, or
- (b) any other area or areas of the State prescribed by the regulations for the purposes of this definition.

Water Savings Fund means the Water Savings Fund established under section 34E.

water service includes any of the following:

- (a) the storage or supply of water,
- (b) the disposal of waste water,
- (c) the provision of a sewerage, stormwater or drainage service.

[3] Section 3 (4)

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[4] Section 5 Objects

Insert "in relation to energy" after "The objects of this Act" in section 5 (1).

[5] Section 5 (3)

Insert after section 5 (2):

- (3) The objects of this Act in relation to water are:
- (a) to reduce the demand for water in water savings areas, and
 - (b) to stimulate investment in innovative water savings measures for use in water savings areas, and
 - (c) to increase public awareness and acceptance of the need to save water in water savings areas, and
 - (d) to improve access to a wider range of water saving technologies in water savings areas, and
 - (e) to encourage the use of non-potable water in water savings areas as an alternative to potable water.

[6] Section 6 Establishment of the Department

Omit the section.

[7] Part 6A

Insert after Part 6:

Part 6A - Water and energy savings

Division 1 - General

34A Designated water users The following persons and bodies are **designated water users** for the purposes of this Part:

- (a) any local council that has all or part of its local government area located within a water savings area,
- (b) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that uses water in a water savings area.

34B Designated energy users The following persons and bodies are **designated energy users** for the purposes of this Part:

- (a) any State agency,
- (b) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that uses energy.

34C Exemptions A savings order may exempt specified persons and bodies (or specified classes of persons and bodies) from any or all of the provisions of this Part or the regulations relating to designated water users or designated energy users (or both).

34D Savings orders

- (1) The Minister may, by order published in the Gazette, make provision for any matter that is required or permitted to be prescribed or otherwise dealt with by a savings order under a provision of this Act.

Note: The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

- (2) Sections 40, 41 and 42 of the *Interpretation Act 1987* apply to a savings order in the same way as they apply to a statutory rule.

Division 2 - Water Savings Fund

34E Establishment of Water Savings Fund There is to be established in the Special Deposits Account a fund called the "Water Savings Fund".

34F Purposes of Water Savings Fund The purposes of the Water Savings Fund are:

- (a) to provide funding to encourage water savings and the recycling of water in

water savings areas, and

(b) to provide funding to reduce the demand for water in water savings areas, and

(c) to provide funding to stimulate investment in innovative water savings measures for use in water savings areas, and

(d) to provide funding to increase public awareness and acceptance of the importance of water savings measures in water savings areas.

34G Payments into Water Savings Fund

(1) There is payable into the Water Savings Fund:

(a) all money received from contributions required to be made to the Fund under section 34J, and

(b) all money advanced by the Treasurer for the Fund, and

(c) all money appropriated by Parliament for the purposes of the Fund, and

(d) the proceeds of the investment of money in the Fund, and

(e) all money directed or authorised to be paid into the Fund by or under this or any other Act or law, and

(f) all money received from voluntary contributions to the Fund made by any other person or body.

(2) Without limiting subsection (1) (f), State agencies are authorised by this section to make voluntary contributions to the Fund.

(3) Nothing in subsection (2) authorises a State water agency to refuse to pay a contribution to the Fund that is payable under section 34J.

34H Payments out of Water Savings Fund

(1) There is payable from the Water Savings Fund:

(a) any money approved by the Minister to fund all or any part of the cost of any water savings measure that the Minister is satisfied promotes a purpose referred to in section 34F, and

(b) any money required to meet administrative expenses related to the Fund, and

(c) any money required to meet administrative expenses of the Minister in connection with the Minister's functions under this Act in relation to water savings action plans, and

(d) any money directed or authorised to be paid from the Fund by or under this or any other Act or law.

(2) In exercising the Minister's functions under subsection (1) (a) (but without limiting the generality of that paragraph), the Minister may:

(a) approve selection criteria from time to time to be applied to determine the kinds of water savings measures that will be eligible for funding, and

(b) require a person or body seeking funding for a water savings measure to do either or both of the following as a precondition to applying for or obtaining funding:

(i) to submit a water savings action plan that includes details about the measure,

(ii) to provide any other information requested by the Minister about the measure, and

(c) obtain and have regard to any advice, recommendations or other information provided to the Minister by a committee appointed by the Minister under Division 5, or by any other person or body, that the Minister considers relevant.

34I Investment of money in Water Savings Fund The Minister may invest money in the Water Savings Fund:

(a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or

(b) if that Act does not confer power on the Minister to invest the money, in any other manner approved by the Treasurer.

34J Minister may require State water agencies to make contributions

(1) The Minister may, by order published in the Gazette, require any one or more State water agencies to make an annual contribution for a specified financial year to the Water Savings Fund.

Note: The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

(2) An order under subsection (1):

(a) must specify the annual contributions payable by each State water agency to which it applies (being an amount that does not exceed the maximum amount, if any, prescribed by the regulations), and

(b) may specify that an annual contribution may be paid by instalments during the financial year to which the order applies, and

(c) must specify the time or, in the case of an annual contribution that is payable by instalments, the times at which any contribution required under the order is to be made, and

(d) may be made before or during the financial year to which it relates.

(3) If a State water agency to which an order under subsection (1) is to apply is constituted by or under an Act that is administered by a Minister other than the Minister administering this section, the order may be made only with the concurrence of the Minister administering the Act by or under which the agency is constituted.

(4) If a State water agency to which an order under subsection (1) is to apply is a local water utility within the meaning of the *Water Management Act 2000* but not a State owned corporation, the Minister must consult with each of the following before making the order:

(a) the State water agency,

(b) the Local Government and Shires Associations of New South Wales.

(5) The Minister is to cause a copy of an order under subsection (1) to be served on the State water agencies to which it applies as soon as is reasonably practicable after the order is published in the Gazette.

(6) A failure to comply with subsection (5) does not affect the validity of an order under subsection (1).

(7) Despite any other Act or law, a State water agency to which an order under subsection (1) applies must pay into the Fund such amounts at such times as may be required by the order.

(8) An amount that is payable by a State water agency under an order under subsection (1) may be recovered by the Minister as a debt in any court of competent jurisdiction for payment into the Fund.

(9) If the Independent Pricing and Regulatory Tribunal is required by or under the *Independent Pricing and Regulatory Tribunal Act 1992* to determine a maximum price for a water service provided by a State water agency, any requirement imposed on the agency by this section to pay an amount into the Fund is to be treated for the purposes of section 16A of that Act as a requirement with which the agency must comply in providing the service.

Note: Section 16A of the *Independent Pricing and Regulatory Tribunal Act 1992* enables the Minister responsible for a government agency to direct the Tribunal, when it makes a determination of the maximum price for a government monopoly service provided by the agency, to include in the maximum price an amount representing the efficient cost of complying with a specified requirement imposed on the agency. It also enables the Minister to direct the Tribunal, when it makes a determination of the methodology for fixing the maximum price for the service, to include in the methodology a factor

representing such a cost.

Division 3 - Energy Savings Fund

34K Establishment of Energy Savings Fund There is to be established in the Special Deposits Account a fund called the "Energy Savings Fund".

34L Purposes of Energy Savings Fund

- (1) The purposes of the Energy Savings Fund are:
 - (a) to provide funding to encourage energy savings, and
 - (b) to provide funding to address peak demand for energy, and
 - (c) to provide funding to stimulate investment in innovative energy savings measures, and
 - (d) to provide funding to increase public awareness and acceptance of the importance of energy savings measures, and
 - (e) to provide funding for cost effective energy savings measures that reduce greenhouse gas emissions arising from the use of energy, and
 - (f) to provide funding for contributions made by the State for the purposes of national energy regulation.
- (2) However, it is not a purpose of the Fund to provide funding for investment in low emission power generation, or any other kind of power generation, where the primary purpose of the generation is to generate energy for sale into the power grid.

34M Payments into Energy Savings Fund

- (1) There is payable into the Energy Savings Fund:
 - (a) all money received from contributions required to be made to the Fund under section 34P, and
 - (b) all money advanced by the Treasurer for the Fund, and
 - (c) all money appropriated by Parliament for the purposes of the Fund, and
 - (d) the proceeds of the investment of money in the Fund, and
 - (e) all money directed or authorised to be paid into the Fund by or under this or any other Act or law, and
 - (f) all money received from voluntary contributions to the Fund made by any other person or body.
- (2) Without limiting subsection (1) (f), State agencies are authorised by this section to make voluntary contributions to the Fund.
- (3) Nothing in subsection (2) authorises a distribution network service provider to refuse to pay a contribution to the Fund that is payable under section 34P.

34N Payments out of Energy Savings Fund

- (1) There is payable from the Energy Savings Fund:
 - (a) any money approved by the Minister to fund all or any part of the cost of any energy savings measure that the Minister is satisfied promotes a purpose referred to in section 34L, and
 - (b) any money approved by the Minister to fund all or any part of the contributions that the State is required to make for the purposes of national energy regulation, and
 - (c) any money required to meet administrative expenses related to the Fund, and
 - (d) any money required to meet administrative expenses of the Minister in connection with the Minister's functions under this Act in relation to energy savings action plans, and
 - (e) any money directed or authorised to be paid from the Fund by or under this or any other Act or law.
- (2) In exercising the Minister's functions under subsection (1) (a) (but without limiting the generality of that paragraph), the Minister may:

- (a) approve selection criteria from time to time to be applied to determine the kinds of energy savings measures that will be eligible for funding from the Fund, and
- (b) require a person or body seeking funding for an energy savings measure to do either or both of the following as a precondition to applying for or obtaining funding:
 - (i) to submit an energy savings action plan that includes details about the measure,
 - (ii) to provide any other information requested by the Minister about the measure, and
- (c) obtain and have regard to any advice, recommendations or other information provided to the Minister by a committee appointed by the Minister under Division 5, or by any other person or body, that the Minister considers relevant.

34O Investment of money in Energy Savings Fund The Minister may invest money in the Energy Savings Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Minister to invest the money, in any other manner approved by the Treasurer.

34P Minister may require distribution network service providers to make contributions

- (1) The Minister may, by order published in the Gazette, require any one or more distribution network service providers to make an annual contribution for a specified financial year to the Energy Savings Fund.

Note: The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

- (2) An order under subsection (1):
 - (a) must specify the annual contributions payable by each distribution network service provider to which it applies (being an amount that does not exceed the maximum amount, if any, prescribed by the regulations), and
 - (b) may specify that an annual contribution may be paid by instalments during the financial year to which the order applies, and
 - (c) must specify the time or, in the case of an annual contribution that is payable by instalments, the times at which any contribution required under the order is to be made, and
 - (d) may be made before or during the financial year to which it relates.
- (3) An order under subsection (1) may be made only with:
 - (a) the concurrence of the Treasurer, and
 - (b) if section 14 (Licences) of the *Electricity Supply Act 1995* is administered by a Minister other than the Minister administering this section--the concurrence of the Minister administering section 14 of that Act.
- (4) The Minister is to cause a copy of an order under subsection (1) to be served on the distribution network service providers to which it applies as soon as is reasonably practicable after the order is published in the Gazette.
- (5) A failure to comply with subsection (4) does not affect the validity of an order under subsection (1).
- (6) Despite any other Act or law, a distribution network service provider to which an order under subsection (1) applies must pay into the Fund such amounts at such times as may be required by the order.
- (7) An amount that is payable by a distribution network service provider under an order under subsection (1) may be recovered by the Minister as a debt in any court

of competent jurisdiction for payment into the Fund.

Division 4 - Savings action plans

34Q Preparation of draft savings action plans

(1) Draft water savings action plans Each designated water user is to prepare a draft water savings action plan and submit it to the Minister for approval:

- (a) if the user is a designated water user on the commencement of this section--within the period prescribed by a savings order after the commencement of this section, or
- (b) if the user becomes a designated water user after the commencement of this section--within the period prescribed by a savings order after the user becomes a designated water user, or
- (c) if an approved water savings action plan previously prepared by the user expires or is wholly revoked--within the period prescribed by a savings order after the approved action plan expires or is revoked.

(2) Draft energy savings action plans Each designated energy user is to prepare a draft energy savings action plan and submit it to the Minister for approval:

- (a) if the user is a designated energy user on the commencement of this section--within the period prescribed by a savings order after the commencement of this section, or
- (b) if the user becomes a designated energy user after the commencement of this section--within the period prescribed by a savings order after the user becomes a designated energy user, or
- (c) if an approved energy savings action plan previously prepared by the user expires or is wholly revoked--within the period prescribed by a savings order after the approved action plan expires or is revoked.

(3) Joint water and energy draft savings action plans If a person or body is both a designated water user and designated energy user, a draft savings action plan dealing with both water and energy use by the person or body may be prepared and submitted to the Minister for approval.

(4) Amendment or replacement of savings action plans A designated water user or designated energy user may prepare and submit for approval by the Minister a draft savings action plan that amends or replaces a savings action plan at any time while that savings action plan is in effect.

34R Contents of draft savings action plans

(1) A draft water savings action plan must include the following:

- (a) a description of the designated water user's current water usage,
- (b) a list of individual water savings measures prioritised in terms of water saved, cost effectiveness and potential benefits,
- (c) a statement concerning the water savings measures included on that list that the designated water user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),
- (d) any other matter prescribed by a savings order.

(2) A draft energy savings action plan must include the following:

- (a) a description of the designated energy user's current energy usage,
- (b) a list of individual energy savings measures prioritised in terms of energy saved, cost effectiveness and potential benefits,
- (c) a statement concerning the energy savings measures included on that list that the designated energy user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),

(d) any other matter prescribed by a savings order.

(3) A draft savings action plan must be prepared in accordance with such guidelines concerning the preparation of savings action plans as may be issued by the Minister from time to time and published in the Gazette.

34S Approval of savings action plans

(1) The Minister may:

(a) approve a draft savings action plan submitted by a designated water user or designated energy user, without alteration or with such alteration as the Minister thinks fit, or

(b) refer the draft savings action plan back to the user for further consideration.

(2) Before making any alterations to the draft savings action plan, the Minister must consult the designated water user or designated energy user that submits the plan.

(3) If the Minister approves a savings action plan, the Minister must give the designated water user or designated energy user that submits the plan written notice of the following within 14 days after approving the plan:

(a) that the Minister has approved the plan,

(b) the day on which the plan was approved.

34T Duration of a savings action plan A savings action plan that has been approved by the Minister:

(a) has effect on and from the day on which the Minister serves a written notice on the designated water user or designated energy user that submitted the plan indicating the day on which the Minister approved the action plan, and

(b) expires on the fourth anniversary of the day on which the Minister approved the action plan, unless sooner revoked by the Minister.

34U Amendment, replacement or revocation of savings action plans

(1) A savings action plan may be amended or replaced by a subsequent savings action plan prepared and approved in accordance with this Division.

(2) A savings action plan may also be amended by the Minister, but only in the circumstances, in relation to the matters and to the extent the action plan provides.

(3) The Minister may revoke a savings action plan, wholly or in part.

(4) The amendment or revocation of a savings action plan by the Minister under this section takes effect on the day on which written notice of the amendment or revocation is served on the designated water user or designated energy user concerned or on a later date specified in the notice.

34V Compliance with this Division and savings action plans

(1) A designated water user or designated energy user must prepare and submit a savings action plan in accordance with the provisions of this Division.

Maximum penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant had a reasonable excuse for not preparing or submitting a savings action plan in accordance with the provisions of this Division.

(3) Nothing in this Division requires a designated water user or designated energy user to implement any savings measures specified in a savings action plan submitted by the user and approved under this Division unless the regulations so provide.

(4) Without limiting subsection (3), the regulations may make provision for or with respect to the following:

(a) the implementation of savings measures that are set out in savings action plans approved under this Division,

(b) the issuing of directions by the Minister to designated water users and designated energy users to implement savings measures set out in savings

action plans approved under this Division (whether issued at the time of approval or subsequently).

(5) Proceedings for an offence against subsection (1) or an offence against a provision of the regulations relating to the implementation of a savings measure set out in a savings action plan may only be instituted with the written consent of the Minister.

(6) However, nothing in subsection (5) requires the consent of the Minister before a penalty notice can be issued for an offence.

Division 5 - Advisory committees

34W Committees

(1) The Minister may establish standing or special committees for the purpose of advising the Minister in the exercise of the Minister's functions under this Part.

(2) The Minister may appoint as a member of any such committee any person who, in the Minister's opinion, appears to be qualified to be a member of the committee.

(3) The Minister must appoint one of the members of a committee to be chairperson of the committee.

(4) A committee may, subject to this section and to any directions of the Minister, regulate its procedure in such manner as it thinks fit.

(5) The Minister may specify the number of persons who are to constitute a quorum of a committee.

[8] Section 40 Persons may be required to furnish information

Insert after section 40 (1):

(1A) The Minister may, by notice in writing, require a water or energy service provider to furnish to the Minister such information concerning such of the following matters as may be specified in the notice:

(a) the identity of the persons or bodies to which the provider provides a water service within a water savings area,

(b) the identity of the persons or bodies to which the provider provides an energy service,

(c) the amount of water or energy that is provided to any such persons or bodies by the provider.

[9] Section 40 (4) and (5)

Insert after section 40 (3):

(4) Compliance with a requirement under this section to furnish information is not to be regarded as:

(a) a breach of contract or confidence or otherwise as a civil wrong, or

(b) a breach of any instrument, or

(c) an event of default under any contract or other instrument, or

(d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

(5) In this section:

water or energy service provider means any of the following:

(a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*,

(b) Sydney Water Corporation,

(c) any other person or body (or person or body belonging to a class of persons or bodies) prescribed by a savings order that provides a water service or energy service.

[10] Section 41 Disclosure of information

Insert at the end of the section:

- (2) Without limiting subsection (1) (c), nothing in this section or any other Act or law prevents the Minister from disclosing information about any matter referred to in section 40 (1A) that is furnished to the Minister under that section where that information is disclosed to indicate why persons or bodies have been, or are to be, prescribed as designated water users or designated energy users by a savings order.

[11] Section 43A

Insert after section 43:

43A Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

(a) in the case of a natural person:

- (i) delivering it to the person personally, or
- (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
- (iii) sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

- (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
- (ii) sending it by facsimile transmission to the facsimile number of the body corporate.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

[12] Section 45

Omit the section. Insert instead:

45 Delegation

- (1) The Minister may, by instrument in writing, delegate the exercise of any of the Minister's functions under this Act or the regulations (other than this power of delegation).

- (2) The Corporation may, by instrument in writing, delegate the exercise of any of its functions (other than this power of delegation).

- (3) The Director-General may, by instrument in writing, delegate the exercise of any of the Director-General's functions under this Act or any other Act administered by the Minister (other than this power of delegation).

- (4) The Director-General may delegate the exercise of any of the functions delegated to the Director-General by the Minister or the Corporation, unless the Minister or the Corporation (as the case may be) otherwise provides in the instrument of delegation to the Director-General.

- (5) A delegation may be made only to:

- (a) the Director-General, or
- (b) a member of staff of a Government Department, or
- (c) the holder of a particular statutory or public office, or
- (d) a committee established under section 10 or Division 5 of Part 6A.

[13] Section 46A Penalty notices (as inserted by the Electricity (Consumer Safety) Act 2004)

Insert "or the Director-General" after "the Corporation" in section 46A (9).

[14] Section 47A

Insert after section 47:

47A Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

[15] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Energy Administration Amendment (Water and Energy Savings) Act 2005

[16] Schedule 2

Insert at the end of the Schedule (with appropriate Part and clause numbering):

Part - Provisions consequent on enactment of Energy Administration Amendment (Water and Energy Savings) Act 2005

Existing delegations The substitution of section 45 by the *Energy Administration Amendment (Water and Energy Savings) Act 2005* does not affect the continued validity of any delegation in force under that section immediately before the substitution.

Department of Energy, Utilities and Sustainability The Department of Energy, Utilities and Sustainability (which was previously called the Department of Energy) established under section 6 of this Act before the repeal of that section is taken to have been established under the *Public Sector Employment and Management Act 2002*.

Schedule 2 Consequential amendment of other Acts and Regulations

(Section 4)

2.1 - Electricity (Consumer Safety) Act 2004 No 4

[1] Schedule 1 Savings, transitional and other provisions

Omit "*Energy Administration Act 1987*" from the definition of **new electricity safety legislation** in clause 2 (1). Insert instead "*Energy and Utilities Administration Act 1987*".

[2] Schedule 3, heading

Omit "Energy Administration Act 1987". Insert instead "Energy and Utilities Administration Act 1987".

2.2 - Electricity Safety Act 1945 (1946 No 13)

[1] Section 4 Definitions

Omit "*Energy Administration Act 1987*" from the definition of **Corporation** in section 4 (1). Insert instead "*Energy and Utilities Administration Act 1987*".

[2] Section 9 Additional functions of Energy Corporation

Omit " *Energy Administration Act 1987* " from section 9 (1). Insert instead " *Energy and Utilities Administration Act 1987* ".

2.3 - Electricity Safety (Equipment Efficiency) Regulation 1999

Clause 3 Definitions

Omit " *Energy Administration Act 1987* " from the definition of **the Act** in clause 3 (1) (as amended by the *Electricity (Consumer Safety) Act 2004*). Insert instead " *Energy and Utilities Administration Act 1987* ".

2.4 - Electricity Supply Act 1995 No 94

[1] Part 4, Division 3A

Insert after Division 3:

Division 3A - Passing through contributions made to Energy Savings Fund

42A Definitions In this Division:

Energy Savings Fund means the Energy Savings Fund established under section 34K of the *Energy and Utilities Administration Act 1987* .

Fund contribution means any contribution that a distribution network service provider is required to make to the Energy Savings Fund by an order made under section 34P of the *Energy and Utilities Administration Act 1987* .

modification includes addition, exception, omission or substitution.

42B Operation of Division

(1) It is a condition of a retail supplier's licence that the licensee comply with the requirements specified by this Division or in regulations made for the purposes of this Division.

(2) This Division applies to retail customers of retail suppliers.

(3) However, this Division does not apply with respect to:

- (a) any customer supply contract entered into before 6 April 2005 that contains a provision in force before that date that expressly precludes payment of additional charges for the supply of electricity under it, or
- (b) any other person, matter or thing (or class of person, matter or thing) prescribed by the regulations.

(4) A provision of any customer supply contract entered into on or after 6 April 2005 that:

- (a) expressly precludes the payment of costs of the kind referred to in section 42C (1), or
- (b) otherwise precludes the payment of additional charges for the supply of electricity under it,

is of no force or effect to the extent that it would, but for this subsection, preclude a retail supplier from recovering under this Part costs of the kind referred to in section 42C (1) from the customer.

(5) Any Fund contributions recovered under this Part by a retail supplier from customers are to be disregarded for the purposes of applying clause 7 of Determination No 1, 2004 made by the Independent Pricing and Regulatory Tribunal in June 2004 and set out in its report entitled *NSW Electricity Regulated*

Retail Tariffs 2004/05 to 2006/07: Final Report and Determination, (ISBN 1 877049 49 2) .

(6) Nothing in this Division gives rise to any rights that are justiciable by a customer of a licensee or to any grounds that constitute a defence to proceedings for the recovery of any amount from a customer of a retail supplier.

42C Regulations may make provision for passing through of Fund contributions to retail customers

(1) The regulations may make provision for or with respect to requiring or permitting any retail supplier to recover from its retail customers:

(a) if the retail supplier is also a distribution network service provider--the cost of any Fund contributions it has made in its capacity as a distribution network service provider, or

(b) if the retail supplier is not a distribution network service provider--the cost of any Fund contributions made by a distribution network service provider that has been passed through to the retail supplier by the provider.

(2) Without limiting subsection (1), the regulations may make provision for or with respect to any of the following matters:

(a) the conferral or imposition of functions on the Tribunal with respect to the determination of amounts of the kind referred to in subsection (1) that may be recovered by retail suppliers from their retail customers (including applying provisions of Division 5 or the *Independent Pricing and Regulatory Tribunal Act 1992* (or both) with such modifications, if any, as may be prescribed),

(b) the imposition of conditions on the licences of retail suppliers with respect to the recovery of amounts of the kind referred to in subsection (1),

(c) the imposition or inclusion of conditions in customer supply contracts with respect to the recovery of amounts of the kind referred to in subsection (1).

[2] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Energy Administration Amendment (Water and Energy Savings) Act 2005 , but only to the extent that it amends this Act

2.5 - Essential Services Act 1988 No 41

Section 5 Relationship to other Acts etc

Omit "*Energy Administration Act 1987*" from section 5 (a) (iii). Insert instead "*Energy and Utilities Administration Act 1987*".

2.6 - Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit "*Energy Administration Act 1987*" (as inserted by the *Electricity (Consumer Safety) Act 2004*). Insert instead "*Energy and Utilities Administration Act 1987*".

2.7 - Freedom of Information Regulation 2000

Schedule 3 Public authorities

Omit "*Energy Administration Act 1987*" from the first column in Part 3. Insert instead "*Energy and Utilities Administration Act 1987*".

2.8 - Gas Industry Restructuring Act 1986 No 213

Section 3 Interpretation

Omit "*Energy Administration Act 1987*" from the definition of **Corporation** in section 3 (1).
Insert instead "*Energy and Utilities Administration Act 1987*".

2.9 - Protection of the Environment Operations (Clean Air) Regulation 2002

Clause 19F Vapour pressure of petrol

Omit "*Energy Administration Act 1987*" from clause 19F (6). Insert instead "*Energy and Utilities Administration Act 1987*".

2.10 - Subordinate Legislation Act 1989 No 146

Schedule 4 Excluded instruments

Omit "*Energy Administration Act 1987*" from item 19. Insert instead "*Energy and Utilities Administration Act 1987*".

Historical notes

Table of amending instruments *Energy Administration Amendment (Water and Energy Savings) Act 2005 No 18* . Second reading speech made: Legislative Assembly, 6.4.2005; Legislative Council, 5.5.2005. Assented to 18.5.2005. Date of commencement, Schs 1 [13], 2.3 and 2.6 excepted, 20.5.2005, sec 2 and GG No 57 of 20.5.2005, p 1733; date of commencement of Schs 1 [13], 2.3 and 2.6: not in force.