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Electricity Supply Industry Act 1995

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Electricity Supply Industry Act 1995

An Act to promote efficiency and competition in the electricity supply industry, to provide for a safe and efficient system of electricity generation, transmission, distribution and supply, to provide for the safety of electrical installations, equipment and appliances, to enforce proper standards in the performance of electrical work, to protect the interests of consumers of electricity and for related purposes

[Royal Assent 4 October 1995]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Electricity Supply Industry Act 1995 .

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

AEMO (Australian Energy Market Operator) has the same meaning as in the National Electricity Rules;

approved financial risk contract means a contract that –

- (a) is an approved type of contract; and
- (b) is in an approved standard form in relation to that type of contract; and
- (c) contains prices calculated in accordance with the approved methodology in respect of contracts that are in that approved standard form;

approved methodology means a methodology approved under section 43G ;

approved standard form means a standard form approved under section 43G ;

approved type of contract means a type of contract approved under section 43G ;

AER means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* of the Commonwealth;

Aurora Energy means Aurora Energy Pty Ltd (ABN 85 082 464 622);

Aurora Retail means Aurora Energy in its capacity as the holder of a retailer authorisation;

Australian Energy Market Agreement means the Australian Energy Market Agreement made between the Commonwealth, State and Territory Governments on 30 June 2004 and all amendments to that Agreement;

authorised officer means a person appointed under section 84 as an authorised officer;

authorised retailer means a person who is the holder of a retailer authorisation;

Basslink means the interconnection between the electricity grids of the States of Tasmania and Victoria by means of –

- (a) a high voltage, direct current, submarine cable across Bass Strait; and
- (b) converter stations in those States; and
- (c) direct current connecting lines to those converter stations; and
- (d) alternating current transmission connections to the transmission systems of those States; and
- (e) related infrastructure;

Bass Strait Islands means those islands in the State of Tasmania known as King Island and Flinders Island;

Bass Strait Islands tariff retailer means –

- (a) the holder of a licence issued under section 19A(2) ; and
- (b) the holder of a licence issued in accordance with section 19A(6) ;

Code means the Tasmanian Electricity Code, as amended or substituted from time to time, issued under Division 9 of Part 3 ;

Competition Code has the same meaning as in the Competition Policy Reform (Tasmania) Act 1996 ;

connection means a physical link between a distribution system and a customer's premises to allow the flow of electricity;

contestable customer means a customer who is determined by or under the regulations to be a contestable customer;

customer means a person to whom electricity is sold for premises by a retailer or who proposes to purchase electricity for premises from a retailer;

customer retail services means the sale of electricity by a retailer to a customer at premises;

decision includes a direction or order;

disconnect electricity supply includes a procedure to interrupt or discontinue the electricity supply to the electrical installation, or premises, of a customer;

distribution of electricity means the carrying of electricity between different points using a distribution network;

distribution network has the meaning given by section 3A ;

distributor, in relation to premises, means an electricity entity that holds a licence to distribute electricity by way of the distribution network by which electricity may be supplied to the premises;

electrical installation means a set of wires and associated fittings, equipment and accessories that forms part of a power system and includes a set of wires and associated fittings, equipment and accessories in premises to which a power system is connected;

electricity means electrical energy generated, transmitted or supplied in trade or commerce (including electricity generated by a person engaged in trade or commerce for the person's own commercial use);

electricity entity means a person licensed to carry on operations in the electricity supply industry under this Act and includes (where the context requires) a person who has been licensed to carry on operations in the electricity supply industry under this Act whose licence has been cancelled or has expired;

electricity generating plant has the meaning given by section 3A ;

electricity infrastructure means anything used for, or in connection with, the generation, transmission or distribution of electricity including –

- (a) electricity generating plant; and
- (b) structures and equipment to hold water, or to direct, monitor or control the flow of water, for the purposes of hydro-electric generation; and
- (c) powerlines; and
- (d) substations for converting, transforming or controlling electricity; and
- (e) equipment for metering, monitoring or controlling electricity;

electricity officer means a person appointed under this Act as an electricity officer;

electricity supply industry means the industry involved in the generation, transmission, distribution, supply and sale of electricity;

energy Minister means the Minister assigned the administration of Division 1 of Part 3 ;

extra high voltage means a nominal voltage of 88 kilovolts or above;

generation of electricity means the operation of any kind of electricity generating plant including, in the case of hydro-electric power generation, the accumulation and release of water for the purpose of driving the generating plant and all incidental and related operations;

high voltage means a nominal voltage of 1 kilovolt or above but less than 88 kilovolts;

Jurisdictional Regulator has the same meaning as in the National Electricity Rules;

land includes –

- (a) an estate or interest in land (including an easement); or
- (b) a right or power over or in respect of land;

licence means a licence issued under section 19 or 19A ;

load following swap means a type of contract that allows a retailer to manage financial risks associated with the purchase of a specified quantity of electricity over the duration of the contract, where that quantity is allocated to trading intervals, within the meaning of the National Electricity Rules, in proportion to the Tasmanian net system load profile, within the meaning of the NEM Metrology Procedures made in accordance with the National Electricity Rules;

low voltage means a nominal voltage of less than 1 kilovolt;

mainland Tasmania means all parts of Tasmania other than any off-shore island of Tasmania (except for Bruny Island);

market retail contract has the meaning it has in the National Energy Retail Law (Tasmania);

National Electricity Law means the National Electricity Law contained in the schedule (as amended from time to time) to the *National Electricity (South Australia) Act 1996* of South Australia;

National Electricity Market means the wholesale electricity market operated and administered by AEMO under the National Electricity Rules;

National Electricity Rules has the same meaning as in the National Electricity Law;

National Energy Retail Law (Tasmania) has the meaning it has in the National Energy Retail Law (Tasmania) Act 2012 ;

National Energy Retail Regulations (Tasmania) has the meaning it has in the National Energy Retail Law (Tasmania) Act 2012 ;

National Energy Retail Rules means the National Energy Retail Rules, within the meaning of the National Energy Retail Law (Tasmania), as modified in their application in this jurisdiction under the National Energy Retail Law (Tasmania) Act 2012 ;

NEM entry time means the time at which section 6 of the Electricity - National Scheme (Tasmania) Act 1999 commences;

network services means –

- (a) the transmission and distribution of electricity between electricity entities and from electricity entities to customers; and
- (b) controlling and regulating the quality of electricity;

non-contestable customer means a small customer who is not a contestable customer;

officer means –

- (a) in relation to a body corporate, an officer within the meaning of the Corporations Act;
- (b) in relation to an organisation that is not incorporated, a person with executive or administrative authority in the organisation;

operations includes activities;

power system means a system for the generation, transmission or distribution of electricity;

powerline means –

(a) a set of cables for the transmission or distribution of electricity and their supporting or protective structures; and

(b) associated equipment for the transmission or distribution of electricity;

prepayment meter system has the same meaning as in the National Energy Retail Law (Tasmania);

price includes a tariff and a charge;

public land means land –

(a) belonging to the Crown, an Agency, within the meaning of the State Service Act 2000 or an instrumentality of the Crown; or

(b) belonging to a local authority;

regulated offer retailer means an authorised retailer who is declared to be a regulated offer retailer in an order made under section 38B(1) ;

regulations means regulations made and in force under this Act;

Regulator means the person appointed as the Regulator under section 5 ;

retailer means a person who sells, or proposes to sell, for premises, electricity to a customer;

retailer authorisation has the meaning it has in the National Energy Retail Law (Tasmania);

reviewable decision means any direction, decision or determination under this Act, the regulations or the Code, other than –

(a) a decision of the Regulator or the Minister to make an order, approval or determination under Division 4 , 4A or 5A of Part 3 ; or

(b) a direction, decision or determination declared by this Act, the regulations or the Code not to be reviewable;

small customer means a customer who is a small customer under the National Energy Retail Law (Tasmania);

standard retail contract has the meaning it has in the National Energy Retail Law (Tasmania);

standing offer prices has the meaning it has in the National Energy Retail Law (Tasmania);

subsidiary has the same meaning as in the Corporations Act;

supply of electricity means the delivery of electricity to the electrical installation of a customer;

transmission of electricity means the carrying of electricity between different points using a transmission system;

transmission system has the same meaning as in the National Electricity Rules;

WEP order means an order made under section 40ABA(1) ;

workplace health and safety Secretary means the Secretary of the department responsible for the administration of the Work Health and Safety Act 2012 .

3A. Meaning of distribution network and electricity generating plant

(1) In this Act, a reference to *distribution network* is a reference to the apparatus, electric lines, equipment, plant, and buildings, used to convey or control the conveyance of electricity, that the National Electricity Rules specify as, or as forming part of, a distribution system.

(2)

(3) An electricity generating plant is a facility or plant that is or could be used to generate electricity, and includes all equipment at that facility or plant.

(4) The Regulator may declare that any equipment, or any equipment of a specified class, is to be treated as part of a specified distribution network, transmission system or electricity generating plant for the purposes of the Act, the regulations and the Code generally or for the purposes of a specified provision of the Act, the regulations or the Code.

(5) While a declaration under subsection (4) has effect, any equipment to which the declaration applies –

(a) forms part of the specified distribution network, transmission system or electricity generating plant for the specified purpose; and

(b) does not form part of any other distribution network, transmission system or electricity generating plant for the specified purpose.

(6) In subsections (3) , (4) and (5) –

equipment means powerlines, substations, plant, structures or other equipment;

specified means specified in the relevant declaration made under subsection (4) .

(7) The Regulator may amend or revoke a declaration under subsection (4) .

(8) A declaration under subsection (4) or an amendment or revocation of such a declaration –

(a) is to be made by notice published in the *Gazette*; and

(b) is not a statutory rule for the purposes of the Rules Publication Act 1953 .

4. Crown to be bound

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 - Administration

Division 1 - The Regulator

5. The Regulator

- (1) The office of the Regulator is established.
- (2) The Regulator, within the meaning of the Economic Regulator Act 2009 , is appointed as the Regulator.

6. Regulator's functions and powers

- (1) The Regulator's functions are –
 - (a) to administer the licensing system for electricity entities established by this Act; and
 - (ab) to monitor and provide reports in relation to the development of competition in respect of the electricity supply industry; and
 - (b) to monitor and regulate technical standards in the electricity supply industry; and
 - (ba) to monitor and enforce the compliance of electricity entities with their licence conditions; and
 - (c) to perform and exercise the functions and powers of Jurisdictional Regulator in respect of Tasmania under the National Electricity Rules; and
 - (ca) to issue, maintain, administer and enforce the Code; and
 - (d) to carry out the other functions assigned to the Regulator under this Act, the regulations and the Code.
- (2) In exercising powers and functions under this Act, other than the powers and functions referred to in subsection (1)(c) , the Regulator's objectives are–
 - (a) to promote efficiency and competition in the electricity supply industry; and
 - (b) to establish and maintain a safe and efficient system of electricity generation, transmission, distribution and supply; and
 - (c) to establish and enforce proper standards of safety, security, reliability and quality in the electricity supply industry; and
 - (d) to protect the interests of consumers of electricity.
- (3) The Regulator has power to do all things necessary or convenient to be done in connection with, incidental to or related to the performance and exercise of the Regulator's functions and powers.
- (4) In performing and exercising his or her functions and powers, the Regulator is to take into account the provisions of the National Electricity Rules and the desirability of avoiding duplication of, or inconsistency with, regulatory arrangements under the National Electricity Rules.
- (5) In performing and exercising his or her functions and powers, other than the functions and powers referred to in subsection (1)(c) , the Regulator is to take into account the policy that it is desirable for the businesses of electricity entities and authorised retailers to be financially sustainable.
- (6)

7. Enforcement of Act by Regulator

- (1) If the Regulator is satisfied that an electricity entity has contravened this Act or the conditions of the licence held by the electricity entity, the Regulator may impose on the electricity entity a monetary penalty not exceeding –
 - (a) 5 000 penalty units for the first day on which the contravention occurs; and

(b) a further fine not exceeding 200 penalty units for each subsequent day on which the contravention continues.

(2) If there is more than one electricity entity that may be taken to have contravened this Act in respect of a single event, the Regulator may take any action under this section in respect of one or more such electricity entities as the Regulator thinks fit.

(3) A decision of the Regulator under this section may be subject to administrative review under Part 9 .

8. Administrative fairness and independence

(1) In exercising powers and functions under this Act, the Regulator must not unfairly discriminate between electricity entities that are authorised to provide similar services, between authorised retailers, between customers for electricity or between other persons.

(2) In exercising powers and functions under this Act, the Regulator is not subject to the direction of the Minister or any other person.

(3) Subsection (2) does not apply in respect of the directions of the Minister properly contained in a notice under section 9 , section 36 or the directions given in accordance with regulations for the purposes of Division 4 or 4A of Part 3 .

9. Special reports to Minister

The Regulator must report to the Minister on subjects on which the Minister requires a report as and when required by the Minister.

10. Annual report

The annual report made by the Regulator, within the meaning of the Economic Regulator Act 2009 , under that Act is to include a report on the performance and exercise of the Regulator's functions and powers under this Act.

10A. State of the industry report

(1) The Regulator may prepare a report on the state of the electricity supply industry (the *state of the industry report*).

(2) The Regulator is to prepare a state of the industry report –

(a) on the Regulator's own initiative; or

(b) if directed to do so by the energy Minister and the Minister assigned the administration of the Economic Regulator Act 2009 .

(3) A direction under subsection (2)(b) to prepare a state of the industry report may include the terms of reference for that state of the industry report.

(4) The Regulator is to cause a copy of the state of the industry report to be –

(a) laid before each House of Parliament within 7 sitting-days after preparing it; and

(b) made available to members of the public in such a manner as the Regulator considers appropriate.

10B. Network reliability report

(1) At least once in every 3-year period, the Regulator is to conduct a review into the reliability of network services.

(2) After conducting a review under subsection (1) , the Regulator is to prepare a report on the findings of the review (the *network reliability report*).

(3) The Regulator is to conduct a review under subsection (1) –

(a) on the Regulator's own initiative; or

(b) if directed to do so by the energy Minister and the Minister assigned the administration of the Economic Regulator Act 2009 .

(4) A direction under subsection (3)(b) to conduct a review under subsection (1) may include the terms of reference for the network reliability report that is to be prepared in respect of the review.

(5) The Regulator is to cause a copy of the network reliability report to be –

(a) laid before each House of Parliament within 7 sitting-days after preparing it; and

(b) made available to members of the public in such a manner as the Regulator considers appropriate.

10C. Price comparison report

(1) In this section –

pricing Minister means the Minister assigned the administration of Division 4 of Part 3.

(2) The Regulator –

(a) may prepare a report into the comparison of electricity prices available to small customers across Australian jurisdictions (the *price comparison report*); and

(b) is to prepare a report into the comparison between the prices of a prepayment meter system and all other relevant retail electricity prices for small customers in Tasmania (the *prepayment price comparison report*).

(3) The Regulator is to prepare a price comparison report –

(a) on the Regulator's own initiative; or

(b) if directed to do so by the pricing Minister and the Minister assigned the administration of the Economic Regulator Act 2009 .

(4) A direction under subsection (3)(b) to prepare a price comparison report may include the terms of reference for that report.

(5) The Regulator is to prepare a prepayment price comparison report annually.

(6) The Regulator is to cause a copy of each report prepared under subsection (2) to be –

(a) laid before each House of Parliament within 7 sitting-days after preparing it; and

(b) made available to members of the public in such a manner as the Regulator considers appropriate.

Division 2 - Executive and advisory committees

11. Executive committees

(1) An executive committee may be established by regulation to exercise specified powers and functions as a delegate of the Regulator.

(2) A regulation establishing an executive committee to exercise specified powers and functions operates as a delegation of the relevant powers and functions to the committee (which is revocable only as provided in the regulation itself or by a later regulation).

(3) The members of an executive committee are appointed and hold office on terms and conditions determined by the Minister.

(4) A committee established under this section –

(a) is responsible to the Regulator for the proper exercise of its powers and functions; and

(b) is subject to control and direction by the Regulator; and

(c) must report on the exercise of delegated powers and functions as required by the Regulator.

12. Advisory committees

- (1) The Minister or the Regulator may establish an advisory committee to advise the Minister or the Regulator (or both) on specified aspects of the administration of this Act.
- (2) The members of an advisory committee established under this section by the Minister are appointed and hold office on such terms and conditions as the Minister determines.
- (3) The members of an advisory committee established under this section by the Regulator are appointed and hold office on such terms and conditions as the Regulator determines.

Division 3 - Delegation

13. Delegation

The Regulator may delegate powers to a person or body of persons that is, in the Regulator's opinion, competent to exercise the relevant powers.

Division 4 - Regulator's power of direction

14. Regulator's power of direction

- (1) The Regulator may, for the purposes of this Act, give directions to an electricity entity.
- (2) A direction under this section must be given in writing.

Division 5 - Power to obtain information

15. Regulator's power to require information

- (1) The Regulator may, by written notice, require a person to give the Regulator, within a time stated in the notice (which must be reasonable), information in the person's possession that the Regulator reasonably requires for the administration of this Act, the regulations, the Code and the National Electricity Rules.
- (2) A person required to give information under this section must provide the information within the time stated in the notice.

Penalty: For a body corporate a fine not exceeding 100 penalty units and for a natural person a fine not exceeding 50 penalty units.

- (3) A person may not be compelled to give information under this section if the information might tend to incriminate the person of an offence.
- (4) A requirement to provide information under this section is not reviewable.

Division 6 - Confidential information

16. Obligation to preserve confidentiality

- (1) The Regulator must preserve the confidentiality of information that –
 - (a) could affect the competitive position of an electricity entity or other person; or
 - (b) is commercially sensitive for some other reason.
- (2) Information classified by the Regulator as confidential is not liable to disclosure under the Right to Information Act 2009 .
- (3) A classification of information by the Regulator as confidential (or not confidential) is not reviewable.

Division 7 - Conferral of Regulator's functions and powers on AER

16A. Conferral agreement

On behalf of the State, the Minister may enter into an agreement with the Commonwealth in respect of the performance and exercise of any or all of the functions and powers of the Regulator under this Act, the regulations or the Code by the AER.

16B. Conferral notice

- (1) If the Minister has entered into an agreement under section 16A , the Minister may specify, by notice published in the *Gazette*, the functions and powers of the Regulator under this Act, the regulations or the Code that are to be performed and exercised by the AER.
- (2) A notice under subsection (1) –
 - (a) is to be consistent with the agreement made under section 16A ; and
 - (b) may provide for all matters relating to the conferral of the functions and powers of the Regulator on the AER.
- (3) The Minister may amend or repeal a notice under subsection (1) by notice published in the *Gazette*.
- (4) A notice under subsection (1) or (3) takes effect –
 - (a) on a day, or at a time, specified in it; or
 - (b) on the happening of an event specified in it; or
 - (c) if no day, time or event is so specified in it, on the day it is published in the *Gazette*.
- (5) A notice under subsection (1) or (3) must not specify a day, time or event for the purposes of subsection (4) (a) or (b) that is earlier than the time at which the notice would take effect if no day, time or event were so specified.
- (6) A notice under subsection (1) or (3) is not a statutory rule for the purposes of the Rules Publication Act 1953 .

16C. Conferral of transmission pricing functions and powers

- (1) On the taking effect of a notice referred to in section 16B in respect of the conferral on the AER of a function or power of the Regulator, that function or power –
 - (a) is conferred on the AER; and
 - (b) at the discretion of the AER, may be performed or exercised by the AER.
- (2) The AER may do all things necessary or convenient to be done in connection with, or incidental to, the performance or exercise of a function or power conferred on it by subsection (1) .
- (3) A function or power conferred on the AER by subsection (1) may be performed or exercised by the Regulator.
- (4) Despite subsection (3) , the Regulator may not perform or exercise a function or power conferred on the AER by subsection (1) in relation to any matter if –
 - (a) the AER is performing or exercising that function or power in respect of that matter; or
 - (b) the AER has performed or exercised that function or power in respect of that matter; or
 - (c) the Regulator believes that the AER intends to perform or exercise that function or power in respect of that matter.
- (5) Despite section 16 , any other provision of this Act, any other Act and any other law, the Regulator is authorised, on his, her or its own initiative or at the request of the AER –
 - (a) to provide the AER with such information (including information given in confidence) in the possession or control of the Regulator that is reasonably required by the AER for the purposes of performing and exercising the functions and powers conferred on it by this section; and
 - (b) to provide the AER with such other assistance as is reasonably required by the AER for the purposes of performing and exercising those functions and powers.

(5A) Despite section 16 , any other provision of this Act, any other Act and any other law, the Regulator may authorise the AER to disclose information provided under subsection (5) even if the information was given to the Regulator in confidence.

(5B) Nothing done, or authorised to be done, by the Regulator when acting under subsection (5) or (5A) –

- (a) constitutes a breach of, or default under, this Act, another Act or another law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a person wholly or in part from an obligation.

(6) Except as otherwise specified in a notice referred to in section 16B , the provisions of this Act, the regulations and the Code apply to the AER in the performance and exercise by it of functions and powers conferred on it by this section as if it were the Regulator.

16D. Termination of conferral agreement

On the termination of an agreement referred to in section 16A –

- (a) all notices under section 16B in respect of the conferral on the AER of a function or power of the Regulator are revoked; and
- (b) the conferral of that function or power on the AER ceases to have effect; and
- (c) the AER is no longer entitled to perform or exercise that function or power.

PART 3 - The Electricity Supply Industry

Division 1 - Licensing of electricity entities

Subdivision 1 - Issue of licences

17. Requirement for licence

(1) A person must not carry on operations in the electricity supply industry for which a licence is required unless the person holds a licence under this Act authorising the relevant operations.

Penalty: For a body corporate a fine not exceeding 1 000 penalty units and for a natural person a fine not exceeding 500 penalty units.

(2) The operations in the electricity supply industry for which a licence is required are –

- (a) generation of electricity; or
- (b) transmission of electricity; or
- (c) distribution of electricity; or
- (d) the retailing of electricity in the Bass Strait Islands; or
- (e) other operations for which a licence is required by the regulations.

(3) The regulations may provide that licences are not required in such circumstances as are specified in the regulations.

18. Application for licence

(1) An application for a licence –

(a) must be made to the Regulator in a form approved by the Regulator and contain the information specified in the form; and

(b) must identify the applicant's officers and, if applicable, its major shareholders; and

(c) must –

(i) if authority for generation of electricity is sought, contain details of the generating plant or proposed generating plant, identify the transmission system or distribution network to which the generating plant is to be connected and describe how the connection is to be made; and

(ii) if authority to operate a transmission system is sought, contain details of the transmission system or proposed transmission system and, if the transmission system is to be connected to another transmission system, details of the proposed connection; and

(iii) if authority to operate a distribution network is sought, contain details of the distribution network or proposed distribution network (including details of the area to be served by the distribution network); and

(iv) if authority for retailing electricity in the Bass Strait Islands is sought, contain details of the business or proposed business; and

(v) if authority is sought to carry out other operations in the electricity supply industry for which a licence is required under the regulations, contain details of the proposed operations and the other information required under the regulations; and

(d) must be accompanied by the application fees required under the regulations.

(2) The applicant must give the Regulator further relevant information requested by the Regulator.

19. Consideration of application

(1) The Regulator must consider an application for the issue of a licence and may issue, or refuse to issue, the licence.

(2) The Regulator may only issue a licence if satisfied that –

(a) the applicant is a suitable person to hold the licence; and

(b)

(c) in the case of a licence authorising the generation of electricity, the generating plant (or proposed generating plant) will generate electricity of the appropriate quality for the relevant transmission system or distribution network; and

(d) in the case of a licence authorising the operation of a transmission system, the transmission system has (or the proposed transmission system will have) the necessary capacity for transmitting electricity safely; and

(e) in the case of a licence authorising the operation of a distribution network, the distribution network has (or the proposed distribution network will have) the necessary capacity for distributing electricity safely; and

(f)

(fa)

(g) in the case of a licence authorising other operations in the electricity supply industry for which a licence is required under the regulations, the applicant meets any special requirements imposed by the regulations for the holding of the licence; and

(h) in the case of a licence of any class, the grant of the licence would be consistent with criteria (if any) prescribed by regulation for a licence of the relevant class.

(2A)

(3) In deciding whether an applicant is a suitable person to hold a licence, the Regulator may consider –

(a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and

(b) the financial, technical and human resources available to the applicant; and

(c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and

(d) other matters prescribed by regulation.

19A. Bass Strait Islands power system

(1) In this section –

Bass Strait Islands power system means the system for generation and distribution of electricity in the Bass Strait Islands.

(2) On the day on which this section comes into operation, the Regulator must issue –

(a) a licence to the Hydro-Electric Corporation to carry on, in relation to the Bass Strait Islands, the operations in the electricity supply industry referred to in section 17(2)(a) ; and

(b) a licence to the Hydro-Electric Corporation to carry on, in relation to the Bass Strait Islands, the operations in the electricity supply industry referred to in section 17(2)(c) ; and

(c) a licence to the Hydro-Electric Corporation to carry on the operations in the electricity supply industry referred to in section 17(2)(d) .

(3) Section 19 , section 21 , section 27(1) and (3) , section 29 and section 30 do not apply in relation to a licence issued under subsection (2) .

(4) On the day on which this section comes into operation, section 4 of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995* ceases to apply in relation to the Hydro-Electric Corporation in respect of regulated operations, in an electricity supply industry referred to in section 17(2)(a), (c) or (d), carried on in relation to the Bass Strait Islands.

(5) The Regulator, with the approval of the Treasurer and the Minister, may –

(a) by notice in writing to the Hydro-Electric Corporation, revoke a licence issued under subsection (2); or

(b) by notice in writing to the holder of a licence issued in accordance with subsection (6), revoke the licence.

(6) If a licence that is revoked under subsection (5) is –

(a) a licence to carry on operations in an electricity supply industry that is referred to in section 17(2)(a), the Regulator may issue to a person under section 19 a licence, to carry on such operations in relation to the Bass Strait Islands, that is subject to the condition specified in section 19B(2); or

(b) a licence to carry on operations in an electricity supply industry that is referred to in section 17(2)(c), the Regulator may issue to a person under section 19 a licence, to carry on such operations in relation to the Bass Strait Islands, that is subject to the condition specified in section 19B(2) and the condition specified in section 19B(3); or

(c) a licence to carry on operations in an electricity supply industry that is referred to in section 17(2)(d), the Regulator may issue to a person under section 19 a licence, to carry on such operations in relation to the Bass Strait Islands, that is subject to the condition specified in section 19B(2).

(7) Nothing in subsection (6) is to be taken to prevent the Regulator issuing under section 19 a licence that is not subject to the condition specified in section 19B(2) or the condition specified in section 19B(3).

(8) The Regulator may only issue a licence in accordance with subsection (6) with the approval of the Treasurer and the Minister and the applicant for the licence.

19B. Conditions of, and liabilities in respect of, certain licences in relation to Bass Strait Islands

(1) This section applies to –

(a) a licence issued under section 19A(2); and

(b) a licence issued in accordance with section 19A(6).

(2) Without limiting the conditions to which a licence to which this section relates may be subject under this Act, such a licence is subject to the condition that it only authorises the carrying on in the Bass Strait Islands of the operations in an electricity supply industry to which the licence relates.

(3) It is a condition of a licence to which this section relates, issued in respect of the electricity supply industry referred to in section 17(2)(c), that the holder of the licence must –

(a) continuously monitor the operation of the Bass Strait Islands power system; and

(b) control the input of electricity and the loads placed on the Bass Strait Islands power system to ensure that –

(i) the integrity of the Bass Strait Islands power system is maintained; and

(ii) the Bass Strait Islands power system operates efficiently, reliably and safely; and

(c) perform the functions in relation to the Bass Strait Islands that are assigned to the holder of the licence under the regulations or the Code; and

(d) exercise the powers in relation to the Bass Strait Islands that the holder of the licence is required to exercise under the regulations or the Code.

(4) In performing, in relation to the Bass Strait Islands, the functions or powers referred to in subsection (3), the holder of a licence to which this section relates has, in addition to the powers referred to in subsection (3),

any other power imposed or conferred on the holder of the licence by the regulations or the Code.

(5) The holder of a licence to which this section relates is not liable for an act or omission, in relation to the Bass Strait Islands, that is done, or omitted to be done, in good faith, by –

- (a) the holder of the licence; or
- (b) an employee or agent of the holder of the licence –

in the exercise or performance, or the purported exercise or performance, of a power or function, referred to in subsection (3) or (4), of the holder of the licence.

(6) An employee or agent of the holder of a licence to which this section relates is not personally liable for an act, or omission, in relation to the Bass Strait Islands, that is done, or omitted to be done, in good faith, in the exercise or performance, or the purported exercise or performance, of a power or function, referred to in subsection (3) or (4), of the holder of the licence.

Subdivision 2 - Terms and conditions of licence

20. Authority conferred by licence

(1) A licence authorises the electricity entity that holds the licence to carry on operations in the electricity supply industry for which a licence is required in accordance with the terms and conditions of the licence.

(2) The operations authorised by a licence need not be all of the same character but may consist of a combination of different operations for which a licence is required.

21. Term of licence

(1) A licence is granted for a term (not exceeding 10 years) stated in the licence.

(2) The term of a licence is, subject to the conditions of the licence, renewable.

(3) An application for renewal of a licence must be made, in writing, to the Regulator at least 3 months, but not more than 6 months, before the end of the licence term (but the Regulator may grant an exemption from this requirement in an appropriate case).

(4) The Regulator must not unreasonably refuse an application for renewal of a licence.

22. Conditions of licence

(1) A licence is subject to the following conditions:

- (a) conditions determined by the Regulator on the issue or amendment of the licence;
- (b) a condition that the electricity entity must comply with standards, codes and requirements stated in the licence or prescribed by regulation;
- (c) a condition that the electricity entity must comply with this Act and any regulation that applies to the electricity entity;
- (d) a condition that the electricity entity must comply with the provisions of the Code, other than any provisions specifically exempted from the operation of this paragraph in the licence;
- (e) a condition that the electricity entity must comply with directions or requirements given or made by the Regulator under this Act, the regulations or the Code;
- (f) a condition that the electricity entity must comply with –
 - (i) any award made under the Energy Ombudsman Act 1998 ; and
 - (ii) any decision of any court in respect of a matter that could have been the subject of a complaint under the Energy Ombudsman Act 1998 or resulted from proceedings commenced on the recommendation of the Ombudsman under that Act; and
 - (iii) any decision of any tribunal, board or other person in respect of a matter that could have been the subject of a complaint under the Energy Ombudsman Act 1998 or resulted from the

referral of that matter to the tribunal, board or other person by the Ombudsman under that Act;

- (g) a condition that the electricity entity must pay periodic and other fees and charges fixed by or in accordance with the licence;
- (h) in respect of a licence authorising the transmission, distribution or retailing of electricity, a condition that the electricity entity cannot use any prescribed expression or logo or any expression or logo of a prescribed class –
 - (i) as part of the trading name of the entity; or
 - (ii) in any way to promote the entity or its products;
- (i) a condition that the electricity entity become a member of any relevant prescribed body;
- (j) in respect of a licence authorising the generation of electricity, a condition that the electricity entity publish information relating to the electricity entity's energy production capability of the kind prescribed in the regulations.

(2) Without limiting subsection (1) , the conditions of a licence that the Regulator may determine may include conditions of a prescribed kind.

(3) The Regulator must not determine as a condition of a licence authorising the generation of electricity issued to the Hydro-Electric Corporation a condition that relates to a matter referred to in section 36(1) .

23. Matters to be included in licence

A licence must –

- (a) state the name of the electricity entity that holds the licence; and
- (b) state the operations in the electricity supply industry that are authorised by the licence (including, where relevant, the geographic location of the operations); and
- (c) state the term of the licence; and
- (d) contain the conditions determined by the Regulator.

Subdivision 3 - Special licence obligations

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24A. Licence condition relating to system security capability

If a licence authorises an electricity entity to operate a transmission system, it is a condition of the licence that the electricity entity must ensure that it has the capability to maintain the security of the system on mainland Tasmania.

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26. Obligation to supply

(1)

(2) An electricity entity is not obliged to supply electricity to a customer if–

- (a) the supply would overload the power system or prejudice in some other way the supply of electricity to other customers; or
- (b) the supply would result in contravention of the conditions of the electricity entity's licence; or
- (c) the supply would result in risk of fire or some other risk to life or property; or
- (d) the supply is or needs to be interrupted–

- (i) in an emergency; or
- (ii) in circumstances beyond the electricity entity's control; or
- (iii) for carrying out work on electricity infrastructure; or
- (iv) to comply with a direction to the electricity entity under this Act; or
- (e) the electricity entity is exempted from the obligation by regulation.

Subdivision 4 - Miscellaneous

27. Notice of licence decisions and limitations on review and appeal

- (1) The Regulator must give an applicant for the grant or renewal of a licence written notice of the Regulator's decision on the application.
- (2) The Regulator must give the holder of a licence written notice of any decision by the Regulator affecting the terms or conditions of the licence.
- (3) A decision by the Regulator on an application for the grant or renewal of a licence is reviewable under this Act on application by the applicant but is not reviewable on the application of any other person.
- (4) A decision by the Regulator affecting the terms or conditions of a licence is reviewable under this Act on application by the electricity entity that holds the licence but is not reviewable on the application of any other person.

28. Amendment of licence

- (1) The Regulator may amend the terms or conditions of an electricity entity's licence.
- (2) An amendment may only be made –
 - (a) with the electricity entity's agreement; or
 - (b) after giving the electricity entity reasonable notice of the proposed amendment and allowing the entity a reasonable opportunity to make representations about the proposed amendment.

29. Transfer of licence

- (1) A licence may be transferred with the Regulator's agreement.
- (2) The Regulator may impose conditions on the transfer of a licence, or amend the terms and conditions of the licence on its transfer.

30. Surrender of licence

- (1) An electricity entity may, by written notice given to the Regulator, surrender its licence.
- (2) The notice must be given to the Regulator at least 6 months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.
- (3) The Regulator may, by agreement with the electricity entity, shorten the required period of notice.

31. Register of licences

- (1) The Regulator must keep a register of the licences issued to electricity entities under this Act.
- (2) The Register must include –
 - (a) the terms and conditions of each licence; and
 - (b) other information required under the regulations.
- (3) A person may, on payment of a fee fixed by the Regulator, inspect the Register.

Division 2 -

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34A.

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Division 3 - Special provisions relating to Hydro-Electric Corporation

36. Ministerial notice relating to Basslink

(1) After consulting with the Hydro-Electric Corporation, the Minister may establish, by written notice provided to the Hydro-Electric Corporation, principles to be followed by the Hydro-Electric Corporation in relation to –

(a) the exercise by it of any rights it has under any agreement specified in that notice –

(i) to make, revise or amend; or

(ii) to request the making, revising or amending of; or

(iii) to control, approve or direct the content of –

network dispatch offers under the National Electricity Rules in relation to Basslink; and

(b) the making available by the Hydro-Electric Corporation of any moneys that –

(i) are payable to the Hydro-Electric Corporation under any agreement specified in that notice; and

(ii) are calculated by reference to, or relate to, moneys received or receivable under the National Electricity Rules in respect of the transfer of electricity from Victoria to Tasmania by means of Basslink.

(2) A notice under subsection (1) may provide for any other matter related to, or necessary or convenient to be included in respect of, a matter referred to in that subsection including, but not limited to –

(a) the day by which, in each year during which the notice is in force, the Hydro-Electric Corporation must prepare and provide a draft compliance plan under section 37 ; and

(b) the functions of the Regulator in respect of the compliance by the Hydro-Electric Corporation with the principles established in the notice and a compliance plan under section 37 ; and

(c) terms of reference and objectives for the Regulator in performing his or her functions; and

(d) matters and information required to be included in a compliance plan under section 37 ; and

(e) disclosure of information by the Hydro-Electric Corporation; and

(f) the manner in which moneys referred to in subsection (1)(b) are to be made available; and

(g) any process to be followed by the Hydro-Electric Corporation in giving effect to the principles established in the notice.

(3) The Minister, by written notice provided to the Hydro-Electric Corporation, may amend or revoke a notice under subsection (1) or this subsection.

- (4) The Minister is to provide a copy of a notice under subsection (1) or (3) to the Regulator.
- (5) A notice under subsection (1) or (3) –
 - (a) takes effect on the day on which it is provided to the Hydro-Electric Corporation or on a later day specified in it; and
 - (b) is not a statutory rule for the purposes of the Rules Publication Act 1953 .

37. Compliance plan

- (1) In each year during which a notice under section 36(1) is in force, the Hydro-Electric Corporation must prepare and provide a draft compliance plan to the Minister on or before the day specified in the notice.
- (2) The draft compliance plan is to –
 - (a) specify details as to the manner in which, and when, the Hydro-Electric Corporation proposes to comply with the principles established in the notice under section 36(1) ; and
 - (b) contain any matters and information required by that notice to be included in the compliance plan.
- (3) On receipt of a draft compliance plan, the Minister may do any one or more of the following:
 - (a) require the Hydro-Electric Corporation to provide further information;
 - (b) require the Hydro-Electric Corporation to provide to the Minister within the time specified by the Minister an amended draft compliance plan;
 - (c) amend the draft compliance plan or the amended draft compliance plan;
 - (d) approve the draft compliance plan or an amended draft compliance plan as the compliance plan.
- (4) If the Hydro-Electric Corporation fails to provide a draft compliance plan to the Minister by the day it is required to do so, the Minister may determine a compliance plan for the Hydro-Electric Corporation.
- (5) The compliance plan –
 - (a) takes effect when the Hydro-Electric Corporation receives –
 - (i) notice of its approval under subsection (3)(d) ; or
 - (ii) notice of its determination under subsection (4) and a copy of the compliance plan; and
 - (b) has effect until a further compliance plan so approved or determined by the Minister takes effect.
- (6) The Hydro-Electric Corporation must –
 - (a) comply with the compliance plan; and
 - (b) publish the compliance plan on its website.
- (7) Each year the Hydro-Electric Corporation must –
 - (a) have its compliance with the compliance plan audited by a person approved by the Regulator; and
 - (b) provide a copy of the report of that person on the audit to the Regulator.

37A.

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Division 4 - Retailing of electricity to certain customers

Subdivision 1 - Retailing generally

38. Only Aurora Retail may retail electricity to non-contestable customers on mainland Tasmania

- (1) A person other than Aurora Retail must not sell, or offer to sell, electricity to a non-contestable customer at premises situated on mainland Tasmania.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) Subsection (1) does not apply, in relation to a non-contestable customer who is a move-in customer, within the meaning of the National Energy Retail Law (Tasmania), until 3 months after the non-contestable customer becomes such a customer.

(3) Subsection (1) does not apply in relation to –

- (a) a person to whom section 23 of the National Energy Retail Law (Tasmania) Act 2012 applies; or
- (b) a sale of electricity to which section 23 of the National Energy Retail Law (Tasmania) Act 2012 applies or an offer to sell such electricity; or
- (c) a person who is an exempt seller, within the meaning of the National Energy Retail Law (Tasmania), if the sale of electricity to which that subsection would otherwise apply is permitted, or not prohibited, by the terms of the exemption of the person.

(4) A retailer authorisation under the National Energy Retail Law (Tasmania) is of no effect under that Law to the extent that it authorises, or purports to authorise, an authorised retailer to sell electricity to a customer in contravention of this section.

(5) This section ceases to have effect immediately before 1 January 2014.

38A. Transitional provisions in relation to retail sales

(1) A person must not, in the period commencing on 1 January 2014 and ending immediately before 1 April 2014, sell electricity to a transitional customer at premises situated on mainland Tasmania, unless the person is a designated retailer, within the meaning of the National Energy Retail Law (Tasmania), in respect of the premises.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

(2) A person must not, in the period commencing on 1 April 2014 and ending on 30 June 2014, sell electricity to a transitional customer at premises situated on mainland Tasmania, unless the person is –

- (a) a regulated offer retailer (whether or not the person is the regulated offer retailer in respect of the premises); or
- (b) a designated retailer in respect of the premises under the National Energy Retail Law (Tasmania).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

(3) Subsections (1) and (2) do not apply in relation to –

- (a) a person to whom section 23 of the National Energy Retail Law (Tasmania) Act 2012 applies; or
- (b) a sale of electricity to which section 23 of the National Energy Retail Law (Tasmania) Act 2012 applies or an offer to sell such electricity; or
- (c) a person who is an exempt seller, within the meaning of the National Energy Retail Law (Tasmania), if the sale of electricity to which that subsection would otherwise apply is permitted, or not prohibited, by the terms of the exemption of the person.

(4) A retailer authorisation under the National Energy Retail Law (Tasmania) is of no effect under that Law to the extent that it authorises, or purports to authorise, an authorised retailer to sell electricity to a customer in contravention of this section.

(5) The Minister, by order –

(a) may specify conditions that must be satisfied before a transitional customer is permitted, during the period (in this section referred to as *the transitional period*) specified in the order to be the transitional period, to cease to be a customer of an authorised retailer and to become a customer of another authorised retailer; and

(b) may specify that an authorised retailer must –

(i) at the request of another authorised retailer, provide, during the transitional period, the other authorised retailer with the information; and

(ii) establish and maintain, during the transitional period, systems of information management – necessary or convenient to enable the other authorised retailer to determine whether the conditions specified in the order in accordance with paragraph (a) have been satisfied in relation to a transitional customer.

(6) Without limiting the generality of subsection (5), an order under that subsection may contain any one or more of the following conditions:

(a) a limit on the number of transitional customers who are permitted, in any period (*a specified period*), specified in the order, that occurs during the transitional period, to cease to be customers of an authorised retailer and to become customers of another authorised retailer;

(b) conditions relating to the sequence in which, and the time at which, transitional customers are permitted to cease to be customers of an authorised retailer, and to become customers of another authorised retailer, after the end of a specified period that occurs during the transitional period.

(7) The period specified in an order under subsection (5) to be the transitional period is to be a period that –

(a) begins on 1 April 2014; and

(b) ends on a date, specified in the order, that occurs before 1 January 2015.

(8) Nothing in any law of Tasmania authorises or requires an authorised retailer to –

(a) comply with a request by a transitional customer for electricity to be supplied to the premises of the customer; or

(b) submit or comply with a request, under the Retail Market Procedures, for the transfer to the authorised retailer of a transitional customer –

if the transfer of that customer to the authorised retailer would be inconsistent with a condition of an order made under subsection (5).

(9) In this section –

regulated offer retailer in respect of the premises means the regulated offer retailer who is, by virtue of an order under section 38B, the regulated offer retailer in respect of the premises;

Retail Market Procedures has the meaning it has in the National Electricity Rules;

transitional customer, in relation to premises, means a person who –

(a) is, immediately before 1 January 2014, a non-contestable customer in relation to the premises; or

(b) if the person had been, immediately before 1 January 2014, a customer in relation to the premises, would have been a non-contestable customer, in relation to the premises, under the Electricity Supply Industry (Customer) Regulations 2012, as in force immediately before 1 January 2014 –

and includes a transitional prepayment meter customer;

transitional prepayment meter customer, in relation to premises, means a person who is a customer to whom electricity is provided at the premises using a prepayment meter system.

38B. Regulated offer retailers

- (1) The Minister may, by order, declare an authorised retailer to be a regulated offer retailer in respect of premises.
- (2) The Minister may make more than one order under subsection (1), but each such order is to relate to a different authorised retailer.
- (3) An authorised retailer may be declared in an order under subsection (1) to be a regulated offer retailer –
 - (a) in respect of premises situated on mainland Tasmania or on a part of mainland Tasmania specified in the order; or
 - (b) in respect of premises of a type of premises specified in the order; or
 - (c) in respect of premises of a type of customer, specified in the order, for the premises; or
 - (d) in respect of premises for a period specified in the order –or in respect of premises by virtue of a combination of the factors referred to in paragraphs (a), (b), (c) and (d).
- (4) An authorised retailer may only be declared in an order under subsection (1) to be a regulated offer retailer if the retailer, any subsidiary of the retailer, or any related body corporate of the retailer, have between them more than 50,000 small customers at premises situated on mainland Tasmania.
- (5) For the avoidance of doubt, an order under subsection (1) continues to apply, unless it is revoked, even if the authorised retailer in relation to which it is made, any subsidiary of the retailer, or any related body corporate of the retailer, have, at any time after the order is made and while the order is in force, between them less than 50,000 small customers at premises situated on mainland Tasmania.
- (6) The Minister, by order, may revoke an order made under subsection (1).
- (7) The Minister –
 - (a) is to be taken to have made, on and from the day on which this section comes into force, an order under subsection (1) declaring Aurora Retail to be a regulated offer retailer in respect of premises situated on mainland Tasmania; and
 - (b) may revoke under subsection (6) the order that the Minister is to be taken, in accordance with paragraph (a), to have made under subsection (1).
- (8) In this section –

related body corporate, in relation to a regulated offer retailer, means a person that is a related body corporate of the retailer under the Corporations Act;

subsidiary, in relation to a regulated offer retailer, means a person that is a subsidiary of the retailer under the Corporations Act.

38C. Local area retailer

- (1) The Minister, by order, may declare a regulated offer retailer to be a local area retailer for this State for the purposes of the National Energy Retail Law (Tasmania).
- (2) The Minister, by order, may revoke an order made under subsection (1).
- (3) The Minister –
 - (a) is to be taken to have made, on and from the day on which this section comes into force, an order under subsection (1) declaring Aurora Retail to be a local area retailer for this State for the purposes of the National Energy Retail Law (Tasmania); and

(b) may revoke under subsection (2) the order that the Minister is to be taken, in accordance with paragraph (a) , to have made under subsection (1) .

39. HEC not to sell electricity to certain customers on, or be authorised retailer for, mainland Tasmania

(1) In this section –

related body corporate, in relation to the Hydro-Electric Corporation, means a person that, if the Hydro-Electric Corporation were a corporation within the meaning of the Corporations Act, would be a related body corporate of that corporation;

subsidiary, in relation to the Hydro-Electric Corporation, means a person that, if the Hydro-Electric Corporation were a corporation within the meaning of the Corporations Act, would be a subsidiary of that corporation.

(2) The Hydro-Electric Corporation, a subsidiary of the Hydro-Electric Corporation and a related body corporate of the Hydro-Electric Corporation must not sell, or offer to sell, electricity to a customer at premises situated on mainland Tasmania, other than electricity that is generated by an electricity generating plant that is prescribed for the purposes of this section to be an historic electricity generating plant.

Penalty: Fine not exceeding 1 000 penalty units.

(3) A retailer authorisation is of no effect to the extent that it authorises, or purports to authorise, the Hydro-Electric Corporation, a subsidiary of the Hydro-Electric Corporation, or a related body corporate of the Hydro-Electric Corporation, to sell electricity to a customer at premises situated on mainland Tasmania, other than electricity generated by an electricity generating plant that is prescribed for the purposes of this section to be an historic electricity generating plant.

Subdivision 2 - Charging for retail services

39A.

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40AA. Determination of certain maximum prices

(1) The Regulator must determine –

(a) the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers; or

(b) a method of determining the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers.

(2) The Regulator must make a separate determination under subsection (1) in relation to each regulated offer retailer.

(3) The Regulator may amend or revoke a determination under subsection (1) .

(4) An amendment to a determination under subsection (1) may not be made if the determination, as so amended, would be a determination that did not take into account the principles set out in section 40AB .

(5) The regulations may make provision in relation to –

(a) the making of determinations under this section; and

(b) the matters that are to be considered in taking into account the principles set out in section 40AB(1) ; and

(c) the amending or revocation of determinations under this section; and

(d) the making of adjustments to determinations under this section; and

(e) the charging to an electricity entity, or a regulated offer retailer, of costs incurred by the Regulator in exercising the Regulator's powers under this Division or the regulations.

(6) A determination made under this section remains in force for the period determined in accordance with the regulations.

(7) If the regulations make provision in relation to the making, amendment or revocation of a determination under this section, a determination under this section that is to be made, amended or revoked, is to be, respectively, made, amended or revoked in accordance with the regulations.

40AB. Principles to be taken into account in making determinations under section 40AA

(1) In determining for the purposes of section 40AA the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers, or a method of determining the maximum prices that may be charged by a regulated offer retailer under standard retail contracts in respect of small customers, the Regulator is to –

- (a) estimate the operational costs of the retailer in providing standard retail services; and
- (b) take into account the principle that the maximum prices that may be imposed by the retailer under standard retail contracts in respect of small customers are to be such as will enable the retailer, after the operational costs are taken into account, to make a reasonable return on its investment in respect of the provision of standard retail services, taking into account the risk of making that investment; and
- (c) take into account the principle that small customers should be protected from the adverse effects of the exercise of substantial market power by –
 - (i) the Hydro-Electric Corporation; or
 - (ii) the regulated offer retailer in relation to prices, pricing policies and standards of service in respect of the provision of standard retail services by the regulated offer retailer; and
- (d) take into account the principle that, for the purpose of benefiting the public interest, there is a need for efficiency in the provision of standard retail services.

(2) For the purposes of this section, the *operational costs* of the regulated offer retailer in providing standard retail services are –

- (a) the wholesale electricity costs of the regulated offer retailer in relation to the provision of those services; and
- (b) the transmission and distribution costs of the regulated offer retailer in relation to the provision of those services; and
- (c) the cost to serve of the regulated offer retailer in relation to the provision of those services; and
- (d) any other costs, incurred by the regulated offer retailer in relation to the provision of those services, that the Regulator thinks fit, including but not limited to –
 - (i) the cost of any obligation imposed on the retailer by or under this Act or by or under the National Energy Retail Law (Tasmania) Act 2012 ; or
 - (ii) the costs to the retailer, in relation to the generation of electricity, that may be imposed under any Commonwealth legislation relating to the emission of carbon.

(3) For the purposes of this section, the *wholesale electricity costs* of a regulated offer retailer in relation to the provision of standard retail services consist of –

- (a) if a WEP order is in effect under section 40ABA – the costs of the retailer in purchasing electricity for the purposes of providing those services, calculated in accordance with the methodology for calculating costs that is specified in subsection (3A) ; or
- (b) if a WEP order is not in effect under section 40ABA – the costs of the retailer in purchasing electricity for the purposes of providing those services, calculated in accordance with the methodology for calculating costs (which includes the approved methodology) that is specified in subsection (3B) .

(3A) For the purposes of subsection (3)(a) , the methodology for calculating costs consists of the multiplication, of the number of units of electricity purchased by the retailer for the purposes of providing

standard retail services, by the wholesale electricity price set out in the WEP order that is in effect.

(3B) For the purposes of subsection (3)(b), the methodology for calculating costs consists of the costs of the retailer in purchasing electricity for the purposes of providing standard retail services, including any adjustment to the costs that would be made if the regulated offer retailer and the Hydro-Electric Corporation were to enter into a contract that –

(a) was a contract in an approved standard form determined under section 43G(1) for a load following swap; and

(b) contained prices calculated in accordance with the approved methodology in relation to contracts in that approved standard form; and

(c) related to the same number of units of electricity as the number of units of electricity purchased by the retailer for the purposes of providing those services.

(4) For the purposes of this section, the **transmission and distribution costs** of the regulated offer retailer in relation to the provision of standard retail services consist of –

(a) the prices, as determined in accordance with any relevant distribution determination made under the National Electricity Rules, charged to the regulated offer retailer for the distribution of electricity; and

(b) the prices, as determined in accordance with any relevant transmission determination made under the National Electricity Rules, charged to the regulated offer retailer for the transmission of electricity –

but only in so far as the costs relate to electricity used in the provision of standard retail services.

(5) For the purposes of this section, the **cost to serve** of the regulated offer retailer in relation to the provision of standard retail services consists of the costs (other than those referred to in subsection (2)(a), (b) or (d)) that are, in the opinion of the Regulator, reasonably incurred by the regulated offer retailer in the efficient provision of those services.

(6) In this section –

standard retail services, in relation to a regulated offer retailer, means services to be provided by the retailer under standard retail contracts in respect of small customers.

40ABA. Wholesale electricity price order

(1) The Minister, by order, may determine an amount to be the wholesale electricity price to a retailer for a unit of electricity specified in the order.

(2) An order under subsection (1) (a **WEP order**) –

(a) must specify –

(i) that the order takes effect on and from the day on which notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 ; or

(ii) a day, after the day on which notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 , to be the day on which the order takes effect; and

(b) must specify the financial year at the end of which the order is to cease to be in effect.

(3) Except in relation to the first WEP order made under this section, notice of the making of a WEP order is to be published in the *Gazette* in accordance with the Rules Publication Act 1953 before the 15 May immediately before the financial year that is specified in the order as the financial year at the end of which the order is to cease to be in effect.

(4) A WEP order –

(a) takes effect on the day on which notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 or, if a later day is specified in the order as the day on which the order is to take effect, that later day; and

(b) ceases to be in effect –

- (i) at the end of the financial year specified in the order to be the financial year at the end of which the order is to cease to be in effect; or
- (ii) on the day on which an order under subsection (7) revoking the order takes effect; or
- (iii) immediately before another WEP order takes effect –

whichever occurs first.

(5) If a WEP order is in effect –

- (a) the WEP order applies under section 40AB in relation to the making of a determination under section 40AA while the WEP order is in effect; and
- (b) the calculation of any prices, in accordance with a determination made under section 40AA (whether the determination is made before or after the WEP order has effect) for a period specified in the determination, is, if such a calculation of prices has not already been made in relation to the period, to be made in relation to that period by taking into account the methodology specified in section 40AB(3A) ; and
- (c) any reference, in a determination, or a guideline, made by the Regulator under this Act, to the wholesale electricity price is to be taken to be a reference to the wholesale electricity price to a retailer for a unit of electricity specified in the WEP order; and
- (d) the Treasurer may, by notice to the Regulator and a regulated offer retailer, specify the criteria to be taken into account by the Regulator in deciding under section 41 whether to approve any draft standing offer prices submitted to the Regulator under section 41(2) by the regulated offer retailer.

(6) If –

- (a) a WEP order is in effect; and
- (b) a contract between a regulated offer retailer and the Hydro-Electric Corporation is in effect; and
- (c) the contract relates to managing the financial risk associated with the purchase by the regulated offer retailer of electricity to be supplied by the regulated offer retailer to small customers to whom standing offer prices relate –

the contract is to be taken to have the effect that the wholesale electricity price specified in the WEP order for a unit of electricity is to be the price payable by the regulated offer retailer in relation to each such unit of electricity that is so supplied.

(7) The Minister may, by order, revoke a WEP order.

(8) An order under subsection (7) must specify –

- (a) that the order takes effect on and from the day on which notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 ; or
- (b) a day, after the day on which notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 , to be the day on which the order takes effect.

(9) An order under subsection (7) takes effect on the day on which notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 or, if a later day is specified in the order as the day on which the order is to take effect, that later day.

(10) As soon as practicable after making a WEP order or an order under subsection (7) , the Minister must give a copy of the order to –

- (a) the Regulator; and
- (b) each regulated offer retailer.

40ABB. Effect of WEP order on certain provisions of instruments

(1) Clauses 5.1(b)(2), 5.1(b)(6)(iii) and 5.2(a)(2) of the guideline, made by the Regulator, entitled "Standing offer price approval process in accordance with the 2016 Standing Offer Determination" and dated 28 April 2016, are of no effect while a WEP order is in effect.

(2) Clause 10 of the determination made under section 40AA , entitled "Aurora Energy Pty Ltd 2016 Standing Offer Price Determination (2016 Price-Regulated Retail Service Price Determination)" and issued on 5 May 2016, as that determination is amended from time to time, is of no effect while a WEP order is in effect.

40AC. Making of first determinations under section 40AA in relation to regulated offer retailers

(1) The regulations may provide that –

- (a) the Minister is to make a submission to the Regulator in relation to each of the first determinations, in relation to each of the regulated offer retailers, to be made by the Regulator under section 40AA ; and
- (b) the submission may be made in relation to an authorised retailer as if the retailer were a regulated offer retailer; and
- (c) the submission is to specify the structure and methodology to be applied in the determination; and
- (d) the submission may specify the cost to serve for the purposes of section 40AB ; and
- (e) the submission is to specify the period for which the determination is to remain in force; and
- (f) the submission may specify that the Regulator is only to approve under section 41 draft standing offer prices to be fixed by a regulated offer retailer under section 40 in accordance with the determination, if the prices are in accordance with a pricing structure specified in the determination; and
- (g) the submission may specify a pricing structure that is to be included, for the purposes of paragraph (f) , in the determination.

(2) If –

(a) the regulations specify that the Minister is to make a submission to the Regulator in relation to each of the first determinations, in relation to each of the regulated offer retailers, to be made by the Regulator under section 40AA ; and

(b) a matter referred to in subsection (1)(c) , (d) , (e) , (f) or (g) is specified in the submission –

the determination is to be in accordance with the matter so specified.

(3) The regulations may provide that a determination made under regulations in force before this section comes into operation is to be taken to be a determination made under section 40AA in relation to the authorised retailer specified in the determination.

(4) A determination, in relation to a regulated offer retailer, to be made, or taken to be made, by the Regulator under section 40AA –

(a) may be specified to apply to an authorised retailer even though, at the time the determination is made, the authorised retailer is not a regulated offer retailer; but

(b) does not apply in relation to the authorised retailer until the retailer is a regulated offer retailer.

40AD. Declarations and determinations in relation to certain services

(1) The Regulator may declare that goods or a service that are or may be provided by an electricity entity, or an authorised retailer, specified in the declaration are a declared electrical service.

(2) A declaration may not be made under subsection (1) in relation to –

(a) a service provided under standard retail contracts in respect of small customers; or

(b) a distribution service or a transmission service.

(3) The Regulator may only make a declaration under subsection (1) in relation to goods, or a service, that are or may be provided by an electricity entity, or an authorised retailer, specified in the declaration, if –

(a) the electricity entity or authorised retailer has substantial market power in respect of the service; and

(b) the promotion of competition, efficiency or the public interest requires the making of the declaration.

(4) The Regulator may amend or revoke a declaration made under subsection (1) .

(5) If the Regulator declares in accordance with subsection (1) goods or a service to be a declared electrical service, the Regulator may, in accordance with the regulations, determine the maximum prices, in relation to the declared electrical service, that the electricity entity or authorised retailer specified in the declaration may charge for the provision of the service.

(6) If the Regulator determines in accordance with subsection (5) the maximum prices that the electricity entity or authorised retailer specified in the declaration may charge for the provision of a declared electrical service, the electricity entity or authorised retailer must only impose a price in respect of the service if the price is in accordance with the determination, as amended, if at all, under subsection (7) .

Penalty: Fine not exceeding 1 000 penalty units.

(7) The Regulator may amend or revoke a determination made under subsection (5) .

(8) The regulations may make provision in relation to –

(a) the making by the Regulator of declarations or determinations under this section; and

(b) the amending or revocation of declarations or determinations under this section; and

(c) the matters that the Regulator is to take into account in making, amending or revoking declarations or determinations under this section; and

(d) the making of adjustments to determinations made under this section; and

(e) the charging to an electricity entity or an authorised retailer of costs incurred by the Regulator in exercising the Regulator's powers under this Division or regulations for the purposes of this Division.

(9) If the regulations make provision in relation to the making, amendment or revocation of a declaration or determination under this section, a declaration or determination under this section that is to be made, amended or revoked, is to be, respectively, made, amended or revoked in accordance with the regulations.

(10) A declaration or determination under this section remains in force for the period determined in accordance with the regulations.

40. Standing offer prices

(1) A regulated offer retailer must fix its standing offer prices in respect of small customers.

(2) Except under a market retail contract, a regulated offer retailer must not –

(a) sell, or offer to sell, electricity to a small customer at a price; or

(b) require payment of a charge –

unless the price or charge is a standing offer price fixed under subsection (1) or a standing offer price as amended under subsection (4) .

Penalty: Fine not exceeding 1 000 penalty units.

(3) A standing offer price fixed under subsection (1) , and a standing offer price as amended under subsection (4) , may specify different prices or charges for different classes of small customers but may not specify different standing offer prices, in respect of different areas of Tasmania, for the same class of small customers.

(4) A regulated offer retailer may –

(a) amend a standing offer price fixed under subsection (1) or a standing offer price as amended under this subsection; or

(b) rescind a standing offer price fixed under subsection (1) , or a standing offer price as amended under this subsection, and fix a new standing offer price under subsection (1) .

(5) A standing offer price fixed under subsection (1) and an amendment of such a standing offer price under subsection (4) –

(a) must be consistent with this Act, a determination of the Regulator under section 40AA(1), the regulations and the Code; and

(b) must comply with any form specified in the regulations.

(6) In fixing or amending a standing offer price, a regulated offer retailer must comply with the requirements, if any, for the fixing or amending of standing offer prices, set out in the regulations.

(7) A standing offer price, or an amendment or rescission of a standing offer price, takes effect on the day specified in the standing offer price or amendment or rescission of the standing offer price.

41. Approval of standing offer prices

(1) A standing offer price may not be fixed under section 40(1), and an amendment of a standing offer price may not be made under section 40(4), unless –

(a) a draft of the standing offer price, or a draft amendment of the standing offer price, has been approved by the Regulator under subsection (3); and

(b) the standing offer price fixed, or the draft amendment made, is in the same terms as the draft of the standing offer price, or the draft amendment of the standing offer price, approved by the Regulator under subsection (3).

(2) A regulated offer retailer may submit to the Regulator a draft standing offer price or a draft amendment of a standing offer price.

(3) If a draft standing offer price, or a draft amendment of a standing offer price, is submitted to the Regulator under subsection (2), the Regulator must –

(a) approve, without modification, the draft standing offer price or the draft amendment of the standing offer price; or

(b) approve, with modification, the draft standing offer price or the draft amendment of the standing offer price; or

(c) refuse to approve the draft standing offer price or the draft amendment of the standing offer price.

(4) The Regulator may only approve the draft standing offer prices, that are to be fixed by a regulated offer retailer under section 40 in accordance with a determination that specifies, in accordance with regulations made for the purposes of section 40AC, a pricing structure for such prices, if the prices are in accordance with the pricing structure.

42. Tariffs, charges and conditions for Bass Strait Islands customers

(1) A Bass Strait Islands tariff retailer must fix the tariffs, charges and conditions that are to constitute its prices, charges and conditions in respect of customers at premises on the Bass Strait Islands.

(2) A Bass Strait Islands tariff retailer must not –

(a) sell, or offer to sell, electricity to a customer at premises on the Bass Strait Islands, at a price; or

(b) require payment of a charge by a customer at premises on the Bass Strait Islands; or

(c) impose a condition on the sale of electricity to a customer at premises in the Bass Strait Islands –

unless the price, charge or condition is a tariff, charge or condition fixed under subsection (1) or a tariff, charge or condition as amended under subsection (4).

Penalty: Fine not exceeding 1 000 penalty units.

(3) A tariff, charge or condition fixed under subsection (1), and a tariff or charge as amended under subsection (4), may specify different prices, charges or conditions for different classes of customers at premises

on the Bass Strait Islands but may not specify different tariffs, charges or conditions, in respect of different areas of the Bass Strait Islands, for the same class of customers.

(4) A Bass Strait Islands tariff retailer may –

- (a) amend a tariff, charge or condition fixed under subsection (1) or a tariff or charge as amended under this subsection; or
- (b) rescind a tariff, charge or condition fixed under subsection (1) , or a tariff, charge or condition as amended under this subsection, and fix a new tariff, charge or condition under subsection (1) .

(5) A tariff, charge or condition fixed under subsection (1) and any amendment of a tariff, charge or condition under subsection (4) –

- (a) must be consistent with this Act, the regulations and the Code; and
- (b) must comply with any form specified in the regulations.

(6) In fixing or amending a tariff, charge or condition, a Bass Strait Islands tariff retailer must comply with the requirements, if any, for the fixing or amending of tariffs, charges or conditions, set out in the regulations.

(7) A tariff, charge or condition, or an amendment of a tariff, charge or condition, takes effect on the day specified in the tariff, charge or condition or amendment of the tariff, charge or condition.

(8) A Bass Strait Islands tariff retailer must, before a tariff, charge or condition, or an amendment of a tariff, charge or condition, in respect of premises on the Bass Strait Islands takes effect –

- (a) ensure the tariff, charge or condition, or the amendment of a tariff, charge or condition, is published in a newspaper circulating generally in the supply area; and
- (b) take other reasonable steps to bring changes in tariffs, charges and conditions to the attention of customers affected by the changes; and
- (c) comply with any further requirements, relating to the publication of tariffs, charges or conditions, specified in the Code.

(9) A Bass Strait Islands tariff retailer must, at the request of a customer at premises on the Bass Strait Islands, provide to the customer a copy of the entity's current tariff, charges or conditions in relation to such premises.

43. Approval of tariffs, charges and conditions for Bass Strait Islands customers

(1) A tariff, charge or condition may not be fixed under section 42(1) , and an amendment of a tariff, charge or condition may not be made under section 42(4) , unless –

- (a) a draft of the tariff, charge or condition, or a draft of the amendment of the tariff, charge or condition, has been approved by the Regulator under subsection (3) ; and
- (b) the tariff, charge or condition fixed, or the draft amendment made, is in the same terms as the draft of the tariff, charge or condition, or the draft amendment of the tariff, charge or condition, approved by the Regulator under subsection (3) .

(2) A Bass Strait Islands tariff retailer may submit to the Regulator a draft tariff, charge or condition or a draft amendment of a tariff, charge or condition.

(3) If a draft tariff, charge or condition, or a draft amendment of a tariff, charge or condition, is submitted to the Regulator under subsection (2) , the Regulator must –

- (a) approve, without modification, the draft tariff, charge or condition or the draft amendment of the tariff, charge or condition; or
- (b) approve, with modification, the draft tariff, charge or condition or the draft amendment of the tariff, charge or condition; or
- (c) refuse to approve the draft tariff, charge or condition or the draft amendment of the tariff, charge or condition.

43A. Regulator may charge for certain expenses

- (1) The Regulator may send a notice to a regulated offer retailer specifying –
 - (a) the amount of the reasonable expenses incurred by the Regulator in –
 - (i) determining under section 41 whether to approve a standing offer price or an amendment of a standing offer price; and
 - (ii) ensuring compliance by the regulated offer retailer with section 40 ; and
 - (iii) performing the Regulator's functions, and exercising his or her powers, under the Act in respect of the regulation of the provision of services and the sale of electricity under standard retail contracts with the regulated offer retailer; and
 - (b) the date on or before which the expenses are to be paid by the regulated offer retailer.
- (2) A date specified in a notice to a regulated offer retailer under subsection (1) is not to be earlier than 30 days after the notice is sent to the regulated offer retailer.
- (3) A regulated offer retailer is liable to pay to the Regulator, on the date specified, in a notice under subsection (1) sent to the regulated offer retailer, as the date by which the amount is to be paid, the amount of the reasonable expenses specified in the notice.
- (4) The Regulator may recover from a regulated offer retailer, in a court of competent jurisdiction, as a debt due and owing, an amount that the regulated offer retailer is liable to pay under subregulation (3) .

43B. Only local area retailer may sell unmetered electricity

An authorised retailer, other than a local area retailer, within the meaning of the National Energy Retail Law (Tasmania), must not sell electricity to be supplied to a type 7 metering installation, within the meaning of the National Electricity Rules, unless that installation –

- (a) is classified under those Rules as a market load; and
- (b) is of a type of installation included in a load table published by the AEMO in accordance with a metrology procedure approved by the AEMO.

Subdivision 3 - Community service obligation concessions

43C. Interpretation of this Subdivision

In this Subdivision –

concession means a concession specified in a concession order;

concession order means an order made under section 43D ;

eligible person means a person who is a member of a class of eligible persons specified in a concession order to be a class of eligible persons;

relevant period means the period during which the user cost for which a concession is sought was incurred;

user cost means an amount payable (including any interest) in respect of electricity supplied to residential premises.

43D. Concession orders

- (1) The Minister, by order, may determine –
 - (a) the class or classes of persons, members of which are to be eligible persons; and
 - (b) the concessions in relation to those user costs that are payable by members of the class of eligible persons specified in the order; and
 - (c) that authorised retailers are required to provide those concessions to those persons.

- (2) A concession specified in a concession order may be expressed –
- (a) as a pro rata reduction of the user cost to which it applies; or
 - (b) as an amount that is payable in respect of, or that is to be deducted from, the user cost to which the order applies in relation to a particular period; or
 - (c) in any other manner.
- (3) Without limiting the subject matter or content of a concession order, a concession order may –
- (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstance; and
 - (c) be expressed to apply subject to conditions specified in the order; and
 - (d) specify the manner in which an application for the granting of a concession in relation to a particular user cost may be made.
- (4) If a concession order applies in relation to a user cost, an authorised retailer –
- (a) to which the order applies; and
 - (b) that imposes the user cost on an eligible person to whom the order applies –
- must provide the concession to the eligible person.

Penalty: Fine not exceeding 200 penalty units.

- (5) A concession order takes effect –
- (a) on the date that notice of the making of the order is published in the *Gazette* in accordance with the Rules Publication Act 1953 ; or
 - (b) if a later date is specified in the concession order, on that later date.
- (6) The Minister, by order, may revoke a concession order from the date specified in the revoking order as the date on which the concession is revoked.
- (7) Nothing in any law of Tasmania prevents the transfer, to an authorised retailer to whom a concession order relates, of information in relation to a customer in respect of whom a contract was transferred to the retailer in accordance with the Electricity Reform Act 2012 , if the information –
- (a) was held by a person with whom the contract was made before the contract was so transferred; and
 - (b) is required for the purpose of determining whether the retailer must provide the concession to the customer or the amount of such a concession that must be so provided.
- (8) The Minister is to provide to each authorised retailer that retails electricity in the State a copy of each order made under this section.

43E. Community service obligation agreements

- (1) The Minister may enter into a community service obligation agreement with an authorised retailer.
- (2) A community service obligation agreement with an authorised retailer is an agreement that sets out the circumstances, and the manner, in which –
- (a) the retailer will comply with a concession order that applies to the retailer; and
 - (b) the Minister will reimburse to the retailer the amount of the concessions granted in accordance with the concession order.
- (3) An agreement entered into under subsection (1) is for the period, and is subject to the terms and conditions, determined by the parties to the agreement.

43F. Reimbursement of concessions

- (1) The Minister must ensure that an authorised retailer is reimbursed by the State for the concessions granted by the retailer in accordance with a concession order.
- (2) If there is an agreement entered into with an authorised retailer under section 43E(1) , the reimbursement to the authorised retailer is to be in accordance with the agreement.

Division 4A - Wholesale electricity pricing and contracts

Subdivision 1 - Approvals

43G. Approvals in relation to certain contracts of Hydro-Electric Corporation

- (1) The Regulator must approve –
 - (a) a type of contract relating to managing the financial risks associated with the purchase of electricity supplied, or to be supplied, to an authorised retailer in the national electricity market; and
 - (b) a standard form, or standard forms, in relation to the type of contract specified in the approval; and
 - (c) a methodology for the calculation of prices in contracts that are in a standard form specified in the approval; and
 - (d) a total period, in contracts that are in a standard form specified in the approval, for which an authorised retailer may elect to have such a contract apply to prices for electricity; and
 - (e) a formula, rules or methodology for determining the minimum total quantity of units of electricity in respect of the type of contract specified in the approval.
- (2) For the avoidance of doubt, a formula, rules or methodology approved under subsection (1)(e) may take into account contracts, relating to the management of financial risks, entered into in Tasmania by the Hydro-Electric Corporation that are not in an approved standard form.
- (3) The Regulator must, in an approval under subsection (1) , declare to be an approved type of contract a load following swap contract.
- (4) The Regulator may revoke an approval under subsection (1) .
- (5) Without limiting subsection (4) , the Regulator may revoke an approval under subsection (1) if the Regulator is of the opinion that the approval has ceased to reflect any of the principles specified in section 43H .
- (6) The regulations may make provision in relation to –
 - (a) the approval by the Regulator of matters under subsection (1) ; and
 - (b) the revocation of an approval made under subsection (1) ; and
 - (c) the charging to an electricity entity of costs incurred by the Regulator in exercising the Regulator's powers under this Division or regulations for the purposes of this Division.
- (7) If regulations are made in relation to the making of approvals or revocation under this section, such approvals or revocations must be made in accordance with the regulations.
- (8) If the Regulator makes or revokes an approval under this section –
 - (a) the Regulator is to provide a copy of the approval or revocation to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State; and
 - (b) the Regulator is to publish a copy of the approval or revocation on a website of the Regulator and to ensure such a copy remains on the website –
 - (i) while the approval remains in force; or
 - (ii) in the case of a revocation of an approval, for at least 6 months after the revocation comes into force.

(9) An approval under subsection (1) remains in force for the period determined in accordance with the regulations.

(10) The making of an approval under subsection (1) or a revocation under subsection (4) of such an approval does not affect the validity or operation of a contract, in an approved standard form, that was entered into before the approval or revocation came into force.

43H. Principles to be taken into account in approvals

(1) In determining whether to approve a type of contract under section 43G(1), the Regulator must take into account the following principles:

(a) the principle that authorised retailers should have a choice of different types of contracts to enter into with the Hydro-Electric Corporation;

(b) the principle that a type of contract ought to be, as far as reasonably practicable, of a type of contract generally used in the national electricity market.

(2) In determining whether to approve a standard form under section 43G(1) in relation to a type of contract to be specified in an approval, the Regulator must take into account the following principles:

(a) the principle that the terms and conditions of the approved standard form should be generally similar to those offered in contracts, of the type of contract, used in the national electricity market;

(b) the principle that the total period referred to in section 43G(1)(d) should be of a duration similar to that generally used, for the purpose specified in that paragraph, in contracts in the national electricity market.

(3) In determining whether to approve a methodology to be used for the calculation of prices in contracts that are in an approved standard form in relation to an approved type of contract, the Regulator must take into account the principle that –

(a) prices in such contracts should be based upon the price in contracts that –

(i) relate to managing the financial risks associated with the wholesale purchase of electricity in the Victorian region of the national electricity market; and

(ii) are of the approved type of contract –

as adjusted to accommodate any estimation by the Regulator of the effect of the difference between the supply of, and demand for, electricity in Tasmania after the approval is made; and

(b) prices in such contracts should reflect the risks, to an authorised retailer that enters into a contract that is in an approved standard form in relation to an approved type of contract, of variations in the demand for, or supply of, electricity in Tasmania that the retailer is required to provide under standard retail contracts with small customers.

Subdivision 2 - Contracts

43I. Approved standard form contracts to be offered to authorised retailers

The Hydro-Electric Corporation must –

(a) offer, to each authorised retailer that retails electricity in the State, each approved financial risk contract; and

(b) at the request of an authorised retailer that retails electricity in the State, enter into an approved financial risk contract with the retailer.

Penalty: Fine not exceeding 1 000 penalty units.

43J. Certain contracts not required to be offered, &c., if requirements as to risk not met

(1) The Hydro-Electric Corporation may submit to the Regulator an instrument setting out the requirements, relating to the risk to the Corporation of financial loss arising from an authorised retailer failing to meet its obligations under a contract that may be entered into in accordance with section 43I, that are to be satisfied by an authorised retailer in order for section 43I to apply in relation to the authorised retailer.

(2) The Regulator, by notice to the Hydro-Electric Corporation, may approve, or refuse to approve, the requirements set out in an instrument submitted to the Regulator under subsection (1).

(3) It is a defence to a charge of an offence against section 43I of failing to offer to an authorised retailer an approved financial risk contract, or failing to enter into an approved financial risk contract with an authorised retailer, if the Hydro-Electric Corporation establishes that the authorised retailer did not, at the time of the failure, satisfy the requirements set out in an instrument approved under subsection (2).

43K. Certain contracts not required to be offered, &c., if minimum volume would be exceeded

(1) It is a defence to a charge of an offence against section 43I of failing, at a particular time –

(a) to offer to an authorised retailer an approved financial risk contract; or

(b) to enter into an approved financial risk contract with an authorised retailer –

if the Hydro-Electric Corporation establishes that the minimum electricity unit volume in relation to the contract would have been exceeded at the particular time.

(2) For the purposes of subsection (1), the minimum electricity unit volume in relation to an approved financial risk contract would have been exceeded at a particular time if –

(a) the contract would have been in one of the approved standard forms in relation to a type of contract specified in an approval under section 43G(1); and

(b) the contract would have related to a period, specified in accordance with section 43G(1)(d), in the approval; and

(c) had the contract been entered into at the particular time, it would have related to a number of units of electricity, that, if added together to the total number of units of electricity to which any other contracts that –

(i) were in any of the approved standard forms specified in the approval; and

(ii) had been entered into before the particular time and related to the period referred to in paragraph (b) –

related would have exceeded the minimum total quantity of units of electricity as determined in accordance with the formula, rules or methodology specified in the approval in accordance with section 43G(1)(e).

(3) If a minimum total quantity of units of electricity is specified, in accordance with section 43G(1)(e), in an approval under section 43G(1) in relation to an approved type of contract, the Hydro-Electric Corporation must, at the request of an authorised retailer, provide to the authorised retailer accurate information as to the total number of units of electricity to which any other approved financial risk contracts that –

(a) are in any of the approved standard forms in relation to that type of contract; and

(b) have been entered into with the Corporation in respect of the period specified, in accordance with section 43G(1)(d), in the approval –

relate at the time at which the request is made.

Penalty: Fine not exceeding 200 penalty units.

Subdivision 3 - Price monitoring

43L. Application of approved methodologies

- (1) The Regulator must publish guidelines that set out the process to be followed by the Hydro-Electric Corporation in applying an approved methodology in a contract that is in an approved standard form.
- (2) The Hydro-Electric Corporation, in applying an approved methodology in a contract that is in an approved standard form, is to comply with any guidelines published under subsection (1) .
- (3) The Regulator is to monitor and report on –
 - (a) the offering, and entering into, by the Hydro-Electric Corporation, of contracts in accordance with section 43I ; and
 - (b) the calculation of prices, to be charged by the Hydro-Electric Corporation in accordance with an approved methodology, in a contract that is in an approved standard form.

43M. Regulator may approve fixing of prices in certain circumstances

- (1) If the Regulator is satisfied that there has been a significant, deliberate or repeated failure by the Hydro-Electric Corporation to correctly apply an approved methodology in the calculation of prices to be applied in contracts that –
 - (a) are in an approved standard form to which the approved methodology relates; and
 - (b) the Hydro-Electric Corporation is, in accordance with section 43I , required to offer to an authorised retailer –

the Regulator may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, approve the fixing by the Regulator, under the approval, of prices in such contracts.

- (2) If the Regulator is of the opinion that a supply disruption event has occurred, the Regulator, after consulting with the Treasurer, may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, approve the fixing by the Regulator, under the approval, of prices in contracts that the Hydro-Electric Corporation is, in accordance with section 43I , required to offer to an authorised retailer.

(3) For the purposes of subsection (2) , a *supply disruption event* is an event (other than drought) that, in the opinion of the Regulator, is likely to cause a prolonged interruption to a substantial quantity of the electricity that would otherwise be supplied under normal circumstances by the Hydro-Electric Corporation.

(4) The Regulator may revoke an approval under this section.

(5) The regulations may make provision in relation to the making or revocation of an approval under this section.

(6) If the regulations make provision in relation to the making or revocation of an approval under this section, an approval under this section, and a revocation of an approval under this section, must be made in accordance with the regulations.

(7) An approval under this section, or the revocation of an approval under this section, does not affect the validity or operation of a contract that was entered into before the approval or revocation came into force.

43N. Fixing of prices by Regulator

(1) If an approval is made under section 43M(1) in respect of prices in mandatory contracts that are in an approved standard form, the Regulator may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, fix the prices in respect of mandatory contracts that are in that approved standard form.

(2) Prices fixed by the Regulator under subsection (1) in respect of mandatory contracts in an approved standard form are to be calculated by the Regulator in accordance with the approved methodology in relation to contracts that are in that approved standard form.

(3) If an approval is made under section 43M(2) in respect of prices in mandatory contracts, the Regulator may, by notice to the Hydro-Electric Corporation and each authorised retailer that retails electricity in the State, fix the prices in respect of mandatory contracts.

(4) Prices fixed by the Regulator under subsection (3) in respect of mandatory contracts are not required to be calculated by the Regulator in accordance with the approved methodology in relation to contracts that are in an approved standard form.

(5) The Regulator may revoke a notice issued under subsection (1) or (3) .

(6) If the Regulator, in accordance with an approval under section 43M , fixes, under subsection (1) or (3) , the prices in respect of mandatory contracts, section 43I applies in relation to such contracts offered or entered into by the Hydro-Electric Corporation while the approval and the notice remain in force, as if any reference in this Division, including section 43I , to prices calculated in accordance with an approved methodology were a reference to the prices so fixed.

(7) The regulations may make provision in relation to the fixing of prices under this section.

(8) If regulations are made in relation to the fixing of prices under this section, the fixing of prices under this section must be made in accordance with the regulations.

(9) The issue under this section of a notice fixing a price in contracts, or a revocation of such a notice, does not affect the validity or operation of a contract that was entered into before the issue or revocation.

(10) In this section –

mandatory contract means a contract that –

(a) is in an approved standard form; and

(b) the Hydro-Electric Corporation is, in accordance with section 43I , required to offer to an authorised retailer.

Subdivision 4 - Transitional matters

430. Transitional provisions in relation to approvals under this Division

(1) The Minister may, in the first 6 months after this Division commences, make or revoke an approval under this Division as if the Minister were the Regulator.

(2) The regulations may make provision in relation to the exercise by the Minister, as if the Minister were the Regulator, of the powers of the Regulator to make or revoke an approval under this Division.

(3) If the regulations make provision in relation to the exercise by the Minister, as if the Minister were the Regulator, of the powers of the Regulator to make or revoke an approval under this Division, the Minister must exercise the power in accordance with those regulations.

(4) If regulations are made for the purposes of this section, regulations made for the purposes of another section in this Division, in relation to the exercise by the Regulator of the Regulator's powers under the section to make or revoke an approval under this Division, do not apply in relation to the Minister, except as may be provided in the regulations made for the purposes of this section.

Division 5 - Restrictions on re-supply

44. Restrictions on re-supply

(1) An electricity entity may enter into a contract for the supply of electricity to a customer to which this section applies –

(a) on conditions prohibiting or restricting the re-supply of the electricity; or

(b) on conditions providing for price discrimination according to whether the electricity is, or is not, to be re-supplied.

(2) This section applies to a customer who has contractual rights (which may be aggregate rights arising under 2 or more separate contracts) to draw electricity from a power system at a rate of 50 megawatts or above.

(3) For the purposes of section 51 of the *Competition and Consumer Act 2010* of the Commonwealth and the Competition Code, a contractual condition under subsection (1) , and anything done to enforce compliance with the condition, are authorised by this Act.

(4) This section does not apply to a contract of a kind referred to in subsection (1) entered into by an electricity entity on or after 1 July 2001.

Division 5A - Feed-in tariffs

44A. Interpretation of Division 5A

(1) In this Division –

AS 4777 means Australian Standard AS 4777, issued and published by Standards Australia, as that Standard is amended, or substituted, from time to time;

billing period, in relation to premises, means a period to which relates, or is to relate, an electricity account in respect of the premises;

electricity account, in respect of premises, means an invoice, for the supply of electricity to the premises, that is issued, or to be issued, by an authorised retailer in respect of the premises;

feed-in tariff billing amount, in respect of a billing period, means the amount calculated under section 44E(3) in relation to the billing period;

feed-in tariff customer, in respect of premises, means –

- (a) a standard feed-in tariff customer in respect of the premises; and
- (b) a transitional feed-in tariff customer in respect of the premises;

feed-in tariff supply statement, in respect of a billing period in relation to premises, means a written statement (which may form part of an electricity account in respect of the premises) setting out –

- (a) the quantity of electricity that has been, during the billing period, supplied to a distribution network by a qualifying system at the premises; and
- (b) the feed-in tariff billing amount in respect of the billing period in relation to the premises; and
- (c) any amount, in addition to the feed-in tariff billing amount in respect of the billing period in relation to the premises, that relates to the supply, to the distribution network in respect of the premises, of electricity from a qualifying system installed at the premises;

qualifying system, in relation to premises, means a qualifying system, within the meaning of section 44B , in relation to the premises;

quarterly billing period means a period of not less than 85 days and not more than 95 days;

residential customer, in respect of premises, means a person who purchases electricity principally for use at the premises for personal, household or domestic purposes;

small business customer, in respect of premises, means a small customer who is not a residential customer;

spouse, in relation to a customer, means –

- (a) a person who is, or was immediately before the customer's death, a spouse of the customer; and
- (b) a person with whom the customer is, or was immediately before the customer's death, in a significant relationship, within the meaning of the Relationships Act 2003 ;

standard feed-in tariff customer means a customer to whom section 44C applies;

transitional feed-in tariff customer means a customer to whom section 44D(1) applies;

transition day means 31 August 2013.

(2) For the purposes of this Division, electricity that is supplied to a distribution network from a qualifying system installed at premises is only to be taken to form part of a kilowatt hour of supply of the electricity from the qualifying system if, at the instant at which the electricity is so supplied, the amount generated by the system is more than the amount of electricity being supplied, at that instant, from the distribution network to the premises by one or more circuits, connected to the qualifying system, to which relates a price that is charged, or may be charged, by an authorised retailer for the supply of electricity.

44B. Qualifying systems

(1) For the purposes of this Division, a system is a qualifying system in relation to premises if the system –

- (a) is a system for the generation of electricity by solar, wind or water power; and
- (b) complies with AS 4777 or, if it does not comply with AS 4777, is approved, before the transition day, by the distributor in respect of the premises at which the system is installed; and
- (c) has the relevant total generation capacity in relation to the premises; and
- (d) is not a member of a class of systems that are prescribed by the regulations not to be qualifying systems for the purposes of this Division.

(2) For the purposes of subsection (1)(c), a system has the relevant total generation capacity in relation to premises if –

- (a) where the system installed at the premises has a single-phase inverter and is not a system to which paragraph (c) applies – the system has a total generation capacity of not more than 10kVA; or
- (b) where the system installed at the premises has a 3-phase inverter and is not a system to which paragraph (c) applies – the system has a total generation capacity of not more than 30kVA; or
- (c) where the system installed at the premises is a system, or replaces a system, in relation to which there is an application, accepted before the transition day by the distributor in respect of the premises, for –
 - (i) connection of the system to the distribution network by the distributor; or
 - (ii) approval to upgrade or replace that system and have it be, or remain, connected to the network –

the system is not capable of generating more electricity than was specified in that application.

44C. Standard feed-in tariff customers

For the purposes of this Act, a person is a standard feed-in tariff customer in respect of premises if –

- (a) the person is, in relation to the premises, a small customer of an authorised retailer; and
- (b) the premises are situated on mainland Tasmania; and
- (c) a qualifying system in relation to the premises is installed at the premises and connected to the distribution network by the distributor in respect of the premises; and
- (d) the person is not a transitional feed-in tariff customer in respect of the premises.

44D. Transitional feed-in tariff customers

(1) For the purposes of this Act, a person is a transitional feed-in tariff customer in respect of premises if –

- (a) the person is, in relation to the premises, a small customer of an authorised retailer; and
- (b) the premises are situated on mainland Tasmania; and
- (c) the person was, immediately before the transition day –
 - (i) a customer, in respect of the premises, of an authorised retailer; or
 - (ii) a spouse of a customer, in respect of the premises, of an authorised retailer; and

- (d) a qualifying system in relation to the premises is installed at the premises and connected to the distribution network by the distributor in respect of the premises; and
- (e) the customer, or a spouse of the customer, is a recognised applicant in respect of the premises; and
- (f) the person has not ceased, after the transition day, to be, in respect of the premises, a customer of an authorised retailer, except if –
 - (i) the person has so ceased in order to become, in respect of the premises, a customer of another authorised retailer; or
 - (ii) the person's spouse has become a customer, of the authorised retailer, in respect of the premises; and
- (g) 31 December 2018 has not expired.

(2) For the purposes of subsection (1)(e), a customer, or a spouse of the customer, is a recognised applicant in respect of premises if –

- (a) an accurately completed application –
 - (i) that relates to the premises; and
 - (ii) that is for a qualifying system to be connected to the distribution network; and
 - (iii) that is in a form approved, by the distributor in respect of the premises, for use before the transition day –

is received, before the transition day, from the customer, or the spouse of the customer, by the distributor and is accepted by the distributor; and

- (b) a qualifying system in relation to the premises is installed and connected at the premises before 31 August 2014.

(3) A feed-in tariff customer in respect of premises –

- (a) who is, immediately before 1 January 2019, a transitional feed-in tariff customer in respect of the premises; and
- (b) who receives, or is to receive, an electricity account in respect of the premises for a billing period in relation to the premises that begins before, and expires after, 1 January 2019 –

is to be taken, for the purposes only of ensuring that the customer is entitled to receive the feed-in tariff billing amount that would be payable in respect of that billing period if the customer were a transitional feed-in tariff customer, to be a transitional feed-in tariff customer in respect of the premises, for so much of the billing period as expires before 1 January 2019.

44E. Authorised retailers to pay feed-in tariffs and provide feed-in tariff supply statements

(1) An authorised retailer in respect of premises must ensure that a feed-in tariff supply statement, in respect of a billing period in relation to the premises, is sent to a feed-in tariff customer in respect of the premises, if, in the billing period, electricity is supplied to the distribution network in respect of the premises by a qualifying system installed at the premises.

Penalty: Fine not exceeding 50 penalty units.

(2) An authorised retailer must pay, to a customer of the retailer who is a feed-in tariff customer in respect of premises, the feed-in tariff billing amount, if any, in respect of a billing period in relation to the premises.

Penalty: Fine not exceeding 100 penalty units.

(3) The feed-in tariff billing amount in respect of a billing period in relation to premises is the amount calculated by multiplying, by the feed-in tariff rate that applies in respect of the premises under section 44F in relation to the kilowatt hour, each kilowatt hour of electricity that is, during the billing period, supplied to the distribution network by a qualifying system that is –

(a) installed at the premises; and

(b) connected to the distribution network by the distributor in respect of the premises.

(4) Nothing in this Division is to be taken to prevent an authorised retailer from paying to a customer in respect of premises a greater amount for the supply of electricity from the premises than the authorised retailer is required to pay under this section, but such a greater amount is not to be taken to be –

(a) any part of the feed-in tariff billing amount in relation to the premises; or

(b) any part of the amount that a distributor is required to pay to an authorised retailer under section 44I .

(5) An authorised retailer is to pay the feed-in tariff billing amount in respect of premises in the prescribed manner.

Penalty: Fine not exceeding 100 penalty units.

(6) An authorised retailer is not required under subsection (2) to pay to a feed-in tariff customer in respect of premises the feed-in tariff billing amount in respect of the premises for more than one qualifying system installed at the premises.

(7) If more than one qualifying system is installed at premises –

(a) a feed-in tariff customer in respect of the premises may notify the distributor in respect of the premises as to which qualifying system is to be taken to be the only qualifying system in relation to the premises; and

(b) the qualifying system specified in the notice is to be taken to be the only qualifying system in relation to the premises.

44F. Feed-in tariff rates

(1) If a transitional feed-in tariff customer in respect of premises is a residential customer in respect of the premises, the feed-in tariff rate that applies in respect of the premises is 28.283 cents in relation to a kilowatt hour.

(2) If a transitional feed-in tariff customer in respect of premises is a small business customer in respect of the premises and the billing period to which the rate is to apply is a quarterly billing period, the feed-in tariff rate that applies in respect of the premises is –

(a) 38.577 cents in relation to each kilowatt hour that is within the first 500 kilowatt hours of electricity supplied, during the billing period, to the distribution network in respect of the premises by a qualifying system installed at the premises; or

(b) 28.319 cents in relation to each kilowatt hour that –

(i) is supplied, during the billing period, to the distribution network in respect of the premises by a qualifying system installed at the premises; and

(ii) is so supplied after the first 500 kilowatt hours of electricity are so supplied.

(3) If a transitional feed-in tariff customer in respect of premises is a small business customer in respect of the premises and the billing period to which the rate is to apply is not a quarterly billing period, the feed-in tariff rate that applies in respect of the premises is –

(a) 38.577 cents in relation to each kilowatt hour that –

(i) is supplied, during the billing period, to the distribution network in respect of the premises by a qualifying system installed at the premises; and

(ii) is so supplied before the relevant generation threshold in relation to the billing period is reached; or

(b) 28.319 cents in relation to each kilowatt hour of electricity that –

(i) is supplied, during the billing period, to the distribution network in respect of the premises by a qualifying system installed at the premises; and

(ii) is so supplied after the relevant generation threshold in relation to the billing period is reached.

(4) For the purposes of subsection (3) , the relevant generation threshold in relation to a billing period is reached when the number of kilowatt hours of electricity that is supplied during that billing period becomes equal to, or greater than, the number obtained by dividing the number of days in the billing period by 91 and multiplying by 500 the number obtained.

(5) If a customer is a standard feed-in tariff customer in respect of premises, the feed-in tariff rate that applies in respect of the premises in relation to a kilowatt hour is the rate that –

(a) is specified in, or determined under, a determination under section 44G that is in force at the time of the supply of the electricity, from the premises, for which the rate is to be applied in a calculation under section 44E(3) ; and

(b) under the determination, applies in respect of the premises in relation to the kilowatt hour.

44G. Feed-in tariff rate determinations

(1) The Regulator must determine, for the purposes of section 44E(5) , the feed-in tariff rate that applies in respect of premises in relation to a kilowatt hour.

(2) The feed-in tariff rate in respect of premises in relation to a kilowatt hour may be a differential rate that varies according to either or both of the following:

(a) the class of premises;

(b) factors specified in the determination.

(3) The feed-in tariff rate for standard feed-in tariff customers may be expressed as –

(a) a rate in relation to a kilowatt hour; or

(b) a method for determining a rate in relation to a kilowatt hour.

(4) The Regulator may amend or revoke a determination under subsection (1) .

(5) The regulations may make provision in relation to –

(a) the making of determinations under this section; and

(b) the amending or revoking of determinations under this section; and

(c) the making of adjustments to determinations made under this section; and

(d) the charging to an electricity entity, or an authorised retailer, of costs incurred by the Regulator in exercising the Regulator's powers under this Division or the regulations.

(6) The regulations may provide that the first determination to be made under subsection (1) is to be consistent with the recommendation, as to the rate to be paid by authorised retailers, that is made by the Regulator in the relevant report.

(7) For the purposes of subsection (6) , the relevant report is the report, made by the Regulator before the day on which this section commences, pursuant to a request, made to the Regulator by the Minister, for the Regulator to recommend the rate to be paid by authorised retailers to small customers in respect of premises from which electricity is supplied to a distribution network by a system –

(a) for the generation of electricity by solar, wind or water power; and

(b) that has –

(i) for a system that has a single-phase inverter, a total generation capacity of not more than 10kVA; or

(ii) for a system that has a 3-phase inverter, a total generation capacity of not more than 30kVA.

(8) A determination made under this section remains in force for the period determined in accordance with the regulations.

(9) If the regulations make provision in relation to the making, amendment or revocation of a determination under this section, a determination under this section that is to be made, amended or revoked is to be, respectively, made, amended or revoked in accordance with the regulations.

44H. Principles to be taken into account in making feed-in tariff rate determinations

In determining a feed-in tariff rate under section 44G, the Regulator must consider the following matters:

(a) the fair and reasonable value to authorised retailers of electricity supplied to the distribution network by feed-in tariff customers;

(b) the net financial benefit, to authorised retailers, of electricity supplied to the distribution network by feed-in tariff customers, having regard to the costs of authorised retailers, including, but not limited to including –

(i) the costs to authorised retailers of purchasing wholesale electricity; and

(ii) other costs of authorised retailers in operating their retail electricity businesses;

(c) the other costs, or other benefits, that –

(i) the Regulator considers relevant, including, but not limited to including, those related to the distribution networks or transmission networks; and

(ii) result, either directly or indirectly –

from the supply of electricity to distribution networks by qualifying systems at premises of small customers;

(d) the COAG National Principles for Feed-in Tariff Arrangements, as those Principles apply from time to time;

(e) any arrangements of the Commonwealth, whether legislative or otherwise, in relation to the pricing of carbon emissions or other mechanisms to reduce the use of carbon-emitting fuels;

(f) the principle that the feed-in tariff rate specified in the determination should not have the effect that any customer would effectively be cross-subsidising any other customer;

(g) such approaches, methodologies, findings or recommendations, taken or made in other jurisdictions, as the Regulator thinks fit, for determining fair and reasonable feed-in tariff rates;

(h) any prescribed matters;

(i) any other matter the Regulator thinks relevant.

44I. Distributors to reimburse authorised retailers for difference between rates

(1) If an authorised retailer pays to a transitional feed-in tariff customer a feed-in tariff billing amount in respect of premises, the amount equal to the difference between –

(a) the feed-in tariff billing amount paid by the authorised retailer to the customer; and

(b) the feed-in tariff billing amount in respect of the premises that would have been paid to the customer under section 44E(2) by the authorised retailer if the transitional feed-in tariff customer had been a standard feed-in tariff customer in respect of the premises –

is a debt due and payable to the authorised retailer by the distributor in respect of the premises.

(2) An amount of a debt due and payable by a distributor to an authorised retailer under subsection (1) may be paid –

(a) by way of a deduction of the amount of the debt from the amount of any network charges that are payable to the distributor by the authorised retailer; or

(b) in a manner agreed between the distributor and an authorised retailer; or

(c) in a manner approved by a court in which the debt is recovered under subsection (3).

(3) A debt that is due and payable under subsection (1) to an authorised retailer by a distributor may be recovered in a court of competent jurisdiction.

44J. Report and recording obligations of distributors

(1) A distributor in respect of premises must keep an accurate record of the matters, relating to feed-in tariff customers, that are prescribed in regulations for the purposes of this subsection.

(2) A distributor in respect of premises must, within the period specified in regulations for the purposes of this subsection, provide to the Regulator a report containing the matters prescribed in such regulations.

(3) A distributor in respect of premises must, if a person becomes, or has ceased to be, a customer, of an authorised retailer, who is a transitional feed-in tariff customer in respect of the premises, advise –

(a) the customer; and

(b) each authorised retailer who has become, or has ceased to be, the authorised retailer in respect of such a customer in relation to those premises –

that the customer has become, or has ceased to be, respectively, a transitional feed-in tariff customer in respect of the premises.

Division 6 - Disputes

45. Disputes

(1) If a dispute arises between electricity entities or between an electricity entity and another person about the exercise of powers under this Act, any party to the dispute may ask the Regulator to mediate in the dispute.

(2) The Regulator has a discretion whether to mediate or to decline to mediate in a dispute and may impose conditions that must be satisfied if the mediation is to proceed.

(3) If the Regulator proceeds with the mediation –

(a) the Regulator may give directions to the parties to assist in the resolution of the matters in issue; and

(b) the Regulator must attempt to get the parties to agree to a negotiated settlement of the dispute.

(4) If a dispute is resolved, the parties and the Regulator must sign an agreement setting out the terms of the settlement and the agreement is binding on the parties to the dispute.

(5) This section is not intended to provide an exclusive method of dispute resolution.

Division 7 - Effect of non-compliance with Act

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47. Cancellation of licences

(1) If an electricity entity contravenes this Act, and the contravention is, in the Regulator's opinion, serious enough to justify cancellation of the electricity entity's licence, the Regulator may give the electricity entity a written notice –

(a) stating that the Regulator is considering cancelling the electricity entity's licence; and

(b) stating the grounds on which the Regulator considers the cancellation of the licence to be justified; and

(c) inviting the electricity entity to make written representations showing why the licence should not be cancelled.

(2) After considering –

- (a) representations made by the electricity entity in response to the invitation; and
 - (b) any action taken, or undertaking given, by the electricity entity to remedy the contravention or to prevent recurrence of the contravention; and
 - (c) the effect the cancellation of the licence would have on the electricity entity's customers –
- the Regulator may, by written notice given to the electricity entity, cancel the licence.
- (3) The Regulator may, instead of cancelling a licence, amend the licence by adding to, or varying, the conditions of the licence.

Division 8 - Regulator's powers to take control of operations

48. Power to take over operations

- (1) If –
- (a) an electricity entity contravenes this Act, or an electricity entity's licence is cancelled or expires without renewal; and
 - (b) it is necessary, in the Regulator's opinion, to take over the entity's operations (or some of them) to ensure that the entity's customers receive an adequate supply of electricity –
- the Governor may make an order under this section.
- (2) Before an order is made under this section, the Regulator must give the electricity entity a reasonable opportunity to make written representations giving reasons why the order should not be made.
- (3) An order under this section –
- (a) authorises the Regulator to take over the electricity entity's operations or a specified part of the electricity entity's operations; and
 - (b) may contain ancillary directions (and may, in particular, contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with).
- (4) A direction under subsection (3) (b) operates to the exclusion of rights that are inconsistent with it.

49. Appointment of operator

- (1) When an order is made under this Part, the Regulator must appoint a suitable person (who may, but need not, be an electricity entity) to take over the relevant operations on agreed terms and conditions.
- (2) A person appointed to take over an electricity entity's operations is referred to in this section as the "operator".
- (3) The electricity entity must facilitate the takeover of the relevant operations by the operator.
- (4) The operator may have access to the electricity infrastructure and other property of the electricity entity for the purposes of carrying on the relevant operations.
- (5) A person must not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Part.

Penalty: Fine not exceeding 1 000 penalty units and a daily fine not exceeding 10 penalty units.

- (6) A person must comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.

Penalty: Fine not exceeding 1 000 penalty units and a daily fine not exceeding 10 penalty units.

Division 8A -

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Division 9 - Tasmanian Electricity Code

49A. Tasmanian Electricity Code

- (1) The Regulator must issue the Tasmanian Electricity Code.
- (2) The Code may provide for any matter relating or incidental to the regulation of the electricity supply industry.
- (3) Without limiting subsection (2) , the Code may make provision with respect to the following matters:
 - (a) the regulation of electricity markets;
 - (b) dispute resolution;
 - (c) electricity system operation and electricity system security;
 - (d) metering;
 - (e) connection to the distribution and transmission systems;
 - (f) supply of electricity to customers;
 - (fa) sale of electricity to customers on the Bass Strait Islands;
 - (g) safety and environmental codes of practice;
 - (h) generation, transmission, distribution and retail pricing principles;
 - (i) access to electricity infrastructure;
 - (j) whether any direction, decision or determination under this Act, the regulations or the Code is not a reviewable decision;
 - (k) the establishment of tribunals and committees for the purposes of the Code;
 - (l) principles on which the Regulator is to base any direction, decision or determination under this Act, the regulations or the Code;
 - (m) principles for the separation of accounts and functions within electricity entities;
 - (n) the enforcement of the regulation of pricing;
 - (o) amendment, revocation and substitution of the Code;
 - (p) administration of the Code;
 - (q) enforcement of the Code;
 - (r) any other prescribed matter.
- (4) The Code must be consistent with this Act, the regulations and the public interest.
- (5) If there is an inconsistency between the Code and this Act or the regulations, the Code is invalid to the extent of the inconsistency.
- (6) The Code may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the Code.
- (7) The Code may authorise any matter to be from time to time determined, applied or regulated by –
 - (a) the Regulator; or
 - (b) a tribunal or committee established under the Code or this Act.
 - (c)
- (8) The Code may adopt either wholly or partly and with or without modification, and either specifically or by reference, the National Electricity Rules or the National Electricity Law.

49B. Review, amendment and replacement of Code

- (1) The Regulator may review the Code –
 - (a) at his or her discretion; or
 - (b) on the request of any person.
- (2) The Regulator must review the Code when required to so do by the Minister.
- (3) The Regulator may amend or rescind and substitute the Code as specified in, and in accordance with, the Code.
- (4) By notice provided to the Regulator, the Minister may amend, or rescind and substitute, the Code as he or she considers necessary or convenient for any one or more of the following purposes:
 - (a) facilitating participation of electricity entities in the National Electricity Market;
 - (b) facilitating the application of the National Electricity Law and the National Electricity Rules in Tasmania;
 - (c) the performance and exercise by the AER of functions and powers conferred on it by section 16C ;
 - (d) ensuring that, after the NEM entry time, the Code is consistent with the National Electricity Law and the National Electricity Rules;
 - (e) making provision in respect of any arrangements, guidelines or requirements necessary in relation to distribution services, performance standards and distribution performance targets, including but not limited to payments to customers, that are connected with the provision of guaranteed service levels;
 - (ea) facilitating the application of the Electricity Reform Act 2012 and the Electricity Reform (Implementation) Act 2013 ;
 - (f) giving effect to the implementation of national energy market reforms in accordance with the Australian Energy Market Agreement.
- (5) In amending or rescinding and substituting the Code under subsection (4) , the Minister may consult with those persons the Minister considers appropriate and is not bound by any procedures relating to the amendment or rescission and substitution of the Code specified in the Code.
- (6) After amending or rescinding and substituting the Code under subsection (4) , the Minister is to publish in the *Gazette* notice of the making of that amendment or rescission and substitution.

49C. Availability of Code

- (1) The Regulator must provide a person with a copy of the Code or part of the Code if the person –
 - (a) requests it; and
 - (b) pays to the Regulator any reasonable fee determined by the Regulator.
- (2) The Regulator, free of charge, must allow a person to peruse the Code at the office of the Regulator at any time within the hours during which that office is normally open.

49D. Scrutiny of Code by Parliamentary Standing Committee on Subordinate Legislation

- (1) Within 14 days after issuing the Code or an amendment to the Code, the Regulator must provide a copy of the Code or amendment to the Parliamentary Standing Committee on Subordinate Legislation.
- (2) The Parliamentary Standing Committee on Subordinate Legislation may recommend to the Regulator, in writing, that the Code be amended.

49E. Application of Code to persons other than electricity entities

- (1) The Code may provide for the registration as participants of persons, other than electricity entities, that intend to participate in the electricity supply industry.

- (2) A person registered as a participant must comply with the relevant provisions of the Code and any direction, decision or determination of the Regulator under the Code.
- (3) The Regulator may cancel the registration of a participant if the Regulator finds that the participant has failed to comply with the relevant provisions of the Code or any direction, decision or determination of the Regulator under the Code.
- (4) The Code may specify conditions that must be complied with –
 - (a) before a person can be registered as a participant; or
 - (b) before the registration of a participant can be cancelled.

Division 10 - Miscellaneous

49F. Application of Commonwealth *Competition and Consumer Act 2010* and the Competition Code

- (1)
- (2) For the purposes of section 51 of the *Competition and Consumer Act 2010* of the Commonwealth and the Competition Code, this Act authorises an electricity entity –
 - (a) to supply and purchase goods and services in accordance with its licence, this Act, the regulations and the Code; and
 - (b)
 - (c) to comply with obligations imposed by this Act, the regulations and the Code; and
 - (d) to exercise rights and powers given by this Act, the regulations or the Code.

49G. Ownership of electricity infrastructure

- (1) In this section,

prescribed electricity infrastructure means that part of the electricity infrastructure in respect of an electricity entity that is situated on, above or under land that is not owned by the electricity entity.
- (2) Subject to any agreement to the contrary, the ownership of prescribed electricity infrastructure is not, and is taken never to have been, affected by the attachment, affixation or annexation of the infrastructure to the land.

49H. Indemnity for members of committees

- (1) In this section,

Panel means the Code Change Panel or the Reliability and Network Planning Panel established under the Code.
- (2) A member of a Panel does not incur any personal liability in respect of any act done or omitted to be done by the member in good faith in the performance or exercise, or purported performance or exercise, of any function or power as such a member.
- (3) Subsection (2) does not preclude the Crown from incurring liability that a member of a Panel would, but for that subsection, incur.
- (4) Where there is an inconsistency between this section and a provision of any other Act, this section prevails.
- (5) The application of this section extends to any act done or omitted to be done by a member of a Panel since the establishment of the Panel.

49I. Certain instruments not statutory rules

An instrument, declaration, determination, approval, notice or report made under this Part or under regulations made for the purposes of this Part, other than an order by the Minister, is not a statutory rule for the purposes of the Rules Publication Act 1953 .

PART 4 - Land Acquisition and use for Electricity Infrastructure

Division 1 - Surveys and assessments

50. Entry on land to conduct surveys or assess its suitability for electricity infrastructure

- (1) An electricity entity may, by agreement with the occupier of land or on the Regulator's authorisation, enter and remain on land –
 - (a) to conduct surveys (including hydrometric or water power surveys); or
 - (b) to assess the suitability of the land for the construction or installation of electricity infrastructure.
- (2) The Regulator may authorise an electricity entity to enter and remain on land under this section on conditions the Regulator considers appropriate.
- (3) If an electricity entity enters land under the Regulator's authorisation, the electricity entity –
 - (a) must give reasonable notice of the proposed entry of land under this section to the occupier; and
 - (b) must minimise the impact of work carried out by the electricity entity on activities of others on the land; and
 - (c) must comply with the conditions of the Regulator's authorisation.

Division 2 - Land acquisition

51. Acquisition of land

- (1) An electricity entity is an acquiring authority under the Land Acquisition Act 1993 .
- (2) An electricity entity may acquire land under the Land Acquisition Act 1993 for the purposes of the operations that the electricity entity is authorised to carry on under its licence.
- (3) Without limiting subsection (2) , an electricity entity –
 - (a) is a public authority for the purposes of the Conveyancing and Law of Property Act 1884 ; and
 - (b) may acquire an easement in gross within the meaning of section 90A of that Act; and
 - (c) may enter into, or acquire the benefit of, a covenant in gross within the meaning of section 90AB of that Act .
- (4) An electricity entity may only acquire land by compulsory process under the Land Acquisition Act 1993 if the acquisition is authorised in writing by the Minister.
- (5) Regulations may be made modifying the Land Acquisition Act 1993 in its application to the acquisition of land under this section, but the regulations cannot affect the monetary entitlements of persons from whom land is acquired.

Division 3 - Work on public land

52. Power to carry out work on public land

- (1) An electricity entity may, by agreement with the authority responsible for the management of public land –
 - (a) install electricity infrastructure on the land; or
 - (b) operate, maintain, repair, modify, add to or replace electricity infrastructure on the land; or
 - (c) carry out other work on the land for the generation, transmission, distribution or supply of electricity.
- (2) Without limiting subsection (1) , the electricity entity may –
 - (a) erect powerlines; and

(b) clear vegetation to prevent contact with powerlines; and

(c) build conduits for underground cables.

(3) An agreement under this section may contain conditions the authority responsible for management of the land considers appropriate in the public interest.

(4) The responsible authority must not unreasonably refuse to agree to work proposed by an electricity entity under this section nor may it impose unreasonable conditions.

(5) The responsible authority's agreement to proposed work under this section is presumed if the work is of a kind classified by the regulations as being of minor environmental impact.

53. Disputes about work on public land

(1) If there is a dispute between an electricity entity and the authority responsible for managing public land about whether work should be permitted under this Division on the land or about the conditions on which work should be permitted on the land, either party to the dispute may refer the dispute to the Regulator.

(2) If a dispute is referred to the Regulator, the Regulator –

(a) must allow the parties to the dispute the opportunity to make representations to the Regulator on the questions at issue in the dispute; and

(b) must make reasonable attempts to get the parties to agree to settlement of the dispute on agreed terms.

54. Power to stop or divert traffic

An electricity entity may temporarily stop or divert traffic for the purpose of carrying out work under this Division.

Division 4 - Emergency work

55. Emergency work

(1) In an emergency, an electricity entity may, on the Minister's authority, enter land and carry out work that is necessary for the protection of electricity infrastructure or the protection of public safety.

(2) Without limiting subsection (1), the electricity entity may –

(a) clear vegetation or flammable materials; or

(b) control or divert water; or

(c) erect protective structures.

(3) If it is practicable to give notice of entry to the occupier of the land, notice must be given, but otherwise notice to the occupier is not required.

(4) An electricity entity is liable to pay reasonable compensation for damage caused by the exercise of powers under this section.

Division 5 - Interaction with planning laws

56. Acquisition and use of land for electrical infrastructure

(1) Where –

(a) an electricity entity acquires land under this Act for the purposes of electricity infrastructure; and

(b) the dimensions of the land are within limits fixed by the regulations; and

(c) the proposed use of the land complies with requirements imposed by the regulations for the purposes of this section –

a subdivision of land necessary to give effect to the acquisition is not to be regarded as development for the purposes of the Land Use Planning and Approvals Act 1993 and is not subject in any other way to that Act.

(2) If the use of the land complies with requirements imposed by the regulations, the use is not affected by the Land Use Planning and Approvals Act 1993 .

57. Work on electricity infrastructure

Where –

(a) an electricity entity proposes to carry out work on the construction, installation, modification, maintenance, demolition or replacement of electricity infrastructure; and

(b) the work is of a kind classified by the regulations as work of minor environmental impact –

the work is not to be regarded as development for the purposes of the Land Use Planning and Approvals Act 1993 and is not subject in any other way to that Act.

PART 5 - Electricity Officers

Division 1 - Appointment of electricity officers

58. Appointment of electricity officers

- (1) An electricity entity may appoint an eligible person to be an electricity officer for the entity.
- (2) A person is eligible for appointment as an electricity officer if the person –
 - (a) has the qualifications and experience required for appointment by the workplace health and safety Secretary; or
 - (b) has successfully completed a course of training approved by that Secretary.
- (3) An electricity officer may exercise powers only –
 - (a) in relation to the electricity entity's infrastructure and the supply of electricity by the electricity entity; and
 - (b) subject to the conditions of appointment and any directions given to the electricity officer by or on behalf of the electricity entity.

59. Conditions of appointment

- (1) An electricity officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.
- (2) An electricity officer holds office on the conditions stated in the instrument of appointment.
- (3) An electricity officer may resign by written notice given to the electricity entity.
- (4) An electricity officer may be removed from office by the electricity entity.

60. Electricity officer's identity card

- (1) An electricity entity must give each electricity officer for the entity an identity card.
- (2) The identity card must be in a form approved by the workplace health and safety Secretary and–
 - (a) must contain a recent photograph of the electricity officer; and
 - (b) must be signed by the electricity officer; and
 - (c) must identify the electricity officer as an electricity officer for the relevant electricity entity.
- (3) A person must, within 21 days after ceasing to be an electricity officer, return the identity card to the electricity entity.

Penalty: Fine not exceeding 10 penalty units.

61. Production of identity card

An electricity officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

Division 2 - General powers of electricity officers

62. Entry to inspect, operate or repair electrical infrastructure

- (1) An electricity officer for an electricity entity may, at any reasonable time, enter a place where the entity's electricity infrastructure is situated to inspect, operate, maintain, repair, make alterations to or replace the infrastructure.

(2) An electricity officer for an electricity entity may, at any reasonable time, enter a place to which electricity is, or is to be, supplied by the entity –

- (a) to inspect electrical installations in the place to ensure that it is safe to connect or reconnect electricity supply; or
- (b) to take action to prevent or minimise an electrical hazard; or
- (c) to protect property of the electricity entity in the place; or
- (d) to investigate suspected theft, loss, interference with or damage to the electricity entity's property or suspected theft of electricity.

(3) A power of entry under this section may be exercised, in an emergency, at any time.

(4) When an electricity officer enters a place under this section, the electricity officer –

- (a) may be accompanied by such assistants as the electricity officer considers necessary or appropriate; and
- (b) may take any vehicles or equipment the electricity officer considers necessary or appropriate for the functions the electricity officer is to carry out in the place.

(5) If in the opinion of an electricity officer an electrical installation is unsafe, the electricity officer may disconnect electricity supply to the place in which the installation is situated until the installation is made safe to the satisfaction of the electricity officer.

63. Entry to read meters, &c.

An electricity officer for an electricity entity may, at any reasonable time, enter a place to which electricity is, or is to be, supplied by the entity to –

- (a) read, or check the accuracy of, a meter for recording consumption of electricity; or
- (b) examine the electrical installations in the place to determine load classification and the appropriate tariff for the sale of electricity; or
- (c) install, repair or replace meters, control apparatus and other electrical installations in the place.

64. Entry to disconnect supply

If the disconnection of electricity supply is authorised under this Act, an electricity officer may, at any reasonable time, enter a place to disconnect an electricity supply to the place.

65. Disconnection of supply if entry refused

(1) If an electricity officer seeks to enter a place under this Division and entry is refused or obstructed, the electricity entity may, by written notice to the occupier of the place, ask for consent to entry.

(2) The notice must state the reason and the date and time of the proposed entry.

(3) If entry is again refused or obstructed, the electricity entity may –

- (a) if it is possible to do so, disconnect the electricity supply to the place without entering the place; or
- (b) if not, obtain a warrant to enter the place for the purpose of disconnecting the electricity supply, enter the place under the warrant and disconnect the electricity supply.

(4) The electricity entity must restore the electricity supply if –

- (a) the occupier –
 - (i) consents to the proposed entry; and
 - (ii) pays the appropriate reconnection fee; and
- (b) it is safe to restore the electricity supply.

66. Forcible entry

(1) An electricity officer may use force to enter a place under this Division if—

(a) the entry is authorised under a warrant; or

(b) the entry is necessary in an emergency.

(2) When entering a place by force under the authorisation of a warrant, an electricity officer must be accompanied by a police officer.

PART 6 - Emergency Restriction of Electricity Use

67. Emergency restriction orders

- (1) The Minister may make an emergency restriction order restricting the use of electricity.
- (2) An emergency restriction order may only be made if the Minister is satisfied that –
 - (a) an electricity entity –
 - (i) is presently unable to meet the demands for electricity from its customers because of failure of, or damage to, its electricity infrastructure or for any other reason; or
 - (ii) may not be able to sustain hydro-electric electricity generation at the level of current demand because of depletion of water supplies; and
 - (b) the electricity may not reasonably be obtained from an alternative source; and
 - (c) the order is necessary to restrict electricity use to the level of available or sustainable supply.
- (3) Before making an emergency restriction order because of the depletion of water supplies available for hydro-electric electricity generation, the Minister must consider the advice of an advisory committee established to monitor and advise the Minister on the adequacy of the available water supplies.
- (4) An emergency restriction order –
 - (a) must be made in writing; and
 - (b) must state the grounds on which the order is made; and
 - (c) must state the restrictions on the use of electricity imposed by the order; and
 - (d) must be published in a way that ensures, in the Minister's opinion, that the order will come to the attention of the persons affected by it.
- (5) Without limiting subsection (4) (c) , the order may –
 - (a) restrict the classes of customers to whom electricity may be supplied; or
 - (b) prescribe the maximum demand that may be placed on a power system by an electrical installation; or
 - (c) restrict the purposes for which electricity may be used; or
 - (d) restrict the nature of electrical equipment that may be used by customers; or
 - (e) authorise an authorised officer to disconnect the electricity supply to installations of a specified class or to take other specified action to enforce a restriction imposed by the order.
- (6) If an emergency restriction order is made because of the depletion of water supplies available for hydro-electric electricity generation the order must be laid before both Houses of Parliament and is subject to disallowance in the same way as a regulation.

68. Order to prevail over inconsistent contractual obligations

An emergency restriction order prevails over contractual obligations that are inconsistent with the order.

69. Term and expiry of order

- (1) If, in the Minister's opinion, the need for an emergency restriction order no longer exists, the Minister must make an order revoking the emergency restriction order.
- (2) An order revoking an emergency restriction order must be published in a way that ensures, in the Minister's opinion, that the order will come to the attention of the persons affected by it.
- (3) If an emergency restriction order is not revoked within the prescribed period after the order is made, the order expires.

(4) In subsection (3) , *prescribed period* means –

(a) if the order is made because of depletion of water supplies available for hydro-electric electricity generation, 6 months; or

(b) in any other case, one month.

(5) The expiry of an emergency restriction order does not prevent the Minister from making a further emergency restriction order to the same or similar effect.

70. Exclusion of compensation

No right to compensation from the Crown or an electricity entity arises because of a restriction imposed by an emergency restriction order.

71. Obligation to comply

A person must not –

(a) contravene an emergency restriction order; or

(b) obstruct an authorised officer acting under the authority of an emergency restriction order.

Penalty: For a body corporate a fine not exceeding 1 000 penalty units and for a natural person a fine not exceeding 500 penalty units.

PART 7 -

Division 1 -

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Division 2 -

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Division 3 -

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Division 4 -

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PART 8 - Enforcement

Division 1 - Authorised officers

84. Appointment of authorised officers

- (1) The workplace health and safety Secretary may appoint suitable persons as authorised officers.
- (2) An authorised officer may, but need not, be a State Service officer or State Service employee.
- (3) In the exercise of his or her powers, the authorised officer is subject to control and direction by the workplace health and safety Secretary.

85. Conditions of appointment

- (1) An authorised officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.
- (2) An authorised officer holds office on the conditions stated in the instrument of appointment.
- (3) An authorised officer may resign by written notice given to the workplace health and safety Secretary.
- (4) An authorised officer may be removed from office by the workplace health and safety Secretary.

86. Authorised officer's identity card

- (1) The workplace health and safety Secretary must give each authorised officer an identity card.
- (2) The identity card –
 - (a) must contain a recent photograph of the authorised officer; and
 - (b) must be signed by the authorised officer.
- (3) A person must, within 21 days after ceasing to be an authorised officer, return the identity card to the workplace health and safety Secretary.

Penalty: Fine not exceeding 10 penalty units.

87. Production of identity card

An authorised officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

Division 2 - Power of entry

88. Power of entry

- (1) An authorised officer may, for the purpose of carrying out functions assigned to the authorised officer under this Act, enter any place.
- (2) When an authorised officer enters a place under this section, the authorised officer –
 - (a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and
 - (b) may take any vehicles or equipment the authorised officer considers necessary or appropriate for the functions the authorised officer is to carry out in the place.
- (3) An authorised officer may use force to enter a place under this Division if –
 - (a) the entry is authorised under a warrant; or
 - (b) the entry is necessary in an emergency.
- (4) When entering a place by force, an authorised officer may be accompanied by a police officer.

Division 3 - General investigative powers

89. General investigative powers of authorised officers

(1) An authorised officer who enters a place under this Part may exercise any one or more of the following powers:

(a)

(b)

(c) investigate a suspected interference with electrical infrastructure or an electrical installation;

(d) investigate a suspected theft or diversion of electricity;

(e)

(f)

(g) take photographs or make films or other records of activities in the place and electrical installations in the place;

(h) take possession of any object that may be evidence of an offence against this Act.

(2) If an authorised officer takes possession of an object that may be evidence of an offence under subsection (1) (d) –

(a) the authorised officer must give the occupier of the place a receipt for the object; and

(b) the object must be returned to its owner –

(i) if proceedings for an offence are not commenced within 6 months after the authorised officer takes possession of the object, at the end of that period; or

(ii) if any such proceedings are commenced within that period, on completion of the proceedings, unless the court, on application by the workplace health and safety Secretary, orders confiscation of the object.

(3) A court may order the confiscation of an object of which an authorised officer has taken possession under subsection (1) (d) if it is of the opinion that the object has been used for the purpose of committing an offence or there is some other proper reason for ordering its confiscation.

(4) If the court orders the confiscation of an object under subsection (3) , the workplace health and safety Secretary may dispose of the object.

Division 4 - Power to disconnect electricity supply

90. Disconnection of electricity supply

(1) If an authorised officer finds that electricity is being supplied or consumed contrary to this Act or an order under this Act, the authorised officer may disconnect the electricity supply.

(2) If an authorised officer disconnects an electricity supply under this section, the officer must give written notice to the occupier of the relevant place informing the occupier –

(a) that the electricity supply has been disconnected under this section; and

(b) that it is unlawful to reconnect the electricity supply until arrangements have been made to the satisfaction of the authorised officer to ensure against future contravention of this Act or the order.

(3) If an electricity supply has been disconnected under this section, a person must not reconnect the electricity supply, or have it reconnected, without the authorised officer's approval.

Penalty: Fine not exceeding 20 penalty units.

Division 5 -

91.

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Division 6 -

92.

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Division 7 -

93.

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Division 8 - Power to require information

94. Power to require information

(1) An authorised officer may require a person to provide information in the person's possession relevant to the enforcement of this Act.

(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to the enforcement of this Act for inspection by the authorised officer.

(3) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Penalty: For a body corporate a fine not exceeding 20 penalty units and for a natural person a fine not exceeding 10 penalty units.

(4) A person is not required to give information or produce a document under this section if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

PART 9 - Administrative Review and Appeal

Division 1 - Administrative review

95. Statement of reasons for decision

- (1) A person whose interests are affected by a reviewable decision of the Regulator, workplace health and safety Secretary or an authorised officer may apply, in writing, to the Regulator, workplace health and safety Secretary or authorised officer for a statement of the reasons for the decision.
- (2) An application under this section must be made within 28 days after the date on which the applicant received notice of the decision.
- (3) The Regulator, workplace health and safety Secretary or authorised officer must comply with a request under this section as soon as practicable and, in any case, no later than 60 days after receiving the application.

96. Application for administrative review

- (1) In this section –

applicable authority means –

- (a) the Regulator in relation to a decision of the Regulator; or
 - (b) the workplace health and safety Secretary in relation to a decision of the workplace health and safety Secretary or an authorised officer.
- (2) A person whose interests are affected by a reviewable decision of the Regulator, the workplace health and safety Secretary or an authorised officer may, subject to this Act, apply to the applicable authority for an administrative review of the decision.
 - (3) An application for an administrative review must –
 - (a) be in writing; and
 - (b) set out in detail the grounds on which the applicant seeks review of the decision; and
 - (c) be made within 28 days after the day on which notice of the decision was given to the applicant or, if reasons for the decision were not then given to the applicant and the applicant sought those reasons under this Part, within 28 days after reasons for the decision were given to the applicant.
 - (4) The Regulator or workplace health and safety Secretary may extend the period for making an application for an administrative review.

97. Stay of operation

- (1) The Regulator or workplace health and safety Secretary may stay the operation of a decision that is subject to review or appeal under this Part.
- (2) A stay may not be granted if, in the opinion of the Regulator or workplace health and safety Secretary, its effect would be to create a risk to public safety or to allow a risk to public safety to continue.

98. Reference of application for mediation

- (1) The Regulator or workplace health and safety Secretary may refer an application for administrative review to a mediator.
- (2) If a mediator achieves an agreed settlement of the matter to which the application relates, the Regulator or workplace health and safety Secretary must decide the application in accordance with the agreed settlement.

99. Powers of Regulator or workplace health and safety Secretary on review

- (1) After considering an application for administrative review, and taking advice the Regulator considers appropriate, the Regulator or workplace health and safety Secretary may–

- (a) confirm the disputed decision; or
- (b) amend the disputed decision; or
- (c) substitute another decision for the disputed decision.

(2) The Regulator or workplace health and safety Secretary must give the applicant written notice of the his or her decision and the reasons for that decision on the review.

100. Reference of application for review for mediation or advice

The Regulator or workplace health and safety Secretary may delegate the power to review decisions, or decisions of a particular class, to—

- (a) a review panel appointed under the regulations; or
- (b) an arbitrator.

Division 2 - Appeals

101. Appeal

(1) A person who is dissatisfied with a decision on administrative review may, subject to this Act, appeal against the decision to the appropriate appellate authority.

(2) The appropriate appellate authority is —

- (a) if a regulation is in force assigning appeals of the relevant class to a specified authority, the authority specified in the regulations; or
- (b) if there is no such regulation, the Minister.

102. Procedure on appeal

An appeal is to be commenced, heard and determined in accordance with the regulations.

103. Stay of operation

(1) An appellate authority to which an appeal is made or is intended may stay the operation of a decision that is subject to appeal under this Part.

(2) A stay may not be granted if, in the opinion of the Regulator or the workplace health and safety Secretary, as appropriate having regard to who made the decision that is subject to appeal under this Part, its effect would be to create a risk to public safety or to allow a risk to public safety to continue.

104. Powers of appellate authority on appeal

(1) On an appeal, the appropriate appellate authority may —

- (a) confirm the decision under appeal; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the primary decision maker with directions the appellate authority considers appropriate.

(2) The appellate authority may make ancillary directions to deal with incidental matters.

(3) No appeal lies from the decision of the appropriate appellate authority on an appeal.

PART 10 - Miscellaneous

Division 1 - Exempting power

105. Power of exemption

- (1) The Regulator or workplace health and safety Secretary may grant exemptions from this Act, or specified provisions of this Act, as authorised by the regulations.
- (2) An exemption under this section may be given on terms and conditions the Regulator or workplace health and safety Secretary considers appropriate.

106. Obligation to comply with conditions of exemption

A person in whose favour an exemption is given must comply with the conditions of the exemption.

Penalty: For a body corporate a fine not exceeding 100 penalty units and for a natural person a fine not exceeding 50 penalty units.

Division 2 - Warrants

107. Application and issue of warrant

- (1) An authorised officer or an electricity officer may apply to a justice for a warrant to enter a place specified in the application.
- (2) A justice may issue a warrant if satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant is to authorise the authorised officer or electricity officer, with any assistance and by any force reasonably necessary –
 - (a) to enter the place specified in the warrant; and
 - (b) to do anything authorised by this Act –at any time, or within any period, specified in the warrant.
- (4) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

108. Urgent situations

- (1) An authorised officer or an electricity officer may apply to a justice for a warrant by telephone, facsimile or other prescribed means if the officer considers the urgency of the situation requires it.
- (2) The justice may complete and sign a warrant in the terms referred to in section 107 (3) if satisfied that there are reasonable grounds for issuing the warrant urgently.
- (3) The justice is to –
 - (a) tell the officer –
 - (i) the terms of the warrant; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (iii) the date on which, and the time at which, the warrant ceases to have effect; and
 - (b) record on the warrant the reasons for granting the warrant.
- (4) The officer is to –
 - (a) complete a form of warrant in the same terms as the warrant signed by the justice; and
 - (b) write on the form –
 - (i) the name of the justice; and

- (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the justice the completed form of warrant not later than the day after the warrant is executed or ceases to have effect.
- (5) On receipt of the form of warrant, the justice is to attach it to the warrant the justice signed.
- (6) A form of warrant completed by an authorised officer or an electricity officer under subsection (4) has the same force as a warrant signed by the justice under subsection (2) .

Division 3 - Offences

109. Unlawful interference with electricity infrastructure or electrical installation

- (1) A person must not, without proper authority –
- (a) attach an electrical installation or other thing to a transmission system or distribution network; or
 - (b) connect, disconnect or interfere with a supply of electricity from a transmission system or distribution network; or
 - (c) interfere with electrical infrastructure or an electrical installation in any other way.

Penalty: For a body corporate a fine not exceeding 100 penalty units and for a natural person a fine not exceeding 50 penalty units.

- (2) A person must not, without proper authority –
- (a) be in an enclosure where electrical infrastructure is situated; or
 - (b) climb on poles and other structures that are part of electrical infrastructure.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not discharge a firearm or throw or project an object towards electrical infrastructure or an electrical installation if there is significant risk of damage to the infrastructure or installation or interruption of electricity supply.

Penalty: Fine not exceeding 50 penalty units.

110. Notice of work that may affect electrical infrastructure

- (1) A person who proposes to do work near electrical infrastructure must give the appropriate electricity entity at least 7 days' notice of the proposed work if –
- (a) there is a risk of equipment or a structure coming into dangerous proximity to electrical conductors; or
 - (b) the work may affect the support for any part of electricity infrastructure; or
 - (c) the work may interfere with electricity infrastructure in some other way.

Penalty: Fine not exceeding 50 penalty units.

- (2) If the work is required to deal with an emergency, and it is not practicable to give the notice required by subsection (1) , the notice must be given as soon as practicable.

- (3) A person who does work near electricity infrastructure must comply with –
- (a) requirements prescribed by regulation that are applicable to the work; and
 - (b) reasonable requirements made by the electricity entity for the protection of the infrastructure or the safety of the persons carrying out the work.

Penalty: Fine not exceeding 50 penalty units.

111. Unlawful diversion of electricity

(1) A person must not, without proper authority, take or divert electricity.

Penalty: For a body corporate a fine not exceeding 1 000 penalty units and for a natural person a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 1 year, or both.

(2) In proceedings for an offence against subsection (1) –

(a) evidence of the finding of a device that would have enabled the unlawful taking or diversion of electricity by the defendant; or

(b) evidence of tampering by the defendant or someone acting with the defendant's authority with a meter for recording consumption of electricity supplied to the defendant's premises –

establishes, in the absence of proof to the contrary, the unlawful taking or diversion of electricity by the defendant.

(3) A person must not run a line capable of carrying an electricity supply beyond the boundaries of property occupied by the person unless –

(a) the person is an electricity entity; or

(b) the electricity supply line is authorised under the regulations.

Penalty: For a body corporate a fine not exceeding 100 penalty units and for a natural person a fine not exceeding 50 penalty units.

112. False or misleading information

(1) A person must not knowingly give false or misleading information to the Regulator, workplace health and safety Secretary or anyone else involved in the administration of this Act.

Penalty: For a body corporate a fine not exceeding 500 penalty units and for a natural person a fine not exceeding 50 penalty units.

(2) A person must not knowingly give documents containing false or misleading information to the Regulator, workplace health and safety Secretary or anyone else involved in the administration of this Act unless the person points out in what respects the documents are false or misleading.

Penalty: For a body corporate a fine not exceeding 500 penalty units and for a natural person a fine not exceeding 50 penalty units.

113. Impersonation of officials, &c.

A person must not impersonate an authorised officer, an electricity officer or anyone else with powers under this Act.

Penalty: Fine not exceeding 50 penalty units.

114. Obstruction

(1) A person must not, without reasonable excuse, obstruct an authorised officer, an electricity officer or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not use abusive or intimidatory language to, or engage in offensive or intimidatory behaviour towards, an authorised officer, an electricity officer or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Penalty: Fine not exceeding 20 penalty units.

114A. Compliance with direction, order, determination and requirement

(1) An electricity entity must comply with any direction, order, determination or requirement given or made under this Act, the regulations or the Code.

Penalty: Fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

(2) If a court finds an electricity entity guilty of an offence against subsection (1) , it may in addition to, or instead of, imposing a penalty under that subsection make one or more of the following orders:

- (a) an order requiring the electricity entity to comply with the direction, order, determination or requirement referred to in that subsection;
- (b) an order directing the electricity entity to do or refrain from doing anything;
- (c) such other order as the court considers appropriate.

114B. Compliance with licence conditions

(1) An electricity entity must comply with the conditions to which its licence under this Act is subject.

Penalty: Fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

(2) If a court finds an electricity entity guilty of an offence against subsection (1) , it may in addition to, or instead of, imposing a penalty under that subsection make one or more of the following orders:

- (a) an order requiring the electricity entity to comply with the conditions to which its licence under this Act is subject;
- (b) an order directing the electricity entity to do or refrain from doing anything;
- (c) such other order as the court considers appropriate.

114C. Institution of proceedings for offence

Proceedings in respect of an offence against section 114A or 114B may only be instituted by the Regulator, the workplace health and safety Secretary or a person authorised by the Regulator or the workplace health and safety Secretary.

114D. Injunction

(1) If the Regulator or workplace health and safety Secretary considers that an electricity entity is contravening, has contravened or is proposing to contravene this Act, the regulations or the Code, it, he or she may apply to a magistrate for an injunction.

(2) If a magistrate is satisfied that an electricity entity is contravening, has contravened or is proposing to contravene this Act, the regulations or the Code, the magistrate may grant an injunction in terms the magistrate considers appropriate.

(3) Without limiting subsection (2) , an injunction may require the electricity entity –

- (a) to refrain from engaging in any conduct specified in the injunction; and
- (b) to take the action specified in the injunction to remedy any consequences of the act of the electricity entity that contravened this Act, the regulations or the Code, including –
 - (i) the refunding of any amount wrongfully paid; and
 - (ii) the disclosure of information; and
 - (iii) the publication of advertisements relating to the contravention or the actions to remedy the contravention.

(4) An injunction may be granted –

- (a) in proceedings for an offence against this Act or the regulations; or
 - (b) in proceedings brought for the purposes of obtaining the injunction.
- (5) An injunction may be granted –
- (a) in the case where an electricity entity has contravened this Act, the regulations or the Code, whether or not it appears to a magistrate that the electricity entity intends to continue or repeat that contravention; and
 - (b) whether or not the electricity entity has previously contravened this Act, the regulations or the Code; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the electricity entity contravenes this Act, the regulations or the Code.
- (6) An injunction may be granted in addition to any order that a magistrate may make under this Act.
- (7) An interim injunction may be granted under this section pending final determination of the application.
- (8) With the consent of the parties, a final injunction may be granted without proof that proper grounds for the injunction exist.
- (9) In proceedings for an injunction, the Regulator or workplace health and safety Secretary may not be required to enter into an undertaking as to damages.
- (10) An injunction may be rescinded or varied at any time.

Division 4 - Evidentiary provisions and provisions relating to proceedings in a court

115. Evidence of appointments

- (1) If a person is alleged in a complaint for an offence or in civil pleadings to have held a specified appointment under this Act at a specified time, the allegation is taken to have been proved in the absence of proof to the contrary.
- (2) A document that appears to have been signed by the Minister, the Regulator, the workplace health and safety Secretary, an authorised officer or an electricity officer is taken to have been duly executed by that person in the absence of proof to the contrary.

116. Certificates by Regulator or workplace health and safety Secretary

- (1) A certificate given by the Regulator or the workplace health and safety Secretary to the effect that a specified person held or did not hold a specified licence, authority, permit or certificate under this Act on a specified date or over a specified period is evidence of the matter certified.
- (2) A certificate given by the Regulator or the workplace health and safety Secretary to the effect that a specified notice, order or direction was given to a specified person on a specified day is evidence of the matter certified.
- (3) A certificate given by the Regulator or the workplace health and safety Secretary to the effect that the costs of specified action taken under this Act is a specified amount is evidence of the matter certified.

116A. Regulator or workplace health and safety Secretary may take court action on behalf of customer

Where a customer or a class of customer could take any action in a court to enforce a right under, or to enforce compliance with, this Act, the regulations or the Code, the Regulator or the workplace health and safety Secretary may in his or her discretion take that action on behalf of the customer or class of customer.

Division 5 - Damage caused by officers in exercising statutory powers

117. Damage to be notified

(1) An electricity officer or authorised officer who damages property in a place entered in pursuance of powers under this Act must (unless the damage appears to be trivial) give notice containing particulars of the damage to the occupier of the place.

Penalty: Fine not exceeding 10 penalty units.

(2) If it is not practicable to give the notice to the occupier personally, the notice may be left in a conspicuous position near where the damage happened.

118. Liability for compensation

(1) If the damage is caused by an electricity officer, the electricity entity for which the officer is acting is liable to pay reasonable compensation for the damage and, if the damage is caused by an authorised officer, the Regulator or the workplace health and safety Secretary, as appropriate, is liable to pay reasonable compensation for the damage.

(2) A claim for compensation under this section may be made in a court with jurisdiction to decide a claim in tort for the relevant amount.

Division 6 - Immunity from liability

119. Immunity from liability

The Regulator, workplace health and safety Secretary or another person acting, or purporting to act, in good faith in the administration of this Act incurs no civil liability except—

- (a) a liability for negligence; or
- (b) a liability for which express provision is made by or under this Act.

119A. Entry into certain agreements is authorised

Nothing in any law of Tasmania is to be taken to prevent a Minister entering into an agreement, arrangement or contract under which, or in relation to which, a Minister agrees to subsequently –

- (a) make an order or approval under Division 4 or 4A of Part 3 ; or
- (b) take steps for the making of regulations under this Act for the purposes of Division 4 or 4A of Part 3

–

and accordingly –

- (c) a Minister is, for the purpose of carrying out or giving effect to that agreement, arrangement or contract, authorised to make such an order or approval or take such steps for the making of regulations under this Act for the purposes of Division 4 or 4A of Part 3 ; and
- (d) the Governor is authorised to make any such regulations.

Division 6A - Charges

120. Interpretation

In this Division –

AEMC means the Australian Energy Market Commission established under the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

Electricity Safety Minister means the Minister administering the Electricity Industry Safety and Administration Act 1997 ;

Energy Minister means the Minister administering this Act;

ESIS fund means the electrical safety inspection service fund established under section 121E ;

NEMC means the charge for the cost of the State's funding commitments in respect of the AEMC payable under section 121 ;

121. National energy market charge

- (1) An annual charge is payable to the Crown by an electricity entity representing part or all of the cost of the State's funding commitments in respect of the AEMC.
- (2) The Minister, by order published in the *Gazette*, is to determine –
 - (a) the electricity entity that is liable for the charge; and
 - (b) the amount of the charge for the financial year in which the order is made.
- (3) In determining the amount of the charge for a financial year, the Minister must consider the expenditure incurred, or expected to be incurred, by the State in its funding commitments in respect of the AEMC in respect of that financial year.
- (4) The Minister must notify the electricity entity of the entity's liability for the NEMC and the amount of the charge.
- (5) The NEMC is to be paid into an account in the Special Deposits and Trust Fund, unless otherwise directed or approved by the Treasurer.

121AA. Costs of transfer of prepayment meter customers recoverable from distributor

- (1) An authorised retailer may give to the distributor in respect of the authorised retailer a notice specifying –
 - (a) the relevant costs incurred by the retailer in relation to a relevant termination, under the National Energy Retail Law (Tasmania), of a prepayment meter market retail contract; and
 - (b) the day, not being (unless otherwise agreed between the distributor and the authorised retailer) a day that is less than 30 days after the day on which the notice is given, by which the distributor is to pay the costs to the retailer.
- (1A) For the purposes of subsection (1)(a) , the relevant costs incurred by an authorised retailer in relation to a relevant termination are the costs charged to the retailer by the distributor for the removal or reconfiguration of a prepayment meter system installed at the premises to which the relevant termination relates.
- (1B) For the purposes of subsection (1)(a) , a relevant termination is a termination, of a prepayment meter market retail contract in relation to a prepayment meter of the prescribed type installed at premises, by a customer –
 - (a) who has received from an authorised retailer a notice of the variation of the tariffs and charges in relation to the prepayment meter market retail contract; and
 - (b) who has, within 20 days of receiving the notice referred to in paragraph (a) , given, under the National Energy Retail Rules, notice to the authorised retailer of the customer's intention to terminate the prepayment meter market retail contract; and
 - (c) who has, subsequent to the termination of the prepayment meter market retail contract, entered into a standard retail contract in relation to the premises; and
 - (d) who has not previously terminated a prepayment meter market retail contract in relation to a prepayment meter system of the prescribed type installed at the premises.
- (2) If a notice is given to a distributor under subsection (1) , the costs specified in the notice in accordance with subsection (1)(a) are due and payable by the distributor on the day specified in the notice in accordance with subsection (1)(b) .
- (3) In this section –

prepayment meter market retail contract has the same meaning as it has in the National Energy Retail Law (Tasmania).

121A. NEMC not recoverable from specified customers

The Minister may determine that the electricity entity must not seek to recover the NEMC from a customer, or class of customers, of the electricity entity as may be specified in the order under section 121(2) .

121B. Electrical safety inspection service charge

(1) An annual charge is payable to the Crown by an electricity entity for the operation and administration of the electrical safety inspection service administered by the responsible Department in relation to the Electricity Industry Safety and Administration Act 1997 .

(2) The Minister, by order published in the *Gazette*, is to determine the amount of the electrical safety inspection service charge each year.

(3) In determining the amount of the electrical safety inspection service charge, the Minister is to take into account the budget prepared under section 121D .

(4) The Minister must notify the electricity entity of the entity's liability to pay the electrical safety inspection service charge and the amount of the charge.

(5) The electrical safety inspection service charge is to be paid into the ESIS fund.

121C. Orders under this Division

(1) An order made under this Division is to specify –

(a) to whom the charge is payable; and

(b) the place at which, and the date and method by which, payment of the charge is to be made.

(2) Sections 47(3) , (4) , (5) , (6) and (7) of the Acts Interpretation Act 1931 apply to an order made under this Division as if it were regulations within the meaning of that Act.

(3) An order made under this Division is not –

(a) a statutory rule for the purposes of the Rules Publication Act 1953 ; or

(b) subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

121D. Preparation of annual budget

(1) Before 30 September in each calendar year, the person or body engaged to carry out the electrical safety inspection service is to prepare a budget in respect of the costs of delivering that service for the next calendar year.

(2) The person or body is to provide a copy of the budget to the Energy Minister, the Regulator and the Administrator of Occupational Licensing appointed under the Occupational Licensing Act 2005 .

121E. Electrical safety inspection service fund

(1) The Electricity Safety Minister is to establish the electrical safety inspection service fund.

(2) Money in the ESIS fund is to be applied for the operation and administration of the electrical safety inspection service in any way the Electricity Safety Minister determines.

121F. Penalty for late payment

If the whole or any part of the electrical safety inspection service charge payable under section 121B is not paid by the due date, the electricity entity is liable to a penalty calculated at the rate of 20% per annum of the amount unpaid as from that due date.

121G. Money payable may be recovered as debt

The relevant Minister may recover money payable as the NEMC or the electrical safety inspection service charge as a debt due in a court of competent jurisdiction.

Division 7 - Regulations

122. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting subsection (1) , regulations may be made in respect of –

- (a) the generation, transmission, distribution and supply of electricity; and
- (b) the construction, installation and positioning of electricity infrastructure; and
- (c) technical, operational and safety requirements and standards and monitoring and enforcing compliance with the prescribed requirements and standards; and
- (d)
- (e) conditions of electricity sale or supply; and
- (f)
- (g)
- (h)
- (i)
- (j)
- (k) procedures for reviews and appeals; and
- (l) fees and charges; and
- (m) other subjects on which regulations are contemplated by this Act.

(2A) Without limiting subsection (1) , the regulations may provide for –

- (a) investigations by the Regulator into the pricing policies of electricity entities or authorised retailers for the purposes of Division 4 or 4A of Part 3 ; and
- (b) the making by the Regulator of determinations, for the purposes of Division 4 or 4A of Part 3 , regulating the prices that may be charged by electricity entities or authorised retailers for the sale or supply of electricity and the provision of other services; and
- (c) the functions and powers of the Regulator with relation to such investigations and the making of such determinations; and
- (d) the appointment of assistants to the Regulator for the purposes of carrying out such investigations and determinations; and
- (e) the power of the Regulator and such assistants to delegate any functions and powers specified in the regulations with relation to such investigations and determinations; and
- (f) the liability of electricity entities and authorised retailers for the costs incurred in undertaking such investigations and making such determinations; and
- (g) any related matter.

(2B) Without limiting the type of determinations that, under subsection (2A)(b) , the regulations may require or permit the Regulator to make or the matters to be included in the determinations, the regulations may require or allow the prices regulated by the determinations to be regulated by specifying, or by reference to, one or more of the following:

- (a) maximum prices that may be charged by electricity entities or authorised retailers for the sale or supply of electricity and the provision of other services;
- (b) maximum revenues in respect of the sale or supply of electricity and the provision of other services provided by electricity entities or authorised retailers;
- (c) pricing policies or principles to be applied by electricity entities or authorised retailers;
- (d) other price control mechanisms to be applied by electricity entities or authorised retailers;
- (e) any other prescribed matter.

(2BAA)

(2BA) Without limiting subsection (1) , the regulations, for the purposes of the application of the National Electricity Rules in Tasmania, may –

- (a) confer functions and powers on the Regulator and workplace health and safety Secretary; and
- (b) vary the functions and powers of the Regulator and workplace health and safety Secretary under this Act, the regulations or the Code; and
- (c) provide for any matter which the National Electricity Rules contemplate will be provided for or dealt with by Tasmania as a participating jurisdiction within the meaning of the National Electricity Law.

(2BB)

(2BC)

(2BD)

(2BE) If the regulations provide for the making by the Regulator of determinations –

- (a) those determinations are not statutory rules for the purposes of the Rules Publication Act 1953 ; and
- (b) the Treasurer may not declare such a determination to be subordinate legislation under section 3(2) of the Subordinate Legislation Act 1992 .

(2C) Without limiting the generality of subsection (1) , the Governor may make regulations that contain provisions of a savings or transitional nature consequent on the commencement of any one or more of the following:

- (a) the Electricity Supply Industry Amendment Act 1998 ;
- (b) the Government Prices Oversight Amendment Act 1998 ;
- (ba) the Electricity Supply Industry Amendment Act 2003 or a provision of that Act;
- (bc) the Economic Regulator (Consequential Amendments) Act 2009 ;
- (bd) any of the provisions of the National Energy Retail Law (Tasmania) (Consequential Amendments) Act 2012 ;
- (be) the Electricity Reform (Implementation) Act 2013 ;
- (c) regulations providing for any matter specified in subsection (2A) .

(2D) A regulation of a kind referred to in subsection (2C) may take effect on and from the day on which the Act or regulations to which that regulation relates commences or takes effect or on and from a later day.

(3) A regulation may have a differential application that varies according to factors stated in the regulation.

(4) The regulations may provide that contravention of a regulation is an offence and provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(5) The regulations may authorise regulation of a matter by the Minister, the Regulator or the workplace health and safety Secretary.

(6) The regulations may incorporate by reference, or operate by reference to, specified codes, standards and protocols.

123. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Energy; and
- (b) the department responsible to the Minister for Energy in relation to the administration of this Act is the Office of Energy Planning and Conservation.

124. Transitional provisions on enactment of *Economic Regulator (Consequential Amendments) Act 2009*

(1) In this section –

former Act means this Act as in force immediately before the transition day;

transition day means the day on which the Economic Regulator Act 2009 commences.

(2) If a person was appointed by the Regulator or its delegate as an authorised officer under the former Act and, immediately before the transition day, holds that office –

(a) that person is taken to have been appointed as an authorised officer by the workplace health and safety Secretary for the same term and on the same conditions; and

(b) an identity card issued to the authorised officer is taken to have been issued by the workplace health and safety Secretary; and

(c) a reference in an identity card to the Regulator is taken to be to the workplace health and safety Secretary.