



TASMANIA

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**ELECTRICITY SUPPLY INDUSTRY RESTRUCTURING  
(SAVINGS AND TRANSITIONAL PROVISIONS) ACT  
1995**

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**No. 49 of 1995**

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**ELECTRICITY SUPPLY INDUSTRY RESTRUCTURING  
(SAVINGS AND TRANSITIONAL PROVISIONS) ACT  
1995**

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**No. 49 of 1995**

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**AN ACT to make certain repeals and enact provisions of a saving or transitional nature in consequence of legislation providing for the restructuring of the electricity supply industry and for other purposes**

**[Royal Assent 22 September 1995]**

**B**E 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**

**Short title**

**1—**This Act may be cited as the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.

### Commencement

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

### Interpretation

3—In this Act—

“**complementary legislation**” means—

- (a) the *Electricity Supply Industry Act 1995*; and
- (b) the *Hydro-Electric Corporation Act 1995*; and
- (c) the *HEC Enterprises Corporation Act 1995*;

“**construction Acts**” means the Acts referred to in Part 2 of Schedule 1;

“**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;

“**ESI Act**” means the *Electricity Supply Industry Act 1995*;

“**former Act**” means the *Hydro-Electric Commission Act 1944*;

“**HEC**” means the Hydro-Electric Corporation formerly known as the Hydro-Electric Commission;

“**land**” includes—

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

“**owner**” of land means—

- (a) if the land has been alienated from the Crown by the grant of an estate in fee simple or another estate or interest conferring a right to possession of the land, the person who holds the relevant estate or interest; or
- (b) in any other case, the Minister, authority or person responsible for the management of the land;

“**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;

“**powerline corridor**” means a strip of land 12 metres wide defined by measuring 6 metres in a horizontal plane to each side of the centreline of a powerline at right angles to the centreline;

“**regulated operations**” means operations in the electricity supply industry for which a licence is required under the ESI Act;

“**Regulator**” means the person holding office as the Regulator under the ESI Act;

“**wayleave register**” means the register of wayleave contracts established under section 47 (3) of the former Act.

**PART 2****TRANSITIONAL PROVISIONS****Presumptive licensing**

4—(1) A person who was, immediately before the commencement of this Act, lawfully carrying on operations in the electricity supply industry is taken to be licensed under the ESI Act to carry on regulated operations in the electricity supply industry if—

- (a) the person was carrying on operations of the same kind immediately before the commencement of this Act; or
- (b) the person is authorised by regulation to carry on the operations.

(2) A presumptive licence under subsection (1) terminates 6 months after the commencement of this Act if the person makes no application for a licence under the ESI Act within that period and, if an application is made for a licence under that Act, the presumptive licence terminates when the application is finally decided.

(3) The regulations may prescribe conditions to which a presumptive licence under this section is subject.

**Presumptive appointment as system controller**

5—(1) On the commencement of this Act, the HEC is taken to have been appointed under the ESI Act as the system controller for all power systems operated by it immediately before the commencement of this Act.

(2) An appointment under this section continues for 12 months after the commencement of this Act.

**Regulations and by-laws**

6—(1) A regulation in force under the former Act immediately before the commencement of this Act continues in force, subject to amendment or revocation under the ESI Act or this Act, as a regulation under the ESI Act.



(8) A regulation or by-law that continues in force under this section must be read subject to any adaptations and modifications that are necessary for its continued operation under the ESI Act.

(9) In this section, “**relevant date**” means the date when the first order affecting the prices that may be charged by the HEC for electricity takes effect under the *Government Prices Oversight Act 1995*.

### Contracts

7—(1) 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.

(2) If, before the commencement of this Act, the HEC entered 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—

the contractual conditions and anything done to enforce the conditions are, for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth, authorised by this Act.

(3) If, before the commencement of this Act, the HEC entered into contracts with one or more customers to which this section applies and it appears from comparison of the conditions of the contracts that there is price discrimination according to whether the electricity is, or is not, re-supplied, the contractual conditions and anything done to enforce the conditions are, for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth, authorised by this Act.



**Permits, licences, authorisations and approvals**

8—(1) Subject to subsection (2), if a permit, licence, authorisation or approval was in force under the former Act immediately before the commencement of this Act, and the ESI Act contains provision for a similar kind of permit, licence, authorisation or approval, it continues in force, subject to the ESI Act, as if granted under the corresponding provision of the ESI Act.

(2) Unless renewed under the ESI Act, a permit, licence, authorisation or approval that continues in force under subsection (1) expires—

(a) at the end of the term for which it was granted or last renewed; or

(b) one year after the commencement of this Act—

whichever is the earlier.

**Electricity officers and authorised officers**

9—(1) An officer appointed by the HEC to exercise powers under section 58 of the former Act is, on the commencement of this Act, taken to have been appointed an electricity officer for the purposes of the ESI Act.

(2) An appointment under subsection (1) expires, unless revoked earlier by the HEC, 12 months after the commencement of this Act.

(3) A person appointed by the HEC to exercise powers for the purposes of regulations under section 61 or 62 of the former Act is, on the commencement of this Act, taken to have been appointed as an authorised officer for the purposes of the ESI Act.

(4) An appointment under subsection (3) expires, unless revoked earlier by the Regulator, 12 months after the commencement of this Act.

**PART 3****EASEMENTS AND OTHER STATUTORY RIGHTS OF ACCESS TO  
LAND****Continuation of wayleave contracts and easements**

**10—(1)** A wayleave contract or easement in force under the former Act immediately before the commencement of this Act continues in force, subject to its terms, under this Act.

(2) The HEC may, with the Minister's consent in writing, transfer its interest in a wayleave contract, and the wayleave easement to which the contract relates, to another electricity entity.

(3) A claim against an electricity entity under or in respect of a wayleave contract or easement must be made within 12 months after the right on which the claim is based arose and, if not made within that period, the claim is barred.

**Register of wayleave contracts**

**11—(1)** The HEC must continue to maintain the register of wayleave contracts until the date of transition.

(2) Any dealing with a wayleave contract or easement under section 10 (2) before the date of transition must be recorded in the register.

(3) The HEC must, at the request of any person, and payment of the fee, if any, prescribed by regulation—

(a) make the register available for inspection by the person; or

(b) provide the person with an extract from the register.

(4) A person who takes or acquires an interest in land subject to a registered wayleave easement is presumed to have notice of the easement and takes or acquires the interest subject to the easement.

(5) In this section—

“**date of transition**” means a date agreed between the Minister and the Minister responsible for the administration of the *Land Titles Act 1980* as the date when the Recorder of Titles is to assume responsibility for registering wayleave easements;

“**registered wayleave easement**” means a wayleave easement for which the relevant wayleave contract is registered in the register maintained under this section.

### **Rights of access to existing electricity infrastructure**

**12—(1)** If—

- (a) the HEC had, before the commencement of this Act, established electricity infrastructure on, above or under land of which the HEC is not the owner; and
- (b) the electricity infrastructure is in existence at the commencement of this Act; and
- (c) there is no wayleave easement in force at the commencement of this Act relating to the electricity infrastructure—

the relevant electricity entity may exercise the rights conferred by this section.

(2) The relevant electricity entity is entitled—

- (a) to maintain the relevant electricity infrastructure on, above or under the land; and
- (b) to enter and remain on the land, at reasonable times and with any necessary vehicles and equipment, for any one or more of the following purposes:—
  - (i) examining, operating, maintaining, repairing, modifying, adding to or replacing the relevant electricity infrastructure;
  - (ii) fencing or placing protective structures around the electricity infrastructure;
  - (iii) if the electricity infrastructure consists of a powerline, clearing the powerline corridor of vegetation, structures and objects that could interfere with the proper operation of the powerline; and

(c) if it is reasonably necessary to do so in order to gain access to the land on which the electricity infrastructure is situated, to enter and pass over adjoining land, with vehicles and equipment.

(3) The rights conferred by this section may be exercised by agents, contractors and employees authorised by the relevant electricity entity to act on the entity's behalf.

(4) The rights conferred by this section must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by other persons.

(5) Before a person enters land to exercise powers under this section, the relevant electricity entity must, if practicable, give reasonable notice of the proposed exercise of powers to the occupier of the land.

(6) The relevant electricity entity is liable to pay reasonable compensation for damage arising from the exercise of powers under this section.

(7) In this section "relevant electricity entity" means the electricity entity that is entitled under the terms of its licence to operate the transmission or distribution network to which the electricity infrastructure relates.

### **Transfer of the register**

13—(1) The HEC must—

(a) notify the Recorder of Titles, in accordance with the transition agreement, of—

(i) all wayleave easements that were in force under this Part on the date of transition; and

(ii) all electricity infrastructure in respect of which rights existed under section 12 as at the date of transition and the land on which the infrastructure is situated; and

(b) comply with the other obligations to be performed by the HEC under the transition agreement.

(2) As from the date of transition—

(a) the wayleave register is incorporated with, and forms part of, the Register under the *Land Titles Act 1980* and;

- (b) a wayleave easement is to be regarded as an easement in gross, subject to the terms and conditions of the relevant wayleave contract, registered under the *Land Titles Act 1980*; and
  - (c) the land on which electricity infrastructure is situated in respect of which rights exist under section 12 is to be regarded as subject to an easement in gross, subject to the terms and conditions prescribed by section 12, and registered under the *Land Titles Act 1980*.
- (3) In this section—

“**date of transition**” means a date, which must be a date falling before 31 December 2000, agreed between the Minister and the Minister responsible for administering the *Land Titles Act 1980* as the date when the Recorder of Titles is to assume responsibility for the wayleave register;

“**transition agreement**” means an agreement between the Minister and the Minister responsible for administering the *Land Titles Act 1980* for transferring responsibility for the wayleave register from the HEC to the Recorder of Titles.

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## PART 4

### CONTINUING OBLIGATIONS RELATED TO WATER MANAGEMENT

#### *Division 1—The Huon and Serpentine Rivers*

#### The HEC’s obligations

##### 14—(1) The HEC—

- (a) must maintain a release valve with a capacity of not less than 2 832 litres per second so that water may be released down the Huon River from the structures that were established under the *Hydro-Electric Commission (Power Development) Act 1967*; and

- (b) must release water into the Huon River as required by—
  - (i) an agreement between the HEC and the Rivers and Water Supply Commission; or
  - (ii) in default of agreement, a determination made by the Governor after considering representations from both the HEC and the Rivers and Water Supply Commission; and
- (c) must not allow the conserved waters of the Serpentine River to rise to more than 308.46 metres above sea level or to fall to less than 306.93 metres above sea level, or a lower level authorised under subsection (3).

(2) Any income, expenditure or loss resulting from the release of water under subsection (1) (b) must be shared between the HEC and the Rivers and Water Supply Commission in proportions determined by the Governor.

(3) The Governor may, by order published in the *Gazette*, authorise the HEC to allow the conserved waters of the Serpentine River to fall to a level that is not less than 305.41 metres above sea level.

### **Entitlement to compensation**

**15—(1)** An owner or occupier of land on, or in the valley of, the Huon River who suffers loss from an increase in the salinity of the waters of the Huon River or of the underground waters affected by it because the river's flow has been diminished by—

(a) works for the conservation of its waters that were carried out under the *Hydro-Electric Commission (Power Development) Act 1967*; or

(b) the use or management of those works—

is entitled to compensation for the loss from the HEC.

(2) The compensation is to be assessed on the same basis as compensation under the *Land Acquisition Act 1993*.

*Division 2—The Lake River and River Ouse***Obligation to provide water for irrigation**

16—(1) The HEC must make available to the owners of land to which this section applies water reasonably required for the irrigation of that land from the beds of the Lake River and the River Ouse and the channels of the Lawrenny Irrigation Works that have continued in existence since 1 November 1957 or earlier.

(2) This section applies to the following land:—

(a) the area of land in the Parish of Lawrenny, County of Cumberland, bounded as follows:—

On the south-west by the River Derwent from its confluence with the River Ouse to its confluence with the River Clyde thence on the east by the River Clyde in a general northerly direction to the Lyell Highway thence on the north-east in a general north-westerly direction by that highway to the River Ouse and thence on the west by the River Ouse in a general southerly direction to the point of commencement;

(b) the riparian tenements situated on the Lake River and the River Ouse below Waddamana.

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**PART 5****MISCELLANEOUS****Presumption of continuance of certain powers**

17—(1) So far as the HEC has the same power under this Act and the complementary legislation to enter and remain on land for the purpose of examining, operating, maintaining, repairing, modifying or replacing electricity infrastructure as the HEC had under the former legislation, the relevant provisions of this Act and the complementary legislation are not to be construed as making a fresh grant of power but rather as continuing an existing grant of power.

(2) In this section, “former legislation” means the Acts repealed by this Act.

### **Completion of certain construction projects**

18—Notwithstanding the repeal of the construction Acts, the HEC may, in accordance with the regulations, continue and complete any work or activities that were authorised by any of those Acts.

### **Regulations**

19—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may—

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

(4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Minister or an officer or person nominated in the regulations.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or complementary legislation.

(6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

### **Repeals**

20—The Acts specified in Schedule 1 are repealed.



**Administration of Act**

**21**—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.
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**SCHEDULE 1**

Sections 3 and 20

**ACTS REPEALED**

**PART 1**

*Hydro-Electric Commission Act 1944*

*Loan (Hydro-Electric Commission) Act 1957*

*Electric Power Development (Loan Agreement) Act 1968*

**PART 2**

*Hydro-Electric Commission (Mersey-Forth Power Development) Act 1963*

*Hydro-Electric Commission (Miena Dam) Act 1964*

*Hydro-Electric Commission (Lower Derwent Power Development and Miena Dam) Act 1966*

*Hydro-Electric Commission (Power Development) Act 1967*

*Hydro-Electric Commission (Pieman River Power Development) Act 1971*

*Hydro-Electric Commission (Doubts Removal) Act 1972*

*Hydro-Electric Commission (Power Development) Act 1974*

*Gordon River Hydro-Electric Power Development Act 1982*

*Hydro-Electric Commission (Doubts Removal) Act 1982*

*Hydro-Electric Commission (Power Development) Act 1983*



