

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

ELECTRICAL PRODUCTS ACT 2000

No. 78 of 2000

[Assented to 14 December 2000]

An Act to make provisions relating to the safety, performance, energy efficiency and labelling of electrical products; to repeal the Electrical Products Act 1988; and for other purposes.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Standards—availability to public

PART 2 SAFETY, PERFORMANCE AND ENERGY EFFICIENCY OF ELECTRICAL PRODUCTS

5. Declarations for purposes of this Part
6. Trader must not sell declared electrical products unless labelled or registered
7. Offences relating to labels
8. Prohibition of sale or use of unsafe electrical products
9. Mutual recognition

PART 3 ENFORCEMENT

10. Appointment of authorised persons
11. General powers
12. Power to seize electrical products
13. Hindering or obstructing authorised person

PART 4 MISCELLANEOUS

14. Power of exemption
15. Statutory declarations
16. False or misleading information
17. General defence
18. Offences by bodies corporate
19. Continuing offence
20. Evidence
21. Service
22. Delegation
23. Confidential information
24. Immunity from personal liability for Technical Regulator, authorised person, etc.
25. Annual report
26. Regulations

SCHEDULE *Repeal and Transitional Provisions*

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Electrical Products Act 2000*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"authorised person"—see *Part 3*;

"corresponding law"—see *subsection (2)*;

"document" includes any disc, tape or other medium in which information is stored;

"electrical product" means—

- (a) an appliance operated by electricity; or
- (b) a wire, cable, insulator or fitting designed for use in connection with the conveyance of electricity; or
- (c) a meter or instrument for measuring the consumption of electricity, potential difference, or any other characteristic of an electrical circuit;

"energy performance standard"—see *section 5*;

"label" includes a stamp or mark;

"public notice" means a notice published in—

- (a) the *Gazette*; or
- (b) a newspaper circulating generally in the State;

"safety and performance standard"—see *section 5*;

"second-hand goods" means goods that have been used, or taken from other goods that have been used, for a purpose not connected with their manufacture or sale;

"standard" means a code or standard—

- (a) published or approved by Standards Australia; or
- (b) published or approved jointly by Standards Australia and Standards New Zealand; or

(c) published or approved by a prescribed body,

and includes any code or standard called up by or under the code or standard;

"to sell" includes—

(a) to let on hire;

(b) to advertise for sale or hire;

(c) to offer or expose for sale or hire;

and "sale" has a corresponding meaning;

"Technical Regulator" means the person holding or acting in the office of Technical Regulator under the *Electricity Act 1996*;

"trader" means a person who sells electrical products in the course of a trade or business.

(2) The Governor may, by proclamation—

(a) declare a law of another jurisdiction to be a law corresponding to this Act (a **corresponding law**); and

(b) vary or revoke a proclamation previously made under this section.

Standards—availability to public

4. A copy of a standard referred to or incorporated in a proclamation or regulation under this Act must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Technical Regulator.

PART 2
SAFETY, PERFORMANCE AND ENERGY EFFICIENCY OF
ELECTRICAL PRODUCTS

Declarations for purposes of this Part

5. (1) The Governor may, by proclamation, declare for the purposes of this Part—

- (a) that a provision of section 6 applies to a class of electrical products;
- (b) that a standard or part of a standard is (with or without modification) a safety and performance standard or an energy performance standard applicable to a class of electrical products (a safety and performance standard or an energy performance standard).

(2) The Governor may, by proclamation, vary or revoke a proclamation previously made under this section.

(3) A proclamation under this section may refer to a standard as in force at a specified time or as in force from time to time.

Trader must not sell declared electrical products unless labelled or registered

6. (1) A trader must not sell an electrical product of a class to which this subsection applies unless it is labelled so as to indicate its compliance with applicable safety and performance standards—

- (a) under the authority of the Technical Regulator in accordance with the regulations; or
- (b) under an authority conferred by a corresponding law in accordance with that corresponding law.

Maximum penalty: \$5 000.

(2) A trader must not sell an electrical product of a class to which this subsection applies unless it is registered so as to indicate its compliance with applicable energy performance standards—

- (a) in accordance with the regulations; or
- (b) in accordance with a corresponding law.

Maximum penalty: \$5 000.

(3) A trader must not sell an electrical product of a class to which this subsection applies unless it is labelled so as to indicate its energy efficiency—

- (a) under the authority of the Technical Regulator in accordance with the regulations; or
- (b) under an authority conferred by a corresponding law in accordance with that corresponding law.

Maximum penalty: \$5 000.

(4) No offence is committed against subsection (1), (2) or (3) if the sale takes place within six months after the making of the proclamation declaring the subsection to apply to the relevant class of electrical products.

(5) No offence is committed against subsection (1) or (3) if the sale takes place within six months after a change in the requirements as to the form or contents of the label occurs and the electrical product is labelled in accordance with the requirements formerly applicable to it.

(6) This section does not apply to the sale of second-hand goods.

Offences relating to labels

7. (1) A person must not—

- (a) without proper authority, affix a label to which section 6(1) or (3) applies, or which could reasonably be taken to be such a label, to an electrical product; or
- (b) sell an electrical product to which a label has been affixed contrary to paragraph (a) knowing that the label was affixed without proper authority.

Maximum penalty: \$10 000.

(2) A trader must not display on or near an electrical product that is being offered or exposed for sale by the trader a sign, label or notice that—

- (a) contains information conflicting with the information contained in a label affixed to the electrical product for the purposes of this Act or a corresponding law; or
- (b) is likely to mislead a purchaser or prospective purchaser as to matters to which information contained in any such label relates.

Maximum penalty: \$5 000.

(3) A person must not, while an electrical product is being offered or exposed for sale by a trader, alter, interfere with or obscure from view a label affixed to the electrical product for the purposes of this Act or a corresponding law.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(4) A trader must not offer or expose for sale an electrical product if a label affixed to the electrical product for the purposes of this Act or a corresponding law is not readily legible by a purchaser or prospective purchaser.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(5) This section does not apply to the sale of second-hand goods.

Prohibition of sale or use of unsafe electrical products

8. (1) If, in the opinion of the Technical Regulator, an electrical product of a particular class is or is likely to become unsafe in use, the Technical Regulator may—

- (a) prohibit the sale or use (or both sale and use) of electrical products of that class; and

- (b) require traders who have sold the product in the State—
 - (i) to take specified action to recall the product from use; and
 - (ii) —
 - (A) to take specified action to render the product safe; or
 - (B) if it is not practicable to render the product safe or the trader chooses not to do so—to refund the purchase price on return of the product.

(2) A prohibition or requirement under this section may be imposed—

- (a) by notice in writing given to the person to whom it is addressed; or
- (b) if addressed to a class of persons, or the public generally—by public notice,

and may be varied or revoked in the same way.

(3) A person who contravenes or fails to comply with a prohibition or requirement under this section is guilty of an offence.

Maximum penalty: \$10 000.

Mutual recognition

9. (1) For the purposes of—

- (a) section 5 of the *Mutual Recognition (South Australia) Act 1993* and section 15 of the *Mutual Recognition Act 1992* of the Commonwealth; and
- (b) section 5 of the *Trans-Tasman Mutual Recognition (South Australia) Act 1999* and section 46 of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth,

an electrical product the sale of which is prohibited by public notice given at any time under section 8 on the ground that the product is or is likely to become unsafe in use is declared—

- (c) to be goods to which section 15 of the *Mutual Recognition Act 1992* of the Commonwealth applies; and
- (d) to be exempt from the operation of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

(2) The exemption from the *Mutual Recognition Act 1992* of the Commonwealth and the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth of an electrical product pursuant to subsection (1) has effect for a period beginning on the day on which the public notice imposing the prohibition is published and ending—

- (a) 12 months later; or
- (b) on the revocation of the prohibition,

whichever occurs first.

(3) In this section, a reference to a Commonwealth Act includes a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

**PART 3
ENFORCEMENT**

Appointment of authorised persons

10. (1) The Technical Regulator may appoint a person (who may, but need not, be a Public Service employee) to be an authorised person for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Technical Regulator may, at any time, revoke an appointment or vary, revoke or add a condition of an appointment.

(4) The Technical Regulator must issue an identity card to each authorised person appointed by the Technical Regulator.

(5) An authorised person must produce his or her identity card at the request of a person in relation to whom the authorised person has exercised, or intends to exercise, powers under this Act.

(6) In the exercise of the authorised person's powers, the authorised person is subject to control and direction by the Technical Regulator.

(7) A person must, within 21 days after ceasing to be an authorised person, return the identity card to the Technical Regulator.

Maximum penalty: \$250.

General powers

11. (1) An authorised person may require—

(a) a person—

- (i) to provide information in the person's possession relevant to the enforcement of this Act; and
- (ii) to produce documents in the person's possession that may be relevant to the enforcement of this Act for inspection by the authorised person; and

(b) a trader—

- (i) to make all electrical products of a class specified by the authorised person that are in the trader's possession available for examination by the authorised person; and
- (ii) to inform the authorised person of the date when the trader obtained an electrical product; and
- (iii) to inform the authorised person of the person from whom the trader obtained an electrical product; and
- (iv) to produce to the authorised person all invoices and accounts in respect of an electrical product that are in the trader's possession; and

- (v) to sell to the authorised person an electrical product for the same price as the electrical product is sold to other purchasers (or, if that price cannot be identified, for a fair price offered by the authorised person).

Maximum penalty: \$5 000.

(2) 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.

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

Maximum penalty: \$5 000.

Power to seize electrical products

12. (1) Subject to subsection (2), an authorised person who suspects on reasonable grounds that a trader has, on particular premises, stocks of an electrical product prohibited from sale under section 8 may—

- (a) enter and search the premises; and
- (b) seize and remove any stocks of the electrical product found on the premises.

(2) An authorised person may not enter a place of residence under subsection (1) except in pursuance of a warrant issued by a magistrate.

(3) A magistrate may issue a warrant authorising entry of a place of residence under subsection (1) if satisfied that the warrant is, in the circumstances of the case, reasonably required for the purposes of the administration or enforcement of this Act.

(4) The Magistrates Court may, on the application of the Technical Regulator, order that electrical products seized under subsection (1) be forfeited to the Crown and disposed of as the Technical Regulator thinks fit.

(5) If—

- (a) no application for forfeiture is made within one month after the date of seizure; or
- (b) such an application is made but does not result in an order for forfeiture,

electrical products seized under subsection (1) must be returned to the person from whom they were seized.

Hindering or obstructing authorised person

13. A person must not hinder or obstruct an authorised person or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: \$5 000.

PART 4
MISCELLANEOUS

Power of exemption

14. (1) The Technical Regulator may exempt a person or class of persons from this Act, or specified provisions of this Act, on terms and conditions the Technical Regulator considers appropriate.

(2) A person or class of persons in whose favour an exemption is given must comply with the conditions of the exemption.

Maximum penalty: \$5 000.

Statutory declarations

15. If a person is required by or under this Act to furnish information to the Technical Regulator, the Technical Regulator may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Technical Regulator.

False or misleading information

16. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in information furnished under this Act.

Maximum penalty: If the person made the statement knowing that it was false or misleading—\$10 000.
 In any other case—\$5 000.

General defence

17. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Offences by bodies corporate

18. If a body corporate is guilty of an offence against this Act, each director (within the meaning of the *Corporations Law*) of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

19. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Evidence

20. (1) In any legal proceedings, a certificate executed by the Technical Regulator certifying as to a matter relating to—

- (a) a delegation under this Act; or
- (b) the appointment of an authorised person; or
- (c) a notice given or published under this Act,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) Evidence of the contents of a standard referred to or incorporated in a proclamation or regulation under this Act may be given in any legal proceedings by production of a document apparently certified by the Technical Regulator to be a true copy of the standard.

Service

21. (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may, if the person is a body corporate, be given to or served on the person in accordance with section 109X of the *Corporations Law*.

Delegation

22. (1) The Technical Regulator may delegate his or her powers under this Act to a person or body of persons that is, in the Technical Regulator's opinion, competent to exercise the relevant powers.

(2) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

Confidential information

23. A person must not intentionally divulge, or use for the person's own gain, information of a commercially sensitive or private confidential nature obtained by the person in the course of administering or enforcing this Act except—

- (a) as authorised or required to do so by law; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act or of a corresponding law.

Maximum penalty: \$5 000.

Immunity from personal liability for Technical Regulator, authorised person, etc.

24. (1) No personal liability attaches to the Technical Regulator, a delegate of the Technical Regulator, an authorised person or any officer or employee of the Crown engaged in the administration or enforcement of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Annual report

25. (1) The Technical Regulator must, within three months after the end of each financial year, deliver to the Minister a report on the Technical Regulator's administration of this Act during that financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

Regulations

26. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for, the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) provide for the examination and testing of electrical products and for the recovery of costs associated with such examination and testing; and
- (b) provide for the issuing of certificates for electrical products certifying compliance with specified standards or suitability for connection to an electricity transmission or distribution network; and
- (c) make further provisions for the labelling of electrical products and the prohibition of the sale of electrical products not labelled in accordance with the regulations; and
- (d) fix or provide for the payment of fees in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; and
- (e) exempt (conditionally or unconditionally) persons or electrical products from any provision of this Act; and

- (f)* impose fines, not exceeding \$5 000, for offences against the regulations; and
 - (g)* fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) A regulation may—
- (a)* be of general application or limited by reference to time, places, circumstances or any other factor;
 - (b)* provide that a matter or thing in respect of which a regulation may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Technical Regulator;
 - (c)* refer to or incorporate, wholly or partially and with or without modification, a standard as in force at a specified time or as in force from time to time.

SCHEDULE
Repeal and Transitional Provisions

Repeal

1. The *Electrical Products Act 1988* (the repealed Act) is repealed.

Transitional provisions

2. (1) An electrical product labelled under the authority of the Minister in accordance with the regulations pursuant to section 5(1)(a) of the repealed Act will be taken to have been labelled so as to indicate its compliance with applicable safety and performance standards under the authority of the Technical Regulator in accordance with the regulations pursuant to section 6(1)(a) of this Act.

(2) A domestic appliance labelled under the authority of the Minister in accordance with the regulations pursuant to section 5(2)(a) of the repealed Act will be taken to have been labelled so as to indicate its energy efficiency under the authority of the Technical Regulator in accordance with the regulations pursuant to section 6(3)(a) of this Act.

(3) A prohibition or requirement under section 6 of the repealed Act in force immediately before the commencement of this Act will be taken to be a prohibition or requirement imposed by the Technical Regulator under section 8 of this Act.

(4) An authorised person appointed for the purposes of the repealed Act will be taken to have been appointed as an authorised person under Part 3 of this Act.

Regulations—other transitional provisions

3. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from a day antecedent to the day on which the regulations are made.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.