

PARLIAMENT OF VICTORIA

Electricity Industry (Amendment) Act 1996

Act No.

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PARLIAMENT OF VICTORIA

Initiated in Assembly 15 May 1996

A BILL

to amend the **Electricity Industry Act 1993** and certain other Acts and
for other purposes.

**Electricity Industry (Amendment) Act
1996**

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to make certain
amendments to the **Electricity Industry Act
1993**.

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2. Commencement

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- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 4(1) is deemed to have come into operation on 20 June 1995.
- (3) Section 6 comes into operation on a day to be proclaimed.
- 10 (4) If section 6 does not come into operation before 31 December 1997, it comes into operation on that day.
- (5) Section 14 comes into operation on 1 January 2001.
- 15 (6) Section 20 is deemed to have come into operation on 20 December 1994.

3. Principal Act

In this Act, the **Electricity Industry Act 1993** is called the Principal Act.

No. 130/19
Reprinted
No. 110/19
and
subsequent
amended
Nos. 42/19
56/1995 and
79/1995.

**PART 2—AMENDMENT OF ELECTRICITY INDUSTRY ACT
1993**

4. Definitions

- (1) In section 3(1) of the Principal Act—
- (a) after the definition of "PoolCo" **insert—**
 "**Power Net Victoria**" means the body
 established under Division 2 of Part 2;';
 - (b) in the definition of "public distribution
company" for "State or by" **substitute** "State
or";
 - (c) in the definition of "public generation
company" for "State or by" **substitute** "State
or".
- (2) In section 3(1) of the Principal Act, the definition
of "chief electrical inspector" is **repealed**.
- (3) In section 3(1) of the Principal Act, for the
definition of "Office" **substitute—**
 "**Office**"—
- (a) except in Part 4, means the Office of the
Regulator-General under the Office of
the **Regulator-General Act 1994**; and
 - (b) in Part 4, means the Office of the Chief
Electoral Inspector established under
that Part;'
- (4) After section 3(2) of the Principal Act **insert—**
 "(3) In any Act, other than this Act, and in all
subordinate instruments (within the meaning
of the **Interpretation of Legislation Act
1984**) made under any Act and in all other
instruments, unless the contrary intention
appears, a reference to the chief electrical

inspector must be construed as a reference to the Office of the Chief Electrical Inspector established under Part 4."

- 5 (5) In section 4(1) of the Principal Act for "or VPX or SEC" (where twice occurring) **substitute** ", VPX, SEC or any other body".

5. Directions affecting electricity supply systems

In section 17 of the Principal Act, sub-section (7) is **repealed**.

10 **6. Repeal of section 17**

Section 17 of the Principal Act is **repealed**.

7. Repeal of section 34

Section 34 of the Principal Act is **repealed**.

8. New section 36A inserted

15 After section 36 of the Principal Act **insert**—

'36A. Electricity corporations to act in accordance with corporate plan

- 20 (1) Each electricity corporation must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Treasurer and the Minister to do otherwise.
- (2) Nothing done by an electricity corporation is void or unenforceable merely because the electricity corporation has failed to comply with section 35, 36 or this section.
- 25 (3) In this section, "**electricity corporation**" includes VPX, a public distribution company and a public generation company.'
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9. Amendment of sections 42B and 46

- (1) In section 42B(1) of the Principal Act—
 - (a) after "A generation company" **insert** "or an associated entity of a generation company";
 - (b) after "the generation company" **insert** "or associated entity".
- (2) After section 42B(3) of the Principal Act **insert**—
 - (4) In this section, "**associated entity**", in relation to a generation company, means a person to whom an exemption under section 160 applies in respect of an activity relating to the generation of electricity for supply or sale, being an activity for which the generation company holds a licence under Part 12.'
- (3) In section 46 of the Principal Act—
 - (a) in sub-section (2), after "generation company" (where twice occurring) **insert** "or an associated entity of a generation company";
 - (b) in sub-section (2)(b), after "that company" **insert** "or associated entity";
 - (c) in sub-section (3), after "generation company" (wherever occurring) **insert** "or associated entity";
 - (d) in sub-section (6), after "generation company" **insert** "or an associated entity of a generation company".
- (4) In section 46(7) of the Principal Act, before the definition of "**generation company**" **insert**—
"**associated entity**", in relation to a generation company, means a person to whom an

exemption under section 160 applies in respect of an activity relating to the generation of electricity for supply or sale, being an activity for which the generation company holds a licence under Part 12.'.

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10. Section 53 substituted

For section 53 of the Principal Act substitute—

"53. Directions

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- (1) The Treasurer and the Minister, acting jointly, may from time to time, by written notice to the Administrator, give such directions to the Administrator as the Treasurer or Minister think fit.
 - (2) The Administrator must comply with a direction given under this section but an act or decision of the Administrator is not invalid merely because of a failure to comply with such a direction.
 - (3) The Administrator must keep a copy of each direction given under this section available for inspection at the office of the Administrator during business hours, other than any direction, or part of a direction, that the Treasurer and the Minister have declared to be confidential.
 - (4) The Administrator must include in the annual report of SEC under Part 7 of the **Financial Management Act 1994** a brief summary, in a form approved by the Treasurer, of each direction given to the Administrator under this section, together with a statement of the Administrator's response to the direction.
 - (5) A notice containing a direction given under this section is an exempt document for the
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purposes of the **Freedom of Information Act 1982.**"

11. *New Division 2 of Part 4 substituted*

For Division 2 of Part 4 of the Principal Act
substitute—

**'Division 2—Office of the Chief Electrical
Inspector**

55. *Establishment*

- (1) There is established a body by the name "Office of the Chief Electrical Inspector".
- (2) The Office—
 - (a) is a body corporate with perpetual succession;
 - (b) has an official seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of the Office affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of the Office must be kept in such custody as the Office directs and must not be used except as authorised by the Office.

56. *Functions*

The functions of the Office are the functions conferred on the Office or on the chief

electrical inspector under this Act, the **State Electricity Commission Act 1958**, the **Electric Light and Power Act 1958** or any other Act.

5 **57. Powers**

For the purpose of performing its functions, the Office—

- 0 (a) has such powers as are conferred on it by this or any other Act; and
- (b) may do all other things necessary or convenient to be done for or in connection with, or as incidental to, the achievement of its objectives or the performance of its functions.

5 **58. Delegation**

The Office may, by instrument under its official seal, delegate to a person approved by the Minister any function or power of the Office, other than this power of delegation.

0 **59. Office consists of chief electrical inspector**

The Office consists of the chief electrical inspector.

5 **60. Appointment of chief electrical inspector**

- 0 (1) The Governor in Council, on the recommendation of the Minister, may appoint a person to be the chief electrical inspector.
- (2) The **Public Sector Management Act 1992** (except Part 9) does not apply to the chief electrical inspector in respect of the office of chief electrical inspector.

61. *Terms and conditions of appointment*

- (1) The chief electrical inspector shall be appointed for such term, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) The chief electrical inspector holds office, subject to this Act, on such terms and conditions as are determined by the Minister.

61A. *Vacancies, resignations and removal from office*

- (1) The chief electrical inspector ceases to hold office if he or she becomes bankrupt.
- (2) The chief electrical inspector may resign by writing delivered to the Governor.
- (3) The Governor in Council may remove the chief electrical inspector from office.

61B. *Acting appointments*

- (1) The Governor in Council may appoint a person to act as chief electrical inspector—
 - (a) during a vacancy in the office of the chief electrical inspector;
 - (b) during any period, or during all periods, when the chief electrical inspector is absent or, for any other reason, is unable to perform the functions of chief electrical inspector—

but a person appointed to act during a vacancy must not continue so to act for more than 6 months, unless re-appointed.

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(2) An acting appointment shall be for the term and on the conditions determined by the Governor in Council.

(3) The Governor in Council may at any time terminate an acting appointment.

(4) A person appointed under this section has all the powers, and may perform all the functions, of the person for whom he or she is acting.

61C. *Validity of decisions*

(1) An act or decision of the Office is not invalid merely because of a defect or irregularity in, or in connection with, the appointment of the chief electrical inspector.

(2) Anything done by or in relation to a person purporting to act as chief electrical inspector is not invalid merely because—

(a) the occasion for the appointment has not arisen; or

(b) there was a defect or irregularity in relation to the appointment; or

(c) the appointment has ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

61D. *Disclosure of interests*

(1) If the chief electrical inspector has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Office, he or she must, as soon as practicable after the relevant facts come to his or her knowledge, disclose the nature of the interest to the Minister.

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- (2) Sub-section (1) does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.
 - (3) A failure to comply with this section does not affect the validity of any act or decision of the Office or chief electrical inspector.

61E. *Corporate plan*

- (1) The Office must prepare a corporate plan each year.
 - (2) The Office must give a copy of the proposed plan to the Minister and the Treasurer on or before 31 May in each year.
 - (3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and the Treasurer and must include—
 - (a) a statement of corporate intent in accordance with section 61F;
 - (b) a business plan containing such information as the Treasurer or the Minister requires;
 - (c) financial statements containing such information as the Treasurer requires.
 - (4) The Office must consider any comments on the proposed plan that are made to it by the Treasurer or the Minister within 2 months after the plan was submitted to the Treasurer and the Minister.
 - (5) The Office must consult in good faith with the Treasurer and the Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Treasurer, the Minister and the Office and must deliver the completed plan to
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the Treasurer and the Minister within 2 months after the commencement of the financial year.

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- (6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Division without the prior approval of the Office, the Treasurer and the Minister.
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- (7) The plan may be modified at any time by the Office with the agreement of the Treasurer and the Minister.
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- (8) If the Office, by written notice to the Treasurer and the Minister, proposes a modification of the plan, the Office may, within 14 days, make the modification unless the Treasurer or Minister, by written notice to the Office, directs the Office not to make it.
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- (9) The Treasurer or the Minister may, from time to time, by written notice to the Office, direct the Office to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.
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- (10) Before giving a direction under this section, the Treasurer and the Minister must consult with the Office as to the matters to be referred to in the notice.
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- (11) The Office must comply with a direction under this section.
- (12) At any particular time, the statement of corporate intent, the business plan or the financial statements for the Office are the statements and plan last completed, with any
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modifications or deletions made in accordance with this Division.

61F. *Statement of corporate intent : contents*

Each statement of corporate intent must specify for the Office, in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

- (a) the objectives of the Office;
- (b) the nature and scope of the activities to be undertaken by the Office;
- (c) the accounting policies to be applied in the accounts;
- (d) the performance targets and other measures by which the performance of the Office may be judged in relation to its stated objectives;
- (e) the kind of information to be provided to the Treasurer and the Minister by the Office during the course of those financial years;
- (f) such other matters as may be agreed on by the Treasurer, the Minister and the Office from time to time.

61G. *Office to act in accordance with corporate plan*

The Office must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister and the Treasurer to do otherwise.

61H. *Nothing void merely because of non-compliance*

Nothing done by the Office is void or unenforceable merely because the Office has failed to comply with this Division.

61I. *Protection from liability*

(1) The chief electrical inspector is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function of the Office; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of the Office.

(2) Any liability resulting from an act or omission that, but for sub-section (1), would attach to the chief electrical inspector attaches instead to the Office.

61J. *Staff*

(1) The Office may appoint or engage such officers and employees as are necessary for the performance of its functions.

(2) The terms and conditions of appointment or employment are as determined by the Office.

61K. *Improper use of information*

A person who is, or has been, chief electrical inspector or an officer or employee of the Office, must not make improper use of any information acquired only in the course of his or her duties to obtain directly or indirectly

any pecuniary or other advantage for himself or herself or for any other person.

Penalty: 50 penalty units.

61L. *Costs of Office*

Each electricity corporation, VPX and each distribution company and generation company must pay to the Office at such time or times as the Treasurer determines such annual amount as the Treasurer and the Minister determine in respect of the remuneration and reasonable costs and expenses of the Office and the chief electrical inspector.

61M. *Annual report*

The Office must include a copy of the statement of corporate intent last completed in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**.

12. *Amendment of section 91*

In section 91 of the Principal Act, for "Trade Practices Act 1974 of the Commonwealth as amended and in force for the time being" **substitute** "Trade Practices Act 1974 of the Commonwealth and the Competition Code".

13. *New section 91AA inserted*

After section 91 of the Principal Act **insert**—

'91AA. *Trade Practices Act and Competition Code*

- (1) For the purposes of Part IV of the Trade Practices Act 1974 of the Commonwealth and the Competition Code, this Act authorises a person or body referred to in sub-section (2)—

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- (a) to supply and purchase goods and services;
 - (b) to enter into and perform agreements;
 - (c) to comply with obligations;
 - 5 (d) to exercise rights and powers—
as required or authorised under, and subject to such terms and conditions as are applicable under—
 - (e) a licence issued under Part 12;
 - 10 (f) the pool rules within the meaning of Part 12;
 - (g) an Order under section 158A;
 - (h) an agreement referred to in sub-section (3).

15 (2) The persons and bodies referred to in this sub-section are—

- (a) Power Net Victoria;
- (b) Generation Victoria;
- (c) Victorian Power Exchange;
- 20 (d) a subsidiary of a body referred to in paragraph (a), (b) or (c);
- (e) a person holding a licence issued under Part 12.

15 (3) The agreements referred to in this sub-section are each agreement (entitled "vesting contract") entered into by a distribution company in October 1994 or March 1995 for the purposes of hedging the price payable by the distribution company under the pool rules within the meaning of Part 12 in relation to
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10 electricity acquired by the distribution

company for sale to franchise customers,
being an agreement entered into with—

- (a) a generation company; or
- (b) SEC; or
- (c) Energy Brix Corporation Australia (a State Body within the meaning of the **State Owned Enterprises Act 1992**).

14. Repeal of section 91AA

Section 91AA of the Principal Act is **repealed**.

15. Amendment of section 158C

- (1) In section 158C(a) and (b) of the Principal Act **omit "or 158B"**.
- (2) After section 158C(b) of the Principal Act **insert—**
 - "(ba) an Order in force under section 158B—
 - (i) may be amended, with effect from the date of its commencement, by one Order only of the Governor in Council published in the Government Gazette;
 - (ii) may be wholly revoked;
 - (bb) an Order under paragraph (ba)(i) cannot be amended or varied;
 - (bc) an Order cannot be made under section 158B, other than an Order—
 - (i) wholly revoking another Order; or
 - (ii) revoking another Order and making a new Order with effect from the commencement of the first Order;
 - (bd) if an Order is made under section 158B revoking another Order and making a new Order, a later Order cannot be made under

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s. 16

that section, other than an Order wholly
revoking another Order;".

16. Amendment of section 173

(1) In section 173 of the Principal Act, for sub-section
(5) **substitute—**

"(5) A person, not being a licensee, does not hold
a prohibited interest within the meaning of
sub-section (3) because the person has a
controlling interest in 2 or more licensees or
a substantial interest in 3 or more licensees
if—

(a) the Office is satisfied that each such
interest is held only as a passive
institutional investment; and

(b) the Office determines in writing that the
person does not hold a prohibited
interest.

(5A) The Office may make a determination under
sub-section (5) with effect from 1 March
1996, or such later date as is specified in the
determination, in relation to the holding of an
interest before the commencement of section
16 of the **Electricity Industry**
(Amendment) Act 1996.".

(2) In section 173(6) of the Principal Act, for
"sub-section (7)(a)" **substitute** "sub-section
(5)(a)".

PART 3—TRANSITIONAL AND CONSEQUENTIAL

17. *Financial accommodation levy*

- (1) Part 6C of the **Financial Management Act 1994** applies to a distribution company in respect of the financial year commencing on 1 July 1995 as if the distribution company had been declared to be a leviable authority under that Part before it ceased to be a public authority.
- (2) A distribution company is not liable to pay a levy under Part 6C of the **Financial Management Act 1994** in respect of a period after it ceases to be a public authority.
- (3) In this section—

"distribution company"—

- (a) Citipower Pty ACN 064 651 056;
- (b) Eastern Energy
Ltd ACN 064 651 118;
- (c) Powercor
Australia Ltd ACN 064 651 109;
- (d) Solaris Power
Ltd ACN 064 651 083;
- (e) United Energy
Ltd ACN 064 651 029;

"public authority" has the same meaning as in the **Treasury Corporation of Victoria Act 1992**.

18. *Amendment of Electric Light and Power Act 1958*

In section 3(1) of the **Electric Light and Power Act 1958**, for the definition of "chief electrical inspector" substitute—

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"chief electrical inspector" means the Office of the Chief Electrical Inspector established under the **Electricity Industry Act 1993**;

19. Amendment of State Electricity Commission Act 1958

In section 110(c) of the **State Electricity Commission Act 1958**—

- (a) for "electric tramways" **substitute** "any railway or tramway system within the meaning of section 93(1) of the **Transport Act 1983**";
- (b) after "prevent danger" **insert** "or damage";
- (c) in sub-paragraph (ii), for "tramways" **substitute** "railway and tramway systems".

20. Amendment of Electricity Industry (Amendment) Act 1994

Section 9 of the **Electricity Industry (Amendment) Act 1994** is repealed.

No. 6377
Reprinted
No. 48/1991
and
subsequent
amended
Nos. 3/1992,
35/1992,
50/1992,
130/1993,
31/1994,
49/1994,
53/1994,
110/1994,
16/1995,
31/1995,
56/1995 and
79/1995.

No. 53/1994
amended
Nos 110/1994
and 29/1995.

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Act No.

NOTES

By Authority. Government Printer for the State of Victoria.

