

Electricity Industry (Further Amendment) Bill

EXPLANATORY MEMORANDUM

The Bill provides for the further restructuring of the electricity supply industry by way of amendment of the **Electricity Industry Act 1993** (“**EI Act**”) and for the amendment of the **Financial Management Act 1994** and of various other Acts.

The Bill provides for the operation of many sections of the **EI Act** to extend to new generation companies and for the abolition of Generation Victoria. The generation companies are also given a right to explore for or mine coal on certain land in the Latrobe area (Part 2).

The Bill contains provisions for the transfer of certain residual liabilities of the State Electricity Commission of Victoria (“**SEC**”) to electricity corporations and other persons and for the creation of an energy levy on the wholesale purchase of electricity (Part 2).

Part 3 of the Bill makes provision for the transfer of property, rights and liabilities from Generation Victoria to the new generation companies and for the employment of former Generation Victoria staff by the generation companies.

The Bill provides for the Governor in Council to regulate tariffs, charges and various other matters in relation to the sale of electricity and the use of any distribution or transmission system (Part 4).

The Bill also provides for the payment of a franchise fee by distribution companies and permits the Treasurer to enter into agreements with the distribution companies relating to the setting of franchise fees and other matters (Part 4).

The Bill authorizes the Treasurer to give indemnities in favour of statutory authorities, State companies and their officers (Part 6).

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 specifies the **EI Act** as the Principal Act.

PART 2—AMENDMENT OF PRINCIPAL ACT

Clause 4 sets out amendments to the definitions in the Principal Act the effect of which is to include in the operation of the Principal Act the new generation companies for most, but not all, of the purposes of the **EI Act** and to extend the definition of distribution companies in the **EI Act** to refer to shares held by a statutory authority. In addition, the definition section of the **EI Act** is amended to limit the definition of electricity corporation to Power Net Victoria and to repeal the definition of Generation Victoria.

Clause 5 provides for the abolition of Generation Victoria and the repeal of Part 2 Division 1 of the **EI Act**.

Clause 6 inserts new sections 12A and 12B in the **EI Act** to give the generation companies a right to explore for or mine coal on land within the Latrobe area vested in them under the **EI Act**, to exempt the generation companies from the **Mineral Resources Development Act 1990** in doing so and to provide for the passing of property in the coal. These provision also provide for the creation and calculation of a brown coal levy on the generation companies.

Clause 7 substitutes a new section 26 in the **EI Act** which permits the Treasurer and the Minister to jointly give directions to the board of an electricity corporation. Each electricity corporation must include in its annual report a copy of such a direction and its response to the direction.

Clause 8 provides for the amendment of sections 27 (2) (3) and (4) and 29 (3) of the **EI Act** to extend the operation of those sections to the generation companies. It also provides for the amendment of section 33 of the **EI Act** to include the paying of a premium in respect of a contract of insurance within the operation of that section.

Clause 9 inserts a new section 35 (3A) in the **EI Act** which provides that the proposed corporate plan of a distribution company must include a statement of the company's bushfire mitigation programs.

Clause 10 provides for the amendment of sections 35 (13), 36 (2), 37 (6), 38 (2) and 42AA of the **EI Act** to extend the operation of those sections to the generation companies.

Clause 11 inserts a new section 45A in the **EI Act** which authorises any two or more of the electricity corporations, distribution companies and generation companies to enter into agreements for the joint use of easements.

Clause 12 provides for the amendment of section 53 (2) of the **EI Act** to include a decision to issue a certificate under Part 11A of the **EI Act** from the operation of that section and to amend section 54 (11) and 60 of the **EI Act** to extend to operation of those sections to the generation companies.

Clause 13 inserts a new Division 1A in Part 5 of the **EI Act** to provide for the transfer of certain liabilities of SEC to the electricity corporations or other persons nominated in writing by the Minister. This is done by the preparation of an allocation statement. As from 3 January 1994 or such later date specified in a certificate, the liabilities allocated to an electricity corporation or other persons become liabilities of those entities.

Clause 14 inserts a new section 71A in the **EI Act** which provides for the liability of SEC to pay a fine for an offence to be allocated to an electricity corporation or other person.

Clause 15 provides for the amendment of sections 77 (5) and 78 (4) of the **EI Act** to extend the operation of those sections to the generation companies.

Clause 16 inserts a new Part 6A in the **EI Act** which provides that a distribution company and any other person which purchases electricity in the market for wholesale trading in electricity operated and administered by Victorian Power Exchange must pay to Victorian Power Exchange a levy in respect of the electricity it purchases in that market. Victorian Power Exchange must pay the amounts received by it to the State.

Clause 17 substitutes a new section 84A in the **EI Act** which provides that a distribution company or a generation company does not represent the Crown.

Clause 18 provides for the amendment of sections 84c, 84E (3), 86 (a), 90 (1), 90 (3) and 91A of the **EI Act** to extend the operation of those sections to the generation companies.

Clause 19 inserts a new section 91AB in the **EI Act** which provides that an electricity corporation, VPX, a distribution company or a generation company is not a public statutory body within the meaning of the **Ombudsman Act 1973**. *Clause 19* also inserts a new section 91AC in the **EI Act** which makes provision for the supply of electricity by SEC in connection with its obligations in relation to excluded property, including supply under an agreement, contract or document referred to in Schedule 3 of the **EI Act**.

Clause 20 provides for the amendment of section 96 (3) of the **EI Act** to extend the operation of that section to include in the accounts of the entities referred to therein for the year ending 30 June 1995 the operations of a municipal council that conducted an electrical undertaking for the year ending 30 June 1995 and associated with the property, rights and liabilities of a municipal council that conducted an electrical undertaking that have vested in or become liabilities of the relevant entity as at 30 June 1995. A new section 96 (5) is inserted in the **EI Act** which extends the operation of sections 96 (3) and (4) of the **EI Act** to the generation companies if the Treasurer so determines. *Clause 20* also inserts a new section 97 (4) in the **EI Act** which permits Generation Victoria to prepare its accounts for the year ending 30 June 1995 as if each relevant date for the purposes of Part 11A had been 1 July 1994.

Clause 21 inserts a new section 106A in the **EI Act** which provides for the liability of National Electricity to pay a fine for an offence to be allocated to a person nominated by the Minister.

Clause 22 inserts a new section 117 (5A) in the **EI Act** which provides that sections 117 (4) and 117 (5) do not affect a distribution company unless all the shares in the distribution company are held by or on behalf of the State or a statutory authority.

Clause 23 inserts a new section 124A in the **EI Act** which provides for the liability of ESV to pay a fine for an offence to be allocated to a distribution company or other person.

Clause 24 inserts a new section 133 (3) in the **EI Act** which provides that a transferred ESV employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a distribution company or other person, being a payment or benefit, in respect of a period of service as an officer or employee of ESV if he or she has received a payment or other benefit in respect of that period by reason of having ceased to be an employee of another distribution company or another person.

PART 3—FURTHER RESTRUCTURING

Clause 25 inserts a new Part 11A in the **EI Act** providing the mechanisms for the transfer of Generation Victoria property to the new generation companies, SEC and other persons in the same manner as property of the State Electricity Commission has been transferred to Generation Victoria, National Electricity and ESV and in the same manner as property of ESV, municipal electrical undertakings and National Electricity has been transferred to the distribution companies, PoolCo and other persons. This Part also provides for the transfer of liabilities. This is done by the preparation of an allocation statement. On the relevant day the property allocated to a generation company, SEC or other person vests in that entity and liabilities allocated to a generation company, SEC or

other person become liabilities of that entity. Provisions in the **EI Act** regarding the interim sharing of rights by all electricity corporations in relations to transferred property will continue to apply to the electricity corporations (including the new generation companies). The new Part 11A also provides for the transfer of staff and the continuity of employment of transferred staff.

PART 4—FURTHER AMENDMENT OF PRINCIPAL ACT

Clause 26 substitutes in section 154 of the **EI Act** a new definition of non-franchise customer which is defined to be a customer who purchases a load or amount of electricity that exceeds prescribed limits determined in accordance with the regulations. Clause 26 also repeals the definition of retailer contained in section 154 of the **EI Act**.

Clause 27 inserts a new section 158A in the **EI Act** which permits the Governor in Council to regulate tariffs for the sale of electricity to franchise customers, charges for connection to, and the use of, any distribution system or the transmission system and any other prices in respect of goods and services declared in respect of the electricity industry under section 3 (2) of the **Office of the Regulator-General Act 1994**.

Clause 28 amends section 163 (3) of the **EI Act** to provide that licence conditions may require the licensee to develop, issue and comply with customer-related standards, procedures, policies and practices.

Clause 29 inserts a new section 163A in the **EI Act** which provides for a distribution company that supplies electricity to franchise customers under a licence issued under Part 12 of the **EI Act** to the distribution company to pay to the State an amount to be specified by Order in Council in respect of each year during which it has so supplied electricity.

Clause 30 substitutes a new section 165 in the **EI Act** which provides that the Office of the Regulator-General must ensure that notice of the grant of a licence or notice of a variation or revocation under section 164 of the **EI Act** is published in the Government Gazette as soon as possible.

Clause 31 amends section 168 of the **EI Act** so that it applies to the initial licences issued to the generation companies.

Clause 32 inserts a new section 169A in the **EI Act** which provides that the Treasurer, on behalf of the Government, may enter into an agreement in writing with one or more of the distribution companies relating to the setting of franchise fees and such other matters as the Treasurer determines.

Clause 33 provides for the amendment of section 3 (1) of the **EI Act** by substituting VPX for PoolCo in various definitions and inserting definitions of Victorian Power Exchange and VPX. Clause 33 also provides for VPX to be substituted for PoolCo in numerous sections of the **EI Act**.

PART 5—AMENDMENT OF OTHER ACTS

Clause 34 sets out a number of consequential amendments to the **Borrowing and Investment Powers Act 1987**.

Clause 35 substitutes a new definition of electricity corporation in section 3 (1) of the **Electric Light and Power Act 1958**.

Clause 36 amends the **Gas and Fuel Corporation Act 1958** so that section 24 applies to the generation companies.

Clause 37 amends the definition of “mine” in the **Land Tax Act 1958** so that it includes reference to the generation companies.

Clause 38 sets out a number of consequential amendments to the **Public Authorities (Dividends) Act 1983**.

Clause 39 provides for various amendments to the **State Electricity Commission Act 1958** including substituting a new definition of electricity corporation in section 3 (1) of that Act and inserting a new section 12A (*ad*) in the **State Electricity Commission Act 1958** which gives the Commission the function of acquiring, disposing of or trading in electricity. *Clause 39* also substitutes a new section 85D (1) in the **State Electricity Commission Act 1958** which provides that the Commission must not, without the Treasurer’s approval, enter into a contract for the provision of financial accommodation (within the meaning of the **EI Act**) or enter into a financial arrangement (also within the meaning of the **EI Act**) under which its financial obligations exceed or may exceed \$50 000.

Clause 40 sets out a consequential amendment to the **State Owned Enterprises Act 1992**.

Clause 41 provides that the Acts specified in Schedule 1 will be amended as provided in Schedule 1.

Clause 42 deems Schedule 1 of the **Electricity Industry (Amendment) Act 1994** to have come into operation on 3 October 1994.

PART 6—FINANCIAL MANAGEMENT ACT 1994

Clause 43 inserts a new Part 6A in the **Financial Management Act 1994** which authorizes the Treasurer, on behalf of the Government of Victoria, to give indemnities to eligible directors of statutory authorities and State companies and to certain other persons. The new Part 6A also permits the confirmation of certain indemnities which are already in existence and contains a standing appropriation for sums required to fulfil any liability arising under an indemnity given under the new Part 6A.

SCHEDULE 1

Consequential Amendments

This schedule sets out consequential amendments to other Acts.

