

Electricity Industry (Further Amendment) Bill

EXPLANATORY MEMORANDUM

The Bill provides for miscellaneous amendments to the **Electricity Industry Act 1993** and other Acts.

PART I—GENERAL

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for the commencement of the Act. The Act comes into operation on the day on which it receives the Royal Assent.

PART 2—ELECTRICITY INDUSTRY ACT 1993

This Part makes various miscellaneous amendments to the **Electricity Industry Act 1993** (*EI Act*).

- Clause 3 states that the EI Act is the Principal Act for the purposes of this Act.
- Clause 4 makes drafting changes to sections 13, 14, 15 and 16 of the EI Act to replace references to "National Electricity", wherever occurring, with "Power Net Victoria" and inserts a new section 15(2)(f) in the EI Act.

Proposed section 15(2)(f) provides that Power Net Victoria may provide a telecommunications service within the meaning of the Telecommunications Act 1991 of the Commonwealth.

- Clause 5 inserts a new section 44A in the EI Act which allows Power Net Victoria to use its easements for the provision of a telecommunications service, but provides that Power Net Victoria may not compulsorily acquire land or interests in land only for that purpose.
- Clause 6 inserts a new section 157A in the EI Act which gives the Office of the Regulator-General the power to determine whether a person's facilities are or are not co-generation facilities for the purposes of the Act.
- Clause 7 inserts new sections 158D and 158E in the EI Act.

Proposed section 158D authorises the Governor in Council, on the recommendation of the Treasurer, to make rules to facilitate the operation of a wholesale electricity market for trading in electricity between persons in

Victoria and persons in one or more other States or Territories. The rules have the same effect as the pool rules and prevail over the pool rules to the extent of an inconsistency. The rules and subsequent amendments to the rules are to be made by an Order in Council published in the Government Gazette and are exempt statutory rules within the meaning of section 4(4) of the **Subordinate Legislation Act 1994**.

Proposed section 158E states that the Order may declare that the pool rules are to have effect as if amended as specified in the declaration. However such a declaration is ineffective if it is inconsistent with a later amendment of the pool rules.

- Clause 8 inserts a new section 159(6) in the EI Act which provides that the transmission, distribution or supply of electricity by or for the use of the Public Transport Corporation is not prohibited by the prohibition contained in section 159(1) of the EI Act.
- Clause 9 inserts a new section 162(2AA) in the EI Act which provides that the Office of the Regulator-General need not be satisfied as to the condition for the grant of a generation or distribution licence contained in section 162(2)(d) of the EI Act if, having regard to the proposed conditions of the licence, the Minister so approves at the request of the Office.
- Clause 10 amends section 163(6)(b) of the EI Act to allow the Office of the Regulator-General to resolve disputes relating to specified industry codes or pool rules as they affect non-licensed persons, and inserts new sub-sections (1A), (3)(da) and (7) in section 163 of the EI Act.

Proposed section 163(2A) allows a licence issued to two or more persons for the purpose of carrying on the licensed activity in a partnership or as an unincorporated joint venture to include conditions relating to the carrying on of those activities in that manner.

Proposed section 163(3)(da) allows a licence to include ownership requirements in relation to property used in the carrying out of the licensed activities.

Proposed section 163(7) allows the Office to amend certain instruments which have been amended for the purpose of their application under a licence pursuant to section 163(6)(a) to be amended for other purposes at the same time.

Clause 10 also makes drafting changes to section 164 of the EI Act consequential to proposed section 162(2AA) inserted in the EI Act by clause 9.

Clause 11 inserts a new section 165A in the EI Act which authorises the Office of the Regulator-General to resolve disputes between non-licenced persons in relation to industry codes or the pool rules.

Clause 12 inserts a new section 167(7A) in the EI Act which provides that the Office of the Regulator-General need not be satisfied as to the condition for the transfer of a licence specified in section 167(6)(c) of the EI Act if, having regard to the conditions to which the licence will be subject on transfer, the Minister so approves at the request of the Office.

Clause 13 amends the definition of "licensee" in section 171(1) of the EI Act and inserts a new section 171(9) in the EI Act. The amendment to the definition of "licensee" has the effect that the cross ownership rules contained in Part 13 of the Act do not apply to electricity distributors or suppliers who are exempt from the requirement to hold a licence under an exemption granted in accordance with section 160 of the EI Act.

Proposed section 171(9) has the effect that a person is not entitled to generating capacity if the entitlement arises only because of the person's traced interest in generating capacity of a licensee or because the person and a licensee are parties to a relevant agreement.

Clause 14 inserts a new section 171AA in the EI Act which provides that Part 13 of the EI Act is to apply to a partnership as if it were a corporation and to partners as if they were members of the corporation. For this purpose, the term "partnership" includes an unincorporated joint venture and "partner" includes a member of an unincorporated joint venture.

Clause 15 amends section 171A(a) of the EI Act so that it includes a reference to section 15(1) of the Corporations Law as well as to section 12(1)(e) of the Corporations Law.

Clause 16 amends section 173(4) of the EI Act to extend the application of that provision to a person who has a controlling interest in a distribution company. Clause 16 also amends section 173(8) of the EI Act so that a licensee is not treated as having prohibited interest in another licensee where they each carry on activities under their respective licences in the same business undertaking.

Clause 17 inserts new sub-sections (4A) and (8) in section 175 of the EI Act and repeals sub-sections 175(5), 175(6) and 175(7)(b) of the EI Act.

Proposed section 175(4A) provides that if a licence is partly held by a person who is a member of a partnership who is required to dispose of shares under section 175(1) of the EI Act and the person does not do so, the Office may revoke the licence.

Proposed section 175(8) provides that the Office may order a person who has a prohibited interest because of the circumstances referred to in section 171(7)(d) of the EI Act to desist from certain activities and to terminate any relevant agreement which may cause such a person to have a prohibited interest.

- Clause 18 makes drafting changes to sections 180(4) and 181 of the EI Act for consistency with clause 17, which repeals section 175(5) and (6) of the EI Act, amongst other things.
- Clause 19 makes a drafting correction to the definition of "Office" in section 3(1) of the EI Act.

PART 3—AMENDMENT OF OTHER ACTS

This Part makes miscellaneous amendments to the **State Electricity Commission Act 1958** and other Acts.

- Clause 20 amends section 15(4) of the **State Electricity Commission Act 1958** (SEC Act) to ensure that the generating capacity of the power station at Newport is not limited in any way and that there is no requirement to do or cease to do any act or thing, in either case as a result of recommendations contained in the final report of the Newport Review Panel referred to in section 15(4) of the SEC Act.
- Clause 21 makes drafting corrections and revisions to various sections of the SEC Act.
- Clause 22 inserts a new section 137AE in the **Land Act 1958** (Land Act) which exempts a lease of Crown land and a lease of land granted to a generation company for the purposes of generating electricity for supply or sale from the operation of sections 134A(2)(a) and 137 of the Land Act and the **Transfer of Land Act 1958**, respectively.
- Clause 23 inserts a new section 140AA in the Land Act which allows a licence not exceeding a term of 99 years to be granted to a generation company for the purposes of generating electricity for supply or sale.
- Clause 24 inserts a new section 229 in the Land Act which allows the Minister to enter into a land management agreement with a generation company in relation to

Crown land used for the purposes of or in connection with generating electricity for supply or sale.

- Clause 25 inserts a new section 17BA in the **Crown Land (Reserves) Act 1978** (CL(R) Act) which allows a licence not exceeding a term of 99 years to be granted to a generation company for the purposes of generating electricity for supply or sale.
- Clause 26 inserts new sub-sections (6), (7) and (8) in section 17D of the CL(R) Act which impose certain conditions which have to be met before the Minister may grant a lease of a stratum of reserved land under the Act.
- Clause 27 inserts a new section 17DAA in the CL(R) Act which allows a lease not exceeding a term of 99 years to be granted to a generation company for the purposes of generating electricity for supply or sale.
- Clause 28 inserts a new section 18A in the CL(R) Act which allows the Minister to enter into a land management agreement with a generation company in relation to reserved land used for the purposes of or in connection with generating electricity for supply or sale.
- Clauses 29, 30 and 31 amend the **Forests Act 1958** (Forests Act) so as to give the Minister the power to grant leases and licences to, and to enter into land management agreements with, generation companies in relation to the use of land for the purposes of generating electricity for supply or sale. Clause 29 also inserts new sub-sections (3), (4) and (5) in section 57B of the Forests Act which impose certain conditions which have to be met before the Minister may grant a lease for a stratum of land under the Act. Clause 31 also provides that an agreement entered into in section 57D of the Forests Act must contain provisions in relation to the preservation and conservation of the land.
- Clause 32 makes drafting changes to the **Alpine Resorts Act 1983** and imposes certain conditions which have to be met before the Minister may grant a lease for a stratum of land in an alpine resort under the Act.
- Clauses 33 and 34 amend the **National Parks Act 1958** (NP Act) so as to give the Minister the power to grant leases and licences to, and to enter into land management agreements with, generation companies in relation to the use of National Park land as described under the NP Act, for the purposes of generating electricity for supply or sale. Clause 33 also inserts new sub-sections (3), (4) and (5) in section 30AA of the NP Act which impose certain conditions which have to be met before the Minister may grant a lease for a

stratum of National Park land under the NP Act. Clause 34 also provides that an agreement entered into in section 30AB(1) of the NP Act must contain provisions in relation to the protection and conservation of the land.