

Electricity Industry Bill

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EXPLANATORY MEMORANDUM

General

The Bill provides for the regulation of the electricity supply industry in Victoria. It is a cognate Bill with the Bill for the **Electricity Industry Legislation (Miscellaneous Amendments) Act 2000**.

The Bill for the most part represents a re-enactment of the regulatory provisions that were contained in the **Electricity Industry Act 1993**. However, it also contains various new regulatory provisions principally related to the implementation of electricity retail competition and the conferral of powers on VENCORP to deal with electricity supply shortages. There are also some amendments to the provisions that provide for the separation of generation and distribution sectors. The re-enactment has resulted in a separation of the regulatory provisions from the other provisions of the **Electricity Industry Act 1993** that enabled the restructuring of the Victorian electricity industry.

The Bill commences with preliminary provisions (Part 1). Regulation of the electricity industry is achieved principally through powers in relation to price regulation, the licensing of certain activities in the electricity supply industry, and regulation of terms and conditions relating to the sale and supply of electricity (Part 2). The Bill has electricity market provisions (Part 2 Division 6) which relate to the implementation of electricity retail competition including metering installation identification and registration, arrangements facilitating election by a customer of supply from another retailer and metrology procedures. The Bill allows for community services agreements between a licensee and the State (Part 2, Division 7). The Bill provides for the separation of generation, transmission and distribution sectors (Part 3) and provisions conferring powers on VENCORP to deal with electricity supply shortages (Part 4). The Bill provides for powers and works and easements (Part 5) and for electricity supply emergencies (Part 6). The Bill also contains general provisions (Part 7).

The **Electricity Industry Act 1993** will be renamed by section 3 of the **Electricity Industry Legislation (Miscellaneous Amendments) Act 2000** as the **Electricity Industry (Residual Provisions) Act 1993**. In this Explanatory Memorandum it will continue to be referred to as the **Electricity Industry Act 1993**.

Clause Notes

PART 1—PRELIMINARY

- Clause 1 sets out the main purpose of the Act which is to regulate the electricity supply industry. This is to be compared with section 1 of the **Electricity Industry Act 1993** which provided that the purpose of that Act was to restructure the electricity supply industry.
- Clause 2 provides for the commencement of the Act. All of the Bill comes into force on 1 January 2001 except sections 19(5) and 83. Section 19(5) relates to the Snowy Hydro Company and as such cannot come into force until the **Snowy Hydro Corporatisation Act 1997** comes into force. Section 83 is expressed as subject to the regulations and as such cannot come into force until the regulations are made.
- Clause 3 sets out the definitions for the Act. Many of these definitions were formerly in section 3 of the **Electricity Industry Act 1993**. The definitions of "distribution company", "generation company" and "transmission company" differ from that section in that the requirement that those companies both have a licence from the Office of the Regulator-General and be declared as such by Order in Council has been modified in that no longer is an Order in Council required.
- Clause 4 provides that the Act binds the Crown. It is in the same terms as section 4 of the **Electricity Industry Act 1993**.
- Clause 5 determines the extraterritorial operation of the Act. It is in the same terms as section 5 of the **Electricity Industry Act 1993**.
- Clause 6 provides that this Act is to be read and construed as one with the **Electricity Industry (Residual Provisions) Act 1993** which is the **Electricity Industry Act 1993** as re-named by the **Electricity Industry Legislation (Miscellaneous Amendments) Act 2000**. This provision is inserted because of

the inter-relationship between the **Electricity Industry Act 2000** and the **Electricity Industry (Residual Provisions) Act 1993** and the transitional provisions to be inserted in the latter Act.

PART 2—REGULATION OF ELECTRICITY INDUSTRY

Part 2 provides that the electricity supply industry is a regulated industry for the purposes of the **Office of the Regulator-General Act 1994**. The Part provides that the Office of the Regulator-General has powers in relation to price regulation and that the Governor in Council may make orders in relation to tariffs. Further provisions deal with licences and their terms and conditions and the appointment of an administrator in respect of a contravention of licence conditions by a licensee if electricity supply is threatened. The Part provides for terms and conditions of sale and supply of electricity and contains electricity market provisions dealing with metering installation and metrology procedures. Finally, the Part contains provision for community services agreements.

Division 1—Introduction

- Clause 8 provides that Part 2 applies to any person including SEC, VENCORP and any distribution company, transmission company and generation company. This clause is in the same terms as section 156 of the **Electricity Industry Act 1993** except that the references to an "electricity corporation" and VPX have been omitted as spent and a reference to VENCORP has been inserted.
- Clause 9 provides for this Part to be relevant legislation for the purposes of the **Office of the Regulator-General Act 1994**. It is in the same terms as section 155 of the **Electricity Industry Act 1993**.
- Clause 10 sets out the objectives of the Office of the Regulator-General under the Act. This clause is in the same terms as section 157 of the **Electricity Industry Act 1993**.
- Clause 11 provides that the Australian Competition and Consumer Commission (ACCC) and the members of the ACCC may perform such functions and exercise such powers as the Office of the Regulator-General has in relation to regulation of charges for connection to, and use of, the transmission system which are conferred on the ACCC by an agreement entered into by the State with the Commonwealth and the ACCC. The agreement is to be published in the Government Gazette and commences on

that date or such later date as is specified in the agreement. The section allows the Office of the Regulator-General to give the ACCC certain information relevant to the functions and powers conferred on the ACCC. This clause is in the same terms as section 155A of the **Electricity Industry Act 1993**.

Division 2—Price Regulation

Clause 12 provides that power is conferred on the Office of the Regulator-General to regulate prices in respect of prescribed goods and services in respect of charges for connection to, and use of, any distribution or transmission system and in respect of tariffs for sale of electricity. Sub-section (1)(b)(ii) provides that regulation of charges for connection to, and the use of, the transmission system by the Office of the Regulator-General is subject to any Order made under subsection (2). Sub-section (2) allows the Governor in Council to make an Order declaring that charges for connection to, and the use of the transmission system are subject to the regulation of the ACCC under an agreement entered into under section 11 and are not subject to the regulation of the Office of the Regulator-General.

This clause is in the same terms as section 158 of the **Electricity Industry Act 1993** except that the reference in section 158 to regulation of tariffs for the sale of electricity to franchise customers has been omitted.

Clause 13 provides for possible regulation by Order in Council of tariffs for prescribed customers. Orders may be made under the section to regulate tariffs for persons or classes of persons as specified in the Order. Any order made under the section and the section itself expires on 31 December 2003. This section provides for the possible regulation of retail tariffs for customers who consume 160 MW hours per annum or less post 31 December 2000. This clause is in the same terms as section 158AA of the **Electricity Industry Act 1993**.

Clause 14 provides that, subject to clause 15, the Tariff Order made under section 158A of the Electricity Industry Act cannot be varied or revoked except in accordance with this section. The "Tariff Order" is defined in section 3 as the order made under section 158A as amended and in force from time to time. Sub-section (2) provides for revocation and subsections (3) to (5) for

amendment of the Tariff Order. Sub-section (6) provides that matters determined by the Tariff Order have effect as if they were determinations of the Office of the Regulator-General. Sub-section (7) is a transitional provision that provides for how the Tariff Order is to be construed when certain of its provisions (such as those regulating retail tariffs for the sale of electricity to franchise customers) cease to have effect.

This clause is derived from sections 158A and 158C of the **Electricity Industry Act 1993**. However it contains new provisions to allow amendment of the Order in Council to (i) provide for the notice that retailers must give franchise customers prior to their becoming non-franchise customers; (ii) address certain issues that arise in relation to excluded services under that Order; (iii) provide for possible re-opening of a distribution price determination of the Office of the Regulator-General to address any matter arising from the implementation and operation of full retail competition in the electricity markets; and (iv) allow for possible pass through to retailers of distribution company costs of the implementation and operation of full retail competition in the electricity markets as approved by the Regulator-General.

Clause 15 provides for the possible making of Orders in Council regulating prices for connection to and use of any distribution system in any instance where there is not in force a determination of the Office of the Regulator-General regulating prices for connection to and use of that distribution system. An Order made under this section may provide for the continuance of existing tariffs for connection to and use of the distribution system and may amend the Tariff Order for that purpose. Once there is in force a determination of the Office, that determination prevails over any Order made under this section except to the extent that the Order contains transitional provisions governing the transition between that Order or the Tariff Order and the determination.

Division 3—Licences

Clause 16 prohibits a person from engaging in the generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity unless the relevant person is licensed or exempted from obtaining a licence in respect of the relevant activity.

This clause is in the same terms as section 159 of the **Electricity Industry Act 1993**.

- Clause 17 provides that the Governor in Council may by Order, published in the Government Gazette, exempt a person from the requirement to obtain a licence. This clause is in similar terms to section 160 of the **Electricity Industry Act 1993** save that it is now possible to confer powers and functions on the Office of the Regulator-General under an exemption order.
- Clause 18 provides for the issue of licences by the Office of the Regulator-General and the classes of licence that may be issued. This clause is similar to section 161 of the **Electricity Industry Act 1993** with the exception that it is no longer possible (as a result of the establishment of the National Electricity Market) to issue licences to operate and administer a market for wholesale trading in electricity.
- Clause 19 provides the mechanism for the determination of an application for the issue of a licence. The clause provides that the Office of the Regulator-General must not grant an application for a licence to sell electricity unless the Office of the Regulator-General is satisfied that the applicant is financially viable and has the necessary technical capacity. Certain exceptions to these two requirements are set out in the clause. The clause is in essentially the same terms as section 162 of the **Electricity Industry Act 1993**.
- Clause 20 provides that a licence is to be issued for such term and on such conditions as the Office of the Regulator-General may determine. Clause 20 is in the same terms as section 163(1)–(2A) of the **Electricity Industry Act 1993**.
- Clause 21 provides for specific licence conditions and sets out those conditions in detail. The clause is in essentially the same terms as section 163(3) of the **Electricity Industry Act 1993** save that new paragraphs have been added to provide for conditions relating to public lighting, customer load shedding arrangements, information requests by VENCORP, informing customers in relation to retail competition and giving notice to customers of certain deemed contracts.

- Clause 22 provides that licence fees and charges are to be determined by the Minister having regard to the proportion of the total costs of the Office of the Regulator-General that are incurred in the administration of the electricity industry regulation provisions of the Act. This clause is in the same terms as section 163(4) of the **Electricity Industry Act 1993**.
- Clause 23 provides that a licence to sell electricity is deemed to include a condition prohibiting a licensee from selling electricity to persons or classes of persons specified in any Order in Council made under the section. This section ceases to have effect of 31 December 2003.
- Clause 24 provides that if the Office of the Regulator-General issues a single licence authorising the generation, distribution and supply of electricity, or issues or approves transfer to the same persons of separate licences for those activities, the licence or licences must contain a condition prohibiting the licence holder from having generating capacity in excess of specified limits. This clause is in essentially the same terms as section 163(5) of the **Electricity Industry Act 1993**.
- Clause 25 allows the Office of the Regulator-General to amend specified industry codes, standards, rules or guidelines, for the purposes of their application under a licence. It also provides that the Office of the Regulator-General is allowed to resolve disputes relating to specified industry codes, standards, rules or guidelines. This clause is in the same terms as sections 163(6) and 163(7) of the **Electricity Industry Act 1993**.
- Clause 26 provides that if a licence is subject to conditions relating to customer related standards, procedures, policies and practices then the Office of the Regulator-General must monitor the licensees' compliance with these standards, procedures, policies and practices. The clause also provides that if the Office of the Regulator-General considers that any of the customer related standards, procedures, policies and practices, or compliance by the licensee with any of them, disadvantages any class of its customers, or all of its customers, then the Office of the Regulator-General may make a determination requiring the licensee to modify or revoke any part of the standards, procedures, policies or practices. This clause is in the same

terms as sections 163(8)–(11) of the **Electricity Industry Act 1993**.

- Clause 27 establishes a supplier of last resort scheme. The clause provides that the conditions to which a licence to distribute or supply electricity is subject may include a requirement that the licensee, on terms and conditions approved by the Office of the Regulator-General, supply and sell electricity to customers to whom electricity is supplied or sold under another licence. Customers are defined for this purpose, in relation to a licensee, as customers of another licensee whose licence is suspended or terminated or whose right to acquire electricity from the market for wholesale trading in electricity is suspended or terminated. Provision is made for the publication of approved tariffs and terms and conditions in the Government Gazette and for those terms and conditions to be binding on the licensee and the customers to which they apply. This clause is in the same terms as section 163AAA of the **Electricity Industry Act 1993** as substituted by section 8 of the **Electricity Industry Acts (Amendment) Act 2000**.
- Clause 28 provides for customer dispute resolution. It is in the same terms as section 163AAB of the **Electricity Industry Act 1993** which will be introduced into that Act by the **Essential Services Legislation (Dispute Resolution) Act 2000**.
- Clause 29 provides the mechanism and procedures for the variation and revocation of licences. The clause is in the same terms as section 164 of the **Electricity Industry Act 1993** save that variations necessary to give effect to community service obligations are now included in sub-section (2).
- Clause 30 provides that the Office of the Regulator-General must ensure that notice of a grant of a licence and notice of a variation or revocation of a licence is published in the Government Gazette. This clause is in the same terms as section 165 of the **Electricity Industry Act 1993**.
- Clause 31 provides for a procedure whereby licences can be transferred with the approval of the Office of the Regulator-General and subject to certain requirements. This clause is in the same terms as section 167 of the **Electricity Industry Act 1993** save for the deletion of the former requirement that holders of licences to

generate or distribute electricity had to be corporations or statutory authorities.

Clause 32 provides that the Office of the Regulator-General must not grant an application for a licence or vary a licence if the Office of the Regulator-General is satisfied that the effect of granting the licence or variation would be in certain circumstances inconsistent with Part 3 of the Act. This clause is in essentially the same terms as section 164A of the **Electricity Industry Act 1993**.

Clause 33 provides that a prohibition in sections 24 or 33 does not apply if the prohibition arises because of an acquisition referred to in section 88(9)(a) or (b) of the **Trade Practices Act 1974** and either an authorisation has been granted under that Act or the Office of the Regulator-General is satisfied that the Australian Competition and Consumer Commission has determined that the acquisition would not contravene section 50 of that Act. This provision is to read together with Part 3 of the Act.

Division 4—Appointment of Administrator

Clause 34 provides for a mechanism for the appointment by the Office of the Regulator-General of an administrator in respect of a licensed activity if the contravention by a licensee of licensed conditions threatens the security of electricity supply. This clause is in essentially the same terms as section 166 of the **Electricity Industry Act 1993**.

Division 5—Terms and Conditions of Sale and Supply of Electricity

Clause 35 provides for offers ("standing offers") by a licensee to sell electricity to domestic or small business customers. Sub-section (5) provides that who is a domestic and small business customer may be specified by Order in Council and sub-section (6) expands on the basis for so specifying. Sub-section (7) provides that the Order may confer powers and functions on, and leave any matter to be determined by, the Office of the Regulator-General. The section expires on 31 December 2003. This clause is in the same terms as section 169A of the **Electricity Industry Act 1993** save for the addition of sub-sections (6) and (7).

- Clause 36 creates certain fundamental consumer protection obligations for sale of electricity to "relevant customers" up to 31 December 2003 when the section expires. The clause is in the same terms as section 169B of the **Electricity Industry Act 1993** except for sub-sections (2), (4) and (5). Sub-section (4) expands on the basis by which Orders in Council may specify who are "relevant customers" for the purposes of the section. Sub-section (2) provides that certain contractual terms and conditions are void to the extent of their inconsistency with this section. Sub-section (5) provides for powers for the Office of the Regulator-General.
- Clause 37 provides for deemed contracts up to 31 December 2003 (when the section expires) for those customers who are franchise customers within the meaning of the **Electricity Industry Act 1993** immediately before 1 January 2001 until either the contract is terminated or the customer enters into a new contract for the purchase of electricity. The clause is in essentially the same terms as section 169C of the **Electricity Industry Act 1993**.
- Clause 38 provides for variation of those deemed contracts by advertisements in a newspaper circulating generally in Victoria and in the Government Gazette. The clause is in similar terms to section 169D of the **Electricity Industry Act 1993**.
- Clause 39 provides for deemed contracts for supply and sale of electricity for certain domestic and small business customers who commence to take supply of electricity at premises from a licensee where no notice is first given to the licensee.
- Clause 40 provides for deemed contracts for supply and sale of electricity for certain relevant customers who commence to take supply of electricity at premises from a licensee where no notice is first given to the licensee.

Division 6—Electricity Market Provisions

The scheme of this Division is that each section creates a head of power pursuant to which certain Orders in Council may be made. The intent is that the legislation sets parameters within which the detail required for implementation of full retail competition in the electricity markets may then be fleshed out in the Orders in Council.

- Clause 41 provides definitions of "prescribed information" and "prescribed person" for the purposes of this Division. "Prescribed information" is defined to include customer information and consumption of electricity information. "Prescribed Person" includes the Office of the Regulator-General and distribution companies, retailers, their customers and NEMMCO as well as their agents.
- Clause 42 makes provision for certain technical aspects for the implementation of full retail competition, namely, metering installation identification and registration. The clause derives from section 169E of the **Electricity Industry Act 1993**. However it now contains further provisions for a register of unique identifying marks and of metering installations as well as for processes and procedures for registration and allocation of marks plus provision from the register of the marks and of information from that register or of other prescribed information reasonably necessary to facilitate customer transfers between retailers.
- Clause 43 makes provision for the processes and procedures to facilitate arrangements for customers to transfer between retailers and to provide for the administration of those arrangements and of the customer transfers occurring under them. The section also allows for directions requiring release of prescribed information by prescribed persons to other prescribed persons.
- Clause 44 makes provision for the establishment of metrology procedures in order to facilitate arrangements for customers to switch retailers or in order to settle the national market for electricity in the case of customers switching retailers. The section provides for initial and subsequent specification and approval of those procedures and for the appointment of NEMMCO or another person to perform functions under any Order in Council made under the section or under or in connection with any process or procedure established pursuant to the section.
- Clause 45 makes provision for cost recovery in relation to the implementation and operation of arrangements for full retail competition.

Clause 46 contains general powers relating to any Order in Council made under Division 6. These include that the Orders may adopt extrinsic documents and may confer powers and functions on the Office of the Regulator-General. There is also a general ancillary power in subsection (1). Additionally, provision is made for the effect of Orders and when Orders may have effect.

Division 7—Community Services Agreements

Clause 47 A licence condition may require a licensee to have a community service agreement with the State. This clause provides for how those agreements are to be entered into, their length (5 years) and their terms and conditions. This clause is in the same terms as section 170A of the **Electricity Industry Act 1993**.

Clause 48 inserts a transitional provision relating to community services agreements already in place. The clause is in the same terms as section 170B of the **Electricity Industry Act 1993**.

Clause 49 provides how disputes as to the terms of community service agreements are to be dealt with by the Office of the Regulator General. The clause is in the same terms as section 170C of the **Electricity Industry Act 1993**.

PART 3—SEPARATION OF GENERATION, TRANSMISSION AND DISTRIBUTION SECTORS

This Part provides for separation of the generation, transmission and distribution sectors of the Victorian electricity industry. The Part is in essentially the same terms as Part 13 of the **Electricity Industry Act 1993**. That said, in re-enacting the Part, the opportunity has been taken where possible to divide long sections into their constituent parts as well as re-ordering the sections into a more logical sequence. Section 173(7) of the **Electricity Industry Act 1993** provided that as from 1 January 2001 the Office of the Regulator-General was to have a discretion to exempt persons from the application of the Part. This discretion has not been re-enacted and instead provision has been made to allow authorisations or determinations by the Australian Competition and Consumer Commission under the relevant merger and acquisition provisions of the Trade Practices Act 1974 (Cwth) to operate as an exemption from the Part. Lastly, a number of amendments have been made to provisions in the Part to reflect changes in the **Corporations Law** since the Part was first enacted.

Division 1—Interpretation

- Clause 50 inserts definitions and contains other interpretation provisions for the purposes of Part 3. This clause is in essentially the same terms as section 171(1) of the **Electricity Industry Act 1993**.
- Clause 51 provides when a person has a relevant interest in a share. This clause is in essentially the same terms as section 171(2) of the **Electricity Industry Act 1993**.
- Clause 52 provides for voting power. This clause derives from section 171(3) of the **Electricity Industry Act 1993**.
- Clause 53 provides for the interpretation of references to the Corporations Law. This clause is in the same terms as section 171(4) of the **Electricity Industry Act 1993**.
- Clause 54 provides that in certain specified circumstances units in a unit trust are deemed to be shares in a corporation. This clause is in the same terms as section 171(4A) of the **Electricity Industry Act 1993**.
- Clause 55 provides that if the whole or a portion of the share capital of a licensee consists of stock, a reference to a number of shares in the licensee as a percentage is a reference to the amount of stock that represents that number of shares. This clause is in the same terms as section 171(6) of the **Electricity Industry Act 1993**.
- Clause 56 provides that when a person has a controlling interest in a corporation. This clause is in essentially the same terms as section 171(7) of the **Electricity Industry Act 1993**.
- Clause 57 provides when a person has a substantial interest in a corporation. This clause is in essentially the same terms as section 171(8) of the **Electricity Industry Act 1993**.
- Clause 58 provides under what circumstances a person is entitled to generating capacity. This clause is in the same terms as sections 171(9) and 171(9A) of the **Electricity Industry Act 1993**.
- Clause 59 provides for how a person's traced interest in generating capacity to which a corporation is entitled is calculated. This clause is in the same terms as sections 171(10), (11) and (14) of the **Electricity Industry Act 1993**.

- Clause 60 provides for how a person's direct interest in a corporation is to be calculated. This clause is in essentially the same terms as sections 171(12) and 171(13) of the **Electricity Industry Act 1993**.
- Clause 61 provides that regulations relating to relevant interests and generating capacity may provide that certain relevant interests, particular classes of relevant interests in shares or that generating capacity or a particular class of generating capacity may be disregarded for such purposes as are specified in the regulations. This clause is in the same terms as section 171(5) of the **Electricity Industry Act 1993**.
- Clause 62 provides that on the certification of the Office of the Regulator-General certain shareholders agreements may be disregarded. This clause is based on section 171A of the **Electricity Industry Act 1993**.
- Clause 63 provides that on certification of the Office of the Regulator-General certain "see-through" interests may be disregarded. This clause is based on section 171B of the **Electricity Industry Act 1993**.
- Clause 64 provides for the effect of the Office's certificates under sections 62 and 63. It is in essentially the same terms as section 171C of the **Electricity Industry Act 1993**.

Division 2—Application of Part

- Clause 65 provides when the Part is to be applied and construed. This clause is in the same terms as section 172(1) of the **Electricity Industry Act 1993**.
- Clause 66 provides that Part 3 of the Act is to apply to a partnership as if it were a corporation and to partners as if they are 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. This clause is in the same terms as section 171AA of the **Electricity Industry Act 1993**.

Clause 67 provides that Part 3 is relevant legislation for the purposes of the **Office of the Regulator-General Act 1994**. This clause is in the same terms as section 172(2) of the **Electricity Industry Act 1993**.

Division 3—Separation of Generation, Transmission and Distribution Sectors

Clause 68 provides that it is unlawful for a person to hold a prohibited interest. This clause sets out what constitutes a prohibited interest for this purpose by reference to the number of controlling or substantial interests a person has in licensees. In the case of certain licensees, an entitlement to generating capacity can also give rise to a prohibited interest. Sub-section (4) permits the Office of the Regulator-General to declare that a person who is not a licensee does not hold a prohibited interest if the person does not hold a controlling interest but holds a substantial interest in three or more licensees for passive investment purposes only. Sub-section (5) permits the Office of the Regulator-General to declare in writing that a person does not hold a prohibited interest if the Office of the Regulator-General is satisfied that were a person to hold such a prohibited interest, it would not be likely to substantially lessen competition in a market in which electricity is bought and sold in Victoria. Sub-section (8) provides that a person does not hold a prohibited interest if an authorisation under the **Trade Practices Act 1974** has been granted or the Office of the Regulator-General is satisfied that the Commission has notified the person that it does not intend to take action under section 50 of that Act.

This clause essentially re-enacts section 173 of the **Electricity Industry Act 1993** with the exception of subsection (8) which is new.

Clause 69 empowers the Office of the Regulator-General to grant one temporary exemption not exceeding six months pursuant to which a specified person is declared not to have a prohibited interest for the period of the exemption. The purpose of this provision is to allow persons time to divest themselves of interests or to allow time for them to obtain required regulatory approvals.

- Clause 70 provides that the Office of the Regulator-General may require a person who is or is suspected by the Office of the Regulator-General of having a relevant interest in shares or holding a controlling or substantial interest in a licensee, or of being entitled to generating capacity, to provide information for the purpose of determining whether that person or any other person has or is taking action to acquire a prohibited interest. If the information is not provided or is false or misleading, the Office of the Regulator-General may take certain action, such as declaring that the person is an associate, that the person is entitled to specified shares in the licensee, that voting rights attached to those shares are suspended and that the person has a prohibited interest. This clause is in essentially the same terms as section 174 of the **Electricity Industry Act 1993**.
- Clause 71 provides that if the Office of the Regulator-General makes a determination under section 70(3) or if the Office of the Regulator-General forms the opinion that the person has a prohibited interest, the Office of the Regulator-General may serve a notice declaring that the offender or other relevant person must dispose of certain shares. If the shares are not disposed of, the shares can be forfeited to the State. This clause also provides that certain transactions which cause a person to have a prohibited interest are illegal and void. This clause is in essentially the same terms as section 175 of the **Electricity Industry Act 1993**.
- Clause 72 provides that if written notice is served on a licensee that a person is an associate of another or has a prohibited interest in a licensee or that voting rights are suspended, the declaration is binding and has effect in relation to any general meeting of the licensee held after receipt by the licensee of the notice. This clause is in the same terms as section 176 of the **Electricity Industry Act 1993**.
- Clause 73 enables the Office of the Regulator-General to revoke a licensee's licence if the Office makes a determination that the licensee has a prohibited interest because of its entitlement to generating capacity and the licensee does not comply with a notice requiring it to take action to prevent it having that interest. This clause is in the same terms as section 177 of the **Electricity Industry Act 1993**.

- Clause 74 provides that if, in the Office's opinion, a general meeting of a licensee has passed a resolution as a result of the admission of votes that should not by virtue of a declaration under subsection 70(3) or sub-section 71(1) have been admitted, the Office of the Regulator-General may by written notice declare that resolution has been at all times null and void. This clause is in the same terms as section 178 of the **Electricity Industry Act 1993**.
- Clause 75 provides that the Office of the Regulator-General may make a determination on the basis of such information as the Office of the Regulator-General considers sufficient in the circumstances. The Office of the Regulator-General may confirm, vary or revoke a determination. The section also provides for the interim effect of determinations when applications under section 37 of the **Office of the Regulator-General Act 1994** are lodged. This clause is in the same terms as section 179 of the **Electricity Industry Act 1993**.
- Clause 76 provides that an appeal lies to the Supreme Court against a determination. The Supreme Court may quash or vary the determination. This clause is in the same terms as section 180 of the **Electricity Industry Act 1993**.
- Clause 77 provides that the Office of the Regulator-General is to sell any shares forfeited to the State. This clause is in essentially the same terms as section 181 of the **Electricity Industry Act 1993**.
- Clause 78 sets out service requirements in respect of notices. This clause is in the same terms as section 182 of the **Electricity Industry Act 1993**.

PART 4—ELECTRICITY TRANSMISSION

This Part describes the powers of VENC Corp in relation to the electricity industry and then goes on to provide for specific functions that VENC Corp is to perform with respect to management of electricity supply insufficiencies.

Division 1—Powers of VENC Corp

- Clause 79 provides for the powers and functions of VENC Corp in relation to the electricity industry. This clause is in the same terms as section 41A of the **Electricity Industry Act 1993** save that a

new paragraph (c) has been added to provide for the functions conferred on VENCORP under this Part and under any licence issued under Part 2.

Division 2—Load Shedding in Situations of Emergency Supply Shortage

- Clause 80 provides that in circumstances where the available supply of electricity is, or is likely to become, less than is sufficient for the reasonable requirements of the community, that for the purposes of the National Electricity Code VENCORP can, after consultation with the Minister, enter into agreements with licensees to determine the arrangements to apply in respect of customer load shedding. If no agreement can be reached with a licensee, the Minister may determine those arrangements with the assistance of a person appointed for that purpose and inform VENCORP accordingly. The Minister and VENCORP must take certain matters into account in determining load shedding arrangements which are set out in subsection (4). VENCORP must from time to time publish the load shedding arrangements determined by it or the Minister
- Clause 81 provides for the powers of VENCORP in relation to load shedding which include the power to inform and give required directions. Directions may be amended or revoked. Directions are required to be published in the Government Gazette.
- Clause 82 provides for offences of non-compliance with a direction and other related offences.
- Clause 83 provides that, subject to the regulations, VENCORP may give any information it receives from a licensee about any past or likely future insufficiency in the supply of electricity by the licensee to the Minister and to any other prescribed person.
- Clause 84 inserts a new clause providing that the person acting in good faith in the execution of section 81 or any direction under that section has immunity from suit.

PART 5—POWERS OF ELECTRICITY CORPORATIONS

This Part makes provision for easements and works. It re-enacts provisions previously contained in the **Electricity Industry Act 1993**.

- Clause 85 defines who is an electricity corporation for the purposes of this Part. It is in essentially the same terms as section 42AA of the **Electricity Industry Act 1993**.
- Clause 86 makes provision for acquisition of easements with the approval of the Governor in Council. It is in essentially the same terms as section 42A of the **Electricity Industry Act 1993**.
- Clause 87 provides for acquisition of land in the Latrobe area. It is in essentially the same terms as section 42B of the **Electricity Industry Act 1993**.
- Clause 88 provides for the making of easements in subdivisions. It is in the same terms as section 44 of the **Electricity Industry Act 1993**.
- Clause 89 provides that certain easements may be used for telecommunications purposes. It is in the same terms as section 44A of the **Electricity Industry Act 1993**.
- Clause 90 provides for easements over lands held by Crown licensees or lessees. It is in the same terms as section 45 of the **Electricity Industry Act 1993**.
- Clause 91 provides for arrangements for joint use of easements. It is in the same terms as section 45A of the **Electricity Industry Act 1993**.
- Clause 92 provides for cancellation of easements. It is in the same terms as section 45B of the **Electricity Industry Act 1993**.
- Clause 93 provides for powers as to works. It enables electricity corporations to enter on to land and do such things as are necessary for the purposes of the electricity supply. It is in the same terms as section 47 of the **Electricity Industry Act 1993**.
- Clause 94 provides for the rateability of certain property. It is in essentially the same terms as section 46 of the **Electricity Industry Act 1993**.

PART 6—ELECTRICITY SUPPLY EMERGENCY PROVISIONS

This Part confers broad powers of direction on the Minister in circumstances where the Governor in Council declares by a proclamation that Part 6 applies. The Part re-enacts without significant amendment Parts 3A and 3AA of the **Electricity Industry Act 1993**.

Division 1—Emergency Provisions

- Clause 95 provides that if it appears to the Governor in Council that an event has occurred or is about to occur which may endanger certain electricity undertakings or materially affect the safe, economical or effective supply of electricity or that the available supply of electricity is, or is likely to become, less than is sufficient for the reasonable requirements of the community, a proclamation may be made. This clause is in the same terms as section 47B of the **Electricity Industry Act 1993**.
- Clause 96 provides that the Minister may give any directions that are thought necessary. This clause is in the same terms as section 47C of the **Electricity Industry Act 1993**.
- Clause 97 provides for offences under Part 6. This clause is in the same terms as section 47D of the **Electricity Industry Act 1993**.
- Clause 98 provides that all courts and any person acting judicially must take judicial notice of any proclamation, direction or general requisition made, given or imposed under Part 6. This clause is in the same terms as section 47F of the **Electricity Industry Act 1993**.
- Clause 99 provides for immunity from suit in the case of declared emergency. This clause is in the same terms as section 47G of the **Electricity Industry Act 1993**.

Division 2—Enforcement

- Clause 100 provides, in the case of declared emergencies, for powers of entry and enforcement by enforcement officers of the Office of the Chief Electrical Inspector in the case of alleged contraventions of Part 6 of the Act. This clause is in the same terms as section 47H of the **Electricity Industry Act 1993**.

Clause 101 provides that the occupier who consents in writing to the entry of his or her land or premises must be given a copy of the signed consent. This clause is in the same terms as section 47I of the **Electricity Industry Act 1993**.

Clause 102 provides that an enforcement officer may apply to a Magistrate for the issue of a search warrant in relation to alleged contraventions of Part 6 of the Act. This clause is in the same terms as section 47J of the **Electricity Industry Act 1993**.

Clause 103 provides that before executing a search warrant, the enforcement officer named in the warrant or a person assisting the enforcement officer named in the warrant must announce that he or she is authorised to enter the land or premises. This clause is in the same terms as section 47K of the **Electricity Industry Act 1993**.

Clause 104 provides that a copy of the warrant is to be given to the occupier. This clause is in the same terms as section 47L of the **Electricity Industry Act 1993**.

Clause 105 provides that a person authorised by the Office of the Chief Electrical Inspector can bring proceedings for an offence against Part 6. This clause is in the same terms as section 47M of the **Electricity Industry Act 1993**.

Division 3—Infringement Notices

Clause 106 Division 3 provides for infringement notices in the case of use of electricity by a person in contravention of a direction under section 96 of the Act. This clause sets out the definition of a prescribed offence. This clause is in essentially the same terms as section 47N of the **Electricity Industry Act 1993** save that subsections (2)–(4) have not been re-enacted as they repeated earlier provisions in the Part.

Clause 107 provides that enforcement officers of the Office of the Chief Electrical Inspector may serve infringement notices. This clause is in the same terms as section 47O of the **Electricity Industry Act 1993**.

Clause 108 provides for the form of the infringement notices. This clause is in essentially the same terms as section 47P of the **Electricity Industry Act 1993**.

Clause 109 fixes the penalties for an offence against a prescribed offence. This clause is in the same terms as section 47Q of the **Electricity Industry Act 1993**.

Clause 110 provides for late payment of the infringement penalty. This clause is in the same terms as section 47R of the **Electricity Industry Act 1993**.

Clause 111 provides when an enforcement officer may withdraw an infringement notice. This clause is in the same terms as section 47S of the **Electricity Industry Act 1993**.

Clause 112 provides that payment exiates an offence against a prescribed offence. This clause is in the same terms as section 47T of the **Electricity Industry Act 1993**.

Clause 113 provides that the payment of an infringement penalty is not to have certain consequences. This clause is in the same terms as section 47U of the **Electricity Industry Act 1993**.

Clause 114 provides that a charge may be filed after service of an infringement notice. This clause is in the same terms as section 47V of the **Electricity Industry Act 1993**.

Clause 115 provides how payment of an infringement penalty may be enforced. This clause is in the same terms as section 47W of the **Electricity Industry Act 1993**.

PART 7—GENERAL

Clause 116 enables the Minister to delegate his or her powers under the Act. This clause is in essentially the same terms as section 85 of the **Electricity Industry Act 1993**.

Clause 117 limits liability for not supplying electricity. It is in essentially the same terms as section 27 of the **Electricity Industry Act 1993**.

Clause 118 provides that it is the intention of sections 84 and 99 of the Act to alter or vary section 85 of the **Constitution Act 1975**.

Clause 119 enables the Governor in Council to make regulations relating to the Act. This clause is in essentially the same terms as section 92 of the **Electricity Industry Act 1993**.

