

Electricity Industry (Further Amendment) Bill (No. 2)

EXPLANATORY MEMORANDUM

The Bill provides for the further reform of the electricity supply industry by way of amendment of the **Electricity Industry Act 1993** and other Acts.

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the commencement of the Act.

PART 2—FURTHER AMENDMENT OF ELECTRICITY INDUSTRY ACT 1993

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

Clause 3 provides that the EI Act is the Principal Act for the purpose of Part 2.

Clause 4 amends section 4 of the EI Act. It deems a decision or approval of the SEC to have been passed by special resolution for the purpose of the Corporations Law if the Administrator so certifies in writing.

Clause 5 inserts a new section 46 (1A) in the EI Act which ensures that the location of distribution company or generation company poles, wires or cables on land does not alone cause the land to be occupied land for the purposes of the **Local Government Act 1989**.

Clause 6 amends section 47 of the EI Act to allow officers or employees or persons authorised in writing by an electricity corporation to exercise powers given in section 47 of the EI Act on behalf of the electricity corporation in relation to entering on land and performing works of the electricity corporation.

Clause 7 amends section 47A (16) of the EI Act to ensure that it takes effect notwithstanding section 108A of the **State Electricity Commission Act 1958**.

Clause 8 inserts a new section 49A in the EI Act which creates the office of Deputy Administrator and provides for his or her appointment. Proposed section 49B provides for the Deputy Administrator’s resignation or removal from office, and proposed section 49C specifies the functions and powers of the Deputy Administrator.

Clause 9 repeals section 54 of the EI Act.

Clause 10 inserts new sections 84AA, 84AB and 84AC in the EI Act. Proposed section 84AA deems financial benefits given by generation companies to specified electricity companies before 1 July 1995 to have been given on arm’s length terms for the purpose of Part 3.2A of the Corporations Law if the contract is one of a listed type. Proposed section 84AB allows the Governor in Council to exempt generation or distribution companies from certain requirements of section 32 (2) of the **Sale of Land Act 1962** when selling land. Proposed section 84AC allows the Building Control Commission to declare unclassifiable or to exempt certain buildings on generation company land from provisions of the **Building Act 1993**.

Clause 11 inserts a new section 161 (3) in the EI Act which ensures that a specified previous amendment contained in the **Electricity Industry (Amendment) Act 1995** to section 161 of the EI Act is to be treated as if it had been made at the date of the enactment of the EI Act. *Clause 11* also inserts a new section 163 (3) (*ha*) in the EI Act which will allow licences to contain conditions which specify procedures for variation by the Treasurer. *Clause 11* also confirms the validity of any such conditions already contained in licences.

Clause 12 amends section 163 (5) in the EI Act to enable the Office of the Regulator-General to amend certain specified industry codes or pool rules, and resolve disputes. *Clause 12* also amends section 164A to include references to transfers of licences.

Clause 13 inserts a new section 163AA which allows the Governor in Council, on the recommendation of the Treasurer, to impose charges on holders of licences, but these charges may only be imposed on distribution and generation companies while they remain wholly owned by the State.

Clause 14 inserts a new section 167 in the EI Act which provides for a procedure whereby licences can be transferred with the approval of the Office of the Regulator-General.

Clause 15 inserts a new section 171 (4A) in the EI Act which provides that in certain specified circumstances units in a unit trust are deemed to be shares in a corporation.

Clause 16 inserts three new sections in Part 13 of the EI Act. Proposed section 171A allows relevant interests of an associate of a person to be disregarded if the Treasurer certifies on specified grounds that they should be disregarded. Interests of associates can be included in calculating whether a person has a controlling or substantial interest in a licensee. Where associations with a person exist only because of consortium arrangements and the Treasurer is satisfied that person does not have the power to control or influence the composition of the board or the conduct of affairs of the licensee except in certain limited respects which would be usual in such consortium arrangements, that association will not be included in determining whether a controlling or substantial interest exists.

Proposed section 171B similarly permits relevant interests which exist solely by virtue of section 32 (c) or section 33 of the Corporations Law to be disregarded if the Treasurer is satisfied as to certain matters. Sections 32 (c) and 53 of the Corporations Law deem a person to have a relevant interest in shares if they hold a specified percentage of shares in a corporation which holds those shares. Under the new section 171B, a person holding the specified percentage of shares in a corporation may not be deemed to have a relevant interest in shares held by that corporation, as long as the Treasurer is satisfied on various grounds that the person's power of control or influence in relation to the licensee is limited.

Proposed section 171C allows a certificate provided under sections 171A and 171B to cease to have effect if the Office of the Regulator-General determines a change in circumstances has occurred and that the certificate should no longer have effect.

Clause 17 amends section 181 (c) of the EI Act to provide that the Office of the Regulator-General is not bound, when selling forfeited shares under Part 13, by restrictions on sale contained in the memorandum or articles of association of the licensee or any other document.

PART 3—ELECTRICITY INDUSTRY ACT 1993: LOY YANG AND HAZELWOOD LAND

This Part provides for the rationalisation and reorganisation of land titles associated with the Loy Yang power station and the Hazelwood power station. The process employed by the Part is to divest land held by various persons including Generation Victoria, SEC, Loy Yang Power Limited and Hazelwood Power Corporation Limited. That land reverts to the Crown. The Crown is then authorised to grant Crown land to Loy Yang Power Limited, Hazelwood Power Corporation Limited, SEC, and others. This will enable diverse parcels of land to be consolidated into new Crown grants.

Clause 18 inserts a new Part 15 in the EI Act which provides for the surrender (in proposed section 198) and grant (in proposed section 204) of land relating to the Loy Yang power station. Proposed Schedule 3B (inserted by clause 20 of this Bill) lists the specific parcels of land which will be surrendered to the Crown.

Proposed section 199 ensures that leases over the surrendered land are preserved. The Minister administering the **Land Act 1958** will become the lessor of all leases over surrendered land. Sub-leases are not affected. After surrender, the Governor in Council may issue new Crown grants. New section 199 provides that the leases listed in proposed Schedule 3B will continue to exist after the new Crown grant is made. The new lessor of these leases will be the new grantee under the Crown grant.

Proposed section 200 protects interests in surrendered land such as easements or restrictive covenants and caveats listed in Part 3 of proposed Schedule 3B.

Proposed section 201 divests specified land from the Latrobe Shire Council to the Crown.

Proposed section 202 revokes a specified Order in Council and Crown grant.

Proposed section 203 removes rights and easements in specified roads.

Proposed section 204 gives the Governor in Council power to make new Crown grants to Loy Yang Power Limited or the SEC, and proposed section 206 exempts all of these transactions from State stamp duty.

Clause 19 inserts a new Part 16 in the EI Act which is similar in its application and purpose to the new Part 15 inserted by clause 18.

Proposed sections 207 and 208, like their counterparts in proposed sections 198 and 199 in Part 15, respectively surrender land (specified in Part 1—Table B of proposed Schedule 3c) to the Crown, and proposed section 208 ensures the continuation of the leases specified in Part 2 of proposed Schedule 3c.

Proposed section 209 protects any easements vested in the SEC on the land described in Volume 8217 Folio 219 of the Land Titles Register.

Proposed section 210 protects the drainage and sewage easements on two specified parcels of land surrendered to the Crown under proposed section 207.

Proposed sections 211, 212, and 213 divest specific parcels of land from the Central Gippsland Region Water Authority, Latrobe Shire Council, and Roads Corporation respectively and vest these parcels of land in the Crown.

Proposed section 214 revokes the reservation of a specified parcel of land which had been reserved by an Order in Council for public purposes.

Proposed section 215 revokes the classification of certain roads and removes rights and easements that exist in relation to the specified land.

Proposed section 216 gives power to the Governor in Council to grant new Crown grants to Generation Victoria, SEC, Hazelwood Power Corporation Limited, Powerworks Pty Ltd or Central Gippsland Region Water Authority, and proposed section 217 provides for the necessary amendments to records and the Land Titles Register, and proposed section 218 exempts things done under this Part from stamp duty.

Clause 20 inserts into the EI Act a new Schedule 3B (Loy Yang Land) which contains a list of land to be surrendered to the Crown under proposed section 198 in Part 1; a list of leases that are protected under proposed section 199 in Part 2; a list of encumbrances and caveats protected under proposed section 200 in Part 3; and a table showing land in respect of which a reservation has been revoked under proposed clause 202 in Part 4.

Clause 21 inserts a new Schedule 3C (Hazelwood Land) into the EI Act containing equivalent Parts to Schedule 3B.

PART 4—AMENDMENT OF STATE ELECTRICITY COMMISSION ACT 1958

This Part principally inserts a new Part 5A into the **State Electricity Commission Act 1958** which confers powers on the Chief Electrical Inspector in relation to electrical safety and also amends Part VI to provide for a Power Line Clearance Consultative Committee to replace the Tree Clearance Consultative Committee.

Clause 22 provides that in this Part the **State Electricity Commission Act 1958** (the “SEC Act”) is the Principal Act.

Clause 23 amends the definition of “Administrator” in section 31 of the SEC Act to make reference to the Deputy Administrator and also amends section 12A (1) of the SEC Act to provide that it is a function of the Commission to carry out directions given to the Administrator under section 53 of the EI Act.

Clause 24 inserts the proposed Part VA in the SEC Act. This new Part includes powers such as the power to appoint an inspector and provide identification cards to him or her (proposed section 57B); power to enter any premises containing a dangerous electrical hazard or electrical equipment which breaches the provisions of the SEC Act; and power to search, take evidence and generally inspect the premises (proposed section 57C) and direct a person to disconnect electricity supply for safety reasons (proposed section 57I). Inspectors have the power under proposed section 57F to require information and documents and to copy the documents.

Clause 25 makes amendments to Part VI of the SEC Act to replace the Tree Clearance Consultative Committee with the Power Line Clearance Consultative Committee and contains other minor amendments.

Clause 26 inserts new sections 63 and 63A which provide for the establishment, membership and functions of the Power Line Clearance Consultative Committee.

Clause 27 makes consequential amendments to sections 64 and 65 (1) (d) of the SEC Act.

PART 5—AMENDMENT OF ELECTRICITY INDUSTRY (AMENDMENT) ACT 1995

This Part makes amendments to the **Electricity Industry (Amendment) Act 1995** to correct certain title references and other details included in sections 37 and 38 of that Act.

Clause 28 extends the definition of “lease” in proposed section 184 (1) of the EI Act so that interests in land in the nature of leases can be preserved under proposed section 184.

Clause 29 amends proposed section 195 of the EI Act by inserting a new sub-section (4) to allow Crown grants issued by the Governor in Council to specify how far underground the Crown grant extends (to a maximum depth of 300 metres).

Clause 30 makes minor corrections to Part 1 and Part 2 of proposed Schedule 3A of the EI Act.

PART 6—WATER AND LAND ENTITLEMENTS FOR GENERATION COMPANIES

This Part makes amendments to four acts: the **National Parks Act 1975**, **Alpine Resorts Act 1983**, **Forests Act 1958**, and **Water Act 1989** to allow the Governor in Council to grant or renew leases and licences in respect of land subject to the first three Acts to a generation company; and in the case of the **Water Act 1989**, to ensure the primacy of “declared bulk water entitlements”.

Clause 31 inserts into the **Alpine Resorts Act 1983** new sections 28A and 28B. Proposed section 28A authorises the Governor in Council to grant or renew a lease to a generation company of land in an alpine resort used for the generation of electricity for supply or sale. Proposed section 28B authorises the Commission to grant or renew licences in the same circumstances.

Clause 32 inserts into the **Forests Act 1958** new sections 57B, 57C, and 57D. Proposed sections 57B and 57C deal with leases and licences of land in reserved forests in similar terms to clause 31. Proposed section 57D gives the Director-General power to enter an agreement with a generation company to manage or control or carry out functions in an area of reserved forest.

Clause 33 inserts into the **National Parks Act 1975** a new section 30AA which gives the Governor in Council power to grant or renew a lease or licence over land used for the generation of electricity for supply or sale in a specified national park. Proposed section 30AB allows the Director of National Parks to enter an agreement with a generation company for management of areas of the park used for generation of electricity for supply or sale.

Clause 34 inserts a new section 56 (5) into the **Water Act 1989** which allows a licence to be issued to a generation company to take groundwater for a period exceeding 15 years, but not exceeding 30 years.

Clause 35 inserts proposed section 107A into the **Water Act 1989** which ensures that authorities given the management and control of an area under section 107 of the **Water Act 1989** cannot exercise their powers inconsistently with a “declared bulk water

entitlement". Under section 185 of the **Water Act 1989**, the Governor in Council can protect a generation company's rights to water by declaring a bulk water entitlement.

Clause 36 inserts proposed section 161A in the **Water Act 1989** which has a similar effect to proposed section 107A, except it prevents an Authority from exercising its general powers under Part 7 of the **Water Act 1989** inconsistently with a bulk water entitlement.

PART 7—AMENDMENT OF OTHER ACTS

Clause 37 corrects a typographical error in the **Equal Opportunity Act 1995**.

Clause 38 makes some consequential amendments to section 24 (2) of the **Office of the Regulator-General Act 1994**.

Clause 39 amends Schedule 5 to the **Transport Act 1983** to establish the division of costs of operating, installing and improving certain street lighting between the Roads Corporation and the relevant municipal council and to abolish the Street Lighting Committee. The clause makes other consequential amendments to Schedule 5 to the **Transport Act 1983**.

Clause 40 corrects a typographical error in Schedule 2 to the **National Parks (Yarra Ranges and other Amendments) Act 1995**.