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Robyn Webb
Chief Parliamentary Counsel
Dated 13 September 2019



TASMANIA

**ELECTRICITY SUPPLY INDUSTRY
RESTRUCTURING (SAVINGS AND
TRANSITIONAL PROVISIONS) ACT 1995**

No. 49 of 1995

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SCHEDULE 1 – ACTS REPEALED



**ELECTRICITY SUPPLY INDUSTRY
RESTRUCTURING (SAVINGS AND
TRANSITIONAL PROVISIONS) ACT 1995**

No. 49 of 1995

An Act to make certain repeals and enact provisions of a saving or transitional nature in consequence of legislation providing for the restructuring of the electricity supply industry and for other purposes

[Royal Assent 22 September 1995]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.

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Transitional Provisions) Act 1995*
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Part 1 – Preliminary

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act –

complementary legislation means –

- (a) the *Electricity Supply Industry Act 1995*; and
- (b) the *Hydro-Electric Corporation Act 1995*; and
- (c) the *HEC Enterprises Corporation Act 1995*;

construction Acts means the Acts referred to in Part 2 of Schedule 1;

ESI Act means the *Electricity Supply Industry Act 1995*;

former Act means the *Hydro-Electric Commission Act 1944*;

HEC means the Hydro-Electric Corporation formerly known as the Hydro-Electric Commission;

land includes –

- (a) an estate or interest in land (including an easement); and

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- (b) a right or power over or in respect of land;

owner of land means –

- (a) if the land has been alienated from the Crown by the grant of an estate in fee simple or another estate or interest conferring a right to possession of the land, the person who holds the relevant estate or interest; or
- (b) in any other case, the Minister, authority or person responsible for the management of the land;

regulated operations means operations in the electricity supply industry for which a licence is required under the ESI Act;

Regulator means the person holding office as the Regulator under the ESI Act;

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Part 2 – Transitional Provisions

PART 2 – TRANSITIONAL PROVISIONS

4. Presumptive licensing

- (1) A person who was, immediately before the commencement of this Act, lawfully carrying on operations in the electricity supply industry is taken to be licensed under the ESI Act to carry on regulated operations in the electricity supply industry if –
 - (a) the person was carrying on operations of the same kind immediately before the commencement of this Act; or
 - (b) the person is authorised by regulation to carry on the operations.
- (2) A presumptive licence under subsection (1) terminates 6 months after the commencement of this Act if the person makes no application for a licence under the ESI Act within that period and, if an application is made for a licence under that Act, the presumptive licence terminates when the application is finally decided.
- (3) The regulations may prescribe conditions to which a presumptive licence under this section is subject.

5. Presumptive appointment as system controller

- (1) On the commencement of this Act, the HEC is taken to have been appointed under the ESI Act

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as the system controller for all power systems operated by it immediately before the commencement of this Act.

- (2) An appointment under this section continues for 12 months after the commencement of this Act.

6. Regulations and by-laws

- (1) A regulation in force under the former Act immediately before the commencement of this Act continues in force, subject to amendment or revocation under the ESI Act or this Act, as a regulation under the ESI Act.
- (2) Subject to subsections (3) and (4), a by-law in force under the former Act immediately before the commencement of this Act continues in force, subject to amendment or revocation under the ESI Act or this Act, as a regulation under the ESI Act.
- (3) A by-law fixing charges for electricity in force under the former Act immediately before the commencement of this Act continues in force as an electricity tariff under the ESI Act until it is superseded by an electricity tariff published under the ESI Act.
- (4) A by-law fixing charges for electricity that continues in force under subsection (3) or an electricity tariff published under the ESI Act fixing prices and conditions for the sale of electricity by the HEC is to be regarded as a

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tariff by-law for the purposes of the *Hydro-Electric Commission (Contributions) Act 1980*.

- (5) For the purposes of the *Government Prices Oversight Act 1995* –
- (a) a by-law fixing charges for electricity that continues in force under subsection (3) or an electricity tariff published under the ESI Act fixing prices and conditions for the sale of electricity by the HEC is, before the relevant date, to be regarded as a statutory rule; and
 - (b) on and after the relevant date, an electricity tariff published under the ESI Act fixing prices and conditions for the sale of electricity by the HEC is not to be regarded as a statutory rule.
- (6) Until the relevant date, section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to an electricity tariff published under the ESI Act fixing prices and conditions for the sale of electricity by the HEC as if the tariff were regulations within the meaning of that Act.
- (7) Notwithstanding section 36(3)(b) of the *Government Prices Oversight Act 1995*, an order may be made specifying maximum prices for electricity under section 36 of that Act without amendment to this Act or the complementary legislation.

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- (8) A regulation or by-law that continues in force under this section must be read subject to any adaptations and modifications that are necessary for its continued operation under the ESI Act.
- (9) In this section, *relevant date* means the date when the first order affecting the prices that may be charged by the HEC for electricity takes effect under the *Government Prices Oversight Act 1995*.

7. Contracts

- (1) This section applies to a customer who has contractual rights (which may be aggregate rights arising under 2 or more separate contracts) to draw electricity from a power system at a rate of 50 megawatts or above.
- (2) If, before the commencement of this Act, the HEC entered into a contract for the supply of electricity to a customer to which this section applies –
 - (a) on conditions prohibiting or restricting the re-supply of the electricity; or
 - (b) on conditions providing for price discrimination according to whether the electricity is, or is not, to be re-supplied –

the contractual conditions and anything done to enforce the conditions are, for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth, authorised by this Act.

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- (3) If, before the commencement of this Act, the HEC entered into contracts with one or more customers to which this section applies and it appears from comparison of the conditions of the contracts that there is price discrimination according to whether the electricity is, or is not, re-supplied, the contractual conditions and anything done to enforce the conditions are, for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth, authorised by this Act.

8. Permits, licences, authorisations and approvals

- (1) Subject to subsection (2), if a permit, licence, authorisation or approval was in force under the former Act immediately before the commencement of this Act, and the ESI Act contains provision for a similar kind of permit, licence, authorisation or approval, it continues in force, subject to the ESI Act, as if granted under the corresponding provision of the ESI Act.
- (2) Unless renewed under the ESI Act, a permit, licence, authorisation or approval that continues in force under subsection (1) expires –
- (a) at the end of the term for which it was granted or last renewed; or
 - (b) one year after the commencement of this Act –

whichever is the earlier.

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Part 2 – Transitional Provisions

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9. Electricity officers and authorised officers

- (1) An officer appointed by the HEC to exercise powers under section 58 of the former Act is, on the commencement of this Act, taken to have been appointed an electricity officer for the purposes of the ESI Act.
- (2) An appointment under subsection (1) expires, unless revoked earlier by the HEC, 12 months after the commencement of this Act.
- (3) A person appointed by the HEC to exercise powers for the purposes of regulations under section 61 or 62 of the former Act is, on the commencement of this Act, taken to have been appointed as an authorised officer for the purposes of the ESI Act.
- (4) An appointment under subsection (3) expires, unless revoked earlier by the Regulator, 12 months after the commencement of this Act.

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Part 3 –

PART 3 –

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Part 4 – Continuing obligations related to water management

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**PART 4 – CONTINUING OBLIGATIONS RELATED TO
WATER MANAGEMENT**

Division 1 – The Huon and Serpentine Rivers

14. The HEC’s obligations

(1) The HEC –

- (a) must maintain a release valve with a capacity of not less than 2 832 litres per second so that water may be released down the Huon River from the structures that were established under the *Hydro-Electric Commission (Power Development) Act 1967*; and
- (b) must release water into the Huon River as required by –
 - (i) an agreement between the HEC and the Minister; or
 - (ii) in default of agreement, a determination made by the Governor after considering representations from both the HEC and the Minister; and
- (c) must not allow the conserved waters of the Serpentine River to rise to more than 308.46 metres above sea level or to fall to less than 306.93 metres above sea level, or a lower level authorised under subsection (3).

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- (2) Any income, expenditure or loss resulting from the release of water under subsection (1)(b) must be shared between the HEC and the Minister in proportions determined by the Governor.
- (3) The Governor may, by order published in the *Gazette*, authorise the HEC to allow the conserved waters of the Serpentine River to fall to a level that is not less than 305.41 metres above sea level.
- (4) In this section,

Minister means the Minister administering the
Water Management Act 1999.

15. Entitlement to compensation

- (1) An owner or occupier of land on, or in the valley of, the Huon River who suffers loss from an increase in the salinity of the waters of the Huon River or of the underground waters affected by it because the river's flow has been diminished by –
 - (a) works for the conservation of its waters that were carried out under the *Hydro-Electric Commission (Power Development) Act 1967*; or
 - (b) the use or management of those works –is entitled to compensation for the loss from the HEC.

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s. 16A

- (2) The compensation is to be assessed on the same basis as compensation under the *Land Acquisition Act 1993*.

Division 2 – The Lake River and River Ouse

16A. Interpretation of Division

In this Division –

2011 transition day means the day on which the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2011* commences;

2011 transition period means –

- (a) the 4-month period commencing on the 2011 transition day; or
- (b) if the Minister’s power of extension under section 16C(3) is exercised, the period referred to in paragraph (a) plus the period of extension;

entitlement holder means –

- (a) in relation to land to which section 16(2)(b) of this Act applied immediately before the 2011 transition day – see section 16AB; and

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- (b) the Lawrenny Water Trust, being the body corporate and politic by that name created by letters patent under the seal of the State on 11 February 1960 (as notified in the *Gazette* on 16 March 1960);

former section 16C means section 16C as in force immediately before the commencement of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2019*;

Lake River means the Lake River from its source to its confluence with the South Esk River;

water entitlement agreement means an agreement that –

- (a) was made between the HEC and an entitlement holder under former section 16C; and
- (b) is taken to have been validly made by virtue of section 16C(2), as amended by the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2019*;

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Water Minister means the Minister administering the *Water Management Act 1999*.

16AB. Entitlement holders for certain land

- (1) A person is an entitlement holder, in respect of land to which section 16(2)(b) of this Act applied immediately before the 2011 transition day, if –
- (a) an order has not been made under section 16D(2) in respect of the land; and
 - (b) the person –
 - (i) was the owner of the land immediately before the 2011 transition day; or
 - (ii) if the land has been transferred on or after the 2011 transition day, is receiving the benefit of the water entitlement agreement made in respect of the land.
- (2) If an order has been made under section 16D(2) in respect of land to which section 16(2)(b) of this Act applied immediately before the 2011 transition day, a person is an entitlement holder in respect of the land if the person is the holder of a valid authorisation –
- (a) to take water under the *Irrigation Clauses Act 1973*, or the *Water*

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Management Act 1999, in respect of the
land; and

- (b) that is in accordance with the order made under section 16D(2) in respect of the land.

16B. Obligation of HEC to supply certain water entitlements

- (1) The HEC must make water available from the beds of the Lake River and the River Ouse to every entitlement holder.
- (2) The HEC's obligation under subsection (1) is taken to be a condition of its special licence under the *Water Management Act 1999*.

16C. Quantification of HEC obligation to supply certain water entitlements

- (1) In this section –

commencement day means the day on which
the *Electricity Supply Industry
Restructuring (Savings and Transitional
Provisions) Amendment Act 2019*
commences.

- (2) For the purposes of this section, an agreement made, for the purposes of former section 16C, between the HEC and –
- (a) entitlement holders collectively; or

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s. 16C

- (b) groups of entitlement holders; or
- (c) individual entitlement holders; or
- (d) any combination under paragraphs (b) and (c) –

is taken to have been validly made under that section if approved by the Water Minister as such an agreement before the commencement day, whether or not the agreement was made during or after the 2011 transition period.

- (3) For the avoidance of doubt, an agreement that –
 - (a) was in force immediately before the commencement day; and
 - (b) on and after the commencement day, is taken to be a water entitlement agreement –

remains in force, on the same terms and conditions, on the commencement day.

- (4) Subject to section 16E, the amount of water to be made available under section 16B(1) to an entitlement holder is the amount specified in the water entitlement agreement, as fixed by order under section 16D(2), that applies to the entitlement holder.
- (5) Despite subsection (4), a water entitlement agreement is not capable of providing for the suspension, relinquishment, phased reduction or extinction (by any means) of the HEC's

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s. 16D

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obligation under section 16B(1) and a term of any such agreement purporting to make such provision is, to that extent, void and unenforceable.

16D. Orders providing for supply of certain water entitlements

- (1) This section applies once, under section 16C, a water entitlement agreement has been validly made in respect of –
 - (a) entitlement holders collectively; or
 - (b) any group of entitlement holders; or
 - (c) any individual entitlement holder; or
 - (d) any combination under paragraphs (b) and (c).
- (2) For the purposes of this Division, the Water Minister, by order, is to confer, on the entitlement holders, an authorisation to take water under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*.
- (3) The order –
 - (a) is to fix the amount of water to be made available under section 16B(1) to the entitlement holders; and
 - (b) may do all or any of the following:

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-
- (i) appoint one or more water districts under the *Water Management Act 1999*;
 - (ii) prescribe conditions relating to the discharge of the HEC's obligation under section 16B(1);
 - (iii) set limitations on the HEC's obligation under section 16B(1).
- (4) The order –
- (a) may be made at any time during or after the 2011 transition period; and
 - (b) is, as far as practicable, to incorporate the matters relevantly agreed or awarded under section 16C; and
 - (c) is not to prescribe anything repugnant to the matters relevantly agreed or awarded under section 16C; and
 - (d) may be of general application or apply differently according to persons, matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the order.
- (5) To avoid doubt –
- (a) the Water Minister's powers extend to the making of the order; and
 - (b) the order may, consistently with this section –

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- (i) confer authorisations to take water under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*; and
 - (ii) appoint water districts under the *Water Management Act 1999*; and
 - (c) the order has effect according to its terms; and
 - (d) in the event of any inconsistency between a term of the order and an enactment other than this section made before the order, the term of the order is not invalidated or rendered nugatory by the inconsistency.
- (6) The order –
- (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; but
 - (b) is not subordinate legislation for the purpose of the *Subordinate Legislation Act 1992*.

16E. Transitional supply of certain water entitlements

Until an order under section 16D(2) takes effect in respect of an entitlement holder –

- (a) the amount of water that the HEC must make available to the entitlement holder under section 16B(1) is the same amount

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as it was obliged to make available to the entitlement holder under section 16(1) of this Act immediately before the 2011 transition day; and

- (b) the entitlement holder is taken to hold an authorisation, under the *Irrigation Clauses Act 1973* or *Water Management Act 1999*, to take the water so made available.

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Part 5 – Miscellaneous

PART 5 – MISCELLANEOUS

17.

18. Completion of certain construction projects

Notwithstanding the repeal of the construction Acts, the HEC may, in accordance with the regulations, continue and complete any work or activities that were authorised by any of those Acts.

19. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

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- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Minister or an officer or person nominated in the regulations.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or complementary legislation.
- (6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

20. Repeals

The Acts specified in Schedule 1 are repealed.

21. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Energy; and
- (b) the department responsible to the Minister for Energy in relation to the administration of this Act is the Office of Energy Planning and Conservation.

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SCHEDULE 1 – ACTS REPEALED

Sections 3 and 20

PART 1

Hydro–Electric Commission Act 1944

Loan (Hydro–Electric Commission) Act 1957

Electric Power Development (Loan Agreement) Act 1968

PART 2

*Hydro–Electric Commission (Mersey–Forth Power
Development) Act 1963*

Hydro–Electric Commission (Miena Dam) Act 1964

*Hydro–Electric Commission (Lower Derwent Power
Development and Miena Dam) Act 1966*

Hydro–Electric Commission (Power Development) Act 1967

*Hydro–Electric Commission (Pieman River Power
Development) Act 1971*

Hydro–Electric Commission (Doubts Removal) Act 1972

Hydro–Electric Commission (Power Development) Act 1974

Gordon River Hydro–Electric Power Development Act 1982

Hydro–Electric Commission (Doubts Removal) Act 1982

Hydro–Electric Commission (Power Development) Act 1983

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NOTES

The foregoing text of the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 2 September 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995</i>	No. 49 of 1995	6.11.1996
<i>Water Management Act 1999</i>	No. 45 of 1999	1.1.2000
<i>Electricity Wayleaves and Easements Act 2000</i>	No. 64 of 2000	14.11.2000
<i>Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2011</i>	No. 17 of 2011	6.7.2011
<i>Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Amendment Act 2019</i>	No. 24 of 2019	2.9.2019

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 64 of 2000, s. 15
Part 3	Repealed by No. 64 of 2000, s. 15
Section 10	Repealed by No. 64 of 2000, s. 15
Section 11	Repealed by No. 64 of 2000, s. 15
Section 12	Repealed by No. 64 of 2000, s. 15
Section 13	Repealed by No. 64 of 2000, s. 15
Section 14	Amended by No. 45 of 1999, Sched. 6
Division 2 of Part 4	Substituted by No. 17 of 2011, s. 4

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Provision affected	How affected
Section 16A	Inserted by No. 17 of 2011, s. 4 Amended by No. 24 of 2019, s. 4
Section 16AB	Inserted by No. 24 of 2019, s. 5
Section 16B	Inserted by No. 17 of 2011, s. 4
Section 16C	Inserted by No. 17 of 2011, s. 4 Substituted by No. 24 of 2019, s. 6
Section 16D	Inserted by No. 17 of 2011, s. 4 Amended by No. 24 of 2019, s. 7
Section 16E	Inserted by No. 17 of 2011, s. 4
Section 16	Subsection (3) inserted by No. 45 of 1999, Sched. 6 Repealed by No. 17 of 2011, s. 4
Section 17	Repealed by No. 64 of 2000, s. 15