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**ENDNOTES** 23
The Parliament of Victoria enacts:

1 Purpose

The main purpose of this Act is to amend the National Electricity (Victoria) Act 2005 to—

(a) provide for the modification of the application of the National Electricity Law and the National Electricity Rules (as laws of Victoria) for a limited period; and

(b) provide for transitional arrangements relating to the administration and enforcement by the Australian Energy Regulator of the current
distribution pricing determination made by the Essential Services Commission and certain conditions of distribution licences.

2 Commencement

(1) Subject to this section, this Act (except section 6) comes into operation on a day or days to be proclaimed.

(2) Section 6 comes into operation on the day after the day on which this Act receives the Royal Assent.

(3) If a provision of this Act does not come into operation before 1 January 2009, it comes into operation on that day.

3 New definitions inserted

In section 3(1) of the National Electricity (Victoria) Act 2005—

(a) before the definition of National Electricity (Victoria) Law insert—

"2006–2010 distribution pricing determination—

(a) means the determination of the ESC under Part 3 of the Essential Services Commission Act 2001 made on 18 October 2005 applying to charges for connection to, and the use of, distribution systems in Victoria (as amended in accordance with the decision of the appeal panel (within the meaning of the Essential Services Commission Act 2001) on 17 February 2006); and

(b) includes amendments made to that determination before the commencement of section 5 of the
National Electricity (Victoria) Amendment Act 2007;

*Essential Services Commission* or *ESC*
means the Essential Services Commission established under section 7 of the *Essential Services Commission Act 2001*; 

(b) in the definition of *National Electricity (Victoria) Regulations*, for "Act." substitute "Act;"; 

(c) after the definition of *National Electricity (Victoria) Regulations* insert—
"*Tariff Order* has the same meaning as in the *Electricity Industry Act 2000*;

*Victorian distribution pricing determination* means—

(a) the 2006–2010 distribution pricing determination as amended from time to time; or 

(b) a determination under Part 3 of the *Essential Services Commission Act 2001* or the Tariff Order applying to charges for connection to, and the use of, distribution systems in Victoria that revokes and substitutes—

(i) the 2006–2010 distribution pricing determination; or 

(ii) a determination applying to charges for connection to, and the use of, distribution systems in Victoria—

as amended from time to time.".
4 New Part 3 inserted

After section 12 of the National Electricity (Victoria) Act 2005 insert—

"__________________

PART 3—MODIFICATION OF APPLICATION OF THE NATIONAL ELECTRICITY LAW

13 Definitions

In this Part—

NEL means the National Electricity Law set out in the Schedule to the National Electricity (South Australia) Act 1996 of South Australia as in force for the time being;

Victorian distribution pricing determination end date means—

(a) 31 December 2010; or

(b) if a Victorian distribution pricing determination provides that it will cease to have effect on a later date—that date.

14 NEL provisions providing for access to distribution services do not apply during specified period

(1) Despite section 6, during the specified period—

(a) section 2A, Division 3B of Part 6, Part 10 and section 157 of the NEL (as each of those provisions apply to access to services provided by means of a distribution system, or connection to a distribution system) do not apply as a law of Victoria; and
(b) a Rule made for the purposes of any provision referred to in paragraph (a) does not have the force of law in Victoria.

(2) In this section—

specified period means the period—

(a) commencing on the day section 46 of the National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Act 2007 of South Australia commences operation; and

(b) ending on the Victorian distribution pricing determination end date.

15 Modification of application of National Electricity Law and National Electricity Rules by Order

(1) The Minister, by Order published in the Government Gazette, may declare that, despite section 6—

(a) a provision of the NEL that relates to the economic regulation of the provision of distribution services—

(i) does not apply as a law of Victoria until a date specified in the Order (being a date that is not after the Victorian distribution pricing determination end date);

(ii) ceases to apply as a law of Victoria for the period specified in the Order (not being a period that ends after the Victorian
distribution pricing determination end date);

(iii) applies as a law of Victoria with any modifications that are specified in the Order for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date);

(b) a provision of the National Electricity Rules that relates to the economic regulation of the provision of distribution services—

(i) does not have the force of law in Victoria until a date specified in the Order (being a date that is not after the Victorian distribution pricing determination end date);

(ii) ceases to have the force of law in Victoria for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date);

(iii) has the force of law in Victoria with any modifications that are specified in the Order for the period specified in the Order (not being a period that ends after the Victorian distribution pricing determination end date).
(2) Despite section 6—
   (a) the NEL applies as a law of Victoria subject to any Order under subsection (1) that is in force;
   (b) the National Electricity Rules have the force of law in Victoria subject to any Order under subsection (1) that is in force.

16 Role of National Electricity Law and Rules in relation to distribution determinations and Victorian distribution pricing determinations

(1) To avoid doubt, nothing in this Part is to be taken as preventing the making of a distribution determination under—
   (a) the NEL as it applies as a law of Victoria under this Act; and
   (b) the National Electricity Rules as they have the force of law in Victoria under this Act—
that takes effect after the Victorian distribution pricing determination end date.

(2) To avoid doubt, nothing in this Part is to be taken as preventing the AER (before, on or after the Victorian distribution pricing determination end date) performing a function or duty, or exercising a power, for the purposes of making a distribution determination under—
   (a) the NEL as it applies as a law of Victoria under this Act; and
National Electricity (Victoria) Amendment Act 2007
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(b) the National Electricity Rules as they have the force of law in Victoria under this Act—

that takes effect after the Victorian distribution pricing determination end date.

(3) Despite anything to the contrary in the National Electricity (Victoria) Law or the National Electricity Rules, the provisions of that Law and those Rules that relate to the economic regulation of the provision of distribution services do not apply to a Victorian distribution pricing determination.

(4) To avoid doubt—

(a) the AER cannot perform any function or duty, or exercise any power, under a provision of the National Electricity (Victoria) Law or the National Electricity Rules that relates to the economic regulation of the provision of distribution services under a Victorian distribution pricing determination; and

(b) a Victorian distribution pricing determination is not a distribution determination for the purposes of the National Electricity (Victoria) Law or the National Electricity Rules.

(5) In this section—

distribution services has the same meaning as in Chapter 10 of the National Electricity Rules.".
5 New Part 4 inserted

At the end of the National Electricity (Victoria) Act 2005 insert—

PART 4—ECONOMIC REGULATORY DISTRIBUTION FUNCTIONS TRANSITIONAL ARRANGEMENTS

17 Definitions

In this Part—

AMI Order means—
(a) the initial AMI Order; or
(b) any other Order made by the Governor in Council under section 46D of the Electricity Industry Act 2000 that is in force immediately before the transitional period commencement date;

distribution licence has the same meaning as in the Electricity Industry Act 2000;

distribution services has the meaning given by section 18;

initial AMI Order means the Order—
(a) made by the Governor in Council under sections 15A and 46D of the Electricity Industry Act 2000; and
(b) published in the Government Gazette on 28 August 2007;
relevant distributor means—

(a) a distribution company within the meaning of the Electricity Industry Act 2000; or

(b) a person who—

(i) engages in the distribution or supply of electricity; and

(ii) is exempted under an Order under section 17 of the Electricity Industry Act 2000 from the requirement to obtain a licence under that Act in respect of that activity;

relevant regulatory duty has the meaning given by section 19;

relevant regulatory function or power has the meaning given by section 20;

relevant regulatory law or instrument means—

(a) the Essential Services Commission Act 2001; or

(b) the Electricity Industry Act 2000; or

(c) any regulation made under the Essential Services Commission Act 2001 or the Electricity Industry Act 2000; or

(d) the Tariff Order; or

(e) an AMI Order; or
(f) an Order made by the Governor in Council (other than the Tariff Order or an AMI Order) under the Electricity Industry Act 2000; or

(g) the 2006–2010 distribution pricing determination; or

(h) a distribution licence; or

(i) a code or guideline made by the ESC;

specified distribution licence condition means a condition of a distribution licence specified by Order under section 21;

specified ESC code or guideline provision means a provision of a code or guideline published by the ESC specified by Order under section 22;

transitional period commencement date means the date on which section 5 of the National Electricity (Victoria) Amendment Act 2007 comes into operation.

18 Meaning of distribution services

(1) Distribution services are services provided by means of, or in connection with, a distribution system.

(2) Without limiting subsection (1), distribution services include—

(a) services provided relating to the connection to, and use of, a distribution system; and

(b) services provided relating to augmentations to a distribution system; and
(c) metering services; and
(d) services to facilitate access to services provided by means of, or in connection with, a distribution system; and
(e) the supply of electricity from a distribution system; and
(f) services to facilitate the distribution of electricity; and
(g) public lighting services.

19 Meaning of relevant regulatory duty

A relevant regulatory duty is—

(a) a duty the ESC had, immediately before the transitional period commencement date, under a relevant regulatory law or instrument that relates to the economic regulation of the provision of distribution services by a relevant distributor other than a duty—

(i) to (or refuse to) grant, vary, revoke, or approve the transfer of, a distribution licence; or

(ii) to make or amend a code or guideline that relates to the provision of distribution services; or

(b) a duty the ESC has under—

(i) a specified distribution licence condition; or

(ii) a specified ESC code or guideline provision.
20 Meaning of relevant regulatory function or power

A relevant regulatory function or power is—

(a) a function or power the ESC had, immediately before the transitional period commencement date, under a relevant regulatory law or instrument that relates to the economic regulation of the provision of distribution services by a relevant distributor other than a function or power—

(i) to (or refuse to) grant, vary, revoke, or approve the transfer of, a distribution licence; or

(ii) to make or amend a code or guideline that relates to the provision of distribution services; or

(b) a function or power the ESC has under—

(i) a specified distribution licence condition; or

(ii) a specified ESC code or guideline provision.

21 Specified distribution licence conditions

The Minister, by Order published in the Government Gazette, may specify a condition of a distribution licence that—

(a) relates to the provision of distribution services and does not relate to the economic regulation of the provision of those services; and
(b) confers a function or power, or imposes a duty, on the ESC—
as a specified distribution licence condition if the Minister considers that the AER must be conferred that function or power, or be subject to that duty, for the purposes of this Part.

22 Specified ESC code or guideline provisions
The Minister, by Order published in the Government Gazette, may specify a provision of a code or guideline published by the ESC that—
(a) relates to the provision of distribution services and does not relate to the economic regulation of the provision of those services; and
(b) confers a function or power, or imposes a duty, on the ESC—
as a specified ESC code or guideline provision if the Minister considers that the AER must be conferred that function or power, or be subject to that duty, for the purposes of this Part.

23 Certain ESC regulatory functions, powers and duties conferred and imposed on the AER
(1) On and from the transitional period commencement date the AER is, by force of this subsection—
(a) conferred a relevant regulatory function or power; and
(b) subject to a relevant regulatory duty.
(2) In addition, the AER has the functions and powers conferred, and is subject to the duties imposed, on it under this Part.

(3) For the purposes of this Part, on and from the transitional period commencement date, every reference to the Essential Services Commission (by whatever name described) in—

(a) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by a relevant distributor); or

(b) a specified distribution licence condition; or

(c) a specified ESC code or guideline provision—

is to be taken to be a reference to the AER unless the context otherwise requires.

24 ESC ceases to have certain distribution system related regulatory functions, powers and duties

Despite anything to the contrary in any Act or instrument, on the transitional period commencement date the ESC, by force of this section, ceases to have any function or power, or to be subject to any duty, under—

(a) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by a relevant distributor); or
(b) a specified distribution licence condition; or
(c) a specified ESC code or guideline provision.

25 Enforcement of Victorian distribution pricing determination and distribution licences by AER

(1) This section applies if a relevant distributor has contravened or is contravening or, in the opinion of the AER, is likely to contravene, as the case requires—

(a) a Victorian distribution pricing determination; or
(b) a condition of a distribution licence that requires compliance with—

(i) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by the relevant distributor); or
(ii) a code or a guideline published by the ESC that relates to the economic regulation of the provision of distribution services by the distributor—

and the AER considers that the contravention or likely contravention is not of a trivial nature.

(2) The AER may serve a provisional order or a final order on the relevant distributor requiring the distributor—
(a) to comply with—
   (i) a Victorian distribution pricing determination; or
   (ii) the relevant distribution licence condition; and

(b) if a contravention has already occurred, to take such actions as are specified in the order to rectify the contravention.

(3) Section 53(2) to (9) and section 54 of the Essential Services Commission Act 2001 apply as if—

   (a) reference in those sections to a provisional order or a final order were a reference to a provisional order or a final order made and served under this section; and

   (b) a reference to the Commission were a reference to the AER.

26 ESC cannot enforce Victorian pricing determination or certain distribution licence conditions

On and from the transitional period commencement date, the ESC cannot make or serve a provisional order or a final order under section 53 of the Essential Services Commission Act 2001 in respect of a contravention or likely contravention by a relevant distributor of, as the case requires—

   (a) a Victorian distribution pricing determination; or
(b) a condition of a distribution licence that requires compliance with—

(i) a relevant regulatory law or instrument (as that law or instrument relates to the economic regulation of the provision of distribution services by a relevant distributor); or

(ii) a code or a guideline published by the ESC that relates to the economic regulation of the provision of distribution services by a distributor.

27 AER may request amendment of distribution licences and distribution service related code or guideline

(1) The AER may request the ESC to amend—

(a) a distribution licence; or

(b) a code or guideline published by the ESC that relates to the provision of distribution services.

(2) On receiving a request under subsection (1), the ESC may, after consulting with the AER, amend the distribution licence, code or guideline (as the case may be).

28 Provision of information and assistance by ESC to the AER

(1) Despite any other Act or law, the ESC is authorised, on its own initiative or at the request of the AER—

(a) to provide the AER with such information (including information given in confidence) in the possession or control of the ESC that is reasonably
required by the AER for the purposes of this Part; and

(b) to provide the AER with such other assistance as is reasonably required by the AER to perform a function or duty, or exercise a power, conferred or imposed under this Part.

(2) Nothing done, or authorised to be done, by the ESC in acting under subsection (1)—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or

(f) releases a surety or any other obligee wholly or in part from an obligation.

29 Appeals against certain decisions or actions of the AER

(1) This section applies if the AER, in exercise or performance, or purported exercise or performance, of a relevant regulatory function or power conferred on it under section 23, makes—
(a) a requirement under section 37 of the Essential Services Commission Act 2001; or

(b) a decision to disclose information or the contents of a document given to the AER by a person under a notice given by the AER under section 38(2)(c) or 38(2)(d) of the Essential Services Commission Act 2001; or

(c) a determination that—

(i) revokes and substitutes the 2006–2010 distribution pricing determination or a subsequent determination applying to charges for connection to, and the use of, distribution systems in Victoria; or

(ii) amends—

(A) the 2006–2010 distribution pricing determination; or

(B) a subsequent determination applying to charges for connection to, and the use of, distribution systems in Victoria.

(2) A person who is aggrieved by the requirement, decision or determination may appeal to the Tribunal against the making of the requirement, decision or determination.

(3) Sections 55 and 56 of the Essential Services Commission Act 2001 apply to an appeal under this section as if—

(a) a reference in those sections to section 55(1) were a reference to subsection (1) of this section; and
(b) in section 55(3) for "the Registrar" there were substituted "the Tribunal"; and

(c) section 56(1) to (3) and (5) were omitted; and

(d) a reference in those sections to the Commission were a reference to the AER; and

(e) a reference in those sections to an appeal panel were a reference to the Tribunal.

(4) Part 3 of the Essential Services Commission Regulations 2001 applies to an appeal under this section as if—

(a) regulations 10 and 11 of that Part were omitted; and

(b) a reference in that Part to the Commission were a reference to the AER; and

(c) a reference in that Part to an appeal panel were a reference to the Tribunal; and

(d) a reference in that Part to the Registrar were a reference to the Tribunal.

(5) In this section—

Tribunal means the Australian Competition Tribunal referred to in the Trade Practices Act 1974 of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal.".
6 Statute law revision

In section 11(2) of the National Electricity (Victoria) Act 2005, in the definition of VENCorp, for "established" substitute "continued".

7 Repeal of Act

This Act is repealed on 1 January 2010.
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 1 November 2007
Legislative Council: 21 November 2007

The long title for the Bill for this Act was "A Bill for an Act to amend the National Electricity (Victoria) Act 2005 and for other purposes."