

I certify that this is a copy of the authorised version of this Act as at 9 April 2019, and that it incorporates all amendments, if any, made before and in force as at that date and 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 9 April 2019.

Robyn Webb
Chief Parliamentary Counsel
Dated 22 August 2019



TASMANIA

ENERGY CO-ORDINATION AND PLANNING ACT 1995

No. 47 of 1995

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ENERGY CO-ORDINATION AND PLANNING ACT 1995

No. 47 of 1995

An Act to provide for a public officer to co-ordinate and advise on energy policy and to assist in planning the energy needs of the State and for related matters

[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 *Energy Co-ordination and Planning Act 1995*.

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Part 1 – Preliminary

2. Commencement

This Act commences on a day to be fixed by proclamation.

3. Interpretation

In this Act, unless the contrary intention appears

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Assessor means the Monitor and Assessor for Energy Security appointed under section 8A;

Co-ordinator means the Energy Security Co-ordinator appointed under section 8D;

Director means the Director of Energy Planning referred to in section 4;

electricity includes electrical energy of any kind however produced, stored, transported or consumed;

energy includes electricity, gas and thermal energy however derived as well as any other recognised energy resource;

energy in storage has the same meaning as in Schedule 1 to the *Electricity Supply Industry Regulations 2018*;

gas means any gas or mixture of gases, whether naturally occurring or manufactured, intended for use –

(a) as a fuel; or

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(b) in any chemical process;

headwater storage has the same meaning as in Schedule 1 to the *Electricity Supply Industry Regulations 2018*;

HRL means the high reliability level specified by the Minister under section 3A(a);

HRL recovery plan means a recovery plan submitted in accordance with section 8G;

Hydro means the Hydro-Electric Corporation continued under the *Hydro-Electric Corporation Act 1995*;

National Electricity Market has the same meaning as in the *Electricity Supply Industry Act 1995*;

PSL means the prudent storage level specified by the Minister under section 3A(b);

PSL recovery plan means a recovery plan submitted in accordance with section 8F;

recovery plan includes the following:

(a) an HRL recovery plan;

(b) a PSL recovery plan;

Regulator means the Tasmanian Economic Regulator appointed under the *Economic Regulator Act 2009*.

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Part 1 – Preliminary

3A. High reliability level and prudent storage level

The Minister may, by order, specify in respect of each month, a level of energy in storage to be –

- (a) the high reliability level; and
- (b) the prudent storage level.

PART 2 – DIRECTOR OF ENERGY PLANNING

4. Director of Energy Planning

The Minister may appoint a State Service officer or State Service employee to be Director of Energy Planning and that person holds that office in conjunction with State Service employment.

5. Director's functions and powers

- (1) The functions of the Director are as follows:
 - (a) to assist the Minister in planning and co-ordinating the provision of energy in the State;
 - (b) to advise the Minister on all aspects of energy policy, including –
 - (i) the energy needs of the State and any factors which might put the supply of electrical energy at risk; and
 - (ii) ways of using energy and sources of energy, including renewable energy; and
 - (iii) the introduction and encouragement of competition in the energy industry; and

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Part 2 – Director of Energy Planning

- (iv) ways of achieving greater efficiency in the use of energy; and
 - (v) the use of energy policy to assist in achieving other policy objectives of the State;
- (c) for the purposes of paragraphs (a) and (b)
-
- (i) to monitor the operation of the State's energy industry and its participants; and
 - (ii) to consult with interested groups and persons;
- (d) to examine and monitor factors affecting the supply and demand for energy for the State;
- (e) to co-ordinate activities to ensure that adequate arrangements are in place for the planning of the State's electrical system;
- (f) to undertake, sponsor and co-ordinate research, development and demonstration relating to energy;
- (g) to promote the development of commercial applications of renewable energy;
- (h) to produce and publish information and reports on energy-related matters;

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- (i) to provide support in the resolution of disputes about energy-related matters.
- (2) In addition to any other powers conferred on the Director, the Director has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of the Director's functions.

6. Staff

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed to assist the Director in carrying out the Director's functions under this Act.
- (2) The Secretary of the Department may make arrangements for State Service officers and State Service employees employed in the Department and, with the approval of another Head of a State Service Agency, for State Service officers and State Service employees employed in that Agency to be made available to the Director to enable the Director to perform the Director's functions.
- (3) The officers and employees made available to the Director may, in conjunction with State Service employment, serve the Director in any capacity.

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Part 2 – Director of Energy Planning

7. Delegation

The Director may delegate any of the Director's functions or powers under this Act other than this power of delegation.

8. Directions from Minister

- (1) The Minister may give directions in writing to the Director with respect to the performance of the Director's functions.
- (2) The directions may be given generally or in relation to a particular matter.
- (3) The Director must perform his or her functions in accordance with the directions.

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Part 2A – Monitor and Assessor for Energy Security and Energy Security Co-ordinator

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PART 2A – MONITOR AND ASSESSOR FOR ENERGY SECURITY AND ENERGY SECURITY CO-ORDINATOR

Division 1 – Monitor and Assessor for Energy Security

8A. Monitor and Assessor for Energy Security

The Regulator is to be the Monitor and Assessor for Energy Security.

8B. Assessor's functions and powers

- (1) The Assessor has the following functions:
 - (a) to monitor and provide reports in relation to energy in storage and other sources of energy;
 - (b) to evaluate, on a monthly basis, whether there is sufficient energy in storage and associated generation capacity to meet forecast electricity demand in the Tasmanian region of the National Electricity Market;
 - (c) to require Hydro to provide recovery plans in accordance with section 8F;
 - (d) to provide the Co-ordinator with a copy of any recovery plan and the Assessor's advice on the quality of the plan;

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Co-ordinator

- (e) to notify the Co-ordinator when energy in storage levels are likely to drop below the HRL;
 - (f) to monitor and evaluate the PSL and HRL and advise the Minister whether changes in the levels are required;
 - (g) such other functions as may be prescribed.
- (2) In addition to any other powers conferred on the Assessor, he or she has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of his or her functions.

8C. Reports by Assessor

- (1) The Assessor is to publish on the Assessor's website a monthly report in relation to energy in storage levels, the PSL and the HRL.
- (2) The Assessor, not later than 30 November each year, is to prepare and give to the Minister a report on the performance of the Assessor's functions and the exercise of the Assessor's powers under this Act in the preceding 12 months.
- (3) The report provided under subsection (2) is to include the following:

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- (a) an examination of the forecast energy in storage levels and forecast demand for energy;
 - (b) consideration of whether the energy in storage levels are likely to drop below the PSL or the HRL;
 - (c) a review of changes to the balance between supply and demand for energy, and recommendations to ensure the maintenance of security of energy supply;
 - (d) any other matters that the Assessor thinks appropriate.
- (4) The Assessor is to cause a copy of the report to be published on the Assessor’s website.
- (5) If the Assessor considers that a change in the PSL or the HRL is required, the Assessor is to provide the Minister with advice to that effect.
- (6) In preparing the advice under subsection (5), the Assessor is to consult with Hydro.

Division 2 – Energy Security Co-ordinator

8D. Energy Security Co-ordinator

The Director is to be the Energy Security Co-ordinator.

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Co-ordinator

8E. Functions and powers of Co-ordinator

- (1) The Co-ordinator has the following functions:
 - (a) to recommend to the Minister any action that the Co-ordinator considers should be taken in order to ensure that the State's energy requirements can be met;
 - (b) to manage electricity supply risks when energy in storage is at or below the HRL;
 - (c) to review any recovery plan provided to the Assessor by Hydro;
 - (d) such other functions as may be prescribed.
- (2) In addition to any other powers conferred on the Co-ordinator, he or she has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of his or her functions.

Division 3 – Recovery plans

8F. Assessor may require PSL recovery plan from Hydro

- (1) If the level of energy in storage is below the PSL and, in the Assessor's opinion, it is reasonably possible that it will fall below the HRL, the Assessor may require Hydro to submit to the Assessor a PSL recovery plan, within a specified period.

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- (2) If requested to do so under subsection (1), Hydro must submit a PSL recovery plan within the period specified.

8G. Assessor must require HRL recovery plan from Hydro

- (1) If, in the Assessor's opinion, it is probable that the level of energy in storage will fall below the HRL, the Assessor must require Hydro to submit to the Assessor an HRL recovery plan, within a specified period.
- (2) If requested to do so under subsection (1), Hydro must submit an HRL recovery plan within the period specified.

8H. Information to be included in recovery plans

A recovery plan is to include the following information:

- (a) details of any strategies that Hydro may implement for reducing the consumption of energy in storage and other sources of energy;
- (b) details of any strategies of which Hydro is aware for increasing the supply of energy other than energy in storage.

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Co-ordinator

8I. Approval of HRL recovery plan

- (1) On receipt of an HRL recovery plan, the Assessor is to provide the Co-ordinator with a copy of the plan.
- (2) The Co-ordinator must review the HRL recovery plan.
- (3) In reviewing an HRL recovery plan, the Co-ordinator may require information from any person or body that the Co-ordinator considers relevant.
- (4) If the Co-ordinator is not satisfied that the HRL recovery plan adequately addresses the matters referred to in section 8H, the Co-ordinator is to liaise with Hydro to rectify any deficiencies in the HRL recovery plan.
- (5) Once any deficiencies in the HRL recovery plan have been rectified to the Co-ordinator's satisfaction, the amended HRL recovery plan is to be submitted to the Assessor.
- (6) If an amended HRL recovery plan is submitted to the Assessor, the Assessor is to provide the Co-ordinator with a copy of the amended HRL recovery plan for review.
- (7) If the Co-ordinator is satisfied that the HRL recovery plan, whether as amended or not, adequately addresses the matters referred to in section 8H, the Co-ordinator is to –
 - (a) approve the HRL recovery plan; and

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(b) advise Hydro, the Assessor and the Minister of that approval.

8J. Implementation and reporting of recovery plan

- (1) If the Co-ordinator approves a recovery plan, he or she must oversee and co-ordinate the implementation of the plan.
- (2) The Co-ordinator may require Hydro to provide reports on the progress of the implementation of the recovery plan as and when the Co-ordinator requires.
- (3) The Co-ordinator must provide reports on the progress of the implementation of the recovery plan to the Minister as and when the Minister requires.

8K. Risk to electricity supply

If, in the Co-ordinator's opinion, there is a reasonable probability that energy in storage and associated generation capacity will not be sufficient to meet forecast demand for electricity in the Tasmanian region of the National Electricity Market, the Co-ordinator must advise the Minister of that risk and may recommend an appropriate course of action.

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Co-ordinator

Division 4 – General

8L. Directions from Minister

- (1) The Minister may give directions in writing to –
 - (a) the Assessor with respect to the performance of the Assessor’s functions; and
 - (b) the Co-ordinator with respect to the performance of the Co-ordinator’s functions.
- (2) The directions may be given generally or in relation to a particular matter.
- (3) The Assessor and the Co-ordinator must perform their functions in accordance with the directions.

8M. Assessor and Co-ordinator may require information

The Assessor or the Co-ordinator may request a person to provide such information as the Assessor or Co-ordinator requires, including information by way of periodical returns at specified times, if –

- (a) the information is required to enable the Assessor or Co-ordinator to perform his or her functions; and

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- (b) the Assessor or Co-ordinator has reasonable grounds for believing that the person is able to provide the information.

8N. Obligation to preserve confidentiality

- (1) The Assessor and the Co-ordinator must preserve the confidentiality of information that –
- (a) could affect the competitive position of an electricity entity or other person; or
 - (b) is commercially sensitive for some other reason.
- (2) Information that is provided to the Assessor or the Co-ordinator on a confidential basis is not liable to disclosure under the *Right to Information Act 2009*.
- (3) Subsection (1) does not apply to the disclosure of information between persons engaged in the administration of this Act.

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Part 3 – Obtaining of Information by Director

**PART 3 – OBTAINING OF INFORMATION BY
DIRECTOR**

9. Director may require information to be given

- (1) The Director may request a person to give prescribed information to the Director, including information by way of periodical returns at specified times, if –
 - (a) the information is required to enable the Director to perform his or her functions; and
 - (b) the Director has reasonable grounds for believing that the person is able to give the information.
- (2) The request must –
 - (a) be made by written notice given to the person; and
 - (b) specify the time before which the information is to be given.
- (3) The information must be given –
 - (a) in writing; and
 - (b) before the time specified in the request.
- (4) In this section, *prescribed information*, in relation to a person, means information as to all or any of the following:

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- (a) the quantity, quality, service or supply of any energy held or required by the person in the State, or imported into the State by the person;
- (b) facilities available to, or held by, the person for storing or distributing energy;
- (c) any works, plant, equipment, apparatus or process that consumes energy and that is used by or available to the person.

10. Trade secrets

- (1) Where a request is made under section 9 a person may object to complying with it on the ground that it will result in the disclosure of a trade secret.
- (2) An objection must be made in writing served on the Minister within 7 days after the request is received.
- (3) The Minister may by notice in writing exempt the objector from the obligation to comply with the request either in whole or in part.
- (4) For the purposes of this section, *trade secret* means any knowledge or information relating to technology, marketing, energy or energy resources or reserves, or as to the business of the person objecting, that might reasonably be expected to adversely affect the business or interests of that person if disclosed to any other person.

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Part 3 – Obtaining of Information by Director

11. Obligation to comply with request

- (1) Subject to section 10, a person must not, without reasonable excuse, fail to comply with a request under section 9.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units;
and
 - (b) a natural person, a fine not exceeding 50 penalty units.
- (2) A person must not give false or misleading information in response to a request under section 9.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units;
and
- (b) a natural person, a fine not exceeding 50 penalty units.

PART 4 – GENERAL

12. Committees

- (1) The Minister may establish committees for the purpose of considering and advising on energy matters specified by the Minister.
- (2) Subject to subsection (3), the Minister may –
 - (a) prescribe the membership, constitution and procedures of a committee; and
 - (b) discharge, alter or reconstitute a committee.
- (3) The Minister is to appoint a chairperson of every committee established under this section.
- (4) The Minister may determine that a member of a committee is to receive remuneration or an allowance, and if the Minister so determines, the Minister is to fix the remuneration or allowance.
- (5) Subject to this section, a committee may determine its own procedure.
- (6) The Minister may direct the Director to provide a committee with support services and any such direction is to define the support to be provided.

13. Annual report

- (1) The Director, not later than 31 October after the end of each financial year, is to prepare and give to the Minister a report on the performance of

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the Director's functions and the exercise of the Director's powers under this Act in relation to that financial year.

- (2) The Minister is to cause a copy of the report to be laid on the table of each House of Parliament within 14 sitting days of the House after its receipt by the Minister.

13A. Immunity from liability

The Director, when acting or purporting to act as Director or as Co-ordinator, or the Assessor or another person acting, or purporting to act, in good faith in the administration of this Act incurs no civil liability except –

- (a) a liability for negligence; and
- (b) a liability for which express provision is made by or under this Act.

14. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations under this section may –
 - (a) authorise any act, matter or thing in relation to which the regulations may be made to be from time to time determined, applied or regulated by the Director; and
 - (b) be made subject to such conditions or be made so as to apply differently according

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to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified; and

- (c) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (d) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

15. 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, within the meaning of that Act, 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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Part 4 – General

NOTES

The foregoing text of the *Energy Co-ordination and Planning 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 9 April 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Energy Co-ordination and Planning Act 1995</i>	No. 47 of 1995	11.9.1996
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Financial Management and Audit Amendment Act 2003</i>	No. 42 of 2003	4.7.2003
<i>Energy Co-ordination and Planning Amendment Act 2019</i>	No. 4 of 2019	9.4.2019
<i>Legislation Publication Act 1996</i>	No. 17 of 1996	9.4.2019

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 17 of 1996 and No. 4 of 2019, s. 4
Section 3A	Inserted by No. 4 of 2019, s. 5
Section 4	Amended by No. 86 of 2000, Sched. 1
Section 6	Amended by No. 86 of 2000, Sched. 1
Division 1	Inserted by No. 4 of 2019, s. 6
Division 2	Inserted by No. 4 of 2019, s. 6
Division 3	Inserted by No. 4 of 2019, s. 6
Division 4	Inserted by No. 4 of 2019, s. 6
Section 13	Amended by No. 42 of 2003, Sched. 1
Section 13A	Inserted by No. 4 of 2019, s. 7