

Explanatory Statement

Electrical Safety Bill 2021

GENERAL OUTLINE

The main aim of the Bill is to modernise and consolidate electricity safety legislation into one Act having a common enforcement. It also seeks to improve public safety by bringing NT law into conformity with that elsewhere in Australia concerning appliances and small generation units such as those relating to solar.

The Bill will apply to all places where electricity is transmitted or consumed. It will not be limited to workplaces, but extend to domestic residences and public places. The Bill encompasses:

- all electrical installations, works of an electricity entity, electrical equipment, cathodic protection systems and activities conducted near and on exposed live electrical parts; and
- all persons who may affect the electrical safety of others and whose electrical safety may be affected.

The overall purpose of the Bill is directed at eliminating the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity. The purpose of the Bill is to modernise the legislative framework for:

- preventing persons from being killed or injured by electricity; and
- preventing property from being destroyed or damaged by electricity.

The legislative framework established to achieve this purpose includes:

- imposing obligations on persons who may affect the electrical safety of others by acts or omissions;
- updating or making regulations, ministerial notices and codes of practice about electrical safety;
- enhancing the requirements for safety management systems for prescribed electricity entities;
- introducing safety requirements for all electrical goods through the adoption of a national scheme
- providing for the safety of all persons through modernised licensing and discipline of persons who perform electrical work;
- providing for the appointment of an Electrical Safety Regulator
- establishing the Electrical Safety Board to advise the Minister and oversee the activities of the Electrical Safety Regulator

Why?

In 2018, in response to calls from various stakeholders, the Northern Territory Government established an Electrical Safety and Licensing Reference Group (that consisted of industry, worker, training, regulator and legal representatives) and asked that its members work together to do amongst other things:

- Develop recommendations relating to amendments to both the *Electricity Reform Act 2000* and the *Electrical Workers and Contractors Act 1978*;

- Compile a list of necessary short term changes and longer term amendments to improve electrical safety and licensing;
- Identify legislative mechanisms to improve electrical safety for all Territorians;
- Identify existing gaps and issues in current legislation and potential way to improve the operation of the legislation;
- Consider legislation and governance in other jurisdictions in mapping out future reforms in the Northern Territory;
- Provide direction on how electrical licensing in the NT can better align with other jurisdictions and provide pathways to national licensing;
- Clarify the roles and responsibilities for the Electrical Licensing Board and NT WorkSafe Electrical Inspectors;
- Take into account the Government's Roadmap to Renewables commitment and the increasing popularity for renewable energy;
- Assess licence renewal requirements for electrical workers and constructors licences to ensure competency;
- Ensure the quality and oversight of electrical apprentice training, profiling and assessment within the electrical industry is adequate;
- Assess the impact of a strong auditing regime and use of the disciplinary process to ensure maximising safety outcomes and effectiveness to act as deterrence

The Reference Group handed up its final report in December 2019. In that report the Reference Group identified:

- that there are overlaps and lack of clarity with in the *Electrical Contractors and Workers Act 1978*, *Electricity Reform Act 2000* and the *Power and Water Corporation Act 1987* from a technical, licensing and safety perspective;
- responsibilities for both sets of regulatory responsibilities (licensing and safety) need to be set out in a manner designed to maximise understanding and be reasonably practicable to implement and administer; and
- that for the longer term, the regulatory responsibilities should be in one Act (based on the *Electrical Safety Act 2000* (Queensland)).

In respect of regulatory responsibilities, the Reference Group recommended that:

- There is a need for a single government regulator responsible for the overall administration of the legislation for both safety and licensing. This would cover matters such as the issuing of licences, supervision of inspectors, industry education and enforcement (disciplinary action and prosecutions);
- there is a need for other bodies (such as a licensing / disciplinary authority) that would deal with more complex licensing decisions (e.g. licensing applications rejected by the government regulator), disciplinary matters and policy reviews and consultations as directed by the Minister; and
- there be a single enforcement inspectorate with stronger auditing and regulatory powers and more appropriate penalties that will maximise safety outcomes.

The Reference Group examined interstate electrical licensing and safety legislation and the following aspects of the interstate Acts:

- the extent to which licensing of workers and contractors is integrated with general electrical safety and work health legislation;
- the operations of the main electrical safety regulator;
- the operations of the licensing regulator; and
- the interrelationships with the economic / industry regulator.

After a benchmarking exercise against other jurisdictions' legislation, the Reference Group concluded that it is appropriate to develop new legislation against the current Queensland legislation. Whilst all of the policy positions taken in the Queensland legislation might not necessarily be suitable for the Northern Territory, the Queensland legislation appears to deal in relatively straightforward terms with the issues that will need to be dealt with in the longer term.

In summary, in dealing with the other Terms of Reference the Reference Group found:

- that in considering the content of any new legislation, the core definitions of electrical work and competency requirements should align with those in place elsewhere in Australia as set out in recent modern legislation in jurisdictions such as Queensland, Tasmania and the Australian Capital Territory. The crux of this appears to have the basic licence as being for electrical workers and electrician businesses but with a clear capacity for subordinate legislation to provide for classes of electrician businesses and employees of electricians;
- that the legislation should provide for automatic recognition of prescribed interstate licensing of individual licences (rather than simply relying on mutual recognition or administrative processes), but that there should be a requirement to obtain a local licence if an individual substantially operates in the Northern Territory;
- that the simplification of the regulatory regime in the Northern Territory along with the automatic recognition of individual interstate licences meet, as best possible, the issues that arise from geographic isolation;
- a need for urgent amendments to the *Electricity Reform Act 2000* to provide for modern definitions and improve capture of renewable energy sources and of modern battery storage systems. These reforms will support Government's Roadmap to Renewables commitment and improve safety outcomes for consumers, business and home owners;
- no difference in safety or assurance standards based simply on geographic location;
- no problems relating to competency issues regarding the renewal of licences;

- no systematic or legislative problems concerning training and assessment for apprentices or licences that is occurring in the Northern Territory. The Reference Group noted, and supported, the hands on approach of the current licensing authority when dealing with licensing applications and disciplinary matters. The Reference Group suggests some regulation making powers that might bolster the hands on approach; and
- that by creating a single Act, with a single jurisdiction and definitions, which covers safety, technical compliance and illegal activity would dramatically increase the ability and usefulness of audits on electrical work.

The Reference Group, in considering the agenda for economic regulation found that:

- its proposals support the overall simplification of the regulatory framework and strengthen consumer protections; and
- its recommendation that the discriminatory provisions concerning the Northern Territory Government electricity bodies be repealed will create a framework better suited to the Northern Territory situation. Though outside the scope of this review it is also fairly clear that the *Electricity Reform Act 2000* needs modernisation in light of the Northern Territory's ongoing electricity supply industry reforms (including the application of the National Electricity Rules and reform of the wholesale electricity market arrangements) coupled with technical changes in the electricity sector.

EXPLANATION OF CLAUSES

Part 1 Preliminary matters

Division 1 Preliminary

Clause 1. Short title

Clause 2. Commencement

These two clauses set the name of the Act that this Bill creates and establishes the commencement date as upon gazettal by the Administrator.

The commencement date will not be immediately after passage through the Legislative Assembly as the Regulations will need to be developed and adopted and their transition periods set.

Division 2 Interpretation

Clause 3. Definitions

Clause 3 gives the definition of a lot of the terms used in the Act.

Clause 4. Meaning of electrical risk, safe from electrical risk and electrical safety

Clause 4 introduces a number of important concepts in the Act. These concepts are about what an electrical risk is, and what electrical safety looks like in managing that risk.

It sets that electrical risk means the following:

- a) in relation to an individual, the risk to the individual of death, shock or injury caused directly by electricity or originating from electricity; and
- b) in relation to property, the risk to the property of:
 - i. damage caused by a cathodic protection system; or
 - ii. loss or damage caused directly by electricity or originating from electricity.

It then sets out the meaning of 'safe from electrical risk' using similar language to that used in the *Work Health and Safety National Uniform Legislation) Act 2011* (the WHS Act) in that electrical risk needs to be eliminated or minimised so far as is reasonably practicable.

Clause 5. Meaning of serious electrical event and dangerous electrical events

Clause 5 defines the meaning of a serious electrical event and of dangerous electrical events.

A serious electrical incident is:

- a fatality involving electricity;
- a person treated by a doctor for injuries received from contact with electricity; or
- a person received a high voltage shock even if they require no treatment from a doctor.

A dangerous electrical event is typically an event where an individual is not safe from electrical risk because of electrical equipment but the person does not receive a shock or injury. However it can also be where there is significant property damage caused directly by, or originating from, electricity, or where

work occurs which is unsafe or is conducted inappropriately. Examples of a dangerous electrical event include:

- a crane contacting a high voltage overhead line even though the operator did not receive an electric shock;
- an electricity pole supporting a high voltage electric line falls in a street although no persons were present;
- a fire caused by a faulty electrical appliance;
- an explosion caused by electrical equipment;
- the connection of electrical equipment to a source of supply involving incorrect polarity or other incorrect connection;
- the performance of electrical work as a result of which an exposed wire is left in circumstances in which it can be energised by the operation of a switch or circuit breaker or the insertion of a fuse;
- installation of a stove by a person without an electrical work licence; or
- discovery of a toaster with no appliance approval number by an electrician.

Clause 6. Meaning of electrical equipment

Clause 6 defines electrical equipment which includes apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that either is used for controlling, generating, supplying, transforming or transmitting electricity at a voltage greater than extra low voltage; or is operated by electricity at a voltage greater than extra-low voltage; or is, or is part of, a cathodic protection system.

It goes on to clarify that unless specifically prescribed by regulation, electrical equipment does not include any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that is part of, or powered by, a unit of a vehicle, boat or aircraft that provides propulsion.

It also clarifies that an appliance includes any device that consumes electricity at a voltage greater than extra-low voltage such as an iron, drill or refrigerator. However, the definition is not intended to include a bulb or tube used as a replaceable part of a light fitting until fitted to the light fitting.

NB: extra low voltage is defined elsewhere as voltage of 50V or less AC RMS; or 120V or less ripple-free DC.

Clause 7. Meaning of electrical installation

Clause 7 defines an electrical installation as a group of items of electrical equipment that are permanently connected together and can be supplied with electricity from the works of an electricity entity or from a generating source but does not include items that are works of an electricity entity. .

The clause clarifies that an item of electrical equipment connected to electricity by a plug and socket outlet is taken not to be permanently electrically connected and that a connection achieved through using works of an electricity entity is not a consideration in determining whether or not electrical equipment is electrically connected.

Clause 8. Meaning of electric line

Clause 8 defines an electric line. An electric line is a wire or conductor, as well as the associated equipment, used to transmit, transform or supply electricity greater than extra low voltage. It clarifies that electrical equipment such as, appliances, switchboards and internal wiring for lights and socket outlets within a home do not constitute an electric line.

Clause 9. Meaning of electrical work

Clause 9 defines electrical work. Electrical work includes manufacturing, constructing, installing, testing, maintaining, repairing, altering, removing or replacing electrical equipment. Electrical work carried out on electrical equipment includes electrical equipment forming part of an electrical installation, or works of an electricity entity.

Examples include:

- Installing low voltage electrical wiring in a building.
- Installing electrical equipment into an installation coupler or interconnector.
- Replacing a low voltage electrical component of a washing machine.
- Maintaining an electricity entity's overhead distribution system.

This clause also sets out a number of exclusions. These are:

Non-electrical work on electrical equipment

Installing or removing electrical equipment by connecting it to electricity, or disconnecting it from electricity, by a plug and socket outlet. For example plugging an electric griller into a socket outlet or unplugging an electric iron from a socket outlet is not electrical work. This exclusion allows persons other than holders of an electrical work licence to install or remove electrical equipment by connecting or disconnecting it from electricity by a plug and socket outlet;

Repairing or replacing non-electrical components of electrical equipment. For example repairing the belts in a washing machine or hydraulic components attached to an electric motor is not electrical work. This exclusion allows persons other than holders of an electrical work licence to repair non-electrical components of electrical equipment;

Replacing a component forming part of electrical equipment, if the electrical equipment has been designed so that a person without electrical knowledge or skill can readily and safely replace the component. For example, replacing a light bulb, a fuse, a modem or hard drive in a computer is not electrical work. This exclusion allows persons other than holders of an electrical work licence to replace a user replaceable part where the electrical equipment is designed for such an activity;

Manufacturing of electrical equipment

Assembling, manufacturing, modifying or repairing electrical equipment in a workplace registered under the WHS Act if that is the principal manufacturing process at the workplace and arrangements are detailed in writing for ensuring that:

- the work is done safely and competently; and
- the equipment is tested to ensure compliance with relevant standards.

This exclusion allows persons other than holders of an electrical work licence to assemble or manufacture electrical equipment at an industrial workplace.

Construction of electric line infrastructure

Building, under the supervision of an electricity entity, an overhead electric line on structures that do not already carry an energised overhead electric line. This exclusion allows persons other than holders of an electrical work licence such as riggers constructing large metal towers for high voltage lines, to perform work where electricity is not connected or where they are not in close proximity to live electric lines;

Building or repairing ducts, conduits or troughs (“channels”) where electrical wiring will be or is installed, if:

- the channels are not intended to be earthed; and
- wiring installed in the channels is not energised; and
- the work is done under the supervision of a licensed electrical installation worker.

This exclusion allows persons other than holders of an electrical work licence to perform work such as digging trenches and installing cables or carrying out preparatory construction work for the installation of cables, where electricity is not connected or where they are not in close proximity to live electric lines;

Laying, cutting or sealing underground cables that are part of the works of an electricity entity before the initial connection to an electricity source. This exclusion allows for persons other than holders of an electrical work licence to perform work where electricity is not connected. For example, the roll-out of the high voltage cable in a trench prior to connection to the electricity supply;

Recovering underground cables that are part of the works of an electricity entity after disconnection from an electricity source. This exemption enables persons other than holders of an electrical work licence to perform work e.g. excavating and recovering high voltage underground cables that are no longer connected to the electricity supply;

Altering, repairing, maintaining or recovering an overhead electric line that is part of works of an electricity entity, if the work is performed under the entity’s supervision and:

- if the line is not on supports supporting another electric line and has been isolated from an electricity source so that the closure of a switch cannot energise the section where work is being done; or
- if the line is on supports supporting another electric line and both lines have been isolated from an electricity source so that the closure of a switch cannot energise the section where the work is being done or an adjacent section of another line.

This exemption enables persons other than holders of an electrical work licence to perform work under the supervision of an electricity entity where electricity is not connected or could become energised or where they are not in close proximity to live electric lines;

Work performed by a person under supervision on electrical equipment if the electrical equipment is not energised. An example is a trade’s assistant providing physical assistance.

Work involving locating, mounting or fixing in place electrical equipment as long the work does not involve electrical connections or supply conductors.

Work on an electrical railway as long as the work does not involve overhead lines and complies with a safe system of work.

Clause 10. Types of electrical work

Clause 10 sets out the types of electrical work for the Act. The types of work link to the scope of work permitted in the various electrical work licence classes that will be specified in a regulation.

Clause 11. Meaning of officer

Clause 11 defines an officer to mean a number of types of individuals, other than an elected member of a local government council acting in that capacity, or a partner in a partnership. An officer includes:

- (a) an officer within the meaning of the *Corporations Act 2001* (Cth);
- (b) an officer of the Crown;
- (c) an officer of a public authority.

Clause 12. Meaning of person in control

Clause 12 defines a person in control of electrical equipment as the person who has control of the electrical equipment. This will normally be the person who is the owner of the electrical equipment unless there is in place a contract or other arrangement to the effect that another person assumes control of the electrical equipment. To clarify this definition, a number of examples of who is and is not a person in control, are provided in the clause.

Example of person in control—the owner of a unit block who leases furnished units. The owner of the units is the person in control of the electrical appliances, fixed wiring and light fittings in the unit. The owner is the person responsible for ensuring the electrical safety of a refrigerator they supply for use by the tenant as well as light fittings, wiring and fixed connected electrical equipment in the unit.

Clause 13. Person conducting a business or undertaking

Clause 13 introduces the concept of a ‘person conducting a business or undertaking’ (PCBU) from the WHS Act that sets out the types of ‘employers’ captured by this Act. The definition of an employer is a person who, in the course of the person’s business or undertaking, engages someone else to do work, other than under a contract for service, for or at the direction of the person.

Clause 14. Meaning of reasonably practicable in ensuring electrical safety

Clause 14 defines reasonably practicable as that which is, or was at a particular time, reasonably able to be done by the person. This is a similar definition as in the WHS Act but is phrased both from the perspective of eliminating or minimising harm or preventing an offence.

Basically, to work out what is ‘reasonably practicable’ in a given situation a person or a PCBU, must weigh-up the following factors:

- (a) the probability of the harm to be eliminated or minimised or the offence to be prevented occurring;
- (b) the seriousness of the harm or offence;
- (c) the availability and suitability of ways to eliminate or minimise the harm or prevent the offence from occurring;
- (d) what the person concerned knows, or ought reasonably to know, about the matters referred to in paragraphs (a) to (c);
- (e) the cost associated with the courses of conduct available, including whether the cost is grossly disproportionate to the probability of the harm or offence occurring.

Clause 15. Meaning of worker

Clause 15 defines a worker as being a person who does work, other than under a contract for service, for or at the direction of an employer. The definition of a “worker” is consistent with definition of a worker in the WHS Act.

Division 3 Purposes and application of Act

Clause 16. Purposes

Clause 16 sets the purposes and application of the Act which is as discussed above.

Clause 17. Act binds Crown

Clause 17 clarifies that the Northern Territory Government must comply with the Act

Clause 18. Application of Criminal Code

Clause 18 clarifies that Part IIAA of the Criminal Code should be used in conjunction with this Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Electrical safety duties

Division 1 Preliminary matters

This Division introduces the concept of a duty to maintain electrical safety in the same fashion that the WHS Act creates safety duties (i.e. that duties under the Act are non-transferable; a person can have more than one duty and more than one person can concurrently have the same duty).

The duties under the Act are intended to operate in the context that electricity is ubiquitous in the Northern Territory, and so the duties will apply where-ever electricity is generated, transmitted or used. The vast majority of such places will also be work places; and as these electrical safety duties are a sub-set of the duties imposed in a work health and safety context, the same concepts and language have been used regardless of the actual location of any electrical risk.

Clause 19. Duties not transferable

Clause 19 sets out that a duty under this Act is not transferable to another person.

Clause 20. Person with multiple duties

Clause 20 sets out that a person can have more than 1 duty.

Clause 21. Multiple persons with same duty

Clause 21 sets out that more than 1 person can have same duty and that each duty holder must comply with that duty even if another duty holder has the same duty.

Clause 22. Duty of officers

Clause 22 sets a positive duty on officers of a PCBU to exercise 'due diligence' to ensure that the PCBU complies with any duty or obligation under the Act.

Just like in the WHS Act (where this concept comes from), an officer must have high, yet attainable, standards of due diligence. These standards should relate to the position and influence of the officer within the PCBU. What is required of an officer should be directly related to the influential nature of their position. This is because the officer governs the PCBU and makes decisions for management. A high standard requires persistent examination and care, to ensure that the resources and systems of the PCBU are adequate to comply with the duty of care required by the PCBU. This also requires ensuring that they are performing effectively. Where the officer relies on the expertise of a manager or other person, that expertise must be verified and the reliance must be reasonable.

Division 2 Electrical safety duties

These duties are (modernised) conversions of obligations under Part 5 the *Electricity Reform Act 2000* or create a specific electrical safety duty akin to the work health and safety duties of the WHS Act.

Clause 23. Primary safety duty

Clause 23 imposes a duty on a PCBU to ensure its business or undertaking is conducted in a way that is electrically safe. This includes:

- ensuring that all electrical equipment used in conducting the person's business or undertaking is electrically safe; and

Example—employers, workers and self-employed persons are at risk of electric shock from damaged electric drills, electric saws or electric leads on building sites. The employer or self-employed person can guard against the use of damaged electrical equipment through a regular inspection and maintenance program.

- for a business or undertaking involving carrying out electrical work, ensuring the electrical safety of all persons and property likely to be affected by the electrical work.

Example—an electrical contractor has an obligation to ensure the safety of all persons where electrical work is being carried out installing lighting circuits in a home. In this instance, the contractor could meet their obligation by providing a safe system of work for the electrical worker which requires that electricity is disconnected from the circuits to be worked on, the worker and other persons are therefore not exposed to electrical risk while the work is being carried out and testing procedures to ensure the work is electrically safe.

- for a business or undertaking involving the performance of work, whether or not electrical work, involving contact with or being near to exposed parts, ensuring persons performing the work are electrically safe.

Clause 24. Safety duty of electricity entity

Clause 24 imposes duties on an electricity entity to ensure its works are electrically safe and operated in a way that is electrically safe. To ensure its works are electrically safe the duty includes a requirement to inspect, test and maintain the works.

Clause 25. Safety duty of designers

Clause 25 imposes a duty on a designer of electrical equipment or an electrical installation to ensure the equipment or installation is designed to be electrically safe. The duty also requires that if the designer gives the design to another PCBU who will manufacture the equipment or installation according to the design, the design must be accompanied by information about the way the electrical equipment or installation must be used and installed to ensure the equipment or installation is electrically safe.

Clause 26. Safety duty of manufacturers

Clause 26 imposes duties on a manufacturer of electrical equipment to ensure the process followed in the manufacture of electrical equipment ensures it is electrically safe and the electrical equipment when manufactured, is electrically safe.

Clause 27. Safety duty of importers

Clause 27 imposes duties on an importer of electrical equipment to ensure the equipment is electrically safe. This includes ensuring it is designed, tested and examined to ensure it is electrically safe.

Clause 28. Safety duty of suppliers

Clause 28 imposes duties on a supplier of electrical equipment to ensure that when the equipment leaves the supplier, it is accompanied by sufficient information that details its safe use.

Clause 29. Safety duty of installers

Clause 29 imposes duties on the installer of electrical equipment or electrical installations to ensure the way in which the equipment or installation is installed, and the processes followed to install the equipment or installation, is electrically safe. Further, the installer must ensure they test and examine the equipment or installation after installation to ensure it is electrically safe.

Clause 30. Safety duty of repairers

Clause 30 imposes a duty on a repairer of electrical equipment or electrical installations to ensure that the way in which the repair is undertaken is electrically safe, and the processes used to repair the equipment or installation will result in that equipment or installation being electrically safe, and that the end result is electrically safe. These duties include a requirement to test and examine the equipment or installation after repair to ensure it is electrically safe.

Clause 31. Safety duty of owner or operator of installation

Clause 31 imposes a duty on a person who owns or operates an electrical installation to ensure the installation is electrically safe. This duty will apply to persons in control of electrical equipment in public, industrial or commercial buildings and places, rental housing, and bodies corporate in common areas.

Clause 32. Safety duty of person in control of electrical equipment

Clause 32 imposes an obligation on a person in control of electrical equipment to ensure the equipment is electrically safe. This obligation will not apply to persons in control of electrical equipment in their own residential property or that forms part of the works of an electrical entity.

Clause 33. Safety duty of worker

Clause 33 imposes an obligation on a worker at a work to take reasonable care for their own electrical safety and reasonable care that their conduct does not create an electrical risk to other persons or to property. It provides that a worker has a duty to comply with reasonable instructions given for electrical safety of persons and property at a place by their employer or the person in control of the place as far as is reasonably possible within the law.

Clause 34. Duty to ensure workers are licensed

Clause 34 imposes a duty on a PCBU that provides electrical work requiring an electrical work licence to ensure that the electrical work is performed by the holder of an electrical work licence that authorises the work and any supervision of the electrical work is performed by the holder of an electrical work licence that authorises the work.

Clause 35. Safety duty of other individuals

Clause 35 imposes duties on other persons at a place where electrical equipment is located to take reasonable care for their own electrical safety and reasonable care that their conduct does not create an electrical risk to other persons or to property. It provides that the person has a duty to comply with reasonable instructions given for electrical safety of persons and property at a place by the person in control of the place as far as is reasonably possible within the law.

Clause 36. Safety duty of person conducting recognised external certification scheme

Clause 36 will apply to a person who conducts a recognised external certification scheme and who certifies in-scope electrical equipment under the scheme. The person has an obligation to ensure, as far as practicable, that the in-scope electrical equipment certified by the scheme is electrically safe. This will be used in conjunction with the powers and obligations sets out under Part 4 Division 1 to ensure

electrical equipment is safe to use and there is a penalty if a PCBU certifies unsafe equipment as being safe.

Division 3 Duties in relation to events

This Division modernises the requirements set out in Section 71 of the *Electricity Reform Act 2000* by using the language in the WHS Act regarding reporting work health and safety incidents into an electrical safety context. The primary purpose of incident notification is to enable the regulator to investigate serious incidents and potential work health and safety contraventions in a timely manner.

The duty to report incidents is linked to the duty to preserve an incident site until an inspector arrives or otherwise directs so that evidence is not compromised.

Clause 37. Duty to report events

Clause 37 specifies that a serious electrical event or a dangerous electrical event must be notified to the regulator; and who must do this, and when and how this must be done. The duty holder will either be the licence holder involved in the event or the occupier of the premises or place (be it public, industrial, commercial or residential rental or a private residence) where the event occurs; while the when will be as soon as possible after the duty holder becomes aware and the how can be verbal and/or email.

Clause 38. Duty to preserve site of event

Clause 38 requires the person with management or control of a workplace where a notifiable incident has occurred must do all that is reasonably practicable to ensure that the incident site is preserved until an inspector arrives or until such earlier time as directed by an inspector. The clause also sets out the kinds of things that can still be done to ensure work health and safety at the site, including assisting an injured person or securing the site to make it safe.

Division 4 Work related to electricity network

This Division modernises the concept of the certificate of compliance introduced in Section 67 of the *Electricity Reform Act 2000* and fully set out in Part 3 of the *Electricity Reform (Safety and Technical) Regulations 2000*. It also converts the industry requirements put in place under Regulation 4(b) of the *Electricity Reform (Safety and Technical) Regulations 2000* into legislated requirements to ensure the safety of workers and building owners/occupiers.

Clause 39. Notice of proposed work related to electricity network

Clause 39 requires the holder of a licence to give notice of certain types of work to the network operator (in a form suitable to, and with information relevant to, the network operator) before conducting that electrical work. This includes but is not limited to:

- altering an electricity network;
- making a connection to or disconnection from an electricity network;
- connecting or disconnecting a final sub-circuit from a private generating plant with a capacity exceeding 25 kW.

Clause 40. Requirements for work related to electricity network

Clause 40 sets out that an electrical entity may make reasonable requirements in relation to any work notified to it under clause 41. It also sets out how notification and management of such works will occur with the underlying goal of safety of workers and others.

Division 5 Certificate of compliance

Clause 41. Certificate of compliance

Clause 41 requires a person who conducts electrical work to complete and sign a certificate of compliance that certifies that the electrical work was tested to be safe from electrical risk and the electrical work complies with this Act and any standards prescribed or adopted by the regulations.

The clause sets out who must sign the certificate, how long it must be kept, and how much time is allowed between the works being completed and the certificate being handed to the relevant parties. The relevant parties are:

- the owner and occupier of the place where the work was performed;
- the person for whom the work was performed, if other than the owner or occupier;
- if the work is associated with making a connection to an electricity network – the operator of the network;
- the Electrical Safety Regulator.

This clause elaborates on the concept of the certificate of compliance introduced in Section 67 of the *Electricity Reform Act 2000* and fully set out in Part 3 of the *Electricity Reform (Safety and Technical) Regulations 2000*.

Clause 42. Exemption from certificate of compliance requirements

Clause 42 sets out exemptions from clause 41. As well as exemptions upon application to, and approval by the regulator, this includes but is not limited to:

- maintenance work;
- in house electrical installing work carried out under the authority of an in house electrical licence;
- electrical installing work that is associated with the installation of a temporary builders supply.

Division 6 Offences and penalties

This Division sets out the offences framework in relation to breaches of health and safety duties under the Act. It uses the modern approach to safety offences adopted by current Australian and Northern Territorian work health and safety laws.

Contraventions of the Act and regulations are generally criminal offences. This generally reflects the community's view that any person who has an electrical safety duty of care but does not observe it should be liable to a criminal sanction for placing another person's health and safety at risk.

The Act provides for three categories of offences against electrical safety duties. Category 1 offences are for breach of health and safety duties that involve reckless conduct and carry the highest maximum penalty under the Act. While Category 1 offences require the prosecution to prove most of the physical elements of the charges, Category 2 and 3 offences are strict liability offences which means that there are no fault elements for any of the physical elements of the offence but the defence of mistake of fact is available – basically the prosecution does not have to prove the elements of the offence.

Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, for example, the issuing of inspector notices. The maximum penalties set in the Act reflect the level of seriousness of the offences and have been set at levels high enough to cover the most egregious examples of offence.

Clause 43. Reckless conduct – category 1

Clause 43 creates the category 1 offence which is described as 'reckless conduct'. It applies to a 'person' – this can be an individual (e.g. sole trader) or a body corporate (e.g. a corporation).

A person commits a category 1 offence if the person:

- has an electrical safety duty
- intentionally engages in conduct which results in a risk to an individual of death, or serious injury or illness (caused directly by electricity or originating from electricity), and
- is reckless in relation to that result.

There are penalties for individuals (2 000 penalty units or imprisonment for 5 years or both), individuals who are PCBU's or officers of a PCBU (4 000 penalty units or imprisonment for 5 years or both), and for PCBU's (20 000 penalty units).

As Category 1 offences involve reckless conduct, the prosecution will be required to prove the fault element of recklessness in addition to proving most of the physical elements of the offence.

Clause 44. Failure to comply with electrical safety duty – category 2

Clause 44 creates the category 2 offence which is described as a 'failure to comply with an electrical safety duty'. It also applies to a 'person' – this can be an individual or a corporate entity.

A person commits a category 2 offence if:

- the person has an electrical safety duty
- the person intentionally engages in conduct; and
- the conduct results in a risk (caused directly by electricity or originating from electricity) to an individual of death, or serious injury or illness.

There are penalties for individuals (1 000 penalty units), individuals who are PCBU's or officers of a PCBU (2 000 penalty units), and for PCBU's (10 000 penalty units).

Clause 45. Failure to comply with electrical safety duty – category 3

Clause 45 creates a lesser offence which is described as a 'failure to comply with an electrical safety duty – Category 3'. It also applies to a 'person' – this can be an individual (e.g. sole trader) or a corporate entity (e.g. a corporation).

A person commits a category 3 offence if:

- the person has an electrical safety duty, and
- the person fails to comply with that duty

There are penalties for individuals (320 penalty units), individuals who are PCBU's or officers of a PCBU (650 penalty units), and for PCBU's (3200 penalty units).

Clause 46. Exemption for volunteer

Clause 46 sets out the exceptions to the above offences is that a volunteer cannot commit an offence unless they breach a duty as a worker or as a person commissioning work.

It should be noted that unlike in the WHS Act, there is no exception for an unincorporated association or a volunteer association. The reason for this is that the underlying intent of this Act is that all people are safe from electrical risk; and a volunteer or community organisation, or an unincorporated association cannot be excluded from being required to comply with essential electrical safety duties.

It should be recalled that without a separate legal 'identity' for the group (as distinct from the individuals involved in the group) an unincorporated association can't be prosecuted as a separate body if it fails to meet an electrical duty. Instead, individual members of the group could potentially each bear personal responsibility for the group's actions.

In summary, the WHS Act makes a fair and reasonable policy decision to exclude volunteer groups, unless they have employees, from holding duties under that Act as the impacts of such regulation far outweigh the risks; as well as acknowledging that in almost all cases the volunteer group actually has little capacity to influence safety matters that are captured under the WHS Act. However the Electricity Safety Act will have not that exclusion as electricity, unlike workplaces (all of which are captured by the WHS Act), is ubiquitous.

Clause 47. Offences in relation to events

Clause 47 sets the offences and penalties for not complying with the obligations to report events as set out in clause 37 and maintain the site of an event as per clause 38.

Clause 48. Offences in relation to certificates

Clause 48 sets the offences and penalties for not complying with the requirements to complete, sign and give a certificate of compliance in accordance with clause 41, or to keep records of certificates as required. As well as for providing false information in a certificate, or for providing a certificate for work that that person did not perform or was not the electrical contractor who employed the electrical worker who did perform that work.

Part 3 Licences

This Part is a modern emulation of the licencing framework created in the Northern Territory by the *Electrical Workers and Contractors Act 1978*. There are some differences but they are in place to remove administrative burden for the regulator and licence holders; and to provide clarity via legislation, instead of administrative policy, of licence holders' obligations and authorities.

This Part sets the framework for, and over-arching management of, electrical licences. It sets that there shall be both contractor and worker licences and well as permits and that some work will not require a licence or shall have a special type of licence.

While the over-arching management of all these licences is established in the Act, there will be specific details set out in the Regulations.

Division 1 Requirements for licences

This division creates the framework for electrical licences by creating the need for a licence and then establishing licences for PCBU's and electrical work licences for electrical workers.

It makes it an offence to undertake electrical work without the appropriate licence.

Clause 49. Types of licences

Clause 49 establishes the types of licences as:

- an electrical work licence;
- an electrical contractor licence;
- an in-house licence.

It then sets out that the Regulations will provide for different classes of licence within each type. These classes of licence will correspond to the types of electrical work set out earlier in the Act.

Clause 50. Electrical work licence

Clause 50 creates the electrical work licence which can only be held by an individual and is needed to perform or supervise electrical work. It also sets out that some types of work do not require this licence including:

- installing or repairing telecommunications cabling;
- to perform electrical work as an apprentice or trainee if appropriate to the apprenticeship or training; or
- to supervise electrical work as an electrical engineer.

The clause also sets out that if a person intentionally performs or supervises electrical work of a type for which an electrical worker licence is required without said licence, and is reckless in relation to the circumstances of the breach, it is an offence with a maximum penalty of 500 penalty units.

This clause is a (modernised) replication of sections 18 and 53 of the *Electrical Workers and Contractors Act 1978* with the classes of licence to be set in the Regulations rather than in the Act to allow for later modernisation of the classes of licence and alignment with national mutual recognition.

Clause 51. Electrical contractor licence

Clause 51 creates the electrical contractor licence for PCBU's that:

- (a) perform electrical work; or
- (b) advertise, notifies or states that the person, business or undertaking performs electrical work; or
- (c) contract for the performance of electrical work, other than under a contract of employment; or
- (d) represent to the public that the PCBU is willing to perform electrical work; or
- (e) employ a worker to perform electrical work for anyone other than the person.

It also sets out that some types of work do not require this licence including:

- (a) electrical work by the holder of an electrical work licence in the house of the holder of an electrical work licence or that of an immediate relative; or
- (b) contracting for work that will include electrical work, if that electrical work is to be sub-contracted to a PCBU licenced to do the work; or
- (c) making minor emergency repairs if you have the appropriate electrical work licence; or
- (d) electrical work by the holder of an electrical work licence under an in-house licence.

It also clarifies that holding an electrical contractor licence does not permit the holder to undertake electrical work if they do not also have the appropriate electrical work licence.

This clause replicates the intent of Part 3 Division 3 of the *Electrical Workers and Contractors Act 1978*.

Clause 52. In-house electrical licence

Clause 52 creates an in-house licence which authorises a PCBU that employs a worker to perform electrical work as long as it is exclusively for the PCBU.

An example of an in-house licence would be a mining company that only has electrical work completed (under licence) by their own licenced workers on their mine site.

By creating this clause an anachronism regarding the licensing of the Power and Water Corporation and the Power Generation Corporation (Territory Generation) set out in Section 42 of the *Electrical Workers and Contractors Act 1978* is dealt with. It also removes the burdensome requirement for a PCBU undertaking only in-house electrical work to hold an electrical contractor licence.

Clause 53. Register of engaged workers

Clause 53 sets out that a PCBU that is required to hold an electrical contractor licence must keep a register of any person engaged to perform or supervise electrical work. The clause also sets out time periods for keeping the record and how the record may be kept and that the record must be available for inspection by an inspector.

This clause is a (modernised) replication of section 50B of the *Electrical Workers and Contractors Act 1978*.

Clause 54. Information from engaged electrical worker

Clause 54 sets out that a holder of an electrical workers licence employed by a holder of an electrical contractors licence must notify the holder of the electrical contractors licence if there is any change in relevant circumstances. These circumstances include changes to, suspension (and reinstatement), cancellation or surrender of the person's electrical work licence as well as expiry (of licence) without renewal.

Division 2 Application process

This Division amalgamates and modernises the application processes set out in Divisions 1, 2 and 3 of Part 3 of the *Electrical Workers and Contractors Act 1978*.

Clause 55. Application for licence

Clause 55 sets out that a person may apply to the Electrical Safety Regulator for a licence. Additionally it clarifies that to be eligible for a licence, the person must meet the eligibility criteria prescribed by regulation for the licence; and that the application must be in the form approved by the Regulator and include the information, and be accompanied by the fee, prescribed by Regulation.

Clause 56. Application to renew licence

Clause 56 sets out that a person may apply to the Electrical Safety Regulator for a renewal of a licence using the appropriate forms and providing the information, and be accompanied by the fee, prescribed by Regulation. It clarifies that an application for renewal must occur within one-year of expiry.

Clause 57. Further information to support application

Clause 57 sets out that the Electrical Safety Regulator may require (by written notice) an applicant to undertake an assessment and/or provide further information, or affirm information provided, in support of their application. It clarifies that if an applicant does not comply with the Regulator's request for additional information or affirmation or assessment within a certain time then the application is deemed to have been withdrawn.

Clause 58. Issuing and renewing licences

Clause 58 sets out that when issuing or renewing a licence, the Electrical Safety Regulator must consider any eligibility criteria required under this Act for the applicant.

It then requires that if the regulator proposes to refuse to issue or renew a licence, notification must first be given to the applicant. The applicant then has a certain time period in which to show-cause why the application should not be refused.

The clause clarifies that the regulator must consider any written submission by the applicant before making a final decision. It then requires the regulator to give the applicant a decision notice as soon as practicable after making the decision.

Division 3 Other licence matters

Clause 59. Conditions and restrictions

Clause 59 empowers the Electrical Safety Regulator, when issuing or renewing a licence, to impose any conditions or restrictions upon that licence it considers necessary or desirable for the proper performance of electrical work.

Clause 60. Compliance with conditions and restrictions

Clause 60 sets out that a licence holder must comply with any conditions or restrictions placed upon their licence. It sets a maximum penalty of 400 penalty units if a licence holder intentionally engages in conduct that breaches a condition or restriction placed upon their licence.

Clause 61. Licence fees

Clause 61 requires that fees for applications shall be prescribed by regulation.

Division 4 Apprentices, trainees and interstate licences

This Division replicates and modernises the framework for allowing electrical work to be undertaken by apprentices, trainees and the like as set out in Divisions 2 and 3A of Part 3 of the *Electrical Workers and Contractors Act 1978*. It also converts the administrative policies put in place under the *Mutual Recognition (Northern Territory) Act 1992* into legislated requirements to ensure the ongoing safety of workers and building owners/occupiers while not inhibiting a person's right to carry out their lawful trade.

Clause 62. Registration of apprentices

Clause 62 sets out that a person may apply to the Electrical Safety Regulator to be registered as an apprentice if they are an apprentice that will be required to undertake electrical work as part of that apprenticeship. Additionally it clarifies that to be eligible for a licence, the person must meet the eligibility criteria prescribed by regulation for the licence; and that the application must be in the form approved by the Regulator and include the information, and be accompanied by the fee, prescribed by Regulation.

It clarifies that an apprentice so registered can undertake electrical work if under the appropriate direct supervision or, if allowed by regulation, under the appropriate general supervision. This is to ensure the safety of the apprentice as electrical work can be dangerous if not suitably trained.

Clause 63. Trainee permits

Clause 63 sets out that a person may apply to the Electrical Safety Regulator to be issued a trainee permit if they are a trainee that will be required to undertake electrical work as part of that traineeship. Additionally it clarifies that to be eligible for a licence, the person must meet the eligibility criteria prescribed by regulation for the licence; and that the application must be in the form approved by the Regulator and include the information, and be accompanied by the fee, prescribed by Regulation.

It clarifies that a trainee with such a permit can undertake electrical work if under the appropriate direct supervision or, if allowed by regulation, under the appropriate general supervision. This is to ensure the safety of the trainee as electrical work can be dangerous if not suitably trained.

Clause 64. Recognition of interstate licences

Clause 64 sets out the criteria by which a licence, permit, certificate or other authority issued under a corresponding law is taken to be equivalent to an electrical work licence issued in the Northern Territory.

It stipulates that a person holding a licence, permit, certificate or other authority issued under a corresponding law is allowed to undertake work in the Northern Territory as if they held the appropriate electrical work licence issued in the Northern Territory. It clarifies that such persons must comply with this Act, and are subject to any conditions or penalties applied under this Act, as if they held the equivalent Northern Territorian licence.

It also clarifies that a person needs to provide prior notice to the regulator and sets a time period, and amount of hours works allowed, beyond which this allowance ceases. This is to ensure that persons moving to the Northern Territory permanently cannot undertake work without a Northern Territory licence in the long-term without seeking a Northern Territory licence; while allowing visiting persons and those in the Northern Territory temporarily to undertake the appropriate electrical work without the administrative burden of seeking a Northern Territory licence.

Division 5 Offences

This division sets out the offences and maximum penalties for non-compliance with this Part of the Act.

Clause 65. Electrical worker offences

Clause 65 sets out that if a person undertakes electrical work without the appropriate electrical work licence then they could be fined up to 500 penalty units.

Clause 66. Electrical contractor offences

Clause 66 sets out that a business could be fined for either conducting an electrical business without an electrical contractor's licence or has an employee who conducts electrical work for them without the appropriate electrical work licence. In both cases the maximum fine is 500 penalty units.

Clause 67. In-house contractor offence

Clause 67 sets out for a business that should or does hold an in-house electrical licence, similar offences and fines as those set out in Clause 66.

Clause 68. Offences related to the register of engaged workers

Clause 68 sets out offences relating to the register of engaged workers established by clauses 54 and 55. These offences include a business failing to keep a register or a worker failure to provide up-to-date information; and all have a maximum penalty of 50 penalty units.

Part 4 Safety of electrical equipment and supply

Division 1 Safety of consumer electrical equipment

This Division implements the Electrical Equipment Safety System (EESS) already enacted in other jurisdictions. The EESS is a regulatory framework aimed at increasing safety when interacting with electrical equipment.

The key objective of the EESS is to eliminate the human and financial costs of shock, injury and property damage that can be caused by unsafe electrical equipment used by consumers and workers; and

installed or in use in their premises or workplaces. While workers are covered by the duties owed by PCBU's under the WHS Act; Northern Territorians using electrical equipment for household, personal or similar use are not as protected. This Part will rectify that situation.

The EESS outlines the safety requirements for registration of Responsible Suppliers and equipment in a centralised national database. That database is managed by Queensland as the jurisdiction which created the parent legislation. However this Act will call-up all systems in Australia and New Zealand to ensure comprehensive coverage and thus maximum assurance of safety; noting that no such system will be created in the Northern Territory.

Responsible Suppliers are local manufacturers or importers of in-scope electrical equipment. The Responsible Supplier must be a legal entity in Australia and is responsible ensuring the safety of the electrical equipment sold onto the Australian market.

Clause 69. Consumer electrical equipment

Clause 69 sets out that this Part captures low voltage electrical appliances (Consumer electrical equipment) that are designed, or marketed as suitable, for household, personal or similar use as defined under the Australian/New Zealand Standard AS/NZS 4417.2 (Regulatory compliance mark for electrical and electronic equipment).

The relevant classes of equipment will be prescribed (and published) in the Northern Territory by the Electrical Safety Regulator who will be informed by Australian/New Zealand Standard AS/NZS 4417.2 (Regulatory compliance mark for electrical and electronic equipment), Annex B.4. Examples of classes of equipment that will be prescribed include hand-held portable electric tools, battery chargers, dishwashers, ovens, and toasters

Prescribed appliances must be approved before they are offered for sale. They must be marked with either the Regulatory Compliance Mark (RCM) or the Approval Number. The conditions for use of the RCM are set out in AS/NZS 4417. Approval numbers are issued by electrical safety regulators who operate electrical equipment safety schemes when satisfied that a product complies with the electrical safety regulations.

The Northern Territory will not be operating such a scheme.

Clause 70. Approved consumer electrical equipment

Clause 70 stipulates that a consumer appliance is approved to be used in the Northern Territory if it approved for use elsewhere in Australia or New Zealand (if said approval system has been prescribed by regulation).

Clause 71. Selling or supplying unapproved consumer electrical equipment

Clause 71 gives effect to this approval by making it an offence to sell consumer appliances that have not been approved. The maximum penalty is 100 penalty units for the offence of selling unapproved equipment.

It also makes it an offence to claim that a consumer appliance is approved when in fact it is not - maximum penalty is 500 penalty units.

Clause 72. Marked consumer electrical equipment

Clause 72 provides for how approval will be indicated on consumer appliances. This shall be via a mark from any other approving jurisdiction as per clause 70.

Clause 73. Selling or supplying unmarked consumer electrical equipment

Clause 73 sets out that it is an offence to sell unmarked consumer appliances - maximum penalty is 50 penalty units.

Clause 74. Selling falsely marked consumer electrical equipment

Clause 74 sets out that it is an offence to sell falsely marked consumer appliances - maximum penalty is 50 penalty units.

Clause 75. Falsely marking consumer electrical equipment

Clause 75 sets out that it is an offence to falsely mark a consumer appliance - maximum penalty is 100 penalty units.

Clause 76. Used consumer electrical equipment

Clause 76 allows the sale of used consumer appliances if they are labelled to indicate either that they have not been tested or that it has been tested and found safe. It creates an offence of selling used consumer appliances without a label - maximum penalty of 100 penalty units.

This clause will not remove the ability to sell used consumer appliances that may not have been approved, but will ensure safety by requiring appliance's to pass a test conducted by a competent person prior to sale.

It creates an additional offence of selling falsely labelling used consumer appliances as safe - maximum penalty is 50 penalty units.

Division 2 Safety management and mitigation plans

The Utilities Commission issues licences to distribution, electricity and generation entities (electricity entities). Currently where appropriate the Utilities Commission imposes a condition that the licence holder must present to the Utilities Commission a Safety Management and Mitigation Plan (SMMP) for approval.

SMMP are informed by legislation, Australian Standards and a National Electricity Network Safety Code. They are used to define how the licence holder ensures the safe design, construction, commissioning, operation, maintenance and decommissioning of its electricity works.

This Division converts that particular licence condition imposed administratively by the Utilities Commission into a legislated requirement which can be realistically enforced. It defines a SMMP as a written document that sets out:

- the hazards and risks associated with the design, construction, operation and maintenance of the entity's works;
- how the electricity entity will manage the hazards and risks to ensure that its electrical safety obligation is properly discharged;
- what the entity will do to ensure that contractors for the performance of electrical and other work for the entity comply with the requirements of the SMMP.

Clause 77. Requirement for safety management and mitigation plan

Clause 77 provides that an electricity entity must not generate electricity or operate an electricity network unless it has a SMMP that has been approved by the Electrical Safety Regulator. It sets out the requirements for the contents of a SMMP as well as how it should be developed and that it must be assessed by a competent independent third party.

Clause 78. Approval of safety management and mitigation plan

Clause 78 sets out how a SMMP will be approved by the Electrical Safety Regulator. It also sets out the timetable for submission of the initial SMMP upon commissioning and that a SMMP is valid (if approved) for three years.

Clause 79. Implementation of safety management and mitigation plan

Clause 79 gives effect to the requirements of this Division by making it an offence for an electricity entity to intentionally and recklessly fail to implement or comply with their approved SMMP - maximum penalty is 2000 penalty units.

Clause 80. Review and assessment of safety management and mitigation plan

Clause 80 sets out the SMMP must be reviewed every year and that every three years it must be assessed by an independent third party. It clarifies that the recommendations of each review must be implemented.

Clause 81. Subsequent approval

Clause 81 sets out that the electricity entity shall submit a SMMP that has undergone its three-yearly review by a competent independent third party to the Electrical Safety Regulator for approval. It also sets out the timetable for submission of said assessed SMMP and that an assessed SMMP is valid (if approved) for a further three years.

Clause 82. Offences related to safety management and mitigation plan

Clause 82 gives further effect to the requirements of this Division by making it an offence for an electricity entity:

- (a) to intentionally operate without an approved SMMP;
- (b) to intentionally fail to implement or comply with the approved SMMP; or
- (c) to intentionally and recklessly fail to review their approved SMMP.

The maximum penalty for these offences is 2000 penalty units.

Division 3 Electrical safety of supply

The supply of electricity is an essential service and any deliberate interference with supply could have catastrophic or even deadly outcomes. The deliberate diversion of electricity is theft as well as creating an electrical safety risk.

This Division replicates and modernises requirements, offences and powers relating to safety and integrity of the supply of electricity set out in Parts 4 and 8 of the *Electricity Reform Act 2000*.

Clause 83. Retailer information

Clause 83 requires a retailer (an entity that holds a licence authorising the selling of electricity) to provide to the Electrical Safety Regulator information about a place and the customers at that place if the retailer is selling electricity to any customers at that place. This information can only be used by the Electrical Safety Regulator to administer or enforce this Act.

This clause enables the regulator to receive vital intelligence that it can use to investigate issues with the safety and integrity of the supply of electricity and identify and prosecute offenders.

Clause 84. Unauthorised connections

Clause 84 sets out that it is an offence to intentionally and recklessly, without authority, interfere with the installations and infrastructure of an entity and installations generally. The maximum penalty is 100 penalty units or imprisonment for 1 year.

It also creates an offence of connecting to a network without a certificate of compliance. The maximum penalty is 100 penalty units.

Clause 85. Interference with electricity infrastructure

Clause 85 recognises that interfering with the electricity network infrastructure is dangerous to individuals and the public; and so creates offences to discouraging individuals from various actions that could interfere or damage electricity infrastructure. The maximum penalties range from 100 penalty units to 200 penalty units or two years imprisonment.

The offences include doing any of the following without permission:

- attaching equipment to infrastructure
- disconnecting or interfering with the supply of electricity
- entering an infrastructure enclosure
- climbing infrastructure
- damaging infrastructure

The clause also creates an offence of throwing or shooting or projecting an object towards electrical infrastructure or an electrical installation.

Clause 86. Abstracting or diverting electricity

Clause 86 sets out that it is an offence to steal electricity from a network or a person, or to interfere (without authority) with an electricity meter. The maximum penalty is 200 penalty units or imprisonment for 2 years.

While electricity is notionally property, and thus any unauthorised diversion or abstraction could be seen as property theft under the criminal code, this clause provides certainty that a prosecution can be made. However the offence of interference with a meter is the more likely offence charged as it is simpler to prove a meter has been interfered with at a certain time at a certain place than it is to prove electricity has been stolen at that time at that place.

The clause also creates an offence of installing or possessing electrical cable that could be used to steal electricity from a place outside the property boundary of the person.

This offence is similar to the offence of interfering with a meter in that the presence of electrical line placed in such a way that it could take electricity from someone else is easier to prove than the actual abstraction or diversion. However this sub-clause is not meant to create an offence of simply possessing such electrical line or installing said line entirely within your own property (although if you do such work without the correct licence then that could be an offence under Part 3 of this Act).

This clause also allows the relevant electricity entity to recover costs and receive compensation from a guilty person. This recovery needs to be actioned through application to NTCAT or the appropriate court.

Clause 87. Unauthorised increase in capacity of connections

Clause 87 sets out that a person must not increase the capacity of an existing connection to a distributor's distribution system unless authorised to do so by the distributor. It creates an offence with a maximum penalty of 200 penalty units or imprisonment for 2 years.

While such additional capacity put through a meter may not be theft, the management of a distribution system is a careful balancing act and unforeseen usage could unbalance the system catastrophically. Additionally most connections and sub-systems are carefully designed to handle just the right amount of electricity and any alteration of that could create an electrical risk.

Clause 88. Unauthorised alterations and additions to electrical installations

Clause 88 sets out that a person must not alter or add to an electrical installation that is connected to a distributor's distribution system so as to cause the supply of electricity to the installation or any part of it to be incorrectly metered unless authorised to do so by the distributor. It creates an offence with a maximum penalty of 200 penalty units or imprisonment for 2 years.

Division 4 Interference with powerlines

This Division replicates and modernises requirements, offences and powers relating to safety of the supply of electricity through powerlines as set out in Part 4 Division 4 of the *Electricity Reform Act 2000* and Part 7 of the *Electricity Reform (Safety and Technical) Regulations 2000*.

This Division especially relates to managing vegetation, buildings, and work that may affect powerlines. This Division creates offences and sets obligations to ensure the integrity of supply and maximise public and worker safety through minimising foreseeable physical interactions with powerlines. It should be noted that physical interactions with powerlines do not always need actual physical contact as arcing across gaps is a known hazard of energised powerlines.

Clause 89. Clearance of vegetation

Clause 89 sets out that the Electrical Safety Regulator may establish guidelines on the clearance from powerlines of vegetation on land to prevent the vegetation from creating an electrical risk. If any guidelines are made, they must be published, and must be consistent with requirements set out in other relevant legislation (e.g. the *Planning Act 1999*).

The clause also allows that an electricity entity may establish requirements for the clearance of vegetation on land from its powerlines to prevent the vegetation from creating an electrical risk. It requires the electricity entity to notify its customers of its requirements for the clearance of vegetation.

It then creates an offence for the owner or occupier of land to not take reasonable steps to keep vegetation on the land clear of any powerline in accordance with any guidelines (as set out above). The maximum penalty is 100 penalty units.

Clause 90. Remedial action to clear vegetation

Clause 90 gives the electricity entity the option to remedy electrical risks due to vegetation if the owner or occupier of land does not comply with clause 90. It does this by allowing the officers of the electricity entity to enter land to which the entity supplies electricity, without the consent of the owner or occupier, to ensure that the vegetation on the land is clear of any powerline. The clause clarifies that the electricity entity may recover any costs it incurs in clearing the vegetation.

It also clarifies that if the electricity entity does not take action, it is not liable for any loss or damage suffered by another person due to that inaction. Which basically means that if the owner or occupier of land doesn't take steps to keep vegetation on the land clear of any powerlines that provide them with electricity, and the electricity entity does not take action either, then the owner or occupier of land has to wear the costs of losing power if and when the powerline fails due to interference from vegetation.

Clause 91. Erecting building or structure in proximity to powerline

Clause 91 sets out that a person must not erect a building or structure in proximity to a powerline contrary to a safety requirement prescribed by regulation. It establishes a framework for exemptions from this exclusion. It also creates an offence for intentionally erecting a building or structure contrary to this clause - maximum penalty of 100 penalty units.

Clause 92. Remedial order

Clause 92 allows an electricity entity, if it sees fit, to seek an order from a Court under this section if a person erects a building or structure person in proximity to a powerline in contravention of clause 91. It then sets out that the Court may make one or more of the following orders:

- (a) an order requiring the person to take specified action to remove or modify the building or structure within a specified period;
- (b) an order for compensation from the person for loss or damage caused by the contravention;
- (c) an order for costs reasonably incurred by the electricity entity in relocating the powerline or carrying out other work to rectify the situation.

Clause 93. Proposed work in proximity to electricity infrastructure

Clause 93 allows an electricity entity, if it sees fit, to establish requirements the protection of its infrastructure and the safety of persons carrying out work in proximity to its infrastructure.

It also requires a person who proposes to do work in proximity to electricity infrastructure must give the electricity entity written notice of the proposed work if certain criteria are met. That notice must be at least 24-hours prior to the work commencing.

The electricity entity must inform the person of the requirements it has made in relation to the proposed work. The person must comply with all reasonable requirements of the electricity entity as well, of course, with any regulated requirements.

Clause 94. Offences related to work in proximity to electricity infrastructure

Clause 94 empowers clause 93 by creating two offences:

- 1) Failure to give notice (unless it was an emergency situation) - maximum penalty of 50 penalty units;
- 2) Failure to comply with requirements of the electricity entity or regulations - maximum penalty of 25 penalty units.

Part 5 Administration

This Part replicates Part Division 2 of the *Electricity Reform Act 2000* in that it provides for the appointment of a public sector employee to be the Electricity Safety Regulator. The Electricity Safety Regulator will play a key role in administering and enforcing this legislation, as well as managing any committees established by this Act, and providing independent advice to the Minister on electrical safety matters.

The Electrical Safety Regulator has the following key functions:

- to support the activities of, and Chair, the Board and its committees
- to advise the Minister on electrical safety matters generally
- to report on the operation and effectiveness of this Act
- to give the appropriate approvals and authorisations
- to monitor and enforce compliance with electrical safety requirements
- to provide advice and information on electrical safety to licence holders and to the community
- to administer licences.

In undertaking the function of administering licences, this Part grants to the Electricity Safety Regulator modernised equivalents of the functions, powers and authorities previously granted to the Electrical Workers and Contractors Licensing Board by the *Electrical Workers and Contractors Act 1978*.

In place of the Electrical Workers and Contractors Licensing Board, and to support the Electrical Safety Regulator in the same way that the Work Health and Safety Advisory Council appointed under the WHS Act supports the Work Health Authority, this Part creates an Electrical Safety Board whose roles include:

- developing and maintaining a strategic plan for improving electrical safety;
- advising the Minister about Territorial, interstate, national and international electrical safety issues;
- reviewing the efficacy of the provisions of this Act and the regulations, ministerial notices and codes of practice made under this Act;
- to take disciplinary action against licence holders through its Discipline Committee.

Clause 95. Appointment

Clause 95 creates the position of the Electricity Safety Regulator by requiring the Minister to appoint an Electricity Safety Regulator. The clause sets a maximum appointment period of 5-years.

Clause 96. Functions and powers

Clause 96 sets out the functions of the regulator.

Clause 97. Powers of Electrical Safety Regulator

Clause 97 grants the regulator the powers it needs to carry out its functions.

Clause 98. Delegation by Electrical Safety Regulator

Clause 98 allows the regulator to delegate its authority

Clause 99. Power to require information

Clause 99 empowers the Electricity Safety Regulator to require, by written notice, a person to give the Electricity Safety Regulator a document, information or thing. Similarly to the WHS Act, this clause sets out what the notice must say including that the person must be warned that failure to comply is an offence but that if given a warning under this Act, the information can be given without fear of it being used in a prosecution against them.

Powers under this clause are intended to facilitate the regulator's function of monitoring and enforcing compliance with the Act and ensure effective regulatory coverage of electrical safety matters. Provisions have been designed to provide robust powers of inquiry and questioning subject to appropriate checks and balances to ensure procedural fairness.

Powers under this clause are only available if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of the Act or that will assist the regulator to monitor or enforce compliance under the Act. These powers are only exercisable by way of written notice, which must set out the recipient's rights under the Act (e.g. entitlement to legal professional privilege and the 'use immunity').

Additionally powers to require a person to appear before the regulator to give evidence are only exercisable if the regulator has taken all reasonable steps to obtain the relevant information by other means available under the clause but has been unable to do so. The time and place specified in the notice must be reasonable in the circumstances, including taking into account the circumstances of the person required to appear.

Clause 100. Offence of failing to give information

Clause 100 empowers clause 99 by creating an offence of failure to comply with requirements of the notice - maximum penalty of 50 penalty units.

Clause 101. Annual report

Clause 101 requires the Electrical Safety Regulator to prepare and give the Minister an annual report on the Electrical Safety Regulator's operations during the financial year.

The clause also requires the Minister is required to table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

Division 2 Electrical Safety Board

Clause 102. Establishment

Clause 102 establishes the Electrical Safety Board

Clause 103. Functions of Board

Clause 103 sets out the functions of the Board.

Clause 104. Composition of Board

Clause 104 sets out that the Board consists of eight members:

- (a) the Electrical Safety Regulator (who is the chair);
- (b) six members appointed by the Minister (who must consider each person's practical experience and competence in relation to electrical safety prior to appointment) including:
 - a person to represent employers;
 - a person to represent workers;
 - a person to represent the community;
 - a person to represent licensed electrical entities;
 - person to represent the Territory;
 - a person to represent training bodies; and
- c) the chairperson of the Discipline Committee (who is also appointed by the Minister).

Clause 105. Conditions of appointment to Board

Clause 105 sets the conditions of appointment including being able to hold office for periods of up to three years and that the appointed members will be remunerated.

Clause 106. Acting members

Clause 106 requires the Minister to have the same considerations when appointing an acting member as for a permanent member.

Clause 107. Times of Board meetings

Clause 107 sets out of often the Board should meet and how a meeting will be called.

Clause 108. Conduct of proceedings

Clause 108 sets out how meetings of the Board must be conducted including necessary quorums and voting principles.

Division 3 Board committees

Clause 109. Discipline Committee

Clause 109 establishes the Discipline Committee of Electrical Safety Board. It requires the Minister to appoint an experienced legal practitioner to be the chairperson of the Discipline Committee.

The clause also sets out the Committee consists of the chairperson of the Committee and two other members of the Electrical Safety Board. The other two members are chosen by the chairperson of the Committee as needed with the decision to be based on the immediate needs of the Committee.

Clause 110. Functions and powers of Discipline Committee

Clause 110 sets out that the main function of the Committee is to take disciplinary action against licence holders and against persons who previously held an electrical contractor licence.

Clause 111. Other committees

Clause 111 allows the Board to create any other committees it sees fit.

Clause 112. Times of committee meetings

Clause 112 sets out that committees of the Board will meet as determined by the chairperson of that committee.

Clause 113. Conduct of proceedings

Clause 113 sets out how meetings of the committees must be conducted including necessary quorums and voting principles.

Clause 114. Reports

Clause 114 requires a committee of the Board to report on its performance as soon as practicable after each meeting of the committee.

Division 4 General

Clause 115. Conflict of interests

Clause 115 requires a member of the Board to disclose any personal interest in any matter being considered, or about to be considered by the Board or a committee of the Board. It also sets out how that disclosure shall be managed.

Clause 116. Vacancy in office

Clause 116 allows a member of the Board to resign from their appointment. It sets out how a member of the Board can be removed from the Board including:

- being found guilty of an indictable offence, or
- becomes bankrupt, or
- if the Minister ends the appointment.

The clause sets out the four reasons for which the Minister may end a member's appointment including not attending three consecutive ordinary meetings without Ministerial approval.

Clause 117. Minutes

Clause 117 requires the Board and its committees to keep minutes of their proceedings.

Clause 118. Annual report

Clause 118 requires the Board to prepare and provide to the Minister an annual report, which includes a summary of the work of each committee, within four months of the end of each financial year.

The clause also requires the Minister is required to table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

Clause 119. Approved forms

Clause 119 allows the Electrical Safety Regulator to approve forms for use under this Act.

Clause 120. Charges for services

Clause 120 allows the Minister to fix, by Gazettal Notice, fees for service by the Regulator if no fee is set elsewhere. This fee must be only to cover reasonable costs for providing that service.

Part 6 Disciplinary action

This Part is the modern version of the disciplinary process for licence holders set out in Part 3 Division 4 of *Electrical Workers and Contractors Act 1978*.

However instead of the authority to undertake the actions set out in this Part residing with an Electrical Workers and Contractors Licensing Board (as set out in the *Electrical Workers and Contractors Act 1978*), this Part gives that authority to the Electrical Safety Regulator.

Clause 121. Grounds for discipline – electrical work licence

Clause 121 sets the grounds for taking disciplinary action against the holder of an electrical work licence:

- the holder performs or supervises electrical work in a way that is not safe from electrical risk;
- the holder performs or supervises electrical work and that work is not safe from electrical risk;
- the holder performs or supervises electrical work that results in a person or property not being safe from electrical risk;
- the holder gave incorrect or misleading information in an application;
- the holder is no longer eligible, qualified or competent to hold the licence;
- the holder commits an offence against this Act;
- the holder contravenes a condition or restriction in the licence.

Clause 122. Grounds for discipline – electrical contractor licence or in-house electrical licence

Clause 122 sets the grounds for taking disciplinary action against the holder of an electrical contractor licence or of an in-house licence:

- the holder performs or supervises electrical work in a way that is not safe from electrical risk;
- the holder performs or supervises electrical work and that work is not safe from electrical risk;
- the holder performs or supervises electrical work that results in a person or property not being safe from electrical risk;
- the holder failed to give a notice required under this Act about electrical work performed by the holder;
- the holder unreasonably delayed rectifying a fault in electrical work performed by the holder;
- the holder, or a worker of the holder, intentionally deceives, or attempts to deceive, an electricity entity or inspector by:
 - concealing inferior work or materials used in electrical work; or
 - making a statement about electrical work that is false or misleading in a material particular;
- the holder, or a worker of the holder, unlawfully breaks or tampers with a meter, control apparatus or fuse belonging to an electricity supplier or a seal attached to a meter or control apparatus;
- the holder, or a worker of the holder, connects an electrical installation, or part of an electrical installation, to a source of supply chargeable at a rate lower than the rate for which electricity supply to the electrical installation or part is chargeable, without the authority of the electricity supplier;
- the holder gave incorrect or misleading information in an application;
- the holder is no longer eligible or qualified to hold the licence;
- the holder commits an offence against this Act;
- the holder contravenes a condition or restriction included in the licence.
- the holder advises, causes or allows a person to perform electrical work, knowing the person is not authorised under this Act to perform the work.

This clause also allows disciplinary action where the holder is a party to conduct, equivalent to a number of the matters listed above, engaged in by another person, or knows of the conduct and does nothing about it.

Additionally this clause also permits disciplinary action against a person who no longer holds a licence, where the person performed the work while they were licensed and the work was not electrically safe or the person who actually performed the work was negligent or incompetent in the performance of the work.

An example of where action may be taken against a former electrical contractor is where a contractor undertook electrical work (when licensed) that did not comply with the requirements in the Regulations or relevant Australian Standards. Disciplinary action could be taken to require the person to rectify, or cause to have rectified, the electrical work.

Clause 123. Grounds for discipline – apprentices and trainees

Clause 123 sets the grounds for taking disciplinary action against an apprentice or a trainee.

Clause 124. Failure to pay penalty

Clause 124 clarifies that failure to pay a penalty imposed through disciplinary action is grounds for further disciplinary action.

Clause 125. No limitation period

Clause 125 sets out that there is no limitation period for when disciplinary action may be taken after the events that constitute the ground for taking disciplinary action.

This clause gives strength to the ability under the Act to take action against a former electrical contractor. This is critical because quite often poor or dangerous work is not discovered until well after (years) the work was undertaken. The current situation has a limit of six-months after the work is undertaken beyond which no action can be taken.

This clause also allows for the collation over time of a brief of evidence of poor work that may not be individually dangerous but in totality demonstrates the licence holder is not performing work at the level set by regulation, industry standards and best practice.

Division 2 Nature of disciplinary action

Clause 126. Types of disciplinary action

Clause 126 sets out what disciplinary action may be taken by the Discipline Committee against a licence holder:

- cancel or amend the licence;
- suspend the licence;
- disqualify the holder from being eligible for a licence;
- disqualify the holder from holding a licence;
- reprimand or caution the holder;
- require the holder to correct a fault or defect in electrical work;
- require the holder to undergo further training;
- impose on the holder a penalty of not more than 100 penalty units.

The clause also allows any disciplinary action taken to be subject to conditions.

The clause clarifies that a licence may not be renewed if under suspension or the holder is disqualified; and that a holder of a licence issued elsewhere (and recognised in the Northern Territory) is liable for every disciplinary action listed above except that the disciplinary committee cannot require the holder to correct a fault or defect in electrical work.

Clause 127. Competency assessment

Clause 127 allows the Board to request a licence holder to undergo an assessment of the holder's competency to perform electrical work. It sets out the process the Board needs to undertake prior to requiring an assessment; and that the licence holder can submit that an assessment is unnecessary.

The also clause sets out how the assessment will occur and that it will be conducted either by the Electrical Safety Regulator or by a Registered Training Organisation. The results of the assessment are required to be given to the Committee and the licence holder.

This process would most commonly used if the Board had concerns relating to a persons' competency prior, during or as a result of a disciplinary action.

Clause 128. Recovery of penalties

Clause 128 allows for any penalty imposed under this Division to be treated as a debt that can be recovered by the Territory.

Division 3 Procedure for taking disciplinary action

This Division sets out how a disciplinary matter will be progressed. While the intent is as per that previously in existence under the *Electrical Workers and Contractors Act 1978*, the process has been modernised and rewritten for greater clarity and ease of operation for all parties.

The disciplinary process has been designed to be as informal as possible with whatever flexibility is needed to arrive at an informed and just decision that complies with natural justice.

Clause 129. Complaints

Clause 129 allows that a complaint may be lodged, using the appropriate form, alleging there are grounds for disciplinary action to be taken

Clause 130. Investigation

Clause 130 allows the Electricity Safety Regulator to undertake an investigation initiated by a complaint or off its own volition. It also allows the Electricity Safety Regulator to refuse to undertake an investigation if it believes a complaint is trivial, frivolous or vexatious, or is baseless.

It then sets out that if an investigation does proceed, the person about whom the complaint was made must be informed of the complaint, and its substance) and the investigation, and that they have a right of reply.

Clause 131. Action after investigation

Clause 131 sets out that after an investigation the Electricity Safety Regulator must do one of the following:

- take no further action if satisfied that that is the appropriate action;
- give a formal warning in relation to the complaint;
- mediate the complaint;
- issue a notice or direction in relation to the complaint;
- enter into an enforceable undertaking in relation to the complaint; or
- refer the matter to the Discipline Committee for disciplinary action.

This decision must be provided by a Decision Notice to the complainant and to the subject of the complaint.

Clause 132. Referral of disciplinary matter

Clause 132 sets out how the matter will be sent to the Disciplinary Committee including that the subject of the disciplinary action will be informed of the action and may make submissions to the Committee.

Clause 133. Notice of disciplinary hearing

Clause 133 sets out that before the Disciplinary Committee holds a hearing the subject of the disciplinary action must be given notice of the hearing and the subject's right to attend.

Clause 134. Disciplinary hearing

Clause 134 sets out that the Disciplinary Committee must hold a hearing regarding any matter the Electricity Safety Regulator refers to it. It allows that the hearing does not need oral submissions if the subject agrees and the Committee believes it has all the relevant information it needs to make an informed and fair decision.

Clause 135. Participation at hearing

Clause 135 allows the subject of the disciplinary actions to have legal counsel and/or a support person during a hearing.

Clause 136. Conduct of disciplinary hearing

Clause 136 sets out the conduct of the disciplinary hearing including that the Committee must comply with natural justice and act with as quickly and with as little formality as possible while ensuring the process is a fair one.

The clause goes on to allow that that Committee is not bound by rules of evidence and may make what rules it believes it needs as long as they are not inconsistent with this Act. It also allows that a disciplinary hearing can be adjourned; and hearings are not typically open to the public.

Clause 137. Record of disciplinary hearing

Clause 137 requires a record of evidence to be kept but not a transcript of any hearing.

Clause 138. Discipline Committee's decision

Clause 138 requires the Committee at the end of a hearing to either dismiss the matter or take disciplinary action. This decision must be given by notice to person who was the subject of the hearing. In addition a copy of the decision must be provided to the complainant, and a notice of the action must be published on the Electricity Safety Regulator's website.

Division 4 Immediate suspension of electrical work licence

This Division emulates the power of the Regulator under the Work Health and Safety Regulations to immediately suspend a High Risk Work Licence on the grounds of the actions of the licence holder being so dangerous that the holder needs to cease and desist all work of that types while further assessments are made.

Clause 139. Notice of immediate suspension

Clause 139 allows the Electrical Safety Regulator to immediately suspend an electrical work licence if the Electrical Safety Regulator believes on reasonable grounds that the performance of electrical work under the licence:

- (a) may have caused the death of a person; or
- (b) may have caused serious harm to a person; or
- (c) may pose an imminent serious risk to the health or safety of a person.

The clause also allows such action if warranted against the holder of an interstate licence recognised in the Northern Territory.

The clause sets out the process that must be undertaken including that written notice must be given and the suspension actually does not commence until the written notice is given. Such action by the Electrical Safety Regulator does not replace or interfere with any disciplinary action taken by the Disciplinary Committee.

Clause 140. End of suspension

Clause 140 sets out a clear end to the suspension if no further action is taken.

Part 7 Compliance measures

This Part establishes the electrical safety inspectorate, and sets out the inspectorate's functions and powers including providing inspectors with powers of entry to conduct compliance checks and ensure electrical safety.

Division 1 Inspectors

The Division sets out the process for appointing, suspending and terminating inspector appointments. It also provides a process for dealing with conflicts of interest that may arise during the exercise of inspectors' compliance powers.

This emulates the process set out in Part 6 (Enforcement) Division 1 (Appointment of authorised officers) of the *Electricity Reform Act 2000* with the main difference being that the appointment is by the Electrical Safety Regulator rather than the Minister. That change was made as the appointment of an inspector should be a purely operational issue – as it is in the WHS Act.

The change of designation from "Authorised Officer" to "Inspector" is deliberate as the *Electricity Reform Act 2000* will continue to have Authorised Officers, and so a different name will clearly differentiate between the two groups (something that was an issue identified by the Review).

Clause 141. Appointment of inspectors

Clause 141 sets out that the Regulator may appoint only public service employees as inspectors but that the regulations may additionally allow for the appointment of any person who is in a class prescribed under a regulation. Regulations could be made, for example, to allow for the appointment of specified experts to meet the regulator's short-term, temporary operational requirements, or to appoint inspectors appointed under equivalent legislation elsewhere.

Clause 142. Functions and powers of inspectors

Clause 142 sets the functions and powers of an inspector including:

- to provide information and advice about compliance with this Act;
- to promote electrical safety;
- to monitor and enforce compliance with this Act, including making inspections and issuing notices;
- to investigate contraventions of this Act.

Clause 143. Limits on inspectors' powers

Clauses 143 deals with conditions or restrictions attaching to inspectors' appointments and with regulator's directions. An example of a condition is that an inspector may be appointed to exercise compliance powers only in relation to a particular geographic area or industry or both. While an example of a direction is that the regulator could direct inspectors to comply with investigation or litigation protocols that would apply to all matters. An inspector must comply with these directions. This ensures a consistent approach to the way that inspectors' compliance powers are exercised.

Clause 144. Identity card

Clause 145. Return of identity card

Clause 146. Producing identity card

Clauses 144, 145 and 146 provide for the issue by the Regulator, return of, and use of inspectors' identity cards. Specifically clause 144 sets out that the Regulator must issue an inspector with an identification card (which includes a photo of the inspector) while clause 146 specifies that an inspector when exercising a power must produce his or her identity card at the request of an affected person, or has the identity card clearly displayed. Provision is made for the inspector to produce the identity card for inspection by the person at the first reasonable opportunity if it is not practicable to do so when exercising a power.

Clause 147. Accountability of inspectors

Clause 147 requires inspectors to report actual or potential conflicts of interest arising out of their functions as an inspector to the regulator. The clause requires the regulator to direct the inspector to not deal with any matter where are known or potential conflict of interest may occur.

Clause 148. Suspension and revocation of appointment of inspector

Clause 148 gives the Regulator the authority to suspend or revoke the appointment of an inspector; and clarifies that if an inspector is no longer eligible to be an inspector (for example, through retirement from the public service) then the appointment also ceases.

Division 2 Powers relating to entry

This Division sets out the powers of an inspector to enter a place. This emulates the powers set out in Part 6 (Enforcement) Division 2 (Authorised officers' powers) of the *Electricity Reform Act 2000* with the language taken from the WHS Act.

Inspectors have access to a range of powers to support their compliance and enforcement roles including, under certain circumstances, the power to enter residential premises. While that particular power is additional to that under the WHS Act, it is actually a modern interpretation and limitation on the broad and unlimited powers Authorised Officers have under section 63 the *Electricity Reform Act 2000*.

Subdivision 1 Power to enter places

Clause 149. Exercise of powers

Clause 149 clarifies that inspectors have all the powers necessary for them to perform their functions.

Clause 150. Power to enter place

Clause 150 sets out that an inspector may enter places that are:

- a place with electrical equipment; or
- a place under the control of a person with an electrical safety duty; or
- a place where electrical work is being or was conducted; or
- a place where a serious electricity event or a dangerous electrical event occurred.

Clause 151. Residential premises

Clause 151 puts a caveat on the powers granted under Clause 150 by setting out that an inspector must not enter or exercise search powers in relation to any part of premises that are used for residential purposes except in certain circumstances.

This power balances the right to privacy of individuals in their own home with the recognition that electricity is ubiquitous, and that inspectors need to ensure electrical safety duties are being complied with everywhere. An example of the need to use this power is to inspect solar panels and storage batteries as the standards for installation of that equipment are still maturing, and industry practices are unfortunately dangerously inconsistent.

This clause also allows entry if empowered by a warrant, or to inspect a part of the place that is not a residence (for example a home office or the kitchen of a licensed food supplier who is working from home).

Clause 152. Consent to entry

Clause 152 sets out how an Inspector shall seek consent for entry including that the Inspector must identify themselves and clearly explain the purpose for requesting consent.

Clause 153. Entry on Aboriginal land

Clause 153 reinforces the powers of entry, of inspectors to perform their functions, by clarifying that an Inspector may enter aboriginal land without needing an entry permit granted under the *Aboriginal Land Act 1978*.

Clause 154. Notice of entry

Clause 154 requires the inspector, upon entry, to notify the occupier of a place that they have entered that place unless that defeats the purpose of that entry (for example to undertake an inspection of a possible ongoing contravention).

Clause 155. Person assisting inspectors

Clause 155 allows that an inspector may be assisted by another person and that person has the powers of an inspector (for example a technical expert accompanying the inspector to provide on-the-spot advice).

Subdivision 2 Search warrants

Clause 156. Search warrants

Clause 156 permits an inspector to request a search warrant from a Local Court Judge. The clause sets out the standard requirements for granting and the contents of a search warrant.

Clause 157. Announcement before entry with warrant

Clause 158. Copy of warrant to be given

Clauses 157 and 158 set out how the search warrant is to be used and what actions the inspector must and can take in executing the search warrant.

Subdivision 3 Powers of inspection

This Subdivision provides for specific information-gathering powers on entry and for seizure and forfeiture of things in certain circumstances. It is intended that inspectors will obtain documents and information under the Act co-operatively, as well as by requiring them under this Subdivision.

The powers in this subdivision are a near replica of the powers granted to an inspector under Part 9 (Securing compliance), Division 3 (Powers relating to entry), Subdivision 4 (Specific powers on entry) of the WHS Act. However they are also an expansion of the powers granted under Part 6 (Enforcement) Division 2 (Authorised officers' powers) of the *Electricity Reform Act 2000* as they are both restrictive on inspectors' ability to assure compliance and not reflecting modern understanding of inspectors' powers and limitations there-on.

Clause 159. General powers

Clause 159 permits inspectors, upon entry to a place, to inspect, examine and make inquiries at the place to the extent reasonably required for the administration, operation or enforcement of this Act. This includes amongst other things the power to:

- inspect and examine any electrical equipment and anything else related to electrical safety;
- take copies of, or extracts from, documents;
- seize electrical equipment that the inspector believes are connected with an offence;
- take and remove for analysis a sample of any substance or thing without paying for it.

Clause 160. Powers to copy and retain documents

Clause 160 expands upon the powers regarding documents to allow an inspector to:

- (a) make copies of, or take extracts from, a document obtained during an inspection or search or otherwise provided under this Act; and
- (b) keep that document for the period that the inspector considers necessary.

If the inspector retains custody of a document, the inspector must make that document, or copies thereof, available to the original owners of the document or their agents.

The term 'document' is taken to include a 'record'. It is further intended that the term 'document' includes any paper or other material on which there is writing and information stored or recorded by a computer as provided by the *Interpretation Act 1978*.

Clause 161. Power to require answers and assistance

Clause 161 establishes the powers of an inspector to ask questions and require answers or that a person at a place provide documents as requested while conducting an inspection. The clause requires written requests for documents unless the inspector needs immediate access to those documents. It also allows that any interviews or questions put to a person must be in private unless the person does so require or the inspector does not believe it to be appropriate.

This clause also creates an offence if a person does not comply with the inspectors' requirements with the maximum penalty being 100 penalty units.

Clause 162. Warning to be given

Clause 162 sets out the steps an inspector must take before requiring a person to produce a document or answer a question under this Part. It clarifies however that these steps are not required if documents or information are provided voluntarily.

Under clause 162, an inspector must first identify himself or herself by producing his or her identity card or in some other way and then:

- warn the person that failure to comply with the requirement or to answer the question without reasonable excuse would constitute an offence,
- warn the person about the abrogation of privilege against self-incrimination (see clause 163), and
- advise the person about legal professional privilege – which is unaffected by the Act (see clause 244).

This ensures that persons are fully aware about the legal rights and obligations involved when responding to an inspector's requirement to produce a document or answer a question.

If requirements to produce documents are made by written notice, the notice must also include the appropriate warnings and advice.

This clause also provides that it is not an offence for an individual to refuse to answer an inspector's question on grounds of self-incrimination, unless he or she was first given the warning about the abrogation of the privilege against self-incrimination.

Clause 163. Self-incrimination

Clause 163 sets out the abrogation of privilege against self-incrimination mentioned in clause 162. The Act seeks to ensure:

- that the strongest powers to compel the provision of information currently available to the regulator are available for securing ongoing electrical safety, and
- that the rights of persons under criminal law are appropriately protected.

The clause clarifies that there is no privilege against self-incrimination under the Act, including under clauses 161 (Power to require answers and help) and 99 (Power to require information). This means that persons must comply with requirements made under these provisions, even if it means that they may be incriminated or exposed to a penalty in doing so.

These arrangements are proposed because the right to silence is clearly capable of limiting the information that may be available to inspectors or the regulator, which may compromise inspectors' or the regulator's ability to ensure ongoing electrical safety protections. Securing ongoing compliance with the Act and ensuring electrical safety are sufficiently important objectives as to justify some limitation of the right to silence.

The clause instead provides for a 'use immunity' which means that the answer to a question or information or a document provided by an individual under clause 161 or 99 is not admissible as evidence against that individual in civil or criminal proceedings. An exception applies in relation to proceedings arising out of the false or misleading nature of the answer information or document.

Clause 164. Power to disconnect unsafe electrical equipment

Clause 164 allows an inspector to disconnect unsafe electrical equipment if urgent action is required to minimise electrical risk. This is a replication of Section 80 of the *Electricity Reform Act 2000* that is in place to empower inspectors to achieve the core goal of this Act – which is to ensure electrical safety. This power is most often used where very dangerous installations or connections have been made; or there has been equipment failure yet the equipment is still electrically 'live' and so is dangerous.

Clause 165. Power to seize evidence

Clause 165 provides that an inspector who enters a place may seize a thing in the place subject to certain circumstances. If entry was by warrant, an inspector entering a place may seize the evidence for which the warrant was issued.

This clause also authorises an inspector to seize anything else at the place if the inspector reasonably believes it is evidence of an offence against this Act and that the thing must be seized to prevent it from being hidden, lost, destroyed or used to continue or repeat the offence. An inspector may seize a thing if the inspector reasonably believes the thing has just been used in committing an offence against this Act.

Clause 166. Seizing unsafe electrical equipment

Clause 166 is a clarifying extension of clauses 164 and 165 which authorises an inspector who enters a place to seize unsafe electrical equipment if the inspector reasonably believes that persons or property are at electrical risk and it is urgent that the inspector act to prevent, remove or minimise the risk.

Clause 167. Receipt for seized things

Clause 167 requires an inspector who has seized a thing to give a receipt. If it is not practicable to give a receipt to the person, the inspector must leave the receipt at the place of seizure in a conspicuous position in a reasonably secure way. This clause also provides the circumstances under which an inspector does not have to give a receipt.

Clause 168. Powers related to seizures

Clause 168 describes the powers an inspector may exercise in relation to a thing the inspector has seized, including the power to move the thing from the place where it was seized or to, leave the thing at the place but take reasonable action to restrict access to it including dismantling it. However a requirement under this clause is required to be made by written notice either immediately or as soon as practicable once a verbal requirement has been made.

If an inspector restricts access to a seized thing, a person may not tamper or attempt to tamper with the thing or something restricting access to the thing without the inspector's approval. There are a number of offences under this clause, with each having a maximum penalty of 100 penalty units.

Clause 169. Analysis

Clause 169 empowers the Regulator to arrange for analysis of anything taken by an inspector. It is an offence to interfere with the conduct of an analysis with the maximum penalty for a contravention being 100 penalty units.

Clause 170. Return of seized things

Clause 170 provides for the circumstances in which the Electricity Safety Regulator must return a seized thing to its owner upon request unless certain circumstances are met – including that the thing is needed in evidence. Any decision to return a requested thing must be provided in writing.

Clause 171. Return of unsafe things

Clause 171 allows the Electricity Safety Regulator to impose conditions on the use of any returned thing if the thing is considered electrically unsafe. The clause makes it an offence to not comply with any direction given under this clause with a maximum penalty of 50 penalty units.

Clause 172. Forfeiture of seized things

Clause 172 describes the circumstances in which a seized thing is forfeited to the Territory, and the action the Electricity Safety Regulator must take if a thing is forfeited including that a decision notice must be issued to the owner if possible and that any costs reasonably incurred by the Territory in storing or disposing of a thing forfeited under this cause may be recovered in a Court of competent jurisdiction as a debt due to the Territory from the owner of the thing.

Clause 173. Access to seized things

Clause 173 requires an Electricity Safety Regulator to allow the owner of a seized thing to inspect and, if it is a document, to copy it. The clause does not apply in circumstances in which it is impractical or would be unreasonable to allow inspection or copying.

Division 3 Damage and compensation

This Division provides for fair compensation for the actions of an inspector or the Electricity Safety Regulator if appropriate. These are taken from the WHS Act but have been modernised based on recent court decisions.

Clause 174. Damage to be minimised

Clause 174 requires an inspector, in exercising a power under this Act, to cause as little inconvenience, detriment and damage as is practicable.

Clause 175. Inspector to give notice of damage

Clause 175 provides for what is to happen if property is damaged by an inspector or by a person acting under an inspector's direction, when exercising or purporting to exercise a power. The clause requires the inspector to promptly give written notice of the particulars of the damage to the person who appears to be the owner of the thing. If it is impracticable to give such notice, the inspector must leave the notice, in a reasonably secure way where the damage happened.

This clause does not apply to damage the inspector reasonably believes is trivial. For this clause, an "owner" of a thing includes the person in possession or control of the thing.

Clause 176. Compensation

Clause 176 provides a person may claim compensation from the Territory if the person incurs a loss or expense because of the exercise, or purported exercise, by an inspector under of any power under this Act if the power was exercised, or purported to be exercised, in bad faith.

A court may order compensation to be paid only if it is satisfied it is just to make an order in the circumstances of a particular case. It is specified that a regulation may prescribe the matters that may, or must, be taken into account by the court or NTCAT in this instance.

The clause clarifies that the right to claim compensation under this clause is in addition to any other right available under a law of the Territory.

Division 4 Other inspector powers

This Division replicates the equivalent Division in the WHS Act. It grants additional powers to an inspector that may be required for them to fully carry out their functions under the Act.

Clause 177. Power to require name and address

Clause 177 allows an inspector to require a person to tell the inspector his or her name and residential address if the inspector believes on reasonable grounds that the person has committed, is committing, or is about to commit, an offence against this Act.

It is an offence to not comply with this request unless the inspector did not produce their identification card upon request or did not warn the person that failing to respond would constitute an offence. The offence carries a maximum penalty of 50 penalty units.

Clause 178. Inspector may witness affidavits

Clause 178 clarifies that an inspector may take affidavits for any compliance-related purpose under the Act.

Clause 179. Attendance of inspector at coronial inquests

Clause 179 clarifies that an inspector may attend and examine witnesses at any coronial inquests into the cause of death of a worker while the worker was carrying out work if permitted by the *Coroners Act 1993*.

Division 5 Other offences

This Division establishes offences against inspectors. Given the importance of the role of the inspector and that the inspector is the most immediate personification of the regulatory system, offences in relation to inspectors are considered to be serious and the subject of significant penalties.

This Division also creates a specific offence relating to utilisation and privacy of information provided to an inspector. This is because inspectors are given broad powers and protections under the Act; and mechanisms are needed to ensure that inspectors are accountable and credible when they perform functions and exercise powers.

Clause 180. Intimidation or obstruction of inspector

Clause 180 makes it an offence to intentionally intimidate or obstruct an inspector in exercising compliance powers under the Act. This would include unreasonably refusing or delaying entry, as well as behaviour such as intentionally destroying or concealing evidence from an inspection.

The maximum penalty is 100 penalty units or imprisonment for 12 months.

Clause 181. Falsely representing to be an inspector

Clause 181 makes it an offence for a person who is not an inspector to hold himself or herself out to be an inspector.

The maximum penalty is 100 penalty units or imprisonment for 12 months.

Clause 182. Misleading information

Clause 182 makes it an offence to deliberately mislead an inspector.

The maximum penalty is 200 penalty units or imprisonment for 24 months.

Clause 183. Offence to disclose certain information

Clause 183 applies where a person (usually an inspector) obtains information or gains access to a document in exercising a power or function under the Act. It prohibits the person who has obtained information or a document from disclosing the information or the contents of the document to another person other than in administration of this Act or another relevant Act.

The maximum penalty is 200 penalty units or imprisonment for 24 months.

However it is a defence if the disclosure is made with consent of the other person or is required by law.

Part 8 Enforcement measures

This Part gives inspectors and the Electrical Safety Regulator the powers and tools to ensure electrical safety is maintained. Some of the tools have been bought over from the *Electricity Reform Act 2000* and been modernised in both language and scope, while others have been introduced from the WHS Act.

Improvement Notices

An improvement notice is a written notice issued by an inspector requiring a contravention against the Act or Regulations to be remedied within a certain period or a likely contravention to be prevented (that is, if there are circumstances that make it likely that a contravention will continue or be repeated).

An inspector may issue an improvement notice requiring a person to remedy the contravention, prevent a likely contravention from happening or remedy the things or operations causing the contravention or likely contravention.

The notice must state the inspector's belief about the contravention or likely contravention, identify the provision the inspector believes is being or has been contravened, how the provision is being or has been contravened and a reasonable date by which to fix the contravention. An improvement notice may also include directions and/or recommendations about how to fix or prevent a contravention.

Directions to rectify defective electrical work

Directions to rectify defective electrical work may only be issued by the Electrical Safety Regulator; and only if the Regulator considers that:

- the way the electrical work was performed was not safe from electrical risk; or
- the person who actually performed the electrical work was negligent or incompetent in performing the work; or
- the work was performed in a way that causes a person or property to not be safe from electrical risk.

They are designed to ensure that work conducted by a licence holder is brought to standard if it was not so originally. The intent is that while work of such poor or dangerous nature may be an offence, the owner of any equipment of installation so affected should not be forced to rectify the poor or dangerous work themselves.

However the Act does allow that if the responsible licence holder cannot be found, the direction may be given to the current owner of the equipment of installation to ensure that electrical safety is achieved.

Ministerial Notices and Codes of Practice

Ministerial Notices are for those exceptional circumstances where it has been identified that there is a risk to electrical safety throughout the Northern Territory or in relation to specific equipment or installations beyond the capacity of the Electrical Safety Regulator to deal with individually. It allows the Minister to require urgent action to be undertaken by all relevant duty holders.

Codes of Practice provide practical guidance on how to meet the requirements set out in the Act and the Regulations. Codes of Practice are admissible in proceedings as evidence of whether or not a duty under the WHS laws has been met. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

It is recognised that equivalent or better ways of achieving the required electrical safety outcomes may be possible. For that reason compliance with Codes of Practice is not mandatory providing that any other method used (e.g. complying with prescribed Australian Standards) provides an equivalent or higher standard of electrical safety than suggested by the Code of Practice.

Prohibitions on sale of consumer electrical equipment

Prohibitions on the sale of consumer electrical equipment are the main method the Electrical Safety Regulator has to enforce safety standards for consumer electrical equipment given that the Northern Territory will be relying on national licences and registration of such equipment.

To achieve this, the Electrical Safety Regulator may, by Gazette notice, prohibit the supply or sale of consumer electrical equipment if satisfied that the consumer electrical equipment:

- is not safe from electrical risk; or
- does not comply with the requirements of this Act or the regulations.

Electrical safety directions

If an inspector believes that an immediate electrical risk exists at a place, the inspector may issue an electrical safety direction. The direction can direct a person to do any of the following:

- to stop any activity that is causing the electrical risk;
- to stop using, or allowing to be used, unsafe electrical equipment;
- to disconnect electrical equipment from its supply of electricity to the extent the inspector considers necessary to eliminate the electrical risk;
- to take any other action reasonably required to prevent, mitigate or remedy the electrical risk.

Such a direction is the equivalent of a Prohibition Notice in the WHS Act; and its intent is to ensure activity that has unacceptable electrical risk is immediately ceased and the situation corrected. However one difference from a Prohibition Notice is that an electrical safety direction must include the measures to be taken to remedy the electrical risk with the specific time when the measures are required to be taken; and can include other requirements that must be complied with before reconnecting the supply of electricity.

Recall order

The Act allows the Minister to make a recall order for electrical equipment. A recall order requires the designer, manufacturer, importer or supplier specified in the order to recall the electrical equipment specified in the order from use.

The Minister may make a recall order for electrical equipment whether or not the electrical equipment was previously recalled by the designer, manufacturer or importer; or is installed at a place.

This is a serious step that may be taken for any type of electrical equipment regardless of operational status. It would typically be required where there is a particular piece of electrical equipment that would not be covered by an EESS (e.g. solar panels) that need to be removed due to unacceptable electrical risk from many locations (and so could not be managed by individual electrical safety directions).

As the step is so serious there are significant penalties for not complying.

There are also provisions allowing any business or person required to comply with a recall order to both provide compensation to owners of recalled equipment, and to request help from appropriate third-parties to ensure the recall occurs.

Non-disturbance notices

A non-disturbance notice is a written notice issued by an inspector requiring a person to with management or control of a workplace to preserve the site of a serious electrical event or a dangerous electrical event or prevent disturbance of a particular site (e.g. a workshop) or a particular thing at a particular site (e.g. a failed installation) in certain circumstances. It may only be issued if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of their compliance powers.

A notice may require the person to preserve the site or prevent disturbance for up to seven days, and must include the measures to be taken to do so. One or more subsequent non-disturbance notices may be issued to a person if an inspector considers this necessary.

A person issued with a non-disturbance notice must comply with the notice unless they have a reasonable excuse for not doing so. However a non-disturbance notice does not prevent any action required to protect a person's health or safety, undertake a coronial or police investigation, help someone who is injured or make the site safe.

Division 1 Improvement notices

Clause 184. Giving improvement notice

Clause 184 allows an inspector to issue an improvement notice and that the inspector may require the recipient to take actions to remedy the situation.

Clause 185. Contents of improvement notices

Clause 185 sets out what shall be in an Improvement Notice including that may include the (reasonable) measures to be taken to remedy the contravention or prevent the likely contravention.

Clause 186. Extension of time for compliance with improvement notices

Clause 186 allows that an extension of time to comply with an Improvement Notice may be given by an Inspector.

Clause 187. Compliance with improvement notice

Clause 187 requires a person who has been issued an Improvement Notice to comply with that notice with the maximum penalty for non-compliance being 500 penalty units. However it is a defence to a prosecution that the defendant did all that was reasonably practicable to comply, including engaging a contractor to perform the work.

Division 2 Direction to rectify defective electrical work

Clause 188. Power to make direction

Clause 188 sets out that the Electrical Safety Regulator may give a person a direction to rectify electrical work.

Clause 189. Notice of proposed direction

Clause 189 requires the Regulator to give prior notice of such a direction and allow the proposed recipient an opportunity to show cause that the direction should not be made. The Regulator must consider any representations made; and provide a written decision notice.

If the direction is given to a person who does not hold a licence to carry out the required work, the person must have the work performed by a person who is licensed to perform the work.

Clause 190. Compliance with rectification direction

Clause 190 makes it an offence to not do all that was reasonably practicable to comply with a direction given under clause 188 with a maximum penalty of 500 penalty units.

Division 3 Ministerial notices and codes of practice

Clause 191. Ministerial notice about electrical safety duty

Clause 191 allows the Minister to make notice about electrical safety duty. The notice may prescribe a way of discharging a person's electrical safety duty in relation to the electrical risk.

These notices expire after 12 months unless the Minister sets an earlier expiry date or extends the expiry date by up to another 12 months.

Clause 192. Effect of ministerial notice

Clause 192 clarifies that such a notice does not limit or strictly prescribe what a person must do to discharge the person's electrical safety duty in relation to the electrical risk specified in the notice; and that a person is taken to have failed to discharge their electrical safety duty in relation to an electrical risk specified in a Minister's notice if the person fails to comply with the notice.

Clause 193. Code of practice

Clause 193 allows that the Minister, by Gazette notice, make or adopt a code of practice regarding ways to discharge a person's electrical safety duty. These Codes must be published on the Electricity Safety Regulators website; and will expire after 10 years unless earlier revoked.

Most critically, this clause sets out that if a code of practice is inconsistent with a regulation or a notice under clause 191, the regulation or notice prevails to the extent of the inconsistency.

Clause 194. Use of code of practice in proceedings

Clause 194 sets out that a code of practice is admissible in proceedings for a contravention of this Act as evidence in relation to a duty under this Act. It also sets out how a Court may use a Code; and that a person may introduce alternative methods and systems to that in a Code if said methods and systems provide equivalent or better electrical safety outcomes.

Division 4 Prohibitions

Clause 195. Prohibiting sale of consumer electrical equipment

Clause 195 gives the Electrical Safety Regulator the power to prohibit the supply or sale of consumer electrical equipment. This must be done via a Gazette notice which must include specific subject matter including a clear means of identifying the equipment and the reasons the notice is being made. While the notice may have a prescribed expiry date, it does not need to mean that the prohibition could be permanent.

The notice may also include specific directions on the measures to be taken by the public or by specific persons to prohibit the sale of the consumer electrical equipment; and if it does so, a copy of the notice must be given to any person who is specifically directed to take measures under the notice.

Clause 196. Informing public of proposed prohibition

Clause 196 sets out the steps the Electrical Safety Regulator must take prior to issuing a prohibition notice by Gazette. These include informing the public and any person who will be specifically directed to take measures under the proposed notice of the intent to issue the notice and inviting representations showing why the proposed notice should not be made.

The clause allows that the Electrical Safety Regulator does not have to undertake this process if:

- the Minister advises the Electrical Safety Regulator that the prohibition is urgently required to minimize electrical risk; or
- the sale of the consumer electrical equipment was prohibited under the law of a State or another Territory.

Clause 197. Prohibited supply and sale

Clause 197 makes it an offence to not comply with such a notice issued under clause 200 with a maximum penalty of 500 penalty units.

Division 5 Electrical safety direction

Clause 198. Giving electrical safety direction

Clause 198 allows an inspector to issue an electrical safety direction if an inspector believes on reasonable grounds that an immediate electrical risk exists at a place. The direction may be given orally, but must be confirmed by written notice as soon as practicable. The clause sets out what must be in the direction.

The clause also creates an offence of not complying with the direction that has a maximum penalty of 1000 penalty units.

Division 6 Recall order

Clause 199. Making recall order

Clause 199 allows the Minister to make an order to recall electrical equipment if the Electrical Safety Regulator recommends to the Minister that the electrical equipment is placing, or will place, a person or property in electrical risk.

The clause sets out that such an order is directed to designers, manufacturers, importers or suppliers (as specified in the order) and that those so specified must offer the owners or users of the recalled electrical equipment one of the following options:

- to have the recalled equipment repaired to be safe from electrical risk and then returned to the owner or user;
- to have the recalled equipment replaced with equivalent or better electrical equipment that is safe from electrical risk;
- to be given compensation for the recalled equipment in accordance with guidelines from the Electrical Safety Regulator.

The clause sets out that the recall order must be in writing and that the Minister must publish a public warning about the electrical risk identified in the recall order in the Gazette, and on the Electrical Safety Regulator's website.

The clause also sets out that a recall order remains in force for 2 years after the day the order is made unless sooner revoked by the Minister; and that more than one recall order may be made for the same electrical equipment.

Clause 200. Notice before recommending recall order

Clause 200 requires the Electrical Safety Regulator, before recommending a recall order, to give the person to whom it is directed a written notice that:

- advises the person of the proposed recommendation; and
- the reasons for making the recommendation; and
- invites the person to show cause why the proposed recommendation should not be made.

Any written submissions made must be considered by the Electrical Safety Regulator prior to a recommendation being made.

Clause 201. Compliance with recall order

Clause 201 makes it an offence to not comply with a recall order, or to not assist a person (who has been specified in a recall order) in relation to that recall order, with a maximum penalty of 500 penalty units.

Clause 202. Interstate recall order

Clause 202 recognises recall orders made in another Territory or a State, and requires suppliers to comply with such orders in the Territory by:

- ceasing to sell that equipment; and
- doing all that is reasonably practicable to inform purchasers and users of the equipment that the equipment is being recalled; and
- doing all that is reasonably practicable to arrange for the recall of the equipment.

The clause makes it an offence to not comply with such an order; with a maximum penalty of 500 penalty units.

Clause 203. Supplier must assist responsible person

Clause 203 allows that a person given a recall order may request the supplier of electrical equipment for assistance in relation to the recall order. It is an offence, if requested to give reasonable assistance, to fail to give the other person reasonable help in relation to the recall order; with a maximum penalty of 50 penalty units.

Division 7 Non-disturbance notices

Clause 204. Issuing non-disturbance notice

Clause 204 allows an inspector to issue a non-disturbance notice on various grounds. It requires the notice to be written and that it must contain certain information including the grounds on which it was issued and the measures to be taken to preserve a site, prevent disturbance or otherwise facilitate the inspector's compliance powers.

The clause sets the expiry date of a non-disturbance notice as 7 days but allows a non-disturbance notice to be re-issued.

Clause 205. Compliance with non-disturbance notice

Clause 205 requires a person to comply with a non-disturbance notice with the maximum penalty for non-compliance being 500 penalty units. However it is a defence to a prosecution that the defendant did all that was reasonably practicable to comply.

The clause also allows certain activities to occur regardless of the non-disturbance notices including action that is essential to make the site safe or to prevent another (or ongoing) serious or dangerous electrical event or to assist an injured person.

Division 8 General requirements

This Division co-locates the provisions of a procedural nature that apply to all notices, directions and orders issued under this Part, unless otherwise specified.

Clause 206. Other content of direction, notice or order

Clause 206 provides clarification that a direction, notice or order may refer to a Code of Practice or standard and that the person to whom it is issued must be offered a choice of ways in which to comply with direction, notice or order.

It also clarifies that that a direction, notice or order may include recommendations. The difference between a direction and recommendation is that it is not an offence to fail to comply with recommendations.

Clause 207. Minor changes

Clause 208. Electrical Safety Regulator power to vary or revoke

Clauses 207 and 208 allow for notices, directions and orders to be varied or cancelled:

- clause 207 allows a person who made a notice, direction or order to make minor changes to it, and
- Clause 208 allows the Electrical Safety Regulator may vary or revoke notices and directions issued by inspectors.

Clause 209. Formal irregularities or defects

Clause 209 provides legal clarification that formal defects or irregularities in notices, directions or orders issued under this Part do not invalidate them, unless this would cause or be likely to cause substantial injustice

Clause 210. Methods of service

Clause 210 provides for methods of service of these notices, directions and orders. This should be read in conjunction with the *Interpretation Act 1978*.

Clause 211. Display of direction, notice or order

Clause 211 establishes requirements for a person issued with a notice, direction or order to prominently display said notice, direction or order while it is in force. This must be done as soon as possible. However there is no requirement to display notices that are stayed under review proceedings, as they would not be considered to be 'in force' for the period of the stay.

It is an offence to not comply with this clause or to damage a notice, direction or order that is displayed; with the maximum penalty for non-display being 50 penalty units while the maximum penalty for a person who intentionally removes, destroys, damages or defaces a notice being 100 penalty units.

Division 9 Remedial action

This Division allows the Electrical Safety Regulator to take any action the Regulator believes is reasonable to make a place or situation safe from electrical risk if an Electrical Safety Direction has not been complied with or an inspector is unable to identify a person to issue a Direction to.

This is an essential component of the powers and authorities the Regulator has to ensure and achieve electrical safety. However the phrase “reasonable” in these circumstances, is intended to imply that the Regulator should take the least interventionist approach possible, while making the place electrically safe.

As part of this minimalist approach, the Electrical Safety Regulator may instead of taking remedial action apply to the Work Health Court for a person who has been issued a direction, notice or order to be compelled to comply. This would have the double advantage of reducing the controversy of the Electrical Safety Regulator stepping into an issue and taking direct control at the expense of the person in control or the owner, and uses the powers of the Courts to enforce compliance.

Clause 212. Electrical Safety Regulator power to take action

Clause 212 allows the Electrical Safety Regulator to take remedial action in circumstances where a person issued with an Electrical Safety Direction fails to do all that is reasonably practicable to comply with the Direction. The Regulator may also take such action when there are grounds to issue a Direction but a Direction cannot be issued as the person with management or control of the place could not be found.

The regulator may take any remedial action it believes reasonable to make the place or situation safe if a Direction has not been complied with, but only after giving written notice to the alleged offender of the Regulator’s intent. The written notice must also state the owner’s or person’s liability for the costs of that action.

Clause 213. Costs of remedial or other action

Clause 213 enables the Electrical Safety Regulator to recover the reasonable costs of remedial action taken under clause 212 as a debt due to the Regulator. For costs to be recoverable from a person under clause 198, the person must have been notified of the regulator’s intention to take the remedial action and the person’s liability for costs.

Clause 214. Injunctions for non-compliance

Clause 214 allows the Electrical Safety Regulator to apply to the Work Health Court for an injunction to compel a person to comply with a direction, notice or order or restrain the person from contravening a direction, notice or order issued under this Part. Such an application may be sought in relation to a direction, notice or order even if any time for complying with the direction, notice or order has expired, or any proceedings are commenced for an offence relating to the direction, notice or order.

Division 10 Enforceable undertakings

Division 10 introduces another concept from the WHS Act – the allowance of written, enforceable undertakings to be given by a person as an alternative to prosecuting them. Such undertakings are voluntary—a person cannot be compelled to make an undertaking and the Electrical Safety Regulator has discretion whether or not to accept the undertaking.

An undertaking must not be accepted unless it provides safety benefits for the workplace, the electricity industry and the community.

It should be noted that an undertaking must not be accepted for a contravention or an alleged contravention that is a Category 1 offence under this Act or industrial manslaughter under the WHS Act. These offences are the most serious electrical safety and work health and safety offences, and involve reckless conduct by a duty holder that led to a death or exposed an individual to a risk of death or serious

illness or injury without reasonable excuse. The use of enforceable undertakings would not be appropriate in such circumstances.

Clause 215. Enforceable undertaking

Clause 215 sets out what an enforceable undertaking is and that a person who enters into one must do a number of things including one or more the following:

- to undertake one or more specified projects for the general improvement of electrical work or work health and safety within the period specified in the undertaking;
- to notify a person or a class of persons or the general public, as specified in the undertaking, the contravention and its consequences;
- to pay the reasonable costs of the Electricity Safety Regulator related to the alleged contravention, the undertaking and ensuring future compliance by the person.

An undertaking will have whatever terms of conditions the Regulator determines and will have a set date by which time all commitments will have been achieved and a method to monitor compliance.

Clause 216. Acceptance of undertaking

Clause 216 sets how that the Electrical Safety Regulator may accept an undertaking and in making a decision regarding the benefits of the undertaking the following must be considered:

- the nature and gravity of the conduct;
- the penalty provided for the conduct;
- the benefits of the proposed undertaking and the public interest;
- the interests of justice;
- any other factor that the Electrical Safety Regulator considers relevant.

The clause also sets out the benefits test, and that an undertaking cannot be accepted for certain contraventions, and that the decision of the Regulator is final and cannot be reviewed.

Clause 217. Effect on proceedings

Clause 217 prevents a person being prosecuted for a contravention or alleged contravention of the Act to which an undertaking relates if that undertaking is in effect or if the undertaking has been completely discharged.

The clause enables the Electrical Safety Regulator to accept an undertaking while a prosecution or disciplinary proceedings are on foot but before they have been finalised. The intention is that before a person has been convicted of an offence against the Act or regulations they may seek to enter an enforceable undertaking (i.e. to avoid a conviction or penalty). In such circumstances, the regulator is required to take all reasonable steps to have the prosecution or proceedings discontinued as soon as possible.

This clause also allows proceedings to be instituted or resumed against a person who gave an undertaking in respect of the alleged contravention if the undertaking is not complied with. A written notice must be provided to the person who entered into the undertaking advising them whether an undertaking was or was not complied with; and also to the Discipline Committee if appropriate.

The clause also establishes that the giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the alleged contravention.

Clause 218. Undertaking is enforceable

Clause 218 makes an undertaking enforceable and sets out how and when that occurs.

Clause 219. Variation or withdrawal of undertaking

Clause 219 provides that, with the written agreement of the Electrical Safety Regulator, a person who has made a WHS undertaking may withdraw or vary the undertaking, but only in relation to the contravention or alleged contravention to which the undertaking relates.

Clause 220. Order regarding contravention of undertaking

Clause 220 applies if a person contravenes an undertaking. Where, on an application by the Electrical Safety Regulator to the Local Court, the court is satisfied that the person has contravened the undertaking it may, in addition to imposing a penalty, direct the person to comply with the undertaking, or discharge the undertaking. The court may also make any other order it considers appropriate in the circumstances, including orders that the person pay the costs of proceedings and orders that the person pay the regulator's costs in monitoring compliance with the undertaking in the future.

The clause provides that an application for, or the making of, any orders under this clause will not prevent proceedings being brought for the original contravention or alleged contravention in relation to which the undertaking was made.

Clause 221. Publication of undertaking

Clause 221 sets out that in the interests of transparency, if the regulator accepts an undertaking or a variation or a withdrawal, the pertinent details must be published on the regulator's website along with compliance or lack of compliance.

Part 9 Enforcement proceedings

This Part sets out how prosecutions for alleged offences against this Act will occur, how evidence can be presented, and what sentencing options are available to the Courts. This Part has been strongly informed by the modern (bedded down) processes in the WHS Act as well as processes specific to electrical offences found in the *Electricity Reform Act 2000* and modern electrical safety legislation in other jurisdictions.

Division 1 Prosecutions and related matters

Clause 222. Bringing prosecutions

Clause 222 sets out that proceedings for an offence against the Act may only be brought by the Electrical Safety Regulator or an inspector acting with the written authorisation of the regulator, as well as the Director of Public Prosecutions.

Clause 223. Request for prosecution

Clause 223 sets out the process by which an interested party can request prosecution of a Category 1, 2 or 3 offence under the Act. It provides that a person may request the Electrical Safety Regulator initiate proceedings for a these offences if the person reasonably believes the occurrence of an act, matter or thing constitutes one of these offences and prosecution proceedings have not been commenced within six months of the occurrence constituting the alleged offence.

The clause stipulates that a request for prosecution must be made within twelve months of the occurrence constituting the alleged offence giving a 6 month window of time within which to request prosecution has not changed.

The request must be made in writing to the regulator and must specify the particulars of the occurrence and the grounds for the belief that one of these offences has been committed. A request may seek prosecution for more than one of these offence provided it relates to the same occurrence or conduct.

It requires the regulator to give written notice of a valid request for prosecution to the person who submitted the request and any person allegedly responsible for the offending conduct or occurrence. That Notice must be given by the regulator within three months of receipt of a valid request for prosecution and must contain the content stipulated by the clause for the regulator's notice.

The regulator is allowed to give notice via publication of the prescribed information on the regulator's website and does not need to provide a notice as set out above if the regulator has published current information as prescribed regarding the occurrence on its website. The information provided must not contradict the views of the DPP as to the merits of a prosecution regarding an occurrence.

Clause 224. Guidelines

Clause 224 requires the Electrical Safety Regulator to publish general guidelines on the prosecution of offences and the acceptance of undertakings. These guidelines must be published on the regulator's website.

Arguably, these guidelines will make a difference and assist in alleviating concerns regarding the limitation on prosecutions; however they do not in any way limit the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.

Clause 225. Referral to Director of Public Prosecutions

Clause 225 provides that the Electrical Safety Regulator must seek the views of the DPP as to the merits of a prosecution where the regulator has received a valid request for prosecution under section 223, or the regulator is considering a prosecution, in relation to a death. The regulator must provide the DPP will all relevant documents and evidence, as well as a copy of any request made.

The DPP must respond to the regulator's request for advice within 45 business days of receiving the documents and information. The DPP's response must specify the DPP's view as to the merits of a prosecution and whether the DPP consents to the initiation of proceedings relating to a death.

Clause 226. Consent to prosecution

Clause 226 stipulates that that Electrical Safety Regulator requires the consent of the Director of Public Prosecutions to bring proceedings for a Category 1, Category 2 or Category 3 offence in respect of a death.

Clause 227. Limitation period for prosecutions

Clause 227 sets out the limitation periods for when proceedings for an offence may begin. Proceedings must be commenced:

- within two years after the Electrical Safety Regulator became aware of offence under Part 2 (Electrical safety duties),
- within one year after a finding in a coronial or other official inquiry that the offence has occurred, or
- within 5 years of the occurrence of any other offence.

Reflecting the seriousness of Category 1 offences, the clause enables proceedings for such offences to be brought after the end of the applicable limitation period if fresh evidence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

The limitation periods provided balance the need of a duty holder to have proceedings brought and resolved quickly with the public interest in having a matter thoroughly investigated by the regulator so that a sound case can be brought. It also allows enough time for defects and offences of a technical nature to come to light and be prosecuted if necessary.

Clause 228. Multiple contraventions of electrical safety duty

Clause 228 modifies the criminal law rule against duplicity. This rule means that, ordinarily, a prosecutor cannot charge two or more separate offences relating to the same duty in one count of an indictment, information or complaint.

Unless modified, the rule could complicate the prosecution of electrical safety offences and impede a court's understanding of the nature of the defendant's breach of duty particularly when an offence is ongoing. For example, the duplicity rule might prevent a charge from including all the information about how the defendant had breached their duty of care because information about a second breach of the duty could not be provided in the prosecution for a first breach of that duty. Presenting only one aspect of a defendant's failure might deprive the court of the opportunity to appreciate the seriousness of the failure and result in inadequate penalties or orders being made.

Division 2 Evidence

This Division deals with how evidence will be presented to Court.

Clause 229. Statements of fact in complaint

Clause 229 sets out that in a proceeding for an offence against this Act, how and when statements of fact may be made in a complaint or information as evidence in respect of a number of physical elements of an offence. It also clarifies that documents purported to be published by certain authorities can be taken to be published by those authorities.

Clause 230. Certificate evidence

Clause 230 clarifies that certificates signed by the Electrical Safety Regulator can be used as proof of authenticity of certain documents and that a certificate regarding evidence signed by an analyst is to be taken to authenticate the evidence.

Clause 231. Expert report

Clause 231 requires an expert report to be presented in Court unless the Court allows otherwise. It established the authenticity of said report and differentiates from the certificate of analyse set out above.

Division 3 Court orders

Modern Australian work health and safety (including the WHS Act) and electrical safety laws provide courts with a variety of sentencing options in addition to the traditional sanctions of fines and custodial sentences. This is based on the belief that judicious combinations of orders can enhance deterrence, make meaningful action by an offender more likely, be better targeted and permit a more proportionate response. In these ways, the Act's goals of increased compliance and a reduction in electricity-related injury will be promoted. A range of sentencing options is provided for the court in Division 3. The court may:

- impose a penalty
- make an publicity order
- make a remediation order
- make an electrical safety project order
- release the defendant on the giving of a court-ordered undertaking
- make a training order.

Clause 232. Undertaking to Court

Clause 232 enables a court to adjourn proceedings, with or without recording a conviction, for up to two years and make an order for the release of an offender on the condition that an offender gives an undertaking with specified conditions. This is called a court-ordered undertaking.

Court-ordered undertakings must be distinguished from enforceable undertakings. Enforceable undertakings are given to the Electrical Safety Regulator and are voluntary in nature.

The clause sets out the conditions that must be included in a court-ordered undertaking including that the offender must not commit any offence against the Act during the period of adjournment and must observe any special conditions imposed by the court.

It allows the court to call on an offender to appear before it with the offender to be given not less than four days' notice of the court order to appear.

It also provides that when an offender appears before the court again, if the court is satisfied that the offender has observed the conditions of the undertaking, it may discharge the offender without any further hearing of the proceeding. However if the court is not satisfied it may resume the proceeding for the offence; and make any other orders or findings as may be appropriate.

Clause 233. Orders on conviction or finding of guilt

Clause 233 provides that one or more orders under this Division may be made against a person guilty of an offence against this Act. It also provides that orders can be made under this Division in addition to any penalty that may be imposed or other action that may be taken in relation to an offence.

Clause 234. Publicity orders

Clause 234 provides that a court may make a publicity order requiring a person to publicise the offence or notify a specified person or specified class of persons of the offence, or both. The offender must give the regulator evidence of compliance with the order within seven days of the end of the compliance period specified in the order.

Publicity orders can be an effective deterrent for an organisation that is concerned about its reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it.

The court may make an adverse publicity order on its own initiative or at the prosecutor's request.

The clause also enables action to be taken by the Electrical Safety Regulator if the Electrical Safety Regulator is not satisfied with the actions taken by the offender. The actions of the Electrical Safety Regulator must be approved by the court; and the regulator is entitled to recover from the offender reasonable expenses associated with it taking that action.

Clause 235. Remediation order

Clause 235 allows the court to order an offender to take steps within a specified period to remedy any matter (a remediation order) caused by the commission of the offence that appears to be within the offender's power to remedy.

The court is allowed to grant an extension of the period to allow for compliance, provided an application for extension is made before the end of the period specified in the original order.

Clause 236. Electrical safety project order

Clause 236 allows the court to make an order requiring an offender to undertake a specified project for the general improvement of electrical safety within a certain period. An electrical safety project order may specify conditions that must be complied with in undertaking the project.

Clause 237. Training order

Clause 237 allows a court to make an order requiring a person to undertake, or arrange for workers to undertake, a specified course of training. Training orders enable a court to make an offender take action to develop skills that are necessary to manage electrical safety effectively.

Clause 238. Offence to fail to comply with order

Clause 238 makes it an offence for a person to fail to comply with an order made under this Division without reasonable excuse.

Division 4 The Crown

The Crown is the legal embodiment of executive, legislative, and judicial governance in the Northern Territory. It most typically refers to an Agency of the Northern Territory Government.

Clause 239. Offences and the Crown

Clause 239 provides that if the Crown is guilty of an offence against the Act the penalty to be applied is the penalty applicable to a body corporate.

As the Crown is also an artificial entity that acts and makes decisions through individuals. The clause also provides that conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown is also conduct engaged in by the Crown. The conduct must be within the actual or apparent scope of the person's employment or authority.

The clause also clarifies that in proceedings against the Crown requiring proof of knowledge, intention or recklessness, it is sufficient to prove that the person referred to above possessed the relevant knowledge, intention or recklessness. This will also be the case if mistake of fact is relevant in determining liability in proceedings against the Crown for an offence against the Act.

Clause 240. Officers of the Crown

Clause 240 defines when a person will be an officer of the Crown for the purposes of the Act. A person will be taken to be an officer if they make, or participate in making, decisions that affect the whole or a substantial part of the business or undertaking of the Crown. However, when acting in their official capacity, a Minister of a State or the Commonwealth is not an officer for the purposes of the Act.

Clause 241. Responsible agency or instrumentality of Crown

Clause 241 provides that notices or documents for service on the Crown may be given to or served on the relevant responsible agency. It establishes which Agency will be the appropriate Agency for various types of notices or documents. The clause sets out that this also holds for infringement notices and allegations of offences under this Act.

The responsible agency in respect of an offence is entitled to act for the Crown in proceedings against the Crown for the offence. Also, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused are conferred or imposed on the responsible agency.

The prosecutor or the person bringing the proceedings to change the responsible agency during the proceedings with the court's leave.

The clause also includes rules governing what happens if the relevant agency of the Crown has ceased to exist.

Division 5 General provisions

This Division deals with other legal issues that may arise out of this Act.

Clause 242. Effect on civil liability

Clause 242 provides that nothing in the Act is to be interpreted as conferring a right of action in civil proceedings because of a contravention of the Act, conferring a defence to a civil action or otherwise affecting a right of action in civil proceedings, or as affecting the extent to which a right of action arises with respect of breaches of duties or obligations imposed by the regulations.

Clause 243. Disciplinary action and offences

Clause 243 clarifies that the taking of disciplinary action against a licence holder for a matter does not prevent a prosecution or a court-imposed penalty for the same matter.

Clause 244. Client legal privilege

Clause 244 provides that nothing in the Act requires a person to produce a document disclosing information or otherwise provide information that is the subject of legal professional privilege.

Clause 245. Protection from civil liability

Clause 245 provides that the Electrical Safety Regulator, members of the Electrical Safety Board, and inspectors are not personally liable for acts or omissions so long as those acts or omissions are done in good faith and in the execution or purported execution of their powers and functions. The protection provided by this sub clause is for civil liability only.

Inspectors, in particular, have a crucial role to play in the promotion of electrical safety and in eliminating or minimising serious risks to health and safety. They may be required to exercise judgment, make decisions and exercise powers with limited information and in urgent circumstances. As a result, it is important that they and others engaged in the administration of the Act are not deterred from exercising their skill and judgment due to fear of personal legal liability.

The clause clarifies that this protection from liability does not affect any liability the Territory would have for the act or omission.

Clause 246. No contracting out

Clause 246 deems void any term of any agreement or contract that purports to exclude, limit or modify the operation of the Act or any duty owed under the Act, or that purports to transfer to another person any duty owed under the Act. This upholds the principle that duties of care and obligations cannot be delegated therefore agreements cannot purport to limit or remove a duty held in relation to electrical safety matters.

Part 10 Other matters

Division 1 Review of decisions

This Division emulates and modernises the appeal provisions in Part 7 of the *Electricity Reform Act 2000* and Part 3 Division 5 of the *Electrical Workers and Contractors Act 1978*.

Certain decisions made by inspectors and the Regulator can be reviewed. This Division sets which decisions can be reviewed and who can apply to have them reviewed.

It sets out that for this Division, a reference to a decision by an inspector includes the following:

- (a) making, suspending, revoking or refusing to make an order, determination or decision;
- (b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue an authorisation;
- (d) imposing a condition;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, a thing;
- (g) doing or refusing to do any other act or thing.

It establishes that there is opportunity to request an Internal Review, of a decision of an inspector, by the regulator. Applications must be brought within the time allowed or a longer period permitted by the regulator.

The internal reviewer cannot be the person responsible for the initial decision. The internal reviewer must make a decision within 10 business days after receiving a valid application, although additional time is allowed if further information is required. The internal reviewer must confirm the initial decision, vary it, or set it aside in favour of another course of action.

The Division also creates the option of seeking an External Review at NTCAT if a person is dissatisfied with:

- any decision of the Electrical Safety Regulator or delegate of the Electrical Safety Regulator for which a decision notice is required under this Act (including with an Internal Review decision); or
- any decision of the Board or a committee of the Board for which a decision notice is required under this Act.

It should be noted that contrary to the WHS Act (where this appeals framework originated) an application for review does not automatically stay the operation of the decision until there is an outcome. However there is opportunity to seek a stay.

It should also be noted that NTCAT's practices and procedures will apply to the external review.

Clause 247. Meaning of decision

Clause 247 sets out what decisions of an inspector may be appealed under this Division

Clause 248. Application for review of inspector's decision

Clause 248 sets out how a decision shall be appealed including that it must be lodged with the Regulator within 20 business days after written notice of the decision being given to the person. It clarifies that an application for an Internal Review does not automatically stay the operation of the inspector's decision.

Clause 249. Review powers

Clause 249 sets out how the Regulator must deal with an application for a review.

It also allows that further information can be requested from the applicant and that more time for a Review is allowed if further information is requested from the applicant. However if the requested information is not provided in a reasonable time, the decision is affirmed.

It also allows the Regulator to delegate to another person or body the power to review decisions (as long as they were not the original decision maker or were involved in the decision) and that the Regulator may reject an application for Review if it is deemed frivolous or vexatious, or there are no grounds for the application.

Clause 250. Reviewing inspector's decision

Clause 250 sets out that the how the review should be conducted including that it must:

- take into account any matter that was required when the decision was made; and
- follow the procedures for review determined by the Electrical Safety Regulator; and
- comply with the rules of natural justice.

It also sets out that the outcome of the Review is one of these options:

- It affirms the decision; or
- It varies the decision; or
- It sets aside the decision and substitutes a new decision.

It requires a decision notice be given to the applicant and other affected parties stating the outcome of the review. It requires that this must be given to the applicant within 10 business days of either the receipt of the application or the additional information requested.

Clause 251. Review by NTCAT

Clause 251 sets out which decisions are reviewable by NTCAT as well as who is eligible to apply for such a review.

Clause 252. Effect of application on decision

Clause 252 clarifies that an application for a review by NTCAT does not stay the operation of the original decision.

Division 2 Regulation making powers

The function of regulations is to specify, in greater detail, what steps are required for compliance with the general duties in relation to particular hazards or risks.

Clause 253. Regulations

Clause 253 contains broad regulation making powers that allow for the making of regulations for or with respect to any matter relating to electrical safety and any matter or thing required or permitted by the Act, or necessary or convenient to give effect to the Act.

The Clause makes provision in relation to the nature of regulations that they may include:

- safety and technical requirements for electrical work;
- all matters about licences including the classes of licences;
- amendments, cancellations, suspensions and transfers of certificates and other authorities required under the regulation;
- prescribe fees,
- provide for the recovery of costs incurred by the Electrical Safety Regulator under the Act.
- prescribe other penalties for contravention of a regulation.

Part 11 Repeal and transitional provisions

This Act will completely replace the *Electrical Workers and Contractors Act 1978* and Regulations; and remove from the *Electricity Reform Act 2000* all matters pertaining to electrical safety including the Electricity Reform (Safety and Technical) Regulations 2000.

There is also the need to put in place transitional processes to ensure good governance can continue when the Act is enacted.

Division 1 Repeal of Electrical Workers and Contractors Act 1978

Clause 254. Act repealed

Clause 254 repeals the *Electrical Workers and Contractors Act 1978*. As that Act is repealed, its subordinate legislation, the Electrical Workers and Contractors Regulations 1984, are automatically repealed.

Division 2 Repeal of Electricity Reform (Safety and Technical) Regulations 2000

Clause 255. Regulations repealed

Clause 255 repeals the Electricity Reform (Safety and Technical) Regulations 2000.

Division 3 Transitional matters

Clause 256. Definitions

Clause 256 establishes that the transition actions will commence when the previous Acts are repealed.

Clause 257. Licences under former Act

Clause 257 clarifies that licences issued under the *Electrical Workers and Contractors Act 1978* that were valid immediately before the commencement are still valid with no changes to terms or conditions.

Clause 258. Applications under former Act

Clause 258 clarifies that applications for licences under the *Electrical Workers and Contractors Act 1978* for which no determinations have been made, will be actioned by the Electricity Safety Regulator in accordance with *Electrical Workers and Contractors Act 1978* rather than the new Act.

Clause 259. Electrical Safety Regulator

Clause 259 clarifies that the Electricity Safety Regulator appointed under *Electricity Reform Act 2000* becomes the Electrical Safety Regulator under the new Act.

It also clarifies that clarifies that any actions done and matters under consideration by the Executive Officer under the *Electrical Workers and Contractors Act 1978* for which no determinations have been made, will be actioned by the Electricity Safety Regulator in accordance with *Electrical Workers and Contractors Act 1978* rather than the new Act.

Clause 260. Electrical Workers and Contractors Board

Clause 260 sets out that the Electrical Workers and Contractors Board established under the *Electrical Workers and Contractors Act 1978* is abolished and all appointments to that Board terminated.

It also clarifies that matters under consideration by the Electrical Workers and Contractors Board for which no determination have been made, will be actioned by the Electrical Safety Board in accordance with *Electrical Workers and Contractors Act 1978* rather than the new Act.

Clause 261. Authorised Officers

Clause 261 clarifies that any Authorised Officer, reporting to the Electricity Safety Regulator, appointed under *Electricity Reform Act 2000* become inspectors under the new Act; and that their old identity cards are taken to be valid under the new Act.

Clause 262. Appeals

Clause 262 clarifies that an appeal of a decision of the Electrical Workers and Contractors Board that has already commenced in the Local Court but for which no decision has been made, will be determined in accordance with *Electrical Workers and Contractors Act 1978* rather than the new Act.

It further clarifies that an appeal of a decision of the Electrical Workers and Contractors Board that has not yet commenced will be determined by NTCAT in accordance with the new Act.

Clause 263. Safety management and mitigation plan

Clause 263 clarifies a safety management and mitigation plan that is a condition of a licence of an electricity entity under *Electricity Reform Act 2000* is taken to be a safety management and mitigation plan approved by the Electrical Safety Regulator under section 78 of this Act. It also confirms dates for assessment and expiry of the plans.

Clause 264. Transitional regulations

Clause 264 allows that a regulation may provide for a matter of a transitional nature.

Part 12 Consequential amendments

As parts of the *Electricity Reform Act 2000* have comeingled electrical safety with other regulatory activities in the electricity sector, a number of consequential amendments to the *Electricity Reform Act 2000* are needed to ensure its ongoing operation.

There are also requirements to amendments some other pieces of legislation.

Division 1 Amendment of Consumer Affairs and Fair Trading Act 1990

Clause 265. Act amended

Clause 266. Section 47 repealed (Compliance with standard for supply of electrical appliance)

Clauses 265 and 266 amend the *Consumer Affairs and Fair Trading Act 1990* to remove that Act's power to regulate matters relating to the safety of electrical appliances.

It should be noted that those powers were limited to a very small range of household whitegoods such as refrigerators, air conditioners and washing machines rather than the very broad range of electrical equipment the Electrical Safety Act captures.

Division 2 Amendment of Electricity Reform Act 2000

Clause 267. Act amended

Clause 267 establishes that this Division amends the *Electricity Reform Act 2000*.

Clause 268. Long title amended

Clause 268 amends the long title of the *Electricity Reform Act 2000*.

Clause 269. Section 3 amended (Objects)

Clause 269 updates the objects of the *Electricity Reform Act 2000*.

Clause 270. Section 4 amended (Interpretation)

Clause 271. Part 2, Division 2 repealed (Electricity safety regulator)

Clauses 270 and 271 removes the appointment of the Electricity Safety Regulator from the *Electricity Reform Act 2000*

Clause 272. Section 27 amended (Limitation on obligation to connect and distribute)

Clause 272 removes from the section of the *Electricity Reform Act 2000* that allows limitations on obligations to connect (to a network) and distribute (electricity) some references to safety and inserts references to the requirements under the new Act.

Clause 273. Section 41 replaced

Clause 273 updates the power of the Utilities Commission to take over operations of electricity entities to ensure it aligns with the new Act. It also modernises the power to allow the Minister to make a decision regarding a takeover rather than the Administrator.

Clause 274. Section 60 amended (Entry to inspect, etc., electrical installations)

Clauses 274 removes the authority for an electricity officer (who is an individual appointed by an electricity entity under the *Electricity Reform Act 2000*) to disconnect or reconnect installations on safety grounds.

Clause 275. Section 63 amended (Disconnection of supply if entry refused)

Clause 275 clarifies that an electricity officer can reconnect a premises or installation if it had been disconnected on the grounds (usually for non-payment of bills or costs) still remaining when the amended *Electricity Reform Act 2000* commences.

Clause 276. Part 4, Division 4 repealed

Clause 276 removes matters relating to vegetation management as they will now be in the new Act.

Clause 277. Part 4, Division 5, heading amended

Clause 277 amends the heading of Part 4, Division 5 as emergency powers will now be exercised by inspectors under the new Act.

Clause 278. Part 5 replaced

Clause 278 ensures that (regardless of previous clauses) an electricity officer can still take actions to ensure safety of the entity's electricity network.

This includes giving electricity officers the power to disconnect electricity supply to a place if supply or consumption of electricity is contrary to the new Act.

It also ensures that electricity officers have the power to disconnect, or give directions relating to, a cathodic protection system if it is contrary to the new Act.

The clause also creates an offence for reconnecting (without the proper approval and processes as per this Act) an installation that an electricity officer has disconnected or for not complying with a direction given by an electricity officer.

Clause 279. Section 72 amended (Appointment of authorised officers)

Clause 279 ensures an authorised officer (who is appointed under the *Electricity Reform Act 2000* by the Utilities Commission) can still take actions to ensure the compliance of electricity entities with the *Electricity Reform Act 2000*.

It also creates the ability of the Utilities Commission to appoint suitable persons as auditors to audit the operations of electricity entities. This function is inherent in the current conditions of licence granted to electricity entities but the actual power to make such an appointment was not previously expressly provided.

Clause 280. Section 77 amended (General investigative powers of authorised officers)

Clause 280 removes from the powers of an authorised officer the powers to ensure safety and investigate accidents. It also removes reference to the Electricity Safety Regulator.

Clause 281. Sections 78 to 80 repealed

Clause 281 removes the powers of an authorised officer to disconnect supply or a cathodic protection system, or make an installation safe.

Clause 282. Part 6, Division 3 inserted

Clause 282 allows the Utilities Commission to appoint auditors. This clause empowers the current licence condition the Utilities Commission use to audit the operation of an entity. These audits are typically for financial or governance purposes.

Clause 283. Section 82 repealed (Interpretation)

Clause 284. Section 83 amended (Review of decisions by relevant regulator)

Clause 285. Section 84 amended (Appeal)

Clauses 283, 284 and 285 update the references to reviews and appeals allowed under the *Electricity Reform Act 2000*.

Clause 286. Section 87 amended (Power of exemption)

Clause 287. Section 88 amended (Register of exemptions)

Clauses 286 and 287 update the references to exemptions granted under the *Electricity Reform Act 2000*.

Clause 288. Section 92 amended (Minimum standards of service for non-contestable customers)

Clause 288 removes from the Utilities Commission the power to include in their minimum standards of service for non-contestable customers provision for safety.

Clause 289. Sections 96 to 99 repealed

Clause 289 removes from the *Electricity Reform Act 2000* offences relating to safety.

Clause 290. Section 103 amended (Statutory declarations)

Clause 290 removes reference to the Electricity Safety Regulator.

Clause 291. Section 105 amended (Criminal liability of executive officer of body corporate)

Clause 291 removes reference to offences removed from the *Electricity Reform Act 2000*.

Clause 292. Section 109 amended (Evidence)

Clause 292 removes from the *Electricity Reform Act 2000* allowance for certain types of evidence that will now instead be relied on for prosecutions under the new Act.

Clause 293. Section 111 amended (Regulations)

Clause 293 removes the ability of the regulations made under the *Electricity Reform Act 2000* to refer to safety.

Division 3 Amendment of Electricity Reform (Administration) Regulations 2000

Clause 294. Regulations amended

Clause 295. Part 5 repealed (Vegetation clearance)

Clauses 294 and 294 remove from the *Electricity Reform (Administration) Regulations 2000* the regulations dealing with vegetation clearance.

Division 4 Amendment of Work Health Administration Act 2011

Clause 296. Act amended

Clause 297. Section 14 amended (Jurisdiction of Court)

Clauses 296 and 297 amend the *Work Health Administration Act 2011* to include the *Electrical Safety Act* and that the court of jurisdiction for certain matters is the Work Health Court.

Division 5 Amendment of Work Health and Safety (National Uniform Legislation) Regulations 2011

Clause 298. Regulations amended

Clause 298 establishes that this Division amends the *Work Health and Safety (National Uniform Legislation) Regulations 2011*.

Clause 299. Regulation 5 amended (Definitions)

Clause 299 updates the definitions to reference the new Act.

Clause 300. Part 4.7 repealed (General electrical safety in workplaces and energised electrical work) and regulations 725 to 729 repealed

Clause 300 removes Part 4.7 (General electrical safety in workplaces and energised electrical work) as that will be moved into the new Regulations under the new Act.

Clause 301. Schedule 19 amended (Infringement notice offences and prescribed amounts)

Clause 301 removes electrical work-related infringement notice offences and prescribed amounts as they will be moved into the new Regulations.

Division 6 Repeal of Part

Clause 302. Repeal of Part

Clause 302 sets out that the Bill creating the *Electrical Safety Act* is automatically repealed the day after it commences.