

PARTNER'S COMMENT

At Crisp, we have been keeping a close eye on interstate developments in utilities law. The Victorian and more recently Queensland governments have been steadily enacting legislation promoting the privatisation of energy utilities, specifically gas and electricity entities.

Interestingly, the NSW government has been slow to follow the lead of their interstate counterparts, though we are of the view that similar reforms are not far away here, particularly with regard to electricity, and possibly water. This edition discusses these trends.

FOLLOWING THE STATE OF ORIGIN - AND AGL

By *Mark Todhunter*

There are serious changes happening in the Deep North and NSW would do well to follow suit. Energy giants Origin and AGL have been having a field day with the Queensland government's sell-off of its public utilities, with the former netting Sun Retail late last year in a \$1.2 billion deal and the latter following up by finalising its takeover of Powerdirect on March 1 for just over \$1 billion. This was made possible by the Energy Assets (Restructuring and Disposal) Act 2006 (QLD), which came into force on 13th October 2006 and aims to "facilitate the disposal of particular gas and electricity businesses of energy entities, including by facilitating the restructure or sale of the entities".

This activity has brought attention to the situation in NSW and the increasing pressure on the current State government to effect similar policy. Indeed, many in the industry believe that forcing entities like Integral or Country Energy to try and compete in such a competitive market is counterproductive and expensive.

Indeed, post-election, it appears increasingly likely that the NSW energy market will begin to stir, creating a raft of opportunities for businesses to swoop in and purchase electricity companies from the government (whoever that may be after March 24). These opportunities will be open to companies that are reading the signs now and are prepared to take advantage. Such preparation involves, among other things, gaining an understanding of how the energy market works as well as the legislation and policy that regulates it.

It is firstly important to understand the interrelationship of the energy market on the state and national levels. The National Grid, created in 1998, gives us the National Electricity Code, which essentially acts as a national overseer of the state electricity markets, establishing service standards, investigating breaches, monitoring compliance and generally ensuring the efficient and safe handling of electricity Australia-wide. Much of the increase of private sector involvement in the Australian electricity industry from the 1990s is attributable to

this scheme. The Eraring Power Station at Lake Macquarie provides us with an interesting model of how private ownership and public regulation can work.

However, as far as business interests go, it is State law which actually regulates the electricity retail market. The Electricity Supply Act 1995 (NSW) is the major piece of legislation. It sets out the process for the granting of licences to deal in electricity, the restrictions and standardisations of the contracts required to be entered into by both retailer and customer and outlines the powers and duties that a company inherits when they enter this field. The Independent Pricing and Regulatory Tribunal (IPART) generally advises the government in the execution of its monitoring and regulating duties, including the granting, variation, transfer or cancellation of licences.

Currently, the NSW Government is in control of electricity generators Delta Electricity, Eraring Energy and Macquarie Generation; transmission operator TransGrid; and distributors Country Energy, Energy Australia and Integral Energy. Crisp predicts that these entities may soon become hot property so long as interstate trends continue. Such a process would either entail the enacting of specific legislation by the State government that corresponds with the licensing and safety requirements of the Electricity Supply Act, for each transaction (an example of which was the Eraring Power Station Act 1981 (NSW)), or the enacting of more general legislation to cover all large transactions (as was seen in Queensland, with the Energy Assets (Restructuring and Disposal) Act 2006).

However, all of the above restrictions and responsibilities need to be fully understood for a company to successfully enter the electricity market – but the rewards for doing so are obviously there, as demonstrated by the successes of Origin and AGL in Queensland.

At Crisp, we're ready for the next stage in NSW privatisation, are you?

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