allow a third party to intervene. The Tribunal came to the view that it need not consider its power to allow intervention at this stage but rather should rest its decision on the basis that if a power exists would the Tribunal exercise it in this case in applying principles according to equity, good conscience and the substantial merits of the case. The Tribunal was not satisfied that the applicant should be permitted to intervene and refused the application on the basis that the use of clause 17C is only a possibility at this time and if the Coal Compensation Board subsequently sought to exercise the set-off power under clause 17C, then the applicant could itself challenge that off-set on appeal to the Tribunal and that there would be no injustice to the applicant if it did not participate in the current appeals.

ELECTRICITY SUPPLY AMENDMENT ACT 2000[*]

The *Electricity Supply Amendment Act* provides the statutory framework for the completion of the introduction of full retail competition within the electricity market in NSW by amending the *Electricity Supply Act 1995* and related legislation. In Victoria analogous changes have been made to the *Electricity Industry Act 1993* in accordance with the provisions of the *Electricity Industry Acts (Amendment) Act 2000*. The *Amendment Act* is of importance to distributors, retailers, generators and small users of electricity within NSW.

It also may be of interest to other persons involved in the general energy market with the introduction of the Electricity Tariff Equalisation Fund.

The *Amendment Act* was passed on 20 December 2000. The majority of the provisions of the Act have now commenced.

The main changes to the *Electricity Supply Act 1995* made by the *Amendment Act* are as follows:

- the abolition of the distinction and significance of customers being classified as franchise customers (customers who must obtain their electricity from a particular electricity retail supply) and non-franchise customers. All customers (not just large consumers) will be able to choose from whom they wish to purchase their electricity ;
- the grant to certain small retail customers (details of who a small retail customer is will be determined by regulation) of the right to receive electricity from a retail supplier of electricity in accordance with standard regulated terms and prices. A small retail customer can elect at any time to decide to enter into separate electricity supply contract with a retail supplier of electricity;
- the introduction of separate retail licences. A company which is not an electricity distributor can now hold a retail supply licence. Under the previous provisions of the Electricity Supply Act retail licences were granted to electricity distributors. A retail supply licence may be endorsed requiring such a retailer to provide electricity on standard terms to small retail customers within a particular area;
- the grant of power to the Independent Pricing and Regulatory Tribunal to set regulated retail tariffs, determining the price which electricity must be sold to persons falling within the definition of a "small retail customer";

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[*] John Lawrie, Senior Associate, Allens Arthur Robinson

- the establishment of the Electricity Tariff Equalisation Fund. The Fund is established by sections 43EL-43ES of the *Amendment Act*. The key object of this fund is to manage the cost risk borne by retail suppliers who are required to supply electricity at regulated tariffs to small retail customers but whose costs of acquiring electricity in the wholesale electricity market are unregulated.

This is an interesting response by NSW to the problems such risk can have on retailers as exemplified recently in California where a number of retailers have faced insolvency on account of the dramatic materialisation of such risk (most notably Pacific Gas & Electric). The establishment and the effectiveness of the Fund in managing such risk will be relevant to other partially regulated energy markets. The Fund though has been criticised by the Australian Competition & Consumer Commission as being anticompetitive. The ACCC has warned that the Fund "could distort the national electricity market"[1].

NORTHERN TERRITORY*

STAMP DUTY

The Northern Territory's land-rich provisions, dealing with acquisitions of a majority interest in a land holding corporation or trust, have been amended effective from 1 July 2001 with reference to holdings of mining tenements or similar rights.

A land holder is an entity that is entitled to Northern Territory land worth more than $500,000 where the value of the entity's entire land holdings (wherever situated) exceeds 60% of the value of all of its property. The legislation had previously (as from 16 May 2000) been amended to include mining tenements and information relating to tenements within the meaning of Northern Territory land for the purpose of calculating the $500,000 thresh-hold.

The *Taxation (Administration) Amendment Act 2001*, with effect from 1 July 2001, now provides that mining tenements and other rights and interests similar in nature to mining tenements, and information relating to such tenements, rights and interests, wherever situated are to be included in calculating the value of an entity's entire land holdings for the 60% test.

MINING MANAGEMENT BILL 2001

The *Mining Management Bill 2001* and the *Mining Management (Consequential Amendments) Bill 2001*, referred to in (2001) 20 AMPLJ 12, were passed in the June/July sittings of the Legislative Assembly. They commence on a date to be specified by notice in the Gazette.

TRADE PRACTICES ACT – NORTHERN TERRITORY POWER AND WATER AUTHORITY

On 3 April 2001 Mansfield J in the Federal Court handed down his decision in *NT Power Generation Pty Ltd – v- Power and Water Authority*, a case involving a claim that Northern Territory Power and Water Authority (**PAWA**) and its subsidiary had breached section 46 of the

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1 Thursday, 8 July 2001 – Australian Financial Review, p3

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