Western Australia

Energy Operators (Powers) Act 1979

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Defined terms

Western Australia

Energy Operators (Powers) Act 1979

An Act to vest powers in energy operators, to make other provision in respect of the functions of those operators, and for related and other purposes.

[Long title inserted: No. 89 of 1994 s. 4; amended: No. 58 of 1999 s. 77; No. 24 of 2000 s. 14(13); No. 33 of 2004 s. 38.]

1. Short title

This Act may be cited as the *Energy Operators (Powers) Act 1979*.

[Section 1 amended: No. 89 of 1994 s. 5; No. 58 of 1999 s. 78.]

2. Commencement

The provisions of this Act shall come into operation on such day or days as is, or are respectively, fixed by proclamation.

*[**3.** Omitted under the Reprints Act 1984 s. 7(4)(f) and (g).]*

4. Terms used

(1) In this Act, unless the context otherwise requires —

acquisition in relation to land or any estate or interest in land includes taking or resumption, and cognate expressions have a corresponding meaning;

apparatus means any apparatus, equipment, plant, or appliance in which energy is capable of being, or is, or is intended to be transmitted, distributed, used, consumed or converted, and includes any meter, fitting, or connection;

charges includes any sum due from the consumer to an energy operator pursuant to section 62(1);

consumer installation includes all wiring, piping, apparatus and other works not being the property of the supplier of energy on any premises to which energy is, or is intended to be, supplied from the position at which the delivery of energy is made;

Coordinator of Energy means the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*;

distribution works means any works, apparatus or system, utilised or capable of being or intended to be utilised for the purpose of transmitting or distributing energy to consumers and includes any other equipment or plant used in conjunction therewith, and any part thereof;

electricity corporation means a body established by the *Electricity Corporations Act 2005* section 4(1);

energy includes electrical, hydro-electrical, chemical, thermal, tidal, nuclear, or solar energy and all other kinds of energy however derived, of whatever form or description, or however used, and the term extends to comprise the source or sources of any such energy;

energy operator means —

(a) an electricity corporation if regulations have not been made for the purposes of section 45(1) of the *Electricity Industry Act 2004*;

(b) in a prescribed provision as defined in section 45(1) of the *Electricity Industry Act 2004*, a person who, under that section, is included in a reference in that prescribed provision to an energy operator;

(c) in a provision of this Act referred to in Schedule 2 Part 1 or 2 of the *Energy Coordination Act 1994*, a person who, under section 11ZO of that Act, is included in a reference in that provision to an energy operator;

(d) in a provision to which paragraphs (b) and (c) both apply, a person referred to in either of those paragraphs;

generating works means any works, apparatus or system whatsoever utilised or capable of being or intended to be utilised for the production or generation of energy, or for the manufacture or treatment or storage of energy for supply or use, or for the conversion of energy from one form into another, up to the point at which transmission or distribution commences for the purposes of making supply, and includes all land, building, structures and appurtenances pertaining thereto, any other equipment or plant used in conjunction therewith, and any part thereof;

government department or ***department*** includes any branch of the Public Service of the State established as a Department within the meaning of that term as defined in the *Public Service Act 1978* [1], but also means any other body established by an Act being a body that —

(a) administers or carries out in the State functions in the public interest on behalf of the Crown in right of the State or which carries out the function of a public utility; and

(b) is declared by the Governor, by Order in Council, to be deemed to be a government department for the purposes of this Act;

but where such an Order specifies that a body is only to be deemed to be a government department for the purposes of the provisions of this Act specified in that Order means that body in relation to those provisions but not otherwise;

inspector means a person appointed as such pursuant to section 68;

land includes land covered by water, and shall be construed in accordance with section 36;

liquid petroleum gas means a liquid or vapour which is a mixture of hydrocarbons basically consisting of butane or butene or propane or propene, or any mixture of all or any of them;

meter includes any device designed or adapted for the purpose of ascertaining a measure, and any other device used in conjunction therewith to facilitate that purpose;

officer includes any person, acting within the authorisation conferred upon him, to whom subsection (2) applies;

premises means any land, street, structure, or other place, and may include a vehicle or other thing in or in connection with which energy is or is to be supplied;

service apparatus means any works, apparatus or system which is or is capable of being or is intended to be used for the purpose of conveying, measuring, or controlling energy supplied from any distribution works to the position on any premises at which delivery of the energy is, is capable of being, or is intended to be, made to the consumer, and includes any part of the service apparatus, and any other equipment or plant used in conjunction therewith, whether or not the property of the energy operator concerned;

street includes any highway, road, thoroughfare, lane, alley, square, court, or place of public passage;

supply system may include the generating works, distribution works, and service apparatus pertaining thereto;

system emergency means any event or circumstances to which section 57(1) applies;

undertaking includes works of whatever description used or intended to be used for the purpose of enabling or facilitating the prospecting for, obtaining of, or the generation, conversion, development, storage, distribution, provision or use of energy, and also includes any necessary or convenient lands, water, mines, quarries, buildings, structures, equipment, plant, apparatus, services, facilities, and other works or means provided or used for or in connection therewith, together with any activities, studies, projects, administrative arrangements, legal entities, securities or financial arrangements, concessions, rights, patents, contracts, or other things relating thereto;

works includes any works, excavation, construction, or thing used or intended to be used for the purposes of a supply system or undertaking.

(2) Where a provision of this Act authorises an energy operator to enter upon, occupy, carry out works in, on, over or under, or exercise any other power in relation to, any land, premises, or thing the provision shall be construed as also authorising —

(a) an officer or servant of the energy operator, acting on behalf of the energy operator in the course of his duty; or

(b) a person acting at the request and on behalf of the energy operator under a contract or pursuant to an Agreement of the kind referred to in section 5(1)(b) and any employee of such a person so acting,

together with such vehicles, vessels, machinery or equipment as may be necessary for the purpose, to exercise that power for the purposes of this Act, and any reference to or liability of the energy operator may where the context so requires be construed accordingly.

[Section 4 amended: No. 101 of 1981 s. 3; No. 24 of 1986 s. 5; No. 89 of 1994 s. 6, 39 and 41; No. 14 of 1996 s. 4; No. 58 of 1999 s. 79, 83(1) and (3) and 90; No. 24 of 2000 s. 14(13); No. 33 of 2004 s. 39; No. 18 of 2005 s. 139; No. 25 of 2013 s. 41.]

5. Application of this Act to other Acts, the law generally, and to certain Agreements

(1) In so far as the provisions of this Act would be inconsistent with the operation of that Act or the implementation of that Agreement, but subject to subsection (2) and subsection (3), nothing in this Act shall affect or be construed to derogate from the operation of —

(a) any Act; or

(b) any Agreement to which the State is a party and which, or the execution of which, is or has been ratified, authorised or approved by an Act,

whereby any right or power is conferred upon any person, whether corporate or unincorporate, with respect to the production, manufacture, or generation of energy, or with respect to the conversion, acquisition, provision, distribution, supply, sale, or use of energy, in the manner and for the purposes thereby authorised, or shall injuriously affect or interfere with the exercise and enjoyment of any such right or power so conferred.

(2) To the extent that the exercise of a power vested in an energy operator by this Act would not be inconsistent with the operation of an Act or the implementation of an Agreement, or to the exercise and enjoyment of any right or power of the kind referred to in subsection (1), the power so vested in the energy operator may be exercised by the energy operator.

(3) Where by virtue of an Agreement of the kind referred to in subsection (1)(b) an energy operator would not otherwise be authorised so to do, in so far as the energy operator is authorised pursuant to the consent of the parties to any such Agreement to acquire any undertaking or any part of any undertaking, or to exercise any power, then such authorisation may provide that the provisions of this Act or such of those provisions as are specified therein shall apply in any such case, notwithstanding subsection (1), and effect shall be given thereto according to the tenor of the authorisation.

[Section 5 amended: No. 89 of 1994 s. 7, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

6. Application of this Act to the Crown, government departments, and local governments

(1) This Act binds the Crown —

(a) to the extent that the Crown is a consumer; and

(b) in respect of its provisions relating to matters of safety; and

(c) in relation to land vested in the Crown in right of the State,

but not otherwise.

(2) Where in relation to a provision of this Act any question, difference, or dispute arises, or may arise, between an energy operator and any government department or local government as to the rights, powers or authority of, or the discharge of any duty by, the energy operator, or as to their respective functions or interest, then —

(a) where the matter relates to a government department — the Minister charged with the administration of that government department may consult with the Minister;

(b) where the matter relates to a local government — the local government shall refer the matter to the Minister charged with the administration of the *Local Government Act 1995*, who may consult with the Minister,

and where the Ministers so agree after such consultation the Minister shall give to the energy operator such directions as result from the consultation, but where no such consultation is concluded or if the Ministers can not agree as to the matter the matter may be finally and conclusively determined by the Governor and effect shall be given to any such determination.

(3) The Governor may finally and conclusively determine any question, difference or dispute arising or about to arise in relation to a provision of this Act between an energy operator and any government department or local government with

respect to the exercise of any right, power, or authority or the discharge of any duty whether or not referred to him under subsection (2) and whether or not the Ministers had purported to agree pursuant to that subsection, and effect shall be given to any such determination.

[Section 6 amended: No. 24 of 1986 s. 6; No. 89 of 1994 s. 39 and 41; No. 14 of 1996 s. 4; No. 58 of 1999 s. 83(1) and (3).]

*[**7-15.** Deleted: No. 89 of 1994 s. 8.]*

*[**16.** Deleted: No. 24 of 1986 s. 13.]*

*[**17-19.** Deleted: No. 89 of 1994 s. 8.]*

*[**20-25.** Deleted: No. 24 of 1986 s. 15.]*

*[**26, 27, 27A.** Deleted: No. 89 of 1994 s. 8.]*

28. Powers of energy operators

[(1), (2) deleted]

(3) An energy operator may —

[(a), (b) deleted]

(c) enter upon and occupy any land or other premises and there, without being bound to acquire the same or any estate or interest therein (except where otherwise provided by this Act or such as may be required by a claimant to be taken under Part 9 of the *Land Administration Act 1997*) by the best available route and in a practicable manner, construct, extend, or improve works, maintain and conduct undertakings and facilities, and carry on undertakings or works requisite, advantageous, or convenient to the exercise and performance of the functions of the energy operator or any such function;

(d) acquire by agreement any land, either as to the whole of the interest of the grantor or by way of an estate or interest less than the title, estate, or interest of the grantor;

(e) compulsorily acquire land, or any estate or interest in land, under Part 9 of the *Land Administration Act 1997*, for the purposes of a public work carried out or to be carried out by the energy operator.

[Section 28 amended: No. 101 of 1981 s. 12; No. 36 of 1984 s. 2; No. 24 of 1986 s. 17; No. 89 of 1994 s. 9 and 41; No. 31 of 1997 s. 26(1) and 142; No. 58 of 1999 s. 83(2) and (3).]

*[**29-35.** Deleted: No. 89 of 1994 s. 10.]*

36. Estates and interests in land

For the purposes of this Act, and in Part 9 of the *Land Administration Act 1997*, when construed for the purposes of this Act, a reference to ***land*** shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto, and to any legal or equitable estate, right, title, easement, lease, licence, privilege, or other interests in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land (whether or not that interest is an interest recognised by the Common Law) the extent of which is ascertainable by reference to the documents purporting to relate thereto.

[Section 36 amended: No. 31 of 1997 s. 142.]

37. Partial interests in land

(1) Where, whether by way of agreement or by way of a compulsory taking under Part 9 of the *Land Administration Act 1997*, an energy operator seeks to acquire an estate or interest in or relating to any land that is less than is held by the person from whom the acquisition is sought, the energy operator may, subject to section 45(12), acquire such lesser estate or

interest and shall not be required to acquire the whole of the estate or interest held by that person.

(2) Where the estate or interest of an energy operator is recorded on, or by way of memorial in the register relating to, the title to the land —

(a) that estate or interest shall enure for the benefit of the energy operator and run with the land notwithstanding any sale, subdivision or other dealing with that land by the owner or occupier for the time being, but any such estate or interest may be relinquished by the energy operator; and

(b) the benefit of any right, restriction or covenant in relation to the use of land granted to or held by the energy operator may be enforced by the energy operator to the like extent as if the energy operator were possessed of adjacent land for the benefit of which the same was to enure.

(3) Except where the estate or interest to be acquired under this section is one of a particular kind prescribed by reference to a standard form or abbreviated description pursuant to section 38, a description sufficient to identify that estate or interest shall be set out in any notice served under Part 9 of the *Land Administration Act 1997*, or any document of transfer when that notice or document of transfer is read together with any plan or other document to which that notice or document of transfer refers.

[Section 37 amended: No. 89 of 1994 s. 39 and 41; No. 31 of 1997 s. 26(2) and 142; No. 58 of 1999 s. 83(1) and (3).]

38. Conveyancing by abbreviated description

(1) Regulations made under this Act may, subject to the approval of the Minister administering the *Transfer of Land Act 1893*, make provision for the use of a standard series of forms describing the more frequently occurring particular kinds of estate or interest

less than fee simple which an energy operator acquires pursuant to this Act, and where the estate or interest to be acquired by an energy operator is of one of the particular kinds so prescribed it may, —

(a) subject to subsection (2), be described in the prescribed abbreviated manner in any transfer under the provisions of the *Transfer of Land Act 1893*, or in any notice served under the *Public Works Act 1902* or the *Land Administration Act 1997*, for the purposes of this Act; and

(b) where the estate or interest is of a kind that is not required to be transferred in accordance with the provisions of the *Transfer of Land Act 1893*, be transferred in the prescribed manner,

by reference to the appropriate prescribed standard form.

(2) For the purposes of section 170(5)(b) of the *Land Administration Act 1997*, the copies of the notice shall be accompanied by a description of the estate or interest to be acquired and by a copy of any plan or other documents referred to in the notice.

[(3) deleted]

(4) Where an energy operator acquires an estate or interest in any land less than is held by the person from whom it was so acquired, then there shall be endorsed upon the deed, certificate, or other instrument evidencing the title to the land from which the estate or interest acquired is derived a note, whether or not by way of a prescribed abbreviated description, as to the estate or interest acquired and that deed, certificate, or other instrument shall be returned to the person from whom it was received or to any person entitled to receive it on his behalf.

(5) The description of an estate or interest acquired pursuant to section 37 which the energy operator does not require to be recorded on, or by way of memorial in the register relating to,

the title to the land in question may be delineated by reference to a plan other than a survey plan.

[Section 38 amended: No. 89 of 1994 s. 39 and 41; No. 31 of 1997 s. 26(3)-(6); No. 58 of 1999 s. 83(1) and (3); No. 33 of 2004 s. 40.]

39. Agreements incidental to land matters

(1) In order to facilitate the acquisition of, or dealing with, land to be acquired, an energy operator may enter into agreements relating to incidental matters and things necessary to give effect to the powers of the energy operator.

(2) Where the fee simple of, or any other estate or interest in, any land is vested in an energy operator but the energy operator for the time being does not require the exclusive use and occupation of the land then —

(a) section 191 of the *Land Administration Act 1997* shall not have effect in relation to that land notwithstanding that it is not being used for a public work where the energy operator certifies to the Minister administering the *Land Administration Act 1997* that the land —

(i) will in the future be required to be used for a public work within the meaning of the *Public Works Act 1902*; or

(ii) is presently or may in the future be so required but the requirement does or may not extend to a requirement for exclusive use and occupation;

and

(b) the energy operator may grant to any person —

(i) a lease or licence to occupy the land or any part of the land, either exclusively or concurrently with the energy operator; or

(ii) any other interest in or right to use that land or any part of that land.

(2a) Where a lease, licence or other interest or right granted in relation to land under subsection (2) is stated in that grant as being by way of consideration for the acquisition of the land, or an estate or interest in the land, by an energy operator the grant shall not be revoked without compensation unless the parties otherwise agree.

(3) Where an energy operator exercises the powers conferred by subsection (2), then unless an agreement entered into between the energy operator and the person to whom the lease, licence, interest or right is granted otherwise provides, the grant —

(a) shall be deemed to be subject to a condition that the energy operator shall be indemnified against any costs, damages, claims, or expenses arising therefrom; and

(b) subject to subsection (2a) may be terminated without any liability for compensation thereby arising, on not less than 21 days prior written notice.

[Section 39 amended: No. 24 of 1986 s. 18; No. 89 of 1994 s. 11, 39 and 41; No. 31 of 1997 s. 26(7) and 143; No. 58 of 1999 s. 83(1) and (3).]

40. Power to dispose of land

(1) Subject to subsection (2) but otherwise in accordance with Part 9 of the *Land Administration Act 1997*, an energy operator may sell or otherwise deal with any land, or any estate or interest in land, acquired by or vested in the energy operator for the purposes of the performance of its functions where —

(a) that land, or that estate or interest, is no longer required for such purposes; or

(b) that estate or interest is of a kind not considered by the energy operator to be necessary or appropriate for a particular purpose, notwithstanding that the land, or an estate or interest in the land, is required for such purposes.

(2) Where any such land, estate or interest acquired by or vested in the energy operator was not acquired by way of compulsory taking for any public work sections 187, 188, 189, 190, and 191 of the *Land Administration Act 1997* shall not have effect in relation thereto.

[Section 40 amended: No. 24 of 1986 s. 19; No. 89 of 1994 s. 12, 39 and 41; No. 31 of 1997 s. 26(8) and 142; No. 58 of 1999 s. 83(1) and (3).]

41. Planning approvals

For the purposes of section 135 of the *Planning and Development Act 2005*, an energy operator may submit to the Western Australian Planning Commission plans of a subdivision of land acquired, or to be acquired, by the energy operator notwithstanding that the energy operator is not the owner of the land, and approval under that Act may be given thereto.

[Section 41 amended: No. 84 of 1994 s. 46; No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3); No. 38 of 2005 s. 15.]

42. Energy operator to have certain rights to water

(1) Subject to this Act, and in particular to subsection (2), an energy operator may use waters to which the *Water Agencies (Powers) Act 1984* or a relevant Act within the meaning of that Act applies, and subject to those Acts may erect, construct, build and maintain such dams, storages, sluiceways and other works and make such diversions as the energy operator may consider necessary for the effectual control and use of those waters by the energy operator.

(2) The rights and powers of an energy operator under subsection (1) shall be exercised by the energy operator in such manner and to such extent as will cause the least interference with —

(a) the powers, authorities and functions of a licensee as defined in the *Water Services Act 2012* section 3(1), the

Minister administering the *Water Agencies (Powers) Act 1984* and any statutory authority within the meaning of that Act; and

(b) the rights, benefits and privileges of other persons under the Acts referred to in subsection (1).

[Section 42 amended: No. 24 of 1986 s. 20; No. 89 of 1994 s. 13, 39 and 41; No. 73 of 1995 s. 188; No. 58 of 1999 s. 83(1) and (3); No. 38 of 2007 s. 193; No. 25 of 2012 s. 210.]

43. Property in works

(1) Where any works or other things are or have been placed upon, in, over or under any land by —

(a) an energy operator, in the performance or purported performance of its functions; or

(b) any predecessor in title of an energy operator, in relation to those works or other things,

those works or other things shall be taken to have been lawfully so placed and are, and shall at all times continue to be, the property of the energy operator, unless the energy operator has otherwise specified or may otherwise determine, and the energy operator shall be deemed to have a right of access thereto for the purposes of the performance of its functions.

(1aa) Where any works or other things are or have been placed upon, in, over or under any land by a person under an agreement or arrangement —

(a) entered into by the energy operator in the performance or purported performance of its functions; and

(b) under which the property in those works or other things is to pass to the energy operator on the occurrence of an event specified in the agreement or arrangement (the ***transfer event***),

those works or other things shall be taken to have been lawfully so placed and, on and from the transfer event are, and shall at all

times continue to be, the property of the energy operator, unless the energy operator has otherwise specified or may otherwise determine, and the energy operator shall be taken to have a right of access to them for the purposes of the performance of its functions.

(1a) Where for the purposes of any agreement or arrangement entered into by an energy operator it has transferred or conveyed to another person the property or any other interest in any works or other things placed in, over or under any land but continues to manage or maintain such works or other things whether for itself or for or on behalf of any other person the energy operator, and the transferee and any successor in title of such transferee and their servants and agents, shall be deemed to have a right of access thereto for the purposes of carrying out the agreement or arrangement.

(2) An energy operator and any person or body of persons authorised by the energy operator in that behalf may demolish or destroy on, or remove from, any land occupied by it, any plant, machinery, equipment, apparatus, buildings, road, or other works placed or constructed thereon to which subsection (1) or (1aa) applies.

[Section 43 amended: No. 36 of 1984 s. 3; No. 30 of 1987 s. 7; No. 89 of 1994 s. 14, 39, 40 and 41; No. 58 of 1999 s. 83; No. 33 of 2004 s. 41.]

*[**44.** Deleted: No. 89 of 1994 s. 15.]*

45. Claims against the energy operator for the use of land and the application of the *Land Administration Act 1997*

(1) Subject to subsection (3), an energy operator shall not be liable to pay compensation for, or in respect of any damage attributable to, the placing of any works or other things to which section 43(1) applies or by virtue of the grant of the right of access deemed by that subsection to be vested in the energy operator.

(2) No claim lies against an energy operator by reason of any loss of enjoyment or amenity value, or by reason of any change in the aesthetic environment, alleged to be occasioned by the placing of works of the energy operator on any land.

(3) No claim lies against an energy operator by reason of the placing of any works of the energy operator upon, in, over or under any land, other than a claim —

(a) pursuant to section 120; or

(b) under Part 10 of the *Land Administration Act 1997*, as read with this section, where the energy operator —

(i) is by this or any other Act required; or

(ii) by reason of the nature of the works there placed, the nature of the locality in which the works are placed, the safeguarding of particular works, public safety, future development proposals, or otherwise, elects,

to acquire the land or an estate or interest in the land.

(4) Notwithstanding the powers conferred by sections 28(3)(c) and 46, an energy operator is, except where the land is land to which subsection (15) applies, required to acquire, where practicable by agreement but otherwise pursuant to Part 9 of the *Land Administration Act 1997*, as read with this section, such land, estate, or interest as may in the opinion of the energy operator be appropriate to its needs in respect of —

(a) generating works; and

(b) all electricity transmission works operating at 200 000 volts or above; and

(c) all gas transmission works operating at 2 Megapascals or above; and

(d) such other transmission works as may be prescribed by regulation under this Act as works to which this subsection shall apply.

(4A) In subsection (4)(a) —

generating works does not include a stand-alone power system (as defined in the *Electricity Industry Act 2004* section 3(1)) that is being constructed, installed, operated or maintained —

(a) in accordance with the regulations and the Code made under the *Electricity Industry Act 2004* Part 8 and the electricity system and market rules (as defined in the section 3(1) of that Act); or

(b) by the Regional Power Corporation in accordance with the regulations, the Pilbara Networks Access Code and the Pilbara networks rules made under the *Electricity Industry Act 2004* Part 8A; or

(c) by the Regional Power Corporation in accordance with its powers under the *Electricity Corporations Act 2005* and the regulations made under the *Electricity Industry Act 2004* Part 8A.

(5) Where in the performance of its functions an energy operator determines that any land, or any estate or interest in land, is required to be acquired by the energy operator otherwise than by agreement the power to do so shall be exercised under and in accordance with, and any compensation payable by the energy operator in pursuance of such powers shall be assessed, determined and recovered under, Parts 9 and 10 of the *Land Administration Act 1997*, as read with this section.

(6) A claim for compensation made under this section may only be made once, and where any land, estate, or interest is acquired by an energy operator no further claim in respect thereof shall lie against the energy operator notwithstanding any subsequent works of the energy operator affecting that land, estate or interest unless it is shown that the original claim paid did not take into account the nature of the damage subsequently occurring.

(7) Any entry upon, or acquisition of, land authorised by or under this Act and any works carried out by an energy operator in the

performance of its functions shall be deemed to be for the purposes of a public work within the meaning of the *Public Works Act 1902*, the energy operator shall be deemed to be a local authority within the meaning of that Act authorised to effect that acquisition under Part 9 of the *Land Administration Act 1997* or undertake that public work under the *Public Works Act 1902*, the date of first entry under this Act shall be regarded as the date of the taking of the land for the purposes of section 241(2)(c) of the *Land Administration Act 1997* in order to ascertain the value of the land, and that Act shall apply to and in respect thereto accordingly in so far as that Act is not inconsistent with this Act.

[(8) deleted]

(9) For the purposes of this Act, where an energy operator so requires the energy operator may exercise any power that is by the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* vested in the relevant Minister and in so far as that Act applies, or those Parts apply, to the compulsory taking of any land, or the entry on, occupation or use of any land, pursuant to this Act any reference in that Act or those Parts to the relevant Minister, or to the department of the Public Service principally assisting the relevant Minister in the administration of that Act or those Parts, may be read for the purposes of this Act as a reference to the energy operator and that Act or those Parts may be construed accordingly.

(10) Subsection (9) does not prevent the relevant Minister from exercising the relevant Minister's powers under the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* on behalf of an energy operator when requested by the energy operator to do so.

(11) Where an energy operator fails to serve an offer on a claimant against the energy operator for compensation under Part 10 of the *Land Administration Act 1997*, within the time limited for that purpose by that Act, then the Minister administering that

Act may at any time thereafter serve an offer on behalf of the energy operator, and such offer shall be deemed to be an offer duly made by the energy operator for the purposes of that Act.

(12) A written objection served pursuant to section 175(1) of the *Land Administration Act 1997*, in relation to any proposed taking or resumption for the purposes of an energy operator may request —

(a) that instead of the whole estate or interest in the land being acquired, such a lesser estate or interest as is sufficient for the purposes of the energy operator be acquired; or

(b) that instead of an estate or interest less than the whole being acquired, the whole estate or interest in the land be acquired,

and the Minister, after consultation with the energy operator, may direct that the proposed taking or resumption be varied accordingly.

(13) Where any land is compulsorily acquired under Part 9 of the *Land Administration Act 1997*, for the purposes of an energy operator under this Act or any other Act that land shall, on the registration of the relevant taking order made under section 177 of that Act, be vested in the energy operator for the purpose of the public work for which the land is acquired, by force of section 179 of that Act as read with this subsection; save that the Minister administering that Act may, by that taking order, declare that any specified estate, interest, right or privilege of any person to the use, occupation or enjoyment of the land so acquired by the energy operator, or any specified part of that land, may continue for the period therein specified or until terminated by that Minister by a subsequent order under that Act, and may provide that such continued use, occupation or enjoyment shall not be taken to be in satisfaction or part satisfaction of the compensation claimed, and effect shall be given thereto.

(14) Where, whether by agreement or compulsory acquisition, any land (including any estate or interest in land to which section 36 applies), is vested in an energy operator and the land thereby affected is taken by any other person, body or authority under or by virtue of Part 9 of the *Land Administration Act 1997*, then notwithstanding section 179 of that Act —

(a) the land or the estate or interest vested in the energy operator shall continue to be so vested, unless the energy operator otherwise agrees; and

(b) the energy operator shall be deemed to be a person having an interest in the land, estate or interest to be taken for the purposes of section 202 of that Act.

(15) The requirement imposed by subsection (4) does not extend to land which is vested in, or is otherwise occupied or managed by or on behalf of, the Crown in right of the State, a government department, or a local government.

(16) In subsections (9) and (10) —

relevant Minister means the Minister administering the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997*, as the case requires.

[Section 45 amended: No. 24 of 1986 s. 21; No. 89 of 1994 s. 16, 39 and 41; No. 14 of 1996 s. 4; No. 31 of 1997 s. 26(9)-(18) and 142; No. 58 of 1999 s. 80 and 83(1) and (3); No. 24 of 2000 s. 14(13); No. 33 of 2004 s. 42; No. 9 of 2020 s. 31(2); No. 1 of 2024 s. 52.]

46. The power of entry, generally

(1) In this section, a reference to a ***power of entry***, and cognate expressions, includes a reference to the power of an energy operator to carry out the works or perform the duties and exercise the powers necessary to achieve the purpose for which entry on the land, premises or thing affected is sought, and to occupy that land for those purposes.

(2) Where due notice has been served upon the owner or occupier of that land, premises or thing an energy operator may for the purposes of this Act or any other Act that confers powers on the energy operator, including the purposes referred to in subsection (10), lawfully enter on to any land, premises or thing not under the control or management of the energy operator notwithstanding that the energy operator has not obtained the consent of the owner or occupier, but except as is otherwise provided in this Act such an entry shall not be lawful unless notice has been served or such consent has been obtained.

(3) The power of entry conferred by this section does not authorise or require an energy operator to acquire any interest in any land except such as —

(a) the energy operator elects to acquire by agreement; or

(b) the energy operator elects to lawfully take under Part 9 of the *Land Administration Act 1997*, as read with section 45; or

(c) the energy operator is required to acquire pursuant to section 176 of the *Land Administration Act 1997*.

(4) A notice required by this Act to be given in relation to any entry shall specify the purpose for which entry is required and shall continue to have effect for so long as that requirement subsists, and successive entries for that purpose shall be taken to be entries to which the notice relates.

(5) Where the power of entry is for any reason exercised without the prior service of a notice required under this Act, it shall be the duty of an energy operator to cause notice of the nature of the entry and of any other powers exercised to be given thereafter where that is practicable.

(6) A notice served pursuant to this section for the purposes of the exercise of the power of entry shall not be taken to have effect as a notice for any of the purposes for which a notice is required under Part 9 of the *Land Administration Act 1997*.

(7) Where it is shown to the satisfaction of a Justice of the Peace that entry on or into any land, premises or thing is reasonably required by an energy operator for the purpose of the performance of a function of the energy operator but that entry has been refused or the entry is opposed or prevented, or in any case where such land, premises or thing is unoccupied and access cannot be obtained or a notice required by this Act cannot be served without undue delay or difficulty, the justice may, by warrant in the form prescribed by regulations made under this Act, authorise the energy operator by its officers or servants, together with such other persons as are named in the warrant, or any police officer, to enter upon the land, premises or thing, using such force as may be necessary, for the purpose therein specified and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.

(8) Where in the opinion of an energy operator circumstances have arisen that may occasion undue delay in effecting entry on or into any land, premises or thing or in the carrying out of any works but the provisions of subsection (7) are not appropriate to the circumstances, the energy operator may apply to the Supreme Court ex parte by notice of motion, notwithstanding that no cause or matter between the parties is before the Court or that no previous notice has been given to any party affected thereby, for the grant of an injunction prohibiting the persons therein specified from opposing or preventing the exercise by the energy operator of its powers, or for an order directing the energy operator as to the exercise of powers conferred by this Act in the circumstances specified in that order, or for both such an injunction and such an order.

(9) The owner or occupier of any land, premises or thing supplied with energy by an energy operator or in, on or over which any works of the energy operator are lawfully situate shall be deemed to have given consent to the energy operator to enter and re-enter thereon or therein at all reasonable times for the

purposes of the performance of its functions in relation to any such supply or works and no notice under this Act is required unless an agreement in writing entered into by that owner or occupier with the energy operator in relation thereto otherwise provides.

(10) Where in the opinion of an energy operator entry upon any land is necessary for the purposes of inspecting or examining any land to determine the feasibility of the use of that land for the purposes of the performance of its functions, or as preliminary to any prospective or intended acquisition of that land or any estate or interest in that land, and the energy operator does not elect to exercise the powers conferred by Subdivision 2 of Division 3, or Division 4, of Part 9 of the *Land Administration Act 1997* or section 82 of the *Public Works Act 1902*, the energy operator may make entry for such purposes.

(11) Where an energy operator intends to exercise any of the powers conferred by this section or section 49, notice in writing of that intention shall, where practicable, be given by the energy operator to the owner or occupier of the land, premises or thing to be affected not less than 5 days before the power is to be exercised, save where this Act otherwise provides.

(12) An energy operator responsible for the operation of existing distribution works may without prior notice enter on any street under the control of a local or other statutory authority and there exercise such of the powers conferred by section 49 as are of a minor or routine nature and are related only to the maintenance or extension of those works, but where any exercise of the powers conferred by that section is likely to affect the use or surface of any such street or the position or use of any pipe, sewer, drain or tunnel then notice in writing of the intention to carry out the works specified therein shall be given by the energy operator to the authority concerned unless subsection (13) or section 48 applies.

(13) Where the purpose of the entry upon any land is to correct a defect in supply as a matter of urgency, notice shall be given to all persons likely to be affected by the entry where, and as soon as, it is practicable (unless section 48 applies) but the entry may be effected forthwith.

(14) Where an energy operator enters on to any land, premises, or thing without prior notice for the purpose of exercising any power of the energy operator to carry out works thereon then, wherever practicable, as soon as may be thereafter notice in writing of the entry and of the works carried out, and of any further intention of the energy operator relating thereto, shall be given to the owner or occupier of the land affected.

(15) Where the owner of any unoccupied land, premises or thing is not within the State, or for any other sufficient reason it is not possible to give to any person, body or authority the notice required by this Act, then for the purposes of this Act the notice shall be deemed to have been given if it has been affixed or displayed on or over a conspicuous part of the land, premises or thing concerned and left so affixed or displayed for at least 5 days.

(16) Whenever an energy operator, by its officers, servants or agents, enters or has entered on or into any land, premises or thing the officer of the energy operator responsible for the conduct of the entry shall, on request, produce evidence of his appointment and of the authority under which the energy operator claims a right of entry.

[Section 46 amended: No. 89 of 1994 s. 17, 39, 40 and 41; No. 31 of 1997 s. 26(19) and (20) and 142; No. 58 of 1999 s. 83; No. 33 of 2004 s. 43.]

47. Service of notice by post on owner or occupier

Save as otherwise expressly provided any notice or demand required by or under this Act to be given or served on the owner or occupier of any land or other premises may (in addition to or

instead of any other mode of service) be served by post by prepaid letter addressed to the owner or occupier by that description, and in proving the service it shall be sufficient to prove that the notice or demand was properly addressed to the land or premises in question and was put into the post.

48. Rights as to entry on lands etc. in emergency

(1) Where it appears to an energy operator, or a person authorised under the provisions of section 4, that by reason of —

(a) actual or apprehended danger to any person or property; or

(b) the occurrence of injury or damage attributable, or which might be attributable, to any defect in, or any malfunction, misuse or improper use of, any supply system or consumer installation; or

(c) an urgent necessity to restore or provide a supply of energy to any place or person; or

(d) damage to or interference with a supply system generally; or

(e) any other matter,

the circumstances are such that an emergency situation exists which makes compliance with the normal requirements of this Act impractical or unreasonable, then, while those circumstances subsist and for so long thereafter as is reasonably required in relation thereto, the energy operator or that person may lawfully effect immediate entry on or into any land, premises or thing necessary to deal with the emergency situation, and there exercise all such powers as are by this Act conferred on the energy operator or that person and are reasonably required to deal with that situation, without any requirement for a notice or warrant and by force of this subsection.

(2) Any question as to what is a necessary entry may be determined by the officer of an energy operator or other person authorised

by this section to effect or direct the entry and any question as to what powers are reasonably required to deal with a situation to which subsection (1) refers may be determined by the person responsible for the exercise of the power, and in any proceedings arising therefrom such a determination shall be presumed, in the absence of evidence to the contrary, to have been made in good faith.

(3) An energy operator or other person authorised pursuant to this section shall, as soon as may be, as regards any land, premises or thing entry on or into which was effected for the purposes of this section —

(a) remove or cause to be removed any machinery, equipment or other thing under the control of the energy operator or that person and not necessarily remaining as part of the measures to deal with the emergency; and

(b) where the emergency arose in relation to a supply system or other matter owned by the energy operator or for which the energy operator is otherwise responsible, make good any physical damage or effect restoration, rehabilitation or restitution,

and for that purpose the provisions of section 120 shall be construed as though a reference to the energy operator included a reference to any other person authorised pursuant to this section.

(4) Where entry is effected on or into any land, premises or thing under this section in respect of an emergency situation arising in relation to a supply system or other matter for which an energy operator is not responsible, the energy operator may recover as a debt from the person who is responsible for that supply system or other matter the costs of any expenses incurred in dealing with that emergency situation and of making good any physical damage thereby occasioned.

[Section 48 amended: No. 24 of 1986 s. 22; No. 89 of 1994 s. 39, 40 and 41; No. 58 of 1999 s. 83.]

49. General powers relating to works

For the purposes of, and subject to this Act, an energy operator may exercise the power —

(a) to enter upon any land which may be required to be used for the purposes of the energy operator and there make surveys, clear lines of sight, take levels, make or set up beacons, trenches or other marks, sink bores, take soil or other samples and do any other acts or things whatsoever necessary for the investigation or demarcation of such lands; and

(b) to enter upon any land, and dig, fell, remove, store, or utilise any earth, stone, gravel, sand or other soil, timber or trees, or other material required for the purpose of the construction or maintenance of any part of any undertaking or works of the energy operator; and

(c) to enter upon any land, premises, or thing and set up, lay down, establish, maintain, utilise, and operate, any supply system, or any undertaking or other related things necessary for the establishment or maintenance of any supply system, in, over, under, or through any such land, (including any shore of the sea or any stream or water) premises or thing, and at any time to inspect, service, maintain, replace, repair, or alter, or remove, any such system, undertaking or things; and for that purpose to —

(i) break, excavate and remove any soil to the extent and depth required; and

(ii) utilise water; and

(iii) make or alter watercourses drainage, means of access and transit; and

(iv) remove, reconstruct, or provide buildings, wharves, and other structures; and

(v) remove or carry out any works;

and

(d) to cause any distribution works or service apparatus or related things to be supported by affixing or annexing them to or against any part of a house, building or other structure (subject to the condition that if the owner or occupier wishes to rebuild or alter that house, building or other structure, such of those works, apparatus, or things as are not so attached for the sole purpose of providing a supply of energy for the use of that owner or occupier shall at the cost of the energy operator be removed but may, if so required by the energy operator, be affixed to the new structure); and

(e) to open, or alter the position of, any pipe, sewer, drain, tunnel, or other works within or under any land or premises and, subject to the energy operator taking all reasonable steps to notify the intention of the energy operator to the authority having the care or management thereof, and subject to section 51, to alter the position of any such works (not being works the property of the Australian Telecommunications Commission of the Commonwealth) or any other thing situate over or under any street; and

(f) to do all such other things as may be necessary or convenient for constructing, maintaining, altering, repairing, or using any supply system, undertaking, or related works,

and for any such purpose the energy operator may occupy any land or premises, and may remove, or erect a gate in, any fence (taking all reasonable steps to notify the owner and occupier of the land on which, or on the boundary of which, the fence is erected).

[Section 49 amended: No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

50. Restrictions on the exercise of the general powers

In the exercise of the powers conferred under section 49 an energy operator shall ensure that so far as is reasonable and practicable —

(a) the free use of any land, street, shore or water is not obstructed; and

(b) any works or installations fixed or crossing above the surface of any land, or of any navigable waters, are at a sufficient height or are otherwise so dealt with as to ensure that a source of danger is not likely to be constituted thereby in the course of any reasonable utilisation of that land or water; and

(c) as little detriment or inconvenience is caused and as little damage is done as is possible,

and section 120 applies in respect of any damage thereby occasioned.

[Section 50 amended: No. 89 of 1994 s. 39; No. 58 of 1999 s. 83(1).]

51. Alteration to works in streets

Subject to section 52, where an energy operator considers it necessary at any time to alter the position of any works which are laid in, over or under any street and are under the control or management of any person or local or other authority then it may by notice in writing request any such person or authority concerned to effect the alterations in such manner and within such reasonable time as shall be specified in that notice, and if that notice is complied with the reasonable expenses incurred by that person or authority attendant upon or connected with those alterations shall be repayable by the energy operator, but where that notice is not complied with the energy operator may at its own

cost cause such alterations to be made to those works as are required by the energy operator.

[Section 51 amended: No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

52. Street levels and widths

(1) Where an energy operator proposes to place any works in any street, the local or other authority responsible for determining the level of that street shall, within 14 days of the service of a written request from the energy operator, furnish the energy operator with particulars of any ascertained or proposed levels, or method of surfacing, of that street, and in default of the furnishing of those particulars the existing contour of the street shall for the purposes of the energy operator relating to those works be deemed to be the level.

(2) A local or other authority having the control and management of any street shall give an energy operator at least 7 clear days' notice in writing of its intention to alter the level or width or the surfacing of any street in which any works of the energy operator have been placed, but, whether or not such notice is given, if by reason of any such alteration the energy operator considers it necessary to relocate any such works then the costs of such alteration shall be a debt due from the local or other authority to the energy operator.

(3) Where the notice required by subsection (2) is not given, the authority concerned shall be liable to make full compensation to the energy operator for any loss, damage or costs arising from or in relation to any such alteration.

[Section 52 amended: No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

53. Streets broken up to be reinstated without delay

(1) Where an energy operator opens or breaks up the surface of any street or pavement the energy operator shall —

(a) with all convenient speed complete the work for which it is broken up, and fill in the ground, and reinstate and make good the surface so opened or broken up; and

(b) while any portion of the street or pavement continues to be opened or broken up, cause that portion of the street or pavement to be clearly marked with warning notices or otherwise guarded and a sufficient light to be kept there at night.

(2) An energy operator shall indemnify and keep indemnified any local or other authority from and against all actions, claims, proceedings, loss, damage, costs, or expenses for which that authority may be liable arising from or relating to any acts or omissions of the energy operator done or omitted to be done contrary to subsection (1) in relation to any street or pavement under the control and management of that authority.

[Section 53 amended: No. 89 of 1994 s. 39, 40 and 41; No. 58 of 1999 s. 83.]

54. Duty and powers, as to vegetation causing interference

(1) It shall be the duty of the occupier of any land on or over which vegetation is growing to fell or lop, or to remove or otherwise deal with, in such manner as is reasonable in the circumstances, so much of any vegetation as is necessary to prevent it interfering with or obstructing, or becoming likely to interfere with or obstruct, the construction, maintenance or safe use of any supply system.

(2) Where in the opinion of a responsible officer of an energy operator the duty imposed by subsection (1) has not been carried out —

(i) if the interference or obstruction is occasioned solely in relation to premises or apparatus on the land (not being a street or other public place) from which the vegetation is growing, and the occupier of that land so consents; or

(ii) in any other case, (but where the vegetation has been planted or cultivated, only if the occupier of the land at the point at which the vegetation interferes or obstructs the supply system has been requested by notice in writing to carry out the work but has not done so within such period, not being less than 3 days, as is specified in the notice, and has been given a reasonable opportunity to make representations as to the manner in which the work should be effected),

the energy operator may enter upon the land without notice and clear or remove the vegetation so far as is necessary causing as little damage as is practicable.

(3) The reasonable cost of the clearance or removal of vegetation pursuant to subsection (2) may be recovered by the energy operator from the occupier of the land as a debt due to the energy operator, if that vegetation had been planted or cultivated, and for the purposes of this subsection a local government which has planted or encouraged the planting of vegetation on land not occupied by any other person shall be deemed to be the occupier of that land.

[Section 54 amended: No. 89 of 1994 s. 39 and 41; No. 14 of 1996 s. 4; No. 58 of 1999 s. 83(1) and (3).]

*[**55.** Deleted: No. 8 of 2006 s. 4.]*

*[**56.** Deleted: No. 58 of 1999 s. 54.]*

57. Distribution system emergencies

(1) In this section —

distribution system means distribution works and service apparatus pertaining to distribution works;

system emergency means any event or circumstance arising or reasonably expected to arise in relation to any distribution system —

(a) by reason of which the ability of the operator of the distribution system to maintain a supply of energy from the distribution system is, or may reasonably be expected to be, affected (and for the purposes of this section a reference to a distribution system is taken to extend to any act, matter or thing which affects, or in the opinion of the operator or the Minister may affect, the supply of energy or the obtaining or manner of delivery of any energy or energy resource); and

(b) by reason of which —

(i) any life or property is or may be endangered; or

(ii) the normal operation of the whole or any part of the distribution system has been, or may be, or should be interrupted, curtailed or terminated; or

(iii) the capacity of the distribution system is for any reason insufficient to satisfy any demand or anticipated demand by supply in the normal manner;

and

(c) which, in the opinion of the operator of the distribution system, requires the immediate exercise of the powers conferred by subsection (2) or which, in the opinion of the operator or the Minister, requires the exercise of the powers conferred by subsection (3).

(1a) If a system emergency exists in relation to a distribution system, the operator of the distribution system is to notify the Minister

of the system emergency as soon as practicable after becoming aware of it.

(2) Where a system emergency exists which by reason of the nature of the emergency does not reasonably allow reference to the Minister (which reference shall in any event be made as soon as practicable) the operator of the distribution system may take all such immediate measures as shall seem to it appropriate to avoid or mitigate the emergency, or to ensure the continued distribution of energy in such manner as to it seems possible and which it deems to be necessary or proper.

(3) When a system emergency exists —

(a) the Minister may make any order that the Minister considers necessary, to provide for —

(i) the distribution of the kind of energy affected and the control, regulation, imposition of restrictions upon, curtailment, interruption, prohibition, or termination, of the supply or use of the kind of energy affected, to or by any person or class of persons, or upon any premises or class of premises, within the whole or any portion of the State, or for any particular purpose or purposes, for such period or periods as may be specified in the order; and

(ii) the exemption of any person or class of persons, or of any premises or class of premises, or of any place or institution or class of place or institution, from the operation of the whole or part of the order;

and

(b) the Minister may and is hereby empowered to take all and any such measures as the Minister considers appropriate in relation to the event or circumstances giving rise to the system emergency, or in relation to the consequences of that emergency as are intended to

diminish the effect of, or to terminate, that emergency including measures to discontinue supply to any person, body or authority who or which in the opinion of the Minister is contravening the provisions of any such order; and

(c) the Minister may by order delegate, either generally or specifically, to an energy operator any power of the Minister under this section.

(3a) An energy operator to whom a power is delegated under subsection (3)(c) cannot delegate that power but can perform it through a member of its staff or an agent.

(3b) An energy operator exercising a power that has been delegated to it under subsection (3)(c) is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(4) Any order made pursuant to subsection (3) may be renewed, cancelled or varied by a subsequent order so made.

(5) An order made pursuant to subsection (3) shall have effect and the force of law in the portion of the State therein specified on and from the time of the making of the order, or such other subsequent date as is specified in the order, and shall cease to have effect 7 days thereafter unless previously renewed or cancelled.

(6) An order made pursuant to subsection (3) shall be published for general information in such portion of the State as is affected by the order as soon as practicable and in such manner as the Minister considers likely to be appropriate having regard to the circumstances and what may be practicable, and it shall be confirmed thereafter by notice in the *Government Gazette* setting out the time and date on which it was made and the time, date and manner of its original publication, and if the original manner of publication was not by means of a notice in a newspaper shall be made known in that manner as soon as circumstances permit.

(7) The cancellation or variation of an order does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that cancellation or variation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding any other enactment.

(8) Notwithstanding any obligation or duty of the operator of a distribution system, or of the Crown in right of the State, to effect or continue any supply of energy of the kind affected by the system emergency neither the operator or any officer or servant of the operator, nor the Minister or the Crown in right of the State, shall be liable for any interruption, diminution, or termination of any such supply, or for any loss or damage consequential upon such an interruption, diminution, or termination of supply, if that interruption, diminution, or termination arises by reason of any act of the operator or any officer or servant of the operator made in good faith in the exercise or in purported exercise of the powers contained in this section.

(9) While a system emergency exists and for so long afterwards as the circumstances reasonably require, a person given powers by this section may, without notice and without any warrant other than this subsection, immediately enter onto or into any land, premises or thing if it is necessary to do so to exercise any of those powers.

(9a) Any question as to what is a necessary entry may be determined by the person exercising the power of entry, and in any proceedings the question is to be presumed, in the absence of evidence to the contrary, to have been determined in good faith.

(9b) A person exercising a power of entry given by this section is required, as soon as practicable, to —

(a) remove or cause to be removed any machinery, equipment or other thing that the person brought or caused to be brought onto or into the land, premises, or thing for the purpose for which entry was made; and

(b) make good any physical damage caused in the course of exercising the powers for the purposes of which entry was made, or pay compensation or effect restoration, rehabilitation or restitution.

(9c) If entry is effected under this section for the purpose of exercising powers under subsection (3), the Minister may recover as a debt from the operator of the distribution system concerned the costs of any expenses incurred in dealing with the system emergency, including any expenses incurred in complying with obligations under subsection (9b).

(9d) While an order under subsection (3) is in force, any person authorised by the Minister in writing to do so may, without prior notice, enter premises supplied with energy of the kind to which the order relates and there make any search or examination necessary to determine whether the order is, in respect of those premises, being contravened in any respect.

(9e) Without limiting anything in this section, the Minister may do anything the Minister considers necessary to prevent the occurrence of a system emergency.

(10) Any person —

(a) obstructing a person acting pursuant to any power, authority or discretion conferred by this section; or

(b) contravening an order made pursuant to subsection (3),

is guilty of an offence.

Penalty:

(a) in the case of a natural person $5 000; and

(b) in the case of a body corporate $50 000.

[Section 57 amended: No. 24 of 1986 s. 23 and 42; No. 89 of 1994 s. 39 and 41; No. 78 of 1995 s. 37; No. 58 of 1999 s. 55; No. 33 of 2004 s. 44.]

58. Energy operator may not be bound to supply

(1) Except in so far as —

(a) an energy operator is expressly charged with a particular duty to do so in relation to any specific person, body, authority, premises or circumstances by or pursuant to this Act or any other Act; or

(b) an energy operator is required to do so by or pursuant to any contract or agreement to which the energy operator is a party, whether made under the authority of or brought within the provisions of any Act,

the energy operator is not bound to supply energy to any person, body or authority.

(2) Notwithstanding that an energy operator may be expressly charged with a particular duty to effect or continue any supply of energy, or to effect, maintain or continue any such supply having particular characteristics, qualities or specifications, or is required so to do by or pursuant to any contract or agreement (except to the extent to which subsection (4) applies) or has in any other case effected from time to time a supply of energy, or such a supply having particular characteristics, qualities or specifications, then the energy operator shall nevertheless not be liable to effect, maintain or continue the supply of energy, or a supply having those particular characteristics, qualities or specifications, and shall not be required to pay compensation for or be liable in respect of any penalty, loss or damage thereby arising, if that supply —

(a) is of a nature or extent that, in the opinion of the energy operator, will require an expenditure which the energy operator is unwilling to incur unless the person, body, or authority seeking to effect, maintain or continue such supply enters into an agreement with the energy operator under subsection (3) relating to the supply; or

(b) is such that, in the opinion of the energy operator, it should be refused, curtailed or in some manner limited so as to ensure that any waste, nuisance, or undue consumption is prevented or remedied or that the available supplies or reserves of energy are conserved, whether for the time being or permanently; or

(c) would in the opinion of the energy operator, interfere with, or adversely affect, any supply system, or cause annoyance to, or interfere with or otherwise adversely affect the supply of energy to, other persons, or would appear, in the opinion of the energy operator, to be unsafe or dangerous to life or property; or

(d) relates to any land, premises or thing where —

(i) any installation or apparatus provided or installed by any person, or the manner of use of the energy, or any other matter or thing, is not in compliance with a requirement previously made known by the energy operator, whether or not a prescribed requirement, applicable thereto; or

(ii) any service apparatus provided or installed by or belonging to the energy operator has been interfered with or has not been maintained in compliance with a requirement previously made known by the energy operator, whether or not a prescribed requirement, applicable thereto;

or

(e) is affected by reason of measures taken in respect of a system emergency pursuant to section 57; or

(f) is prevented, interrupted, curtailed, reduced or detrimentally affected by reason of any cause other than a negligent act or omission on the part of the energy operator or an officer, servant or agent of the energy operator.

(3) Where an energy operator is by reason of the operation of this Act or any other Act at liberty to refuse to effect supply or to refuse to continue any supply the energy operator may nevertheless effect or continue such supply if the person, body or authority seeking to effect, maintain or continue the supply enters into an agreement with the energy operator relating to the supply on such terms and conditions as the energy operator thinks fit, including without limitation a condition that the person, body or authority is to pay to the energy operator the cost, as determined by the energy operator, of appropriate network development.

(3a) In subsection (3) —

appropriate network development means extending, or increasing the capacity of, the supply system to enable supply to be effected, maintained, or continued in accordance with the agreement, and it includes making those extensions or increases in capacity in a way that accommodates future demands on the supply system that the energy operator might anticipate, whether or not the demands of the person, body, or authority entering into the agreement.

(4) Where any contract or agreement executed by an energy operator under its Common Seal so stipulates effect shall not, or shall to the extent stipulated but not otherwise, be given to subsection (2)(a) in relation to that contract or agreement.

[Section 58 amended: No. 24 of 1986 s. 24; No. 89 of 1994 s. 20, 39 and 41; No. 58 of 1999 s. 83(1) and (3); (correction to reprint in Gazette 22 Nov 2002 p. 5533); No. 53 of 2003 s. 113.]

59. Energy operator may supply, with or without contract

Where an energy operator in the performance of its functions enters into contracts in writing for, or agreements in relation to, the supply or sale of energy or for providing apparatus or works required in connection with the supply or sale of energy or for maintenance or repair purposes, in relation to any such contract

or agreement the charges, conditions and any other matters relating to supply which have been or are prescribed pursuant to regulations or by-laws made under this Act shall be applicable unless the contract or agreement otherwise expressly provides.

[Section 59 amended: No. 89 of 1994 s. 21; No. 58 of 1999 s. 83(1).]

60. Repudiation of existing contracts, and unwritten contracts

(1) In this section —

(a) a reference to ***supply or sale*** shall be construed as including a reference to the provision of any apparatus or works, or the carrying out of any maintenance or works; and

(b) a reference to ***terms*** shall be construed as a reference to the charges from time to time applicable and to the conditions of supply or provision generally.

(2) Where —

(a) a supply or sale of energy is effected or continued by an energy operator and no contract in writing is applicable thereto; or

(b) a contract is repudiated and subsection (4) applies,

the supply or sale, or the matters to which the repudiated contract relate, shall be deemed to be, and shall be deemed always to have been, entered into subject to and in accordance with the terms and any other matters relating to such supply or sale applying as at the time when the supply or sale was effected in so far as those terms or other matters were lawfully, or are deemed lawfully to have been, or are set out in a relevant schedule, tariff or table published by the energy operator or were or are set out in the regulations or by-laws made under this Act or any other Act, and to be subject thereafter from time to time to any relevant variation specified in any such regulation or by-law.

[(3) deleted]

(4) From and after the repudiation of a contract under this section an energy operator may effect or continue any supply or sale to a person but that supply or sale shall be taken to be a supply or sale to which no written contract applies, and the energy operator may recover the charges applicable to that supply or sale as though no such contract had applied.

(5) Where a contract is repudiated by an energy operator under this section any moneys due or to become due to the energy operator under that contract shall be apportioned as at the date of the repudiation and shall be recoverable by the energy operator in so far as they relate to the period prior to the repudiation.

[Section 60 amended: No. 89 of 1994 s. 22, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

61. Agreements to supply beyond normal range

(1) Where the owner or occupier of land makes application in writing to an energy operator to supply energy to a place on that land and the place is beyond the normal point from which the energy operator is prepared to supply energy in the performance of its functions, the energy operator may supply energy to that place or such other place on the land as the energy operator may determine if the applicant agrees with the energy operator in writing to do all or any of the following things, namely —

(a) to pay the energy operator for the energy so supplied to him subject to such of the terms and conditions of supply as would from time to time have been applicable to him had he been a consumer to whom energy was supplied, for a like purpose at that place, by the energy operator otherwise than on the basis of a contract;

(b) to pay to the energy operator within 3 months, or such further period as the energy operator may agree, after the agreement is made such amount as the energy operator by that agreement may specify by way of capital

contribution, being the amount which the energy operator anticipates will be the cost of appropriate network development;

(c) to pay to the energy operator a maintenance provision, being the amount which the energy operator considers will be required for the purposes of meeting the costs of depreciation or replacement, maintenance, administration, and incidental matters relating to the works in question, either —

(i) by negotiation with the energy operator, by way of a capitalised amount calculated by reference to the capital contribution which in the opinion of the energy operator will thereafter produce a revenue sufficient to make provision for such costs; or

(ii) by way of periodic instalments on demand, pursuant to such agreement, of such amount, at such times, and over such period not exceeding 30 years, as may be therein specified,

as the energy operator, having regard to the circumstances of the case, may require and for the purposes of this section and of all agreements made under this section, or section 32A of the *State Electricity Commission Act 1945* [2] as from time to time amended, a reference to maintenance shall be construed as including, and always having included, a reference to the felling, lopping, or removal of, or any other method of dealing with, vegetation growing on any land over, on or in which the works in question pass or are situated for the purpose of safeguarding those works.

(1a) In subsection (1)(b) —

appropriate network development means extending, or increasing the capacity of, the supply system to enable the requested supply to be effected, and it includes making those extensions or increases in capacity in a way that accommodates

future demands on the supply system that the energy operator might anticipate, whether or not the demands of the applicant.

(2) An energy operator may require the due payment of any instalments payable pursuant to subsection (1) to be secured by security to the satisfaction of the energy operator or to be guaranteed by the applicant or some other person, or by both the applicant and such other person either jointly or severally.

(3) An energy operator shall review the supply system relevant to any supply effected under this section at least once in every 3 years, and in any case where it thinks fit the energy operator may do both or either of the following things, namely —

(a) refund the whole or part of the amount of any moneys paid by way of capital contribution, or by way of a capitalised amount paid pursuant to subsection (1)(c)(i); or

(b) reduce or discontinue the amount of the instalments referred to in subsection (1)(c).

(4) Subject to subsection (3), an energy operator, at the expiration of the period referred to in subsection (1)(c) as agreed upon and specified in any agreement made between the energy operator and the applicant pursuant to that subsection, or earlier if the energy operator so elects, shall refund any amount held by the energy operator and paid pursuant to subsection (1)(b) by way of capital contribution or by way of a capitalised amount paid pursuant to subsection (1)(c)(i).

(5) An energy operator may terminate the supply of energy agreed to be supplied to the applicant pursuant to this section —

(a) if any moneys due to the energy operator for energy so supplied by it remain unpaid for not less than 7 days after they become due; or

(b) if the applicant fails to comply with the terms and conditions of any agreement made by him with the energy operator pursuant to subsection (1),

without in any way affecting the right of the energy operator to enforce any right it may have against the applicant in respect thereof.

(6) Where the supply of energy to land is terminated pursuant to subsection (5), or otherwise, if a written application is made to the energy operator by any person to resume the supply of energy to that land, the energy operator may make the supply available upon the applicant agreeing in writing to take the supply upon the same terms and conditions as those in force immediately preceding the date on which the supply was so terminated or upon those terms and conditions as varied by agreement between the energy operator and the applicant.

(7) Where an energy operator determines that it is not practicable to supply energy to any place the energy operator may assist an applicant to make other arrangements for the supply of energy thereto including —

(a) making contributions, up to such amount, in such manner, and at such intervals, as may be prescribed, towards the cost of the provision of suitable works;

(b) the bulk purchase and individual sale of generating units and approved apparatus;

(c) the provision of advisory and technical services,

subject to such arrangements being approved by the energy operator, and regulations made under this Act may make provision accordingly.

[Section 61 amended: No. 101 of 1981 s. 15; No. 24 of 1986 s. 25; No. 89 of 1994 s. 23, 39, 40 and 41; No. 58 of 1999 s. 83; No. 53 of 2003 s. 114.]

62. Charges for supply, conditions of supply, and termination of supply

(1) Subject to section 60(2), a consumer of energy supplied by an energy operator shall pay to the energy operator such rates, charges, fees, rentals and other sums as may be due to the energy operator pursuant to this Act or any other Act in respect of the supply of energy or a matter connected therewith or any service, apparatus or other thing provided by the energy operator to that consumer, and the conditions of supply prescribed or agreed in relation to such supply shall have effect, but where generating works are owned, controlled, or operated by a person and the energy operator provides a standby service secondary to those generating works, the energy operator may impose conditions or stipulations and make charges in respect of that service whether or not it is utilised.

(2) Subject to this section, the occupier of any premises supplied with energy by an energy operator, or the occupier of such part of any premises as is supplied with energy by an energy operator separately from any other part of those premises, shall for the purposes of this Act or any other Act be deemed to be the consumer as regards those premises, or that part of those premises, as the case may require.

(3) Where an energy operator has supplied energy to any premises, or any part of any premises separately so supplied, and the charges are not met by a person other than the owner of those premises then unless the name of the occupier was notified to the energy operator prior to the rendering of account for charges in respect of the premises, those premises, or that part of those premises, may for the purposes of this Act and the recovery of charges be deemed to have been owner occupied.

(4) Where a person gives to an energy operator not less than 5 days' notice of his intention to vacate any premises and does vacate those premises at the time specified he shall not be liable for any charges incurred in respect of those premises by a subsequent

occupier, and where a person proposes to occupy any premises and arranges with an energy operator for the charges in respect of the premises incurred prior to the occupation by him to be ascertained he shall not be liable in respect of the charges for the period prior to his entry into occupation, but where the energy operator is not so enabled to ascertain the liability for charges then for so long as the supply is continued each person who has occupied or does occupy the premises since last the energy operator was so enabled or an account was paid shall be jointly and severally liable for the payment of unpaid charges, but the energy operator shall not be entitled to recover in the aggregate more than the sum of the unpaid charges and shall so far as is practicable endeavour to recover from each consumer the fair proportion of the total liability.

(5) Each point of supply metered by an energy operator shall be considered by the energy operator as a separate supply, and may be charged for accordingly.

(6) Any application for, or agreement relating to, an optional or special tariff is not transferable, and if the supply is terminated, otherwise than in respect of a failure to pay charges due, that tariff will not be applicable to any new supply without a further application being approved or agreement entered into in respect of the new supply.

(7) Notwithstanding that any charges are expressed to be at a rate calculated by the month, the consumption metered may be charged in respect of the period since the last meter reading adjusted by reference to calendar months and parts of a calendar month.

(8) Where, whether or not a contract in writing applies, in relation to any premises a consumer fails to pay any charges payable within not less than 7 days subsequent to the due date, an energy operator may terminate the supply of energy, of whatever kind, to those premises and finalise the account and may refuse to re-connect that supply, but may re-connect the supply on

payment of the prescribed fee upon the amount due being received, and where an energy operator is satisfied that a consumer has failed to pay any charges in respect of premises previously occupied by him and for which he remains liable the energy operator may terminate the supply of energy, of whatever kind, to any other premises in the occupation of that consumer.

(9) In addition to the power to terminate supply in respect of unpaid charges, an energy operator shall have power to terminate supply where a security required pursuant to subsection (10) is not furnished or where section 58 or section 68(9) applies.

(10) For the purpose of —

(a) covering in whole or in part the costs of any property of an energy operator installed on the premises of any consumer in so far as he derives benefit therefrom; or

(b) securing the payment of any moneys due or likely to become due (other than in respect of charges based on the domestic tariff) to an energy operator from a person to whom or on whose behalf energy is supplied on any premises,

the energy operator may, subject to subsection (11), from time to time require a person to furnish to the energy operator security as a condition of the supply or of the continuance of the supply.

(11) The amount of the security which the energy operator may require a person to furnish pursuant to subsection (10)(b) shall not exceed —

(a) where the accounting period is 2 months or less, twice the average amount of the account taken over the 3 preceding accounting periods; and

(b) where the accounting period exceeds 2 months, one and one-half times the average amount of the account taken over the 3 preceding accounting periods; and

(c) in the case of a new supply, or of an account where it is anticipated upon reasonable grounds that the consumption will be substantially increased, or where the accounting period is or has been of varying duration, or in any other case, such amount as the energy operator determines having regard to the methods of assessment set out in paragraph (a) and paragraph (b) unless or until one of those paragraphs becomes applicable.

(12) Where —

(a) a deposit is made or any other security is given in excess of the amount applicable pursuant to subsection (11), the amount required by an energy operator shall be re-assessed; or

(b) a deposit is made or any other security is given that an energy operator considers to be no longer appropriate for the purpose for which it was required, the energy operator shall re-assess whether a deposit or other security should be required for that purpose and, if so, the amount of the deposit or other security to be required,

and the deposit shall be refunded or credited or the security shall be discharged or modified accordingly.

(13) Where the consumer elects to furnish the required security by means of a bank guarantee, or in some other manner which in the opinion of an energy operator is sufficient to safeguard the financial interest of the energy operator, the energy operator shall not require a security to be given by way of a deposit of moneys.

(14) Where a security is given in relation to any premises for any of the reasons referred to in subsection (10) that security may be applied by the energy operator if default occurs in respect of those premises for any reason.

[(15) deleted]

(16) An energy operator shall pay, or give credit for, interest on money held by the energy operator pursuant to this section by way of security on behalf of any person or body in such manner and at such rate as may be prescribed.

(17) Where in relation to any consumer there is on any premises service apparatus or other apparatus the property of an energy operator and to the possession of which the energy operator is entitled, and the supply effected to or on behalf of that consumer is terminated, the energy operator may at any reasonable time enter those premises and disconnect, remove and take away that service apparatus or other apparatus.

[Section 62 amended: No. 101 of 1981 s. 16; No. 89 of 1994 s. 24, 39, 40 and 41; No. 58 of 1999 s. 83.]

63. Apportioned accounts

Where during any accounting period any change is made as to the amount payable or the manner in which the charges are made, or by reason of the introduction of a new rate, charge, fee, rental or other item of account, the energy operator shall adjust the charges for the relevant period affected by the change by reference to the date on which the change is to take effect or by reference to the date on which the change is applied to any applicable account, whichever results in the lower charge.

[Section 63 amended: No. 89 of 1994 s. 41; No. 58 of 1999 s. 83(3).]

64. Meters

(1) The extent, characteristics, and value of the energy supplied by an energy operator to any premises, or any part of any premises separately so supplied, shall, unless otherwise agreed by the energy operator or some other provision of this Act applies, be ascertained by reference to an appropriate meter fixed and connected to the supply system in a manner approved by the energy operator.

(2) In relation to any supply or proposed supply of energy by an energy operator to any premises, or to any part of any premises separately so supplied, the energy operator may —

(a) cause a meter to be placed so as to serve the premises, or that part of those premises, for the purpose of ascertaining the extent, characteristics, or value of the supply;

(b) cause a meter or other device, which may be additional to any meter placed for the purpose of ascertaining the extent, characteristics, or value of the supply, to be placed so as to serve the premises for the purpose of regulating the supply, or the period of supply or the nature or extent of the supply;

(c) at all reasonable times without prior notice by any officer or servant of the energy operator enter upon the premises in so far as is necessary and there execute all works and do all acts needed to inspect, read, examine, test, maintain, and repair any meter or any apparatus, works, or device belonging to the energy operator, and remove or replace the same.

(3) An energy operator may make a charge in respect of the costs of installing, maintaining, removing or replacing a meter placed to ascertain the extent, characteristics, or value of the supply effected by the energy operator.

(4) An energy operator may, on payment of such charges, and on such terms and conditions, as may be prescribed or as are otherwise agreed, supply a meter for purposes other than ascertaining the extent, characteristics, or value of the supply effected by the energy operator, but in any such case, except where the contract relating to the supply of that meter otherwise provides, the energy operator shall not be liable for or in respect of any loss or damage occasioned to the person to whom such a meter is supplied whether by reason of the reliance of that

person on the proper functioning of that meter in his dealings with any other party or otherwise.

[Section 64 amended: No. 24 of 1986 s. 26; No. 89 of 1994 s. 39, 40 and 41; No. 58 of 1999 s. 83.]

65. Metered accounts

(1) Except where pursuant to section 66 the meter is deemed not to be in proper order, the reading ascertained by an energy operator by reference to a meter or system of meters placed for the purpose of ascertaining the extent, characteristics, or value of the supply effected by the energy operator to any premises or part of any premises, or a certificate as to that reading purporting to be signed by an officer or servant of the energy operator and produced on behalf of the energy operator, shall in all proceedings be prima facie evidence of the extent, characteristics and value of the energy so supplied.

(2) If in the opinion of an energy operator, or an officer or servant of an energy operator authorised for the purposes of this section, a meter referred to in subsection (1) was not correctly registering the extent and value of the energy supplied —

(a) when it was read; or

(b) during any part of the accounting period ending when it was read,

the reading shall be disregarded.

(2a) Where subsection (2) applies, the extent and value of the energy supplied during the accounting period ending with the reading —

(a) shall be computed by reference to the results obtained from a test of the meter; or

(b) if that is not practicable, may be assessed under subsection (3).

(3) An assessment for the purposes of subsection (2) may be made by reference to —

(a) a test carried out in a manner approved by the energy operator; or

(b) the extent recorded by measure in relation thereto for the corresponding period of the preceding year, regard being had to any known variation in demand; or

(c) the extent recorded by measure in relation thereto for the immediately preceding accounting period, regard being had to any known variation in demand; or

(d) if no such method is appropriate, such other basis as the energy operator determines,

and the person liable for the payment of the charges in respect of those premises, or that part of the premises, shall, unless the contrary is shown, be deemed to have been supplied to the extent so assessed.

(4) Where as the result of —

(a) a computation made under subsection (2a)(a); or

(b) an assessment made under subsection (3),

it is shown that the charges made were not what they should have been, the charges may be adjusted in respect of the period during which the meter was not correctly registering the extent and value of the energy supplied, and —

(c) shall be credited; or

(d) may be recovered,

accordingly, as the case requires.

(5) If —

(a) subsection (2) does not apply; but

(b) it is shown that, for some other reason, the charges made for a period were not what they should have been,

the charges shall be adjusted so as to present, as near as may be, a proper accounting for that period, and —

(c) shall be credited; or

(d) may be recovered,

accordingly, as the case requires.

(5a) The energy operator is to determine —

(a) the period during which the meter was not correctly registering the extent and value of the energy supplied, as mentioned in subsection (4); or

(b) the period for which the charges made were not what they should have been, as mentioned in subsection (5),

but, unless subsection (5b) applies, the period so determined is not to exceed 12 months.

(5b) The period so determined for the adjustment and recovery of charges may exceed 12 months if the energy operator considers on reasonable grounds that the person concerned obtained energy at any relevant time by a dishonest or illegal act, including an act to which section 67(1) applies.

(6) Where an account is submitted upon the basis of an assessment, it shall be clearly marked as such and the energy operator shall inform the consumer, if so required, of the basis upon which the assessment was made.

(7) Where by agreement or for any other reason a meter is not read by an energy operator an account may be submitted by way of estimate but the account shall be clearly marked as such.

(8) An account shall not be submitted by way of estimate for a period in excess of 12 months unless the consumer agrees, and a person to whom an account is submitted by way of estimate may at any time require the energy operator to read the meter

applicable as soon as is practicable thereafter and to render him an account adjusted by reference to the reading so ascertained, but where it proves not to be practicable so to adjust the account that account shall thereafter be assessed pursuant to subsection (3).

(9) For the purposes of this section ***accounting period*** means —

(a) the period between any 2 consecutive meter readings made for the purpose of preparing and submitting accounts for energy supplied; or

(b) the period covered by an account submitted upon the basis of an assessment in respect of that period of time,

whichever may result in the lower charge.

[Section 65 amended: No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3); No. 53 of 2003 s. 115(1) and (2).]

66. Meter tests

(1) Where a person who is alleged to be liable to an energy operator for the payment of the charges in respect of any premises, or any part of any premises separately supplied, so demands the energy operator shall, on payment of the prescribed fee, cause a test of any meter used for ascertaining the extent, characteristics or value of the energy supplied to be made by an officer of or a person appointed by the energy operator.

(2) A meter shall be deemed not to be in proper order if, on being tested, it is found to register in such a manner that the limits of error prescribed under the *Electricity Act 1945* or the *Gas Standards Act 1972*, as the case may be in relation to meters of the class to which it belongs are exceeded.

(3) Where a meter, on being tested, is found to register in excess of the prescribed limit of error so as to increase the charge that should properly have been payable then any fee paid in respect of the test shall be refunded by the energy operator.

(4) Where a meter, on being tested pursuant to this section, is found not to be in proper order any relevant account may, subject to section 65, be adjusted by reference to the result of the test, and shall be so adjusted where and to the extent that the error has operated to the disadvantage of the consumer.

(5) A test may, at the option of the person requiring the test, be performed —

(a) on the basis of a comparison of the performance of the meter under consideration with test calibration equipment provided or approved by the energy operator; or

(b) on the basis of testing the meter under consideration by a testing laboratory approved by the energy operator,

and the person conducting such test shall prepare and sign a certificate as to the result of that test and as to whether or not the performance of that meter was within the limits of error prescribed in relation thereto, and any such certificate shall in all proceedings relevant thereto be prima facie evidence as to the performance of the meter specified therein.

(6) An energy operator may require that as a prerequisite to the carrying out of any test under this section all outstanding charges in relation to the supply pertaining to the meter to be tested be paid.

[Section 66 amended: No. 89 of 1994 s. 39, 40 and 41; No. 58 of 1999 s. 56 and 83.]

67. Circumventing meters

(1) Where an energy operator supplies any energy, any unauthorised person who —

(a) alters the record produced by or the recording apparatus of any meter relating to that supply by any means; or

(b) prevents that meter from operating or registering; or

(c) by any means causes that meter to operate or register otherwise than in proper order; or

(d) interferes in any way with any part of any service apparatus, or any seal affixed thereto; or

(e) by any means obtains a supply of energy or enables a supply of energy to be obtained from the energy operator in a manner that circumvents or prevents the due regulation or recording of that supply by the meter,

is guilty of an offence.

Penalty: $2 000 and imprisonment for 9 months.

(2) Upon the conviction of a person for an offence under subsection (1), the Court, in addition to imposing a penalty under that subsection, shall order that the offender pay to the energy operator such amount (if any) as the Court thinks fit having regard to any actual or probable loss, damage, costs, or expenses that may be incurred by the energy operator in consequence of the wrongful act in respect of which the offender is convicted.

(3) Subsection (2) does not affect the right of an energy operator to recover by civil proceedings any sum in excess of the amount paid pursuant to an order made under that subsection.

(4) Where upon a charge of an offence under subsection (1) in relation to any premises or any part of those premises it is shown —

(a) that there was present in or about any relevant service apparatus any means enabling, or capable of enabling, the offence charged to be committed; and

(b) that the alleged offender is the person liable to an energy operator for the payment of the charges relating to those premises or that part of those premises,

an inference exists that the offence was committed and that the offence was committed by the alleged offender, but the alleged

offender shall be at liberty to show that the inference in the particular circumstances should not be so drawn, and in considering the weight to be given to the evidence the Court shall regard such an inference as raising a presumption of law.

[Section 67 amended: No. 101 of 1981 s. 17; No. 24 of 1986 s. 27 and 42; No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3); No. 50 of 2003 s. 58(2); No. 84 of 2004 s. 80.]

67A. Liability for charges, and damage to apparatus

(1) For the purposes of this section, unless the name of the occupier of the premises or of the relevant part of the premises has been notified to an energy operator, the person who is liable under this Act to pay to the energy operator the charges for the supply of energy to the premises or that part of the premises (as the case may be) or, if there be no such person, then the owner of the premises, shall be deemed to be their occupier.

(2) Where any service apparatus the property of an energy operator is placed on any premises, or on any part of any premises, in connection with the supply of energy to those premises, it remains the property of the energy operator and the occupier of those premises or that part of those premises shall be liable to the energy operator in respect of any damage to that service apparatus howsoever caused.

[Section 67A inserted: No. 24 of 1986 s. 28; amended: No. 89 of 1994 s. 25, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

68. Inspectors

(1) An energy operator may appoint an officer of the energy operator to be an inspector.

[(2) deleted]

(3) Every person appointed to be an inspector pursuant to subsection (1) shall be furnished with a certificate in the prescribed form and an inspector shall produce that certificate

whenever requested so to do by any person apparently having the charge of any land, premises, or thing in respect of which he has exercised or is about to exercise any of his powers.

[(4) deleted]

(5) Production of a certificate in the prescribed form is prima facie evidence in any Court of the appointment of the inspector to whom that certificate relates and of his authority as such an inspector to exercise the power conferred upon such an inspector under this Act.

(6) For the purposes of facilitating the carrying out of his duties an inspector may be accompanied by any interpreter, technical adviser, or workman who the inspector thinks competent and necessary to assist him in making any inspection or examination, and any reference to an inspector in this Act in the context of the right of entry or in relation to the powers or duties conferred or imposed by this section shall be deemed to include a reference to a person of the kind referred to in this subsection when that person is accompanied by, and acting in the course of his duties on behalf of, an inspector.

(7) In the exercise of his powers under this section an inspector shall conform so far as is practicable to any reasonable requirement of a person owning or using the land, premises, or thing inspected which is requested by that person in order to prevent the working of any business or the conduct of any operations being thereby obstructed; but subject to the compliance by the inspector with the requirements of this Act an inspector may for the purpose of the exercise of his powers and the discharge of his duties require a person having the custody or control of any land, premises or thing in respect to which the inspector is authorised to exercise any power to furnish such reasonable access to apparatus, facilities and other assistance and relevant information as he is capable of furnishing to that inspector.

(8) Subject to this Act (including the regulations and by-laws made under this Act) an inspector appointed under this section may —

(a) enter without notice on or into any land, premises or thing where any plant, works or apparatus of the energy operator is or may be situated and inspect all such plant, works or apparatus; and

(b) if the inspector has reasonable cause to believe that a consumer is attempting to circumvent or prevent the due regulation or recording of the supply of energy to the consumer by the energy operator, enter without notice on or into any land, premises or thing where any plant, works or apparatus of the consumer is or may be situated and inspect all such plant, works or apparatus; and

(c) take with him such persons as he thinks competent and necessary to assist him in making any inspection.

[Section 68 amended: No. 101 of 1981 s. 18; No. 24 of 1986 s. 29; No. 89 of 1994 s. 26; No. 58 of 1999 s. 83(2) and (3).]

69. Incriminating statements

Where a person, before making a statement requested of him pursuant to a power conferred by this Act, objects to having to make it on the ground that the statement might tend to incriminate him, any statement thereafter so made —

(a) shall not be admissible in evidence in any prosecution against that person for any offence other than the offence of contravening or failing to comply with the provisions of section 70 or section 79; and

(b) if recorded, in writing or otherwise, shall set out the fact of the objection having been made.

*[**70-73.** Deleted: No. 89 of 1994 s. 27.]*

74. Malicious damage

(1) Any person who unlawfully and maliciously —

(a) destroys or damages any supply system, or any generating works or distribution works, or any other undertaking, works or other thing being the property of or under the control or management of an energy operator or which is the subject of an Agreement of the kind referred to in section 5(1)(b), or any part of any such thing; or

(b) interrupts, impedes or obstructs the transmission, distribution or supply of energy therefrom; or

(c) attempts to do any of those things,

is guilty of a crime and is liable upon conviction on indictment to imprisonment for a term of not more than 10 years.

(2) Where an officer or servant of an energy operator, or any other person, has reasonable grounds to believe that a person has contravened subsection (1) he may, without warrant other than this subsection, apprehend the person and deliver him to a police officer who shall deal with him according to law.

[Section 74 amended: No. 89 of 1994 s. 39; No. 58 of 1999 s. 83(1); No. 70 of 2004 s. 82; No. 59 of 2006 s. 73.]

75. Unlawful damage generally

(1) Any person who wilfully —

(a) alters, interferes with, defaces or removes any trigonometrical station, peg, mark, pole, or works or other thing associated with any survey or with the siting of any energy undertaking or works carried out by an energy operator in the performance of its functions; or

(b) damages or extinguishes any light provided, or takes down, alters or interferes with any bar, chain, fence, hoarding or other thing erected or placed for guarding against any accident on or for the protection of any

undertaking, works or thing the property of or under the control or management of an energy operator; or

(c) interrupts, impedes or obstructs the transmission, distribution or supply of energy by an energy operator; or

(d) removes, defaces, damages, alters or interferes with any notice, sign, order or written instruction attached by or with the authority of an energy operator to any undertaking, works or thing the property of or under the control or management of the energy operator or to any service apparatus or consumer installation; or

(e) without the approval in writing of an energy operator affixes any poster, sign, advertisement or notice to any undertaking, works or thing the property of or under the control or management of the energy operator or makes any inscription, drawing or mark thereon,

or who attempts to do so, commits an offence and is liable on conviction to a fine not exceeding $2 000.

(2) Any person who wilfully or negligently breaks, otherwise destroys or damages, or in a manner likely to cause damage interferes with, any part of any supply system, or any undertaking, works or other thing the property of or under the control or management of an energy operator, or any part of any such thing, commits an offence and is liable on conviction to a fine not exceeding $2 000.

(3) In any proceedings for an offence against subsection (2) where a person is found to have destroyed or damaged any part of such system or undertaking or any such work or thing which was in or under any street he shall be deemed to have acted negligently unless he shows that he made reasonable prior inquiry from the energy operator concerned as to the whereabouts in that street of any such system, undertaking, works or thing.

(4) Any person who without authority, or without having given to an energy operator the notice (if any) required by or under this

Act of his intention, so to do opens any ground so as to uncover or expose any works or other thing the property of or under the control or management of the energy operator commits an offence and is liable on conviction to a fine not exceeding $2 000.

[Section 75 amended: No. 24 of 1986 s. 33 and 42; No. 89 of 1994 s. 28, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

76. Unlawful entry

A person who without lawful authority enters on any lands, works, structures or property of or under the control or management of an energy operator commits an offence and is liable on conviction to a fine not exceeding $2 000, and it shall be lawful for any officer or servant of the energy operator to use such force as is reasonably necessary to remove him therefrom.

[Section 76 amended: No. 24 of 1986 s. 42; No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

77. Restraint of persons

Where any lands, works, structures, or undertaking is the property of, or is under the control or management of, an energy operator or of a party to an Agreement of the kind referred to in section 5(1)(b) and in the opinion of an officer a person is engaging in or about to engage in any act or behaviour in relation to matters for which that officer has a responsibility under this Act or that Agreement that does or may constitute a danger to life or to health, or is likely to cause interference with the due function of any generation, transmission, distribution or supply of energy, then it shall be lawful for that officer to use such force as is reasonably necessary to restrain that person and to obviate any such danger or interference.

[Section 77 amended: No. 89 of 1994 s. 39; No. 58 of 1999 s. 83(1).]

78. Persons may be apprehended

Where an officer has reasonable grounds to believe that a person has contravened this Act, or any regulation or by-law made thereunder, and that person fails or refuses to furnish his name and address to the officer on request, or furnishes a name and address that the officer reasonably believes to be false, the officer may, without warrant other than this section, apprehend the person and deliver him to a police officer who shall deal with him according to law.

[Section 78 amended: No. 59 of 2006 s. 73.]

79. Obstruction of officers etc.

(1) A person who without reasonable excuse wilfully obstructs an energy operator or any inspector, or any other person to whom section 68(6) applies, lawfully performing any function commits an offence and is liable on conviction to a penalty not exceeding $2 000.

(2) Subject to section 69, a person who without reasonable excuse fails to furnish to an energy operator, or to any other person to whom section 68(6) applies who is lawfully performing any function any access to apparatus or any facility or other assistance which that person may lawfully and reasonably be required to furnish in order to enable the energy operator or an inspector to carry out the duties required by this Act, or any information which that person is expressly required by or under this Act to furnish or which may otherwise lawfully be required by him, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall for the purposes of subsection (1) be treated as having been guilty of wilful obstruction.

[Section 79 amended: No. 24 of 1986 s. 42; No. 89 of 1994 s. 29, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

80. Offences generally

A person who fails, refuses or neglects to do a thing which by or under this Act he is required to do, and any person who does or attempts to do a thing contrary to the provisions of this Act, commits an offence against this Act.

81. General penalty

A person who commits an offence against this Act is liable to the penalty expressly provided as the punishment for the offence, but where a penalty is not expressly provided is liable on conviction to a fine not exceeding $1 000.

[Section 81 amended: No. 24 of 1986 s. 42.]

82. Recovery of moneys

(1) The Court by or before which a person is convicted of an offence against section 74, or against section 75, may, whether or not it imposes any other punishment, order that the person convicted pay compensation to the person or body named in that order for the costs of any repairs rendered necessary or any loss of property suffered or expenses incurred through or by means of the offence.

(2) The order made against a person under subsection (1), or the institution of proceedings or the conviction of any person under the sections referred to in subsection (1), does not affect any civil remedy against that person.

(3) In any civil proceedings arising from the same circumstances —

(a) any sum recovered pursuant to an order made under subsection (1) shall be taken into account in the assessment of any damages awarded; and

(b) the record of any criminal proceedings under this Act in relation to an offence shall be admissible as prima facie

evidence of the matters determined in those criminal proceedings and relevant to the issues.

[Section 82 amended: No. 59 of 2004 s. 141.]

83. Prosecution expenses

The court by or before which a person is convicted of an offence under this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any measurement, analysis, or other matter undertaken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence in relation thereto, and may make such order as to those costs as the court thinks just.

[Section 83 amended: No. 30 of 1987 s. 8; No. 89 of 1994 s. 30.]

84. Power to institute and conduct proceedings

(1) An energy operator may order either generally or in any particular case that proceedings be taken for the recovery of any penalties incurred under, or for the punishment of any persons offending against, this Act.

(2) The institution of any proceedings, or the conviction of any person for any offence, under this Act shall not affect any remedy to which an energy operator may be entitled in civil proceedings.

(3) In all proceedings before a court of summary jurisdiction any officer of an energy operator appointed by the energy operator for that purpose may represent the energy operator in all respects as though such officer was the party concerned.

[Section 84 amended: No. 89 of 1994 s. 31, 39, 40 and 41; No. 58 of 1999 s. 83; No. 59 of 2004 s. 141.]

85. Limitation period for offences

(1) A prosecution for a simple offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

(2) A prosecution for an offence under section 74(1) may be commenced at any time.

[Section 85 inserted: No. 59 of 2004 s. 141.]

86. Liability of bodies corporate

[(1)-(2a) deleted]

(3) Where, in any proceedings under this Act in respect of any act or thing done or omitted to be done by a body corporate it is necessary to establish the intention of the body corporate it is sufficient to show that a person who was concerned or took part in the management, or who was an agent authorised in that behalf, of the body corporate by which the relevant act or thing was so done or omitted had that intention.

(4) Any act done or omitted to be done, or course of conduct engaged in, on behalf of a body corporate by a person who was concerned or took part in the management, or who was an agent authorised in that behalf, of that body corporate or which was done, omitted to be done, or engaged in on its behalf by another person at the direction or with the consent or agreement (whether express or implied) of such a person or authorised agent shall be deemed, for the purposes of this Act, to have been so done, omitted or engaged in also by the body corporate.

[Section 86 amended: No. 24 of 1986 s. 34; No. 9 of 2023 s. 59.]

87. Proof of certain matters

(1) In any prosecution or legal proceeding under this Act instituted by or under the direction of an energy operator, unless evidence

to the contrary is given in relation to the matter, no proof shall be required of any of the matters following —

(a) the constitution of the energy operator;

(b) any order of the energy operator to prosecute;

(c) the particular or general appointment of any officer of the energy operator to take proceedings against any person;

(d) the powers of any officer of the energy operator to prosecute;

(e) the appointment of a person as an officer of the energy operator;

(f) the presence of a quorum at any meeting at which any order is made or any act is done by the energy operator.

(2) The production of —

(a) a copy of the *Government Gazette* containing any regulation, by-law, rule, order or notice purporting to have been made or given under this Act; or

(b) a copy purporting to be a true copy of any such regulation, by-law, rule, order or notice certified as such under the hand of the chief executive officer of an energy operator,

shall, until evidence is given to the contrary, be evidence of the due making, existence, or giving of such regulation, by-law, rule, order or notice and of its confirmation or approval and that all preliminary steps necessary to give full force and effect to the same have been duly observed.

(3) Where a record is produced and identified as the minutes, or an excerpt from, the minutes of the board of directors of an energy operator, that record shall, until evidence is given to the

contrary, be prima facie evidence of the matters so recorded having taken place, and it shall not be necessary to prove —

(a) that the meeting to which the record relates was duly convened; or

(b) that other requirements relating to the regularity of the meeting were complied with; or

(c) that the minutes were confirmed, and that the signature purporting to be that of the person authorised to sign the confirmation of the minutes is in fact his signature and that he was so authorised.

(4) The provisions of this section —

(a) are in addition to and not in derogation of those of the *Evidence Act 1906*; and

(b) do not render valid a regulation or by-law which has been disallowed under section 42 of the *Interpretation Act 1984*, or which is invalid.

[Section 87 amended: No. 101 of 1981 s. 19; No. 24 of 1986 s. 42; No. 89 of 1994 s. 32, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

88. Evidence of documents issued by an energy operator

(1) All documents whatever purporting to be issued or written by or under the direction of an energy operator and purporting to be signed by, or to bear the facsimile signature of a director or the chief executive officer of the energy operator shall in all courts, and before all persons acting judicially within the State, on production by any person be deemed to have been issued or written by or under the direction of the energy operator and so signed until evidence to the contrary is shown.

(2) In all proceedings in which the publication or service, or the content of, any notice, order, or other document required or authorised to be published or served under this Act has to be proved, then, until evidence to the contrary is shown, the

document and its due publication or service may be sufficiently proved by the production of a purported copy bearing a certificate under the hand of the chief executive officer of the energy operator that the copy is a true copy of the original and that the original was published or served in the manner specified in that certificate.

(3) The validity of any such notice, order, or other document or of its publication or service is not affected by any error, misdescription, or irregularity therein which is not misleading in a material particular.

[Section 88 amended: No. 101 of 1981 s. 20; No. 24 of 1986 s. 35 and 42; No. 89 of 1994 s. 33, 39 and 41; No. 58 of 1999 s. 83(1) and (3).]

[89-96. *Deleted: No. 89 of 1994 s. 34.]*

[97. *Deleted: No. 60 of 1994 s. 13.]*

[98-102. *Deleted: No. 89 of 1994 s. 34.]*

[103. *Deleted: No. 98 of 1985 s. 3.]*

[104-108. *Deleted: No. 89 of 1994 s. 34.]*

[109. *Deleted: No. 101 of 1981 s. 31.]*

[110-114. *Deleted: No. 89 of 1994 s. 34.]*

[115-118. *Deleted: No. 98 of 1985 s. 3.]*

[119. *Deleted: No. 89 of 1994 s. 34.]*

[119A. *Deleted: No. 126 of 1987 s. 121.]*

120. Energy operator to make good damage, and may be liable to pay compensation

In the exercise of the powers conferred by section 49, or where an energy operator is otherwise empowered to enter any land, premises or other thing, the energy operator is required to do as little damage as possible, and, except where a power under section 48 is exercised in respect of an emergency in relation to a supply system or other matter which is not owned by the energy operator and for which the energy operator is not otherwise responsible or unless this Act or any contract or agreement relating thereto otherwise provides, the energy operator shall pay forthwith adequate compensation for, or otherwise make good, the physical damage done to the land, premises or thing by the energy operator's officers, servants, or agents in the course and at the time of the exercise or purported exercise of such a power, whether that damage is of a temporary character or a permanent character.

[Section 120 amended: No. 101 of 1981 s. 37; No. 24 of 1986 s. 38; No. 89 of 1994 s. 35, 39 and 41; No. 58 of 1999 s. 82 and 83(1) and (3).]

121. Actions for damages, generally

(1) An energy operator shall not be liable for any injury or damage, other than damage of the kind referred to in section 120, occasioned in the exercise or purported exercise of a power conferred by this Act unless it is attributable to negligence on the part of the energy operator, or any officer, servant or agent of the energy operator.

(2) No action shall be maintained against an energy operator in respect of any injury to the person, where the person injured fails without reasonable excuse to submit himself to medical examination by a specified medical practitioner or practitioners nominated by the energy operator within such period as the energy operator may by notice in writing require of him where that request is made by the energy operator within 3 calendar

months of the commencement of proceedings in respect of that injury.

[Section 121 amended: No. 101 of 1981 s. 38; No. 24 of 1986 s. 39; No. 89 of 1994 s. 36, 39, 40 and 41; No. 58 of 1999 s. 83.]

122. Protection

A person is not personally liable for any act done or omission made by that person in good faith and in the course of the exercise or performance or purported exercise or performance of a power or duty which he had reasonable and probable cause to believe was conferred or imposed by this Act.

[Section 122 inserted: No. 89 of 1994 s. 37.]

123. Regulations

(1) The Governor may make any regulations not inconsistent with the provisions of this Act, and whether general or to meet particular cases, that he may think necessary or convenient to give effect to this Act or to anything for which regulations or by-laws are contemplated or required by this Act.

(2) Regulations made under this Act may prescribe a penalty not exceeding $2 000 for any contravention or failure to comply with the requirements of the regulations.

(3) Regulations made under this Act may specifically authorise or approve —

(a) contracts or agreements to which an electricity corporation is, or proposes to become, a party, whether for the purpose of obtaining or of furnishing a supply of energy; or

(b) tariffs, including particular charges or charges made pursuant to by-laws; or

(c) the doing of acts or things that are, or are of a kind, necessary to give effect to any such contract, agreement or tariff.

[Section 123 amended: No. 24 of 1986 s. 40 and 42; No. 30 of 1987 s. 9; No. 89 of 1994 s. 39; No. 58 of 1999 s. 91; No. 33 of 2004 s. 45.]

124. By-laws

(1) Subject to this Act, an electricity corporation may with the approval of the Governor make by-laws for the more effectual performance of the functions of the corporation, and as to the other matters provided for by this Act.

(1a) By-laws made by an electricity corporation shall make provision only in respect of electricity, and in respect of related matters.

(2) By-laws made by an electricity corporation under this Act shall be subject to the regulations made by the Governor under this Act and where any such by-law is in any respect inconsistent with or repugnant to any such regulation the regulation shall prevail and the by-law shall be read and be construed and have effect accordingly.

(3) By-laws made under this Act may impose a penalty not exceeding $2 000 for the breach of any such by-law.

(4) Without limiting or restricting the generality of subsection (1) by-laws made under this Act by an electricity corporation may provide for all or any of the following matters or purposes, that is to say —

(a) the establishment, installation, construction, management, maintenance, repair, use and protection of the undertakings, works and other property of, or under the control or management of, the corporation; and

(b) preventing or remedying the waste, misuse or undue consumption of, or any undue or improper interference with the enjoyment by any other person of, any energy

supply whether generated or produced and distributed or supplied by the corporation or any other person, body or authority; and

(c) as to the establishment, conditions, and termination of the supply of energy; and

(d) prescribing —

(i) the fees and charges that are from time to time to apply in relation to energy supplied or services provided by the corporation;

(iaa) subject to subsection (4a), the payment of an additional amount by way of interest at the prescribed rate to be made where the payment of any amount exceeding $1 000 in relation to energy supplied or services performed by the corporation is not paid in full on the date when it is due as specified by the corporation or within such time as is fixed by the corporation;

(ia) any formula, index or other base to be used for the purposes of calculating or ascertaining any fee or charge that is to apply to or in relation to a service provided by the corporation or a supply of energy;

(ii) the making of a fixed charge in respect of a supply effected, whether or not utilised;

(iii) the accounting procedures relating thereto and the fees payable in respect of accounting, the conditions upon and subject to which security by way of deposit or guarantee or otherwise shall be given to secure the payment of accounts or for other purposes, the amount of such deposits or guarantees, and the manner in which moneys relating thereto shall be dealt with;

(iv) re-connection and service fees, and charges for unsatisfactory power factors;

(v) the charges for the use or testing of meters, fittings and other apparatus;

(vi) the different rates to be applicable to particular areas and uses, periods of supply and other circumstances;

(vii) the discounts, rebates, or concessions that may be allowed to specified classes of persons or in specified circumstances in respect of moneys due to the corporation;

(viii) the apportionment and assessment of accounts;

(ix) the manner, in so far as not otherwise provided for in this Act, of adjustment of consumer accounts where errors or inaccuracies are found in the method of charging in, or in the calculation of, such accounts;

(x) the payment of interest on deposits to secure the payment of accounts;

(xi) generally as to the liability of persons for payment to the corporation in respect of supply or services;

and

(e) providing for the recovery by action or summary proceedings of any charges and other amounts payable to the corporation; and

[(f), (g) deleted]

(h) enabling the corporation to repair meters, fittings or other apparatus used in connection with the supply of energy by the corporation to any person or authority; and

(j) prohibiting any alteration of or interference with any works, meters, or apparatus of the corporation without the consent of the corporation; and

(k) providing for frequency control voltages to be imposed on normal supply voltage and prohibiting the use of frequency control voltages within prescribed limits otherwise than by the corporation; and

[(l), (m) deleted]

(n) the measures that may be taken where any supply system is, in the opinion of the corporation, overloaded or inadequate; and

(o) the measures that may be taken in relation to supply systems or components of supply systems, whether or not owned by or otherwise under the control or management of the corporation, to obviate damage to any portion of a supply system that is the property of or under the control or management of the corporation; and

(p) prescribing the point at, or the circumstances in, which the property in energy supplied passes from the corporation to any other person; and

(q) prescribing limits that may be placed upon the supply of energy in relation to any person or premises, and the means whereby such limitation may be achieved; and

(r) prescribing forms and other documents and the circumstances in which they are required under this Act, the fees and charges (other than such as are provided for in paragraph (d)) payable and the matters in respect of which fees, charges or other amounts shall be payable, and the refund or remission of any fees, charges or other amounts.

(4a) For the purposes of calculating the amount on which interest is payable under a by-law made under subsection (4)(d)(iaa) the amounts due under separate accounts rendered to a person shall not be aggregated.

(5) Subject to the by-laws regulating or specifying standards of supply and standards of service, an electricity corporation may,

by notice in the *Government Gazette* including any necessary diagrams, from time to time declare —

(a) the system pressure and frequency, or both, at which it operates or proposes to operate its electricity supply systems or any of them; and

(b) the point or points in a supply system where pressure or frequency values, or both, are measured; and

(c) the system or systems of earthing utilised in respect of its supply systems or any of them or of consumer installations,

and where an electricity corporation has made a declaration under paragraph (b) it shall for so long as that declaration has effect at all times maintain the system pressure at that declared point within the limits of plus or minus 6% of the declared pressure and the frequency at that declared point within the limits of plus or minus 2½% of the declared frequency.

(6) In this section —

corporation includes any subsidiary, as defined in section 3(1) of the *Electricity Corporations Act 2005*, of the corporation.

[Section 124 amended: No. 24 of 1986 s. 41 and 42; No. 6 of 1991 s. 3; No. 89 of 1994 s. 38, 39 and 41; No. 58 of 1999 s. 92; No. 24 of 2000 s. 14(13); No. 74 of 2003 s. 51(2); No. 33 of 2004 s. 46; No. 18 of 2005 s. 139.]

125. Regulations or by-laws, generally

(1) Regulations or by-laws made under this Act may be so made —

(a) as to apply —

(i) generally, or in a specified class of case or in a specified case; and

(ii) at all times, or at specified times or at a specified time; and

(iii) throughout the State, or in specified parts of the State or in a specified place;

or

(b) as to adopt, by reference to the text as from time to time amended and for the time being in force, unless a particular text is specified at the time of such adoption, —

(i) such rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act, or under any Act of the Parliament of the Commonwealth or of the Parliament of the United Kingdom; or

(ii) such standards, rules, codes or specifications issued by Standards Australia, the British Standards Institution, The Australian Gas Association, The Australian Liquefied Petroleum Gas Association, or other specified body,

either wholly or in part or with modifications, as are specified; or

(c) as to provide that where by reason of unavailability of materials or other reason that an energy operator considers valid any requirement imposed by the energy operator cannot be conformed to, the energy operator may dispense with that requirement and in lieu authorise in writing in any particular case the use of materials or any other matters which it considers to be appropriate; or

(d) as to provide that, in a specified case or a specified class of case, whether on specified conditions or unconditionally, a person or thing or a class of persons or things, may be exempted from the provisions of those regulations or by-laws either wholly or to such extent as is specified; or

(e) as to require a matter affected by them to be in accordance with a specified standard, specification or requirement or to be as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body, or so as to confer on a specified person or body or specified class of person or body a discretionary authority.

(2) In this section, ***specified*** means specified in the regulation or by-law in relation to which the term is used.

[Section 125 amended: No. 89 of 1994 s. 39 and 41; No. 58 of 1999 s. 83(1) and (3); No. 74 of 2003 s. 51(3).]

[Schedule deleted: No. 60 of 1994 s. 13.]

Notes

This is a compilation of the *Energy Operators (Powers) Act 1979* and includes amendments made by other written laws [3]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
State Energy Commission Act 1979 [4]	111 of 1979	21 Dec 1979	1 Feb 1980 (see s. 2 and *Gazette* 1 Feb 1980 p. 284)
Acts Amendment (Statutory Designations) and Validation Act 1981 s. 4	63 of 1981	13 Oct 1981	13 Oct 1981
State Energy Commission Amendment Act 1981	101 of 1981	4 Dec 1981	s. 4: 4 Dec 1981 (see s. 2(1)); Act other than s. 4 and 17: 15 Jan 1982 (see s. 2(3) and *Gazette* 15 Jan 1982 p. 49); s. 17: 13 Feb 1982 (see s. 2(2) and *Gazette* 15 Jan 1982 p. 49)
State Energy Commission Amendment Act 1984	36 of 1984	20 Jun 1984	20 Jun 1984
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)
State Energy Commission Amendment Act 1986	24 of 1986	28 Jul 1986	s. 1-3, 6-8, 12-14, 16-39 and 41: 28 Jul 1986 (see s. 2(1)); s. 9(c), 40 and 42: 29 Aug 1986 (see s. 2(2) and *Gazette* 29 Aug 1986 p. 3163); s. 4, 5, 9(a) and (b), 10, 11 and 15: 12 Dec 1986 (see s. 2(2) and *Gazette* 12 Dec 1986 p. 4802)
Reprint of the *State Energy Commission Act 1979* as at 21 May 1987 (includes amendments listed above)			
State Energy Commission Amendment Act 1987	30 of 1987	29 Jun 1987	29 Jun 1987 (see s. 3)

Short title	Number and year	Assent	Commencement
Acts Amendment (Public Service) Act 1987 s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and *Gazette* 16 Mar 1988 p. 813)
Acts Amendment (Land Administration) Act 1987 Pt. XV	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and *Gazette* 16 Sep 1988 p. 3637)
Acts Amendment (Accountability) Act 1989 Pt. 5	5 of 1989	26 Apr 1989	1 Jul 1989 (see s. 2 and *Gazette* 30 Jun 1989 p. 1893)
State Energy Commission Amendment Act 1991	6 of 1991	5 Jun 1991	s. 1 and 2: 5 Jun 1991; Act other than s. 1 and 2: 25 Feb 1992 (see s. 2 and *Gazette* 25 Feb 1992 p. 961)
Financial Administration Legislation Amendment Act 1993 s. 11 and 15	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Local Government (Superannuation) Legislation Amendment Act 1994 s. 13	60 of 1994	7 Nov 1994	24 Dec 1994 (see s. 2 and *Gazette* 23 Dec 1994 p. 7070)
Energy Corporations (Transitional and Consequential Provisions) Act 1994 Pt. 2 [5, 6]	89 of 1994 (as amended by No. 18 of 2005 s. 139)	15 Dec 1994	1 Jan 1995 (see s. 2(2) and *Gazette* 23 Dec 1994 p. 7069)
Planning Legislation Amendment Act (No. 2) 1994 s. 46(4)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and *Gazette* 21 Feb 1995 p. 567)
Reprint of the *Energy Corporations (Powers) Act 1979* as at 25 May 1995 (includes amendments listed above)			
Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and *Gazette* 29 Dec 1995 p. 6291)
Sentencing (Consequential Provisions) Act 1995 Pt. 28	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)

Short title	Number and year	Assent	Commencement
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Acts Amendment (Land Administration) Act 1997 Pt. 24 and s. 142 and 143	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Gas Pipelines Access (Western Australia) Act 1998 Sch. 3 Div. 4	65 of 1998	15 Jan 1999	9 Feb 1999 (see s. 2 and *Gazette* 8 Feb 1999 p. 441)
Energy Coordination Amendment Act 1999 s. 10(1)	20 of 1999	24 Jun 1999	16 Oct 1999 (see s. 2 and *Gazette* 15 Oct 1999 p. 4865)
Gas Corporation (Business Disposal) Act 1999 s. 54-56, 77-83 and 90-92 [7]	58 of 1999 (as amended by No. 74 of 2003 s. 51(4))	24 Dec 1999	s. 54-56: 24 Dec 1999 (see s. 2(1)); s. 77-83: 1 Jul 2000 (see s. 2(2) and *Gazette* 4 Jul 2000 p. 3545); s. 90-92: 16 Dec 2000 (see s. 2(5) and *Gazette* 15 Dec 2000 p. 7201)
Statutes (Repeals and Minor Amendments) Act 2000 s. 14(13)	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Reprint of the *Energy Operators (Powers) Act 1979* as at 15 Sep 2000 (includes amendments listed above except those in the *Gas Corporation (Business Disposal) Act 1999* s. 90-92) (correction in *Gazette* 22 Nov 2002 p. 5533)			
Sentencing Legislation Amendment and Repeal Act 2003 s. 58	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Energy Legislation Amendment Act 2003 Pt. 7 Div. 2 [8]	53 of 2003	8 Oct 2003	8 Oct 2003 (see s. 2(1) and (2))
Statutes (Repeals and Minor Amendments) Act 2003 s. 51(2) and (3)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Electricity Legislation Amendment Act 2004 Pt. 2 Div. 4 (s. 37-46)	33 of 2004	20 Oct 2004	s. 37-43 and 45-46: 1 Dec 2004 (see s. 2 and *Gazette* 23 Nov 2004 p. 5243); s. 44: 1 Apr 2006 (see s. 2 and *Gazette* 31 Mar 2006 p. 1153)

Short title	Number and year	Assent	Commencement
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Law Amendment (Simple Offences) Act 2004 s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 4: The *Energy Operators (Powers) Act 1979* as at 23 Sep 2005 (includes amendments listed above except those in the *Electricity Legislation Amendment Act 2004* s. 44)			
Electricity Corporations Act 2005 s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and *Gazette* 31 Mar 2006 p. 1153)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Energy Operators (Powers) Amendment Act 2006 s. 1-4	8 of 2006	5 May 2006	5 May 2006 (see s. 2)
Criminal Investigation (Consequential Provisions) Act 2006 s. 73	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and *Gazette* 22 Jun 2007 p. 2838)
Water Resources Legislation Amendment Act 2007 s. 193	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and *Gazette* 31 Jan 2008 p. 251)
Reprint 5: The *Energy Operators (Powers) Act 1979* as at 4 Apr 2008 (includes amendments listed above)			
Water Services Legislation Amendment and Repeal Act 2012 s. 210	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Electricity Corporations Amendment Act 2013 s. 41	25 of 2013	18 Dec 2013	1 Jan 2014 (see s. 2(c) and *Gazette* 27 Dec 2013 p. 6465)
Reprint 6: The *Energy Operators (Powers) Act 1979* as at 14 Jun 2019 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
Electricity Industry Amendment Act 2020 s. 31	9 of 2020	6 Apr 2020	7 Apr 2020 (see s. 2(b))
Directors' Liability Reform Act 2023 Pt. 3 Div. 22	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Electricity Industry Amendment (Distributed Energy Resources) Act 2024 Pt. 2 Div. 5	1 of 2024	7 Mar 2024	6 Feb 2025 (see s. 2(b)) and SL 2025/31 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Electricity Industry Amendment (Distributed Energy Resources) Act 2024 Pt. 3 Div. 4	1 of 2024	7 Mar 2024	To be proclaimed (see s. 2(b))
Evidence Act 2025 s. 492(1)	15 of 2025	25 Sep 2025	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)

Other notes

[1] Under the *Public Sector Management Act 1994* s. 112(1) a reference to the *Public Service Act 1978* is, unless the contrary is intended, to be read and construed as if it had been amended to be a reference to the *Public Sector Management Act 1994*.

[2] The *State Electricity Commission Act 1945* was repealed by this Act.

[3] The *Energy Operators (Powers) Act 1979* is affected by the *Dampier to Bunbury Pipeline Act 1997* Sch. 4 Div. 3 it. 9, which reads as follows:

> **9. Exclusion of certain statutory rights**
>
> (1) The rights, powers, and privileges given to the corporation by the *Energy Corporations (Powers) Act 1979* do not apply in relation to land in the DBNGP corridor as defined in section 27 of this Act.

(2) Subclause (1) does not have the effect that anything referred to in section 43 of the *Energy Corporations (Powers) Act 1979* ceases to be the property of the corporation.

[4] Short title was initially the *State Energy Commission Act 1979* and was subsequently changed to the *Energy Corporations (Powers) Act 1979* and then to the *Energy Operators (Powers) Act 1979* (see note under s. 1).

[5] The *Energy Corporations (Transitional and Consequential Provisions) Act 1994* s. 34(2) is a transitional provision that is of no further effect.

[6] The *Energy Corporations (Transitional and Consequential Provisions) Act 1994* Pt. 3 (as amended by the *Electricity Corporations Act 2005* s. 139) reads as follows:

Part 3 — Transitional provisions for succession from Commission to new corporations

Division 1 — Preliminary

42. Intention

The intention of the provisions of this Part is that the Electricity Corporation and the Gas Corporation will, in accordance with those provisions, stand in place of and be the successors to the Commission, except so far as section 48 applies.

43. Definitions

In this Part, unless the contrary intention appears —

assets means —

(a) property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and

(b) without limiting paragraph (a) includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

commencement day means the day on which Part 2 comes into operation;

Commission means the Commission under the principal Act as in force before the commencement day;

corporation means the Electricity Corporation or the Gas Corporation but in section 47 ***corporations*** means both of those corporations;

Electricity Corporation means the body corporate established by section 4 of the *Electricity Corporation Act 1994*;

Gas Corporation means the body corporate established by section 4 of the *Gas Corporation Act 1994*;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

principal Act means the *State Energy Commission Act 1979*;

right means any right, power, privilege or immunity whether actual, contingent or prospective;

transfer order means the order and any amendments to it made by the Minister under section 44, and includes any order made under subsection (5) of that section.

Division 2 — Devolution of Commission's assets and liabilities etc.

44. Minister to make order for allocation of assets and liabilities

(1) As soon as is practicable after this section comes into force the Minister is to make and publish in the *Gazette* an order specifying —

(a) how assets, rights and liabilities of the Commission are to be allocated to the Electricity Corporation and the Gas Corporation; and

(b) any proceedings in which the Electricity Corporation or the Gas Corporation is to be, or both of those corporations are to be, substituted for the Commission as a party or parties.

(2) An allocation under subsection (1)(a) may be made to —

(a) the Electricity Corporation;

(b) the Gas Corporation; or

(c) both of those corporations either jointly or as tenants in common in equal or unequal shares.

(3) Without limiting subsection (1), an order under that subsection may —

(a) provide for the allocation of income in respect of any asset;

(b) in respect of a particular liability, allocate a specified share of the liability to each of the corporations;

(c) provide for the transfer, debiting, crediting, closing or otherwise dealing with any account, reserve, fund, provision, profit or liability for any levy; and

(d) contain such incidental or supplementary provisions as the Minister thinks fit.

(4) The transfer order may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the commencement day.

(5) Where for any reason it is not practicable to allocate any asset, right or liability to a corporation, or to both of the corporations, under this section before the commencement date —

(a) the transfer order is to specify that the asset, right or liability is to be allocated under this subsection; and

(b) the Minister may make a further order under this section in respect of that asset, right or liability not later than 90 days after the commencement day.

(6) An order under subsection (5) is to have effect from the commencement day.

(7) The Commission is to be taken to continue to hold an asset or right, and to be liable for a liability, to which subsection (5) applies until an order is made under that subsection.

45. Transfer of assets and liabilities to the Electricity Corporation

(1) On and after the commencement day —

(a) the assets and rights of the Commission allocated to the Electricity Corporation by the transfer order vest in that corporation by force of this section;

(b) the liabilities of the Commission (including a share of a liability) allocated to the Electricity Corporation by the transfer order become, by force of this section, the liabilities of that corporation;

(c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Electricity Corporation were substituted for the Commission in the agreement or instrument;

(d) the Electricity Corporation is a party to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 44(1)(b);

(e) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Electricity Corporation;

(f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Electricity Corporation;

(g) the Commission is to deliver to the Electricity Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —

(i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and

(ii) proceedings referred to in paragraph (d);

and

(h) all provisions of the transfer order relevant to this section have effect.

(2) Subsection (1)(c) and (e) has effect subject to any provision of the transfer order made under section 44(3)(b).

46. Transfer of assets and liabilities to the Gas Corporation

(1) On and after the commencement day —

(a) the assets and rights of the Commission allocated to the Gas Corporation by the transfer order vest in that corporation by force of this section;

(b) the liabilities of the Commission (including a share of a liability) allocated to the Gas Corporation by the transfer order become, by force of this section, the liabilities of that corporation;

(c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Gas Corporation were substituted for the Commission in the agreement or instrument;

(d) the Gas Corporation is a party to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of

the transfer order to that effect made under section 44(1)(b);

(e) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Gas Corporation;

(f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Gas Corporation;

(g) the Commission is to deliver to the Gas Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —

(i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and

(ii) proceedings referred to in paragraph (d);

and

(h) all of the provisions of the transfer order relevant to this section have effect.

(2) Subsection (1)(c) and (e) has effect subject to any provision of the transfer made under section 44(3)(b).

47. Transfer of assets and liabilities to both corporations

On and after the commencement day —

(a) the assets and rights of the Commission allocated to the corporations jointly by the transfer order vest in those corporations jointly by force of this section;

(b) the assets and rights of the Commission allocated to the corporations as tenants in common by the transfer order vest in those corporations as tenants in common in the shares specified in the transfer order by force of this section;

(c) the liabilities of the Commission allocated to the corporations jointly by the transfer order become, by force of this section, the liabilities of those corporations jointly;

(d) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the corporations were substituted for the Commission in the agreement or instrument;

(e) the corporations jointly are parties to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 44(1)(b);

(f) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c), may be commenced and are available, by or against or to the corporations jointly or severally in accordance with the transfer order;

(g) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the corporations jointly or severally in accordance with the transfer order;

(h) the Commission is to deliver to the Electricity Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —

(i) the assets, rights and liabilities referred to in paragraphs (a), (b) and (c); and

(ii) proceedings referred to in paragraph (e);

and

(i) all of the provisions of the transfer order relevant to this section have effect.

48. Unallocated assets and liabilities

Subject to section 44(5), on and after the commencement day —

(a) any assets and rights of the Commission that do not vest in a corporation or the corporations under section 45, 46 or 47, are to be dealt with as the Minister directs;

(b) any liability of the Commission that does not become a liability of a corporation or the corporations under

section 45, 46 or 47 is, so far as it is properly payable, to be discharged in such manner and from such source as the Minister, with the approval of the Treasurer, directs;

(c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the State were substituted for the Commission in the agreement or instrument;

(d) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the State;

(e) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the State; and

(f) the Commission is to deliver to the Minister all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the assets, rights and liabilities referred to in paragraphs (a) and (b).

49. References to Commission in Government agreements

(1) The transfer order is to also specify for each provision in a Government agreement in which there is a reference to the Commission whether that reference is to be read as a reference to —

(a) the Electricity Corporation;

(b) the Gas Corporation;

(c) both those corporations either jointly or as tenants in common in equal or unequal shares;

(d) a Minister of the Crown or the State; or

(e) the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*.

(2) Subsection (1) does not apply to a provision of a Government agreement that is spent or has had its effect.

(3) On and after the commencement day a provision of a Government agreement which under subsection (1) is affected by the transfer order has effect by force of this section as so affected.

(4) In this section ***Government agreement*** has the same meaning as it has in the *Government Agreements Act 1979*.

50. Debentures and inscribed stock

(1) Without limiting section 45, 46 or 47 any debentures or inscribed stock which devolve under any of those sections, and the determination of rights and obligations in respect of the same, continue to be governed by sections 108 and 111 of the principal Act and regulations made under section 110 of that Act, despite the repeal of those sections, as if —

(a) those sections and regulations remained in force; and

(b) references in those sections and regulations to the "Commission" were references to —

(i) a new corporation; or

(ii) 2 or more of the new corporations jointly or severally,

in accordance with a transfer order.

(1a) In subsection (1)(b) —

new corporation and ***transfer order*** have the meanings given to those terms in section 142(1) of the *Electricity Corporations Act 2005*.

(2) The Governor may, by further regulations, amend or repeal the regulations referred to in subsection (1).

[Section 50 amended: No. 18 of 2005 s. 139.]

51. Guarantees in respect of Commission

(1) A guarantee under section 30 or 108 of the principal Act as in force immediately before the commencement day is not affected by —

(a) any provision of this Act, including without limitation the transfer of any liability of the Commission under section 45, 46 or 47 to a corporation or the corporations jointly; or

(b) any transfer, vesting or assumption of any liability of the Commission to, in or by a corporation or the corporations jointly by any other means.

(2) Any guarantee referred to in subsection (1) is to continue in force and is to be read and construed, on and from —

(a) the commencement day; or

(b) the day on which the transfer, vesting or assumption by any other means referred to in subsection (1) is effective,

as if it were a guarantee of the liabilities of the corporation which have been transferred, vested or assumed to, in or by it.

(3) Despite its repeal by section 34, section 106(1) of the principal Act is to be taken to continue to apply for the purposes of subsection (2).

(4) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee referred to in subsection (1).

(5) Division 4 of Part 5 of the relevant Act is to be taken to apply to a liability of a corporation referred to in subsection (1) if a guarantee of that liability cannot be preserved under this section (whether because the guarantee is governed otherwise than by the law of the State or for any other reason).

(6) In subsection (5) ***relevant Act*** means —

(a) in the case of the Electricity Corporation, the *Electricity Corporation Act 1994*; and

(b) in the case of the Gas Corporation, the *Gas Corporation Act 1994*.

(7) By virtue of this subsection, any sum paid by the Treasurer under a guarantee referred to in subsection (1) constitutes a charge on the assets of the relevant corporation or the corporations jointly, as the case may require.

52. Commission to complete necessary transactions

(1) Where any asset, right or liability to which this Part applies cannot be properly vested in or succeeded to by the Electricity Corporation or the Gas Corporation, or by both of those corporations, by the operation of this Part (whether because the matter is governed otherwise than by the law of the State, or for any other reason) —

(a) the Commission is to be taken to continue to hold or be liable for that asset, right or liability until the same is effectively vested in or succeeded to by the corporation concerned or both of the corporations in accordance with this Part; and

(b) the Commission is to take all practicable steps for the purpose of securing that such asset, right or liability is effectively vested in or succeeded to by the corporation concerned or both of the corporations in accordance with this Part.

(2) The fact that subsection (1)(a) applies to an asset, right or liability that is allocated to a corporation or to both of the corporations under this Part does not affect the duty of the corporation or the corporations to account for and report on that asset, right or liability under the written law by which the corporation is established.

53. Exemption from State taxation

(1) In this section —

State tax includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.

(2) State tax is not payable in relation to —

(a) anything that occurs by the operation of this Part; or

(b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.

(3) The Treasurer or a person authorised by the Treasurer may, on request by the Electricity Corporation or the Gas Corporation, certify in writing that —

(a) a specified thing occurred by the operation of this Part; or

(b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.

(4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

54. Registration of documents

(1) The relevant officials are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner the documents necessary to give effect to this Part.

(2) Without limiting subsection (1), a statement in an instrument executed by the Electricity Corporation or the Gas Corporation that any estate or interest in land or other property has become

vested in it or in the corporations jointly or in specified shares under section 45, 46 or 47 is evidence of that fact.

(3) In subsection (1) ***relevant officials*** means the Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933* and the *Mining Act 1978* and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.

55. Saving

The operation of section 45, 46 or 47 is not to be regarded —

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;

(c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;

(d) as causing any contract or instrument to be void or otherwise unenforceable; or

(e) as releasing or allowing the release of any surety.

Division 3 — Staff

56. Transition of employment

Any agreement made at any time between the Commission and a person for the employment of that person on the staff of a corporation has effect after the commencement of section 15 of the *Electricity Corporation Act 1994* or section 15 of the *Gas Corporation Act 1994* as if it had been made by the board of the corporation under that section.

57. Employees' rights preserved

Except as otherwise agreed by an employee, the change from employment by the Commission to employment by a corporation does not —

(a) affect the employee's remuneration;

(b) prejudice the employee's existing or accruing rights;

(c) affect any rights under a superannuation scheme; or

(d) interrupt continuity of service.

Division 4 — General transitional provisions

58. Annual report for part of a year

The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, of the Commission is to report in respect of that body as required by section 66 of that Act, but limited to the period from the preceding 1 July to the commencement day, and Division 14 of Part II of that Act applies as if that period were a full financial year.

59. Completion of things commenced

Anything commenced to be done by the Commission under the principal Act before the commencement day may be continued by a corporation so far as the doing of that thing is within the functions of that corporation after the commencement day.

60. Continuing effect of things done

Any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of the Commission, to the extent that that act, matter or thing —

(a) has any force; and

(b) is not governed by section 45(f), 46(f) or 47(g),

is to be taken to have been done or omitted by, to or in respect of a corporation so far as the act, matter or thing is relevant to that corporation.

61. Immunity to continue

Despite Part 2 of this Act, where the Commission had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the corporations.

62. Agreements and instruments generally

(1) This section applies to any agreement or instrument subsisting immediately before the commencement day that does not come within the provisions of section 45(1)(c), 46(1)(c), 47(d) or 49.

(2) Any agreement or instrument to which this section applies —

(a) to which the Commission was a party; or

(b) which contains a reference to the Commission,

has effect after that day as if —

(c) the relevant corporation were substituted for the Commission as a party to the agreement or instrument; and

(d) any reference in the agreement or instrument to the Commission were (unless the context otherwise requires) a reference to the relevant corporation.

(3) In this section ***relevant corporation*** means —

(a) in relation to the functions of the Commission that after the commencement day are functions of the Electricity Corporation, that corporation;

(b) in relation to the functions of the Commission that after the commencement day are functions of the Gas Corporation, that corporation.

63. Commission to perform necessary transitional functions

(1) Despite the repeal of section 7 of the principal Act by section 8 of this Act, the Commission continues in existence for the purpose of —

(a) reporting as required by section 58; and

(b) performing the functions described in sections 44(7), 45(1)(g), 46(1)(g), 47(h), 48(f) and 52.

(2) The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, also continues in existence for the purpose described in subsection (1)(a).

(3) Despite the provisions of the principal Act —

(a) the members of the Commission immediately before the commencement day cease to hold office on that day;

(b) the Commission is to be constituted by a person appointed by the Minister; and

(c) the Commission is to perform the functions referred to in subsection (1) through that person.

(4) The person referred to in subsection (3)(b) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.

(5) The Commission as constituted under this section has the powers that are necessary or convenient for the purposes of subsection (1).

(6) Each of the corporations is to provide the clerical or other assistance that the Commission reasonably requires for performing the functions described in subsection (1) in respect of that corporation.

64. Further transitional provision may be made

(1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the intention described in section 42 the Minister may make that provision by order published in the *Gazette*.

(2) Any such order may be made so as to have effect from the commencement day.

(3) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State, the Electricity Corporation, the Gas Corporation or any authority of the State), the rights of that person existing before the day of its publication; or

(b) to impose liabilities on any person (other than the State, the Electricity Corporation, the Gas Corporation or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

[7] The *Gas Corporation (Business Disposal) Act 1999* s. 92(c)(i) and (d) do not have effect because the provisions they would have amended were previously amended by the *Statutes (Repeals and Minor Amendments) Act 2000* s. 14(13). Subsequently s. 92(c)(i) and (d) were deleted by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 51(4).

[8] The *Energy Legislation Amendment Act 2003* s. 115(3)-(4) and 116 read as follows:

115. Section 65 amended and transitional provision

(3) Section 65 of the principal Act as in force immediately before the commencement of this section is to continue to have effect for the purpose of adjusting, under section 65, charges in respect of which, according to the records of the energy operator —

(a) a metering or billing error was discovered by;

(b) a complaint was made to; or

(c) a question was raised with,

the energy operator before that commencement.

(4) A statement in writing signed on behalf of an energy operator showing the day on which, according to the records of the energy operator —

(a) a metering or billing error was discovered by;

(b) a complaint was made to; or

(c) a question was raised with,

the energy operator, as mentioned in subsection (3), is to be presumed to be correct in the absence of evidence to the contrary.

116. Validation of certain agreements

(1) This section applies where before the commencement of this section —

(a) an agreement was made between a person and Western Power Corporation for the purposes of section 58(3) or 61(1) of the principal Act; and

(b) the amount which the person agreed to pay to Western Power Corporation under the agreement was determined in such a way as to include an amount for the cost of appropriate network development.

(2) The provisions of such an agreement, and all acts, matters and things relating to it, are and always were as valid and effective as they would have been if the principal Act had been amended in accordance with sections 113 and 114 of this Act at the time when the agreement was entered into.

(3) In this section —

appropriate network development means "appropriate network development" as defined in section 58(3a) or section 61(1a) of the principal Act, as the case may require;

Western Power Corporation has the meaning given to that term in section 4(1) of the principal Act.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
accounting period	65(9)
acquisition	4(1)
apparatus	4(1)
appropriate network development	58(3a), 61(1a)
charges	4(1)
consumer installation	4(1)
Coordinator of Energy	4(1)
corporation	124(6)
department	4(1)
distribution system	57(1)
distribution works	4(1)
electricity corporation	4(1)
energy	4(1)
energy operator	4(1)
generating works	4(1), 45(4A)
government department	4(1)
inspector	4(1)
land	4(1), 36
liquid petroleum gas	4(1)
meter	4(1)
officer	4(1)
power of entry	46(1)
premises	4(1)
relevant Minister	45(16)
service apparatus	4(1)
specified	125(2)
street	4(1)
supply or sale	60(1)
supply system	4(1)
system emergency	4(1), 57(1)
terms	60(1)
transfer event	43(1aa)
undertaking	4(1)
works	4(1)

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