



Western Australia

## **Electricity Corporations Act 2005**

Compare between:

[05 Nov 2010, 01-d0-03] and [22 Nov 2010, 01-e0-03]



## **Electricity Corporations Act 2005**

**An Act —**

- **to establish 3 corporations in place of Western Power Corporation each with particular responsibilities relating to the provision of electricity in the South West of the State, and a corporation in place of Western Power Corporation with responsibility for the provision of electricity outside the South West of the State;**
- **to provide for the passing of the assets and liabilities of Western Power Corporation to the new corporations or to the State and for other transitional matters;**
- **to amend and rename the *Electricity Corporation Act 1994*, and to amend other Acts<sup>2</sup>, as a consequence of Western Power Corporation being replaced by the new corporations, and to make related provisions.**

## Part 1 — Preliminary

### 1. Short title

This is the *Electricity Corporations Act 2005*<sup>1</sup>.

### 2. Commencement

- (1) Except as stated in subsection (2), this Act comes into operation on the day on which it receives the Royal Assent<sup>1</sup>.
- (2) The provisions of —
  - (a) Parts 2, 3, 4, 5, 6, 7 and 8;
  - (b) Part 9, other than sections 141, 142, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153(1) and 179; and
  - (c) Schedules 1, 2, 3, 4 and 5,come into operation on a day fixed by proclamation<sup>1</sup>.
- (3) Different days may be fixed under subsection (2) for different provisions.
- (4) A day is not to be fixed for the purposes of subsection (2) until the Minister is of the opinion that the transfer order or transfer orders required by section 147(1) has or have been made.

### 3. Terms used

- (1) In this Act, unless the contrary intention appears —

**board** means a board of directors provided for by section 8;

**chief executive officer** means an officer appointed under section 14 and, except in sections 14 and 16, includes an acting chief executive officer appointed under section 17;

**Commissioner for Public Sector Standards** means the person for the time being holding the office created by the *Public Sector Management Act 1994* section 16(1);

**corporation** means a body established by section 4(1);

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**director** means a member of a board;

**Economic Regulation Authority** means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

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

**Electricity Generation Corporation** means the body established by section 4(1)(a);

**Electricity Networks Corporation** means the body established by section 4(1)(b);

**Electricity Retail Corporation** means the body established by section 4(1)(c);

**executive officer** means a member of the staff of a corporation designated under section 20 as an executive officer;

**function** includes powers, duties and authorities, except in —

- (a) Part 3 Division 1 Subdivisions 1 to 6; and
- (b) sections 56 and 59;

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

- (a) as a fuel; or
- (b) in any chemical process;

**member of staff** means a person engaged under section 18;

**non-executive director**, in relation to a corporation, means a director other than the chief executive officer if he or she is a director of the corporation;

**Regional Power Corporation** means the body established by section 4(1)(d);

***South West interconnected system*** means the interconnected transmission and distribution systems, generating works and associated works —

- (a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and
- (b) into which electricity is supplied by one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar,

as expanded or altered from time to time;

***subsidiary***, in relation to a corporation, means —

- (a) a body determined to be a subsidiary of the corporation under subsection (2); and
- (b) an interest or other rights of the corporation in a unit trust, joint venture or partnership where the interest or other rights of the corporation in connection with the unit trust, joint venture or partnership entitle the corporation to —
  - (i) control the composition of the governing body of the unit trust, joint venture or partnership;
  - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
  - (iii) control the business affairs of the unit trust, joint venture or partnership;

***Treasurer*** means the Treasurer of the State.

- (2) The Corporations Act Part 1.2 Division 6 applies for the purpose of determining whether a body is a subsidiary of a corporation.

## **Part 2 — Electricity Corporations**

### **Division 1 — Establishment of corporations**

#### **4. Corporations established**

- (1) Each of the following is established as a body corporate with perpetual succession —
  - (a) the Electricity Generation Corporation;
  - (b) the Electricity Networks Corporation;
  - (c) the Electricity Retail Corporation; and
  - (d) the Regional Power Corporation.
- (2) Proceedings may be taken by or against a corporation in its corporate name.
- (3) A corporation may use, and operate under, one or more trading names approved by the Minister being —
  - (a) an abbreviation or adaptation of its corporate name; or
  - (b) a name other than its corporate name.

#### **5. Corporations not agents of the State**

A corporation is not an agent of the State and does not have the status, immunities and privileges of the State.

#### **6. Corporations and officers not part of Public Service**

- (1) A corporation is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither —
  - (a) the chief executive officer; nor
  - (b) any member of staff,

of a corporation is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

**7. Head office of Regional Power Corporation**

The head office of the Regional Power Corporation is to be located in a part of the State that is not served by the South West interconnected system.

**Division 2 — Boards of directors**

**8. Boards of directors**

- (1) A corporation is to have a board of directors comprising not less than 4, nor more than 6, persons appointed by the Governor on the nomination of the Minister.
- (2) The chief executive officer of a corporation may be a director of the corporation.
- (3) A member of staff of a corporation is not to be a director of the corporation.
- (4) In making nominations for appointment to the board of a corporation the Minister is to ensure that —
  - (a) each nomination is made only after consultation with the board; and
  - (b) in the case of an appointment to the board of the Regional Power Corporation, a nominee is a person ordinarily resident in a part of the State that is not served by the South West interconnected system so far as is necessary for the majority of the directors of the corporation, at the time of the appointment, to be persons so resident.
- (5) Where a vacancy occurs in the membership of a board, the board may recommend a candidate to the Minister.
- (6) Subsection (4)(a) does not apply —
  - (a) to the initial appointments to a board; or
  - (b) where the nominee was recommended by a board under subsection (5).



**9. Role of boards**

The board of a corporation —

- (a) is its governing body; and
- (b) in the name of the corporation and subject to this Act, is to perform the functions, determine the policies and control the affairs of the corporation.

**10. Provisions about the constitution and proceedings of boards**

Schedule 1 has effect with respect to the directors and the board of a corporation.

**11. Remuneration**

- (1) A non-executive director of a corporation is to be paid out of the funds of the corporation such remuneration and allowances as are determined by the Minister in the case of that corporation and that director.
- (2) Remuneration is not to be paid to a non-executive director who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

**12. Conflict of duties**

- (1) In subsection (2) —  
*public service officer* means a person who is employed in the Public Service under the *Public Sector Management Act 1994* Part 3.
- (2) If a public service officer is a director —
  - (a) his or her duties as a director are to prevail if a conflict arises between those duties and his or her other duties as a public service officer; and
  - (b) he or she does not have any immunity of the State in respect of the duties and liabilities imposed on directors by this Act.

**13. Committees**

- (1) The board of a corporation may —
  - (a) appoint committees of such directors of the corporation as it thinks fit; and
  - (b) discharge, alter or reconstitute any committee.
- (2) A committee is to comply with any direction or requirement of the board by which it was appointed.
- (3) A committee may invite any person, including a member of staff of the corporation concerned, to participate in a meeting of the committee but such a person cannot vote on any resolution.
- (4) Subject to subsection (2), a committee may determine its own procedures.

**Division 3 — Staff**

**Subdivision 1 — Chief executive officer**

**14. Appointment**

- (1) A corporation is to have a chief executive officer.
- (2) The powers —
  - (a) to appoint and remove the chief executive officer of a corporation; and
  - (b) to fix and alter his or her terms and conditions of service,are vested in the board of the corporation.
- (3) Despite subsection (2), the Minister is to appoint the initial chief executive officer of a corporation.
- (4) It is a condition of service of the chief executive officer of the Regional Power Corporation that, while he or she holds office, his or her ordinary place of residence is to be in or near the town where the head office of that corporation is located.

- (5) The board is to obtain the concurrence of the Minister before it exercises any of the powers conferred by subsection (2).

**15. Role of chief executive officer**

Subject to the control of the board, the chief executive officer of a corporation is responsible for, and has the powers needed to administer, the day to day operations of the corporation.

**16. Resignation**

- (1) The chief executive officer of a corporation may resign from office by giving notice in writing to the board of the corporation.
- (2) If the chief executive officer's terms and conditions of service deal with the matter of resignation, the right to resign under subsection (1) can only be exercised in accordance with those terms and conditions.

**17. Acting appointments**

The board of a corporation may appoint a person to act in place of the chief executive officer of the corporation —

- (a) during a vacancy in that office; or
- (b) during any period when the chief executive officer is on leave or otherwise unable to carry out his or her duties or is absent from the State.

**Subdivision 2 — Other staff**

**18. Powers in relation to staff**

- (1) The power to engage and manage the staff of a corporation is vested in its board.
- (2) The power conferred by subsection (1) —

- (a) includes powers to determine remuneration and other terms and conditions of service and to remove, suspend and discipline staff; and
  - (b) does not preclude the delegation of any matter under section 71.
- (3) The remuneration of a member of staff and other terms and conditions of employment are to be such that the overall entitlements do not, on balance, disadvantage the person in comparison to the entitlements he or she would have under —
- (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
  - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Nothing in this Act, other than section 19(2), affects the operation of the *Industrial Relations Act 1979* Part VID.

**19. Certain industrial matters excluded from employment agreements**

- (1) There are excluded from the operation of the *Industrial Relations Act 1979* Part II Division 2B —
- (a) any matters dealt with by an instrument issued under section 21 except —
    - (i) rates of remuneration;
    - (ii) leave;
    - (iii) hours of duty; and
    - (iv) matters that are similar to matters prescribed for the purposes of the *Public Sector Management Act 1994* section 99(1)(a)(iv);
- and
- (b) matters concerning the management of the staff that are similar to matters prescribed for the purposes of the *Public Sector Management Act 1994* section 99(1)(c).

- (2) A matter referred to in subsection (1) cannot be varied or affected by an employer-employee agreement made under the *Industrial Relations Act 1979* Part VID.

**20. Designation of executive officers**

For the purposes of section 29, the board of a corporation may designate a member of the staff of the corporation as an executive officer by resolution —

- (a) passed by the board; and
- (b) notified in writing to the employee,

and may in the same manner revoke such a designation.

**Subdivision 3 — Minimum standards for staff management**

**21. Standards to be set out in instrument**

- (1) The board of a corporation must, after consultation with the Commissioner for Public Sector Standards, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the corporation.
- (2) In subsection (1) —  
*management* includes recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment.
- (3) In complying with subsection (1) a board is to have regard to the principles set out in the *Public Sector Management Act 1994* section 8.
- (4) Section 14(5) is not affected by the requirements of subsection (3).
- (5) The Commissioner for Public Sector Standards may at any time recommend to a board any amendment that he or she thinks should be made to an instrument issued under this section.

- (6) A board may —
- (a) amend an instrument issued under this section; or
  - (b) revoke it and substitute a new instrument,
- but, except where subsection (5) applies, is to do so only after consultation with the Commissioner for Public Sector Standards.

**22. Reports to Commissioner for Public Sector Standards**

- (1) The Commissioner for Public Sector Standards may in writing require a board —
- (a) to report to him or her on the observance of the minimum standards in force under section 21; and
  - (b) to make the reports at such times, but not more often than half-yearly, as the Commissioner may specify.
- (2) A board must comply with a requirement made under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on the content or observance of the minimum standards in force under section 21.

**Subdivision 4 — Joint policy on staff transfers**

**23. Corporations to have joint policy approved by Minister**

- (1) The corporations must have, and comply with, a joint policy on staff transfers that has been approved or determined by the Minister under this section.
- (2) The purpose of the joint policy referred to in subsection (1) is to ensure that members of staff of the corporations and of their subsidiaries have the opportunity to transfer between the corporations and their subsidiaries —
- (a) for temporary or permanent employment;
  - (b) on secondment or temporary deployment; or

- (c) for training,  
without loss of entitlements.
- (3) Within 2 months after the commencement of this section, the corporations must jointly prepare a draft policy statement for the purposes of subsection (1) and submit it to the Minister.
- (4) The Minister may —
  - (a) approve a draft policy statement submitted under subsection (3); or
  - (b) request that it be amended and approve it in an amended form.
- (5) If a policy statement has not been approved by the Minister within a period that he or she considers reasonable and notifies to the corporations, the Minister may determine the contents of the policy statement.

**24. Amendment of policy statement**

- (1) With the approval of the Minister, the corporations may jointly —
  - (a) amend a policy statement for the time being in force under section 23; or
  - (b) revoke it and replace it with another policy statement.
- (2) The Minister may, in writing, direct the corporations —
  - (a) to amend a policy statement for the time being in force under section 23 in a specified way; or
  - (b) to revoke it and replace it with another policy statement containing specified provisions,and the corporations are to comply with any such direction.

**25. Consultation with staff**

A corporation must —

- (a) in preparing the draft policy statement under section 23(3); and
- (b) before agreeing to make any amendment or replacement under section 24(1),

consult the members of its staff and the staff of its subsidiaries by making the draft statement, amendment or replacement, as the case may be, available for their comment.

**Subdivision 5 — General**

**26. Superannuation**

- (1) In this section —

*members of staff* includes —

- (a) a chief executive officer;
- (b) dependants of members of staff; and
- (c) former members of staff and their dependants.

- (2) A corporation may grant, or make provision for the grant of, retirement benefits to members of staff of the corporation and, for that purpose may —

- (a) establish, manage and control; or
- (b) enter into an arrangement with any body for the establishment, management and control by such body either alone or jointly with the corporation of,

any fund or scheme for the purpose of providing for such retirement benefits.

- (3) The corporation concerned may make contributions to any fund or scheme referred to in subsection (2).
- (4) Subsections (2) and (3) have effect subject to the *State Superannuation Act 2000* section 30.



- (5) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to a corporation or any member of staff.

**Division 4 — Duties of, and relating to, directors and staff**

**27. Duties of, and relating to, directors**

Schedule 2 has effect in relation to —

- (a) the duties of directors;
- (b) the duties of a corporation in respect of directors and related persons; and
- (c) the other matters provided for in that Schedule.

**28. Chief executive officer, duties imposed**

- (1) Schedule 2 clauses 2 to 11, 15 and 16 apply to the chief executive officer of a corporation in his or her capacity as such in addition, if he or she is a director of the corporation, to their application to him or her in that capacity.
- (2) Schedule 2 clauses 4 and 7 to 11 apply to a former chief executive officer in his or her capacity as such in addition, if he or she was a director of the corporation, to their application to him or her in the capacity of former director.
- (3) This section and section 27 do not operate so as to make a chief executive officer or a former chief executive officer liable to be punished twice for the same act or omission.

**29. Executive officers, duties imposed**

- (1) Schedule 2 clauses 2 to 5, 7 to 11, 15 and 16 apply to an executive officer as if references to a director were replaced by references to an executive officer.
- (2) Schedule 2 clauses 4 and 7 to 11 apply to a former executive officer as if references to a former director were replaced by references to a former executive officer.

**30. Members of staff, duties imposed**

- (1) Schedule 2 clauses 4, 5 and 7 to 11 apply to any person engaged under section 18, other than an executive officer, as if references to a director were replaced by references to a person so engaged.
- (2) Schedule 2 clauses 4 and 7 to 11 apply to a person formerly engaged under section 18, other than an executive officer, as if references to a former director were replaced by references to a person formerly so engaged.

**31. Codes of conduct**

- (1) In this section and in sections 32 and 33 —  
*members of staff* includes a chief executive officer.
- (2) The board of a corporation must, after consultation with the Commissioner for Public Sector Standards, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff of the corporation.
- (3) In complying with subsection (2) a board is to have regard to the principles set out in the *Public Sector Management Act 1994* section 9.
- (4) A board may, after consultation with the Commissioner for Public Sector Standards, amend any code of conduct in force under subsection (2) or revoke it and substitute a new code of conduct.

**32. Reports to Commissioner for Public Sector Standards**

- (1) The Commissioner for Public Sector Standards may in writing require the board of a corporation —
  - (a) to report to him or her on the observance of any code of conduct in force under section 31 by members of staff of the corporation; and

- (b) to make the reports at such times, but not more often than half-yearly, as the Commissioner may specify.
- (2) A board must comply with a requirement made under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on any matter that the Commissioner thinks should be brought to the Minister's attention relating to the observance by members of staff of a corporation of a code of conduct in force under section 31.

**33. Reports to Minister**

- (1) The board of a corporation, when it delivers to the Minister its annual report under section 107, must also deliver to the Minister a separate report on the observance of any code of conduct in force under section 31 by members of staff of the corporation.
- (2) A board must give to the Commissioner for Public Sector Standards a copy of each report under subsection (1).

## **Part 3 — Functions and powers of corporations**

### **Division 1 — Functions, powers and related provisions**

#### **Subdivision 1 — Preliminary**

#### **34. Terms used**

(1) In this Division —

*acquire*, in relation to electricity or gas, includes acquire by way of exchange;

*ancillary services* means services that are necessary or expedient for the security or reliability of an electricity system;

*energy efficient technologies* means technologies, including but not limited to operating software, designed to improve the efficiency of electricity generation plant and equipment;

*renewable sources* means sources of energy that are replaced rapidly by natural processes, including sunlight, wind, biomass, water in motion and geothermal activity;

*telecommunication services* means services for carrying communications by one or more of the following means —

- (a) guided electromagnetic energy;
- (b) unguided electromagnetic energy;
- (c) optical signals;
- (d) other similar means.

(2) References in this Division to the performance of a corporation's functions being limited to the South West interconnected system are —

- (a) in the case of a function relating to electricity, references to performing the function for the purposes of that system or customers served by that system;

- (b) in the case of the functions of —
  - (i) supplying gas or steam; or
  - (ii) providing telecommunication services,references to performing those functions within the area served by that system.

### **Subdivision 2 — Electricity Generation Corporation**

#### **35. Principal functions**

The functions of the Electricity Generation Corporation (in this Subdivision called the *corporation*) are, subject to this Subdivision —

- (a) to generate, purchase or otherwise acquire, and supply electricity from sources of energy including renewable sources;
- (b) to acquire, transport and supply —
  - (i) gas; and
  - (ii) steam;
- (c) to acquire, develop, operate and supply energy efficient technologies;
- (d) to provide ancillary services;
- (e) by agreement with the Regional Power Corporation —
  - (i) to provide consultative and advisory services to that corporation in relation to electricity generation; and
  - (ii) to operate and maintain any electricity generation plant or equipment on behalf of that corporation;and
- (f) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

**36. Other functions**

It is also a function of the corporation —

- (a) in addition to its function under section 35(e)(i), to use its expertise and resources to provide consultative, advisory or other services for profit;
- (b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 35;
- (c) to manufacture and market any product that relates to a function under section 35 or paragraph (b);
- (d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 35 so long as the proper performance of the function is not affected;
- (e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 35 or this section; or
- (f) to do anything that it is authorised to do by any other written law.

**37. Restriction on area in which corporation may operate**

- (1) Within the State the performance of the corporation's functions under section 35 is limited to the South West interconnected system.
- (2) Subsection (1) does not apply to the performance of the corporation's functions under section 35(a) so far as the performance involves only —
  - (a) the generation and supply of electricity from renewable sources; or
  - (b) the purchase or other acquisition and supply of electricity so generated.

- (3) Subsection (1) does not apply to the performance of the corporation's functions under subparagraph (ii) of section 35(e), but the functions under that subparagraph do not authorise the corporation to own or control any electricity generation plant or equipment.
- (4) If —
- (a) the sources of energy used to generate electricity are a combination of renewable sources and diesel or renewable sources and gas; and
  - (b) the renewable sources comprise a substantial proportion of those sources of energy,

then for the purposes of subsection (2) the electricity is taken to be generated from renewable sources.

*[Section 37 amended by No. 8 of 2009 s. 50(2).]*

**38. Restriction on sale of electricity to consumers**

- (1) Except as may be authorised under subsection (3), the corporation, or a subsidiary, must not, until after the expiry of the designated period, supply electricity to a person under section 35(a) for the person's own consumption.
- (2) For the purposes of subsection (1) —  
***the designated period*** is —
- (a) the period of 7 years; or
  - (b) if an order is made under section 40, the period of 10 years,
- after the commencement of this section.
- (3) The Minister may, by order published in the *Gazette* —
- (a) authorise the corporation in the performance of its functions under section 35(a) to supply electricity to specified customers or any specified class of customers during the designated period; and

- (b) amend or revoke an order made under paragraph (a).

**39. Review of restriction**

- (1) The Minister is to review the operation of section 38(1) before the expiry of 5 years from the commencement of this section.
- (2) The purpose of the review is to determine the effect that the operation of section 38(1) has had, and is likely to have, on the encouragement of competition in the generation, retail and wholesale electricity markets.
- (3) Before the Minister carries out the review he or she must obtain, and take into account, the views of the Economic Regulation Authority on the matters mentioned in subsection (2).

**40. Extension of designated period**

- (1) The Minister may by order made —
- (a) after completion of the review required by section 39; and
- (b) before the expiry of the period of 7 years after the commencement of this section,

declare that the designated period is extended to 10 years after that commencement.

- (2) The *Interpretation Act 1984* sections 41 and 42 apply to an order under subsection (1) as if it were a regulation.

**Subdivision 3 — Electricity Networks Corporation**

**41. Principal functions**

The functions of the Electricity Networks Corporation (in this Subdivision called the *corporation*) are —

- (a) to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems and provide and improve electricity transmission and distribution services;



- (b) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8 (which relates to network access) and regulations and Code made under that Part;
- (c) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 9 (which relates to the wholesale electricity market) and regulations and market rules made under that Part;
- (d) to provide services that improve the efficiency of electricity supply and the management of demand on electricity transmission and distribution systems;
- (e) to provide ancillary services;
- (f) by agreement with the Regional Power Corporation, to operate and maintain electricity transmission and distribution systems on behalf of that corporation;
- (g) by agreement with the Electricity Generation Corporation, the Electricity Retail Corporation and the Regional Power Corporation, to provide procurement, financial and commercial services to those corporations;
- (h) to provide telecommunication services; and
- (i) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

**42. Other functions**

It is also a function of the corporation —

- (a) in addition to its functions under section 41(f) and (g), to use its expertise and resources, other than those relating to the functions referred to in section 41(c), to provide consultative, advisory or other services for profit;
- (b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 41(a) or (d) to (i);

- (c) to manufacture and market any product that relates to a function —
  - (i) under section 41(a) or (d) to (i); or
  - (ii) under paragraph (b) of this section;
- (d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 41(a) or (d) to (i) so long as the proper performance of the function is not affected;
- (e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 41 or this section; or
- (f) to do anything that it is authorised to do by any other written law.

**43. Restriction on area in which corporation may operate**

- (1) Within the State the performance of the corporation's functions under section 41 is limited to the South West interconnected system.
- (2) Subsection (1) does not apply to the performance of the corporation's functions under section 41(f) and (g), but the functions under section 41(f) or (i) do not authorise the corporation to own or control any electricity transmission or distribution system.

**Subdivision 4 — Electricity Retail Corporation**

**44. Principal functions**

The functions of the Electricity Retail Corporation (in this Subdivision called the *corporation*) are —

- (a) to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand;

- (b) to purchase or otherwise acquire electricity for the purposes of paragraph (a);
- (c) to generate electricity, but only after the expiry of the designated period under section 47;
- (d) to provide ancillary services;
- (e) by agreement with the Regional Power Corporation, to provide retail support services to that corporation;
- (f) to acquire gas and supply it to consumers;
- (g) to provide telecommunication services; and
- (h) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in paragraph (a), (c), (e) or (g).

**45. Other functions**

It is also a function of the corporation —

- (a) in addition to its function under section 44(e), to use its expertise and resources to provide consultative, advisory or other services for profit;
- (b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 44;
- (c) to manufacture and market any product that relates to a function under section 44 or paragraph (b);
- (d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 44 so long as the proper performance of the function is not affected;
- (e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 44 or this section; or
- (f) to do anything that it is authorised to do by any other written law.

**46. Restriction on area in which corporation may operate**

- (1) Within the State the performance of the corporation's functions under section 44 is limited to the South West interconnected system.
- (2) Subsection (1) does not apply to the performance of the corporation's functions under section 44(e).

**47. Prohibition on generation of electricity for a designated period**

- (1) The corporation, or a subsidiary of the corporation, must not generate electricity until after the expiry of the designated period.
- (2) For the purposes of subsection (1) —  
*the designated period* is —
  - (a) the period of 7 years; or
  - (b) if an order is made under section 49, the period of 10 years,after the commencement of this section.

**48. Review of prohibition**

- (1) The Minister is to review the operation of section 47 before the expiry of 5 years from the commencement of this section.
- (2) The purpose of the review is to determine the effect that the operation of section 47 has had, and is likely to have, on the encouragement of competition in the generation, retail and wholesale electricity markets.
- (3) Before the Minister carries out the review he or she must obtain, and take into account, the views of the Economic Regulation Authority on the matters mentioned in subsection (2).

**49. Extension of designated period**

- (1) The Minister may by order made —
- (a) after completion of the review required by section 48; and
  - (b) before the expiry of the period of 7 years after the commencement of this section,

declare that the designated period is extended to 10 years after that commencement.

- (2) The *Interpretation Act 1984* sections 41 and 42 apply to an order under subsection (1) as if it were a regulation.

**Subdivision 5 — Regional Power Corporation**

**50. Principal functions**

The functions of the Regional Power Corporation (in this Subdivision called the *corporation*) are —

- (a) to generate, purchase or otherwise acquire electricity from sources of energy including renewable sources;
- (b) to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems and provide and improve electricity transmission and distribution services;
- (c) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8 (which relates to network access) and regulations and Code made under that Part;
- (d) to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand and which, so far as is practicable, are comparable to services provided by the Electricity Retail Corporation in the performance of its functions under section 44(a);

- (e) to acquire, transport and supply —
  - (i) gas; and
  - (ii) steam;
- (f) to acquire, develop, operate and supply energy efficient technologies;
- (g) to provide ancillary services;
- (h) by agreement with the Electricity Generation Corporation, to operate and maintain any electricity generation plant or equipment on behalf of that corporation;
- (i) to provide telecommunication services; and
- (j) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

**51. Other functions**

It is also a function of the corporation —

- (a) to use its expertise and resources to provide consultative, advisory or other services for profit;
- (b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 50 other than the function under section 50(c);
- (c) to manufacture and market any product that relates to a function under section 50 or paragraph (b);
- (d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 50, other than the function under section 50(c), so long as the proper performance of the function is not affected;
- (e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 50 or this section; or

- (f) to do anything that it is authorised to do by any other written law.

**52. Restriction on area in which corporation may operate**

- (1) Within the State the performance of the corporation's functions under section 50(a) to (g) and (i) and (j) relating to electricity is limited to electricity systems in those parts of the State (the ***area of operations***) that are not served by the South West interconnected system.
- (2) Within the State the performance of the corporation's functions of —
  - (a) supplying gas or steam; or
  - (b) providing telecommunication services,is limited to supply or provision within the area of operations.

**Subdivision 6 — Special function in respect of certain assets and liabilities**

**53. Administration under delegated power**

- (1) In this section —  
***unallocated asset or liability*** means an asset, right or liability that, under section 169 is to be dealt with by the Minister.
- (2) Regulations may be made —
  - (a) declaring —
    - (i) any specified unallocated asset or liability; or
    - (ii) any specified group of such assets or liabilities, to be an asset or liability or group to which this section applies (the ***declared matters***); and
  - (b) designating a corporation to act in respect of the declared matters.

**Electricity Corporations Act 2005**

**Part 3** Functions and powers of corporations

**Division 1** Functions, powers and related provisions

**s. 54**

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- (3) If regulations are in force designating a corporation to act in respect of declared matters —
  - (a) the Minister may, in writing, delegate his or her powers or duties under section 166 in respect of those matters to that corporation; and
  - (b) it is a function of the corporation to exercise the powers or duties so delegated.
- (4) A corporation exercising or performing a power or duty that has been delegated to it under this section is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.
- (5) A corporation may exercise or perform a power or duty that has been delegated to it under this section through an officer or agent.
- (6) The regulations may prescribe provisions of this Act that —
  - (a) do not apply; or
  - (b) apply with specified modifications, other than in relation to quality and reliability of supply,to the declared matters or the exercise of the powers or duties under this section.
- (7) Regulations referred to in subsection (6) cannot limit or otherwise affect community service obligations, as defined in section 99(1), to be performed by a corporation under this Act.



**Subdivision 7 — Use of distribution systems for the retail supply of electricity**

**54. Electricity Networks Corporation and Regional Power Corporation not to supply services for certain purposes**

- (1) In this section —  
*customer, distribution licence* and *integrated regional licence* have the meanings given to those terms in the *Electricity Industry Act 2004* section 3;  
*prescribed customer* means a customer of a class prescribed by order under subsection (4);  
*services* has the meaning given to that term in the *Electricity Industry Act 2004* section 103.
- (2) A distribution licence does not authorise the Electricity Networks Corporation, or a subsidiary of that corporation, to supply services for the purpose of the supply of electricity to a prescribed customer by a person other than the Electricity Retail Corporation or a subsidiary of the Electricity Retail Corporation.
- (3) A distribution licence or an integrated regional licence does not authorise the Regional Power Corporation, or a subsidiary of that corporation, to supply services for the purpose of the supply of electricity to a prescribed customer by a person other than that corporation or a subsidiary of that corporation.
- (4) The Minister may, by order published in the *Gazette* —
- (a) declare a class of customers to be prescribed customers for the purposes of subsection (2) or (3); and
  - (b) amend or revoke an order made under paragraph (a).
- (5) Without limiting subsection (4)(a), a class of customers may be declared by reference to —
- (a) the amount of electricity that has been consumed by a customer within a specified period; or

- (b) an estimate made by a specified person or a person of a specified class of the amount of electricity that will be consumed by a customer within a specified period.
- (6) In subsection (5) —  
*specified* means specified in the order.
- (7) An order under subsection (4) cannot come into operation before the *Electricity Transmission and Distribution Systems (Access) Act 1994* section 91 and Schedule 6 clause 2(1) have ceased to have effect.
- (8) Subsections (2) and (3) have effect despite the *Electricity Industry Act 2004* Part 8.

**55. Review as to introduction of further retail competition**

- (1) The Minister is to cause a review to be undertaken of the operation of section 54 and any orders under section 54(4) as soon as practicable after the end of the period of 3 years beginning on the coming into operation of this section.
- (2) The purpose of the review is to consider whether or not further competition (including full competition) in the retail supply of electricity should be introduced by amending or revoking any order under section 54(4) that is then in operation.
- (3) As soon as practicable after the review is completed, the Minister is to cause a report based on the review to be laid before each House of Parliament.

**Subdivision 8 — Provisions applying to functions of all corporations**

**56. Corporations may act at their discretion**

The fact that a corporation has a function given to it by this Act does not impose a duty on it to do any particular thing and, subject to —

- (a) this Act; and

(b) any direction given to the corporation under this Act, it has a discretion as to how and when it performs the function.

**57. Where corporation may operate**

A corporation may perform any of its functions —

- (a) outside the State; and
- (b) except as provided in this Division, in any area of the State.

**58. Corporation to act in accordance with policy instruments**

A corporation must perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

**59. Powers**

- (1) In subsection (3)(g) —

*business arrangement* means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

*participate* includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

- (2) A corporation has all the powers it needs to perform its functions under this Act or any other written law.
- (3) A corporation may for the purpose of performing any function —
- (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
  - (b) enter into any contract or arrangement;
  - (c) apply for the grant or transfer of any mining tenement, petroleum licence or other licence or authority to the corporation;

**Electricity Corporations Act 2005**

**Part 3** Functions and powers of corporations

**Division 1** Functions, powers and related provisions

**s. 59**

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- (d) acquire, establish and operate —
    - (i) any undertaking (including any necessary tenements and licences) for the production, recovery, conversion, processing or transport of any fuel or source of energy; and
    - (ii) any associated undertaking;
  - (e) produce and deal in —
    - (i) any by-product resulting from; or
    - (ii) any equipment, facilities or system associated with,  
the performance of any function of the corporation;
  - (f) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the corporation;
  - (g) subject to sections 64 and 68, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;
  - (h) carry out any investigation, survey, exploration or boring;
  - (i) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research;
  - (j) for the purposes of section 36(b), 42(b), 45(b) or 51(b), as the case may be, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
  - (k) promote and market the corporation and its activities.
- (4) A corporation may —
- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;

- (b) undertake community service obligations within the meaning in section 99(1);
  - (c) make any ex gratia payment that the board considers to be in the corporation's interest; and
  - (d) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the corporation.
- (5) Subsection (3) or (4) does not limit subsection (2) or the other powers of a corporation under this Act or any other written law.
- (6) If the generality of a power conferred on a corporation by this Act is restricted by a provision of the *Energy Operators (Powers) Act 1979* that restriction applies, despite this Act.

**60. Certain works exempt from planning laws**

- (1) In this section —  
**corporation** means each of —
- (a) the Electricity Networks Corporation; and
  - (b) the Regional Power Corporation;
- electricity distribution system** and **electricity transmission system** have the meanings given to those terms in the *Electricity Transmission and Distribution Systems (Access) Act 1994* section 89.
- (2) This section applies to the carrying out by a corporation of works for the extension, expansion or enhancement of an electricity distribution system or an electricity transmission system.
- (3) Despite the *Planning and Development Act 2005* sections ~~221~~ 218 and ~~218~~ 221, a corporation is not required to comply with the provisions of —
- (a) an interim development order; or

(b) a local planning scheme; ~~or~~ [or](#)

[\(c\) an improvement scheme,](#)

in force under that Act in carrying out the works referred to in subsection (2).

(4) However, a corporation —

(a) is to carry out the works, so far as is reasonably practicable —

(i) in keeping with the design and intent of; and

(ii) so as not to destroy the amenity of,  
any relevant scheme or order referred to in  
subsection (3); and

(b) is to consult with the responsible authority at the time  
when a proposal for any works referred to in  
subsection (2) is being formulated to ensure that  
paragraph (a) will be complied with.

(5) A corporation is to give the Minister and the Minister  
responsible for the administration of the *Planning and  
Development Act 2005* written notice of a proposal to carry out  
works referred to in subsection (2) if those works will not  
comply with the provisions of an order or scheme referred to in  
subsection (3).

(6) A corporation is to include in its annual report under section 107  
details of any works carried out by the corporation during the  
relevant financial year that did not comply with the provisions  
of an order or scheme referred to in subsection (3).

*[Section 60 amended by No. 38 of 2005 s. ~~15~~15; No. 28 of 2010  
s. 31.]*

## **61. Corporation to act on commercial principles**

(1) A corporation in performing its functions must —

(a) act in accordance with prudent commercial principles;  
and

- (b) endeavour to make a profit, consistently with maximising its long term value.
- (2) In respect of the function of the Electricity Networks Corporation referred to in section 41(c) —
  - (a) subsection (1) does not apply; and
  - (b) the corporation is required to ensure, so far as is practicable, that the reasonable cost of performing the function does not exceed its revenue from doing so.
- (3) If there is any conflict or inconsistency between the duty imposed by subsection (1) and —
  - (a) a direction given under this Act; or
  - (b) any provision in the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 or 6,the direction, or provision of that Schedule, prevails.

**62. Segregation of functions of corporations**

- (1) Regulations may be made —
  - (a) prescribing segments into which the functions or operations of a corporation are to be divided; and
  - (b) providing for, and in relation to —
    - (i) the segregation of any segment so prescribed in respect of a corporation from the other functions or operations of the corporation; or
    - (ii) the segregation from a corporation of any subsidiary of the corporation that has any functions or operations of a specified kind.
- (2) Regulations referred to in subsection (1) may make provision for, or in relation to —
  - (a) the keeping of accounts and records;
  - (b) financial reporting;

- (c) the apportionment of income, expenditure, assets and liabilities;
- (d) the protection of information;
- (e) the conduct of officers of a corporation; and
- (f) controls and procedures, and the conferral of functions on a specified person, to ensure that any required segregation is effective.

**63. Interruption or restriction of supply**

- (1) A corporation may interrupt, suspend or restrict the generation, transport or supply of electricity if in its opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.
- (2) Subsection (1) does not apply if the *Electricity Industry Act 2004* section 31(1) applies to the activity that is interrupted, suspended or restricted.
- (3) A corporation is not liable for any loss or damage which arises from any such interruption, suspension or restriction except to the extent that an agreement to which the corporation is a party provides otherwise.
- (4) This section is in addition to the provisions of —
  - (a) the *Energy Operators (Powers) Act 1979* sections 48, 57 and 58; and
  - (b) regulations made under the *Electricity Industry Act 2004* section 124,and does not limit those provisions.
- (5) This section has effect despite any provision of the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 or 6.



**64. Acquisition of subsidiary**

- (1) A corporation must obtain the approval of the Minister before it —
  - (a) forms or acquires a subsidiary; or
  - (b) enters into any transaction that will result in the formation or acquisition of a subsidiary.
- (2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.

**65. Control of subsidiary**

- (1) A corporation must ensure that the constitution of every subsidiary of the corporation that under a written law or the Corporations Act is required to have a constitution —
  - (a) contains provisions to the effect of those required by Schedule 3;
  - (b) is consistent with this Act; and
  - (c) is not amended in a way that is inconsistent with this Act.
- (2) A corporation must, to the maximum extent practicable, ensure that every subsidiary of the corporation complies with its constitution and with this Act.
- (3) A director, the chief executive officer or a member of staff of a corporation may with the approval of the board of the corporation become —
  - (a) a member of the committee of an incorporated association; or
  - (b) a director of a company,

that is or is to be a subsidiary of the corporation and may represent the interests of the corporation on that committee or the board of directors of that company.

- (4) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of a corporation.

**66. Corporations Act, provisions affecting**

- (1) Neither —
- (a) section 65(1) or (2); nor
  - (b) provisions referred to in section 65(1)(a) included in the constitution of a subsidiary,

make a corporation or the Minister a director of a subsidiary for the purposes of the Corporations Act.

- (2) The following provisions are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the Corporations legislation as defined in the Corporations Act section 9 —
- (a) section 65;
  - (b) subsection (1);
  - (c) Schedule 3.

**67. Disposals that require a Ministerial order**

- (1) In this section —

**dispose of** means enter into any arrangement or series of arrangements that results in a corporation ceasing to have at least 75% of the beneficial interest in a significant asset;

**significant asset** means any property of a corporation (including any contract, shares in a company or interest in a joint venture) that has a value exceeding the greater of —

- (a) the sum equal to 5% of the written down value of the corporation's consolidated fixed assets and investments, as appearing in its last audited accounts; or
- (b) the sum of \$100 million.

- (2) A corporation must not dispose of a significant asset except under and in accordance with an order (a *disposal order*) made by the Minister under this section.
- (3) A corporation that intends to dispose of a significant asset must consult with the Minister before undertaking the disposal.
- (4) The Minister may make a disposal order —
  - (a) authorising a corporation to dispose of a significant asset and to do so on such terms and conditions as may be specified in the order; and
  - (b) if the Minister thinks fit, prescribing the process to be followed by the corporation in undertaking the disposal.
- (5) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to a disposal order as if it were a regulation.

**68. Other transactions that require Ministerial approval**

- (1) In this section and section 69 —

*transaction* —

  - (a) includes a contract or other arrangement or any exercise of the power conferred by section 59(3)(g); but
  - (b) does not include —
    - (i) a disposal to which section 67 applies; or
    - (ii) any transaction under section 127 or 129.
- (2) Despite anything in this Part, a corporation must obtain the approval of the Minister before a transaction to which this section applies is entered into.
- (3) This section applies to a transaction if —
  - (a) it is to be entered into by a corporation or a subsidiary of the corporation;
  - (b) it is not exempt under section 69; and
  - (c) the corporation's liability exceeds the prescribed amount.

- (4) For the purposes of subsection (3)(c) a corporation's liability is —
- (a) the amount or value of the consideration; or
  - (b) the amount to be paid or received by the corporation or a subsidiary,
- ascertained as at the time when the transaction is entered into.
- (5) The prescribed amount in relation to a corporation is the greater of —
- (a) the sum equal to 1% of the written down value of the consolidated fixed assets and investments of the corporation, as appearing in its last audited accounts; or
  - (b) the sum of \$20 million.

**69. Exemptions from s. 68**

- (1) The Minister may by order exempt a transaction or class of transaction from the operation of section 68 either unconditionally or on specified conditions.
- (2) An order under subsection (1) may be revoked or amended by the Minister.
- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transactions or class of transaction to which it relates to enable the transaction or class to be identified.
- (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

**70. Minister to be consulted on major initiatives**

A corporation must consult the Minister before it enters upon a course of action that in its opinion —

- (a) amounts to a major initiative; or

(b) is likely to be of significant public interest,  
whether or not the course of action involves a transaction to  
which section 68 applies.

**71. Delegation**

- (1) A corporation may delegate any power or duty of the corporation under —
  - (a) another provision of this Act; or
  - (b) another written law.
- (2) A delegation under subsection (1) may be made to —
  - (a) a director or directors;
  - (b) a chief executive officer;
  - (c) a member or members of staff;
  - (d) a committee established under section 13; or
  - (e) any other person.
- (3) The delegation must be in writing executed by the corporation.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.
- (6) Nothing in this section limits the ability of a corporation to perform a function through an officer or agent.

**Division 2 — Role of Economic Regulation Authority**

**72. Advisory function**

It is a function of the Economic Regulation Authority (the *Authority*) to give advice for the purposes of sections 39(3)

and 48(3) and to make any recommendation the Authority thinks fit.

**73. Public consultation**

- (1) Before the Authority gives advice on a matter under section 72 it must seek public comment on the matter in accordance with subsection (2).
- (2) The Authority must —
  - (a) cause a notice giving a general description of the matter to be —
    - (i) published in an issue of a daily newspaper circulating throughout the State; and
    - (ii) posted on an internet website maintained by the Authority;and
  - (b) include in the notice the following information —
    - (i) a statement that written submissions on the matter may be made to the Authority by any person within a specified period; and
    - (ii) the address to which the submissions may be delivered or posted.
- (3) The period specified under subsection (2)(b)(i) is not to be less than 30 days after the notice under subsection (2)(a) has been published.
- (4) The Authority must have regard to any submission made in accordance with the notice.

**74. Advice to be published**

The Authority is to publish any advice given for the purposes of section 72 by either or both of the following means —

- (a) by publishing the advice in a newspaper circulating throughout the State;

- (b) by posting the advice on an internet website maintained by the Authority.

### **Division 3 — Arrangements authorised or approved by Governor**

#### **75. Governor may make certain regulations**

- (1) Regulations may be made authorising or approving any arrangement, act, matter or thing in relation to a corporation for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code.
- (2) Regulations referred to in subsection (1) may authorise or approve —
  - (a) any arrangement involving or relating to a corporation or any subsidiary or the performance by a corporation or any subsidiary of any of its functions;
  - (b) any act or thing done or proposed to be done in the State by a corporation or any subsidiary in the performance of its functions; or
  - (c) any other matter or thing necessary or convenient to facilitate or give effect to the authorisation or approval.
- (3) For the purposes of this section —
  - (a) **arrangement** includes any contract, arrangement or understanding, or any market practice or market or customer restriction, division, allocation or segregation of any nature, or a course of conduct or dealing; and
  - (b) a reference to any act or thing done or proposed to be done includes a reference to an omission or proposed omission to do that act or thing.

**Division 4 — Protection of persons dealing with a corporation**

**76. Person dealing with corporation may make assumptions**

- (1) A person having dealings with a corporation is entitled to make the assumptions mentioned in section 78.
- (2) In any proceedings in relation to the dealings, any assertion by the corporation concerned that the matters that the person is entitled to assume were not correct must be disregarded.

**77. Third party may make assumptions**

- (1) A person (the *third party*) having dealings with a person (the *second party*) who has acquired, or purports to have acquired, title to property from a corporation (whether directly or indirectly) is entitled to make the assumptions mentioned in section 78.
- (2) In any proceedings in relation to the dealings, any assertion by the corporation concerned or the second party that the matters that the third party is entitled to assume were not correct must be disregarded.

**78. Assumptions that may be made**

The assumptions that a person is, because of section 76 or 77, entitled to make are —

- (a) that, at all relevant times, this Act has been complied with;
- (b) that a person who is held out by a corporation to be a director, the chief executive officer, an executive officer, a member of staff or an agent of a particular kind —
  - (i) has been properly appointed; and
  - (ii) has authority to perform the functions customarily performed by a director, the chief executive officer, an executive officer, a member



of staff or an agent of that kind, as the case may require;

- (c) that a member of staff or agent of a corporation who has authority to issue a document on behalf of a corporation has authority to warrant that the document is genuine;
  - (d) that a member of staff or agent of a corporation who has authority to issue a certified copy of a document on behalf of the corporation has authority to warrant that the copy is a true copy;
  - (e) that a document has been properly sealed by a corporation if —
    - (i) it bears what appears to be an imprint of the corporation's seal; and
    - (ii) the sealing of the document appears to comply with section 135;
- and
- (f) that the directors, chief executive officer, members of staff and agents of a corporation have properly performed their duties to the corporation.

**79. Exception to s. 76 and 77**

- (1) Despite sections 76 and 77, a person is not entitled to assume a matter mentioned in section 78 if —
  - (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with the corporation concerned, the person ought to know that the assumption would be incorrect.
- (2) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to dealings with a corporation, section 76(2) does not apply to any assertion by the corporation in relation to the assumption.

***Electricity Corporations Act 2005***

**Part 3** Functions and powers of corporations

**Division 4** Protection of persons dealing with a corporation

**s. 79**

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- (3) If, because of subsection (1), the third party is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from a corporation of title to property, section 77(2) does not apply to any assertion by the corporation or the second party in relation to the assumption.

## Part 4 — Operation of corporations, imposition of requirements

### 80. Terms used

In this Part —

*corporation* includes a subsidiary of a corporation;

*prescribed contract* means a contract referred to section 82(1);

*specified* means specified in a prescribed contract.

### 81. Object of this Part

The object of this Part is to confer on the Minister power to determine arrangements between the corporations in order to —

- (a) encourage the development of competition in the generation, wholesaling and retailing of electricity; and
- (b) establish the terms and conditions of the initial arrangements that are to have effect between them.

### 82. Minister may prescribe contracts

- (1) The Minister may by order prescribe provisions that are to have effect as a contract between —
  - (a) a specified corporation and another specified corporation; or
  - (b) 2 or more specified corporations.
- (2) The Minister is to cause an order under subsection (1) to be served on each of the corporations concerned.

### 83. Matters that may be provided for

- (1) A prescribed contract may provide for such matters as the Minister considers necessary or expedient to achieve a purpose mentioned in section 81(a) or (b).

**s. 84**

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- (2) Without limiting subsection (1), a prescribed contract may include provision for —
  - (a) a specified amount of electricity, or an amount of electricity determined in a specified manner, to be supplied or made available by a corporation to another corporation for a specified purpose; and
  - (b) the prices to be paid or price limits that are to apply.
- (3) A prescribed contract may set out —
  - (a) the rights and obligations of the corporations concerned;
  - (b) arrangements and procedures that are to apply between them;
  - (c) requirements that are to be complied with by each of the corporations; and
  - (d) any incidental or supplementary provision that the Minister considers it necessary or expedient to include in the contract.

**84. Amendment or cancellation**

- (1) The Minister may —
  - (a) vary or add to the provisions of a prescribed contract; or
  - (b) cancel the contract and replace it with another prescribed contract.
- (2) The Minister is to cancel, without replacing, a prescribed contract made for the purpose mentioned in section 81(a) when he or she considers that the State electricity market is operating in an open and competitive manner.
- (3) An amendment or cancellation is to be made by order served on the corporations concerned.

**85. Enforcement**

- (1) A prescribed contract is taken to have been entered into between the corporations concerned, and the rights and obligations under the contract are enforceable accordingly.
- (2) A prescribed contract has effect despite any other provision of this Act.

**86. Advice of Economic Regulation Authority to be obtained**

- (1) Before the Minister cancels a prescribed contract under section 84(2) the Minister must obtain, and take into account, the views of the Economic Regulation Authority on the effect that the proposed cancellation is likely to have on the encouragement of competition in the generation, wholesaling and retailing of electricity.
- (2) It is a function of the Economic Regulation Authority to give advice for the purposes of subsection (1).

**87. Trade practices exemption**

For the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code, each of the following —

- (a) the making of an order under section 82(1) or 84;
- (b) a prescribed contract;
- (c) anything done under, or to give effect to, a prescribed contract,

is specifically authorised to the extent that it would otherwise contravene that Act or that Code.

## **Part 5 — Provisions about accountability**

### **Division 1 — Strategic development plans**

#### **88. Draft strategic development plan to be submitted to Minister**

- (1) The board of a corporation must in each year prepare, and submit to the Minister for his or her agreement, a draft strategic development plan for the corporation and any subsidiary.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by notice in writing to a corporation —
  - (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft strategic development plan is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed, 2 months before the start of the next financial year.

#### **89. Transitional provision**

The first strategic development plan of a corporation is to be in respect of the next full financial year after the commencement of this section.

#### **90. Matters to be included in strategic development plan**

- (1) The strategic development plan must set out economic and financial objectives and operational targets and how those objectives and targets will be achieved.

- (2) The matters which are to be considered in the preparation of the strategic development plan include competitive strategies (where appropriate), pricing of products, productivity levels, financial requirements, capital expenditure and personnel requirements.
- (3) A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.
- (4) The regulations may make provision, not inconsistent with this section, for and in relation to the form and content of strategic development plans.
- (5) The regulations may also make special provision —
  - (a) for and in relation to the content of strategic development plans for the Electricity Networks Corporation; and
  - (b) for the Minister administering the *Electricity Industry Act 2004* to be consulted on the content of those plans,so far as they apply to the performance of that corporation's functions under section 41(c).
- (6) Regulations are not to be made for subsections (4) and (5) except after consultation with the Treasurer.

**91. Strategic development plan to be agreed if possible**

The board of a corporation and the Minister must endeavour —

- (a) to reach agreement on the draft strategic development plan as soon as possible, and in any event not later than the start of the next financial year; and
- (b) to reach such agreement at the same time as they reach agreement on the draft statement of corporate intent under section 100.

**92. Minister's powers in relation to draft strategic development plan**

- (1) The Minister may return the draft strategic development plan to a board and request it to —
  - (a) consider or further consider any matter and deal with the matter in the draft plan; and
  - (b) revise the draft plan in the light of its consideration or further consideration.
- (2) The board must comply with the request as soon as is practicable.
- (3) If a board and the Minister have not reached agreement on a draft strategic development plan by one month before the start of the next financial year, the Minister may, by written notice, direct the board —
  - (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must, within 14 days after a direction is given, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

**93. Strategic development plan pending agreement**

- (1) In subsection (3) —

***latest draft plan*** means the draft strategic development plan submitted, or last submitted, by the board concerned to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.



- (2) This section applies if the board of a corporation and the Minister have not reached agreement on a draft strategic development plan for the corporation and any subsidiary before the start of a financial year.
- (3) The latest draft plan is to be the strategic development plan for the corporation and any subsidiary until a draft strategic development plan is agreed to under section 94.

**94. Minister's agreement to draft strategic development plan**

When the board of a corporation and the Minister have reached agreement on a draft strategic development plan for the corporation and any subsidiary, it becomes the strategic development plan for the corporation and any subsidiary for the relevant financial year or the remainder of the year, as the case may be.

**95. Modifications of strategic development plan**

- (1) A strategic development plan may be modified by a board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct a board to modify the strategic development plan.
- (3) Before giving a direction to a board under subsection (2) the Minister must consult with the board and take its views into account.
- (4) The Minister must, within 14 days after a direction is given, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

**96. Concurrence of Treasurer**

The Minister is not to —

- (a) agree to a draft strategic development plan under section 94; or

- (b) agree to or direct any modification of a strategic development plan under section 95,

except with the concurrence of the Treasurer.

### **Division 2 — Statement of corporate intent**

#### **97. Draft statement of corporate intent to be submitted to Minister**

- (1) The board of a corporation must in each year prepare, and submit to the Minister for his or her agreement, a draft statement of corporate intent for the corporation and any subsidiary.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by notice in writing to a corporation —
  - (a) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft statement of corporate intent is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed, 2 months before the start of the next financial year.

#### **98. Transitional provision**

The first statement of corporate intent of a corporation is to be in respect of the next full financial year after the commencement of this section.

#### **99. Matters to be included in statement of corporate intent**

- (1) In subsection (3) —  
*community service obligations* means obligations to perform functions or to meet performance targets that it is not in the

commercial interests of the corporation concerned to perform or to meet.

- (2) The statement of corporate intent of a corporation must be consistent with the strategic development plan under Division 1 for the corporation and any subsidiary.
- (3) The statement of corporate intent for a corporation and any subsidiary must specify —
  - (a) the performance targets and other measures by which performances may be judged in relation to objectives for the relevant financial year;
  - (b) an outline of objectives;
  - (c) an outline of the nature and scope of the functions proposed to be performed during the relevant financial year;
  - (d) an outline of main undertakings during the relevant financial year;
  - (e) the dividend policy for the relevant financial year;
  - (f) accounting policies that apply to the preparation of accounts;
  - (g) the type of information to be given to the Minister, including information to be given in quarterly and annual reports;
  - (h) the nature and extent of community service obligations that are to be performed;
  - (i) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations;
  - (j) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
  - (k) such other matters as may be agreed on by the Minister and the board.

- (4) The Minister may exempt a corporation from including any matter, or any aspect of a matter, mentioned in subsection (3) in its statement of corporate intent.
- (5) The regulations may make provision, not inconsistent with this section, for and in relation to the form and content of statements of corporate intent.
- (6) The regulations may also make special provision —
  - (a) for and in relation to the content of statements of corporate intent for the Electricity Networks Corporation; and
  - (b) for the Minister administering the *Electricity Industry Act 2004* to be consulted on the content of those statements,so far as they apply to the performance of the corporation's functions under section 41(c).
- (7) Regulations are not to be made for subsections (5) and (6) except after consultation with the Treasurer.

**100. Statement of corporate intent to be agreed if possible**

The board of a corporation and the Minister must endeavour —

- (a) to reach agreement on the draft statement as soon as possible and, in any event not later than the start of the next financial year; and
- (b) to reach such agreement in accordance with section 91(b).

**101. Minister's powers in relation to draft statement of corporate intent**

- (1) The Minister may return the draft statement of corporate intent to a board and request it to —
  - (a) consider or further consider any matter and deal with the matter in the draft statement; and

- (b) revise the draft statement in the light of its consideration or further consideration.
- (2) The board must comply with the request as soon as is practicable.
- (3) If a board and the Minister have not reached agreement on a draft statement of corporate intent by one month before the start of the financial year, the Minister may, by written notice, direct the board —
  - (a) to take specified steps in relation to the draft statement; or
  - (b) to make specified modifications to the draft statement.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must, within 14 days after a direction is given, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

**102. Statement of corporate intent pending agreement**

- (1) In subsection (3) —

*latest draft statement* means the draft statement of corporate intent submitted, or last submitted, by the board concerned to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.
- (2) This section applies if the board of a corporation and the Minister have not reached agreement on a draft statement of corporate intent for the corporation and any subsidiary before the start of a financial year.
- (3) The latest draft statement is to be the statement of corporate intent for the corporation and any subsidiary until a draft statement of corporate intent is agreed to under section 103.

**103. Minister's agreement to draft statement of corporate intent**

- (1) When the board of a corporation and the Minister have reached agreement on a draft statement of corporate intent for the corporation and any subsidiary, it becomes the statement of corporate intent for the relevant financial year or the remainder of the year as the case may be.
- (2) The Minister must, within 14 days after agreeing to a draft statement of corporate intent under subsection (1), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.
- (3) A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.
- (4) Any copy of a statement of corporate intent to which subsection (3) applies must —
  - (a) contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear; and
  - (b) be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.
- (5) Nothing in subsection (3) affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

**104. Modifications of statement of corporate intent**

- (1) A statement of corporate intent may be modified by a board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct a board to modify the statement of corporate intent, and the board must comply with any such direction.

- (3) Before giving a direction to a board under subsection (2), the Minister must consult with the board and take its views into account.
- (4) The Minister must, within 14 days after a direction is given, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

**105. Concurrence of Treasurer**

The Minister is not to —

- (a) agree to a draft statement of corporate intent under section 103; or
- (b) agree to or direct any modification of a statement of corporate intent under section 104,

except with the concurrence of the Treasurer.

**Division 3 — Quarterly and annual reports**

**106. Quarterly reports**

- (1) A corporation must, for each of the first 3 quarters of a financial year, give to the Minister a separate report on the operations of the corporation and of each subsidiary.
- (2) A quarterly report is to be prepared by a corporation —
  - (a) on a consolidated basis; and
  - (b) for any segment of the corporation prescribed by regulations made for the purposes of section 62.
- (3) A quarterly report must be given to the Minister —
  - (a) within one month after the end of the quarter; or
  - (b) if another period after the end of the quarter is agreed between the Minister and the board concerned, within the agreed period.
- (4) A corporation must give a copy of each quarterly report to the Treasurer.

- (5) A quarterly report must —
  - (a) include the information required to be given in the report by a relevant statement of corporate intent under Division 2; and
  - (b) comply with regulations made for the purposes of section 62.
- (6) Subject to section 109, the Minister must, after consultation with the board concerned, make a quarterly report available to the public.

**107. Annual reports**

- (1) A corporation must prepare and deliver to the Minister in each year a separate annual report on the operations of each of —
  - (a) the corporation, which is to be done —
    - (i) on a consolidated basis and in accordance with Schedule 4 clauses 32 and 33; and
    - (ii) for any segment of the corporation prescribed by regulations made for the purposes of section 62;and
  - (b) any subsidiary, which is to be done in accordance with Schedule 4 clauses 32 and 33.
- (2) All of the reports under subsection (1) are to be sent to the Minister at the same time.
- (3) The Minister must, within 21 days after the day on which an annual report of a corporation is delivered to the Minister, cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with section 134.
- (4) An annual report on the operations of a subsidiary is not required to be laid before Parliament or dealt with in accordance with section 134.



**108. Contents of annual reports**

- (1) The annual report in respect of a corporation or a subsidiary must —
- (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the corporation or the subsidiary;
  - (b) include a comparison of the performance of the corporation or the subsidiary with any relevant statement of corporate intent;
  - (c) comply with regulations made for the purposes of section 62;
  - (d) include particulars of any directions given by the Minister under section 92(3), 95(2), 101(3), 104(2), 111(1), 119(4) or 126(3) —
    - (i) that apply to the corporation or the subsidiary; and
    - (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year;and
  - (e) include particulars of the impact on the financial position, profits and losses and prospects of the corporation or the subsidiary of any modifications to —
    - (i) the statement of corporate intent; and
    - (ii) any directions given by the Minister under section 111(1),that were given during the relevant financial year.
- (2) The annual report in respect of a corporation must also include a summary of the report referred to in section 33.
- (3) The requirements of this section are in addition to Schedule 4 clauses 32 and 33.

**109. Deletion of commercially sensitive matters from reports**

- (1) The board of a corporation may request the Minister to delete a matter that is of a commercially sensitive nature from the copies of a quarterly or annual report (and accompanying documents) relating to the corporation that are to be made public.
- (2) The Minister may, despite section 108, comply with a request under subsection (1).
- (3) If the Minister complies with a request under subsection (1) the copies of the report are to include a statement that a matter has been deleted from it under this section.
- (4) Nothing in this section affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

**Division 4 — Ministerial directions**

**110. Directions to corporation**

Except as provided by this Act or any other written law, a corporation is not required to comply with any direction or administrative request given or made by or on behalf of the Government.

**111. Directions generally**

- (1) The Minister may give directions in writing to a corporation with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to section 112, the corporation is to give effect to any such direction.
- (2) Without limiting subsection (1) and despite anything in Part 3, the Minister may under that subsection direct a corporation —
  - (a) not to perform a function specified in the direction;
  - (b) not to perform a function specified in the direction to an extent, or except to an extent, specified in the direction;or

- (c) not to perform a function specified in the direction in or in relation to an area, or except in or in relation to an area, specified in the direction.
- (3) Subsection (2) does not authorise a direction of a kind mentioned in section 114.
- (4) Despite subsection (1), the Minister cannot give a direction to the Electricity Networks Corporation with respect to the exercise or performance of any power or duty of that corporation under the *Electricity Industry Act 2004* Part 9 or regulations or market rules made under that Part.
- (5) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with in accordance with section 134 —
  - (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notice under section 112(1), within 14 days after it is confirmed under section 112(2).

**112. Directions contrary to commercial interest**

- (1) Where a direction under section 111 is given to a corporation and the board of the corporation determines that —
  - (a) it would be inconsistent with section 61(1) for the corporation to comply with the direction; or
  - (b) there is some other reason why it should not so comply,the board is to notify the Minister in writing within 7 days of receipt of the direction of its determination and the reason for it.
- (2) Where a board gives such a notice to the Minister —
  - (a) the Minister is to consult with the Treasurer and having regard to those consultations the Minister is to cancel or confirm the direction; and
  - (b) the corporation is not required to give effect to the direction unless it is so confirmed.

**113. When directions take effect**

- (1) A direction under section 111 becomes effective —
  - (a) on the expiry of 7 days after its receipt by the board concerned or of such longer period as the Minister may, at the request of the board, determine; or
  - (b) if it is the subject of a notice under section 112(1), on its being confirmed under section 112(2).
- (2) If the board asks the Minister to extend the 7 day period under subsection (1), the Minister must consider the request and notify the board of his or her decision before the 7 day period has expired.

**114. Directions relating to supply of gas**

- (1) In this section —

**corporation** means the Electricity Generation Corporation or the Electricity Retail Corporation;

**specified** means specified in the instrument referred to in subsection (2).
- (2) The Minister may, despite section 35(b) or 44(f), by instrument served on a corporation direct it not to sell or supply gas —
  - (a) within, or for delivery or consumption within, a specified area or specified areas of the State;
  - (b) in specified quantities; or
  - (c) to specified customers or a specified class of customers.
- (3) The corporation must comply with a direction in an instrument under subsection (2).
- (4) The Minister may —
  - (a) amend or revoke an instrument under subsection (2); or
  - (b) revoke the instrument and replace it with another instrument.

- (5) An amendment or revocation is to be made by instrument served on the corporation.
- (6) The Minister must, within 14 days after an instrument is served on the corporation under this section, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

### **Division 5 — Consultation and provision of information**

#### **115. Consultation**

The board of a corporation and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operation of the corporation.

#### **116. Minister to have access to information**

- (1) In this section —  
*document* includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;  
*information* means information specified, or of a description specified, by the Minister that relates to the functions of the corporation.
- (2) The Minister is entitled —
  - (a) to have information in the possession of a corporation and any subsidiary; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
  - (a) request the chief executive officer or the board of a corporation to furnish information to the Minister;
  - (b) request the chief executive officer or the board of a corporation to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of a corporation and any subsidiary to obtain the information and furnish it to the Minister.
- (4) A request under subsection (3)(a) may specify a time before which the information is to be furnished.
- (5) The chief executive officer or the board of a corporation is to —
  - (a) comply with a request under subsection (3); and
  - (b) make staff and facilities available to the Minister for the purposes of subsection (3)(c).
- (6) Where the chief executive officer or the board of a corporation furnishes or gives access to information to the Minister the Minister is to be advised whether or not in the opinion of the chief executive officer or the board the public disclosure of the information would adversely affect the commercial interests of the corporation or any subsidiary.

**117. Provision of information in compiled form**

- (1) Subsection (2) applies if the Minister wishes to obtain from a corporation information that —
  - (a) is not itself in the possession of the corporation or a subsidiary; but
  - (b) is capable of being assembled or compiled from information in the possession of the corporation or a subsidiary.
- (2) The Minister may request the chief executive officer or the board of the corporation to furnish to the Minister a document containing information that —
  - (a) is of a specified description;
  - (b) is presented in a specified way;
  - (c) relates to a specified period; or

- (d) has some other specified characteristic,  
or that comes within 2 or more of paragraphs (a) to (d).
- (3) A request under subsection (2) may specify a time before which the document is to be furnished.
- (4) The chief executive officer or the board of a corporation is to comply with a request under subsection (2) and is to take, or cause to be taken, whatever steps are necessary in order to do so.
- (5) Section 116(2) applies to a document prepared or compiled for the purposes of this section in the same way as it applies to other information in the possession of a corporation or a subsidiary.
- (6) Section 116(6) applies where a document is furnished under this section in the same way as it applies where information is furnished under that section.

**118. Minister to be kept informed**

A corporation must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the corporation and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the corporation and its subsidiaries;
- (b) give the Minister reports and information that he or she requires for the making of informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the opinion of the board of the corporation may prevent, or significantly affect, achievement of the corporation's —
- (i) objectives outlined in its statement of corporate intent; or

(ii) targets under its strategic development plan, promptly inform the Minister of the matters and its opinion in relation to them.

**119. Notice of financial difficulty**

- (1) The board of a corporation must notify the Minister if the board forms the opinion that the corporation or a subsidiary is unable to, or will be unlikely to be able to, satisfy any financial obligation, of the corporation or the subsidiary from the financial resources available or likely to be available to the corporation or the subsidiary at the time the financial obligation is due.
- (2) The notice must —
  - (a) be in writing;
  - (b) provide the reasons for the board's opinion; and
  - (c) provide such other information as the board considers relevant.
- (3) Within 7 days of receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the board for the purpose of determining what action is required to ensure that the corporation or subsidiary is able to satisfy the relevant financial obligation when it is due; and
  - (b) initiate such action as is required to ensure that the corporation or subsidiary is able to satisfy the relevant financial obligation when it is due.
- (4) For the purposes of subsection (3) the Minister may give directions to a corporation including a direction requiring the corporation or any subsidiary to cease or limit the performance of any function.
- (5) The board of a corporation must give effect to any such direction and must ensure that it is complied with in relation to any relevant subsidiary.



- (6) The Minister must, within 14 days after a direction is given under subsection (4), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

### **Division 6 — Protection from liability**

#### **120. No liability for certain acts or omissions**

- (1) A corporation, a subsidiary of a corporation or a person performing functions under this Act is not liable —
- (a) in respect of any claim arising as a consequence of the disclosure of information or documents under —
    - (i) section 106, 107, 115, 116, 117, 118 or 119; or
    - (ii) the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 4 or 6 or Schedule 6 clause 4 or 6;
- or
- (b) for the fact of having done or omitted anything that is required to be done or omitted by a direction given under section 92(3), 95(2), 101(3), 104(2), 111(1), 119(4) or 126(3).
- (2) Subsection (1) does not extend to the manner in which any thing is done or omitted if it is done or omitted contrary to Schedule 2 clause 2 or 3.

## Part 6 — Financial provisions

### Division 1 — General

#### 121. Bank account

(1) A corporation may have an account or accounts at any bank or banks, and money received by and expenditure of the corporation is to be paid to or from such an account.

(2) In subsection (1) —

*bank* has the meaning given to that term in the *Financial Management Act 2006* section 3.

[Section 121 amended by No. 77 of 2006 Sch. 1 cl. 53(1).]

#### 122. Investment

Funds of a corporation that are not being used for the performance of the corporation's functions may be invested in such investments as the board of the corporation determines.

#### 123. Exemption from rates

Land is not rateable land for the purposes of the *Local Government Act 1995* if it is —

- (a) vested in, or under the management and control of, a corporation; and
- (b) used or reserved exclusively for the purpose of providing works, undertakings or facilities necessary to the performance of the functions of the corporation.

### Division 2 — Payments to State

#### 124. Payment of amount in lieu of rates

A corporation must pay to the Treasurer in respect of a financial year an amount equal to the sum of all local government rates and charges that, but for —

- (a) section 123; and
  - (b) the *Local Government Act 1995* section 6.26(2)(a)(i),
- the corporation would have been liable to pay in respect of that financial year.

**125. Determination of amounts under s. 124**

Amounts payable under section 124 —

- (a) are to be determined in accordance with such principles; and
  - (b) are to be paid at such time or times,
- as the Treasurer may direct.

**126. Dividend**

- (1) A dividend under this section is to be —
  - (a) calculated with respect to the profits of a corporation after first taking into account any amounts payable to the Treasurer by the corporation under —
    - (i) section 124; and
    - (ii) the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*;
  - and
  - (b) paid to the Treasurer, in accordance with subsection (5).
- (2) The board of a corporation, as soon as practicable after the end of each financial year, is to make a recommendation to the Minister as to the amount of the dividend (if any) that the board recommends as appropriate to be paid by the corporation in respect of that financial year.
- (3) The Minister, with the concurrence of the Treasurer —
  - (a) may accept a recommendation under subsection (2); or
  - (b) after consultation with the board, is to direct that some other amount is to be paid.

- (4) The Minister must, within 14 days after a direction is given under subsection (3), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.
- (5) A corporation is to pay any dividend —
  - (a) as soon as is practicable after the amount is fixed under subsection (3); and
  - (b) in any case not later than —
    - (i) 6 months after the end of the financial year to which the dividend relates; or
    - (ii) such other time as may be agreed between the Treasurer and the board.

### **Division 3 — Borrowing**

#### **127. Borrowing**

- (1) In subsection (2)(c) —  
*debt paper* means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.
- (2) A corporation may, subject to section 128 —
  - (a) borrow or re-borrow moneys;
  - (b) obtain credit;
  - (c) issue, acquire, hold or dispose of debt paper;
  - (d) create and issue capital instruments; or
  - (e) otherwise arrange for financial accommodation to be extended to the corporation.
- (3) Capital instruments created and issued by a corporation under subsection (2)(d) —
  - (a) may be described in any way determined by the corporation; and

- (b) are to be created and issued on such terms as the corporation determines and the Treasurer approves.
- (4) A corporation is to keep such registers for the purposes of this section as may be prescribed.

**128. Borrowing limits**

- (1) The Treasurer may, in accordance with subsections (2), (3) and (4), by notice to a corporation, impose monetary limits on the exercise by the corporation of the powers conferred by section 127.
- (2) The monetary limit in respect of a corporation is to be determined for the exercise of those powers in the financial year following the commencement of this section.
- (3) That limit in respect of a corporation may be varied for any subsequent financial year and any limit for the time being in force may also be varied for a subsequent financial year.
- (4) A limit for the time being in force in respect of a corporation continues to apply until it is so varied.
- (5) A corporation must comply with any limit for the time being in force in respect of it.
- (6) A liability of a corporation is not unenforceable or in any way affected by a failure of the corporation to comply with this section.
- (7) No person dealing with a corporation is bound or concerned to enquire whether the corporation has complied or is complying with this section.

**129. Hedging transactions**

- (1) A corporation may in connection with the exercise of any power conferred by section 127 —
- (a) enter into an agreement or arrangement to effect any of the following transactions —
    - (i) a foreign exchange transaction;
    - (ii) a forward foreign exchange transaction;
    - (iii) a currency swap;
    - (iv) a forward currency swap;
    - (v) a foreign currency cap, a foreign currency collar or a foreign currency floor;
    - (vi) a forward interest rate agreement;
    - (vii) an interest rate swap;
    - (viii) a forward interest rate swap;
    - (ix) an interest rate cap, an interest rate collar or an interest rate floor;
    - (x) an option for interest rate or currency management purposes;
    - (xi) a futures contract or a futures option;
    - (xii) a transaction of such other class as is approved in writing by the Treasurer as a class of transactions to which this paragraph applies;
  - or
  - (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
    - (i) 2 or more transactions permitted under paragraph (a); or
    - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 127.

- (2) In subsection (1)(a) —  
*interest rate* includes coupon rate, discount rate and yield.

#### **Division 4 — Guarantees**

#### **130. Guarantees**

- (1) The Treasurer may with the concurrence of the Minister, in the name and on behalf of the State, guarantee the performance by a corporation, in the State or elsewhere, of any financial obligation of the corporation —
- (a) arising under section 127; or
  - (b) to which it becomes subject under Part 9.
- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
- (a) is by this subsection guaranteed by the State; and
  - (b) is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from a corporation or otherwise in respect of any payment made by the Treasurer under a guarantee to be paid into the Consolidated Account.

*[Section 130 amended by No. 77 of 2006 s. 4 and 5(1).]*

#### **131. Charges for guarantee**

- (1) The Treasurer may, after consultation with the board of a corporation, fix charges to be paid by the corporation to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 130.

- (2) Payments by a corporation to the Treasurer in respect of any charges under subsection (1) are required to be made at such times, and in such instalments, as the Treasurer determines.

*[Section 131 amended by No. 77 of 2006 s. 4.]*

**Division 5 — Financial administration and audit**

**132. Limited application of *Financial Management Act 2006* and *Auditor General Act 2006***

Despite anything in the *Financial Management Act 2006* or the *Auditor General Act 2006*, those Acts, other than the provisions referred to in Schedule 4 clauses 34(2) and 35(2), do not apply to a corporation or any person performing functions under this Act.

*[Section 132 amended by No. 77 of 2006 Sch. 1 cl. 53(2).]*

**133. Financial administration and audit**

- (1) Schedule 4 has effect in relation to the financial administration and audit of a corporation.
- (2) Schedule 4 may be amended by regulations made by the Governor in accordance with subsections (3) and (4).
- (3) If —
- (a) a provision of Schedule 4 that sets out the substance of a provision of the Corporations Act, does not accurately reflect the corresponding provision of the Corporations Act as in force for the time being;
  - (b) the Corporations Act as in force for the time being does not contain a provision that corresponds to a provision of Schedule 4 that sets out the substance of a provision of the Corporations Act; or
  - (c) the Corporations Act as in force for the time being contains a provision relating to a matter provided for by



Schedule 4, the substance of which is not set out in Schedule 4,

the Minister may recommend to the Governor, as soon as practicable after the circumstance in paragraph (a), (b) or (c) arises, that regulations be made under subsection (2).

- (4) The regulations are to be in such form that Schedule 4 as amended will, in the opinion of the Minister, be substantially the same as the corresponding provisions of the Corporations Act, but with such modifications as are consistent with the policy of this Act.
- (5) If because of the amendment of Schedule 4 by regulations under subsection (2) it is necessary or expedient to —
  - (a) delete or alter a reference in this Act to a provision of Schedule 4;
  - (b) include in this Act a reference to a provision of Schedule 4; or
  - (c) make some other consequential modification to this Act,the regulations may amend this Act for the purpose of deleting, altering or including the reference or making the modification.
- (6) Regulations are not to be made under subsection (2) except with the Treasurer's concurrence.

## Part 7 — Miscellaneous

### 134. Supplementary provision for laying document before Parliament

- (1) If —
- (a) at the commencement of a period referred to in section 69(4), 92(5), 95(4), 101(5), 103(2), 104(4), 107(3), 111(5), 114(6), 119(6), 126(4), 146 or Schedule 2 clause 13(7) in respect of a document a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

### 135. Execution of documents

- (1) A corporation is to have a common seal.
- (2) A document is duly executed by a corporation if —
- (a) the common seal of the corporation is affixed to it in the presence of —
    - (i) 2 directors;
    - (ii) a director and the chief executive officer; or
    - (iii) a director and an executive officer;
- or

- (b) it is signed on behalf of the corporation by a person or persons referred to in subsection (4).
- (3) The common seal of a corporation is not to be affixed to a document except in accordance with this section.
- (4) A corporation may, by writing under its common seal, authorise a director, the chief executive officer, a member of staff or other agent of the corporation to execute documents on its behalf.
- (5) An authority under subsection (4) —
  - (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;
  - and
  - (b) may be presumed by a person dealing with a corporation to continue —
    - (i) during any period for which it is conferred; or
    - (ii) if subparagraph (i) does not apply, until notice of termination of the authority is given to the person so dealing.
- (6) A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.
- (7) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

**136. Contract formalities**

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a

**s. 137**

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corporation may make, vary or discharge a contract in the name of or on behalf of the corporation in the same manner as if that contract were made, varied or discharged by a natural person.

- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the corporation concerned and other parties to the contract.
- (3) Subsection (1) does not prevent a corporation from making, varying or discharging a contract under its common seal.

**137. Delegation by Treasurer**

- (1) In subsection (2) —  
*Treasury officer* means an officer of the department that principally assists the Minister administering the *Financial Management Act 2006* in the administration of that Act.
- (2) The Treasurer may delegate to a Treasury officer any power or duty of the Treasurer under another provision of this Act.
- (3) The delegation must be in writing signed by the Treasurer.
- (4) An officer to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) An officer exercising or performing a power or duty that has been delegated to the officer under this section is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

*[Section 137 amended by No. 77 of 2006 Sch. 1 cl. 53(3).]*

**138. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

- (2) If there is any conflict or inconsistency between a provision made by regulations under this Act and a provision made by regulations under the *Electricity Act 1945*, the latter prevails.

## **Part 8 — Amendments to other written laws**

### **139. Amendments to other Acts**

The Acts mentioned in Schedule 5 are amended as set out in that Schedule.

### **140. Power to amend subsidiary legislation**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

## **Part 9 — Transitional provisions for succession from Western Power Corporation to new corporations**

### **Division 1 — Preliminary**

#### **141. Purpose of this Part**

The purpose of this Part is to provide for transitional matters in relation to the repeals effected by Schedule 5 clauses 11 and 19 and in particular to provide for —

- (a) the Electricity Generation Corporation;
- (b) the Electricity Networks Corporation;
- (c) the Electricity Retail Corporation; and
- (d) the Regional Power Corporation,

to stand in place of, and be the successors to, Western Power Corporation, except so far as section 169 applies.

#### **142. Terms used**

- (1) In this Part, unless the contrary intention appears —

**asset** means property of any kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) a chose in action;
- (b) goodwill;
- (c) a right, interest or claim of any 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;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 1** Preliminary

**s. 143**

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whether owed alone or jointly or jointly and severally with any other person;

**new corporation** means one or more of —

- (a) the Electricity Generation Corporation;
- (b) the Electricity Networks Corporation;
- (c) the Electricity Retail Corporation; or
- (d) the Regional Power Corporation,

as the case may require;

**principal Act** means the *Electricity Corporation Act 1994*;

**records** means registers, papers, documents, minutes, receipts, books of account and other records, however compiled, recorded or stored;

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

**the 1994 Act** means the *Energy Corporations (Transitional and Consequential Provisions) Act 1994*;

**transfer order** means an order made under section 147, as amended under section 153 or corrected under section 189(1), and includes any schedule to a transfer order;

**Western Power Corporation** means the body corporate that was the corporation under the principal Act section 4(1) before that section was repealed by Schedule 5 clause 11.

- (2) For the purposes of this Part, a reference in an agreement or instrument to the Electricity Corporation referred to in the principal Act section 4(1) repealed by the *Statutes (Repeals and Minor Amendments) Act 2000* section 14(3) is to be taken to be or include a reference to Western Power Corporation, unless the context otherwise requires.



**143. Saving**

The operation of any provision of this Part 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 2 — Powers conferred on Minister**

**144. Power for certain agreements to be made before commencement day**

- (1) The purpose of this section is —
  - (a) to provide for agreements to be made under subsection (2) before the commencement day; and
  - (b) to bring into existence the bodies corporate referred to in section 4(1) to the limited extent necessary for those agreements to be made.
- (2) The Minister may, in the name and on behalf of each body corporate mentioned in subsection (1), agree in writing with Western Power Corporation, for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth section 38-325, that the transfer of assets, rights

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 2** Powers conferred on Minister

**s. 145**

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and liabilities, or of some assets, rights and liabilities, to a new corporation under this Division is the supply of a going concern.

- (3) Western Power Corporation is authorised to enter into the agreements referred to in subsection (2).
- (4) By this section —
  - (a) section 4(1) has effect; and
  - (b) a body corporate referred to in that section is established,

to the extent necessary for the purposes of subsection (2), but to no further extent.

**145. Minister may give directions**

- (1) The Minister may give directions in writing to Western Power Corporation requiring it to take any step that the Minister considers necessary or convenient for achieving the purpose of this Part.
- (2) The reference in subsection (1) to the taking of any step includes refraining from taking any step that Western Power Corporation might otherwise take.
- (3) Without limiting subsection (1), a direction under that subsection may require Western Power Corporation to act in accordance with the instructions of a committee of persons appointed by the Minister and given responsibility for the implementation of reform in the electricity industry.
- (4) Western Power Corporation is to give effect to a direction under subsection (1) despite anything in the principal Act.
- (5) This section has effect despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a).

**146. Directions to be laid before Parliament**

The Minister must, within 14 days after a direction is given under section 145(1), cause the text of the direction to be laid before each House of Parliament or dealt with under section 134.

**Division 3 — Passing of Western Power Corporation's assets and liabilities to new corporations or the State**

**Subdivision 1 — Making of transfer orders**

**147. Minister to make order for allocation of assets and liabilities**

- (1) As soon as is practicable after this section comes into operation the Minister is to make and publish in the *Gazette* one or more orders specifying —
  - (a) how assets, rights and liabilities —
    - (i) of Western Power Corporation; or
    - (ii) of a kind referred to in section 150, are to be allocated among the new corporations;
  - (b) any proceedings in which one or more of the new corporations is to replace Western Power Corporation as a party or parties; and
  - (c) the new corporation that, under section 158(b), is to receive the records described in that section.
- (2) An allocation under subsection (1)(a) may be made to —
  - (a) a new corporation; or
  - (b) one or more of the new 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;

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 148**

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- (b) in respect of a particular liability, allocate a specified share of the liability to one or more of the new corporations;
  - (c) provide for the transfer, debiting, crediting or closing of, or for otherwise dealing with, any account, reserve, fund, provision, profit or liability for any levy;
  - (d) specify any person or thing by describing the person or thing as a member of a class;
  - (e) for any asset or right or class of assets or rights —
    - (i) ascribe a value to; or
    - (ii) provide for the manner in which a value is to be determined for,the asset or right or assets or rights of that class;
  - (f) for any liability or class of liabilities —
    - (i) specify the amount of; or
    - (ii) provide for the manner in which an amount is to be determined for,the liability or class of liabilities; and
  - (g) contain such incidental or supplementary provisions as the Minister thinks fit.
- (4) Except where section 151 applies, a transfer order cannot be made after the commencement day.

**148. Order may provide for transfer to subsidiary**

- (1) A transfer order may provide that —
  - (a) an asset or right that is allocated to a new corporation is to vest in; or

- (b) a liability, or a share of a liability, that is allocated to a new corporation is to become the liability of, a subsidiary of the new corporation.
- (2) If a transfer order so provides, Western Power Corporation is to be taken —
  - (a) to continue to hold the asset or right; or
  - (b) to be liable for the liability,until a further order is made under section 155.

**149. Transfer order schedules**

A transfer order may allocate assets, rights or liabilities by reference to schedules in which they are specified, and those schedules —

- (a) need not be published in the *Gazette*; but
- (b) must be available for inspection by the public at a place identified in the order.

**150. Treatment of certain internal arrangements of Western Power Corporation**

- (1) An instrument that provides for arrangements between different parts of the business and operations of Western Power Corporation may be specified in a transfer order as if it created contractual rights and liabilities.
- (2) An instrument specified as described in subsection (1) is to be regarded as if its provisions were contractual provisions between different legal entities.
- (3) The definitions of *liability* and *right* in section 142 include contractual liabilities and rights that are to be regarded as arising because of subsection (2), and those liabilities and rights may be dealt with accordingly under this Part.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 151**

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**151. Power to make subsequent order**

- (1) If for any reason it is not practicable to allocate any asset, right or liability to one or more of the new corporations under section 147 before the commencement day —
  - (a) a transfer order is to specify that the asset, right or liability is to be allocated under this section; and
  - (b) the Minister may make a further order under section 147 in respect of that asset, right or liability not later than 6 months after the commencement day.
- (2) An order under subsection (1) is to have effect from the commencement day.
- (3) Western Power Corporation is to be taken —
  - (a) to continue to hold an asset or right; or
  - (b) to be liable for a liability,to which subsection (1) applies until the further order is made.

**152. References in Government agreements**

- (1) In this section —

**Government agreement** has the meaning given to that term in the *Government Agreements Act 1979* section 2.
- (2) A transfer order is to specify for each provision in a Government agreement in which there is —
  - (a) a reference to Western Power Corporation; or
  - (b) a reference to a body that under the 1994 Act section 49 is to be read as a reference to Western Power Corporation,whether that reference is to be read as a reference to —
  - (c) a specified new corporation; or
  - (d) 2 or more specified new corporations.

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- (3) A transfer order may, where subsection (2)(d) applies, specify that a reference is to be read as a reference to new corporations jointly or as tenants in common in equal or unequal shares.
  - (4) Subsection (2) does not apply to a provision of a Government agreement that is spent or has had its effect.

**153. Amendment of transfer orders**

- (1) The Minister may, before the commencement day, by further order published in the *Gazette*, amend a transfer order.
- (2) The Minister may, after the commencement day, by order published in the *Gazette* —
  - (a) make any provision that is necessary to rectify any unintentional omission from a transfer order; or
  - (b) amend a provision of a transfer order of the kind provided for by section 147(3)(e), (f) or (g) or section 152.
- (3) An order under subsection (2) may be made so as to have effect from the commencement day.
- (4) To the extent that a provision of an order under subsection (2) 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 or a new corporation), the rights of that person existing before the day of its publication; or
  - (b) to impose liabilities on any person (other than the State or a new corporation) in respect of anything done or omitted to be done before the day of publication.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 154**

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**Subdivision 2 — Operation of transfer orders**

**154. Allocation to one new corporation**

- (1) This section applies where assets, rights or liabilities of Western Power Corporation are allocated to a new corporation by a transfer order.
- (2) On the commencement day the assets and rights vest in the new corporation by force of this subsection.
- (3) On the commencement day the liabilities (including a share of a liability) become, by force of this subsection, the liabilities of the new corporation.
- (4) Any agreement or instrument relating to the assets, rights and liabilities referred to in subsections (2) and (3) has effect on and after the commencement day, by force of this subsection, as if a reference to the relevant new corporation were substituted in the agreement or instrument for a reference to —
  - (a) Western Power Corporation; or
  - (b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,except to the extent that —
  - (c) any provision of a transfer order made under section 147(3)(b);
  - (d) section 159; or
  - (e) the relevant context,otherwise requires.
- (5) Subject to any provision of a transfer order made under section 147(3)(b), any proceedings or remedy that, before the commencement day, might have been —
  - (a) commenced by; or



- (b) available against or to,  
Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2) and (3), on and after that day —
  - (c) may be commenced by the relevant new corporation;  
and
  - (d) are available against or to the relevant new corporation.
- (6) Any act, matter or thing —
  - (a) done; or
  - (b) omitted to be done,  
before the commencement day by, to or in respect of Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2) and (3) is to be taken, on and after that day, to have been —
    - (c) done; or
    - (d) omitted to be done,  
by, to or in respect of the relevant new corporation, to the extent that the act, matter or thing has any force or effect.
- (7) All other provisions of a transfer order relevant to this section also have effect on and after the commencement day.

**155. Order for transfer to subsidiary**

- (1) If a transfer order makes a provision under section 148, the Minister may after the commencement day by order published in the *Gazette*, declare that —
  - (a) the relevant asset or right is vested in; or
  - (b) the relevant liability, or share of a liability, has become the liability of,  
a specified subsidiary of the new corporation.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 156**

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- (2) An order cannot be made under subsection (1) later than 6 months after the commencement day.
- (3) An order under subsection (1) has effect according to its tenor.
- (4) If an order is made under this section —
  - (a) section 154(4), (5) and (6) have effect, with all necessary changes, in relation to any asset, right or liability referred to in the order as if references to “the relevant new corporation” were references to the subsidiary concerned; and
  - (b) Western Power Corporation must, as soon as is practicable after the order is made, deliver to the subsidiary all records relating to the assets, rights and liabilities to which the order applies.

**156. Allocation to more than one new corporation**

- (1) This section applies where assets, rights or liabilities of Western Power Corporation are allocated by a transfer order to 2 or more of the new corporations.
- (2) On the commencement day, the assets and rights allocated to 2 or more of the new corporations jointly vest in those corporations jointly by force of this subsection.
- (3) On the commencement day, the assets and rights allocated to 2 or more of the new corporations as tenants in common, by force of this subsection, vest in those corporations as tenants in common in the shares specified in a transfer order.
- (4) On the commencement day, the liabilities allocated to 2 or more of the new corporations jointly by a transfer order become, by force of this subsection, the liabilities of those corporations jointly.
- (5) Any agreement or instrument relating to the assets, rights and liabilities referred to in subsections (2), (3) and (4) has effect on and after the commencement day, by force of this subsection, as

if a reference to the relevant new corporations were substituted in the agreement or instrument for a reference to —

- (a) Western Power Corporation; or
- (b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,

except to the extent that —

- (c) any provision of a transfer order made under section 147(3)(b);
- (d) section 159; or
- (e) the relevant context,

otherwise requires.

- (6) Subject to any provision of a transfer order made under section 147(3)(b), any proceedings or remedy that, before the commencement day, might have been —

- (a) commenced by; or
- (b) available against or to,

Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2), (3) and (4), on and after that day —

- (c) may be commenced by; and
- (d) are available against or to,

the relevant new corporations jointly or severally in accordance with a transfer order.

- (7) Any act, matter or thing —

- (a) done; or
- (b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the assets, rights and liabilities

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 157**

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referred to in subsections (2), (3) and (4) is to be taken, on and after that day, to have been —

- (c) done; or
- (d) omitted to be done,

by, to or in respect of the relevant new corporations jointly or severally in accordance with the transfer order, to the extent that that act, matter or thing has any force or effect.

- (8) All other provisions of a transfer order relevant to this section also have effect on and after the commencement day.

**157. Replacement of Western Power Corporation in proceedings**

- (1) In accordance with any provision of a transfer order made under section 147(1)(b), on and after the commencement day —

- (a) a new corporation is a party; or
- (b) 2 or more of the new corporations jointly are parties,

as the case may be, to any proceedings by or against Western Power Corporation commenced before the commencement day.

- (2) Any act, matter or thing —

- (a) done; or
- (b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to proceedings mentioned in subsection (1) is to be taken, on and after that day, to have been —

- (c) done; or
- (d) omitted to be done,

by, to or in respect of the relevant new corporation or corporations, to the extent that the act, matter or thing has any force or effect.

**158. Handing over of records**

As soon as is practicable after the commencement day, Western Power Corporation is to deliver to —

- (a) the relevant new corporation; or
- (b) the corporation that under section 147(1)(c) is specified in a transfer order for the purposes of this paragraph,

as the case may require, all records relating to —

- (c) where section 154 applies, the assets, rights and liabilities referred to in section 154(2) and (3);
- (d) where section 156 applies, the assets, rights and liabilities referred to in section 156(2), (3) and (4); and
- (e) where section 157 applies, the proceedings referred to in that section.

**159. Changes to Government agreements**

On and after the commencement day a reference to —

- (a) Western Power Corporation; or
- (b) a body that under the 1994 Act section 49 is to be read as a reference to Western Power Corporation,

that in accordance with a provision of a transfer order made under section 152 is to be read as a reference to —

- (c) a specified new corporation; or
- (d) 2 or more specified new corporations,

has effect by force of this section as provided in the order.

**Subdivision 3 — Re-allocation of assets, rights and liabilities**

**160. Order for re-allocation**

- (1) The Minister may, by order published in the *Gazette*, declare that any asset or right that vested in a new corporation, or 2 or

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 161**

---

more of the new corporations, under section 154(2), 156(2) or 156(3) is instead —

- (a) vested in another new corporation; or
- (b) vested, or vested differently, in 2 or more of the new corporations jointly or as tenants in common in equal or unequal shares.

(2) The Minister may, by order published in the *Gazette*, declare that —

- (a) a liability; or
- (b) a share of a liability referred to in section 147(3)(b),

that became a liability of a new corporation, or 2 or more of the new corporations, under section 154(3) or 156(4) is instead —

- (c) the liability of another new corporation; or
- (d) the joint liability of 2 or more of the new corporations or of a different combination of new corporations.

(3) If an order under this section provides for —

- (a) an asset or right to be vested in; or
- (b) a liability, or a share of a liability, to become a liability of,

2 or more of the new corporations, the order is to specify the corporation that, under section 162(b), is to receive the records described in that section.

(4) An order cannot be made under this section later than 6 months after the commencement day.

**161. Re-allocation to have effect from commencement day**

(1) In this section —

*corporation or corporations previously concerned* means the corporation or corporations —

- (a) in which the assets or rights to which an order under section 160 applies were vested; or
- (b) which was or were subject to any liability to which such an order applies,

immediately before the order was made.

(2) Except as otherwise provided in the order, an order under section 160 has effect from the commencement day as if —

- (a) any asset or right to which the order applies had never been vested in; and
- (b) any liability to which the order applies had never been the liability of,

the corporation or corporations previously concerned.

(3) Despite subsection (1), a corporation previously concerned is not —

- (a) required to account for any benefit received; or
- (b) entitled to reimbursement for any liability discharged,

before the day on which an order is made, except to the extent that provision is otherwise made in the order.

(4) An order under section 160 may make any savings or transitional provision that is necessary or expedient in relation to any asset, right or liability to which it applies including provisions in respect of —

- (a) any —
  - (i) agreement or instrument; or
  - (ii) proceedings or remedy,

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 162**

---

relating to the asset, right or liability; or

- (b) any act, matter or thing —
  - (i) done; or
  - (ii) omitted to be done,by, to or in respect of Western Power Corporation or a new corporation.
- (5) An order under section 160 cannot be made so as —
  - (a) to affect the rights of any person other than the State or a new corporation; or
  - (b) to impose liabilities on any person other than the State or a new corporation.

**162. Handing over of records**

If an order is made under section 160, the corporation or corporations previously concerned must, as soon as is practicable after the order is made, deliver to —

- (a) the relevant new corporation; or
- (b) the new corporation specified as mentioned in section 160(3),

all records relating to the assets, rights and liabilities to which the order applies.

**Subdivision 4 — Order that allocated assets or liabilities pass instead to the State**

**163. Minister may order s. 169 is to apply**

- (1) The Minister may, by order published in the *Gazette*, declare that, on and after a day specified in the order —
  - (a) any asset or right that vested in —
    - (i) a new corporation, or 2 or more of the new corporations, under section 154(2), 156(2) or 156(3); or



(ii) a subsidiary of a new corporation, by order under section 155(1);

or

(b) any —

(i) liability; or

(ii) share of a liability referred to in section 147(3)(b),

that became a liability of —

(iii) a new corporation, or 2 or more of the new corporations, under section 154(3) or 156(4); or

(iv) a subsidiary of a new corporation, by order under section 155(1),

is instead to be dealt with under section 169(3) or (4).

(2) An order cannot be made under this section later than 6 months after the commencement day.

**164. Effect of order**

(1) An order under section 163 has effect according to its tenor in relation to the assets, rights and liabilities to which it applies.

(2) Any agreement or instrument relating to the assets, rights and liabilities referred to in subsection (1) has effect on and after the day specified in the order (the *specified day*), by force of this subsection, as if the State were substituted in the agreement or instrument for the new corporation, or a subsidiary, or new corporations previously entitled or liable (the *corporation or corporations previously concerned*), except to the extent that —

(a) any provision of a transfer order made under section 147(3)(b);

(b) section 159; or

(c) the relevant context,

otherwise requires.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 165**

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(3) Subject to any provision of a transfer order made under section 147(3)(b), any proceedings or remedy that, before the specified day, might have been —

- (a) commenced by; or
- (b) available against or to,

the corporation or corporations previously concerned in relation to the assets, rights and liabilities referred to in subsection (1), on and after that day —

- (c) may be commenced by the State; and
- (d) are available against or to the State.

(4) Any act, matter or thing —

- (a) done; or
- (b) omitted to be done,

before the specified day by, to or in respect of the corporation or corporations previously concerned in relation to the assets, rights and liabilities referred to in subsection (1) is to be taken, on and after that day, to have been —

- (c) done; or
- (d) omitted to be done,

by, to or in respect of the State, to the extent that that act, matter or thing has any force or effect.

**165. Handing over of records**

As soon as is practicable after the specified day, the corporation or corporations previously concerned must deliver to the Minister all records relating to the assets, rights and liabilities referred to in section 164(1).

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**Subdivision 5 — Replacement of party in proceedings**

**166. Order for replacement**

- (1) The Minister may, by order published in the *Gazette*, declare that, on and after a day specified in the order (the *specified day*), a new corporation or 2 or more of the new corporations that became a party or parties to proceedings under section 157(1) are replaced by another new corporation or other new corporations jointly.
- (2) If an order provides for 2 or more of the new corporations to be parties to proceedings, the order is to specify the corporation that, under section 168(b), is to receive the records described in that section.
- (3) An order cannot be made under this section later than 6 months after the commencement day.

**167. Effect of order**

- (1) An order under section 166 has effect according to its tenor.
- (2) Any act, matter or thing —
  - (a) done; or
  - (b) omitted to be done,

before the specified day by, to or in respect of the corporation or corporations that have been replaced in relation to the proceedings is to be taken, on and after that day, to have been —

- (c) done; or
- (d) omitted to be done,

by, to or in respect of the relevant new corporation or the relevant new corporations jointly, to the extent that that act, matter or thing has any force or effect.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 168**

---

**168. Handing over of records**

As soon as is practicable after the specified day, the corporation or corporations that have been replaced must deliver to —

- (a) the relevant new corporation; or
- (b) the new corporation specified as mentioned in section 166(2),

all records relating to the proceedings.

**Subdivision 6 — Assets, liabilities and proceedings not otherwise provided for**

**169. Unallocated assets and liabilities to be dealt with by Minister**

- (1) This section applies to —
  - (a) any asset or right of Western Power Corporation that under this Division does not vest in; and
  - (b) any liability of Western Power Corporation that under this Division does not become a liability of,

a new corporation or 2 or more of the new corporations or a subsidiary of a new corporation.

- (2) This section has effect subject to —
  - (a) any order made under section 151 or 153(2)(a); and
  - (b) regulations made under section 189(1) or (2).

- (3) An asset or right to which this section applies is to be dealt with —
  - (a) after the commencement day; or
  - (b) where an order under section 163(1) applies, after the day specified in the order,

as the Minister directs.

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- (4) A liability to which this section applies, so far as it is properly due, is to be discharged —
- (a) after the commencement day; or
  - (b) where an order under section 163(1) applies, after the day specified in the order,
- in such manner and from such source as the Minister, with the approval of the Treasurer, directs.
- (5) The Minister has the powers that are necessary or convenient for the purposes of this section.

**170. Provisions incidental to s. 169**

- (1) This section does not apply to assets, rights and liabilities for which provision is made in section 164.
- (2) Any agreement or instrument relating to the assets, rights and liabilities referred to in section 169 has effect on and after the commencement day, by force of this subsection, as if a reference to the State were substituted in the agreement or instrument for a reference to —
- (a) Western Power Corporation; or
  - (b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,
- except to the extent that —
- (c) section 159; or
  - (d) the relevant context,
- otherwise requires.
- (3) Any proceedings or remedy that, before the commencement day, might have been commenced by or available against or to Western Power Corporation in relation to the assets, rights and liabilities referred to in section 169, on and after that day may be commenced by and are available against or to the State.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 171**

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(4) Any act, matter or thing —

- (a) done; or
- (b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the assets, rights and liabilities referred to in section 169 is to be taken on and after that day to have been —

- (c) done; or
- (d) omitted to be done,

by, to or in respect of the State, to the extent that the act, matter or thing has any force or effect.

**171. State to be party to proceedings if no provision made**

(1) If —

- (a) immediately before the commencement day Western Power Corporation is a party to any proceedings; and
- (b) no provision is made under section 147(1)(b) for it to be replaced as a party to those proceedings,

the State is, on and from the commencement day, by force of this subsection a party to those proceedings in place of Western Power Corporation.

(2) Any act, matter or thing —

- (a) done; or
- (b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the proceedings is to be taken, on and after that day, to have been —

- (c) done; or

(d) omitted to be done,

by, to or in respect of the State, to the extent that the act, matter or thing has any force or effect.

**172. Handing over of records**

As soon as is practicable after the commencement day, Western Power Corporation is to deliver to the Minister all records relating to —

- (a) assets, rights and liabilities that, after that day, are to be dealt with under section 169(3) and (4); and
- (b) any proceedings to which section 171 applies.

**Subdivision 7 — Other matters relating to passing of assets and liabilities**

**173. Continuation of guarantees in respect of Western Power Corporation**

(1) This section applies to —

- (a) a guarantee under the principal Act section 85(1); and
- (b) a guarantee continued in force by the 1994 Act section 51,

that was in force immediately before the commencement day.

(2) A guarantee referred to in subsection (1) is not affected by —

- (a) any provision of, or made under, this Part, including without limitation a transfer of any liability of Western Power Corporation to a new corporation, or a subsidiary, or to 2 or more new corporations —
  - (i) under section 154 or 156;
  - (ii) by order under section 155(1) or 160(2); or
  - (iii) by regulations under Division 7;

or

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 174**

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- (b) any transfer, vesting or assumption of any liability of Western Power Corporation to, in or by a new corporation or 2 or more new corporations by any other means.
- (3) A 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 a transfer, vesting or assumption by any other means referred to in subsection (1) is effective,  
as if it were a guarantee in respect of the new corporation or corporations or the subsidiary to, in or by which the liabilities have been transferred, vested or assumed.
- (4) Despite its repeal by Schedule 5 clause 11, the principal Act section 85(3) is to be taken to continue to apply for the purposes of subsection (3).
- (5) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee referred to in subsection (1).
- (6) By virtue of this subsection, any sum paid by the Treasurer under a guarantee referred to in subsection (1) in respect of a new corporation constitutes a charge on the assets of the corporation.

**174. Guarantees to which s. 173 does not apply**

- (1) Subject to subsection (2), Part 6 Division 4 is to be taken to apply to a liability of a new corporation if a guarantee of that liability cannot be preserved under section 173, whether because the guarantee is governed otherwise than by the law of the State or for any other reason.



- (2) If —
- (a) a guarantee (the *original guarantee*) cannot be preserved as mentioned in subsection (1); and
  - (b) the lender requests the Treasurer to exercise powers referred to in that subsection to give a guarantee in the same terms as the original guarantee,
- the Treasurer is to comply with that request.

**175. Certain joint tenancies preserved**

- (1) In this section —
- Gas Corporation assignee* has the meaning given to the term *assignee* in the *Gas Corporation (Business Disposal) Act 1999* section 14.
- (2) The vesting of any asset held by Western Power Corporation as a joint tenant with a Gas Corporation assignee in a new corporation or a subsidiary —
- (a) by this Part; or
  - (b) by an order or regulations made under this Part,
- does not sever the joint tenancy, and the new corporation or the subsidiary holds the asset as a joint tenant with the Gas Corporation assignee.

**176. Western Power Corporation to complete necessary transactions**

- (1) This section applies if —
- (a) an asset, right or liability to which this Part applies is required to be vested in or succeeded to by a new corporation or 2 or more new corporations; but
  - (b) that vesting or succession cannot be properly effected by operation of this Part, whether because the matter is governed otherwise than by the law of the State, or for any other reason.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 3** Passing of Western Power Corporation's assets and liabilities to new corporations or the State

**s. 177**

---

- (2) Western Power Corporation —
  - (a) is to be taken to continue to hold or be liable for that asset, right or liability until it is effectively vested in or succeeded to by the new corporation or corporations concerned in accordance with this Part; and
  - (b) is to take all practicable steps for the purpose of ensuring that such vesting or succession occurs.
- (3) The fact that subsection (2)(a) applies to an asset, right or liability that is allocated to a new corporation or 2 or more new corporations under this Part does not affect the duty of the corporation or corporations to account for and report on that asset, right or liability under this Act.

**177. 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 —
    - (i) under this Part;
    - (ii) to give effect to this Part; or
    - (iii) for a purpose connected with or arising out of, giving effect to this Part,including a transaction entered into or an instrument or document of any kind made, executed, lodged or given.
- (3) The Treasurer or a person authorised by the Treasurer may, at the request of a new corporation, certify in writing that a specified thing —
  - (a) occurred by the operation of this Part; or

- (b) was done —
  - (i) under this Part;
  - (ii) to give effect to this Part; or
  - (iii) 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.

**178. Registration of documents**

- (1) In subsection (2) —  
*relevant officials* means —
  - (a) the Registrar of Titles;
  - (b) the Registrar of Deeds;
  - (c) the Ministers respectively administering the *Mining Act 1978* and the *Land Administration Act 1997*; or
  - (d) 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.
- (2) The relevant officials are to take notice of the provisions of —
  - (a) this Part and any regulations made under Division 7; and
  - (b) a transfer order or any other order made under this Part,and are empowered to record and register in the appropriate manner the documents necessary to show the effect of those provisions.
- (3) Without limiting subsection (1), a statement in an instrument is evidence of the facts stated if —
  - (a) the instrument is executed by a new corporation, or a subsidiary, or 2 or more new corporations; and

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 4** Staff

**s. 179**

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- (b) the statement is to the effect that any estate or interest in land or other property has become vested in —
  - (i) the new corporation, or a subsidiary; or
  - (ii) 2 or more new corporations jointly or in specified shares,under section 154 or 156, an order under section 155(1) or 160(1) or regulations made under Division 7.

**Division 4 — Staff**

**179. Transition of employment**

- (1) Western Power Corporation may, before the commencement day —
  - (a) determine which new corporation is to be, on and from that day, the employer of each person who is a member of staff, as defined in the principal Act, before the commencement day; and
  - (b) give to each such person a notice in writing of the determination made in respect of him or her.
- (2) A notice given to a person under subsection (1)(b) is to have effect, after the commencement of section 18, as if it were an agreement made under that section between —
  - (a) the person; and
  - (b) the board of the new corporation specified in the notice,for the employment of that person as a member of the staff of that corporation.

**180. Employees' rights preserved**

Except as otherwise agreed by an employee, the change from employment by Western Power Corporation to employment by a new corporation does not —

- (a) affect the employee's remuneration and other terms and conditions of employment;

- (b) prejudice the employee's existing or accruing rights;
- (c) affect any rights under a superannuation scheme; or
- (d) interrupt continuity of service.

### **Division 5 — Contracts with tariff customers**

#### **181. Minister to prescribe contracts**

- (1) In this section —  
*tariff customer* means a person who, immediately before the commencement day, was supplied with electricity by Western Power Corporation or a subsidiary of that corporation (otherwise than under a written contract) in relation to which the person was liable to pay fees and charges prescribed under the *Energy Operators (Powers) Act 1979* section 124 or the *Electricity Industry Act 2004* section 132.
- (2) A tariff customer is to be taken on and from the commencement day to have entered into a contract with —
  - (a) the Electricity Retail Corporation; or
  - (b) the Regional Power Corporation,as the case requires, for the supply of electricity.
- (3) The Minister, by order published in the *Gazette*, is to prescribe a form of contract for the purposes of subsection (2), and the contract referred to in that subsection is to be taken to be in the form so prescribed.
- (4) An order under subsection (3) —
  - (a) may specify different forms of contract in respect of different classes of tariff customers; and
  - (b) may be amended, replaced or revoked by the Minister by order published in the *Gazette*.

**Division 6 — Other transitional provisions**

**182. Annual report**

- (1) Western Power Corporation is to —
  - (a) do all things that are necessary to ensure that any annual report under the principal Act section 62 that —
    - (i) was required for a financial year before the commencement day; but
    - (ii) was not sent to the Minister before that day, is completed and sent to the Minister; and
  - (b) prepare a report under that section for the period from the preceding 1 July to the commencement day.
- (2) If the period referred to in subsection (1)(b) is less than a year the report is to be prepared as if that period were a full financial year.
- (3) Despite the repeals effected by Schedule 5 clauses 11 and 19, the reports referred to in subsection (1) are to be completed and dealt with in accordance with the provisions contained in the principal Act Part 4 Division 3 and Schedule 3.

**183. Continuation of certain directions given to Western Power Corporation**

- (1) The *Western Power Corporation (Gas Supply) Direction 2000* continues in force on and after the commencement day as if —
  - (a) it were an instrument under section 114(2) served on each of the Electricity Generation Corporation and the Electricity Retail Corporation; and
  - (b) references in it to the corporation were references to each of the corporations mentioned in paragraph (a).
- (2) The direction given to Western Power Corporation under the principal Act section 66 on 7 April 2005 (which relates to generating works) continues in force on and after the

commencement day as if it were a direction given to the Electricity Generation Corporation under section 111.

**184. Completion of things commenced**

Anything commenced to be done by Western Power Corporation under the principal Act before the commencement day may be continued by a new corporation so far as the doing of that thing is, after the commencement day —

- (a) within the functions of; and
- (b) relevant to,

the new corporation.

**185. 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 Western Power Corporation, to the extent that the act, matter or thing —

- (a) has any force; and
- (b) is not governed by section 154(6), 156(7), 157(2), 164(4), 170(4), 171(2) or 183(1) or (2),

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

**186. Immunity to continue**

If Western Power Corporation had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, the immunity continues in that respect for the benefit of a new corporation so far as the act, matter or thing is relevant to that corporation.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 6** Other transitional provisions

**s. 187**

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**187. Agreements and instruments generally**

- (1) In this section —
- instrument* includes subsidiary legislation;
- relevant new corporation*, in relation to an agreement or instrument, means any new corporation that after the commencement day has the function of Western Power Corporation in the performance of which the agreement or instrument was made.
- (2) This section applies to an agreement or instrument subsisting immediately before the commencement day that does not come within the provisions of section 154(4), 156(5), 159, 170(2) or 183(1) or (2).
- (3) An agreement or instrument to which this section applies that contains a reference to —
- (a) Western Power Corporation; or
  - (b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,

has effect on and after the commencement day as if any reference in the agreement or instrument to Western Power Corporation, or the body, were, unless the context otherwise requires, a reference to any relevant new corporation.

**188. Western Power Corporation to perform necessary transitional functions**

- (1) Despite the repeal of the principal Act section 4 by Schedule 5 clause 11, Western Power Corporation continues in existence so that it can —
- (a) perform the functions described in sections 148(2), 151(3), 158, 162, 172, 176 and 182; and
  - (b) perform any other function required for the purposes of this Part that may be prescribed by regulations made by the Governor.



- (2) For the purpose of subsection (1), Western Power Corporation —
- (a) is to be constituted by a person or persons appointed by the Minister; and
  - (b) is to perform the functions referred to in subsection (1) through that person or those persons,
- and that subsection does not affect the abolition of the board of Western Power Corporation by virtue of the repeal of the principal Act Part 2 Division 2.
- (3) The person or persons referred to in subsection (2)(a) hold office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (4) Western Power Corporation as constituted under this section has the powers that are necessary or convenient for the purposes of subsection (1).
- (5) A new corporation is to provide the clerical or other assistance that Western Power Corporation reasonably requests it to provide for the purpose of performing the functions described in subsection (1).

**Division 7 — Making of further provision by regulation**

**189. Powers of rectification and similar matters**

- (1) If in the opinion of the Minister —
- (a) an error has been made in a provision of a transfer order that cannot be rectified by the making of an order under section 160(1) or (2); or
  - (b) there has been an omission from a transfer order that cannot be rectified under section 153(2),

the Governor may by regulations make such provision as is necessary or expedient to correct, and deal with any consequences of, the error or omission.

**Electricity Corporations Act 2005**

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 7** Making of further provision by regulation

**s. 190**

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- (2) If in the opinion of the Minister it is necessary, later than the period of 6 months after the commencement day —
- (a) to make an order referred to in section 151(1)(b);
  - (b) to make a declaration of the kind provided for by section 160(1) or (2); or
  - (c) to make an order of the kind referred to in section 155(1), 163(1) or 166(1),

the Governor may by regulations make such provision as could have been made under that section before the expiration of the period of 6 months.

- (3) Regulations under this section may make any provision of an incidental or supplementary nature that may be expedient.

**190. Further provision may be made by regulation**

- (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to achieve the purpose described in section 141, the Governor may make that provision by regulations.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of —
- (a) this Part; or
  - (b) a transfer order or other order under this Part,
- the Governor may by regulations —
- (c) modify that provision to remove the anomaly; and
  - (d) make such provision as is necessary or expedient to achieve the purpose described in section 141 in the intended manner.

**191. Regulations may operate from the commencement day**

- (1) Regulations may be made under this Division to have effect from the commencement day.

- (2) To the extent that a provision of such regulations 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 or a new corporation), the rights of that person existing before the day of its publication; or
  - (b) to impose liabilities on any person (other than the State or a new corporation) in respect of anything done or omitted to be done before the day of publication.

### **Division 8 — Indemnities and guarantees**

#### **192. Treasurer may give indemnity and guarantee**

- (1) The Treasurer may, in the name and on behalf of the State, give to —
- (a) a person who is or has been a director or officer of Western Power Corporation or of a subsidiary of that corporation; or
  - (b) a member or alternate member of a committee referred to in section 145(3),
- an indemnity against liability or a guarantee of payment in respect of —
- (c) the doing of anything, whether before or after the commencement day, that is required to achieve the purpose of this Part; or
  - (d) an omission to do anything, whether before or after the commencement day, if the omission is required to achieve the purpose of this Part.
- (2) The payment of any money under an indemnity or guarantee given under this section is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

***Electricity Corporations Act 2005***

**Part 9** Transitional provisions for succession from Western Power Corporation to new corporations

**Division 8** Indemnities and guarantees

**s. 192**

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(3) In subsection (1) —

***liability*** includes civil liability under the *Corporations Act 2001* of the Commonwealth.

*[Section 192 amended by No. 77 of 2006 s. 4.]*

## Schedule 1 — Provisions about the constitution and proceedings of boards

[s. 10]

### 1. Term used: director

In clauses 2, 3, 4 and 5(1) —

*director* does not, if the chief executive officer is a director, include him or her in that capacity.

### 2. Term of office

- (1) Subject to clause 3, a director holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, and is eligible for reappointment.
- (2) Periods of appointment are to be fixed in a way that results in approximately one-third of the directors retiring each year.
- (3) A director, unless he or she sooner resigns or is removed from office, continues in office until his or her successor comes into office, even if the period for which the director was appointed has expired.
- (4) A director's duties are not required to be performed on a full-time basis.

### 3. Resignation and removal

- (1) A director may resign from office by notice in writing delivered to the Minister.
- (2) The Governor may at any time remove a director from office and is not required to give any reason for doing so.

### 4. Chairperson and deputy chairperson

- (1) The Governor is to appoint a director to be chairperson and another to be deputy chairperson, appointments in each case being made on the nomination of the Minister.
- (2) The chief executive officer, if he or she is a director, is not eligible for appointment under subclause (1).

**cl. 5**

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- (3) Where the chairperson is unable to act because of sickness, accident or other cause, the deputy chairperson is to act in the chairperson's place.
- (4) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 5(1) applies as if the deputy chairperson were absent from the meeting.

**5. Alternate directors**

- (1) The Minister may in writing appoint a person to act temporarily in place of a director who is unable to act because of sickness, absence or other cause.
- (2) A person appointed under subclause (1), while acting according to the tenor of the appointment —
  - (a) is to be taken to be a director; and
  - (b) is entitled to remuneration under section 11.
- (3) Where the chief executive officer of a corporation is a director he or she may, in writing delivered to the chairperson of the board of the corporation or the person presiding at a meeting of the board, appoint a senior officer of the corporation to represent him or her at a meeting if —
  - (a) he or she is unable to attend by reason of sickness, absence or other cause; and
  - (b) the senior officer is a person who has been approved by the board for the purposes of this subclause.
- (4) While attending a meeting by virtue of such a nomination the officer is to be taken to be a director.
- (5) Subclause (3) does not apply if there is a person acting in place of the chief executive officer under section 17.
- (6) No act or omission of a person acting in place of another under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**6. Meetings**

- (1) The first meeting of a board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of a board may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 4(3), is to preside at all meetings of a board at or in which he or she is present, or participating under clause 7.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
- (5) At any meeting of a board —
  - (a) 3 directors constitute a quorum; and
  - (b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

**7. Telephone and video meetings**

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 6(5)(a) by telephone or audiovisual means is a valid meeting of directors, but only if each participating director is capable of communicating with every other participating director instantaneously at all times during the proceedings.

**8. Resolution may be passed without meeting**

- (1) If —
  - (a) a document containing a statement to the effect that an act, matter or thing has been done or a resolution has been passed is sent or given to all directors of a corporation;
  - (b) the document is assented to by a majority of the directors who signify a response; and

**cl. 9**

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- (c) that majority comprises not less than 3 directors,  
that act, matter, thing or resolution is to be taken as having been done  
at or passed by a meeting of the board of the corporation.
- (2) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
- (i) if the directors assented to the document on the same  
day, on the day on which the document was assented  
to and at the time at which the document was last  
assented to by a director; or
- (ii) if the directors assented to the document on different  
days, on the day on which, and at the time at which,  
the document was last assented to by a director;
- (b) 2 or more separate documents in identical terms each of  
which is assented to by one or more directors are to be taken  
to constitute one document; and
- (c) a director may signify assent to a document —
- (i) by signing the document; or
- (ii) by notifying the corporation of the director's assent in  
person or by post, facsimile transmission, telephone,  
email or other method of written, electronic, audio or  
audiovisual communication.
- (3) Where a director signifies assent to a document otherwise than by  
signing the document, the director must by way of confirmation sign  
the document at the next meeting of the board attended by that  
director, but failure to do so does not invalidate the act, matter, thing  
or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the  
document is to be taken as a minute of a meeting of the board.

**9. Minutes and records**

A board is to ensure that an accurate record is kept and preserved  
of —

- (a) the proceedings at each meeting of the board; and
- (b) each resolution passed under clause 8.



**10. Leave of absence**

A board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

**11. Board to determine own procedures**

Subject to this Act, a board may determine its own procedures.

## **Schedule 2 — Provisions about the duties of directors and related provisions**

[s. 27]

### **Division 1 — Preliminary**

#### **1. Attempts to commit offences**

A person who attempts (within the meaning in *The Criminal Code* section 4) to commit an offence against a provision of this Schedule is guilty of that offence.

### **Division 2 — Certain duties stated**

#### **2. Duty to act honestly**

(1) A director of a corporation must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

(2) A person who contravenes subclause (1) —

- (a) with intent to deceive or defraud —
  - (i) the corporation concerned; or
  - (ii) creditors of that corporation or of any other person;
- or
- (b) for any other fraudulent purpose,

commits a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

(3) If subclause (2) does not apply, a person who contravenes subclause (1) commits an offence and is liable to a fine of \$5 000.

#### **3. Duty to exercise reasonable care and diligence**

A director of a corporation must at all times exercise the degree of care and diligence in the performance of his or her functions, whether within or outside the State, that a reasonable person in that position

would reasonably be expected to exercise in the corporation's circumstances.

Penalty: \$5 000.

**4. Duty not to make improper use of information**

(1) A director of a corporation or a former director must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such —

(a) to gain, directly or indirectly, an advantage —

(i) for himself or herself; or

(ii) for any other person;

or

(b) to cause detriment to the corporation.

(2) A person who contravenes subclause (1) commits a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

**5. Duty not to make improper use of position**

(1) A director of a corporation must not, whether within or outside the State, make improper use of his or her position as such —

(a) to gain, directly or indirectly, an advantage —

(i) for himself or herself; or

(ii) for any other person;

or

(b) to cause detriment to the corporation.

(2) A person who contravenes subclause (1) commits a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

**6. Fiduciary duty**

- (1) A director of a corporation has —
- (a) the same fiduciary relationship with the corporation; and
  - (b) the same duties to the corporation to act with loyalty and in good faith,
- as a director of a company incorporated under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the Minister and not otherwise.
- (3) The provisions of this clause are in addition to the other provisions of this Schedule.

**Division 3 — Recovery from director**

**7. Payment of compensation may be ordered**

- (1) If —
- (a) a person is convicted of an offence for a contravention of clause 2, 3, 4 or 5; and
  - (b) the court is satisfied that the corporation concerned has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the corporation of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

**8. Civil proceedings for recovery from director**

If a person contravenes clause 2, 3, 4 or 5, the corporation concerned may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the corporation by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and

- (b) if the corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

#### **Division 4 — Relief from liability**

##### **9. Court may grant relief**

Without limiting section 120, for the purposes of clause 6, 7 or 8 if it appears to the court that a person —

- (a) is, or may be, liable under that clause;
- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

##### **10. Application for relief**

- (1) Without limiting section 120, where a person has reason to believe that any claim will or might be made against him or her under clause 6, 7 or 8 the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 6, 7 or 8.

##### **11. Case may be withdrawn from jury**

Where a case to which clause 9 applies is being tried by judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that clause to be relieved either wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

**Division 5 — Personal interests of directors, disclosure and voting**

**12. Disclosure**

- (1) In subclause (2) —

*notifiable interest* means an interest in the matter that will, under clause 13(1), disqualify the director from voting on the matter at a meeting of the board unless allowed to do so by a resolution under clause 13(3) or a declaration under clause 13(6).

- (2) A director of a corporation who has a notifiable interest in a matter involving the corporation must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board of the corporation.

Penalty: \$5 000.

- (3) A disclosure under subclause (2) is to be recorded in the minutes of the meeting.

**13. Voting by interested directors**

- (1) A director of a corporation who has a material personal interest in a matter that is being considered by the board of the corporation —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;

and

- (b) must not be present while —
- (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

- (2) For the purpose of subclause (1), a director of a corporation does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her

capacity as a director of the corporation or of a subsidiary, but this subclause does not apply if the corporation is the insurer.

- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite Schedule 1 clause 6(5), if a director is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as a board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must, within 14 days after a declaration under subclause (6) is made, cause a copy of the declaration to be laid before each House of Parliament or dealt with in accordance with section 134.

### **Division 6 — Other prohibited conduct**

#### **14. Prohibition on loans to directors and related persons**

- (1) In subclause (2)(e) —

*relative* means —

  - (a) a parent or remoter lineal ancestor;
  - (b) son, daughter or remoter issue; or
  - (c) a brother or sister.
- (2) A corporation must not, whether directly or indirectly —
  - (a) make a loan; or

**Electricity Corporations Act 2005**

**Schedule 2** Provisions about the duties of directors and related provisions

**Division 6** Other prohibited conduct

**cl. 15**

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- (b) give a guarantee or provide security in connection with a loan made,
  - to —
  - (c) a director;
  - (d) a spouse or de facto partner of a director; or
  - (e) a relative of a director or of a spouse or de facto partner of a director.
- (3) A director of a corporation who is knowingly concerned in a contravention of subclause (2) by the corporation (whether or not in relation to the director) —
  - (a) with intent to deceive or defraud —
    - (i) the corporation concerned; or
    - (ii) creditors of the corporation concerned or of any other person;
  - or
  - (b) for any other fraudulent purpose,commits a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.
- (4) If subclause (3)(a) or (b) does not apply the director commits an offence and is liable to a fine of \$5 000.

**15. Directors and auditors not to be indemnified for certain matters**

- (1) A corporation or a subsidiary must not —
  - (a) indemnify a person who is or has been a director or auditor of the corporation against a liability incurred by the person as a director or auditor; or
  - (b) exempt such a person from such a liability.
- (2) Any agreement or arrangement is void so far as it provides for a corporation or a subsidiary to do anything that subclause (1) prohibits.



- (3) Subclause (1) does not prevent a person from being indemnified against a civil liability to a person, other than a corporation or a subsidiary, unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person —
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in obtaining relief under clause 9 or 10.
- (5) A corporation or a subsidiary must not pay, or agree to pay, a premium, in respect of a contract insuring a person who is or has been a director or auditor of the corporation against a liability —
  - (a) incurred by the person as such a director or auditor; and
  - (b) arising out of conduct involving —
    - (i) a wilful breach of duty in relation to the corporation; or
    - (ii) without limiting subparagraph (i), a contravention of clause 4 or 5.
- (6) In subclause (5) —  
*pay* includes pay indirectly through one or more interposed entities.
- (7) If subclause (5) is contravened, the contract is void so far as it insured the person against such a liability.
- (8) Subclauses (5) and (7) do not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal and whatever their outcome.

**16. False or misleading information**

- (1) A director of a corporation must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
  - (a) the Treasurer or the Minister; or

**Electricity Corporations Act 2005**

**Schedule 2** Provisions about the duties of directors and related provisions

**Division 6** Other prohibited conduct

**cl. 16**

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- (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the director —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

Penalty: \$10 000 or imprisonment for 2 years, or both.

- (2) A director of a corporation must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —

- (a) the Treasurer or the Minister; or
- (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

being information whether in documentary or any other form, relating to the affairs of the corporation that —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

without having taken reasonable steps to ensure that the information —

- (e) was not false or misleading in a material particular; and
- (f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

Penalty: \$5 000 or imprisonment for one year, or both.

- (3) The references in subclauses (1) and (2) to a director of a corporation —

- (a) making available or furnishing; or

- (b) authorising or permitting the making available or furnishing of,

information relating to the affairs of the corporation include references to a director —

- (c) making available or furnishing; or
- (d) authorising or permitting the making available or furnishing of,

information as to the state of knowledge of that director with respect to the affairs of the corporation.

- (4) Where information is made available or furnished to a person referred to in subclauses (1)(a) or (b) or (2)(a) or (b) in response to a question asked by that person, the question and information are to be considered together in determining whether the information was false or misleading.

**Schedule 3 — Provisions to be included in constitution of subsidiary**

[s. 65]

**1. Disposal of shares**

- (1) A corporation is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the corporation.

**2. Directors**

- (1) The directors of the subsidiary are to be appointed by the corporation concerned, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the corporation concerned and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 5 and in the constitution of the subsidiary.

**3. Further shares**

Shares may not be issued or transferred except with the prior written approval of the Minister.

**4. Subsidiaries of subsidiary**

- (1) The subsidiary may not —
  - (a) form;
  - (b) participate in the formation of; or
  - (c) acquire,

any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.

- (2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times complies with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

## **Schedule 4 — Financial administration and audit**

[s. 133(1)]

### **Division 1 — Preliminary**

#### **1. Terms used**

- (1) In this Schedule, unless the contrary intention appears —  
*financial year* has the meaning given to that term in clause 23(1);  
*regulations* means regulations made under the Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, terms (including the terms *accounting standard*, *company* and *financial records*) have the meanings given to them in the Corporations Act Part 1.2.

### **Division 2 — Financial records**

#### **2. Obligation to keep financial records**

*(cf. Corporations Act s. 286)*

- (1) A corporation must keep written financial records that —
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The financial records must be retained for 7 years after the transaction covered by the records is completed.

#### **3. Physical format**

*(cf. Corporations Act s. 288)*

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

**4. Place where records are kept**  
*(cf. Corporations Act s. 289)*

- (1) A corporation may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- (3) A corporation must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct a corporation to produce specified financial records that are kept outside Australia.
- (5) The direction must —
  - (a) be in writing;
  - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

**5. Director access**  
*(cf. Corporations Act s. 290)*

- (1) A director of a corporation has a right of access to the financial records of the corporation at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
  - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
  - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

### **Division 3 — Financial reporting**

#### **Subdivision 1 — Annual financial reports and directors' reports**

**6. Preparation of annual financial reports and directors' reports**  
*(cf. Corporations Act s. 292)*

A financial report and a directors' report must be prepared for each financial year by a corporation before 30 September.

**7. Contents of annual financial report**  
*(cf. Corporations Act s. 295)*

- (1) The financial report for a financial year consists of —
  - (a) the financial statements for the year;
  - (b) the notes to the financial statements; and
  - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
  - (a) a profit and loss statement for the year;
  - (b) a balance sheet as at the end of the year;
  - (c) a statement of cash flows for the year; and
  - (d) if required by the accounting standards — a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (3) The notes to the financial statements are —
  - (a) disclosures required by the regulations;
  - (b) notes required by the accounting standards; and
  - (c) any other information necessary to give a true and fair view.
- (4) The directors' declaration is a declaration by the directors —
  - (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards;
  - (b) that the financial statements and notes give a true and fair view;



- (c) whether, in the directors' opinion, there are reasonable grounds to believe that the corporation, will be able to pay its debts as and when they become due and payable; and
  - (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
    - (i) clause 8 (compliance with accounting standards and regulations); and
    - (ii) clause 9 (true and fair view).
- (5) The declaration must —
- (a) be made in accordance with a resolution of the directors;
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by at least 2 directors.

**8. Compliance with accounting standards and regulations**  
*(cf. Corporations Act s. 296)*

- (1) The financial report for a financial year must comply with the accounting standards.
- (2) The financial report must comply with any further requirements in the regulations.

**9. True and fair view**  
*(cf. Corporations Act s. 297)*

- (1) The financial statements and notes in respect of a corporation for a financial year must give a true and fair view of —
  - (a) the financial position and performance of the corporation; and
  - (b) if consolidated financial statements are required under clause 7(2)(d) — the financial position and performance of the consolidated entity of which the corporation is a part.
- (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.

**10. Annual directors' report**  
*(cf. Corporations Act s. 298)*

- (1) A corporation must prepare a directors' report for each financial year.

- (2) The report must include —
  - (a) the general information required by clause 11; and
  - (b) the specific information required by clause 12.
- (3) The report must —
  - (a) be made in accordance with a resolution of the directors;
  - (b) specify the date on which the report is made; and
  - (c) be signed by at least 2 directors.

**11. Annual directors' report — general information**  
*(cf. Corporations Act s. 299)*

- (1) The directors' report in respect of a corporation for a financial year must —
  - (a) contain a review of operations during the year of the corporation and the results of those operations;
  - (b) give details of any significant changes in the corporation's state of affairs during the year;
  - (c) state the corporation's principal activities during the year and any significant changes in the nature of those activities during the year;
  - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
    - (i) the corporation's operations in future financial years;
    - (ii) the results of those operations in future financial years; or
    - (iii) the corporation's state of affairs in future financial years;
  - (e) refer to likely developments in the corporation's operations in future financial years and the expected results of those operations; and
  - (f) if the corporation's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory — give details of the corporation's performance in relation to environmental regulation.

- (2) If consolidated financial statements are required under clause 7(2)(d), the report must be on the consolidated entity of which the corporation concerned is part.
- (3) The report in respect of a corporation may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to —
  - (a) the corporation; or
  - (b) if consolidated financial statements are required under clause 7(2)(d) — the consolidated entity or any entity (including the corporation concerned) that is part of the consolidated entity.
- (4) If material is omitted from the report, the report must say so.

**12. Annual directors' report — specific information**  
*(cf. Corporations Act s. 300)*

- (1) The directors' report for a financial year must include details of —
  - (a) dividends or distributions paid during the year;
  - (b) dividends or distributions recommended or declared for payment, but not paid, during the year; and
  - (c) the name of each person who has been a director of the corporation at any time during or since the end of the year and the period for which they were a director.
- (2) If —
  - (a) during or since the financial year, the corporation concerned has indemnified against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
  - (b) but for Schedule 2 clause 15(3) or (4), subclause (1) of that clause would have prohibited the corporation from indemnifying the person against that liability,

the report must set out —

- (c) the person's name;
- (d) the nature of the liability; and

- (e) how much the corporation paid, and what else the corporation did, by way of indemnifying the person against the liability.

(3) If—

- (a) during or since the financial year, the corporation concerned has made a relevant agreement (as defined in section 9 of the Corporations Act) for indemnifying against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
- (b) but for Schedule 2 clause 15(3) or (4), subclause (1) of that clause would prohibit the corporation from indemnifying the person against that liability,

the report must set out particulars of the relevant agreement, including—

- (c) the person's name;
- (d) the nature of the liability; and
- (e) how much the relevant agreement provides for the corporation to pay, and what else it provides for the corporation to do, by way of indemnifying the person against the liability.

(4) If—

- (a) during or since the financial year, the corporation concerned has paid, or agreed to pay, a premium in respect of a contract insuring against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
- (b) but for Schedule 2 clause 15(8), subclause (5) of that clause would have prohibited the corporation from paying, or agreeing to pay, the premium,

the report must—

- (c) name the person and state that the corporation has paid, or agreed to pay, a premium in respect of a contract insuring the person against a liability; and
- (d) set out, except so far as prohibited by the contract itself, the nature of the liability and the amount of the premium.

- (5) The report must also include details of —
- (a) each director's qualifications, experience and special responsibilities;
  - (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
  - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

**13. Annual directors' report — other specific information**  
*(cf. Corporations Act s. 300A)*

The directors' report in respect of a corporation for a financial year must also include —

- (a) discussion of board policy for determining the nature and amount of emoluments of board members and senior executives of the corporation;
- (b) discussion of the relationship between such policy and the corporation's performance; and
- (c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the corporation receiving the highest emolument.

**14. Audit of annual financial report**  
*(cf. Corporations Act s. 301)*

A corporation must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 34 and 35 and obtain an auditor's report.

**Subdivision 2 — Audit and auditor's report**

**15. Audit opinion**  
*(cf. Corporations Act s. 307)*

The Auditor General must form an opinion about —

- (a) whether the financial report is in accordance with this Schedule, including —
  - (i) clause 8 (compliance with accounting standards and regulations); and

- (ii) clause 9 (true and fair view);
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit;
- (c) whether the corporation concerned has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the corporation concerned has kept other records and registers as required by this Schedule.

**16. Auditor General's report on annual financial report**  
*(cf. Corporations Act s. 308)*

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —
  - (a) clause 8 (compliance with accounting standards and regulations); and
  - (b) clause 9 (true and fair view).
- (2) If not of that opinion, the Auditor General's report must say why.
- (3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.
- (4) If it is not practicable to quantify the effect fully, the report must say why.
- (5) The Auditor General's report must describe —
  - (a) any defect or irregularity in the financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.
- (6) The report must specify the date on which it is made.
- (7) The Auditor General must give a copy of the report to the directors of the corporation concerned as soon as practicable after it has been given to the Minister.

**17. Auditor General's power to obtain information**  
*(cf. Corporations Act s. 310)*

The Auditor General —

- (a) has a right of access at all reasonable times to the books of a corporation; and
- (b) may require any officer of the corporation to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

**18. Assisting Auditor General**  
*(cf. Corporations Act s. 312)*

An officer of a corporation must —

- (a) allow the Auditor General access to the books of the corporation; and
- (b) give the Auditor General any information, explanation or assistance required under clause 17.

**Subdivision 3 — Special provisions about consolidated financial statements**

**19. Directors and officers of controlled entity to give information**  
*(cf. Corporations Act s. 323)*

If a corporation has to prepare consolidated financial statements, a director or officer of a controlled entity must give the corporation all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

**20. Auditor General's power to obtain information from controlled entity**  
*(cf. Corporations Act s. 323A)*

- (1) Where the financial report includes consolidated financial statements, the Auditor General —
  - (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

- (2) The information, explanations or other assistance required under subclause (1)(b) is to be given at the expense of the corporation concerned.

**21. Controlled entity to assist the Auditor General**  
*(cf. Corporations Act s. 323B)*

If a corporation has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must —

- (a) allow the Auditor General access to the controlled entity's books; and
- (b) give the Auditor General any information, explanation or assistance required under clause 20.

**22. Application of subdivision to entity that has ceased to be controlled**  
*(cf. Corporations Act s. 323C)*

Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the corporation concerned when its financial report is being prepared or audited.

**Subdivision 4 — Financial years of the corporation and the entities it controls**

**23. Financial years**  
*(cf. Corporations Act s. 323D)*

- (1) The financial year of a corporation is the 12 month period ending on 30 June.
- (2) Where a corporation has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
- (3) It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.



**Division 4 — Accounting standards**

**24. Accounting standards**

*(cf. Corporations Act s. 334)*

- (1) An accounting standard applies to —
  - (a) periods ending after the commencement of the standard; or
  - (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) A corporation may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors of the corporation.

**25. Equity accounting**

*(cf. Corporations Act s. 335)*

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

**26. Interpretation of accounting standards**

*(cf. Corporations Act s. 337)*

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

**27. Evidence of text of accounting standard**

*(cf. Corporations Act s. 339)*

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —
  - (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
  - (b) a specified provision of a standard of that kind.

- (2) It also applies to a copy of a document of that kind.
- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under this Act that —
  - (a) the specified standard was in force at that time under that section; and
  - (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

### **Division 5 — Exemptions and modifications**

#### **28. Treasurer's power to make specific exemption orders** *(cf. Corporations Act s. 340)*

- (1) On an application made in accordance with subclause (3) in relation to a corporation, the Treasurer may make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —
  - (a) the directors;
  - (b) the corporation;
  - (c) the Auditor General.
- (2) The order may —
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The application must be —
  - (a) authorised by a resolution of the directors;
  - (b) in writing and signed by a director; and
  - (c) lodged with the Treasurer.
- (4) The Treasurer must give the corporation concerned written notice of the making, revocation or suspension of the order.
- (5) If the Treasurer makes an order under subclause (1) the Treasurer is to cause the text of the order to be laid before each House of Parliament within 14 days after the order is made.

- (6) If at the commencement of the period referred to in subclause (5) a House of Parliament is not sitting and the Treasurer is of the opinion that that House will not sit during that period, the Treasurer is to transmit a copy of the order to the Clerk of that House.
- (7) A copy of an order transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (8) The laying of a copy of an order that is taken to have occurred under subclause (7) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

**29. Criteria for specific exemption orders and class orders**  
*(cf. Corporations Act s. 342)*

To make an order under clause 28, the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

- (a) make the financial report or other reports misleading;
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

**30. Extension of time**

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date or time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.
- (2) Where the Minister grants an extension of time under subclause (1), the provisions of clause 28(5) apply, with all necessary changes, to the memorandum evidencing the extension as if it were an order for the purposes of that subclause.

**Division 6 — Sanctions for contraventions of this Schedule**

**31. Contravention of Divisions 2 and 3**

*(cf. Corporations Act s. 344)*

- (1) A director of a corporation must take all reasonable steps to comply with, or to secure compliance with, Divisions 2 and 3.
- (2) A person who contravenes subclause (1) with intent to deceive or defraud the Minister or the Treasurer or creditors of the corporation, is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.
- (3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.
- (4) Subclause (1) does not apply to clause 17, 18, 20 or 21.

**Division 7 — Miscellaneous**

**32. Deadline for reporting to the Minister**

*(cf. Corporations Act s. 315)*

- (1) In subclause (2) —  
*prescribed day* means the tenth working day after receipt by the directors under clause 16 of the Auditor General's report.
- (2) A corporation must, as soon as practicable but not later than the close of business on the prescribed day in each year, send to the Minister a copy of the annual report required by section 107.

**33. Annual financial reporting to the Minister**

*(cf. Corporations Act s. 314)*

The annual report of a corporation under section 107 is to contain the following documents —

- (a) the financial report for the year;
- (b) the directors' report for the year;
- (c) the Auditor General's report on the financial report;

- (d) a copy of any order of the Treasurer under clause 28.

**34. Audit**

- (1) If the Auditor General cannot complete the audit of a corporation by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for his or her inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before both Houses of Parliament within 7 sitting days of receiving that report.
- (2) The *Auditor General Act 2006* section 21 applies to the audit of the corporation.

*[Clause 34 amended by No. 77 of 2006 Sch. 1 cl. 53(4).]*

**35. Powers and duties of the Auditor General**

- (1) If the Auditor General in the course of the performance of duties as auditor of a corporation and its subsidiaries, is satisfied that —
- (a) there has been a contravention of any provision of this Schedule; and
  - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board of the corporation,

the Auditor General is to forthwith report the matter to the Minister in writing.

- (2) The *Auditor General Act 2006* sections 14, 16 to 18, 24 to 37, 45 and 46 apply to the corporation as if it were a statutory authority named in Schedule 1 to the *Financial Management Act 2006*.

*[Clause 35 amended by No. 77 of 2006 Sch. 1 cl. 53(5).]*

## **Schedule 5 — Amendments to other Acts**

[s. 139]

*[Division 1-3 (cl. 1-6) omitted under the Reprints Act 1984 s. 7(4)(e).]*

### **Division 4 — Electricity Corporation Act 1994**

#### **7. The Act amended**

The amendments in this Division are to the *Electricity Corporation Act 1994*.

*[8-21. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

#### **22. Schedule 7 repealed and saving provisions**

- (1) Schedule 7 is repealed.
- (2) Any procurement of new generation that is in progress under Schedule 7 immediately before its repeal by subclause (1) is to be continued by the Electricity Retail Corporation after the commencement of that subclause as if Schedule 7 clauses 1, 3 and 4 had not been repealed.
- (3) Any act, matter or thing done or omitted to be done before the commencement of subclause (1) by, to or in respect of Western Power Corporation in relation to the procurement of new generation mentioned in that subclause, is to be taken to have been done or omitted by, to or in respect of the Electricity Retail Corporation.
- (4) In subclause (3) —  
*Western Power Corporation* has the meaning given to that term in section 142(1).

*[Division 5-15 (cl. 23-59) omitted under the Reprints Act 1984 s. 7(4)(e).]*

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**Notes**

<sup>1</sup> This is a compilation of the *Electricity Corporations Act 2005* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

| Short title   | Number and year            | Assent                      | Commencement  |
|---|----------------------------|-----------------------------|---|
| <i>Electricity Corporations Act 2005</i> <sup>3</sup>   | 18 of 2005                 | 13 Oct 2005                 | Pt. 1, s. 141, 142, 144-152, 153(1) and 179: 13 Oct 2005 (see s. 2(1)); Pt. 2-8, s. 143, 153(2)-(4), 154-178, 180-192, Sch. 1-4 and Sch. 5 (other than cl. 21(2)(a)(ii)): 1 Apr 2006 (see s. 2(2) and <i>Gazette</i> 31 Mar 2006 p. 1153); Sch. 5 cl. 21(2)(a)(ii) deleted by No. 8 of 2009 s. 50(3)(b) |
| <i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15                          | 38 of 2005                 | 12 Dec 2005                 | 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)  |
| <i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and Sch. 1 cl. 53                             | 77 of 2006                 | 21 Dec 2006                 | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)  |
| <i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 50   | 8 of 2009                  | 21 May 2009                 | 22 May 2009 (see s. 2(b))   |
| <b>Reprint 1: The <i>Electricity Corporations Act 2005</i> as at 14 May 2010</b> (includes amendments listed above) |                            |                             |   |
| <a href="#"><i>Approvals and Related Reforms (No. 4) (Planning) Act 2010</i> s. 31</a>                              | <a href="#">28 of 2010</a> | <a href="#">19 Aug 2010</a> | <a href="#">22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709)</a>  |

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

| Short title  | Number and year       | Assent                 | Commencement   |
|--|-----------------------|------------------------|--|
| <i>State Superannuation Amendment Act 2007</i> s. 81 <sup>4</sup>                              | 25 of 2007            | 16 Oct 2007            | Operative on publication of an order under the <i>State Superannuation Act 2000</i> s. 56 (“transfer time”) (see s. 2(1)(c)) |
| <del><i>Approvals and Related Reforms (No. 4) (Planning) Act 2010</i> s. 31 <sup>5</sup></del> | <del>28 of 2010</del> | <del>19 Aug 2010</del> | <del>To be proclaimed (see s. 2(b))</del>  |
| <i>Public Sector Reform Act 2010</i> s. 75 <sup>6</sup>  | 39 of 2010            | 1 Oct 2010             | 1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)   |

<sup>2</sup> The provisions in this Act amending these Acts have, except for Sch. 5 Div. 4 cl. 7 and 22, been omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>3</sup> Schedule 5 clause 21(2)(a)(ii) of this Act had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 50(3)(b).

<sup>4</sup> On the date as at which this compilation was prepared, the *State Superannuation Amendment Act 2007* s. 81 had not come into operation. It reads as follows:

**81. Electricity Corporations Act 2005 amended**

- (1) The amendments in this section are to the *Electricity Corporations Act 2005*.
- (2) Section 26(4) is amended by deleting “section 30.” and inserting instead —  
“ section 76. ”.

~~<sup>5</sup> On the date as at which this compilation was prepared, the *Approvals and Related Reforms (No. 4) (Planning) Act 2010* s. 31 had not come into operation. It reads as follows:~~



~~31. Electricity Corporations Act 2005 amended~~

~~(1) This section amends the Electricity Corporations Act 2005:~~

~~(2) In section 60(3):~~

~~(a) delete “sections 221 and 218,” and insert:~~

~~sections 218 and 221,~~

~~(b) in paragraph (b) delete “scheme,” and insert:~~

~~scheme; or~~

~~(c) after paragraph (b) insert:~~

~~(c) an improvement scheme,~~

<sup>5</sup> [Footnote no longer applicable.](#)

<sup>6</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 75 had not come into operation. It reads as follows:

**75. Electricity Corporations Act 2005 amended**

(1) This section amends the *Electricity Corporations Act 2005*.

(2) In section 3(1) delete the definition of **Commissioner for Public Sector Standards**.

(3) In the provisions listed in the Table delete “Commissioner for Public Sector Standards” (each occurrence) and insert:

Public Sector Commissioner

**Table**

|                       |                  |
|-----------------------|------------------|
| s. 21(1), (5) and (6) | s. 22(1) and (3) |
| s. 31(2) and (4)      | s. 32(1) and (3) |
| s. 33(2)              |                  |

