



Western Australia

## **Electricity Corporations Act 2005**

Compare between:

[01 Jul 2023, 03-h0-02] and [07 Mar 2024, 03-i0-00]



Western Australia

## **Electricity Corporations Act 2005**

**An Act to provide for the establishment and operation of electricity corporations and for related matters.**

*[Long title inserted: No. 25 of 2013 s. 4.]*

## Part 1 — Preliminary

### 1. Short title

This is the *Electricity Corporations Act 2005*.

### 2. Commencement

- (1) Except as stated in subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) The provisions of —
  - (a) Parts 2, 3, 4, 5, 6, 7 and 8; and
  - (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.
- (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 —

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

**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 and Retail Corporation** means the body established by section 4(1)(a) as renamed under section 4(2A);

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

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

- (a) Part 3 Division 1 Subdivisions 1 to 6; and
- (b) section 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;

**GTE Act** means the *Government Trading Enterprises Act 2023*;

**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.

*[Section 3 amended: No. 39 of 2010 s. 75(2); No. 25 of 2013 s. 5; No. 13 of 2023 s. 180.]*

### **3A. Relationship to GTE Act**

The GTE Act is to be read with this Act as if they formed a single Act.

*[Section 3A inserted: No. 13 of 2023 s. 181.]*

## **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) *deleted*]
  - (d) the Regional Power Corporation.
- (2A) From the time at which the *Electricity Corporations Amendment Act 2013* section 6 comes into operation, the corporate name of the body established by subsection (1)(a) is the Electricity Generation and Retail 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.

*[Section 4 amended: No. 25 of 2013 s. 6.]*

#### **5. Corporations not to be regarded as agents of State for purposes of State laws**

For the purposes of any law of the State, a corporation is to be regarded as not being an agent of the State and does not have the status, immunities and privileges of the State.

*[Section 5 amended: No. 25 of 2013 s. 7.]*

**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 (s. 8-13) deleted: No. 13 of 2023 s. 182.]*

**Division 3 — Staff**

*[Subdivision 1 (s. 14-17) deleted: No. 13 of 2023 s. 183.]*

**Subdivision 2 — Power to engage and manage staff**

*[Heading inserted: No. 13 of 2023 s. 184.]*

**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; and
    - (ii) leave; and
    - (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)<sup>1</sup>;
  - 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)<sup>1</sup>.
- (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. Deleted: No. 13 of 2023 s. 185.]

**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 Public Sector Commissioner, 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) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the corporation as if the chief executive officer were a member of staff.
- (4A) If an instrument issued under subsection (1) applies to the chief executive officer of the corporation, subsection (3) does not affect the operation of the GTE Act section 37(5).
- (5) The Public Sector Commissioner 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 Public Sector Commissioner.

[Section 21 amended: No. 39 of 2010 s. 75(3); No. 13 of 2023 s. 186.]

**22. Reports to Public Sector Commissioner**

- (1) The Public Sector Commissioner 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 Public Sector Commissioner may at any time report to the Minister on the content or observance of the minimum standards in force under section 21.

*[Section 22 amended: No. 39 of 2010 s. 75(3).]*

**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; or
  - (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 — Superannuation**

*[Heading inserted: No. 13 of 2023 s. 187.]*

## **26. Superannuation**

- (1) In this section —  
*members of staff* includes —
  - (a) a chief executive officer; and
  - (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 — Staff codes of conduct**

*[Heading inserted: No. 13 of 2023 s. 188.]*

*[27-30. Deleted: No. 13 of 2023 s. 189.]*

#### **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 Public Sector Commissioner, 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 Public Sector Commissioner, amend any code of conduct in force under subsection (2) or revoke it and substitute a new code of conduct.

*[Section 31 amended: No. 39 of 2010 s. 75(3).]*

#### **32. Reports to Public Sector Commissioner**

- (1) The Public Sector Commissioner 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 Public Sector Commissioner 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.

*[Section 32 amended: No. 39 of 2010 s. 75(3).]*

**33. Reports to Minister**

- (1) The board of a corporation, when it delivers to the Minister its annual report under the GTE Act section 81, 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 Public Sector Commissioner a copy of each report under subsection (1).

*[Section 33 amended: No. 39 of 2010 s. 75(3); No. 13 of 2023 s. 190.]*

## **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 and Retail Corporation**

*[Heading amended: No. 25 of 2013 s. 10.]*

**35. Principal functions**

The functions of the Electricity Generation and Retail 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; and
- (b) to acquire, transport and supply —
  - (i) gas; and
  - (ii) steam;and
- (c) to acquire, develop, operate and supply energy efficient technologies; and
- (da) to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand; and
- (db) to purchase or otherwise acquire electricity for the purposes of paragraph (da); and
- (d) to provide ancillary services; and
- (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
  - (iii) to provide retail support services to that corporation;
- and
- (fa) to provide telecommunications services; and
  - (f) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

*[Section 35 amended: No. 25 of 2013 s. 11.]*

### **36. Other functions**

It is also a function of the corporation —

- (a) in addition to its functions under section 35(e)(i) and (iii), to use its expertise and resources to provide consultative, advisory or other services for profit; or
- (b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 35; or
- (c) to manufacture and market any product that relates to a function under section 35 or paragraph (b); or
- (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; or
- (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.

*[Section 36 amended: No. 25 of 2013 s. 12.]*

**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.
- (3A) Subsection (1) does not apply to the performance of the corporation's functions under section 35(b) to acquire and transport gas.
- (3B) Subsection (1) does not apply to the performance of the corporation's function under section 35(b) to supply gas so far as the performance involves only the supply of gas to the Regional Power Corporation.
- (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.

- (5) Regulations may be made authorising the corporation to perform one or more of its functions under section 35 (including functions referred to in subsections (2), (3A), (3B) and (3)) in a part or parts of the State not served by the South West interconnected system.
- (6) Regulations referred to in subsection (5) are in addition to and do not affect subsections (2), (3A), (3B) and (3) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with any of those subsections.

*[Section 37 amended: No. 8 of 2009 s. 50(2); No. 25 of 2013 s. 13.]*

**38. Wholesale acquisition or supply of electricity**

- (1) Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements (***wholesale arrangements***) providing for and in relation to —
  - (a) the wholesale acquisition or supply of electricity by the corporation; and
  - (b) the acquisition or supply by the corporation of goods and services relating to the wholesale acquisition or supply of electricity (***wholesale products***).
- (2) Without limiting subsection (1), wholesale arrangements may be in the form of rules or a code.
- (3) Wholesale arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.
- (4) The *Interpretation Act 1984* sections 43 (other than subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76 and Part VIII apply to wholesale arrangements as if they were subsidiary legislation.

- (5) Regulations referred to in subsection (1) may —
- (a) set out the process for the approval, amendment and repeal of wholesale arrangements; and
  - (b) provide for the publication, commencement, and laying before each House of Parliament, of wholesale arrangements and instruments amending or repealing them.
- (6) If there is a conflict or inconsistency between a provision of regulations referred to in subsection (1) and a provision of wholesale arrangements, the provision of the regulations prevails.

*[Section 38 inserted: No. 25 of 2013 s. 14.]*

**39. Matters for regulations or wholesale arrangements**

- (1) In this section —
- approved instrument*** means an instrument referred to in subsection (2)(b) that is approved under the regulations or wholesale arrangements;
- specified*** means specified in the regulations or wholesale arrangements;
- terms and conditions*** includes pricing and pricing methodology;
- wholesale arrangements*** has the meaning given in section 38(1);
- wholesale products*** has the meaning given in section 38(1)(b).
- (2) Regulations referred to in section 38(1), or wholesale arrangements, may —
- (a) set out requirements to be complied with, or standards or principles to be observed, by the corporation in relation to —
    - (i) the wholesale acquisition or supply of electricity by the corporation; or

- (ii) the acquisition or supply of wholesale products by the corporation;
- and
- (b) without limiting paragraph (a), require the corporation to lodge with a specified person an instrument setting out the terms and conditions that are to apply to —
    - (i) the wholesale acquisition or supply by the corporation of a specified amount of electricity or an amount of electricity determined in a specified manner; or
    - (ii) the acquisition or supply by the corporation of specified wholesale products or wholesale products of a specified class;
- and
- (c) set out the process for the approval of an instrument referred to in paragraph (b), including the matters to be taken into account when deciding whether to give approval; and
  - (d) set out the process for the amendment or replacement of an approved instrument; and
  - (e) impose obligations on the corporation, including an obligation to give an undertaking to a specified person in respect of a specified matter or class of matter; and
  - (f) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and
  - (g) provide for the rights of persons to be supplied with electricity or wholesale products —
    - (i) in accordance with requirements, standards or principles set out in the regulations or wholesale arrangements; or
    - (ii) on terms and conditions set out in an approved instrument;
- and

(h) provide for matters of an incidental or supplementary nature.

(3) Regulations referred to in section 38(1) may —

(a) provide that a provision of the regulations or wholesale arrangements that —

- (i) imposes an obligation on the corporation; and
- (ii) is specified in the regulations or of a class specified in the regulations,

is a civil penalty provision for the purposes of the regulations; and

(b) prescribe, for a contravention of a civil penalty provision —

- (i) an amount not exceeding \$100 000; and
- (ii) in addition a daily amount not exceeding \$20 000,

that may, in accordance with the regulations, be demanded from or imposed upon the corporation; and

(c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and

(d) provide for and regulate the taking of proceedings in respect of alleged contraventions by the corporation of provisions of the regulations or wholesale arrangements, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and

(e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and

(f) provide for the review by a specified person of decisions made under the regulations or wholesale arrangements.

- (4) In subsection (3)(b)(ii) —  
**daily amount** means an amount for each day or part of a day during which the contravention continues.
- (5) If wholesale arrangements confer functions on a person —
- (a) the functions are to be taken to be conferred by this Act; and
  - (b) the person is authorised to perform the functions.

*[Section 39 inserted: No. 25 of 2013 s. 14.]*

*[40. Deleted: No. 25 of 2020 s. 119.]*

### **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; and
- (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; and
- (ba) to provide stand-alone power systems (as defined in the *Electricity Industry Act 2004* section 3(1)) in accordance with the regulations and Code made under Part 8 of that Act; and
- (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; and

- (d) to provide services that improve the efficiency of electricity supply and the management of demand on electricity transmission and distribution systems; and
- (e) to provide ancillary services; and
- (f) by agreement with the Regional Power Corporation, to operate and maintain electricity transmission and distribution systems on behalf of that corporation; and
- (g) by agreement with the Electricity Generation and Retail Corporation and the Regional Power Corporation, to provide procurement, financial and commercial services to those corporations; and
- (h) to provide telecommunication services; and
- (i) to construct, install, undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

*[Section 41 amended: No. 25 of 2013 s. 15; No. 9 of 2020 s. 30(2).]*

**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; or
  - (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); or
  - (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;
- or



- (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; or
- (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.
- (3) Regulations may be made authorising the corporation to perform one or more of its functions under section 41 (including functions referred to in subsection (2)) in a part or parts of the State not served by the South West interconnected system.
- (4) Regulations referred to in subsection (3) are in addition to and do not affect subsection (2) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with that subsection.

*[Section 43 amended: No. 25 of 2013 s. 16.]*

*[Subdivision 4 (s. 44-50A) deleted: No. 25 of 2013 s. 17.]*

### **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; and
- (b) to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems and provide and improve electricity transmission and distribution services; and
- (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; and
- (ca) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8A (which relates to network access in the Pilbara region) and the regulations, Pilbara Networks Access Code and Pilbara networks rules made under that Part; and
- (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 Generation and Retail Corporation in the performance of its functions under section 35(da); and
- (e) to acquire, transport and supply —
  - (i) gas; and
  - (ii) steam;and
- (f) to acquire, develop, operate and supply energy efficient technologies; and

- (g) to provide ancillary services; and
- (h) by agreement with the Electricity Generation and Retail Corporation, to operate and maintain any electricity generation plant or equipment on behalf of that corporation; and
- (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.

*[Section 50 amended: No. 25 of 2013 s. 18; No. 9 of 2020 s. 30(3).]*

**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; or
- (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); or
- (c) to manufacture and market any product that relates to a function under section 50 or paragraph (b); or
- (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; or
- (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.
- (3) Subsections (1) and (2) do not apply to the performance of the corporation's functions of acquiring, transporting and supplying gas so far as the performance involves only either or both of the following —
  - (a) the acquisition and transport of gas from the Electricity Generation and Retail Corporation;
  - (b) the supply and transport of gas to the Electricity Generation and Retail Corporation.
- (4) Regulations may be made authorising the corporation —
  - (a) to perform one or more of the functions referred to in subsection (1) in respect of electricity systems in a part or parts of the State outside the area of operations; and
  - (b) to perform one or more of the functions referred to in subsection (2) in a part or parts of the State outside the area of operations.
- (5) Regulations referred to in subsection (4) are in addition to and do not affect subsection (3) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with that subsection.

*[Section 52 amended: No. 25 of 2013 s. 19.]*

**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.
- (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 disapply or modify the application of provisions of this Act so as to limit or affect the performance of community service obligations (as defined in the GTE Act section 69(1)) of a corporation.

*[Section 53 amended: No. 13 of 2023 s. 191.]*

**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 3.

- (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 Generation and Retail Corporation or a subsidiary of the Electricity Generation and 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) *deleted*]
- (8) Subsections (2) and (3) have effect despite the *Electricity Industry Act 2004* Part 8 or 8A.

[Section 54 amended: No. 25 of 2013 s. 20; No. 9 of 2020 s. 30(4) and (5); No. 13 of 2023 s. 192.]

[55. *Deleted: No. 13 of 2023 s. 193.*]

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

[56. *Deleted: No. 13 of 2023 s. 194.*]

#### **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. Deleted: No. 13 of 2023 s. 195.]

**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; and
  - (b) enter into any contract or arrangement; and
  - (c) apply for the grant or transfer of any mining tenement, petroleum licence or other licence or authority to the corporation; and
  - (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;and
  - (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; and
  - (f) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the corporation; and
  - (g) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
  - (h) carry out any investigation, survey, exploration or boring; and
  - (i) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
  - (j) for the purposes of section 36(b), 42(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.
- (3A) Subsections (2) and (3) have effect subject to the GTE Act.
- (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; and
  - (b) undertake community service obligations (as defined in the GTE Act section 69(1)); and
  - (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.  
*[Section 59 amended: No. 25 of 2013 s. 21; No. 13 of 2023 s. 196.]*

**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 218 and 221, a corporation is not required to comply with the provisions of —
  - (a) an interim development order; or
  - (b) a local planning scheme; or
  - (c) an improvement scheme; or
  - (d) the Swan Valley Planning Scheme,as defined in section 4(1) of 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 the GTE Act section 144 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: No. 38 of 2005 s. 15; No. 28 of 2010 s. 31; No. 45 of 2020 s. 100; No. 13 of 2023 s. 197.]*

**61. Limitation of corporation's duty to act on commercial principles**

Despite the GTE Act section 9(2)(b), the Electricity Networks Corporation is only required to ensure, so far as is practicable, that the reasonable cost of performing the function referred to in section 41(c) does not exceed its revenue from doing so.

*[Section 61 inserted: No. 13 of 2023 s. 198.]*

**62. Segregation of functions**

- (1) Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements (*segregation arrangements*) providing for and in relation to —
  - (a) the division of the functions or operations of a corporation into segments; and
  - (b) the segregation of any such segment of a corporation from the other functions or operations of the corporation; and
  - (c) the segregation from a corporation of any subsidiary of the corporation that has any functions or operations of a specified kind.
- (2) Without limiting subsection (1), segregation arrangements may be in the form of rules or a code.
- (3) Segregation arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.
- (4) The *Interpretation Act 1984* sections 43 (other than subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76 and Part VIII apply to segregation arrangements as if they were subsidiary legislation.
- (5) Regulations referred to in subsection (1) may —
  - (a) set out the process for the approval, amendment and repeal of segregation arrangements; and
  - (b) provide for the publication, commencement, and laying before each House of Parliament, of segregation arrangements and instruments amending or repealing them.
- (6) If there is a conflict or inconsistency between a provision of regulations referred to in subsection (1) and a provision of

segregation arrangements, the provision of the regulations prevails.

*[Section 62 inserted: No. 25 of 2013 s. 22.]*

**63A. Matters for regulations or segregation arrangements**

- (1) In this section —  
*segregation arrangements* has the meaning given in section 62(1);  
*specified* means specified in the regulations or segregation arrangements.
- (2) Regulations referred to in section 62(1), or segregation arrangements, may —
  - (a) set out requirements to be complied with, or standards or principles to be observed, by a corporation in relation to dealings between one segment of the corporation and another segment of the corporation in respect of a specified matter or class of matter; and
  - (b) provide for the keeping of accounts and records; and
  - (c) provide for financial reporting and performance reporting; and
  - (d) provide for the apportionment of income, expenditure, assets and liabilities; and
  - (e) provide for the protection of information; and
  - (f) provide for controls and procedures to ensure that any required segregation is effective; and
  - (g) impose obligations on a corporation, including an obligation to give an undertaking to a specified person in respect of a specified matter or class of matter; and
  - (h) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and
  - (i) provide for matters of an incidental or supplementary nature.

- (3) Regulations referred to in section 62(1) may —
- (a) provide that a provision of the regulations or segregation arrangements that —
    - (i) imposes an obligation on a corporation; and
    - (ii) is specified in the regulations or of a class specified in the regulations,is a civil penalty provision for the purposes of the regulations; and
  - (b) prescribe, for a contravention of a civil penalty provision —
    - (i) an amount not exceeding \$100 000; and
    - (ii) in addition a daily amount not exceeding \$20 000,that may, in accordance with the regulations, be demanded from or imposed upon a corporation; and
  - (c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and
  - (d) provide for and regulate the taking of proceedings in respect of alleged contraventions by a corporation of provisions of the regulations or segregation arrangements, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and
  - (e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and
  - (f) provide for the review by a specified person of decisions made under the regulations or segregation arrangements.

- (4) In subsection (3)(b)(ii) —  
**daily amount** means an amount for each day or part of a day during which the contravention continues.
- (5) If segregation arrangements confer functions on a person —
- (a) the functions are to be taken to be conferred by this Act; and
  - (b) the person is authorised to perform the functions.

*[Section 63A inserted: No. 25 of 2013 s. 22.]*

**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) deleted]*

*[Section 63 amended: No. 13 of 2023 s. 199.]*

*[64-70. Deleted: No. 13 of 2023 s. 200.]*

**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; or
  - (b) a chief executive officer; or
  - (c) a member or members of staff; or
  - (d) a committee established under the GTE Act section 26(1); 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.
- (7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of a corporation can be given under the GTE Act section 156.

*[Section 71 amended: No. 13 of 2023 s. 201.]*



**72. Disclosure of information in compliance with request under  
*Fines, Penalties and Infringement Notices Enforcement  
Act 1994***

- (1) If a corporation is given a request to disclose information under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 100A, the corporation must disclose information in compliance with the request.
- (2) The information disclosed in compliance with a request referred to in subsection (1) may include the names and addresses of customers of the corporation but must not include photographs or signatures of those customers.
- (3) The disclosure of information is to be free of charge.

*[Section 72 inserted: No. 25 of 2020 s. 120.]*

*[Division 2 (s. 73, 74) deleted: No. 25 of 2013 s. 23.]*

**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 *Competition and Consumer Act 2010* (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; or
  - (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

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- (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.

*[Section 75 amended: No. 25 of 2013 s. 24.]*

*[Division 4 (s. 76-79) deleted: No. 13 of 2023 s. 202.]*

## 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; and
- (c) facilitate the economically efficient performance of their functions under this Act.

*[Section 81 amended: No. 25 of 2013 s. 25.]*

### 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.

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**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), (b) or (c).
- (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; and
  - (b) arrangements and procedures that are to apply between them; and
  - (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.

*[Section 83 amended: No. 25 of 2013 s. 26.]*

**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 *Competition and Consumer Act 2010* (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,

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

*[Section 87 amended: No. 25 of 2013 s. 27.]*

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## Part 5 — Ministerial directions

[Heading inserted: No. 13 of 2023 s. 203.]

[Divisions 1-3 (s. 88-109) deleted: No. 13 of 2023 s. 204.]

[Division 4 heading deleted: No. 13 of 2023 s. 205.]

[110. Deleted: No. 13 of 2023 s. 206.]

### 111. Directions that cannot be given under GTE Act s. 108

No direction can be given under the GTE Act section 108(1) 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.

[Section 111 inserted: No. 13 of 2023 s. 206.]

[112, 113. Deleted: No. 13 of 2023 s. 206.]

### 114. Directions relating to supply of gas

(1) In this section —

*corporation* means the Electricity Generation and Retail Corporation;

*specified* means specified in the instrument referred to in subsection (2).

- (2) The Minister may, despite section 35(b), by instrument served on the 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; or
  - (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).

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- (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.

*[Section 114 amended: No. 25 of 2013 s. 31.]*

*[Divisions 5 and 6 (s. 115-120) deleted: No. 13 of 2023 s. 207.]*

*[Part 6 (s. 121-133) deleted: No. 13 of 2023 s. 208.]*



## Part 7 — Miscellaneous

### 134. Laying documents before Parliament not sitting

If a provision of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the GTE Act section 159 applies as if the reference in that section to a provision of the GTE Act were a reference to the provision of this Act.

*[Section 134 inserted: No. 13 of 2023 s. 209.]*

*[135, 136. Deleted: No. 13 of 2023 s. 209.]*

### 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: 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

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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.
- (3) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.
- (4) Regulations in reliance on subsection (3) must not be made except on the recommendation of —
  - (a) the Minister; and
  - (b) the Minister to whom the administration of the GTE Act is committed.
- (5) If and to the extent that regulations under this Act are so expressed, in the event of a conflict or inconsistency between a provision of those regulations and a provision of regulations made under the GTE Act, the former provision prevails.

*[Section 138 amended: No. 13 of 2023 s. 210.]*

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

[139. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

### **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 or the *Electricity Corporations Amendment Act 2013*.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

*[Section 140 amended: No. 25 of 2013 s. 34.]*

## **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; and
- (b) the Electricity Networks Corporation; and
- (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 —

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

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

as the case may require;

**principal Act** means the *Electricity Corporation Act 1994*<sup>2</sup>;

**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;

**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; or
- (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; or
- (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; or
- (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

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).

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**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.

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**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; and
  - (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; and



- (b) in respect of a particular liability, allocate a specified share of the liability to one or more of the new corporations; and
  - (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; and
  - (d) specify any person or thing by describing the person or thing as a member of a class; and
  - (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; and
  - (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.

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- (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.

**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.

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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); or
  - (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

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- (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.

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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

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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); or
- (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



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.

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**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); and
- (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

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 —

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- (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,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

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- (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); or
  - (b) section 159; or
  - (c) the relevant context,

otherwise requires.

(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).

**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.



**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.

(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

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(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; or
  - (ii) by order under section 155(1) or 160(2); or
  - (iii) by regulations under Division 7;

or

- (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

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- (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.

- (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; or
    - (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; or

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- (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; or
  - (b) the Registrar of Deeds; or
  - (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



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

**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

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- (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.

- (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); or
  - (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 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.
  
- (3) In subsection (1) —  
*liability* includes civil liability under the *Corporations Act 2001* of the Commonwealth.

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

## **Part 10 — Provisions for merger of corporations**

*[Heading inserted: No. 25 of 2013 s. 35.]*

### **Division 1 — Preliminary**

*[Heading inserted: No. 25 of 2013 s. 35.]*

#### **193. Purpose of Part**

The purpose of this Part is to provide for the merger of the Electricity Retail Corporation with the body established by section 4(1)(a), and for related transitional matters.

*[Section 193 inserted: No. 25 of 2013 s. 35.]*

#### **194. Terms used**

In this Part —

***amending Act*** means the *Electricity Corporations Amendment Act 2013*;

***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;

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

***EGRC*** means the continuing corporation as renamed as the Electricity Generation and Retail Corporation under section 4(2A);

***Government agreement*** has the meaning given in the *Government Agreements Act 1979* section 2;

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

**merger** means —

- (a) the actions effected by the coming into operation of section 6 of the amending Act; and
- (b) the merging of the Electricity Retail Corporation into the EGRC under section 196(1);

**merger provisions** means the following —

- (a) section 6 of the amending Act;
- (b) this Part;
- (c) transitional regulations;

**merger time** means the time at which section 6 of the amending Act comes into operation;

**merging corporation** means the Electricity Retail Corporation;

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

**transitional regulations** has the meaning given in section 221.

*[Section 194 inserted: No. 25 of 2013 s. 35.]*

## **195. Saving**

- (1) The operation of any of the merger provisions is not to be regarded —
  - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (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; or

- (c) as giving rise to any right to damages or compensation; or
  - (d) 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; or
  - (e) as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) as releasing or allowing the release of any surety.
- (2) The merger provisions are additional to any relevant provisions of the *Interpretation Act 1984*.

*[Section 195 inserted: No. 25 of 2013 s. 35.]*

### **Division 2 — Merger**

*[Heading inserted: No. 25 of 2013 s. 35.]*

#### **196. Merger of corporations**

- (1) At the merger time the Electricity Retail Corporation ceases to be a corporation under this Act and merges into the EGRC.
- (2) From the merger time the EGRC is a continuation of the merging corporation.

*[Section 196 inserted: No. 25 of 2013 s. 35.]*

#### **197. Corporations to implement or facilitate merger**

- (1) A corporation is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subsection (1) applies —
  - (a) before the merger time — to the merging corporation and the continuing corporation; and

- (b) after the merger time — to the EGRC.
- (3) The function conferred by subsection (1) is in addition to any other function that a corporation has.

*[Section 197 inserted: No. 25 of 2013 s. 35.]*

### **Division 3 — Directions by Minister**

*[Heading inserted: No. 25 of 2013 s. 35.]*

#### **198. Minister may give directions**

- (1) The Minister may give directions in writing to the continuing corporation or the merging 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 the corporation might otherwise take.
- (3) A corporation is to give effect to a direction given to it under subsection (1) despite any other provision of this Act.
- (4) This section has effect despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a).

*[Section 198 inserted: No. 25 of 2013 s. 35.]*

#### **199. Directions to be laid before Parliament**

The Minister must, within 14 days after a direction is given under section 198(1), cause the text of the direction to be laid before each House of Parliament or dealt with under section 134.

*[Section 199 inserted: No. 25 of 2013 s. 35.]*

**Division 4 — Devolution of assets, rights, liabilities and proceedings and related provisions**

*[Heading inserted: No. 25 of 2013 s. 35.]*

**200. Assets, rights and liabilities**

- (1) At the merger time —
  - (a) the assets and rights of the merging corporation that were immediately before that time vested in the merging corporation vest in the EGRC by force of this subsection; and
  - (b) the liabilities of the merging corporation immediately before that time become the liabilities of the EGRC by force of this subsection.
- (2) In determining the profits of the EGRC for the purposes of section 126, assets that vest in the EGRC by force of subsection (1) are not to be regarded as income.

*[Section 200 inserted: No. 25 of 2013 s. 35.]*

**201. Proceedings and remedies**

From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by, or available against or to, the merging corporation may be brought or continued by, and are or is available against or to, the EGRC.

*[Section 201 inserted: No. 25 of 2013 s. 35.]*

**202. Continuation of guarantees**

- (1) This section applies to —
  - (a) a guarantee given under section 130; and
  - (b) a guarantee continued in force by section 173,that was in force immediately before the merger time in respect of the merging corporation.

- (2) A guarantee to which this section applies continues in force and is to be read and construed, from the merger time, as if it were a guarantee in respect of the EGRC.
- (3) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee to which this section applies.
- (4) By virtue of this subsection, any sum paid by the Treasurer under a guarantee to which this section applies in respect of the EGRC constitutes a charge on the assets of that corporation.

*[Section 202 inserted: No. 25 of 2013 s. 35.]*

**203. Joint tenancies preserved**

- (1) This section applies to an asset held by the merging corporation as a joint tenant with another person.
- (2) The vesting of an asset to which this section applies in the EGRC under this Part does not sever the joint tenancy, and the EGRC holds the asset as a joint tenant with the other person.

*[Section 203 inserted: No. 25 of 2013 s. 35.]*

**204. Exemption from State taxation**

- (1) In this section —  
*State tax* includes duty under the *Duties Act 2008* 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 the merger provisions; or
  - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to the merger provisions, or for a purpose connected with or arising out of giving effect to the merger provisions.

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- (3) The Treasurer or a person authorised by the Treasurer may, at the request of the EGRC, certify in writing that a specified thing —
- (a) occurred by the operation of the merger provisions; or
  - (b) was done under this Part, or to give effect to the merger provisions, or for a purpose connected with or arising out of giving effect to the merger provisions.
- (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.

*[Section 204 inserted: No. 25 of 2013 s. 35.]*

**205. Registration of documents**

- (1) In this section —
- relevant officials** means —
- (a) the Registrar of Titles under the *Transfer of Land Act 1893*; and
  - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; and
  - (c) the Minister administering the *Land Administration Act 1997*; and
  - (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 merger provisions 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 (2), a statement in an instrument is evidence of the facts stated if —
- (a) the instrument is executed by the EGRC; and



- (b) the statement is to the effect that any estate or interest in land or other property has become vested in the EGRC under section 200(1).

*[Section 205 inserted: No. 25 of 2013 s. 35.]*

### **Division 5 — Staff**

*[Heading inserted: No. 25 of 2013 s. 35.]*

#### **206. Members of staff**

- (1) At the merger time, a person who immediately before the merger time was a member of staff of the merging corporation becomes a member of staff of the EGRC.
- (2) The operation of subsection (1) does not constitute a retrenchment or redundancy.

*[Section 206 inserted: No. 25 of 2013 s. 35.]*

#### **207. Preservation of rights**

- (1) Except as otherwise agreed by the relevant member of staff, the operation of section 206(1) does not —
- (a) affect his or her remuneration and other terms and conditions of employment; or
  - (b) prejudice his or her existing or accruing rights; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt continuity of service.
- (2) For the purposes of subsection (1)(d), the service of a member of staff with the merging corporation is to be taken to have been with the EGRC.
- (3) Nothing in section 206 or this section prevents the exercise by the EGRC of its powers in relation to the management of members of staff.

*[Section 207 inserted: No. 25 of 2013 s. 35.]*

### **Division 6 — Other provisions**

*[Heading inserted: No. 25 of 2013 s. 35.]*

**208. Renaming of continuing corporation does not affect status**

The renaming of the continuing corporation as the Electricity Generation and Retail Corporation under section 4(2A) does not affect its continuity or legal status.

*[Section 208 inserted: No. 25 of 2013 s. 35.]*

**209. Compliance with policy instruments**

Despite section 58, the EGRC is not required to perform its functions in accordance with its strategic development plan and its statement of corporate intent in the period starting at the merger time and ending on the next 30 June.

*[Section 209 inserted: No. 25 of 2013 s. 35.]*

**210. Financial reporting: merging corporation**

(1) In this section —

*annual reporting provisions* means sections 107 and 108, Schedule 4 Division 3 Subdivision 1 and Schedule 4 clauses 32 and 33;

*quarter* means a quarter of a financial year.

(2) It is a function of the EGRC to perform the duties set out in this section in respect of the merging corporation.

(3) If the merger time coincides with the end of a quarter of the merging corporation, the EGRC is to comply with section 106 in respect of the merging corporation for that quarter.

(4) If the merger time is after the end of a quarter of the merging corporation (the *last quarter*), the EGRC is to —

- (a) comply with section 106 in respect of the merging corporation to the extent that that section has not been complied with for the last quarter; and
  - (b) comply with section 106 in respect of the merging corporation for the period starting at the end of the last quarter and ending at the merger time as if that period were a quarter.
- (5) If the merger time coincides with the end of a financial year of the merging corporation, the EGRC is to comply with the annual reporting provisions in respect of the merging corporation for that financial year.
- (6) If the merger time is after the end of a financial year of the merging corporation (the *last financial year*), the EGRC is to —
- (a) comply with the annual reporting provisions in respect of the merging corporation to the extent that those provisions have not been complied with for the last financial year; and
  - (b) comply with the annual reporting provisions in respect of the merging corporation for the period starting at the end of the last financial year and ending at the merger time as if that period were a financial year.
- (7) In order to enable the EGRC to perform its duties under this section, section 106 and the annual reporting provisions apply with —
- (a) any modifications prescribed by transitional regulations; and
  - (b) any other appropriate modifications.

*[Section 210 inserted: No. 25 of 2013 s. 35.]*

**211. Financial reporting: continuing corporation**

- (1) In this section —
- annual reporting provisions* has the meaning given in section 210(1).

- (2) If the merger time is after the end of a financial year of the continuing corporation (the *last financial year*), the EGRC is to comply with the annual reporting provisions in respect of the continuing corporation as if each of the following periods were a financial year —
- (a) the period starting at the end of the last financial year and ending at the merger time;
  - (b) the period starting at the merger time and ending on the next 30 June.
- (3) For the purposes of subsection (2), the annual reporting provisions apply with —
- (a) any modifications prescribed by transitional regulations; and
  - (b) any other appropriate modifications.

*[Section 211 inserted: No. 25 of 2013 s. 35.]*

**212. Continuation of certain directions**

- (1) A direction under section 111(1) that was in force in respect of the merging corporation immediately before the merger time continues in force, from the merger time, as if it were a direction given under section 111(1) to the EGRC.
- (2) An instrument under section 114(2) that was in force in respect of the merging corporation immediately before the merger time continues in force, from the merger time, as if it were an instrument served under section 114(2) on the EGRC.

*[Section 212 inserted: No. 25 of 2013 s. 35.]*

**213. Amount in lieu of rates**

- (1) If immediately before the merger time the merging corporation has not paid an amount required to be paid under section 124, the EGRC is to pay the amount to the Treasurer.

- (2) Any amount that has to be paid to the Treasurer in accordance with subsection (1) is to be paid from the funds of the EGRC.

*[Section 213 inserted: No. 25 of 2013 s. 35.]*

**214. Dividends**

- (1) In this section —

***dividend function*** means a function of a corporation or its board under section 126.

- (2) If immediately before the merger time a dividend function has yet to be performed by the merging corporation or its board, the EGRC or its board is to perform the function after the merger time as if the EGRC were the merging corporation.

- (3) Any amount that has to be paid to the Treasurer in accordance with subsection (2) is to be paid from the funds of the EGRC.

*[Section 214 inserted: No. 25 of 2013 s. 35.]*

**215. Completion of things commenced**

Anything commenced to be done by the merging corporation before the merger time may be continued by the EGRC.

*[Section 215 inserted: No. 25 of 2013 s. 35.]*

**216. Continuing effect of things done**

- (1) In this section —

***relevant act*** means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of the merging corporation.

- (2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the EGRC so far as the act, matter or thing is relevant to the EGRC.

- (3) This section does not affect the operation of any other provision of this Part.

*[Section 216 inserted: No. 25 of 2013 s. 35.]*

**217. Immunity to continue**

If the merging corporation had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, the immunity continues in that respect for the benefit of the EGRC.

*[Section 217 inserted: No. 25 of 2013 s. 35.]*

**218. Agreements, instruments and documents**

- (1) In this section —

*agreement* includes a Government agreement;

*former name* means “Electricity Generation Corporation”;

*new name* means “Electricity Generation and Retail Corporation”.

- (2) An agreement, instrument or document subsisting immediately before the merger time that contains —

(a) a reference to the merging corporation or to the continuing corporation by its former name; or

(b) a reference to a body that under Part 9 is to be read as, or has effect as if it were, a reference to the merging corporation or the continuing corporation,

has effect from the merger time as if the reference were, unless the context otherwise requires, a reference to the continuing corporation by its new name.

*[Section 218 inserted: No. 25 of 2013 s. 35.]*

**219. Treasurer may give indemnity and guarantee**

- (1) In this section —  
*liability* includes civil liability under the *Corporations Act 2001* (Commonwealth);  
*relevant person* means a person who is or has been a director, the chief executive officer, or a member of staff, of the merging corporation.
- (2) The Treasurer may, in the name and on behalf of the State, give to a relevant person an indemnity against liability or a guarantee of payment in respect of —
- (a) the doing of anything, whether before or after the merger time, that is required to achieve the purpose of this Part; or
  - (b) an omission to do anything, whether before or after the merger time, if the omission is required to achieve the purpose of this Part.
- (3) 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.

*[Section 219 inserted: No. 25 of 2013 s. 35.]*

**220. Government agreements not affected**

The merger provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.

*[Section 220 inserted: No. 25 of 2013 s. 35.]*

**221. Transitional regulations**

- (1) Regulations (*transitional regulations*) may prescribe —
- (a) things to be done by the merging corporation or the continuing corporation to provide for, implement or facilitate the merger; and

- (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.
- (2) Transitional regulations may provide that specific provisions of any written law —
  - (a) do not apply to or in relation to any matter; or
  - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.
- (4) If transitional regulations contain a provision referred to in subsection (3), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State, an authority of the State or the EGRC) the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State, an authority of the State or the EGRC) in respect of anything done or omitted to be done before the day of publication of those regulations.

*[Section 221 inserted: No. 25 of 2013 s. 35.]*



*[Schedules 1-4 deleted: No. 13 of 2023 s. 211.]*

*[Schedule 5 omitted under the Reprints Act 1984 s. 7(4)(e).]*

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## Notes

This is a compilation of the *Electricity Corporations Act 2005* and includes amendments made by other written laws<sup>3</sup>. For provisions that have come into operation, and for information about any reprints, see the compilation table. [For provisions that have not yet come into operation see the uncommenced provisions table.](#)

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Electricity Corporations Act 2005</i> <sup>4</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)			
<i>Approvals and Related Reforms (No. 4) (Planning) Act 2010</i> s. 31	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709)
<i>Public Sector Reform Act 2010</i> s. 75	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

Short title	Number and year	Assent	Commencement
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 4 Div. 2</i>	48 of 2012	29 Nov 2012	21 Aug 2013 (see s. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
<i>Electricity Corporations Amendment Act 2013 Pt. 2 (s. 3-36)</i>	25 of 2013	18 Dec 2013	Pt. 2 heading and s. 3 and 32-35: 19 Dec 2013 (see s. 2(b)); Pt. 2 other than s. 3 and 32-35: 1 Jan 2014 (see s. 2(c) and <i>Gazette</i> 27 Dec 2013 p. 6465)
<b>Reprint 2: The <i>Electricity Corporations Act 2005</i> as at 18 Jul 2014</b> (includes amendments listed above)			
<i>Electricity Corporations Amendment Act 2015</i>	16 of 2015	25 Jun 2015	s. 1 and 2: 25 Jun 2015 (see s. 2(a)); Act other than s. 1 and 2: 26 Jun 2015 (see s. 2(b))
<i>Associations Incorporation Act 2015 s. 216</i>	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291-2)
<i>Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2016 Pt. 3 Div. 2</i>	46 of 2016	7 Dec 2016	8 Dec 2016 (see s. 2(b))
<b>Reprint 3: The <i>Electricity Corporations Act 2005</i> as at 7 Jun 2019</b> (includes amendments listed above)			
<i>Electricity Industry Amendment Act 2020 s. 30</i>	9 of 2020	6 Apr 2020	7 Apr 2020 (see s. 2(b))
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020 Pt. 3 Div. 4</i>	25 of 2020	19 Jun 2020	29 Sep 2020 (see s. 2(1)(c) and SL 2020/159 cl. 2(a))
<i>Swan Valley Planning Act 2020 Pt. 10 Div. 2</i>	45 of 2020	9 Dec 2020	1 Aug 2021 (see s. 2(1)(e) and SL 2021/124 cl. 2)
<i>Government Trading Enterprises Act 2023 Pt. 12 Div. 1</i>	13 of 2023	22 Jun 2023	1 Jul 2023 (see s. 2(b) and SL 2023/89 cl. 2)

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### Uncommenced provisions table

To view the text of the uncommenced provisions see [Acts as passed on the WA Legislation website](#).

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<a href="#">Electricity Industry Amendment (Distributed Energy Resources) Act 2024 Pt. 2 Div. 3 and Pt. 3 Div. 2</a>	<a href="#">1 of 2024</a>	<a href="#">7 Mar 2024</a>	<a href="#">To be proclaimed (see s. 2(b))</a>

### **Other notes**

- <sup>1</sup> Deleted by the *Public Sector Reform Act 2010* s. 57.
- <sup>2</sup> Now known as the *Electricity Transmission and Distribution Systems (Access) Act 1994*.
- <sup>3</sup> The amendment in the *State Superannuation Amendment Act 2007* s. 81 is not included because it was deleted by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.
- <sup>4</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).