

Western Australia

**Electricity Transmission and Distribution
Systems (Access) Act 1994**

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Electricity Transmission and Distribution Systems (Access) Act 1994

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Western Australia

Electricity Transmission and Distribution Systems (Access) Act 1994

**An Act to make provision for the availability of access to electricity
transmission and distribution systems, and for related matters.**

[Long title inserted by No. 18 of 2005 s. 139.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Electricity Transmission and Distribution Systems (Access) Act 1994*¹.

[Section 1 amended by No. 18 of 2005 s. 139.]

2. Terms used in this Act

In this Act, unless the contrary intention appears —

corporation means each of —

- (a) the Electricity Networks Corporation established by section 4(1)(b); and
- (b) the Regional Power Corporation established by section 4(1)(d),

of the *Electricity Corporations Act 2005*;

isolated system means a system for the transmission and distribution of electricity that is not connected to —

- (a) the North West interconnected system; or
- (b) the South West interconnected system as defined in section 3 of the *Electricity Corporations Act 2005*;

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

- (a) located in the Pilbara region of the State; and
- (b) into which electricity is supplied by one or more of the electricity generation plants at Dampier, Port Hedland and Cape Lambert,

as expanded or altered from time to time.

[Section 2 inserted by No. 18 of 2005 s. 139.]

[3. Deleted by No. 18 of 2005 s. 139.]

[Parts 2, 3, 4 and 5 (s. 4-88) deleted by No. 18 of 2005 s. 139.]

Part 6 — Access to electricity transmission and distribution systems

[Heading inserted by No. 18 of 2005 s. 139.]

89. Definitions

- (1) In this Part and in Schedules 5 and 6 —

electricity distribution capacity, in relation to the electricity distribution system operated by a corporation, means, subject to any provision made by the regulations, the capacity of the system to transport electricity from or to a particular point, consistent with the need to maintain the continuity and integrity of that system, whether or not that capacity is committed to existing users;

electricity distribution system, in relation to a corporation, means —

- (a) the part or parts of the system operated by the corporation for the transportation of electricity that is or are prescribed by the regulations for the purposes of this paragraph; and
- (b) plant and equipment that is —
 - (i) used by the corporation —
 - (I) in connection with the transfer of electricity to or from any part referred to in paragraph (a); or
 - (II) for a purpose related to such transfer;
 - and
 - (ii) prescribed, or of a kind that is prescribed, by the regulations for the purposes of this subparagraph;

electricity transmission capacity, in relation to the electricity transmission system operated by a corporation, means the capacity of the system to transport electricity, consistent with the need to maintain the continuity and integrity of that system;

electricity transmission system, in relation to a corporation, means —

- (a) the part or parts of the system operated by the corporation for the transportation of electricity that is or are prescribed by the regulations for the purposes of this paragraph; and
- (b) plant and equipment that is —
 - (i) used by the corporation —
 - (I) in connection with the transfer of electricity to or from any part referred to in paragraph (a); or
 - (II) for a purpose related to such transfer;
 - and
 - (ii) prescribed, or of a kind that is prescribed, by the regulations for the purposes of this subparagraph;

regulations means the regulations referred to in section 95.

- (2) In this Part **user**, in relation to a corporation, means a person who has an arrangement with the corporation for access to either or both of electricity transmission capacity and electricity distribution capacity, and includes the corporation to the extent that it has access to either or both of electricity transmission capacity and electricity distribution capacity.
- (3) In this Part a reference to Schedule 5 or 6 is a reference to that Schedule as in force before its repeal by the *Electricity Transmission and Distribution Systems (Repeal and Related Provisions) Regulations 2007*.

[Section 89 amended by No. 53 of 2003 s. 107; No. 18 of 2005 s. 139; amended in Gazette 26 Jun 2007 p. 3019.]

[90, 91. Deleted in Gazette 26 Jun 2007 p. 3019.]

[92, 93. Deleted by No. 18 of 2005 s. 139.]

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94. Enforcement

- (1) The obligations imposed on a corporation by this Part and by Schedules 5 and 6 create duties that are enforceable by civil proceedings in a court, but no breach of those obligations gives rise to an action for damages.
- (2) A grant of access by a corporation under clause 2 of Schedule 5 or clause 2 of Schedule 6 to a user and the terms and conditions of that grant are to be taken to constitute a contract between the corporation and the user, and rights and obligations under the grant are enforceable accordingly.
- (3) Nothing in subsection (1) affects —
 - (a) the enforceability of any contract, including a deemed contract under subsection (2), to which a corporation is a party; or
 - (b) the availability of damages for a breach of any such contract.
- (4) Sections 177 and 178 of *The Criminal Code* do not apply to the obligations created by or under this Part and Schedules 5 and 6.

[Section 94 amended by No. 18 of 2005 s. 139; amended in Gazette 26 Jun 2007 p. 3019.]

95. Regulations for access and pricing — existing access agreements

- (1) Regulations may be made under section 96 providing for matters relating to —
 - (a) access to, and pricing for, electricity transmission capacity; and
 - (b) access to, and pricing for, electricity distribution capacity,

to the extent that provision in respect of those matters is necessary or expedient for the operation and enforcement of existing access agreements.

- (2) For the purposes of subsection (1) an *existing access agreement* is —
- (a) an access agreement as defined in the *Electricity Transmission Regulations 1996* regulation 3(1); or
 - (b) a distribution access agreement as defined in the *Electricity Distribution Regulations 1997* regulation 3(1),

that is in operation on 1 July 2007.

- (3) Without limiting subsection (1) the regulations may, to the extent mentioned in that subsection, make provision for any matter in respect of which regulations could have been made under Schedule 5 clause 2(2), (3) or (4) or Schedule 6 clause 2(2), (3) or (4).

[Section 95 inserted in Gazette 26 Jun 2007 p. 3020.]

95A. Phasing-out of operation of access and procurement provisions

- (1) The Minister may, by instrument published in the *Government Gazette*, declare that a specified relevant provision does not have effect on and after a specified day, and a declaration so made has effect accordingly.
- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that the matters to which the relevant provision relates —
- (a) no longer need to be dealt with, or will no longer need to be dealt with on and after the specified day, under this Act or any other written law; or
 - (b) are adequately dealt with, or will be adequately dealt with on and after the specified day, under —
 - (i) another provision of this Act; or
 - (ii) Part 8 of the *Electricity Industry Act 2004* and the Code established under that Part.

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- (3) A declaration is not to be made after the expiration of the period of 18 months beginning on the day on which Schedule 5 clause 17 of the *Electricity Corporations Act 2005* comes into operation.
- (4) Regulations made under section 96 may —
- (a) repeal any specified relevant provision that has ceased to have effect because of a declaration;
 - (b) effect any repeal of or amendment to any other provision of this Part or Schedule 5, 6 or 7 that is consequential on a repeal referred to in paragraph (a); and
 - (c) prescribe any matter that it is necessary or convenient to prescribe for transitional or savings purposes in relation to a declaration or in relation to a repeal or amendment referred to in paragraph (a) or (b).
- (5) In this section —

declaration means a declaration made under subsection (1);

relevant provision means any of section 90 or 91 or Schedule 5 or 6, or any portion of any of those sections or Schedules;

specified means specified in the declaration.

[Section 95A inserted by No. 33 of 2004 s. 26; amended by No. 18 of 2005 s. 139.]

96. Regulations

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

[Section 96 inserted by No. 18 of 2005 s. 139.]

[Part 7 deleted by No. 18 of 2005 s. 139.]

[Schedules 1, 2, 3 and 4 deleted by No. 18 of 2005 s. 139.]

[Schedules 5 and 6 deleted in Gazette 26 Jun 2007 p. 3019.]

[Schedule 7 deleted by No. 18 of 2005 s. 139.]

Notes

- ¹ This is a compilation of the *Electricity Transmission and Distribution Systems (Access) Act 1994* and includes the amendments made by the other written laws referred to in the following table^{1a,2}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Electricity Corporation Act 1994</i> ³	86 of 1994	15 Dec 1994	Act other than s. 90, 91 and 93: 1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 23 Dec 1994 p. 7069); s. 90 and 93: 1 Jan 1997 (see s. 2(2) and <i>Gazette</i> 31 Dec 1996 p. 7255); s. 91: 1 Jul 1997 (see s. 2(2) and <i>Gazette</i> 1 Jul 1997 p. 3249)
<i>State Enterprises (Commonwealth Tax Equivalents) Act 1996</i> s. 10(3)	55 of 1996	11 Nov 1996	1 Jul 1996 (see s. 2 and 3(3))
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 52	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 32	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 76	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Gas Corporation (Business Disposal) Act 1999</i> s. 45 and 87	58 of 1999	24 Dec 1999	s. 45: 24 Dec 1999 (see s. 2(1)); s. 87: 1 Jul 2000 (see s. 2(2) and <i>Gazette</i> 4 Jul 2000 p. 3545)
Reprint of the <i>Electricity Corporation Act 1994</i> as at 4 Jan 2000 (includes amendments listed above except those in the <i>Gas Corporation (Business Disposal) Act 1999</i> s. 87)			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 14	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

Electricity Transmission and Distribution Systems (Access) Act 1994

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 42</i>	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Corporations (Consequential Amendments) Act 2001 Pt. 22</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002 s. 27</i>	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Electricity Corporation (Act Amendment) Regulations 2002</i> published in <i>Gazette</i> 1 Nov 2002 p. 5375-87			1 Nov 2002
Reprint 2: The Electricity Corporation Act 1994 as at 3 Jan 2003 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 4⁴</i>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 18</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 57</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 21</i> published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>Energy Legislation Amendment Act 2003 s. 102-108, 109(1)-(3) and 110(1)-(3)</i>	53 of 2003	8 Oct 2003	8 Oct 2003 (see s. 2(1) and (2))
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 49</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Electricity Legislation Amendment Act 2004 Pt. 2 Div. 2</i>	33 of 2004	20 Oct 2004	24 Nov 2004 (see s. 2 and <i>Gazette</i> 23 Nov 2004 p. 5243)

Short title	Number and year	Assent	Commencement
<i>Electricity Corporations Act 2005</i> Sch. 5 cl. 7-22 ^{5,6}	18 of 2005 (as amended by No. 8 of 2009 s. 50(3)(b))	13 Oct 2005	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)
Reprint 3: The <i>Electricity Transmission and Distribution Systems (Access) Act 1994</i> as at 4 Aug 2006 (includes amendments listed above)			
<i>Electricity Transmission and Distribution Systems (Repeal and Related Provisions) Regulations 2007</i> published in <i>Gazette</i> 26 Jun 2007 p. 3018-21 ⁸			r. 1 and 2: 26 Jun 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2007 (see r. 2(b))

^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Energy Legislation Amendment Act 2003</i> s. 109(4)-(5), 110(4) and 111 ⁷	53 of 2003	8 Oct 2003	To be proclaimed (see s. 2(1) and (2))

² The *Energy Corporations (Transitional and Consequential Provisions) Act 1994* Pt. 3 (as amended by the *Electricity Corporations Act 2005* s. 139) reads as follows:

“

Part 3 — Transitional provisions for succession from Commission to New Corporations

Division 1 — Preliminary

42. Intention

The intention of the provisions of this Part is that the Electricity Corporation and the Gas Corporation will, in accordance with

those provisions, stand in place of and be the successors to the Commission, except so far as section 48 applies.

43. Definitions

In this Part, unless the contrary intention appears —

assets means —

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) how assets, rights and liabilities of the Commission are to be allocated to the Electricity Corporation and the Gas Corporation; and
 - (b) any proceedings in which the Electricity Corporation or the Gas Corporation is to be, or both of those corporations are to be, substituted for the Commission as a party or parties.
- (2) An allocation under subsection (1)(a) may be made to —
 - (a) the Electricity Corporation;
 - (b) the Gas Corporation; or
 - (c) both of those corporations either jointly or as tenants in common in equal or unequal shares.
- (3) Without limiting subsection (1), an order under that subsection may —
 - (a) provide for the allocation of income in respect of any asset;
 - (b) in respect of a particular liability, allocate a specified share of the liability to each of the corporations;
 - (c) provide for the transfer, debiting, crediting, closing or otherwise dealing with any account, reserve, fund, provision, profit or liability for any levy; and
 - (d) contain such incidental or supplementary provisions as the Minister thinks fit.
- (4) The transfer order may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the commencement day.
- (5) Where for any reason it is not practicable to allocate any asset, right or liability to a corporation, or to both of the corporations, under this section before the commencement date —
 - (a) the transfer order is to specify that the asset, right or liability is to be allocated under this subsection; and
 - (b) the Minister may make a further order under this section in respect of that asset, right or liability not later than 90 days after the commencement day.
- (6) An order under subsection (5) is to have effect from the commencement day.
- (7) The Commission is to be taken to continue to hold an asset or right, and to be liable for a liability, to which subsection (5) applies until an order is made under that subsection.

45. Transfer of assets and liabilities to the Electricity Corporation

- (1) On and after the commencement day —
- (a) the assets and rights of the Commission allocated to the Electricity Corporation by the transfer order vest in that corporation by force of this section;
 - (b) the liabilities of the Commission (including a share of a liability) allocated to the Electricity Corporation by the transfer order become, by force of this section, the liabilities of that corporation;
 - (c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Electricity Corporation were substituted for the Commission in the agreement or instrument;
 - (d) the Electricity Corporation is a party to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 44(1)(b);
 - (e) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Electricity Corporation;
 - (f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Electricity Corporation;
 - (g) the Commission is to deliver to the Electricity Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
 - (ii) proceedings referred to in paragraph (d);and
 - (h) all provisions of the transfer order relevant to this section have effect.

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

46. Transfer of assets and liabilities to the Gas Corporation

- (1) On and after the commencement day —
- (a) the assets and rights of the Commission allocated to the Gas Corporation by the transfer order vest in that corporation by force of this section;
 - (b) the liabilities of the Commission (including a share of a liability) allocated to the Gas Corporation by the transfer order become, by force of this section, the liabilities of that corporation;
 - (c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Gas Corporation were substituted for the Commission in the agreement or instrument;
 - (d) the Gas Corporation is a party to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 44(1)(b);
 - (e) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Gas Corporation;
 - (f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Gas Corporation;
 - (g) the Commission is to deliver to the Gas Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
 - (ii) proceedings referred to in paragraph (d);and

- (h) all of the provisions of the transfer order relevant to this section have effect.
- (2) Subsection (1)(c) and (e) has effect subject to any provision of the transfer made under section 44(3)(b).

47. Transfer of assets and liabilities to both corporations

On and after the commencement day —

- (a) the assets and rights of the Commission allocated to the corporations jointly by the transfer order vest in those corporations jointly by force of this section;
- (b) the assets and rights of the Commission allocated to the corporations as tenants in common by the transfer order vest in those corporations as tenants in common in the shares specified in the transfer order by force of this section;
- (c) the liabilities of the Commission allocated to the corporations jointly by the transfer order become, by force of this section, the liabilities of those corporations jointly;
- (d) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the corporations were substituted for the Commission in the agreement or instrument;
- (e) the corporations jointly are parties to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 44(1)(b);
- (f) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c), may be commenced and are available, by or against or to the corporations jointly or severally in accordance with the transfer order;
- (g) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the corporations jointly or severally in accordance with the transfer order;

- (h) the Commission is to deliver to the Electricity Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a), (b) and (c); and
 - (ii) proceedings referred to in paragraph (e);and
- (i) all of the provisions of the transfer order relevant to this section have effect.

48. Unallocated assets and liabilities

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

- (a) any assets and rights of the Commission that do not vest in a corporation or the corporations under section 45, 46 or 47, are to be dealt with as the Minister directs;
- (b) any liability of the Commission that does not become a liability of a corporation or the corporations under section 45, 46 or 47 is, so far as it is properly payable, to be discharged in such manner and from such source as the Minister, with the approval of the Treasurer, directs;
- (c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the State were substituted for the Commission in the agreement or instrument;
- (d) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the State;
- (e) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the State; and
- (f) the Commission is to deliver to the Minister all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the assets, rights and liabilities referred to in paragraphs (a) and (b).

49. References to Commission in Government agreements

- (1) The transfer order is to also specify for each provision in a Government agreement in which there is a reference to the Commission whether that reference is to be read as a reference to —
 - (a) the Electricity Corporation;
 - (b) the Gas Corporation;
 - (c) both those corporations either jointly or as tenants in common in equal or unequal shares;
 - (d) a Minister of the Crown or the State; or
 - (e) the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*.
- (2) Subsection (1) does not apply to a provision of a Government agreement that is spent or has had its effect.
- (3) On and after the commencement day a provision of a Government agreement which under subsection (1) is affected by the transfer order has effect by force of this section as so affected.
- (4) In this section “**Government agreement**” has the same meaning as it has in the *Government Agreements Act 1979*.

50. Debentures and inscribed stock

- (1) Without limiting section 45, 46 or 47 any debentures or inscribed stock which devolve under any of those sections, and the determination of rights and obligations in respect of the same, continue to be governed by sections 108 and 111 of the principal Act and regulations made under section 110 of that Act, despite the repeal of those sections, as if —
 - (a) those sections and regulations remained in force; and
 - (b) references in those sections and regulations to the “Commission” were references to —
 - (i) a new corporation; or
 - (ii) 2 or more of the new corporations jointly or severally,in accordance with a transfer order.
- (1a) In subsection (1)(b) —
new corporation and *transfer order* have the meanings given to those terms in section 142(1) of the *Electricity Corporations Act 2005*.
- (2) The Governor may, by further regulations, amend or repeal the regulations referred to in subsection (1).

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

51. Guarantees in respect of Commission

- (1) A guarantee under section 30 or 108 of the principal Act as in force immediately before the commencement day is not affected by —
 - (a) any provision of this Act, including without limitation the transfer of any liability of the Commission under section 45, 46 or 47 to a corporation or the corporations jointly; or
 - (b) any transfer, vesting or assumption of any liability of the Commission to, in or by a corporation or the corporations jointly by any other means.
- (2) Any guarantee referred to in subsection (1) is to continue in force and is to be read and construed, on and from —
 - (a) the commencement day; or
 - (b) the day on which the transfer, vesting or assumption by any other means referred to in subsection (1) is effective,as if it were a guarantee of the liabilities of the corporation which have been transferred, vested or assumed to, in or by it.
- (3) Despite its repeal by section 34, section 106(1) of the principal Act is to be taken to continue to apply for the purposes of subsection (2).
- (4) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee referred to in subsection (1).
- (5) Division 4 of Part 5 of the relevant Act is to be taken to apply to a liability of a corporation referred to in subsection (1) if a guarantee of that liability cannot be preserved under this section (whether because the guarantee is governed otherwise than by the law of the State or for any other reason).
- (6) In subsection (5) **relevant Act** means —
 - (a) in the case of the Electricity Corporation, the *Electricity Corporation Act 1994*; and
 - (b) in the case of the Gas Corporation, the *Gas Corporation Act 1994*.
- (7) By virtue of this subsection, any sum paid by the Treasurer under a guarantee referred to in subsection (1) constitutes a charge on the assets of the relevant corporation or the corporations jointly, as the case may require.

52. Commission to complete necessary transactions

- (1) Where any asset, right or liability to which this Part applies cannot be properly vested in or succeeded to by the Electricity Corporation or the Gas Corporation, or by both of those corporations, by the operation of this Part (whether because the matter is governed otherwise than by the law of the State, or for any other reason) —
 - (a) the Commission is to be taken to continue to hold or be liable for that asset, right or liability until the same is effectively vested in or succeeded to by the corporation concerned or both of the corporations in accordance with this Part; and
 - (b) the Commission is to take all practicable steps for the purpose of securing that such asset, right or liability is effectively vested in or succeeded to by the corporation concerned or both of the corporations in accordance with this Part.
- (2) The fact that subsection (1)(a) applies to an asset, right or liability that is allocated to a corporation or to both of the corporations under this Part does not affect the duty of the corporation or the corporations to account for and report on that asset, right or liability under the written law by which the corporation is established.

53. Exemption from State taxation

- (1) In this section —
State tax includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by the operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.
- (3) The Treasurer or a person authorised by the Treasurer may, on request by the Electricity Corporation or the Gas Corporation, certify in writing that —
 - (a) a specified thing occurred by the operation of this Part; or

- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

54. Registration of documents

- (1) The relevant officials are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner the documents necessary to give effect to this Part.
- (2) Without limiting subsection (1), a statement in an instrument executed by the Electricity Corporation or the Gas Corporation that any estate or interest in land or other property has become vested in it or in the corporations jointly or in specified shares under section 45, 46 or 47 is evidence of that fact.
- (3) In subsection (1) *relevant officials* means the Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933* and the *Mining Act 1978* and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.

55. Saving

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

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

Division 3 — Staff

56. Transition of employment

Any agreement made at any time between the Commission and a person for the employment of that person on the staff of a

corporation has effect after the commencement of section 15 of the *Electricity Corporation Act 1994* or section 15 of the *Gas Corporation Act 1994* as if it had been made by the board of the corporation under that section.

57. Employees' rights preserved

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

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

Division 4 — General transitional provisions

58. Annual report for part of a year

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

59. Completion of things commenced

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

60. Continuing effect of things done

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

- (a) has any force; and
- (b) is not governed by section 45(f), 46(f) or 47(g),

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

61. Immunity to continue

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

62. Agreements and instruments generally

- (1) This section applies to any agreement or instrument subsisting immediately before the commencement day that does not come within the provisions of section 45(1)(c), 46(1)(c), 47(d) or 49.
- (2) Any agreement or instrument to which this section applies —
 - (a) to which the Commission was a party; or
 - (b) which contains a reference to the Commission,has effect after that day as if —
 - (c) the relevant corporation were substituted for the Commission as a party to the agreement or instrument; and
 - (d) any reference in the agreement or instrument to the Commission were (unless the context otherwise requires) a reference to the relevant corporation.
- (3) In this section *relevant corporation* means —
 - (a) in relation to the functions of the Commission that after the commencement day are functions of the Electricity Corporation, that corporation;
 - (b) in relation to the functions of the Commission that after the commencement day are functions of the Gas Corporation, that corporation.

63. Commission to perform necessary transitional functions

- (1) Despite the repeal of section 7 of the principal Act by section 8 of this Act, the Commission continues in existence for the purpose of —
 - (a) reporting as required by section 58; and
 - (b) performing the functions described in sections 44(7), 45(1)(g), 46(1)(g), 47(h), 48(f) and 52.
- (2) The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, also continues in existence for the purpose described in subsection (1)(a).
- (3) Despite the provisions of the principal Act —
 - (a) the members of the Commission immediately before the commencement day cease to hold office on that day;
 - (b) the Commission is to be constituted by a person appointed by the Minister; and
 - (c) the Commission is to perform the functions referred to in subsection (1) through that person.

- (4) The person referred to in subsection (3)(b) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (5) The Commission as constituted under this section has the powers that are necessary or convenient for the purposes of subsection (1).
- (6) Each of the corporations is to provide the clerical or other assistance that the Commission reasonably requires for performing the functions described in subsection (1) in respect of that corporation.

64. Further transitional provision may be made

- (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the intention described in section 42 the Minister may make that provision by order published in the *Gazette*.
- (2) Any such order may be made so as to have effect from the commencement day.
- (3) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State, the Electricity Corporation, the Gas Corporation or any authority of the State), the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State, the Electricity Corporation, the Gas Corporation or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

”.

³ Now known as the *Electricity Transmission and Distribution Systems (Access) Act 1994*; short title changed (see note under s. 1).

⁴ The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

2. Commencement

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.

- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

Financial Services Reform Act means the *Financial Services Reform Act 2001* of the Commonwealth;

FSR commencement time means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

statutory rule means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
- (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
 - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,
- is taken not to be valid, and to never have been valid.

”.

⁵ The *Electricity Corporations Act 2005* Sch. 5 cl. 22(2)-(4) reads as follows:

“

- (2) Any procurement of new generation that is in progress under Schedule 7 immediately before its repeal by subclause (1) is to be continued by the Electricity Retail Corporation after the commencement of that subclause as if Schedule 7 clauses 1, 3 and 4 had not been repealed.
- (3) Any act, matter or thing done or omitted to be done before the commencement of subclause (1) by, to or in respect of Western Power Corporation in relation to the procurement of new generation mentioned in that subclause, is to be taken to have been done or omitted by, to or in respect of the Electricity Retail Corporation.
- (4) In subclause (3) —
Western Power Corporation has the meaning given to that term in section 142(1).

”.

⁶ The *Electricity Corporations Act 2005* Sch. 5 cl. 21(2)(a)(ii) was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 50(3)(b).

⁷ On the date as at which this reprint was prepared, the *Energy Legislation Amendment Act 2003* s. 109(4)-(5), 110(4) and 111 had not come into operation. They have been superseded by the *Electricity Corporations Act 2005* and will not be proclaimed. They read as follows:

“

109. Schedule 5 amended

- (4) Clause 4(1) is amended by deleting “prepare annually” and inserting instead —
“ , not later than the prescribed day in each year, prepare ”.
 - (5) Clause 4(2) is repealed and the following subclauses are inserted instead —
- “
- (2) Any existing or prospective user may request the corporation to provide a report and forecast of firm capacity, non-firm capacity, and spare capacity as applicable to that user’s particular requirements.
 - (3) The corporation may make a reasonable charge in respect of the cost of complying with the request.

- (4) Subject to payment of the charge referred to in subclause (3), the corporation must comply with a request under subclause (2) within the prescribed number of days after the request is made.

”

110. Schedule 6 amended

- (4) Clause 4 is repealed and the following clause is inserted instead —

“

4. Obligation to provide information

- (1) Any existing or prospective user may request the corporation to provide a report and forecast of electricity distribution capacity as applicable to that user’s particular requirements.
- (2) The corporation may make a reasonable charge in respect of the cost of complying with the request.
- (3) Subject to payment of the charge referred to in subclause (2), the corporation must comply with a request under subclause (1) within the prescribed number of days after the request is made.

”

111. Schedule 7 amended

Schedule 7 clause 2(1) is amended by deleting “prepare annually” and inserting instead —

“ , not later than the prescribed day in each year, prepare ”

”

⁸ The *Electricity Transmission and Distribution Systems (Repeal and Related Provisions) Regulations 2007* Pt. 4 reads as follows:

“

Part 4 — Transitional provisions

10. Continued operation of *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 2(4)

- (1) Despite the *Electricity Transmission and Distribution Systems (Access) Declaration 2007* clause 2 and the repeal effected by regulation 6, the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 2(4) continues to have effect, subject to subregulation (2), in relation to the operation and enforcement of any access agreement (as defined in the *Electricity Transmission Regulations 1996* regulation 3(1)) that is in operation on 1 July 2007.

- (2) The *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 2(4) continues to have effect under subregulation (1) as if it were amended by deleting “effect.” and inserting instead —

“

effect, unless the contract expressly provides that the provision applies despite any inconsistency with the essential terms and conditions.

”

11. Continued operation of *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 6 clause 2(4)

- (1) Despite the *Electricity Transmission and Distribution Systems (Access) Declaration 2007* clause 2 and the repeal effected by regulation 6, the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 6 clause 2(4) continues to have effect, subject to subregulation (2), in relation to the operation and enforcement of any distribution access agreement (as defined in the *Electricity Distribution Regulations 1997* regulation 3(1)) that is in operation on 1 July 2007.
- (2) The *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 6 clause 2(4) continues to have effect under subregulation (1) as if it were amended by deleting “effect.” and inserting instead —

“

effect, unless the contract expressly provides that the provision applies despite any inconsistency with the essential terms and conditions.

”

”