

WESTERN AUSTRALIA

STATE ENERGY COMMISSION
ACT 1979

ARRANGEMENT

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SCHEDULE

Former City of Perth Superannuation Scheme

NOTES

WESTERN AUSTRALIA

STATE ENERGY COMMISSION ACT 1979

AN ACT to provide for the constitution, maintenance, management and function of the State Energy Commission; to amend the law and make further provision as to the sources, derivation, conversion, production, manufacture, generation or provision of energy; as to the acquisition, storage, distribution, supply, and sale of energy; as to the use and conservation of energy; as to works, undertakings and other things related thereto; and for incidental purposes.

[Long title amended by No. 24 of 1986 s. 4.]

Short title

1. This Act may be cited as the *State Energy Commission Act 1979*¹.

Commencement

2. The provisions of this Act shall come into operation on such day or days as is, or are respectively, fixed by proclamation¹.

Repeals, transitional provisions, savings, etc.

3. (1) The Acts hereinafter mentioned are hereby repealed, that is to say—

The Perth Gas Company's Act 1886; 50 Vict. No. 33;

The Perth Gas Company's Act 1886, Amendment Act 1892,
(Private); 56 Vict.;

Perth Gas Company's Act 1886 Further Amendment Act 1897
(Private); 61 Vict.;

Perth Gas Company's Act Amendment Act 1937; No. 23 of 1937;
The Perth Municipal Gas and Electric Lighting Act 1911; No. 2 of 1911;
Perth Municipal Gas and Electric Lighting Act Amendment Act 1914; No. 20 of 1914;
Perth Municipal Gas and Electric Lighting Act Amendment Act 1915; No. 54 of 1915;
South-West State Power Scheme Act 1945; No. 56 of 1945;
State Electricity Commission Act 1945; No. 60 of 1945;
State Electricity Commission Act Amendment Act 1952; No. 4 of 1952;
State Electricity Commission Act Amendment Act 1954; No. 23 of 1954;
State Electricity Commission Act Amendment Act 1955; No. 41 of 1955;
State Electricity Commission Act Amendment Act 1959; No. 5 of 1959;
State Electricity Commission Act Amendment Act (No. 2) 1959; No. 30 of 1959;
State Electricity Commission Act Amendment Act (No. 3) 1959; No. 68 of 1959;
State Electricity Commission Act Amendment Act 1966; No. 24 of 1966;
State Electricity Commission Act Amendment Act 1971; No. 8 of 1971;
State Electricity Commission Act Amendment Act 1973; No. 41 of 1973; and
State Energy Commission Act Amendment Act 1978; No. 65 of 1978.

(2) In relation to the Acts hereinafter mentioned, the provisions of those Acts respectively specified herein are hereby repealed, that is to say—

City of Perth Endowment Lands Act 1920; No. 31 of 1920—section 47;
City of Perth Electricity and Gas Purchase Act 1948; No. 33 of 1948—section 9;
Liquid Petroleum Gas Act 1956; No. 58 of 1956—Part III of the Schedule;
Ministers of the Crown (Statutory Designations) and Acts Amendment Act 1974; No. 27 of 1974—Part V of the Act, being the Part heading and sections 16 and 17;
Acts Amendment (State Energy Commission) Act 1975; Act No. 25 of 1975—Part I of the Act, being the Part heading and section 3 to section 28 inclusive.

(3) Without limiting the operation of the *Interpretation Act 1918*², until regulations, by-laws, or rules are made under this Act in relation to any matter the regulations, by-laws and rules applicable to that matter made under the Acts repealed by this Act and in force immediately prior to the coming into operation of this section shall thereafter apply, so far as they are not inconsistent with this Act, as if those regulations, by-laws or rules were made under this Act.

(4) Without limiting the operation of the *Interpretation Act 1918*², to or in relation to the repeals effected by this section, unless the contrary intention appears in this Act—

- (a) all persons, things, and circumstances appointed or created by or under any of the repealed provisions or existing or continuing under the repealed provisions immediately prior to the coming into operation of this section shall under and subject to this Act continue to have the same status, operation and effect for the purposes of this Act; and
- (b) in particular and without affecting the generality of paragraph (a), the repeals effected by this section shall not disturb the continuity of status, operation or effect of any order, direction, deed, agreement, instrument, document, debenture or inscribed stock, scale of tariffs, scale of fees or charges, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, entered into, accrued, incurred, existing, pending or acquired by or under any of the repealed provisions and having effect immediately prior to the coming into operation of this section unless or until the effect thereof is altered pursuant to this Act.

Interpretation

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

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

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

“Assistant Commissioner” means a person appointed as an Assistant Commissioner under section 11;

“Associate Commissioner” means an Associate Commissioner appointed under section 12;

“Chairman of the Commission”, or “Chairman” other than in section 8 (5), means the person appointed under section 12 to be the chairman of the Commission;

“charges” includes any sum due from the consumer to the Commission pursuant to section 62(1);

- “Commission” means the body corporate known as The State Energy Commission of Western Australia preserved and continued pursuant to section 7;
- “Commissioner” means the person appointed under section 12 to be the Commissioner and Chief Executive Officer of the Commission;
- “concessionaire” means any person, body or authority to whom or which a concession has been granted by a local authority under the *Electricity Act 1945*;
- “consumer installation” includes all wiring, piping, apparatus and other works not being the property of the supplier of energy on any premises to which energy is, or is intended to be, supplied from the position at which the delivery of energy is made;
- “Deputy Commissioner” means a person appointed under section 12 to the office of Deputy Commissioner;
- “distribution works” means any works, apparatus or system, utilized or capable of being or intended to be utilized for the purpose of transmitting or distributing energy to consumers and includes any other equipment or plant used in conjunction therewith, and any part thereof;
- “energy” includes electrical, hydro-electrical, chemical, thermal, tidal, nuclear, or solar energy and all other kinds of energy however derived, of whatever form or description, or however used, and the term extends to comprise the source or sources of any such energy;
- “generating works” means any works, apparatus or system whatsoever utilized or capable of being or intended to be utilized for the production or generation of energy, or for the manufacture or treatment or storage of energy for supply or use, or for the conversion of energy from one form into another, up to the point at which transmission or distribution commences for the purposes of making supply, and includes all land, building, structures and appurtenances pertaining thereto, any other equipment or plant used in conjunction therewith, and any part thereof;
- “government department” or “department” includes any branch of the Public Service of the State established as a Department within the meaning of that term as defined in the *Public Service Act 1978*, but also means any other body established by an Act being a body that—
- (a) administers or carries out in the State functions in the public interest on behalf of the Crown in right of the State or which carries out the function of a public utility; and
 - (b) is declared by the Governor, by Order in Council, to be deemed to be a government department for the purposes of this Act;

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

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

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

“linking-up scheme” means a scheme, including the works appurtenant thereto, whereby energy is supplied or interchanged in quantity by or between 2 or more supply systems;

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

“local authority” means the council of the municipality in question constituted pursuant to the *Local Government Act 1960*, or where the municipality has no council a commissioner of the municipality appointed pursuant to that Act;

“member” means a member of the Commission as constituted in accordance with section 11;

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

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

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

“Secretary” means the person appointed under section 11 to hold the office of Secretary to the Commission, and includes an officer designated by the Commission to act as the Assistant Secretary;

“sell” means to sell by way of wholesale or retail, or both, and includes barter, supply for sale, receiving for sale, possessing for sale, sending forward or delivering for sale, and to cause or suffer to be sold and cognate expressions have a corresponding meaning;

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

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

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

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

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

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

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

- (a) an officer or servant of the Commission, acting on behalf of the Commission in the course of his duty; or
- (b) a person acting at the request and on behalf of the Commission under a contract or pursuant to an Agreement of the kind referred to in section 5 (1) (b) and any employee of such a person so acting,

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

[Section 4 amended by No. 101 of 1981 s. 3; No. 24 of 1986 s. 5.]

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

5. (1) In so far as the provisions of this Act would be inconsistent with the operation of that Act or the implementation of that Agreement,

but subject to subsection (2) and subsection (3), nothing in this Act shall affect or be construed to derogate from the operation of—

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

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

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

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

(4) Except in so far as this Act does not expressly or by necessary implication provide otherwise, in the exercise of its functions under this Act the Commission is required to comply with the general law, including the provisions of any other Acts, and for the avoidance of doubt it is hereby declared that the Commission is an independent statutory authority and does not possess, and shall be deemed never to have possessed, the rights and privileges of the Crown but the Commission may, and if directed by the Minister shall, from time to time act as agent for, or carry out functions on behalf of, the Crown.

Application of this Act to the Crown, Government Departments, and local authorities

6. (1) This Act binds the Crown—

- (a) to the extent that the Crown is a consumer;
- (b) in respect of its provisions relating to matters of safety; and
- (c) in relation to land vested in the Crown in right of the State,

but not otherwise.

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

- (a) where the matter relates to a government department—the Minister charged with the administration of that government department may consult with the Minister;
- (b) where the matter relates to a local authority—the local authority shall refer the matter to the Minister charged with the administration of the *Local Government Act 1960*, who may consult with the Minister,

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

(3) The Governor may finally and conclusively determine any question, difference or dispute arising or about to arise in relation to a provision of this Act between the Commission and any government department or local authority with respect to the exercise of any right, power, or authority or the discharge of any duty whether or not referred to him under subsection (2) and whether or not the Ministers had purported to agree pursuant to that subsection, and effect shall be given to any such determination.

[Section 6 amended by No. 24 of 1986 s. 6.]

The State Energy Commission

7. The body corporate which was—

- (a) prior to 1 July 1975, constituted under the *State Electricity Commission Act 1945-1974*, by the name “The State Electricity Commission of Western Australia”; and
- (b) thereafter, constituted under the *State Energy Commission Act 1945-1978*, by the name “The State Energy Commission of Western Australia”,

is hereby preserved and continues in existence as a body corporate having perpetual succession and a common seal under the name “The State Energy Commission of Western Australia”, so that the corporate identity of that body corporate and its rights, securities and assets of every description and its engagements, obligations and liabilities, as at the date immediately preceding the coming into operation of this section, are not affected and vest in or are imposed upon the Commission as constituted under this Act, but so that on and after the coming into operation of this section the Commission shall be subject to this Act.

The Common Seal, authentication of documents, notices etc.

8. (1) All courts, Judges, and persons acting judicially shall take judicial notice of the Common Seal of the Commission affixed to any instrument or other document and shall presume that such seal was properly affixed thereto.

(1a) The Commission may, pursuant to a document affixed with its Common Seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed executed by such an agent or attorney on behalf of the Commission binds the Commission and has the same effect as if it were under the Common Seal of the Commission.

(1b) The authority of an agent or attorney empowered pursuant to subsection (1a) shall be deemed, as between the Commission and a person dealing with him, to have continued during the period (if any) specified in the document conferring the authority or, if no period is so specified, until notice of the revocation or termination of his authority was given to the person dealing with him.

(1c) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of the Commission may make, vary or discharge a contract in the name of or on behalf of the Commission in the same manner as if the Commission were a natural person.

(1d) The making, varying or discharging of a contract in accordance with subsection (1c) is effectual in law and binds the Commission and other parties to the contract.

(1e) Subsection (1c) does not prevent the Commission from making, varying or discharging a contract under its Common Seal.

(2) Every document, including any instrument, summons, notice or order requiring authentication by, or execution on behalf of, the Commission may be sufficiently authenticated or validly executed without the seal of the Commission if signed by the Secretary, the Commissioner, a Deputy Commissioner, an Assistant Commissioner or a person empowered for that purpose pursuant to subsection (1a), or if it bears a facsimile of the signature of that officer or person, and where a facsimile signature is used effect shall be given to the document as if it bore the original of that signature.

(3) Any notice, summons, writ or other proceeding required to be served upon the Commission may be served by being given personally to the Commissioner, a Deputy Commissioner or the Secretary.

(4) Regulations made under this Act may make provision as to the use of the seal of the Commission, or a facsimile of that seal, with or without additional words, in the State and elsewhere and the use in the manner and circumstances so prescribed of the facsimile seal shall be deemed to be use of the Common Seal.

(5) Notwithstanding that the Commission has, prior to the coming into operation of this Act, purported to execute documents by affixing the Common Seal of the Commission otherwise than in the presence of the prescribed persons, where the seal was so affixed and is recorded in the seal book maintained by the Commission pursuant to the regulations and 2 or more persons for the time then being holding or acting in the office of, or as deputy for, the Chairman, Vice Chairman, Commissioner, or Secretary, testified by their signatures that the seal had been affixed, such use of the seal and the effective execution by the Commission of those documents shall be deemed to have been lawfully and properly carried out.

(6) Where the Commission prior to the coming into operation of section 4 of the *State Energy Commission Amendment Act 1981*¹ purported to execute a document in a manner that would have been lawful had the provisions of this section as in force immediately following the coming into operation of that section been in force at that time, the effective execution by the Commission of the document shall be deemed to have been lawfully and properly carried out.

[Section 8 amended by No. 101 of 1981 s. 4; No. 24 of 1986 ss. 7 and 42.]

Change of name of body corporate

9. (1) A reference to The State Electricity Commission of Western Australia, whether by use of that name or a similar or abbreviated form of that name—

- (a) in a law of the State passed or made before 1 July 1975;
- (b) in any document or other instrument made, executed, entered into or done before 1 July 1975; or
- (c) made before 1 July 1975, in any other manner,

shall, unless the context is such that it would be incorrect or inappropriate so to do, be read and construed as a reference to The State Energy Commission of Western Australia.

(2) For the purposes of this section the term “law of the State” means—

- (a) an Act;
- (b) any regulation, rule or by-law having effect by virtue of an Act;
or
- (c) any instrument having effect by virtue of an Act or of any regulation, rule or by-law referred to in paragraph (b).

The administration of this Act

10. (1) The administration of this Act shall be vested in the Minister.

(2) The Minister may, in writing, give to the Commission a direction—

- (a) as to the performance of any function in relation to which a power is conferred on the Commission by this Act or any other Act; or
- (b) to act as agent for the Crown, or to carry out such a function on behalf of the Crown,

and the Commission shall give effect to the direction.

(3) Subject to subsection (2), the Commission is charged with the duty of implementing the provisions of this Act.

[(4) and (5) repealed]

(6) Where the Minister—

- (a) grants any exemption pursuant to this Act;
- (b) exercises a discretion authorized by this Act; or
- (c) gives to the Commission any direction under this Act,

and that exemption, discretion or direction has a continuing effect the Commission shall record the same in writing and submit that record to each Minister assuming the charge of the administration of this Act within 28 days of that Minister undertaking that function, and any such exemption, exercise of discretion, or direction shall be deemed not to continue to have effect after the expiry of a further period of 28 days from the date on which the record was submitted unless confirmed in writing by the Minister then charged with the administration of this Act.

[Section 10 amended by No. 24 of 1986 s. 8.]

Composition of the Commission

11. (1) The Commission shall be constituted by—

- (a) the Chairman of the Commission, who shall be appointed on the recommendation of the Minister;
- (b) the Commissioner, who shall hold office thereby as the Chief Executive Officer of the Commission;
- (c) not less than 4 persons appointed as Associate Commissioners; and
- (d) not more than 3 persons appointed as Deputy Commissioners, each of whom shall respectively hold office thereby as a Deputy Chief Executive Officer of the Commission.

(2) An officer of the Commission shall be appointed by the Commission to hold the office of Secretary to the Commission, and an officer of the Commission may be designated by the Commission to act as the Assistant Secretary to the Commission, but a person who is or has been a member of the Commission or an Assistant Commissioner shall not be eligible for appointment to the office of Secretary.

(3) There shall be not less than 3 Assistant Commissioners, who shall be appointed, subject to the approval of the Minister, by the Commissioner, but who shall not be members of the Commission.

(4) The person who, immediately before the coming into operation of section 5 of the *State Energy Commission Amendment Act 1981*¹, held office as an Assistant Commissioner shall be deemed to have been appointed for the time being as the Deputy Commissioner.

[Section 11 amended by No. 101 of 1981 s. 5; No. 24 of 1986 s. 9.]

The Commissioners, appointment, remuneration, etc.

12. (1) Subject to section 3 (4) (a), the Chairman of the Commission, the Commissioner and the Associate Commissioners shall be appointed by the Governor.

(1a) A person may be appointed to the office of Chairman of the Commission for a term not exceeding 3 years, and any person so appointed is eligible for re-appointment.

(2) A person may be appointed to the office of Commissioner for a term not exceeding 7 years and any person so appointed is eligible for re-appointment.

[(3) and (4) repealed]

(5) A person may be appointed to the office of Associate Commissioner for a term not exceeding 3 years, and any person so appointed is eligible for re-appointment.

(6) If a person appointed to the office of Chairman of the Commission, Commissioner or Associate Commissioner—

- (a) is or becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes in the opinion of the Minister permanently incapable of performing the duties of his office;
- (c) is removed from office by the Governor on the grounds of neglect of duty, misbehaviour or incompetence; or
- (d) resigns his office by writing under his hand addressed to the Minister,

the office to which that person was appointed becomes vacant.

(7) The Minister, after taking into consideration any recommendation that may be made by the Commissioner, may appoint a person to the office of Deputy Commissioner and, subject to section 52 of the *Interpretation Act 1984*, a person so appointed shall hold office for such period as is specified in the instrument by which he is appointed, and is eligible for re-appointment.

(8) At any meeting of the Commission at which neither the Chairman of the Commission nor a person appointed under section 26 to act in the place of the Chairman of the Commission is present, the Commissioner has all the functions, powers, and duties of the Chairman of the Commission.

[(9) repealed]

(10) Subject to the *Salaries and Allowances Act 1975*, the Chairman of the Commission, the Commissioner and the Associate Commissioners shall be paid such remuneration and allowances as are from time to time determined by the Governor.

[Section 12 amended by No. 101 of 1981 s. 6; No. 24 of 1986 s. 10.]

Proceedings of the Commission

13. (1) The Commission shall hold its meetings at such place on such days and at such intervals as the Commission shall from time to time determine.

(2) At any meeting of the Commission any 3 out of the persons holding office as Chairman of the Commission or as Associate Commissioner together with a person who holds office either as Commissioner or as a Deputy Commissioner shall constitute a quorum, and shall have and may exercise and perform the powers, authorities and duties which by this or any Act or means whatsoever are vested in or imposed upon the Commission.

(3) At any meeting of the Commission the Chairman of the Commission, or in his absence a person appointed under section 26 to act in the place of the Chairman of the Commission, or in the absence of any such person the Commissioner shall preside.

(4) At any meeting of the Commission—

(a) each of the Chairman of the Commission, the Commissioner, and the Deputy Commissioners and the Associate Commissioners, when present, is entitled to exercise a deliberative vote;

[(b) deleted]

(c) subject to paragraph (d), where the votes cast on any question are equally divided, the question shall remain unresolved until a subsequent meeting of the Commission;

(d) where the votes cast on a question at a previous meeting were equally divided and the votes cast on that question at a subsequent meeting are again equally divided, the Chairman of the Commission, or where the person presiding at that subsequent meeting is not the Chairman of the Commission or a person appointed under section 26 to act in the place of the Chairman of the Commission the person so presiding, may exercise a casting vote,

and the Secretary shall attend.

(5) The Commission shall cause to be kept, by the Secretary or some other person designated by the Commission, minutes of all its proceedings in such manner and form as the Minister may direct or approve, and, if so required by the Minister, shall forthwith after each meeting of the Commission submit to the Minister a copy of the minutes of the business transacted at such meeting certified as correct under the hand of the member presiding at the meeting.

(6) Subject to this Act and to any direction that may be given by the Minister, or to any rules made by the Commission under section 17, the proceedings at any meeting of the Commission may be regulated in such manner as the meeting may determine.

[Section 13 amended by No. 101 of 1981 s. 7; No. 24 of 1986 s. 11.]

Interests to be disclosed

14. (1) A member, officer or servant of the Commission, or any member of a committee appointed by the Commission, who has a pecuniary interest in any matter—

- (a) which is before a meeting of the Commission or such a committee at which he is present or of which he is a member; or
- (b) on which he advises the Commission or such a committee, whether or not he is present at the meeting where the matter is considered,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the fact and nature of his interest to the meeting, or to the Secretary, or to any other responsible officer of the Commission.

(2) For the purposes of subsection (1), a general notice given to the Commission to the effect that a person has an interest in a specified body corporate, partnership or other business and is to be regarded as interested in any matter affecting that body corporate, partnership or business, shall be deemed to be a sufficient disclosure of interest.

(3) Any disclosure made pursuant to subsection (1) or subsection (2) shall be made known generally to the persons required to consider the matter in question and shall be recorded in the minutes of the meeting at which the disclosure is first made known.

[Section 14 amended by No. 24 of 1986 s. 12.]

Committees

15. (1) The Commission may, from time to time, appoint a committee or committees, consisting in each case of 2 or more persons who need not be members, officers or servants of the Commission, to advise the Commission on such matters relating to its functions as are referred by the Commission to the committee.

(2) Members of committees appointed under this section may be paid such remuneration and allowances as are from time to time determined by the Governor.

[16. *Section 16 repealed by No. 24 of 1986 s. 13.*]

Commission may make rules

17. Subject to this Act the Commission may make rules for or with respect to the regulation of its own procedure or providing for any other administrative matters where there is no provision, or no sufficient provision, in this Act in relation to such matters.

Delegation

18. (1) The Commission may by an instrument in writing in relation to such matter or class of matters and to such activity of the Commission as is specified in that instrument and to the extent therein set out, delegate any of its powers, rights, or duties under this Act, (except this power of delegation and its powers in relation to the making of by-laws), to a member or officer or servant of the Commission, a committee appointed by the Commission, or a person to whom section 4 (2) (b) applies, therein named as delegate.

[(2), (3) and (4) repealed]

(5) A person or body purporting to exercise a power pursuant to a delegation granted under subsection (1) is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary, and shall if requested so to do produce evidence of the terms of the delegation to any person in relation to whom it is proposed to exercise the power.

[Section 18 amended by No. 24 of 1986 s. 14.]

Minister to have reports, etc.

19. (1) The Commission shall furnish the Minister with—

- (a) all such reports, documents, papers, and information as are required pursuant to any Act or pursuant to any order or resolution of either House of Parliament; and
- (b) full information on all business of the Commission as to which he himself requires to be informed, or to enable answers to be made to all questions asked in Parliament concerning the Commission, or to enable the Minister to furnish returns required by Parliament.

(2) The Minister shall be at all times entitled to see all documents, papers and minutes in the possession or control of the Commission which he requires either for Parliament or for himself for the proper conduct of

his public business, and to be supplied with copies thereof, and also to avail himself for such purposes of the services and assistance of any officer or servant of the Commission.

[20., 21., 22., 23., 24., 25. Sections 20, 21, 22, 23, 24 and 25 repealed by No. 24 of 1986 s. 15.]

Acting members, generally

26. (1) Where—

- (a) a member of the Commission is absent or temporarily incapable of fulfilling the duties of a member; or
- (b) the office of such a member is vacant and is not filled in accordance with this Act,

the Minister may appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires, and any person so appointed has, while his appointment subsists, all the powers, functions and duties of the member in whose place he is appointed to act.

(2) Any reference in this Act to a member shall be construed as including a reference to a person appointed by the Minister to act in the place of a member during any absence, temporary incapacity or casual vacancy.

[Section 26 amended by No. 101 of 1981 s. 10; No. 24 of 1986 s. 16.]

The function of the Commission, and its duties

27. (1) The function of the Commission is, pursuant to section 10 (4), to implement the provisions of this Act and carry out the duties imposed on the Commission by or under this Act, or expressly or impliedly required pursuant to any other Act, and for the purpose of the performance of that function, the Commission has and may exercise the powers conferred on the Commission by and under this Act.

(2) It shall be the duty of the Commission to provide, maintain and extend throughout the State an efficient, co-ordinated and economical supply of energy in the form of electricity or gas derived from such source or sources, whether in the State or elsewhere, as the Commission may think appropriate.

(3) The Governor may from time to time by Order in Council charge the Commission with a duty on behalf of the Crown in right of the State—

- (a) to provide and maintain a supply of energy, whether in the form of electricity or gas or otherwise, for use in the State or elsewhere;
- (b) to acquire, hold, distribute, export, or otherwise deal in, resources from which energy in any form may be derived; or

- (c) to supply by a specified means in a specified form energy for use in a specified part of the State,

(notwithstanding that such would not normally be undertaken by the Commission for the purposes of providing a supply of energy to be transmitted by the Commission) for such purposes and in such manner as may be directed pursuant to the provisions of that Order and any such Order may authorize the Minister or the Commission, or both, as may be specified in the Order, to act in the matter as the agent of the Crown or to carry out functions on behalf of the Crown.

(4) Where, in the opinion of the Governor, the provision, supply, or distribution of energy in any form in or to the State or any substantial proportion of the community may otherwise be adversely affected, or a shortage may otherwise result, the Governor may by Order in Council charge the Commission with a duty on behalf of the Crown, or may authorize the Minister, or both, as may be specified in the Order, to give directions as to the provision, supply, or distribution of energy resources (including petroleum or petroleum products, coal, electricity, and gas within the meaning of the *Gas Standards Act 1972*), any such directions may make provision for—

- (a) the adjustment of industry and commerce to the requirements of the community as to energy matters in the circumstances, including the determination of user priority, the prevention of specified uses or practices, the taking of specified measures, and the allocation of supplies to specified consumers;
- (b) the obtaining and verification of returns or information;
- (c) the imposition and implementation of control measures; and
- (d) the making, negotiation and settlement of claims arising under or in relation to any such directions,

in accordance with the policy and practice determined by the Government, and no action shall lie against the Commission or any other person for any loss or damage resulting or arising from and by reason of the giving of, or compliance with, any such direction.

- (5) An Order in Council made under subsection (3) or subsection (4)—

- (a) shall be published in the *Government Gazette*;
- (b) shall, subject to this subsection, take effect from the date of the making of the Order or from a later date fixed by the Order;
- (c) shall be laid before each House of Parliament within the 6 sitting days of such House next following such publication,

but shall otherwise be subject to section 36 and section 38 of the *Interpretation Act 1918*², as though it were a regulation so published pursuant to section 36 (1) of that Act.

(6) An Order in Council made for the purposes of this section may be varied or revoked by a subsequent Order in Council.

(7) It shall be a duty of the Commission—

- (a) so far as the Commission considers it to be practicable, to undertake, promote, and assist in, the development of safe, economical and effective measures to establish, maintain, expand and improve the works and other facilities needed for the conversion, production, manufacture, generation, accumulation, reception, provision, acquisition, storage, transmission, distribution, supply, sale, or use, of energy;
- (b) generally to co-ordinate the development, distribution, and use of energy so as to ensure that so far as is practicable supplies of energy, in whatever form is required, are at all times available for all purposes and at all places in the State in the manner and form best calculated to serve the public interest;
- (c) to secure, so far as is practicable, the ready availability, interconnection and interchange of sources and supplies of energy; and
- (d) generally, to promote and implement measures for the conservation and management of energy.

(8) The duties of the Commission shall include—

- (a) assisting and advising, and making recommendations to, the Minister, whether of its own motion or upon a reference by the Minister, as to matters relevant to this Act, including questions of policy and the means by which the implementation of that policy is to be achieved;
- (b) carrying out investigations relevant to the purposes of this Act, including ascertaining and evaluating the present and future requirement for energy in or by the State and the capacity of the State to satisfy that requirement from internal resources, and the suitability and availability of the resources elsewhere, and other investigations as to the impact and effect of any insufficiency of energy to satisfy any specific requirements or the general demand, and as to the best means of conserving, managing and using the energy and sources of energy available in or to the State;
- (c) the continuous review of apparatus, systems and practices which are, or may become, subject to this Act, and where the public interest so requires the publication of information for the purpose of preventing or minimizing the dangers arising therefrom; and
- (d) informing persons generally as to the relative efficiency, advantages, disadvantages, and cost of differing methods of the use of energy or apparatus, system or practices, conducting trials, tests and studies in the interest of consumers and conservation and management generally and publishing results therefrom, specifying apparatus approved by the Commission for connection to the supply available, and disseminating information derived from sources other than the activities of the Commission but relevant to its functions.

(9) The Commission is charged with the duty—

- (a) of promoting the safety, health and welfare of persons engaged in the construction, maintenance, repair or use of energy works and apparatus throughout the State and for that purpose may implement measures intended to promote safety, simplification and standardization in the systems of supply, plant, equipment and apparatus and their installation and use; and
- (b) of safeguarding operators, users and the public by ensuring that persons engaged in the performance of work on, or the operation of, any apparatus or other equipment or plant involving the use of energy and giving rise to especial hazards or having particular requirements as to safety are competent to do so, and may, subject to the approval of the Governor, pursuant to regulations or by-laws made under this Act (which regulations or by-laws shall have and be expressed to have effect notwithstanding the provisions of any other Act which is or any regulations or by-laws which are administered by the Commission) implement measures, including the creation of offences or the imposition of prohibitions, for that purpose.

(10) The Commission—

(a) shall have regard to—

- (i) the desirability of improving and extending its services in the light of developments in the field of energy matters;
 - (ii) the need to operate its services as efficiently and economically as practicable; and
 - (iii) the special needs for energy services of persons who reside or carry on business outside the cities and townships;
- (b) in the case of accident, emergency, or other unavoidable cause, may interrupt, suspend, or restrict, a service provided by the Commission, in any case where section 48 or section 58 make no provision, or no sufficient provision, appropriate to the circumstances, without incurring any liability for loss or damage thereby occasioned except in so far as any contract entered into by the Commission otherwise specifically provides;
- (c) may, subject to the approval of the Minister, consult or collaborate with, or engage, consultants in particular aspects of its operations and other bodies or authorities having relevant qualifications, experience or interests.

(11) Nothing in this section shall be taken to impose on the Commission a duty that is enforceable by proceedings in a court.

[Section 27 amended by No. 101 of 1981 s. 11.]

Powers of the Commission generally

28. (1) Subject to this Act the Commission for the purposes of this Act—

- (a) shall be capable of doing all such acts and things as bodies corporate may by law do or suffer;
- (b) may sue and be sued in its corporate name and may compound or compromise any claim, or demand made, or any debt or sum of money owing, to or by it, or any action brought by or against it;
- (c) may enter upon land and carry out works thereon, and may purchase, take, hold, sell, lease, take on lease, exchange, or otherwise acquire, deal in or dispose of real and personal property;
- (d) may exercise the powers as to finance and investment conferred by this Act; and
- (e) generally, shall have all such powers, rights and privileges as may be reasonably necessary to enable it to exercise and perform its function and to carry out the duties imposed on it.

(2) For the purposes of giving effect to this section but subject to section 29, the Commission may draw, make, accept, endorse, discount, execute or issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments, and execute all such other instruments, whether by way of security or otherwise, affecting property of the Commission or property to be acquired by the Commission, or any part or parts thereof, or the revenues of the Commission, as may be required for those purposes.

(3) Without prejudice to the generality of the power conferred by subsection (1), for the purposes of its function under this Act or its functions under any other Act administered by the Commission, the Commission, subject to this Act may—

- (a) carry out investigations, surveys, borings, and explorations—
 - (i) to ascertain the existence, nature and extent of the energy resources available within the State from any sources or for any purposes; or
 - (ii) to provide, maintain or modify any supply system or associated works;
- (b) subject to the consent of the Minister, acquire, open, establish, conduct, extend, improve, or discontinue—
 - (i) mines and other works for the recovery, conversion, or processing of any source of energy and any by-products to be derived therefrom; and
 - (ii) in relation to any undertaking, any business usually connected or carried on therewith;

- (c) enter upon and occupy any land or other premises and there, without being bound to acquire the same or any estate or interest therein (except where otherwise provided by this Act or such as may be required by a claimant to be taken or resumed pursuant to the *Public Works Act 1902*) by the best available route and in a practicable manner, construct, extend, or improve works, maintain and conduct undertakings and facilities, and carry on undertakings or works requisite, advantageous, or convenient to the exercise and performance of the functions of the Commission or any such function;
- (d) acquire by agreement any land, either as to the whole of the interest of the grantor or by way of an estate or interest less than the title, estate, or interest of the grantor;
- (e) compulsorily acquire land, or any estate or interest in land, under the *Public Works Act 1902*, for the purposes of a public work carried out or to be carried out by the Commission;
- (f) produce, supply, sell, provide, store, maintain, dispose of, or generally trade in, energy or energy resources, and by-products of the undertakings or works of the Commission, and machinery, equipment, or apparatus, or systems or works associated with the use of any form of energy, whether supplied by the Commission or otherwise, and acquire, hold and deal with energy or any such other thing by purchase or otherwise, or assist in or contribute towards the cost of the provision of energy or any such other thing;
- (g) carry on such activities as appear to the Commission to make the best use of the sources and supply of energy available and the assets of the Commission, whether in the State or elsewhere, including the acquisition in bulk, whether from within the State or elsewhere, of energy resources and for the purposes of obtaining advice and information, or of assisting the Minister to do so, may provide financial assistance, accommodation, facilities, and services to any committee or body of persons established by the Minister to provide policy or planning recommendations in respect of energy related matters;
- (h) enter into contracts—
 - (i) relating to the acquisition of energy or any source of energy, or relating to the supply or sale of energy or any linking-up scheme, whether or not the source from which that energy was or is to be derived is then the property of or subject to the control or management of the Commission; or
 - (ii) for the acquisition, establishment, holding, maintenance, conduct, or disposal of energy undertakings, works, and other related property, including options, rights and obligations relating thereto, whether on its own behalf, or,

subject to the approval of the Minister, as trustee, agent, or otherwise on behalf of any other person, body or authority;

- (j) where the Governor so directs, enter into and participate in arrangements with or on behalf of the Crown or any other body or authority for the acquisition, holding, supply or distribution of energy or energy resources not normally dealt in by the Commission;
- (k) with the approval of the Minister, enter into and participate in arrangements, being within their several powers, and not inconsistent with the provisions of this Act, with any local authority or other body or person for the carrying out, utilization, control or management of any matter or thing, either jointly or by one party on behalf of any other, or otherwise as may be agreed in the common interest, and for such purpose may on behalf of the joint venturers or any of them enter into contracts with any other authority, body or person and generally may join in any act;
- (ka) with the approval of the Minister, promote any company for the purpose of acquiring or taking over any property, rights, and liabilities of the Commission, or for any other purpose which may seem directly or indirectly calculated to further the objects of this Act;
- (l) for the purposes of this Act conduct or promote relevant research, or enter into projects for research or the compilation of information alone or jointly with others, and publish reports and provide information thereon or generally;
- (m) specify and establish standards and criteria, and the methods of testing, to be used for the purposes of this Act, and undertake investigations, inspections and prosecutions under this Act;
- (n) acquire such rights in, or licences for the use, production or manufacture of, any patented or protected processes, inventions, machinery, apparatus, methods, materials, or things, relevant to energy matters as it shall think fit;
- (o) carry out such other functions as are conferred on or imposed on the Commission by or pursuant to any other Act or law; and
- (p) generally, do all such acts and things as appear to the Commission to be necessary or convenient to the exercise and performance of its function.

(4) Where pursuant to this Act the Commission enters into or participates in any agreement or arrangement for the provision of energy or for the carrying out, utilization, control or management of any works, matters or things related thereto such agreement or arrangement shall be deemed to have been entered into for the purposes of carrying out the provisions of this Act and any works or other things constructed, maintained or managed by the Commission pursuant to such agreement

or arrangement shall, without affecting the rights and obligations of the parties to the agreement or arrangement, be deemed to be works constructed, maintained or managed by the Commission for the purposes of this Act.

[Section 28 amended by No. 101 of 1981 s. 12; No. 36 of 1984 s. 2; No. 24 of 1986 s. 17.]

Financial powers

29. (1) The Commission, subject to this Act, may—

- (a) borrow, or re-borrow, moneys—
 - (i) in ways additional to or other than those specifically provided for in section 99, 107 or 108;
 - (ii) pursuant to section 99 (4), or to section 107; or
 - (iii) pursuant to section 108, subject to the issue and sale of debentures, or the creation, issue and sale of inscribed stock, of the kind referred to in that section;
- (b) obtain credit;
- (c) arrange for financial accommodation to be extended to the Commission in ways additional to or other than borrowing moneys or obtaining credit;
- (d) provide credit (including credit to consumers in the normal course of business) for, or arrange financial accommodation on behalf of, or lend or advance money to any person, body or authority whether or not security is to be furnished to the Commission;
- (e) pay moneys by way of commission or brokerage for or in respect of the procuring, negotiating, making or obtaining of any—
 - (i) loan;
 - (ii) credit; or
 - (iii) financial accommodation,under the authority of this section, or in respect of any dealings relating thereto;
- (f) guarantee or give indemnities for the payment of money or the performance of contracts or obligations by any other person, body or authority; and
- (g) give, take or arrange security.

(2) Where—

- (a) the Commission proposes to make use of—
 - (i) moneys borrowed by the Commission;
 - (ii) credit obtained by the Commission; or
 - (iii) financial accommodation, extended to the Commission,under this section; or

- (b) the Commission exercises any other power conferred by this section,

that money, credit or accommodation shall be used, and that power shall be exercised, by the Commission for the purposes only of this Act or any other Act administered by the Commission and not otherwise.

(3) The Treasurer may, from time to time, give directions to the Commission in relation to the exercise of the powers, or any specified power, conferred on the Commission by subsection (1), including a direction that the Commission shall not exercise a power without the prior written approval of the Treasurer (which may be given upon, or subject to, such terms or conditions as the Treasurer thinks fit), and the Commission shall give effect to any such direction.

(4) Any moneys borrowed by, credit obtained by, or financial accommodation extended to, the Commission under this section may be raised or entered into, either in the State or elsewhere, as one loan or transaction or as several loans or transactions.

(5) Except in so far as section 32 (1) applies—

- (a) no contract made, or security, guarantee or indemnity given, by the Commission pursuant to this section shall be taken to be unenforceable by or against the Commission, or shall be in any way prejudiced or otherwise affected, by reason only—
 - (i) that any direction given to the Commission was not given effect to, any approval required to be obtained was not obtained, or any terms or conditions upon or subject to which any such approval was given were not complied with, as required by or pursuant to this section; or
 - (ii) that any money borrowed or credit obtained or financial accommodation extended was or is to be borrowed, obtained or extended, or was or is to be used, for a purpose other than a purpose of this Act or any other Act administered by the Commission; and
- (b) a person dealing with the Commission shall not be bound or concerned to inquire into any matter of a kind referred to in paragraph (a) (i) or (ii).

(6) The provisions of the *Money Lenders Act 1912*³ do not apply, and shall be deemed never to have applied, to or in relation to any loan, within the meaning of section 2 of that Act, made to or by the Commission, whether made before or after the coming into operation of section 13 of the *State Energy Commission Amendment Act 1981*¹, or to any contract or security relating to such a loan.

[Section 29 substituted by No. 101 of 1981 s. 13.]

Specific State Guarantees

30. (1) Subject to the approval of the Governor, the Treasurer may guarantee on behalf of the State the performance by the Commission, in the State or elsewhere, of any obligation of the Commission, however or wherever arising, entered into or to be entered into by the Commission.

(2) An instrument of guarantee given pursuant to subsection (1) shall be executed by—

- (a) the Treasurer; or
- (b) a person authorized—
 - (i) by the Treasurer in writing; or
 - (ii) by operation of law.

(3) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged by the granting to the Commission of any time or other indulgence or consideration, or by reason of any transaction that may take place between the Commission and any person having the benefit of the guarantee, or by any other act or omission of the person having the benefit of the guarantee, whereby the liability of the State as guarantor would but for this provision have been affected or discharged.

[Section 30 substituted by No. 101 of 1981 s. 13.]

Delegation by the Treasurer, and authorization by the Under Treasurer

31. (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate any function or power that is conferred on the Treasurer by this Act, other than this power of delegation.

(2) Where a function or power has been delegated under subsection (1) to the Under Treasurer, the Under Treasurer may authorize another officer of the Treasury to perform the function or exercise the power so delegated.

(3) A delegation under subsection (1) or an authorization under subsection (2) may be to—

- (a) a specified person; or
- (b) the person for the time being holding a specified office.

(4) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Treasurer under subsection (1), or by an officer authorized by the Under Treasurer under subsection (2) to perform that function or exercise that power, has the same force and effect as if it had been done by the Treasurer.

(5) Where the performance of a function or the exercise of a power by the Treasurer is dependent upon the opinion, belief or state of mind of the Treasurer in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate, or by an officer authorized by the Under Treasurer under subsection (2), upon the opinion, belief or state of mind of the delegate or of the authorized officer, as the case may be, in relation to that matter.

(6) Subject to subsection (8), a delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Treasurer, and may be revoked or varied.

(7) Subject to subsection (8), the giving of an authorization under subsection (2) does not prevent the performance of a function or the exercise of a power by the Under Treasurer, and may be revoked or varied.

(8) The authority of a person to whom a power is delegated or an authorization is given under this section shall be deemed, as between the person delegating that power or giving the authorization and a person dealing with him, to have continued during the period (if any) specified in the instrument delegating the power or conferring the authority or, if no period is so specified, until notice of the revocation or variation of the delegation or authorization was given to the person dealing with him.

(9) Where a person purports to perform a function or exercise a power conferred or expressed to be conferred on the Treasurer under this Act, it shall be presumed, unless the contrary is established, that the person is duly authorized by a delegation under subsection (1), or by an authorization under subsection (2) given pursuant to such a delegation, to perform the function or exercise the power.

(10) A document purporting to be signed for the purposes of this Act by a person as a delegate of the Treasurer shall be deemed, unless the contrary is established, to have been signed by him as such a delegate and to have been so signed pursuant to the performance of a function or the exercise of a power duly delegated by the Treasurer.

(11) A document purporting to be signed for the purposes of this Act by an officer of the Treasury authorized by the Under Treasurer to sign the document shall be deemed, unless the contrary is established, to have been signed by such an officer so authorized and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorized by the Under Treasurer to perform or exercise.

[Section 31 substituted by No. 101 of 1981 s. 13.]

Contracts

32. (1) Subject to subsection (2), a contract which purports to be made by the Commission where the amount expressed as the consideration for the contract at the time of its execution exceeds \$1 000 000 shall be unenforceable against the Commission unless or until the entering into that contract by the Commission is authorized, or the execution of that contract by the Commission is ratified, by the Governor.

(2) The Governor may exempt a contract of any kind, or contracts of any class, from the operation of subsection (1), and sufficient particulars of the exemption granted to identify the kind or class of contract in question shall be published by notice in the *Government Gazette*.

(3) Every contract made by the Commission may, if the Commission so thinks fit, specify—

- (a) the person to whose satisfaction the same is to be completed; and
- (b) the mode of determining any dispute which arises concerning or in consequence of such contract.

(4) The Commission may compound and agree with any person, body or authority who or which has entered into any contract with the Commission, or against whom or which any action or suit is brought, for any penalty contained in any such contract, or in any bond or other security for the performance thereof, or for or on account of any breach or non-performance of any such contract, bond or security, for such sum of money or other recompense as the Commission thinks proper.

(5) Subject to the provisions of any contract relating thereto, where the Commission is acting on behalf of or in association with some other person, body or authority in the execution or contemplated execution of any works the Commission has power to receive contributions relating thereto and to disburse or arrange for the disbursement of those contributions for the purposes of those works.

(6) In relation to any contract to which subsection (5) applies the Commission shall ensure—

- (a) that accounting records are maintained showing the several sources and the purposes for which contributions are received, and the manner in which those contributions are disbursed; and
- (b) that such records are open to inspection by responsible officers of the Commission, the Treasury, and the Auditor General.

(7) All contracts duly made and executed by the Commission and by the parties thereto respectively shall, subject to the authorization or ratification required by subsection (1), be effectual in law and binding on the Commission and all other parties thereto, and in the case of default in the carrying out of any such contract either by the Commission or by any other party thereto, such actions or suits or other proceedings may be instituted either by or against the Commission in its corporate name or

by or against the other parties making the default, and such damages and costs recovered, as might be instituted and recovered had the like contract been made between private persons.

[Section 32 amended by No. 101 of 1981 s. 14.]

Preference to local suppliers etc.

33. (1) The Commission shall give proper consideration and, where possible, preference according to Government policy, to Western Australian persons, suppliers, manufacturers, and contractors when letting contracts or placing orders for professional services, works, materials, plant, equipment, or supplies where price, quality, delivery and service are equal to or better than that obtainable outside the State and shall have regard for the desirability of the introduction of new technology into the State.

(2) No contract entered into or order placed by the Commission shall be invalid by reason only of the fact that the Commission has let the contract or placed the order otherwise than in accordance with the provisions of subsection (1).

Power to Commission to purchase private undertakings, etc., by agreement

34. Subject to this Act, the Commission may by agreement—

- (a) purchase or accept all or any of the stock or shares of any body corporate formed within the territorial limits of the Commonwealth and which is carrying on, whether exclusively or as part of its activities, any undertaking, works or business of a kind which the Commission is empowered by this or any other Act to carry on;
- (b) purchase as a going concern, or take on lease, or otherwise acquire or conduct, operate, carry on, or otherwise deal with—
 - (i) the whole or any part of the business, property and liabilities of any person or body who or which carries on any undertaking, works or business relating to energy in the form of electricity or gas, or, where the Commission is for the time being charged with a duty in respect of any other form of energy pursuant to any other Act or an Order in Council made under section 27 relating to such other form of energy, whether or not that undertaking, works or business is carried on under the authority of any Act or any Agreement which, or the execution of which, is or has been ratified, authorized or approved by an Act; or

- (ii) any mine, quarry, well, mining or mineral claim or tenement, or land within the State or contiguous thereto containing or believed to contain any potential source of energy, or used or required as ancillary thereto with a view to investigating, developing or working that source,

where in the opinion of the Commission that is requisite or convenient for the proper discharge of the duties charged upon the Commission by this Act.

Power to acquire compulsorily certain undertakings

35. (1) Subject to this Act, where the Minister on the advice of the Commission considers it is in the public interest that as regards any local authority, concessionaire or other person that supplies, or is authorized to supply energy—

- (a) in the form of electricity or gas; or
- (b) where the Commission is for the time being charged with a duty in respect of any other form of energy pursuant to any other Act or an Order in Council made under section 27, such other form,

the whole or any part of its energy undertaking should be taken over and carried on as a going concern by the Commission on behalf of the State, then, subject to section 5, the Governor may, on the recommendation of the Minister, acquire that undertaking, as a whole or in part, as a public work and vest the same in the Commission.

(2) Where the local authority, concessionaire or other person so requires, an undertaking to be acquired under subsection (1) shall be so acquired in its entirety in all respects.

Estates and interests in land

36. For the purposes of this Act, and in the *Public Works Act 1902*, when construed for the purposes of this Act, a reference to “land” shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto, and to any legal or equitable estate, right, title, easement, lease, licence, privilege, or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land (whether or not that interest is an interest recognized by the Common Law) the extent of which is ascertainable by reference to the documents purporting to relate thereto.

Partial interests in land

37. (1) Where, whether by way of agreement or by way of a compulsory taking or resumption pursuant to the *Public Works Act 1902*, the Commission seeks to acquire an estate or interest in or relating to any land that is less than is held by the person from whom the acquisition is

sought, the Commission may, subject to section 45 (12), acquire such lesser estate or interest and shall not be required to acquire the whole of the estate or interest held by that person.

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

- (a) that estate or interest shall enure for the benefit of the Commission and run with the land notwithstanding any sale, subdivision or other dealing with that land by the owner or occupier for the time being, but any such estate or interest may be relinquished by the Commission; and
- (b) the benefit of any right, restriction or covenant in relation to the use of land granted to or held by the Commission may be enforced by the Commission to the like extent as if the Commission were possessed of adjacent land for the benefit of which the same was to enure.

(3) Except where the estate or interest to be acquired under this section is one of a particular kind prescribed by reference to a standard form or abbreviated description pursuant to section 38, a description sufficient to identify that estate or interest shall be set out in any notice served under the *Public Works Act 1902*, or any document of transfer when that notice or document of transfer is read together with any plan or other document to which that notice or document of transfer refers.

Conveyancing by abbreviated description

38. (1) Regulations made under this Act may, subject to the approval of the Minister administering the *Transfer of Land Act 1893*, make provision for the use of a standard series of forms describing the more frequently occurring particular kinds of estate or interest less than fee simple which the Commission acquires pursuant to this Act, and where the estate or interest to be acquired by the Commission is of one of the particular kinds so prescribed it may,—

- (a) subject to subsection (2), be described in the prescribed abbreviated manner in any transfer under the provisions of the *Transfer of Land Act 1893*, or in any notice served under the *Public Works Act 1902*, for the purposes of this Act; and
- (b) where the estate or interest is of a kind that is not required to be transferred in accordance with the provisions of the *Transfer of Land Act 1893*, be transferred in the prescribed manner,

by reference to the appropriate prescribed standard form.

(2) For the purposes of section 17 (2) (c) (ii) of the *Public Works Act 1902*, the copies of the notice shall be accompanied by a description of the estate or interest to be acquired and by a copy of any plan or other documents referred to in the notice.

(3) Notwithstanding that any notice may have been served or published, or any transfer effected, in the manner permitted by this section, the Registrar of Titles, the Registrar of Deeds, or the Minister for the time being administering the *Land Act 1933*, (as the relevant category of title may require), may by reference to the terms of the notice served on him pursuant to section 17 (2) (c) (iii) or of section 23 (1) (d) of the *Public Works Act 1902*, or by reference to an agreement entered into by the parties in a form prescribed pursuant to this section, cause the like record to be made in the document of title or by memorial in the register relating to the title to the land in question to evidence the interest of the Commission as could have been made if the notice or transfer or agreement had been in full form.

(4) Where the Commission acquires an estate or interest in any land less than is held by the person from whom it was so acquired, then it shall be a sufficient compliance with section 23 (3) and (4) of the *Public Works Act 1902*, if there is endorsed upon the deed, certificate, or other instrument evidencing the title to the land from which the estate or interest acquired is derived a note, whether or not by way of a prescribed abbreviated description, as to the estate or interest acquired and that deed, certificate, or other instrument returned to the person from whom it was received or to any person entitled to receive it on his behalf.

(5) The description of an estate or interest acquired pursuant to section 37 or deemed to be vested in the Commission pursuant to section 44 which the Commission does not require to be recorded on, or by way of memorial in the register relating to, the title to the land in question may be delineated by reference to a plan other than a survey plan.

Agreements incidental to land matters

39. (1) In order to facilitate the acquisition of, or dealing with, land to be acquired for the purposes of this Act, the Commission may enter into agreements relating to incidental matters and things necessary to give effect to the powers conferred on the Commission by this Act.

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

- (a) section 29A of the *Public Works Act 1902* shall not have effect in relation to that land notwithstanding that it is not being used for a public work where the Commission certifies to the Governor that the land—
 - (i) will in the future be required to be used for a public work within the meaning of that Act; or
 - (ii) is presently or may in the future be so required but the requirement does or may not extend to a requirement for exclusive use and occupation; and

(b) the Commission may, subject to the approval in writing of the Minister, grant to any person—

- (i) a lease or licence to occupy the land or any part of the land, either exclusively or concurrently with the Commission; or
- (ii) any other interest in or right to use that land or any part of that land.

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

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

- (a) shall be deemed to be subject to a condition that the Commission shall be indemnified against any costs, damages, claims, or expenses arising therefrom; and
- (b) subject to subsection (2a) may be terminated without any liability for compensation thereby arising, on not less than 21 days prior written notice.

(4) The Minister may in writing direct that in relation to—

- (a) any specific class of land or estate or interest in land vested in the Commission; or
- (b) any specific class of lease, licence, interest or right under this section granted by the Commission,

and referred to in that direction, his approval shall be deemed to have been given to the exercise of the powers conferred by subsection (2) on the Commission.

[Section 39 amended by No. 24 of 1986 s. 18.]

Power to dispose of land

40. (1) Subject to subsection (2) but otherwise in accordance with the *Public Works Act 1902*, the Commission, with the approval of the Minister, may sell or otherwise deal with any land, or any estate or interest in land, acquired by or vested in the Commission for the purposes of this Act where—

- (a) that land, or that estate or interest, is no longer required for such purposes; or
- (b) that estate or interest is of a kind not considered by the Commission to be necessary or appropriate for a particular purpose, notwithstanding that the land, or an estate or interest in the land, is required for such purposes.

(2) Where any such land, estate or interest acquired by or vested in the Commission was not acquired under this Act or any other Act by way of compulsory taking or compulsory resumption for any public work section 29, section 29A, and section 29B of the *Public Works Act 1902*, shall not have effect in relation thereto.

(3) The Minister may in writing direct that in relation to any specific class of land or estate or interest in land referred to therein his approval shall be deemed to have been given to the exercise of the powers conferred by subsection (1) on the Commission.

[Section 40 amended by No. 24 of 1986 s. 19.]

Planning approvals

41. For the purposes of section 20 of the *Town Planning and Development Act 1928*, the Commission may submit to the Town Planning Board plans of a subdivision of land acquired, or to be acquired, by the Commission notwithstanding that the Commission is not the owner of the land, and approval under that Act may be given thereto.

Commission to have certain rights to water

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

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

- (a) the powers, authorities and functions of the Authority or any statutory authority within the meaning of the *Water Authority Act 1984*, irrigation boards and water boards; and
- (b) the rights, benefits and privileges of other persons under the Acts referred to in subsection (1).

[Section 42 amended by No. 24 of 1986 s. 20.]

Property in works

43. (1) Where any works or other things are or have been placed upon, in, over or under any land by the Commission in the exercise or purported exercise of a power conferred by this Act or any Act repealed by this Act, those works or other things shall be taken to have been lawfully so placed and are, and shall at all times continue to be, the property of the Commission, unless the Commission has otherwise

specified or may otherwise determine, and the Commission shall be deemed to have a right of access thereto for the purposes of this Act and any other Act administered by the Commission.

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

(2) The Commission and any person or body of persons authorized by the Commission in that behalf may demolish or destroy on, or remove from, any land occupied by it, any plant, machinery, equipment, apparatus, buildings, road, or other works placed or constructed thereon by the Commission.

[Section 43 amended by No. 36 of 1984 s. 3.]

Regulations as to existing works

44. (1) Regulations made under this Act may make provision—

- (a) in respect of and appropriate to any works or other things placed upon, in, over, or under any land by the Commission prior to the coming into operation of this section, being works or things of a kind prescribed by those regulations, for the vesting in the Commission by force of this section and without further assurance of an estate or interest in the land upon, in, over, under, or adjacent to which the works or things were so placed, and any such estate or interest may be so prescribed and dealt with by reference to the standard series of forms that may be prescribed pursuant to section 38; and
- (b) for the recording of the interest of the Commission on, or by way of memorial in the register relating to, the title to the land in question,

and any such regulations may make provision for such restriction of the use of the land as may in the opinion of the Commission be necessary in the interests of safety.

(2) The vesting in the Commission of an estate or interest in any land pursuant to subsection (1) shall not be taken to authorize the Commission to place upon, in, over or under that land any works not substantially of the kind so placed at the time the estate or interest was created.

Claims against the Commission for the use of land and the application of the *Public Works Act 1902*

45. (1) Subject to subsection (3), the Commission shall not be liable to pay compensation for, or in respect of any damage attributable to, the placing of any works or other things to which section 43 (1) applies or by virtue of the grant of the right of access deemed by that subsection to be vested in the Commission; nor shall the Commission be liable to pay compensation in respect of the vesting in the Commission of any estate or interest pursuant to section 44 or in respect of any restriction imposed on the use of land pursuant to that section.

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

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

- (a) pursuant to section 120; or
- (b) under the *Public Works Act 1902*, as read with this section, where the Commission—
 - (i) is by this or any other Act required; or
 - (ii) by reason of the nature of the works there placed, the nature of the locality in which the works are placed, the safeguarding of particular works, public safety, future development proposals, or otherwise, elects,

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

(4) Notwithstanding the powers conferred on the Commission by section 28 (3) (c) and section 46, the Commission is, except where the land is land to which subsection (15) applies, required to acquire, where practicable by agreement but otherwise pursuant to the *Public Works Act 1902*, as read with this section, such land, estate, or interest as may in the opinion of the Commission be appropriate to its needs in respect of—

- (a) generating works;
- (b) all electricity transmission works operating at 200 000 volts or above;
- (c) all gas transmission works operating at 2 Megapascals or above; and
- (d) such other transmission works as may be prescribed by regulation under this Act as works to which this subsection shall apply,

and regulations made under this Act may make provision for such restriction of any use of the land thereby affected as may in the opinion of the Commission be necessary in the interests of safety.

(5) Where for the purposes of this Act the Commission determines that any land, or any estate or interest in land, is required to be acquired by the Commission otherwise than by agreement the power to do so shall be exercised under and in accordance with, and any compensation payable by the Commission in pursuance of such powers shall be assessed, determined and recovered under, the *Public Works Act 1902*, as read with this section.

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

(7) Any entry upon, or acquisition of, land authorized by or under this Act and any works carried out pursuant to this Act shall be deemed to be for the purposes of a public work within the meaning of the *Public Works Act 1902*, the Commission shall be deemed to be a local authority within the meaning of that Act authorized to effect that acquisition or undertake that public work, the date of first entry under this Act shall be regarded as the date of the gazetting of the notice of the acquisition of the land for the purposes of section 63 of that Act in order to ascertain the value of the land, and that Act shall apply to and in respect thereto accordingly in so far as that Act is not inconsistent with this Act.

(8) The power to effect compulsory acquisition in respect of an energy undertaking conferred by section 35 (1) shall be exercised under and in accordance with the *Public Works Act 1902*, and for the purposes of that section, and of that Act as it relates to the power conferred by that section, the undertaking to be so acquired shall be deemed to be a "public work" within the meaning of that Act and all machinery, plant, chattels and other things to be so acquired under this section shall be deemed to be included in the basis upon which the claim for compensation may be made as though they had been improvements related to land.

(9) For the purposes of this Act, where the Commission so requires the Commission may exercise any power that is by the *Public Works Act 1902*, vested in the Minister responsible for the administration of that Act and in so far as that Act applies to or in relation to the compulsory taking or compulsory resumption of any land, or the entry upon, occupation or use of any land, pursuant to this Act any reference in that Act to that Minister or the Department of Public Works may be read for the purposes of this Act as a reference to the Commission and that Act may be construed accordingly.

(10) Subsection (9) does not prevent the Minister administering the *Public Works Act 1902*, from exercising his powers under that Act on behalf of the Commission when requested by the Commission so to do.

(11) Where the Commission fails to serve an offer on a claimant against the Commission for compensation under the *Public Works Act 1902*, within the time limited for that purpose by that Act, then the Minister administering that Act may at any time thereafter serve an offer on behalf of the Commission, and such offer shall be deemed to be an offer duly made by the Commission for the purposes of that Act.

(12) A written objection served pursuant to section 17 (2) (d) (i) of the *Public Works Act 1902*, in relation to any proposed taking or resumption for the purposes of the Commission may request—

- (a) that instead of the whole estate or interest in the land being acquired, such a lesser estate or interest as is sufficient for the purposes of the Commission be acquired; or
- (b) that instead of an estate or interest less than the whole being acquired, the whole estate or interest in the land be acquired,

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

(13) Where any land is compulsorily acquired pursuant to the *Public Works Act 1902*, for the purposes of the Commission under this Act or any other Act that land shall, upon publication in the *Government Gazette* of the notice referred to in section 17 (1) of the *Public Works Act 1902*, be vested in the Commission for the public work specified in that notice, by force of section 18 of that Act as read with this subsection; save that the Governor may, by that notice, declare that any specified estate, interest, right or privilege of any person to the use, occupation or enjoyment of the land so acquired by the Commission, or any specified part of that land, may continue for the period therein specified or until terminated by the Governor on further notice, and may provide that such continued use, occupation or enjoyment shall not be taken to be in satisfaction or part satisfaction of the compensation claimed, an effect shall be given thereto.

(14) Where, whether by agreement or compulsory acquisition, any land (including any estate or interest in land to which section 36 applies), is vested in the Commission and the land thereby affected is set apart, taken or resumed by any other person, body or authority under or by virtue of the *Public Works Act 1902*, then notwithstanding section 18 of that Act—

- (a) the land or the estate or interest vested in the Commission shall continue to be so vested, unless the Commission otherwise agrees; and
- (b) the Commission shall be deemed to be a person having an interest in the land, estate or interest to be taken for the purposes of section 34 of that Act.

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

[Section 45 amended by No. 24 of 1986 s. 21.]

The power of entry, generally

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

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

(3) The power of entry conferred by this section does not authorize or require the Commission to acquire any interest in any land except such as—

- (a) the Commission elects to acquire by agreement;
- (b) the Commission elects to lawfully take or resume under and in accordance with the *Public Works Act 1902*, as read with section 45; or
- (c) the Commission is required to acquire pursuant to section 25 of the *Public Works Act 1902*.

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

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

(6) A notice served pursuant to this section for the purposes of the exercise of the power of entry shall not be taken to have effect as a notice for any of the purposes for which a notice is required under the *Public Works Act 1902*.

(7) Where it is shown to the satisfaction of a Justice of the Peace that entry on or into any land, premises or thing is reasonably required by the Commission for the purpose of the exercise of a power conferred by this Act but that entry has been refused or the entry is opposed or prevented, or in any case where such land, premises or thing is unoccupied and access cannot be obtained or a notice required by this Act cannot be

served without undue delay or difficulty, the justice may, by warrant in the form prescribed by regulations made under this Act, authorize the Commission by its officers or servants, together with such other persons as are named in the warrant, or any police officer, to enter upon the land, premises or thing, using such force as may be necessary, for the purpose therein specified and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.

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

(9) The owner or occupier of any land, premises or thing supplied with energy by the Commission or in, on or over which any works of the Commission are lawfully situate shall be deemed to have given consent to the Commission to enter and re-enter thereon or therein at all reasonable times for the purposes of this Act in relation to any such supply or works and no notice under this Act is required unless an agreement in writing entered into by that owner or occupier with the Commission in relation thereto otherwise provides.

(10) Where in the opinion of the Commission entry upon any land is necessary for the purposes of inspecting or examining any land to determine the feasibility of the use of that land for the purposes of this Act, or as preliminary to any prospective or intended acquisition of that land or any estate or interest in that land, and the Commission does not elect to exercise the powers conferred by section 17, section 82, section 112, or section 112A of the *Public Works Act 1902*, the Commission may make entry for such purposes.

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

(12) The Commission may without prior notice enter on any street under the control of a local or other statutory authority and there exercise such of the powers conferred by section 49 as are of a minor or routine nature and are related only to the maintenance or extension of existing distribution works, but where any exercise of the powers conferred by that section is likely to affect the use or surface of any such

street or the position or use of any pipe, sewer, drain or tunnel then notice in writing of the intention to carry out the works specified therein shall be given by the Commission to the authority concerned unless subsection (13) or section 48 applies.

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

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

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

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

Service of notice by post on owner or occupier

47. Save as otherwise expressly provided any notice or demand required by or under this Act to be given or served on the owner or occupier of any land or other premises may (in addition to or instead of any other mode of service) be served by post by prepaid letter addressed to the owner or occupier by that description, and in proving the service it shall be sufficient to prove that the notice or demand was properly addressed to the land or premises in question and was put into the post.

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

48. (1) Where it appears to the Commission, or a person authorized under the provisions of section 4, that by reason of—

- (a) actual or apprehended danger to any person or property;
- (b) the occurrence of injury or damage attributable, or which might be attributable, to any defect in, or any malfunction, misuse or improper use of, any supply system or consumer installation;
- (c) an urgent necessity to restore or provide a supply of energy to any place or person;

- (d) damage to or interference with a supply system generally; or
- (e) any other matter,

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

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

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

- (a) remove or cause to be removed any machinery, equipment or other thing under the control of the Commission or that person and not necessarily remaining as part of the measures to deal with the emergency; and
- (b) where the emergency arose in relation to a supply system or other matter owned by the Commission or for which the Commission is otherwise responsible, make good any physical damage or effect restoration, rehabilitation or restitution,

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

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

[Section 48 amended by No. 24 of 1986 s. 22.]

General powers relating to works

49. For the purposes of, and subject to this Act, the Commission may exercise the power—

- (a) to enter upon any land which may be required to be used for the purposes of the Commission and there make surveys, clear lines of sight, take levels, make or set up beacons, trenches or other marks, sink bores, take soil or other samples and do any other acts or things whatsoever necessary for the investigation or demarcation of such lands;
- (b) to enter upon any land, and dig, fell, remove, store, or utilize any earth, stone, gravel, sand or other soil, timber or trees, or other material required for the purpose of the construction or maintenance of any part of any undertaking or works of the Commission;
- (c) to enter upon any land, premises, or thing and set up, lay down, establish, maintain, utilize, and operate, any supply system, or any undertaking or other related things necessary for the establishment or maintenance of any supply system, in, over, under, or through any such land, (including any shore of the sea or any stream or water) premises or thing, and at any time to inspect, service, maintain, replace, repair, or alter, or remove, any such system, undertaking or things; and for that purpose to—
 - (i) break, excavate and remove any soil to the extent and depth required;
 - (ii) utilize water;
 - (iii) make or alter watercourses drainage, means of access and transit;
 - (iv) remove, reconstruct, or provide buildings, wharves, and other structures; and
 - (v) remove or carry out any works;
- (d) to cause any distribution works or service apparatus or related things to be supported by affixing or annexing them to or against any part of a house, building or other structure (subject to the condition that if the owner or occupier wishes to rebuild or alter that house, building or other structure, such of those works, apparatus, or things as are not so attached for the sole purpose of providing a supply of energy for the use of that owner or occupier shall at the cost of the Commission be removed but may, if so required by the Commission, be affixed to the new structure);
- (e) to open, or alter the position of, any pipe, sewer, drain, tunnel, or other works within or under any land or premises and, subject to the Commission taking all reasonable steps to notify the intention of the Commission to the authority having the care or management thereof, and subject to section 51, to alter the position of any such works (not being works the property of the

Australian Telecommunications Commission of the Commonwealth) or any other thing situate over or under any street; and

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

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

Restrictions on the exercise of the general powers

50. In the exercise of the powers conferred under section 49 the Commission shall ensure that so far as is reasonable and practicable—

- (a) the free use of any land, street, shore or water is not obstructed;
- (b) any works or installations fixed or crossing above the surface of any land, or of any navigable waters, are at a sufficient height or are otherwise so dealt with as to ensure that a source of danger is not likely to be constituted thereby in the course of any reasonable utilization of that land or water; and
- (c) as little detriment or inconvenience is caused and as little damage is done as is possible,

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

Alteration to works in streets

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

Street levels and widths

52. (1) Where the Commission proposes to place any works in any street, the local or other authority responsible for determining the level of that street shall, within 14 days of the service of a written request from the Commission, furnish the Commission with particulars of any ascertained or proposed levels, or method of surfacing, of that street, and

in default of the furnishing of those particulars the existing contour of the street shall for the purposes of the Commission relating to those works be deemed to be the level.

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

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

Streets broken up to be reinstated without delay

53. (1) Where the Commission opens or breaks up the surface of any street or pavement the Commission shall—

- (a) with all convenient speed complete the work for which it is broken up, and fill in the ground, and reinstate and make good the surface so opened or broken up; and
- (b) while any portion of the street or pavement continues to be opened or broken up, cause that portion of the street or pavement to be clearly marked with warning notices or otherwise guarded and a sufficient light to be kept there at night.

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

Duty and powers, as to vegetation causing interference

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

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

- (i) if the interference or obstruction is occasioned solely in relation to premises or apparatus on the land (not being a street or other public place) from which the vegetation is growing, and the occupier of that land so consents; or
- (ii) in any other case, (but where the vegetation has been planted or cultivated, only if the occupier of the land at the point at which the vegetation interferes or obstructs the supply system has been requested by notice in writing to carry out the work but has not done so within such period, not being less than 3 days, as is specified in the notice, and has been given a reasonable opportunity to make representations as to the manner in which the work should be effected),

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

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

New gas undertakings

55. Notwithstanding any other Act, on and after the coming into operation of this section—

- (a) a local or other authority which is by virtue of any Act relating to local government matters empowered to construct or purchase or operate any gas undertaking, but which has not exercised that power, shall not exercise that power without the prior approval of the Governor given pursuant to a recommendation of the Minister after consultation with the Commission; and
- (b) no new gas undertaking shall be established by any local or other authority, or any person, other than the Commission, unless—
 - (i) the establishment of that undertaking is approved by the Governor pursuant to a recommendation of the Minister after consultation with the Commission; or
 - (ii) that undertaking is established entirely on lands in private ownership and does not involve the reticulation of gas in any street.

Restrictions on trading in liquid petroleum gas

56. (1) Subject to section 3 (4), this section applies to the sale or delivery of liquid petroleum gas within the area (in this section referred to as "the area of restricted trading") defined—

- (a) until a notice published under paragraph (b) applies, for the purposes of section 22B of the *State Energy Commission Act 1945-1978*, as in force immediately prior to the coming into operation of section 3¹; and
- (b) on the publication in the *Government Gazette* of a notice for the purposes of this paragraph, by reference to the locality determined from time to time by the Minister as specified in that notice,

and not elsewhere.

(2) No person, other than the Commission, shall sell or deliver any liquid petroleum gas within the area of restricted trading unless—

- (a) he has applied for and holds the written permission of the Commission to do so and the sale or delivery is effected in accordance with such conditions as may be imposed thereon and is in conformity with the *Liquid Petroleum Gas Act 1956*, and any other law relating thereto; or
- (b) the sale or delivery is authorized pursuant to subsection (6).

(3) A permission granted under subsection (2) has effect for the period specified therein, not being a period exceeding 3 years, and may from time to time be renewed.

(4) The Commission may grant its permission under this section or any renewal of that permission subject to the observance by the holder of the permission of such conditions as the Commission imposes and is hereby empowered to impose, including, without affecting the generality of the power, conditions—

- (a) that the holder of the permission may effect sales or deliveries that would otherwise be prohibited only in such part or parts of the area of restricted trading or to such person or persons, or class or classes of person, or for use only in the operation of such apparatus or class or classes of apparatus, as is or are specified in the permission;
- (b) that the Commission may alter any condition so imposed on giving written notice of the alteration to the holder of the permission; and
- (c) that on breach of any conditions so imposed, the Commission may cancel the permission.

(5) Where a person who is aggrieved by—

- (a) a decision of the Commission to refuse or not to renew any permission under this section; or
- (b) the conditions imposed in relation to any permission,

within 28 days of the giving of the decision or the imposition of the condition complained of shows cause to the Minister, setting out in writing the reasons, the Minister may direct the Commission to vary the decision or those conditions and effect shall be given to that direction.

(6) Notwithstanding the general prohibition imposed by this section, liquid petroleum gas may be sold or delivered to any person if the effect of the prohibition in any area would otherwise be to deprive that person of the means to operate an apparatus to which this subsection applies, being an apparatus that—

- (a) was so operated in the area prior to the prohibition taking effect; or
- (b) is an apparatus used—
 - (i) in a caravan, a road or rail vehicle, or a sea or river craft, or in some other mobile installation; or
 - (ii) for the purposes of demonstration or while on test for the purposes of sale or maintenance; or
 - (iii) in an application requiring portability, where the gas cylinder capacity does not exceed 9 kilograms; or
- (c) is an apparatus, or is of a class of apparatus, in respect to which the Minister, by notice in the *Government Gazette*, has declared that this subsection shall apply.

(7) Notwithstanding the general prohibition imposed by this section, liquid petroleum gas may be sold or delivered anywhere in the State to a person to provide the motive power for a vehicle.

(8) A person who acquires liquid petroleum gas outside the area of restricted trading and who uses that gas within that area commits an offence unless that gas is used solely to operate an apparatus to which subsection (6) applies or is used to provide the motive power for a vehicle.

(9) In any proceedings for an offence under this section the onus of establishing that a prohibition imposed pursuant to this section does not apply in the circumstances lies on the person alleging that the prohibition does not apply.

[Section 56 amended by No. 24 of 1986 s. 42.]

Supply system emergencies

57. (1) In this section “system emergency” means any event or circumstance which has arisen or is reasonably expected to arise in relation to any supply system, whether or not a supply system owned by the Commission or for which the Commission is otherwise responsible, by reason of which the ability of the Commission to maintain a supply of energy is, or may reasonably be expected to be, affected (and for the purposes of this section a reference to a supply system shall be taken to

extend to any act, matter or thing which affects, or in the opinion of the Commission may affect, the supply of energy or the obtaining or manner of delivery of any energy or energy resource) whereby—

- (a) any life or property is or may be endangered; or
- (b) the normal operation of the whole or any part of any such system has been, or may be, or should be interrupted, curtailed or terminated; or
- (c) the capacity of any such system is for any reason insufficient to satisfy any demand or anticipated demand by supply in the normal manner,

and which, in the opinion of the officer or servant of the Commission having charge or control of the operation of any part of a supply system of the Commission thereby affected, requires the immediate exercise of the powers conferred by subsection (2) or which in the opinion of the Commission requires the exercise of the powers conferred by subsection (3).

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

(3) When a system emergency exists—

- (a) the Commission may, as it seems fit and the circumstances shall reasonably allow, make such order as the Commission considers necessary, to provide for—
 - (i) the distribution of the kind of energy affected and the control, regulation, imposition of restrictions upon, curtailment, interruption, prohibition, or termination, of the supply or use of the kind of energy affected, to or by any person or class of persons, or upon any premises or class of premises, within the whole or any portion of the State, or for any particular purpose or purposes, for such period or periods as may be specified in the order;
 - (ii) the exemption of any person or class of persons, or of any premises or class of premises, or of any place or institution or class of place or institution, from the operation of the whole or part of the order; and
 - (iii) the delegation to any person or body of such authorities and discretions, either generally or specifically, as the Commission itself shall in the circumstances be empowered to exercise and as are specified in the order; and

- (b) the Commission may and is hereby empowered to take all and any such measures as it considers appropriate in relation to the event or circumstances giving rise to the system emergency, or in relation to the consequences of that emergency as are intended to diminish the effect of, or to terminate, that emergency including measures to discontinue supply to any person, body or authority who or which in the opinion of the Commission is contravening the provisions of any such order.

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

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

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

(7) The cancellation or variation of an order does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that cancellation or variation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding section 11 of *The Criminal Code*.

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

(9) At any time and from time to time during the continuance in force of an order made pursuant to subsection (3), in the portion of the State thereby affected any officer or servant of the Commission may, without prior notice, enter premises supplied with energy of the kind to which the

order relates and there make such search and examination as is necessary to determine whether the order is, in respect of those premises, being contravened in any respect.

(10) Any person—

- (a) obstructing the Commission or any officer or servant of the Commission acting pursuant to any power, authority or discretion conferred by this section; or
- (b) contravening an order made pursuant to subsection (3), is guilty of an offence.

Penalty:

- (a) in the case of a natural person \$1 000;
and
- (b) in the case of a body corporate \$10 000.

[Section 57 amended by No. 24 of 1986 ss. 23 and 42.]

Commission may not be bound to supply

58. (1) Notwithstanding the general duty imposed by section 27, except in so far as—

- (a) the Commission is expressly charged with a particular duty to do so in relation to any specific person, body, authority, premises or circumstances by or pursuant to this Act or any other Act; or
- (b) the Commission is required to do so by or pursuant to any contract or agreement to which the Commission is a party, whether made under the authority of or brought within the provisions of this Act,

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

(2) Notwithstanding that the Commission may be expressly charged with a particular duty to effect or continue any supply of energy, or to effect, maintain or continue any such supply having particular characteristics, qualities or specifications, or is required so to do by or pursuant to any contract or agreement (except to the extent to which subsection (4) applies) or has in any other case effected from time to time a supply of energy, or such a supply having particular characteristics, qualities or specifications, then the Commission shall nevertheless not be liable to effect, maintain or continue the supply of energy, or a supply

having those particular characteristics, qualities or specifications, and shall not be required to pay compensation for or be liable in respect of any penalty, loss or damage thereby arising, if that supply—

- (a) is of a nature or extent that, in the opinion of the Commission, will require an expenditure which the Commission is unwilling to incur unless the person, body, or authority so supplied contributes thereto, in total or as to an agreed proportion, in such sum and manner as the Commission requires;
- (b) is such that, in the opinion of the Commission, it should be refused, curtailed or in some manner limited so as to ensure that any waste, nuisance, or undue consumption is prevented or remedied or that the available supplies or reserves of energy are conserved, whether for the time being or permanently;
- (c) would in the opinion of the Commission, interfere with, or adversely effect, any supply system, or cause annoyance to, interfere with or otherwise adversely affect the supply of energy to, other persons, or would appear, in the opinion of the Commission, to be unsafe or dangerous to life or property;
- (d) relates to any land, premises or thing where—
 - (i) any installation or apparatus provided or installed by any person, or the manner of use of the energy, or any other matter or thing, is not in compliance with a requirement previously made known by the Commission, whether or not a prescribed requirement, applicable thereto; or
 - (ii) any service apparatus provided or installed by or belonging to the Commission has been interfered with or has not been maintained in compliance with a requirement previously made known by the Commission, whether or not a prescribed requirement, applicable thereto;
- (e) is affected by reason of measures taken in respect of a system emergency pursuant to section 57; or
- (f) is prevented, interrupted, curtailed, reduced or detrimentally affected by reason of any cause other than a negligent act or omission on the part of the Commission or an officer, servant or agent of the Commission.

(3) Where the Commission is by reason of the operation of this Act or any other Act at liberty to refuse to effect supply or to refuse to continue any supply the Commission may nevertheless effect or continue such supply on such terms and conditions as the Commission thinks fit.

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

[Section 58 amended by No. 24 of 1986 s. 24.]

Commission may supply, with or without contract

59. Subject to this Act, the Commission may enter into contracts in writing for, or agreements in relation to, the supply or sale of energy or for providing apparatus or works required in connection with the supply or sale of energy or for maintenance or repair purposes, and in relation to any such contract or agreement the charges, conditions and any other matters relating to supply which have been or are prescribed pursuant to regulations or by-laws made under this Act shall be applicable unless the contract or agreement otherwise expressly provides.

Repudiation of existing contracts, and unwritten contracts**60.** (1) In this section—

- (a) a reference to “supply or sale” shall be construed as including a reference to the provision of any apparatus or works, or the carrying out of any maintenance or works; and
- (b) a reference to “terms” shall be construed as a reference to the charges from time to time applicable and to the conditions of supply or provision generally.

(2) Where—

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

or

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

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

(3) Where immediately prior to the coming into operation of this section a supply or sale of energy was effected or continued by the Commission and a contract in writing is or was applicable thereto then, on and from the appointed day to be proclaimed for the purposes of this section, every such contract shall be deemed to be repudiated by the Commission and shall be discharged so far as executory, subject to subsection (5), unless—

- (a) the contract was made pursuant to section 32A of the *State Energy Commission Act 1945-1978*; or

- (b) the Commission, by notice in writing to the person receiving the supply or with whom the sale was effected given after the coming into operation of this section but prior to the appointed day so proclaimed, has affirmed the contract.

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

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

Agreements to supply beyond normal range

61. (1) Where the owner or occupier of land makes application in writing to the Commission to supply energy to a place on that land and the place is beyond the normal point from which the Commission is prepared to supply energy under any other provision of this Act, the Commission may supply energy to that place or such other place on the land as the Commission may determine if the applicant agrees with the Commission in writing to do all or any of the following things, namely—

- (a) to pay the Commission for the energy so supplied to him subject to such of the terms and conditions of supply as would from time to time have been applicable to him had he been a consumer to whom energy was supplied, for a like purpose at that place, by the Commission under this Act otherwise than on the basis of a contract;
- (b) to pay to the Commission within 3 months, or such further period as the Commission may agree, after the agreement is made such amount as the Commission by that agreement may specify by way of capital contribution, being the amount which the Commission considers will be required in order to enable the Commission to extend the supply system beyond the normal point of supply in order to effect the supply requested;
- (c) to pay to the Commission a maintenance provision, being the amount which the Commission considers will be required for the purposes of meeting the costs of depreciation or replacement, maintenance, administration, and incidental matters relating to the works in question, either—
 - (i) by negotiation with the Commission, by way of a capitalized amount calculated by reference to the capital contribution which in the opinion of the Commission will thereafter produce a revenue sufficient to make provision for such costs; or

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

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

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

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

- (a) refund the whole or part of the amount of any moneys paid by way of capital contribution, or by way of a capitalized amount paid pursuant to subsection (1) (c) (i); or
- (b) reduce or discontinue the amount of the instalments referred to in subsection (1) (c).

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

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

- (a) if any moneys due to the Commission for energy so supplied by it remain unpaid for not less than 7 days after they become due; or
- (b) if the applicant fails to comply with the terms and conditions of any agreement made by him with the Commission pursuant to subsection (1),

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

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

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

- (a) making contributions, up to such amount, in such manner, and at such intervals, as may be prescribed, towards the cost of the provision of suitable works;
- (b) the bulk purchase and individual sale of generating units and approved apparatus;
- (c) the provision of advisory and technical services,

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

[Section 61 amended by No. 101 of 1981 s. 15; No. 24 of 1986 s. 25.]

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

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

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

(3) Where the Commission has supplied energy to any premises, or any part of any premises separately so supplied, and the charges are not met by a person other than the owner of those premises then unless the name of the occupier was notified to the Commission prior to the rendering of

account for charges in respect of the premises, those premises, or that part of those premises, may for the purposes of this Act and the recovery of charges be deemed to have been owner occupied.

(4) Where a person gives to the Commission not less than 5 days notice of his intention to vacate any premises and does vacate those premises at the time specified he shall not be liable for any charges incurred in respect of those premises by a subsequent occupier, and where a person proposes to occupy any premises and arranges with the Commission for the charges in respect of the premises incurred prior to the occupation by him to be ascertained he shall not be liable in respect of the charges for the period prior to his entry into occupation, but where the Commission is not so enabled to ascertain the liability for charges then for so long as the supply is continued each person who has occupied or does occupy the premises since last the Commission was so enabled or an account was paid shall be jointly and severally liable for the payment of unpaid charges, but the Commission shall not be entitled to recover in the aggregate more than the sum of the unpaid charges and shall so far as is practicable endeavour to recover from each consumer the fair proportion of the total liability.

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

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

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

(8) Where, whether or not a contract in writing applies, in relation to any premises a consumer fails to pay any charges payable within not less than 7 days subsequent to the due date, the Commission may terminate the supply of energy, of whatever kind, to those premises and finalize the account and may refuse to re-connect that supply, but may re-connect the supply on payment of the prescribed fee upon the amount due being received, and where the Commission is satisfied that a consumer has failed to pay any charges in respect of premises previously occupied by him and for which he remains liable the Commission may terminate the supply of energy, of whatever kind, to any other premises in the occupation of that consumer.

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

(10) For the purpose of—

- (a) covering in whole or in part the costs of any property of the Commission installed on the premises of any consumer in so far as he derives benefit therefrom; or
- (b) securing the payment of any moneys due or likely to become due (other than in respect of charges based on the domestic tariff) to the Commission from a person to whom or on whose behalf energy is supplied on any premises,

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

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

- (a) where the accounting period is 2 months or less, twice the average amount of the account taken over the 3 preceding accounting periods;
- (b) where the accounting period exceeds 2 months, one and one-half times the average amount of the account taken over the 3 preceding accounting periods; and
- (c) in the case of a new supply, or of an account where it is anticipated upon reasonable grounds that the consumption will be substantially increased, or where the accounting period is or has been of varying duration, or in any other case, such amount as the Commission determines having regard to the methods of assessment set out in paragraph (a) and paragraph (b) unless or until one of those paragraphs becomes applicable.

(12) Where—

- (a) a deposit is made or any other security is given in excess of the amount applicable pursuant to subsection (11), the amount required by the Commission shall be re-assessed;
or
- (b) a deposit is made or any other security is given that the Commission considers to be no longer appropriate for the purpose for which it was required, the Commission shall re-assess whether a deposit or other security should be required for that purpose and, if so, the amount of the deposit or other security to be required,

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

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

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

(15) Where any moneys are held by the Commission for or on behalf of any person or body, whether by way of deposit or otherwise, and such moneys become refundable but the person entitled to the refund can not be traced without undue expense, the amount so to be refunded shall be dealt with as though it was money held by the Commission as a company within the meaning of the *Unclaimed Moneys Act 1912*.

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

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

[Section 62 amended by No. 101 of 1981 s. 16.]

Apportioned accounts

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

Meters

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

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

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

- (b) cause a meter or other device, which may be additional to any meter placed for the purpose of ascertaining the extent, characteristics, or value of the supply, to be placed so as to serve the premises for the purpose of regulating the supply, or the period of supply or the nature or extent of the supply;
- (c) at all reasonable times without prior notice by any officer or servant of the Commission enter upon the premises in so far as is necessary and there execute all works and do all acts needed to inspect, read, examine, test, maintain, and repair any meter or any apparatus, works, or device belonging to the Commission, and remove or replace the same.

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

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

[Section 64 amended by No. 24 of 1986 s. 26.]

Metered accounts

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

(2) Where in the opinion of the Commission, or of any officer or servant of the Commission thereby authorized, any such meter is not registering the supply, or is registering incorrectly or otherwise is not in proper order, or did not correctly register during any portion of any particular accounting period, then the extent and value of the energy supplied during the accounting period affected thereby shall, where practicable, be computed by reference to the results obtained from a test

of the meter but, if that is not practicable, may be assessed pursuant to subsection (3) by the Commission regardless of the reading ascertained by reference to the meter.

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

- (a) a test carried out in a manner approved by the Commission; or
- (b) the extent recorded by measure in relation thereto for the corresponding period of the preceding year, regard being had to any known variation in demand; or
- (c) the extent recorded by measure in relation thereto for the immediately preceding accounting period, regard being had to any known variation in demand; or
- (d) if no such method is appropriate, such other basis as the Commission determines,

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

(4) Where as the result of a computation made pursuant to subsection (2) following the test of a meter, or of an assessment made pursuant to subsection (3), it is shown that the charges made were not what they should have been, the charges shall be adjusted, and shall be credited or may be recovered, as the case requires, in respect of the period which has elapsed since the last date to which the immediately preceding account related but not in respect of any earlier period.

(5) Where a meter is in proper order but it is shown that the meter has been read incorrectly, or that the results of any reading have been incorrectly computed or incorrectly applied, so that the statement of account is inaccurate and the charges made were not what they should have been, the charges shall be adjusted so as to present as near as may be a proper accounting for a period of not more than 12 months prior to the date of the discovery of the inaccuracy, and shall thereupon be credited or may be recovered as the case requires, but no such adjustment shall be made or allowed in respect of any earlier period unless the Commission otherwise agrees.

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

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

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

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

(9) for the purposes of this section “accounting period” means—

- (a) the period between any 2 consecutive meter readings made for the purpose of preparing and submitting accounts for energy supplied; or
- (b) the period covered by an account submitted upon the basis of an assessment in respect of that period of time,

whichever may result in the lower charge.

Meter tests

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

(2) A meter shall be deemed not to be in proper order if, on being tested, it is found to register in such a manner that the limits of error prescribed in relation to meters of the class to which it belongs are exceeded.

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

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

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

- (a) on the basis of a comparison of the performance of the meter under consideration with test calibration equipment provided or approved by the Commission; or
- (b) on the basis of testing the meter under consideration by a testing laboratory approved by the Commission,

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

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

Circumventing meters

67. (1) Where the Commission supplies any energy, any unauthorized person who—

- (a) alters the record produced by or the recording apparatus of any meter relating to that supply by any means;
- (b) prevents that meter from operating or registering;
- (c) by any means causes that meter to operate or register otherwise than in proper order;
- (d) interferes in any way with any part of any service apparatus, or any seal affixed thereto; or
- (e) by any means obtains a supply of energy or enables a supply of energy to be obtained from the Commission in a manner that circumvents or prevents the due regulation or recording of that supply by the meter,

is guilty of an offence.

Penalty:

- (a) in the case of a natural person \$2 000 or imprisonment for 6 months, or both such fine and imprisonment; and
- (b) in the case of body corporate \$10 000.

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

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

(4) Where upon any complaint brought pursuant to subsection (1) in relation to any premises or any part of those premises it is shown—

- (a) that there was present in or about any relevant service apparatus any means enabling, or capable of enabling, any offence alleged in the complaint to be committed; and
- (b) that the alleged offender is the person liable to the Commission for the payment of the charges relating to those premises or that part of those premises,

an inference exists that the offence was committed and that the offence was committed by the alleged offender, but the alleged offender shall be at liberty to show that the inference in the particular circumstances

should not be so drawn, and in considering the weight to be given to the evidence the Court shall regard such an inference as raising a presumption of law.

[Section 67 amended by No. 101 of 1981 s. 17; No. 24 of 1986 ss. 27 and 42.]

Liability for charges, and damage to apparatus

67A. (1) For the purposes of this section, unless the name of the occupier of the premises or of the relevant part of the premises has been notified to the Commission, the person who is liable under this Act to pay the charges for the supply of energy to the premises or that part of the premises (as the case may be) or, if there be no such person, then the owner of the premises, shall be deemed to be their occupier.

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

[Section 67A inserted by No. 24 of 1986 s. 28.]

Inspectors

68. (1) The Commission may appoint a person to be an inspector for the purposes of this Act if that person is—

- (a) an officer or servant of the Commission;
- (b) an employee of a party to—
 - (i) a contract entered into with the Commission; or
 - (ii) an Agreement to which the State is also a party and which, or the execution of which, is or has been ratified, authorized or approved by an Act,

being a contract or Agreement with respect to the production, manufacture, generation, conversion, requisition, provision, distribution, supply, sale or use of energy;

- (c) the holder of qualifications, or has experience, prescribed as required for inspectors of that classification; or
- (d) a person who in the opinion of the Commission has special experience or qualifications appropriate to the particular appointment.

(2) The Commission may appoint under this section any person eligible for appointment under subsection (1) to be an inspector for the purpose of any other Act administered by the Commission, and a person so appointed shall be deemed also to have been appointed as an inspector under such other Act.

(3) Every person appointed to be an inspector pursuant to subsection (1) or subsection (2) shall be furnished with a certificate in the prescribed form specifying his classification and an inspector shall produce that certificate whenever requested so to do by any person apparently having the charge of any land, premises, or thing in respect of which he has exercised or is about to exercise any of his powers.

(4) By-laws made under this Act may make provision as to the qualifications required by persons who may be appointed as inspectors, for the classification of inspectors by reference to the form of energy to which their powers relate, their duties or otherwise, and for the limitation of the powers of an inspector by reference to that classification, but unless the classification of an inspector imposes a limitation to the contrary the powers of an inspector shall extend throughout the State for the purposes of any Act under which he is or is deemed to be appointed to and in relation to any supply system, energy works, meters, apparatus, or consumer installations upon any land, premises, or thing to which the form of energy to which his powers relate is supplied or on, over or under which any works related to that form of energy are situated, or on which it is used, by whomsoever supplied, operated, controlled or used (including the Crown or a Crown instrumentality).

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

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

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

any land, premises or thing in respect to which the inspector is authorized to exercise any power to furnish such reasonable access to apparatus, facilities and other assistance and relevant information as he is capable of furnishing to that inspector.

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

- (a) enter without prior notice on or into any land, premises or thing where he has reason to believe that the generation, transmission, distribution, supply, or use of the form of energy to which his powers relate is or may be taking place, or where any plant, works or apparatus relating thereto is or may be situated, irrespective of the source or origin of the energy, and may take with him such persons as he thinks competent and necessary to assist him in making any inspection or examination;
- (b) inspect all supply systems, generating works, distribution works, service apparatus, consumer installations, and all other works, plant, installations, or apparatus used or intended to be used for or in connection with the generation, transmission, distribution, supply or use of the form of energy to which his powers relate;
- (c) make such inspection, examination, sampling, inquiry and tests, and ask such questions, and request such information and production of such licences, records or other documents, as he considers necessary or desirable, and to the extent required, to ascertain—
 - (i) whether the provisions of this Act, or any other Act to which his powers extend, or any requirement made under or pursuant thereto, are being or have been complied with;
 - (ii) whether any condition, restriction, or limitation is being or has been observed;
 - (iii) the cause, results and other aspects of any failure of any system, works, or apparatus, including the damage and other matters arising therefrom or suspected of being related thereto; or
 - (iv) the cause of any death, personal injury or damage to property which is or may be attributable to the form of energy to which his powers relate,and to evaluate the efficiency of those requirements, systems, works, apparatus and other matters having particular regard to aspects of safety; and
- (d) exercise such other authorities and discretions and perform such duties as may be prescribed.

(9) Where an inspector having made an inspection is of the opinion that any installation, apparatus or other thing which he is empowered to inspect—

- (a) does not conform with the requirements of this Act or of any other Act to which his powers extend; or
- (b) is unsafe,

he may by an order in writing prohibit the use of any such thing either absolutely or except subject to such conditions, restrictions or limitations as he shall specify in that order and may cause the supply of energy to any such thing or to the premises to be terminated until such time as an inspector is satisfied that such thing so conforms and is safe.

(10) A person aggrieved by an order given by an inspector pursuant to subsection (9) may appeal in the prescribed manner to the Commission and the decision of the Commission in relation to that appeal shall be final, but notwithstanding the right of appeal hereby conferred the order of the inspector shall take effect according to its tenor until the appeal is determined or the Commission otherwise authorizes.

[Section 68 amended by No. 101 of 1981 s. 18; No. 24 of 1986 s. 29.]

Incriminating statements

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

- (a) shall not be admissible in evidence in any prosecution against that person for any offence other than the offence of contravening or failing to comply with the provisions of section 70 or section 79; and
- (b) if recorded, in writing or otherwise, shall set out the fact of the objection having been made.

Information to be furnished

70. (1) For the purpose of obtaining information necessary for—

- (a) the appreciation of the energy resources or requirements of the State, or the economic or other relevant trends affecting energy or the use of energy;
- (b) the provision of a statistical service for industry; or
- (c) the use of the Commission, government departments and instrumentalities in the exercise of their functions,

the Commissioner, a Deputy Commissioner or the Secretary may by notice in writing served on any person require that person to furnish to the Commission, in the form and manner and within the time specified in that notice, such periodical or other returns, estimates or information, as to the quantity, quality, source or supply of any energy held or required by that person in the State or imported into the State by that person, and as to facilities available to or held by that person for storing or

distributing energy, and as to any works or apparatus utilized by him or available for the utilization of energy, as appear to the Commissioner, a Deputy Commissioner or the Secretary to be required for the exercise of the functions of the Commission under this Act and as may be specified in that notice.

(2) The Commissioner, a Deputy Commissioner or the Secretary may for the purposes of this Act, by notice in writing served on the occupier of any premises, require the occupier to furnish to the Commission, within 7 days or such longer period as may be specified in the notice, information or any specified information as to any apparatus, equipment, industrial plant, or process utilizing energy in or on the premises.

[Section 70 amended by No. 24 of 1986 s. 30.]

Disclosure of information

71. (1) Returns as to energy held or required, or other information obtained under, or as a result of information obtained under, section 70 shall not, without the consent of the person carrying on the business to which the information relates, be disclosed by the Commission otherwise than—

- (a) in the form of a summary of similar returns or information furnished by or obtained from a number of persons, being a summary so framed as not to enable particulars relating to any individual business to be ascertained; or
- (b) to, or to an officer of, the Commission or the Minister for the purposes of this Act.

(2) A person who, when required to give any information to the Commission under section 70, knowingly makes any false or misleading statement in relation thereto, or in relation to any investigation or inquiry made in accordance with that section, commits an offence against this Act.

[Section 71 amended by No. 24 of 1986 ss. 31 and 42.]

Secrecy and unauthorized use of information

72. (1) Subject to subsection (11), a person who is or has at any time been—

- (a) appointed as—
 - (i) a member of the Commission;
 - (ii) a member of a committee appointed by the Commission;
 - or
 - (iii) a member of a committee or body of persons established by the Minister in respect of energy related matters;
- (b) engaged as an officer or servant of the Commission; or

- (c) authorized under this Act, or any other Act administered by the Commission, to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission,

shall not make a record of, or divulge to any other person either directly or indirectly, any information acquired by him or to which he has gained access by reason of having been so appointed, engaged or authorized, except for the purpose of, and to the extent necessary for, the performance of official duties or the performance or exercise of a function or power of the kind referred to in paragraph (c), or where, in the case of information to which section 70 applies, the prior permission of the Minister or of the person owning or operating the business to which that information relates has been obtained, and shall not make use of any such information (whether or not section 70 applies) for any purpose other than the performance of official duties or the performance or exercise of the function or power.

Penalty:

- (a) in the case of information to which section 70 applies \$2 000, or imprisonment for 12 months, or both such fine and imprisonment; and
- (b) in any other case \$1 000.

(2) A person who—

- (a) is a person to whom subsection (1) applies;
- (b) carries on, or has at any time carried on, in common with the Commission or on behalf of the Commission any venture, enterprise or investigation;
- (c) acts, or has at any time acted, in a professional capacity for, or in a business relationship with, or as agent of, the Commission; or
- (d) is, or has at any time been an officer or employee of, or otherwise associated with or under the control of, a person to whom or which this subsection refers, or acts or acted on behalf of such a person in relation to any matter relating to the affairs of the Commission,

shall not, unless subsection (11) applies, divulge either directly or indirectly, whether in the State or elsewhere—

- (e) to any person; or
- (f) in, or for the purposes of, any proceedings or matter before any court,

any information of a kind to which subsection (5) refers.

Penalty: \$5 000, or imprisonment for 2 years, or both.

(3) Where a person of a kind to whom or which subsection (2) refers divulges to another person for the purposes of this Act information of a kind to which subsection (5) refers that other person and any employee or person associated with or under the control of that other person, if not

a person of a kind to whom or which subsection (2) refers, shall be deemed, in relation to that information, also to be a person to whom subsection (2) applies.

(4) Information of a kind to which subsection (5) refers—

- (a) shall be deemed to be property, held in trust by the Commission on behalf of the Crown in right of the State;
- (b) in the public interest, is required to be dealt with by a person who obtains access to it as property held in trust for the Commission; and
- (c) shall not be divulged by any person who obtains access to it otherwise than in accordance with the public interest,

and in relation to such information any question as to what constitutes the public interest shall be determined by the Commission.

(5) The information to which this subsection refers is any information regarding energy (from whatever source that energy is or is to be derived) being energy which is or is to be obtained, supplied, distributed or utilized by the Commission whether in the State or elsewhere, in so far as that information relates to—

- (a) the source, cost or selling price of the energy which was, is or is to be sold to or supplied by the Commission;
 - (b) the obligations of the Commission, or of any person dealing with the Commission, as to any matter to which paragraph (a) refers, under any former, existing or future contract or agreement to which the Commission was, is or proposes to be a party and which relates to a dealing in, or the production or consumption of, a quantity of energy in excess of 10 terajoules (or, if the contract or agreement relates to a period of more than 12 months, in excess of a rate of 10 terajoules in any 12 month period);
- or

- (c) any negotiations relating to any such matter,

being information obtained from, or in the course of any association with, the Commission or a person to whom or which subsection (2) applies or is deemed to apply.

(6) Where a contravention of this section committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of; or
- (b) to be attributable to any failure to take all reasonable steps to secure compliance by the body corporate with this section on the part of,

any director, manager, executive officer, secretary or other person concerned in the management of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence and is liable to be proceeded against and punished accordingly.

(7) Where, on the application of the Commission, it appears to the Court that a person—

- (a) has committed an offence under this section; or
- (b) is about to do an act that, if done in the State, would be such an offence,

the Court may make such order or orders as it thinks fit for the purpose of securing compliance with this section, including an order directing a person to do or refrain from doing a specified act, and any ancillary order deemed to be desirable in consequence.

(8) Where an application is made to the Court for an order under subsection (7), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(9) The Court may rescind, vary or discharge an order made under subsection (7) or (8) or suspend the operation of such an order.

(10) The Court may, before making an order under subsection (7), direct that notice of the application be given to such persons as the Court thinks fit or direct that notice of the application be published in such manner as the Court thinks fit, or both, and in the case of an application for an interim order under subsection (8) may dispense with any requirement for the giving of notice.

(11) Nothing in this section precludes a person from—

- (a) producing a document to a court in the course of—
 - (i) criminal proceedings;
 - (ii) proceedings under this Act or any other Act administered by the Commission a prescribed Act or a prescribed Commonwealth Act; or
 - (iii) proceedings to enforce, or arising out of, any contract or agreement to which subsection (5) (b) or any Agreement to which section 5 (1) (b) applies;
- (b) divulging to a court in the course of any proceedings referred to in paragraph (a) any information coming under his notice in the performance of his official duties, or the performance of a function or the exercise of a power, under this Act or any other Act administered by the Commission or a prescribed Act;
- (c) producing a document or divulging information to a person where—
 - (i) it is, in the opinion of the Commission, in the public interest that the document be produced or the information be divulged; or
 - (ii) the Minister so requires;
- (d) producing a document or divulging information that is required by any other Act to be so produced or divulged; or

- (e) producing a document, or divulging information, that is relevant to those proceedings in any industrial tribunal established under an Act or Commonwealth Act.

(12) In this section—

“information” includes any record relating to information;

“record” includes any document, accounts or accounting records and any other method of compiling information however prepared, recorded or stored;

“to divulge” includes to communicate by any means whatsoever, or to produce or furnish any record, or any copy of or extract from a record;

“to produce” includes to permit access to, obtain for or make available,

and a reference—

- (a) to “the Court” means the Supreme Court;

but

- (b) to “a court” includes any tribunal, authority, or arbitrator, and any person who may receive or require the giving of evidence or the production of documents or other records,

and cognate expressions shall be construed in accordance with the expressions defined.

[Section 72 inserted by No. 24 of 1986 s. 32.]

Trade secrets

73. (1) Where under this Act a person is obliged to supply information to the Commission, or to any member of the Commission, or otherwise on behalf of the Commission, and that person is of the opinion that compliance with the obligation will result in the disclosure of a trade secret, he may within 7 days declare in writing to the Minister that he objects to the obligation in so far as it relates to that trade secret.

(2) For the purposes of this section the expression “trade secret” includes any knowledge or information relating to technology, marketing, energy, or energy resources or reserves, or as to the business of the person objecting, that might reasonably be expected adversely to affect the business or interests of that person if disclosed to any other person.

(3) On receipt of an objection made under subsection (1) the Minister may, after such investigation and inquiry as he thinks fit, by notice under his hand exempt the person concerned from the obligation either generally in relation to the trade secret alleged or to such extent as the Minister may therein specify.

(4) Where the Minister refuses to exempt a person, either generally or except to such extent as he may specify under subsection (3), from the obligation to supply information, the Minister shall cause notice in

writing of his decision to be served on the person objecting and that person may within 21 days of receiving that notice appeal to a Judge against the decision of the Minister.

(5) An appeal made under subsection (4) to a Judge shall be heard in chambers, and the Judge may—

- (a) reverse the decision of the Minister; or
- (b) confirm the decision absolutely or upon such conditions, which may include conditions intended to protect the business or interest of the person objecting, as the Judge thinks fit,

and may make such order in relation thereto and as to the costs of, and incidental to, the appeal as he thinks fit.

(6) An order made under subsection (5) may include provisions—

- (a) requiring the person objecting to comply with the obligation only to such extent or in such manner as is specified in the order;
- (b) prohibiting the Commission and every person who is, becomes or has been a member of the Commission, or other employee, servant or agent of the Minister, the Commission, or any other person named therein, from disclosing any information relating to the trade secret supplied in compliance with the obligation except in the circumstances specified in the order; or
- (c) prohibiting, where any information so supplied is subsequently adduced in evidence in any proceedings, the publication of that evidence,

and effect shall be given to any order so made.

[Section 73 amended by No. 24 of 1986 s. 42.]

Malicious damage

74. (1) Any person who unlawfully and maliciously—

- (a) destroys or damages any supply system, or any generating works or distribution works, or any other undertaking, works or other thing being the property of or under the control or management of the Commission or which is the subject of an Agreement of the kind referred to in section 5 (1) (b), or any part of any such thing; or
- (b) interrupts, impedes or obstructs the transmission, distribution or supply of energy therefrom; or
- (c) attempts to do any of those things,

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

(2) Where an officer or servant of the Commission, or any other person, has reasonable grounds to believe that a person has contravened subsection (1) he may, without warrant other than this subsection, apprehend the person and deliver him to a police officer or convey him before a justice to be dealt with according to law.

Unlawful damage generally

75. (1) Any person who wilfully—

- (a) alters, interferes with, defaces or removes any trigonometrical station, peg, mark, pole, or works or other thing associated with any survey or with the siting of any energy undertaking or works carried out pursuant to this Act;
- (b) damages or extinguishes any light provided, or takes down, alters or interferes with any bar, chain, fence, hoarding or other thing erected or placed for guarding against any accident on or for the protection of any undertaking, works or thing the property of or under the control or management of the Commission;
- (c) interrupts, impedes or obstructs the transmission, distribution or supply of energy by the Commission;
- (d) removes, defaces, damages, alters or interferes with any notice, sign, order or written instruction attached by or with the authority of the Commission to any undertaking, works or thing the property of or under the control or management of the Commission or to any service apparatus or consumer installation; or
- (e) without the approval in writing of the Commission affixes any poster, sign, advertisement or notice to any undertaking, works or thing the property of or under the control or management of the Commission or makes any inscription, drawing or mark thereon,

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

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

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

(4) Any person who without authority, or without having given to the Commission the notice (if any) required by or under this Act or any other Act administered by the Commission of his intention, so to do opens any ground so as to uncover or expose any works or other thing the property of or under the control or management of the Commission commits an offence and is liable on conviction to a fine not exceeding \$2 000.

[Section 75 amended by No. 24 of 1986 ss. 33 and 42.]

Unlawful entry

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

[Section 76 amended by No. 24 of 1986 s. 42.]

Restraint of persons

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

Persons may be apprehended

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

Obstruction of officers etc.

79. (1) A person who without reasonable excuse wilfully obstructs the Commission or any inspector, or any other person to whom section 68 (6) applies, lawfully acting in the execution of this Act or in pursuance of any regulation or by-law made under this Act, commits an offence and is liable on conviction to a penalty not exceeding \$2 000.

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

[Section 79 amended by No. 24 of 1986 s. 42.]

Offences generally

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

General penalty

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

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

Recovery of moneys

82. (1) The Court by or before which a person is convicted of an offence against section 74, or against section 75, may, whether or not it imposes any other punishment, order that the person convicted pay compensation to the person or body named in that order for the costs of any repairs rendered necessary or any loss of property suffered or expenses incurred through or by means of the offence, and upon a certified copy of the order under the hand of the officer having the custody of the record of the order being delivered to the person or body named in the order and registered by that person or body in the Local

Court nearest to the place where the order was made the order may be enforced in the same way as if it had been a judgment of that Local Court.

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

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

- (a) any sum recovered pursuant to an order made under subsection (1) shall be taken into account in the assessment of any damages awarded; and
- (b) the record of any criminal proceedings under this Act in relation to an offence shall be admissible as *prima facie* evidence of the matters determined in those criminal proceedings and relevant to the issues.

Prosecution expenses

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

Power to institute and conduct proceedings

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

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

(3) In all proceedings before justices or in any court of petty sessions any officer of the Commission appointed by the Commissioner in writing under his hand for that purpose may represent the Commission in all respects as though such officer was the party concerned.

Summary proceedings

85. (1) Subject to section 74 (1) all proceedings for offences under this Act, or for any breaches of the regulations or by-laws made under this Act, may be instituted and dealt with summarily before justices.

(2) The *Justices Act 1902*, shall have effect in relation to proceedings under this Act, in so far as applicable, save that a complaint for an offence under this Act may be made at any time within 2 years from the time when the matter of complaint arose.

Liability for the acts of others, bodies corporate, etc.

86. (1) A person who employs, causes, procures, or knowingly permits, or suffers, or connives or conspires with, another person to contravene any provision of this Act commits an offence and may be dealt with as if the provision had been contravened by him.

(2) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2a) Where the affairs of a body corporate are managed by its members, subsection (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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

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

[Section 86 amended by No. 24 of 1986 s. 34.]

Proof of certain matters

87. (1) In any prosecution or legal proceeding under this Act instituted by or under the direction of the Commission, unless evidence to the contrary is given in relation to the matter, no proof shall be required of any of the matters following—

- (a) the constitution of the Commission;
- (b) any order of the Commission to prosecute;

- (c) the particular or general appointment of the Secretary or any other officer of the Commission to take proceedings against any person;
- (d) the powers of the Secretary or other officer of the Commission to prosecute;
- (e) the appointment of a person as the Commissioner, an Associate Commissioner, a Deputy Commissioner, an Assistant Commissioner, the Secretary, or any other officer of the Commission;
- (f) the presence of a quorum at any meeting at which any order is made or any act is done by the Commission.

(2) The production of—

- (a) a copy of the *Government Gazette* containing any regulation, by-law, rule, order or notice purporting to have been made or given under this Act; or
- (b) a copy purporting to be a true copy of any such regulation, by-law, rule, order or notice certified as such under the hand of the Secretary of the Commission,

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

(3) Where a record is produced and identified as the minutes, or an excerpt from, the minutes of the Commission, that record shall, until evidence is given to the contrary, be *prima facie* evidence of the matters so recorded having taken place, and it shall not be necessary to prove—

- (a) that the meeting to which the record relates was duly convened;
- (b) that other requirements relating to the regularity of the meeting were complied with; or
- (c) that the minutes were confirmed, and that the signature purporting to be that of the person authorized to sign the confirmation of the minutes is in fact his signature and that he was so authorized.

(4) The provisions of this section—

- (a) are in addition to and not in derogation of those of the *Evidence Act 1906*; and
- (b) do not render valid a regulation or by-law which has been disallowed under section 36 (2) of the *Interpretation Act 1918*², or which is invalid.

[Section 87 amended by No. 101 of 1981 s. 19; No. 24 of 1986 s. 42.]

Evidence of documents issued by the Commission

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

(2) In all proceedings in which the publication or service, or the content of, any notice, order, or other document required or authorized to be published or served under this Act has to be proved, then, until evidence to the contrary is shown, the document and its due publication or service may be sufficiently proved by the production of a purported copy bearing a certificate under the hand of the Secretary that the copy is a true copy of the original and that the original was published or served in the manner specified in that certificate.

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

[Section 88 amended by No. 101 of 1981 s. 20; No. 24 of 1986 ss. 35 and 42.]

Assistance by or to the Public Service, and other administrative arrangements

89. (1) The Commission may, with the approval of the Minister concerned and upon such terms and conditions as may be mutually arranged with such Minister, for the purposes of this Act make use, either full time or part time, of the services of any officer or servant employed in the Public Service of the State or otherwise in the service of the Crown in the State, and may by arrangement with the Minister charged with the administration of any other Act make available for the purposes of that other Act the services of any officer or servant of the Commission.

(2) The Commission may engage under contract for services such professional and technical or other assistance as may be necessary to enable the Commission to carry out effectively its functions under this Act.

(3) The Commission may enter into arrangements with—

- (a) a Minister of State of the Commonwealth, or a Minister of any State of the Commonwealth, or any department of the public service, instrumentality or authority of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory, or any person holding office under an Act, an Act of another State or of the Northern Territory, or a Commonwealth Act, relevant to energy matters; or

- (b) a university or other tertiary institution, or any other body or person having relevant specialized knowledge, experience, or facilities,

with respect to the conduct of any investigation, study or research that may be necessary or desirable for the purposes of this Act.

Commission officers, servants, apprentices, etc.

90. (1) The Commission may appoint and employ such officers and other servants as it may from time to time consider are necessary to it for the purposes of this Act, and shall have, and be deemed always to have had, the power also to employ, remunerate and train apprentices, cadets, students, and other trainees and, subject to the right of appeal given by section 91, may suspend, dismiss, fine or reduce to a lower class or grade any such officer, servant or other person.

(2) Where a person who has not been appointed or employed pursuant to subsection (1)—

- (a) is appointed to hold office for the time being as Deputy Commissioner; or
- (b) is, or before the coming into operation of section 21 of the *State Energy Commission Amendment Act 1981*¹ was, appointed to hold office for the time being as an Assistant Commissioner or as Secretary to the Commission,

that person is deemed thereby to be, or to have been, appointed as an officer of the Commission pursuant to subsection (1), as the case may be.

[Section 90 amended by No. 101 of 1981 s. 21.]

Right of appeal of officers, etc.

91. (1) Any person, who, being permanently appointed or employed by the Commission is—

- (a) fined; or
- (b) reduced to a lower class or grade; or
- (c) suspended or dismissed,

may in the prescribed manner appeal to an Appeal Board constituted pursuant to section 92.

(2) For the purposes of this section a person is deemed not to be “permanently appointed or employed” unless he has been appointed or employed by the Commission for a continuous period of not less than one year.

Appeal Board

92. (1) For the purposes of hearing and determining any appeal made pursuant to section 91, an Appeal Board shall consist of—

- (a) a stipendiary magistrate, who shall be Chairman of the Appeal Board, and who shall be appointed by the Governor, or, in the absence of that member, a person appointed by the Governor to

act as the deputy of that person and who shall have the powers and duties of the Chairman of the Appeal Board whilst so acting as deputy;

- (b) one person who shall be appointed by the Commission, or, in the absence of that member, a person appointed in like manner to act as his deputy; and
- (c) one person, to be known as an elective member of the Appeal Board, who shall be elected by and from the employees of that branch of the staff of the Commission in which the appellant is or was employed, or, in his absence, a person elected in the like manner to act as his deputy, or, in the absence of both the elective member and his deputy, a person elected in the like manner to act as a substitute for the elective member.

(2) For the purposes of the election to the Appeal Board of an elective member, the staff of the Commission shall be taken to be divided into a salaried staff branch, a wages employees branch, and such other branches as may be prescribed, and the election shall be conducted from amongst such persons and in such manner as is prescribed.

(3) The ballot to ascertain the persons elected to be the elective member in respect of each branch shall be taken on the preferential system and in the manner prescribed by regulations.

(4) If any question or dispute arises as to the regularity or validity of any ballot for the purposes of this section or the voting thereat such question or dispute shall be determined by the Minister in such manner as he thinks fit, and his decision shall be final.

(5) Immediately upon the election of an elective member of the Appeal Board, the Commission shall take such necessary action in regard to that elective member's employment as will ensure that he is available to attend the relevant sittings of the Board.

(6) Subject to section 3, ordinary elections of elective members shall be held at intervals of 3 years, and an elective member shall hold office for a term of 3 years, save that where the seat of an elective member becomes vacant within 3 months before an ordinary election the member elected to fill the vacancy shall continue in office until the end of the next succeeding term of 3 years.

(7) If any elective member of the Appeal Board—

- (a) dies; or
- (b) by notice in writing addressed to the Chairman of the Appeal Board resigns his office; or
- (c) ceases to be an employee of the Commission; or
- (d) ceases to be an employee of that branch of the staff of the Commission in which he was employed when he was elected,

his seat shall become vacant, and a successor shall be elected who shall, subject to the provisions of subsection (6), hold office for the residue of the period during which his predecessor would have held the same if he had remained a member of the Appeal Board.

(8) The Chairman, and the member appointed by the Commission, shall hold office during the pleasure of the Governor and of the Commission respectively.

(9) Notice of every appointment or election of a member of the Appeal Board shall be published in the *Government Gazette*.

[Section 92 amended by No. 101 of 1981 s. 22.]

Appeal Board procedure

93. (1) Notice of every appeal to the Appeal Board shall be lodged with the Commission within 14 days after the date on which the appellant is informed by or on behalf of the Commission of the decision of the Commission appealed against, and the appeal shall be heard within 30 days from the date of notice being so lodged.

(2) If the hearing of the appeal is not commenced within the period of 30 days required by subsection (1), the punishment appealed against shall be revoked, and the appellant shall be reimbursed any loss of salary or expenses incurred.

(3) If the hearing of the appeal is commenced within the period required by subsection (1) the Appeal Board may allow any adjournment thereafter.

(4) The decision of any 2 members of the Appeal Board shall be the decision of the Board.

(5) In relation to any appeal pursuant to section 91—

- (a) the Appeal Board may admit evidence taken at any inquiry held by the Commission at which the appellant was present and had an opportunity of hearing the evidence and of giving evidence;
- (b) evidence of witnesses resident more than 30 kilometres from the place of the sitting of the Appeal Board may be taken by affidavit or otherwise as prescribed;
- (c) any member of the Appeal Board may administer an oath to or take the affirmation of any witness, and the appellant shall be entitled to have the witnesses examined on oath or affirmation; and
- (d) the Commission or any person concerned in an appeal may be represented by counsel, a solicitor, or an agent, or by an officer or servant of the Commission but, if the appellant so wishes, he may instead be represented by the secretary of the industrial union to which the appellant belongs.

(6) Subject to this Act and in so far as is consistent with the exercise of a judicial function an Appeal Board may regulate its own procedure.

Witnesses at appeals

94. (1) An Appeal Board constituted under section 92 has power to issue summonses for the attendance of witnesses and the production of documents.

(2) Any person who does not appear before the Appeal Board pursuant to a summons issued and served upon him under this section after payment or tender to him of reasonable travelling expenses according to the prescribed scale, and does not assign some reasonable excuse for not so appearing, or who appears and refuses to be sworn or affirmed or to be examined, or to produce for the inspection of the Appeal Board any document which by such summons he is required to produce is guilty of an offence.

Penalty: \$500.

(3) In addition to travelling expenses a person attending as a potential witness before an Appeal Board shall be entitled to recover from the person at whose instance or by whom he was summoned or requested to attend an amount to be fixed by the Appeal Board according to the prescribed scale.

[Section 94 amended by No. 24 of 1986 s. 42.]

Powers of Appeal Board

95. (1) An Appeal Board constituted under section 92 in the exercise of its judicial function may confirm, modify, or reverse any decision of the Commission appealed against, or make such other order thereon, as it thinks fit, and the decision of the Board shall be final and shall be given effect to by the Commission.

(2) An Appeal Board may fix the costs of any appeal and direct by whom and in what proportions they shall be payable, and in every case costs shall be awarded against an appellant whose appeal that Appeal Board considers is frivolous.

(3) All costs awarded against the appellant shall be recoverable as a debt due to the Commission.

(4) All costs awarded to an appellant shall be payable by the Commission.

Rules as to staff

96. Subject to this Act and to any other relevant Act, and to any award or industrial agreement, the Commission may make rules for or with respect to the powers and duties, conditions of employment, control, supervision, safety, guidance, regulation and discipline, retirement benefits, and welfare of its officers and other servants or trainees.

Former City of Perth Superannuation Scheme

97. (1) The superannuation scheme for the benefit of officers and workmen taken over by the Commission from the City of Perth pursuant to section 7 of the *City of Perth Electricity and Gas Purchase Act 1948*, hitherto constituted and maintained by the Commission pursuant to section 29A of the *State Energy Commission Act 1945-1978*, shall, subject to the provisions of subsection (3), be preserved and continued by the Commission.

(2) The superannuation scheme referred to in subsection (1) shall be administered in accordance with the provisions of the Schedule to this Act, and the Commission may pay out of its ordinary revenue all contributions which it may be required to make to the scheme.

(3) When all the liabilities incurred under the superannuation scheme referred to in subsection (1) have been paid and discharged and the Commissioner and Auditor General have certified to that effect, the balance, if any, standing to the credit of the scheme is to be regarded as income derived by the Commission from the business carried on by it under the authority of this Act.

[Section 97 amended by No. 101 of 1981 s. 23.]

Power of Commission to amend superannuation scheme

98. (1) Subject to the approval of the Governor and to subsection (2), the Commission, notwithstanding section 97, may by resolution from time to time amend any term or condition or both of the superannuation scheme continued pursuant to section 97 including any term or condition set out in the Schedule.

(2) Where the Commission duly amends a term or condition of the scheme, the term or condition as so amended is not binding on a contributor to the scheme unless at his option he elects to be bound thereby.

(3) Where the Commission duly makes an amendment to the scheme, the Commission shall cause a copy of the resolution setting out the amendment as approved by the Governor to be published in the *Government Gazette*.

Funds of the Commission

99. (1) Save as is in this Act otherwise provided, the expenses of the administration of this Act shall be paid out of the funds of the Commission.

(2) The Minister shall submit to Parliament the annual estimates of the Commission submitted to him in accordance with the *Financial Administration and Audit Act 1985*.

(3) The funds necessary for the effectual exercise by the Commission of its powers shall be—

- (a) such moneys as are from time to time appropriated by Parliament for the purpose;
- (b) the income derived by the Commission from the business carried on by it under the authority of this Act or any other Act administered by the Commission;
- (c) all other moneys received by the Commission under and for the purposes of this Act or any other Act administered by the Commission, including all fees, expenses, charges, restitutions and contributions received pursuant to any of the provisions of this Act or of such other Act or to any regulations, by-laws or rules made thereunder; and
- (d) such moneys as the Commission may borrow or may derive from financial accommodation entered into under and subject to this Act,

and those funds shall be placed to the credit of an account to be called the "State Energy Commission Account" maintained by the Commission.

(4) The Commission may open, maintain and operate one or more bank accounts in the name of the Commission with such bank or banks, in the State or elsewhere, as the Treasurer may approve, and such operation may include recourse to overdraft from time to time.

(5) The Commission shall pay into the State Energy Commission Account all moneys received by the Commission, and all such moneys and all financial accommodation made available to the Commission shall be applied pursuant to this Act.

(6) The Commission shall cause separate records or entries to be kept in its accounting records in which shall be shown such amounts as are from time to time capital moneys and such amounts as are revenue or profit or income moneys.

(7) Moneys received by the Commissioner shall be deemed, in the hands of the Commission, to be revenue or profit or income moneys for the purpose of subsection (6) if those moneys are—

- (a) received by the Commission by appropriation by Parliament from the Consolidated Revenue Fund; or

- (b) advanced to the Commission from the Treasurer's Advance Account and the Treasurer directs that such moneys shall be deemed to be revenue or profit or income moneys.

(8) Regulations made under this Act may make provision for the manner in which the State Energy Commission Account or any bank account maintained by the Commission is to be operated.

(9) The moneys from time to time in the State Energy Commission Account (other than moneys in relation to which the Commission is a trustee) shall be chargeable with—

- (a) all capital expenditure incurred in connection with the vesting in or transfer to the Commission by purchase or compulsory taking or otherwise of land, or land and buildings, or any other property, or in connection with the establishment and maintenance of any undertakings or works vested in or to be carried on by or for the Commission under this Act; and
- (b) all other expenditure lawfully incurred by the Commission in the exercise of its powers or the discharge of its duties or obligations under this Act, including interest, sinking fund contributions, and amounts related to the depreciation in or maintenance of plant.

(10) The capital expenditure mentioned in subsection (9) (a) shall in the first instance be charged against and be paid out of those moneys in the State Energy Commission Account which are recorded or entered in the books of account as capital moneys.

(11) The expenditures mentioned in subsection (9) (b) shall in the first instance be charged against and be paid out of those moneys in the State Energy Commission Account which are recorded or entered in the books of account as revenue or profit or income moneys.

[Section 99 amended by No. 101 of 1981 s. 24; No. 98 of 1985 s. 3.]

Interest and sinking fund contributions, General Loan and Capital Works Fund

100. (1) There shall be chargeable to the Commission in each year in respect of such portion, if any, of the General Loan and Capital Works Fund as has been applied in relation to the exercise by the Commission of any of the powers conferred upon it or the discharge of the duties imposed upon it such amounts as may be fixed by the Treasurer as the interest and sinking fund contributions payable in respect thereto for that year.

(2) Any such contributions shall be paid to the Treasurer.

(3) The accrued interest in any sinking fund contributions as certified by the Under Treasurer shall be properly incorporated in the accounts of the Commission.

[Section 100 amended by No. 101 of 1981 s. 25; No. 98 of 1985 s. 3.]

Interest, Consolidated Revenue Fund

101. (1) Where any money is provided out of the Consolidated Revenue Fund for the purposes of the Commission, interest on the daily balance shall be properly charged in the accounts of the Commission.

(2) The amount of any interest of the kind referred to in subsection (1) shall be paid to the credit of the Consolidated Revenue Fund half yearly or at such other times as the Treasurer shall direct.

(3) When assessing the amount of the daily balance in respect of which interest shall be charged and be payable under this section there shall be taken into account in addition to any other credits the amount of any cash profit which has been paid to the credit of the Consolidated Revenue Fund as provided for in section 105.

(4) The rate of such interest shall be that from time to time fixed by the Treasurer.

Charges for use of property or services

102. (1) There shall be chargeable to the Commission such sum as in the opinion of the Treasurer represents the value of the use by the Minister or by the Commission of government buildings or other government property, of the services of any government officers not wholly employed by the Commission under this Act, and, subject to section 119A, of the services rendered by any government department.

(2) Any amount charged pursuant to subsection (1) shall be paid by the Commission as and when directed by the Treasurer—

- (a) into a fund or account specified by the Treasurer; or
- (b) in accordance with subsection (3).

(3) Where a vote of the department providing the buildings, property, or services has already been debited in the current financial year then the amount chargeable under subsection (1) shall, where the annual estimates of such department provide for a rebate of expenditure, be credited to that departmental vote or treated as a rebate of the departmental expenditure.

[Section 102 amended by No. 101 of 1981 s. 26; No. 24 of 1986 s. 36.]

[103. *Section 103 repealed by No. 98 of 1985 s. 3.]*

Reserve Accounts

104. The Commission may establish and maintain in its accounting records such provision or reserve accounts for renewals, depreciation, currency fluctuations, deferred payment, financial obligations, and other

matters, whether contingent or in being, as the Commission thinks fit and the Treasurer approves, and may operate each such provision or reserve account in such manner as it thinks fit.

[Section 104 amended by No. 101 of 1981 s. 27.]

Application of profit

105. Where a profit from the business carried on by the Commission under this Act or any other Act administered by the Commission is at the end of any financial year available in cash after making full allowance for interest and sinking fund contributions, and depreciation, obsolescence and maintenance of plant, and is, in the opinion of the Commission, not required by the Commission for its purposes under this Act it may, subject to the approval of the Governor, be paid to the credit of the Consolidated Revenue Fund.

Payment of guarantee moneys, and charges upon the Account and assets

106. (1) The due performance of a guarantee given by the Treasurer on behalf of the State under the authority of this Act, whether given pursuant to section 30 or to section 108, is hereby authorized, and the due payment of moneys payable thereunder with all interest thereon shall be made out of the Consolidated Revenue Fund, which is accordingly appropriated to the extent required for the purposes of this subsection and any sums received or recovered by the Treasurer from the Commission or otherwise in respect of payment so made shall be paid into the Consolidated Revenue Fund.

(2) By virtue of this subsection any sum paid by the Treasurer under any guarantee given by him on behalf of the State under section 30 or section 108, and any obligation of the Commission arising pursuant to an advance made under section 107, constitutes a charge upon the State Energy Commission Account and a floating charge upon the revenue and assets of the Commission, and that account, such revenue and those assets are charged with the performance and observance by the Commission of the terms and the conditions which the Treasurer may have imposed or approved in relation to that guarantee or that advance.

[Section 106 amended by No. 101 of 1981 s. 28; No. 98 of 1985 s. 3; No. 24 of 1986 s. 37.]

Borrowing power, from Treasury sources

107. (1) The Commission may borrow from the Treasurer such amounts and for such reasons as the Treasurer approves, on such conditions as to repayment and payment of interest as the Treasurer imposes.

(2) Where an advance is made under this section—

- (a) the Commission shall repay the amount of the advance; and
- (b) the Commission shall pay interest,

in accordance with the conditions imposed under subsection (1) and shall comply with any other condition so imposed.

[Section 107 amended by No. 101 of 1981 s. 29; No. 98 of 1985 s. 3.]

Power of Commission to borrow on debentures or stock

108. (1) Subject to subsection (2), the Commission may at any time and from time to time with the approval of the Governor—

- (a) whether as units of debentures or units of stock, individual debentures or parcels, or classes of debentures or stock, issue and sell debentures or create, issue and sell inscribed stock for the purpose of—
 - (i) raising funds required by the Commission for the effectual exercise by the Commission of the powers conferred by this Act; or
 - (ii) redeeming any loans owing by the Commission; or
 - (iii) paying the expenses incurred in the issue and creation of the debentures or inscribed stock;
- (b) issue such debentures or inscribed stock in exchange for any debentures or inscribed stock issued in respect of moneys previously borrowed by the Commission and not repaid; and
- (c) effect any conversion authorized by this section either by arrangement with the holders of the existing debentures or registered owner of inscribed stock, or by the purchase of the debentures or inscribed stock out of the money raised by the sale of debentures or inscribed stock, or partly in the one way and partly in the other.

(2) The Commission shall not implement the issue and sale of debentures or the creation, issue and sale of inscribed stock under this section unless a proposal in writing showing—

- (a) the term and particulars of the proposed issue;
- (b) the rate of interest to be paid on that issue;
- (c) the purposes to which the money proposed to be raised is to be applied; and
- (d) the manner in which any moneys raised are to be repaid,

is first submitted by the Commission on the recommendation of the Minister to, and approved of by, the Treasurer.

(3) The due repayment of the principal moneys and the payment of all interest secured by debentures or inscribed stock created or issued by the Commission under this Act is hereby guaranteed by the Treasurer on behalf of the State.

(4) Any moneys to be raised by the Commission pursuant to an issue made under this section shall be secured—

- (a) by the issue of debentures with or without interest coupons attached;
- (b) by the creation and issue of inscribed stock to be called the “State Energy Commission of Western Australia Inscribed Stock”;
- (c) partly as provided by paragraph (a) and partly as provided by paragraph (b); or
- (d) in such other manner as may be prescribed or as the Governor may approve.

(5) Inscribed stock may be issued pursuant to this section from a registry established by or on behalf of the Commission in the State and not elsewhere and may be dealt with in any such registry, but immediately following such issue or thereafter may be transferred to and dealt with in a registry so established elsewhere, in accordance with regulations made under this Act.

(6) Regulations made under this Act may provide that the Commission shall have power to purchase its debentures or its inscribed stock (including amounts not comprising a complete parcel) otherwise than for the purposes of redemption, and to re-issue, sell, or otherwise deal therein.

(7) All debentures and inscribed stock, respectively, issued or created pursuant to this section—

- (a) shall be in a prescribed form;
- (b) shall bear interest at such rate and be redeemable on such date and at such place as the Commission may determine;
- (c) may with the consent of the holder or the registered owner thereof, as the case may be, be paid off at any time before the due date for repayment, at not more than the face value thereof; and
- (d) whether original or not shall rank *pari passu* in point of charge without any preference or priority one over another.

(8) Interest secured by any debentures or inscribed stock issued or created pursuant to this Act shall be payable in such manner, and at such times and places, as is prescribed pursuant to regulations made under this Act.

(9) The Commission may, at the request of the holder of a debenture or of the registered owner of inscribed stock issued or created pursuant to this Act upon the same terms, in lieu thereof issue to him inscribed stock or debentures, as the case may be, in accordance with the regulations made under this Act.

[(10) repealed]

(11) The Commission may, and shall if the Treasurer so directs, set aside half-yearly, by way of a sinking fund for the purpose of redeeming any loans raised by it pursuant to this section, an amount calculated at a rate approved by the Treasurer and sanctioned by the Governor and the moneys so set aside may be dealt with in the manner authorized by section 113.

(12) When it is necessary to have resort to any sinking fund referred to in subsection (11) for the purpose of paying off either the whole or any part of any loan in respect of which the fund is provided, the Commission may sell any securities in which the fund is invested, or may obtain an advance thereon from any bank or from the Treasurer.

(13) The Commission shall keep or cause to be kept on a system approved by the Commission a register of debentures and a registry of records to be called "stock ledgers" for the inscription of stock and the recording of matters relating thereto, and may appoint such registrars and agents and establish such marking facilities as may be necessary for the conduct of transactions relating thereto in the State or elsewhere, and shall, as soon as practicable after the issue of any debenture or the creation and issue of any inscribed stock pursuant to this Act, cause to be made in the appropriate register or ledger a record specifying the number, date and amount of the debenture or the names of the purchaser of the stock and the amount of stock purchased by him.

(14) Stock shall be transferable in the manner prescribed by the regulations from one person to another by instrument in the form so prescribed and not otherwise.

(15) No notice of any trust, express, implied or constructive, shall be received by the Commission or by an officer of the Commission in relation to a debenture or inscribed stock issued or created pursuant to this Act, and the Commission or an officer of the Commission shall not be bound to see to the execution of any trust to which any debenture or inscribed stock may be subject.

(16) The receipt of the person in whose name stock stands in the stock ledger, or if it stands in the names of more persons than one the receipt of one of the persons named in the stock ledger, shall be a sufficient discharge of the Commission for any interest payable in respect of the stock, notwithstanding any trusts to which the stock may then be subject and whether or not the Commission has had notice of the trusts, and the Commission shall not be bound to see to the application of the money paid upon such receipt.

(17) If stock is held in joint names and one or more of the registered owners of the stock dies, becomes bankrupt, insolvent or otherwise legally incapable, the receipt of any one of the other joint owners or survivors shall be a sufficient discharge of the Commission for any interest payable in respect of the stock, notwithstanding that a transmission has not been registered as required by this Act.

(18) The transmission of any stock effected pursuant to a statutory declaration in a manner authorized by the regulations shall be a sufficient discharge of the Commission against the claims of any other person in relation thereto.

(19) A person may by power of attorney under his hand and seal appoint some person to be his attorney for any purpose in relation to stock (including an application for conversion or to receive interest or redemption money) and any such power of attorney shall be valid and effectual for all purposes therein mentioned until notice of its revocation or of the death, bankruptcy, insolvency, or unsoundness of mind of the donor of the power has been received by the registrar at the registry.

(20) A register of debentures or stock ledger kept for the purposes of this section, or a copy or extract therefrom certified to be true by the officer in whose custody the register or ledger is kept, shall be admissible as and is evidence of any matters required or authorized by or under this Act to be inserted in the register or ledger.

(21) A person advancing money to the Commission and receiving in consideration of the advance a debenture or inscribed stock issued under this Act shall not be bound to inquire into the application of the money advanced or be in any way responsible for the non-application or misapplication thereof.

(22) The Commission shall use moneys borrowed under the power conferred by this section for the purposes approved by the Treasurer, and not otherwise.

[Section 108 amended by No. 101 of 1981 s. 30.]

[109. Section 109 repealed by No. 101 of 1981 s. 31.]

Regulations as to debentures and inscribed stock

110. Regulations made under this Act may make provision—

- (a) as to the rights of the bearer of any debenture issued under section 108, and as to the payment of interest coupons;
- (b) for the inspection of, and the supply of copies or extracts from, the register of debentures or stock ledgers, the replacement of lost or defaced debentures or certificates, and the destruction of discharged debentures;
- (c) for the inscription of stock and as to the registration of inscribed stock and the manner of dealing with each stock, including matters relating to transfers and transmission otherwise than on transfer, as to the tendering and marking of transfers for the purpose of giving security or otherwise, and as to the closure of transfer books and ledgers;
- (d) as to the fees or charges payable in respect of such matters; and
- (e) generally, for the purposes of section 108.

[Section 110 amended by No. 101 of 1981 s. 32.]

Trustee investments in debentures, etc.

111. (1) Debentures and inscribed stock created or issued by the Commission under section 108 shall—

- (a) be securities authorized by the laws relating to the investment of trust moneys; and
- (b) have the status of Government securities within the meaning of any Act in force for the time being relating to the investment powers of persons, friendly societies, or other financial institutions.

(2) A trustee unless expressly forbidden by the instrument, if any, creating the trust may invest trust funds in his hands in such debentures or inscribed stock.

(3) Such debentures or inscribed stock shall be a lawful investment for moneys which a body corporate is authorized or directed to invest, in addition to any other investments expressly authorized for the investment of such moneys.

(4) A trustee or body corporate may pursuant to this Act convert such debentures in his or its hands into such inscribed stock.

Power to make provision to pay off loans

112. For the purpose of making provision to pay off either the whole or any part of the moneys comprised in a loan raised by the Commission under section 108, the Commission may convert or re-negotiate that loan or otherwise borrow moneys in accordance with this Act before the loan or that part of it becomes re-payable.

Temporary investment of moneys

113. All moneys standing to the credit of the Commission may, until required by the Commission in connection with the exercise of its powers or the discharge of its duties be temporarily invested in such categories of investment as the Treasurer of the State may approve, and all interest derived from such investment shall be paid to the credit of the Commission.

[Section 113 amended by No. 101 of 1981 s. 33.]

Application of *Financial Administration and Audit Act 1985*

114. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

[Sections 114 to 118 repealed and section 114 substituted by No. 98 of 1985 s. 3.]

[115., 116., 117., 118. Sections 115 to 118 repealed by No. 98 of 1985 s. 3.]

Exemption from rates and taxes

119. No rate, tax, or assessment shall be made, charged or levied on any works or undertakings or on any lands acquired by and vested in or under the management and control of the Commission for any of the purposes of this Act or any other Act administered by the Commission and which are used or reserved exclusively for the purpose of providing works or facilities necessary to the performance of the functions of the Commission.

[Section 119 amended by No. 101 of 1981 s. 35.]

Search of public registers

119A. Any officer of the Commission appointed by the Minister may, for the purposes of this Act or any other Act administered by the Commission, search and obtain copies of the public registers of the Office of Titles⁴, or any office of Lands Administration⁴, the Department of Mines, or the Corporate Affairs Department⁴, without payment of any fee.

[Section 119A inserted by No. 101 of 1981 s. 36.]

Commission to make good damage, and may be liable to pay compensation

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

[Section 120 amended by No. 101 of 1981 s. 37; No. 24 of 1986 s. 38.]

Actions for damages, generally

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

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

[Section 121 amended by No. 101 of 1981 s. 38; No. 24 of 1986 s. 39.]

Liability of Commission officers, etc.

122. Any person who is or has been a member of the Commission, or any committee of the Commission, or any officer or servant of the Commission, shall not be personally liable in civil proceedings and the Crown in right of the State is not liable, for any act or omission made, or statement issued, by him for the purposes of the Act and in good faith in the course of the exercise or purported exercise of a power or duty which he had reasonable and probable cause to believe was conferred or imposed by this Act or by an Act administered by the Commission other than this Act.

[Section 122 amended by No. 24 of 1986 s. 42.]

Regulations

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

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

(3) For the purposes of any law, relating to trade practices or otherwise, provisions of—

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

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

may be specially authorized or approved by regulations made under this section.

[Section 123 amended by No. 24 of 1986 ss. 40 and 42.]

By-laws

124. (1) Subject to this Act, the Commission may with the approval of the Governor make by-laws for the more effectual exercise of its powers and the discharge of its duties and obligations under this Act.

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

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

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

- (a) the establishment, installation, construction, management, maintenance, repair, use and protection of the undertakings, works and other property of, or under the control or management of, the Commission;
- (b) preventing or remedying the waste, misuse or undue consumption of, or any undue or improper interference with the enjoyment by any other person of, any electricity, gas or other energy supply whether generated or produced and distributed or supplied by the Commission or any other person, body or authority;
- (c) as to the establishment, conditions, and termination of the supply of energy;
- (d) prescribing—
 - (i) the fees and charges that are from time to time to apply in relation to electricity, gas, or any other form of energy supplied or services provided by the Commission;
 - (ia) any formula, index or other base to be used for the purposes of calculating or ascertaining any fee or charge that is to apply to or in relation to a service provided by the Commission or a supply of electricity, gas or any other form of energy;
 - (ii) the making of a fixed charge in respect of a supply effected, whether or not utilized;

- (iii) the accounting procedures relating thereto and the fees payable in respect of accounting, the conditions upon and subject to which security by way of deposit or guarantee or otherwise shall be given to secure the payment of accounts or for other purposes, the amount of such deposits or guarantees, and the manner in which moneys relating thereto shall be dealt with;
- (iv) re-connection and service fees, and charges for unsatisfactory power factors;
- (v) the charges for the use or testing of meters, fittings and other apparatus;
- (vi) the different rates to be applicable to particular areas and uses, periods of supply and other circumstances;
- (vii) the discounts, rebates, or concessions that may be allowed to specified classes of persons or in specified circumstances in respect of moneys due under this Act;
- (viii) the apportionment and assessment of accounts;
- (ix) the manner, in so far as not otherwise provided for in this Act, of adjustment of consumer accounts where errors or inaccuracies are found in the method of charging in, or in the calculation of, such accounts;
- (x) the payment of interest on deposits to secure the payment of accounts;
- (xi) generally as to the liability of persons for payment to the Commission in respect of supply or services;
- (e) providing for the recovery by action or summary proceedings of any charges payable under this Act;
- (f) prohibiting the re-sale by any person or authority, without the consent of the Commission, of energy supplied by the Commission, a local authority, or a concessionaire;
- (g) regulating the re-sale by any person or authority, with the consent of the Commission of energy supplied by the Commission, a local authority, or a concessionaire and prescribing the charges, terms, and conditions applicable to any such re-sale;
- (h) enabling the Commission to repair meters, fittings or other apparatus used in connection with the supply of energy by the Commission to any person or authority;
- (j) prohibiting any alteration of or interference with any works, meters, or apparatus of the Commission without the consent of the Commission;
- (k) the inspection of all supply systems, energy works, meters, apparatus, or consumer installations whether or not owned by or otherwise subject to the control or management of the Commission, the authority of inspectors of prescribed classes,

the classification of inspectors, the qualification of inspectors, the grant of certificates to inspectors, and the variation or cancellation of such certificates;

- (l) prohibiting or regulating, pursuant to section 27 (9), the performance of prescribed work or the operation of any prescribed apparatus or other prescribed equipment or prescribed plant for or in connection with the provision, distribution or use of energy of a prescribed kind or in prescribed circumstances, (whether or not such energy is or is to be supplied by the Commission and notwithstanding that pursuant to any other Act administered by the Commission the doing of any such act would otherwise be authorized), except by persons whilst employed for the purpose by the Commission or holding relevant licences or certificates of competency granted by the Commission, and providing for the issue, variation, or cancellation of such licences or certificates, and fixing the conditions thereof and the fees to be paid therefor;
- (m) regulating or specifying standards of supply and standards of service, including apparatus, installations, systems, placements, measuring devices, safety requirements, capacities and designs, inspections, and other matters conducive to the safe and efficient use of energy, whether or not such energy is or is to be supplied by the Commission, providing for frequency control voltages to be imposed on normal supply voltage and prohibiting the use of frequency control voltages within prescribed limits otherwise than by the Commission;
- (n) the measures that may be taken where any supply system is, in the opinion of the Commission, overloaded or inadequate;
- (o) the measures that may be taken in relation to supply systems or components of supply systems, whether or not owned by or otherwise under the control or management of the Commission, to obviate damage to any portion of a supply system that is the property of or under the control or management of the Commission;
- (p) prescribing the point at, or the circumstances in, which the property in energy supplied passes from the Commission to any other person;
- (q) prescribing limits that may be placed upon the supply of energy in relation to any person or premises, and the means where by such limitation may be achieved; and
- (r) prescribing forms and other documents and the circumstances in which they are required under this Act, the fees and charges (other than such as are provided for in paragraph (d)) payable and the matters in respect of which fees, charges or other amounts shall be payable, and the refund or remission of any fees, charges or other amounts.

(5) Subject to the by-laws regulating or specifying standards of supply and standards of service, the Commission may, by notice in the *Government Gazette* including any necessary diagrams, from time to time declare—

- (a) the system pressure and frequency, or both, at which the Commission operates or proposes to operate its electricity supply systems or any of them;
- (b) the point or points in a supply system where pressure or frequency values, or both, are measured; and
- (c) the system or systems of earthing utilized in respect of the Commission's supply systems or any of them or of consumer installations,

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

[Section 124 amended by No. 24 of 1986 ss. 41 and 42.]

Regulations or by-laws, generally

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

- (a) as to apply—
 - (i) generally, or in a specified class of case or in a specified case;
 - (ii) at all times, or at specified times or at a specified time; and
 - (iii) throughout the State, or in specified parts of the State or in a specified place;
- (b) as to adopt, by reference to the text as from time to time amended and for the time being in force, unless a particular text is specified at the time of such adoption,—
 - (i) such rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act, or under any Act of the Parliament of the Commonwealth or of the Parliament of the United Kingdom; or
 - (ii) such standards, rules, codes or specifications issued by the Standards Association of Australia, the British Standards Institution, The Australian Gas Association, The Australian Liquefied Petroleum Gas Association, or other specified body,

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

- (c) as to provide that where by reason of unavailability of materials or other reason that the Commission considers valid any requirement imposed by the Commission cannot be conformed to, the Commission may dispense with that requirement and in lieu authorize in writing in any particular case the use of materials or any other matters which it considers to be appropriate;
- (d) as to provide that, in a specified case or a specified class of case, whether on specified conditions or unconditionally, a person or thing or a class of persons or things, may be exempted from the provisions of those regulations or by-laws either wholly or to such extent as is specified; or
- (e) as to require a matter affected by them to be in accordance with a specified standard, specification or requirement or to be as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body, or so as to confer on a specified person or body or specified class of person or body a discretionary authority.

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

SCHEDULE

Former City of Perth Superannuation Scheme

(section 97)

1. Except—

- (a) as is provided in clause 4 to clause 9 of this Schedule;
- (b) as amended by the Commission with the approval of the Governor pursuant to section 29F of the *State Energy Commission Act 1945-1978* and published in the *Government Gazette*; or
- (c) as amended by resolution of the Commission approved by the Governor pursuant to section 98,

the superannuation scheme referred to in section 97 (1) (in this Schedule referred to as "the Commission's Scheme") shall be in all respects on the same terms and conditions as the scheme under the *City of Perth Superannuation Fund Act 1934*, as amended, as that existed on the Transfer Day defined in the *City of Perth Electricity and Gas Purchase Act 1948*.

2. Those officers and workmen who were contributors to the City of Perth Scheme on the Transfer Day but no others shall be contributors to the Commission's Scheme.

3. For the purpose of ascertaining the rights of such contributors in the Commission's Scheme their service with the City of Perth and their contributions to the City of Perth Scheme shall be deemed to have been service with the Commission and contributions to the Commission's Scheme.

4. A contributor to the Commission's Scheme may at any time by notice in writing to the Commission cease to be a contributor, and the Commission shall thereupon pay to such person twice the total amounts paid by him to the City of Perth Scheme and to the Commission's Scheme, or such greater sum as the Commission may from time to time determine.

5. A person who has been a contributor to the Commission's Scheme and who has ceased to be a contributor shall not be entitled again to become a contributor to the Commission's Scheme.

6. Where an officer, not being a wages employee of the Commission, was, on 8 March 1955, or after that day was or becomes, entitled to receive a superannuation allowance payable out of the Commission's Scheme he is entitled, if the rate of superannuation allowance does not exceed \$8 per week, to receive from the Scheme a supplementary allowance of 50 per centum of such superannuation allowance as he was or becomes entitled to receive from and after that day; or, if the rate of superannuation allowance exceeds \$8 per week, to receive from the Scheme a supplementary allowance calculated on a weekly basis, which is equivalent to—

- (a) 50 per centum of such portion of the superannuation allowance, which he was or becomes so entitled to receive, as does not exceed \$8 per week; and
- (b) 25 per centum of such portion of that superannuation allowance as exceeds \$8 per week.

7. Where a wages employee of the Commission was, on 8 March 1955, or after that day was or becomes, entitled to receive a superannuation allowance payable out of the Commission's Scheme he is entitled to receive from the Scheme a supplementary allowance at the rate of 63 cents per week for the period from and after that day, for which he was or becomes entitled to receive a superannuation allowance.

8. The widow of an officer or of a wages employee of the Commission is entitled to receive from the Scheme a supplementary allowance of five-eighths of the supplementary allowance which her husband would have been entitled to receive, under the provisions of clause 6 or clause 7 of this Schedule had he been living in receipt of a superannuation allowance, but no supplementary allowance is payable to the widow in respect of a period which is prior to the death of her husband and prior to 8 March 1955, nor unless she is entitled to receive a superannuation allowance from the Scheme.

9. Notwithstanding anything contained in the *Superannuation and Family Benefits Act 1938*, or in this Act which is inconsistent with this clause, a person who is a contributor to the Commission's Scheme is not eligible to become a contributor under the *Superannuation and Family Benefits Act 1938*, for a pension that, together with the superannuation allowance which in the estimation of the Commission he would be entitled to receive from the Commission's Scheme, entitles him to a pension and a superannuation allowance which in the aggregate exceeds the maximum amount of pension for which he is eligible to contribute under the provisions of section 37 of the *Superannuation and Family Benefits Act 1938*.

NOTES

¹. This reprint is a compilation as at 21 May 1987 of the *State Energy Commission Act 1979* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>State Energy Commission Act 1979</i>	111 of 1979	21 December 1979	1 February 1980 (see <i>Gazette</i> 1 February 1980 p. 284)	
<i>Act Amendment (Statutory Designations) and Validation Act 1981</i>	63 of 1981	13 October 1981	13 October 1981	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>State Energy Commission Amendment Act 1981</i>	101 of 1981	4 December 1981	Section 4: 4 December 1981 (see s. 2 (1)); section 17: 13 February 1982 (see <i>Gazette</i> 15 January 1982 p. 49); balance on 15 January 1982 (see <i>Gazette</i> 15 January 1982 p. 49)	
<i>State Energy Commission Amendment Act 1984</i>	36 of 1984	20 June 1984	20 June 1984	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, Schedule</i>	98 of 1985	4 December 1985	1 July 1986 (see s. 2)	
<i>State Energy Commission Amendment Act 1986</i>	24 of 1986	28 July 1986	Sections 1 to 3, 6 to 8, 12 to 14, 16 to 39 and 41: 28 July 1986 (see s. 2 (1)); sections 9 (c), 40 and 42: 29 August 1986 (see <i>Gazette</i> 29 August 1986 p. 3163); sections 4, 5, 9 (a) and (b), 10, 11 and 15: 12 December 1986 (see <i>Gazette</i> 12 December 1986 p. 4802)	

² Now see the *Interpretation Act 1984*.

³ Repealed by Act No. 102 of 1984.

⁴ Title of Departments changed pursuant to section 7 (3) (h) of the *Reprints Act 1984*.