

Reprinted under the *Reprints  
Act 1984* as at 25 May 1995

WESTERN AUSTRALIA

---

**ENERGY CORPORATIONS  
(POWERS) ACT 1979**

---

**ARRANGEMENT**

---

1.	Short title	1
2.	Commencement	1
3.	Repeals, transitional provisions, savings, etc.	2
4.	Interpretation	5
5.	Application of this Act to other Acts, the law generally, and to certain Agreements	9
6.	Application of this Act to the Crown, Government Departments, and local authorities	10
28.	Powers of the corporation generally	12
36.	Estates and interests in land	13
37.	Partial interests in land	14
38.	Conveyancing by abbreviated description	15
39.	Agreements incidental to land matters	16
40.	Power to dispose of land	18
41.	Planning approvals	18
42.	Corporation to have certain rights to water	19
43.	Property in works	19

*Energy Corporations (Powers) Act 1979*

45.	Claims against the corporation for the use of land and the application of the <i>Public Works Act 1902</i>	20
46.	The power of entry, generally	25
47.	Service of notice by post on owner or occupier	29
48.	Rights as to entry on lands, etc., in emergency	29
49.	General powers relating to works	31
50.	Restrictions on the exercise of the general powers	33
51.	Alteration to works in streets	34
52.	Street levels and widths	34
53.	Streets broken up to be reinstated without delay	35
54.	Duty and powers, as to vegetation causing interference	35
55.	New gas undertakings	37
56.	Restrictions on trading in liquid petroleum gas	37
57.	Supply system emergencies	40
58.	Corporation may not be bound to supply	44
59.	Corporation may supply, with or without contract	46
60.	Repudiation of existing contracts, and unwritten contracts	47
61.	Agreements to supply beyond normal range	48
62.	Charges for supply, conditions of supply, and termination of supply	51
63.	Apportioned accounts	56
64.	Meters	56
65.	Metered accounts	58
66.	Meter tests	60
67.	Circumventing meters	62
67A.	Liability for charges, and damage to apparatus	63
68.	Inspectors	64
69.	Incriminating statements	66
74.	Malicious damage	66
75.	Unlawful damage generally	67
76.	Unlawful entry	69
77.	Restraint of persons	69
78.	Persons may be apprehended	69
79.	Obstruction of officers etc.	70
80.	Offences generally	70
81.	General penalty	71
82.	Recovery of moneys	71
83.	Prosecution expenses	72
84.	Power to institute and conduct proceedings	72
85.	Summary proceedings	73
86.	Liability for the acts of others, bodies corporate, etc.	73
87.	Proof of certain matters	74
88.	Evidence of documents issued by a corporation	76

*Energy Corporations (Powers) Act 1979*

120.	Corporation to make good damage, and may be liable to pay compensation	77
121.	Actions for damages, generally	78
122.	Protection	78
123.	Regulations	79
124.	By-laws	79
125.	Regulations or by-laws, generally	84
	NOTES	87



Reprinted under the  
*Reprints Act 1984* as  
at 25 May 1995

WESTERN AUSTRALIA

---

---

## ENERGY CORPORATIONS (POWERS) ACT 1979

An Act to vest powers in the Electricity Corporation and the Gas Corporation, to make other provision in respect of the functions of those corporations, and for related and other purposes.

[*Long title inserted by No. 89 of 1994 s.4.*]

### Short title

1. This Act may be cited as the *Energy Corporations (Powers) Act 1979*<sup>1</sup>.

[*Section 1 amended by No. 89 of 1994 s.5.*]

### Commencement

2. The provisions of this Act shall come into operation on such day or days as is, or are respectively, fixed by proclamation<sup>1</sup>.

**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;

*Energy Corporations (Powers) Act 1979*

s. 3

*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*<sup>2</sup>, 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*<sup>2</sup>, 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;

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

**“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;

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

**“corporation”** means the Electricity Corporation or the Gas Corporation;

**“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;

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

**“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;

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

**“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;

**“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;

*Energy Corporations (Powers) Act 1979*

s. 4

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

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

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

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

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

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

concessions, rights, patents, contracts, or other things relating thereto;

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

(2) Where a provision of this Act authorizes a corporation 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 corporation, acting on behalf of the corporation in the course of his duty; or
- (b) a person acting at the request and on behalf of the corporation 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 corporation 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; No. 89 of 1994 ss.6, 39 and 41.]*

**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

*Energy Corporations (Powers) Act 1979*

s. 6

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

(3) Where by virtue of an Agreement of the kind referred to in subsection (1) (b) a corporation would not otherwise be authorized so to do, in so far as the corporation 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) *repealed*]

[*Section 5 amended by No. 89 of 1994 ss.7, 39 and 41.*]

**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 a corporation and any government department or local authority as to the rights, powers or authority of, or the discharge of any duty by, the corporation, 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 corporation 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 a corporation 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

*Energy Corporations (Powers) Act 1979*

s. 28

that subsection, and effect shall be given to any such determination.

*[Section 6 amended by No. 24 of 1986 s.6; No. 89 of 1994 ss.39 and 41.]*

*[7, 8, 9, 10, 11, 12, 13, 14, 15. Repealed by No. 89 of 1994 s.8.]*

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

*[17, 18, 19. Repealed by No. 89 of 1994 s.8.]*

*[20, 21, 22, 23, 24, 25. Repealed by No. 24 of 1986 s.15.]*

*[26, 27, 27A. Repealed by No. 89 of 1994 s.8.]*

**Powers of the corporation generally**

28. *[(1) and (2) repealed.]*

(3) A corporation may —

*[(a) and (b) deleted]*

(c) enter upon and occupy any land or other premises and there, without being bound to acquire the same or any estate or interest therein (except where otherwise provided by this Act or such as may be required by a claimant to be taken 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 corporation 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 corporation;

[(f), (g), (h), (j), (k), (ka), (l), (m), (n), (o) and (p) deleted]

[(4) repealed]

[Section 28 amended by No. 101 of 1981 s.12; No. 36 of 1984 s.2; No. 24 of 1986 s.17; No. 89 of 1994 ss.9 and 41.]

[29, 30, 31, 32, 33, 34, 35. Repealed by No. 89 of 1994 s.10.]

### **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 interests in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land (whether or not that interest is an interest 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*, a corporation 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 corporation 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 a corporation 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 corporation 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 corporation; and
- (b) the benefit of any right, restriction or covenant in relation to the use of land granted to or held by the corporation may be enforced by the corporation to the like extent as if the corporation 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.

[Section 37 amended by No. 89 of 1994 ss.39 and 41.]

**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 a corporation acquires pursuant to this Act, and where the estate or interest to be acquired by a corporation 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

**s. 39**

interest of a corporation as could have been made if the notice or transfer or agreement had been in full form.

(4) Where a corporation 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 a corporation pursuant to section 44 which the corporation does not require to be recorded on, or by way of memorial in the register relating to, the title to the land in question may be delineated by reference to a plan other than a survey plan.

[Section 38 amended by No. 89 of 1994 ss.39 and 41.]

**Agreements incidental to land matters**

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

(2) Where the fee simple of, or any other estate or interest in, any land is vested in a corporation but the corporation 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 corporation 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 corporation may grant to any person —
  - (i) a lease or licence to occupy the land or any part of the land, either exclusively or concurrently with the corporation; 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 a corporation the grant shall not be revoked without compensation unless the parties otherwise agree.

(3) Where a corporation exercises the powers conferred by subsection (2), then unless an agreement entered into between the corporation 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 corporation 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.

s. 40

[(4) *repealed*]

[*Section 39 amended by No. 24 of 1986 s.18; No. 89 of 1994 ss.11, 39 and 41.*]

### **Power to dispose of land**

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

- (a) that land, or that estate or interest, is no longer required for such purposes; or
- (b) that estate or interest is of a kind not considered by the corporation 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 corporation was not acquired 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) *repealed*]

[*Section 40 amended by No. 24 of 1986 s.19; No. 89 of 1994 ss.12, 39 and 41.*]

### **Planning approvals**

41. For the purposes of section 20 of the *Town Planning and Development Act 1928*, a corporation may submit to the Western Australian Planning Commission plans of a subdivision of land

acquired, or to be acquired, by the corporation notwithstanding that the corporation is not the owner of the land, and approval under that Act may be given thereto.

[Section 41 amended by No. 84 of 1994 s.46; No. 89 of 1994 ss.39 and 41.]

### **Corporation to have certain rights to water**

42. (1) Subject to this Act, and in particular to subsection (2), a corporation may use 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 corporation may consider necessary for the effectual control and use of those waters by the corporation.

(2) The rights and powers of a corporation under subsection (1) shall be exercised by the corporation 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; No. 89 of 1994 ss.13, 39 and 41.]

### **Property in works**

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

- (a) a corporation, in the performance or purported performance of its functions; or

s. 45

- (b) any predecessor in title of a corporation, in relation to those works or other things,

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

(1a) Where for the purposes of any agreement or arrangement entered into by a corporation it has transferred or conveyed to another person the property or any other interest in any works or other things placed in, over or under any land but continues to manage or maintain such works or other things whether for itself or for or on behalf of any other person the corporation, 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) A corporation and any person or body of persons authorized by the corporation in that behalf may demolish or destroy on, or remove from, any land occupied by it, any plant, machinery, equipment, apparatus, buildings, road, or other works placed or constructed thereon to which subsection (1) applies.

*[Section 43 amended by No. 36 of 1984 s.3; No. 30 of 1987 s.7; No. 89 of 1994 ss.14, 39, 40 and 41.]*

[44. *Repealed by No. 89 of 1994 s.15.*]

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

45. (1) Subject to subsection (3), a corporation 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 corporation.

(2) No claim lies against a corporation 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 corporation on any land.

(3) No claim lies against a corporation by reason of the placing of any works of the corporation 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 corporation —
  - (i) is by this or any other Act required; or
  - (ii) by reason of the nature of the works there placed, the nature of the locality in which the works are placed, the safeguarding of particular works, public safety, future development proposals, or otherwise, elects,

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

(4) Notwithstanding the powers conferred by sections 28 (3) (c) and 46, a corporation 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 corporation be appropriate to its needs in respect of —

- (a) generating works;
- (b) in the case of the Electricity Corporation, all electricity transmission works operating at 200 000 volts or above;

*Energy Corporations (Powers) Act 1979*

s. 45

- (c) in the case of the Gas Corporation, 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.

(5) Where in the performance of its functions a corporation determines that any land, or any estate or interest in land, is required to be acquired by the corporation otherwise than by agreement the power to do so shall be exercised under and in accordance with, and any compensation payable by the corporation 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 a corporation no further claim in respect thereof shall lie against the corporation notwithstanding any subsequent works of the corporation 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 by a corporation in the performance of its functions shall be deemed to be for the purposes of a public work within the meaning of the *Public Works Act 1902*, the corporation 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 a corporation so requires the corporation 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 corporation 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 a corporation when requested by the corporation so to do.

(11) Where a corporation fails to serve an offer on a claimant against the corporation 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 corporation, and such offer shall be deemed to be an offer duly made by the corporation 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 a corporation may request —

- (a) that instead of the whole estate or interest in the land being acquired, such a lesser estate or interest as is

*Energy Corporations (Powers) Act 1979*

s. 45

sufficient for the purposes of the corporation 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 corporation, 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 a corporation 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 corporation 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 corporation, 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, and effect shall be given thereto.

(14) Where, whether by agreement or compulsory acquisition, any land (including any estate or interest in land to which section 36 applies), is vested in a corporation 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 corporation shall continue to be so vested, unless the corporation otherwise agrees; and

- (b) the corporation 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; No. 89 of 1994 ss.16, 39 and 41.]*

### **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 a corporation 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 a corporation may for the purposes of this Act or any other Act that confers powers on the corporation, 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 corporation notwithstanding that the corporation 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 a corporation to acquire any interest in any land except such as —

- (a) the corporation elects to acquire by agreement;

*Energy Corporations (Powers) Act 1979*

s. 46

- (b) the corporation elects to lawfully take or resume under and in accordance with the *Public Works Act 1902*, as read with section 45; or
- (c) the corporation 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 a corporation 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 a corporation for the purpose of the performance of a function of the corporation 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 corporation 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 a corporation 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 corporation 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 corporation of its powers, or for an order directing the corporation 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 a corporation or in, on or over which any works of the corporation are lawfully situate shall be deemed to have given consent to the corporation to enter and re-enter thereon or therein at all reasonable times for the purposes of the performance of its functions in relation to any such supply or works and no notice under this Act is required unless an agreement in writing entered into by that owner or occupier with the corporation in relation thereto otherwise provides.

(10) Where in the opinion of a corporation entry upon any land is necessary for the purposes of inspecting or examining any land to determine the feasibility of the use of that land for the purposes of the performance of its functions, or as preliminary to any prospective or intended acquisition of that land or any estate or interest in that land, and the corporation 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 corporation may make entry for such purposes.

(11) Where a corporation 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 corporation to the owner or occupier of the land, premises or

*Energy Corporations (Powers) Act 1979*

s. 46

thing to be affected not less than 5 days before the power is to be exercised, save where this Act otherwise provides.

(12) A corporation 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 corporation 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 a corporation enters on to any land, premises, or thing without prior notice for the purpose of exercising any power of the corporation 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 corporation 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 a corporation, by its officers, servants or agents, enters or has entered on or into any land, premises or



thing the officer of the corporation responsible for the conduct of the entry shall, on request, produce evidence of his appointment and of the authority under which the corporation claims a right of entry.

*[Section 46 amended by No. 89 of 1994 ss.17, 39, 40 and 41.]*

**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 a corporation, 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 corporation 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 corporation 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 a corporation 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) A corporation 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 corporation 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 corporation or for which the corporation 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 corporation 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 a corporation is not responsible, the corporation 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; No. 89 of 1994 ss.39, 40 and 41.]*

### **General powers relating to works**

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

- (a) to enter upon any land which may be required to be used for the purposes of the corporation 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 corporation;

s. 49

- (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 corporation be removed but may, if so required by the corporation, 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 corporation taking all reasonable steps to notify the intention of the

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

*[Section 49 amended by No. 89 of 1994 ss.39 and 41.]*

### **Restrictions on the exercise of the general powers**

**50.** In the exercise of the powers conferred under section 49 a corporation 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.

*[Section 50 amended by No. 89 of 1994 s.39.]*

**Alteration to works in streets**

**51.** Subject to section 52, where a corporation 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 corporation, but where that notice is not complied with the corporation may at its own cost cause such alterations to be made to those works as are required by the corporation.

*[Section 51 amended by No. 89 of 1994 ss.39 and 41.]*

**Street levels and widths**

**52.** (1) Where a corporation 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 corporation, furnish the corporation 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 corporation 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 a corporation 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 corporation have been placed, but, whether or not such notice is given, if by reason of any such alteration the corporation 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 corporation.

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

*[Section 52 amended by No. 89 of 1994 ss.39 and 41.]*

### **Streets broken up to be reinstated without delay**

**53.** (1) Where a corporation opens or breaks up the surface of any street or pavement the corporation 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) A corporation 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 corporation done or omitted to be done contrary to subsection (1) in relation to any street or pavement under the control and management of that authority.

*[Section 53 amended by No. 89 of 1994 ss.39, 40 and 41.]*

### **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

s. 54

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 a corporation 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 corporation 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 corporation from the occupier of the land as a debt due to the corporation, 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.

*[Section 54 amended by No. 89 of 1994 ss.39 and 41.]*



### **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 Coordinator of Energy; and
- (b) no new gas undertaking shall be established by any local or other authority, or any person, other than the Gas Corporation, unless —
  - (i) the establishment of that undertaking is approved by the Coordinator of Energy; or
  - (ii) that undertaking is established entirely on lands in private ownership and does not involve the reticulation of gas in any street.

[Section 55 amended by No. 89 of 1994 s.18.]

### **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 3<sup>1</sup>; and
- (b) on the publication in the *Government Gazette* of a notice for the purposes of this paragraph, by reference

*Energy Corporations (Powers) Act 1979*

s. 56

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 Gas Corporation, 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 Coordinator of Energy 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 Coordinator of Energy 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 Coordinator of Energy 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 Coordinator of Energy 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 Coordinator of Energy may cancel the permission.

(5) Where a person who is aggrieved by —

- (a) a decision of the Coordinator of Energy 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 Coordinator of Energy 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

s. 57

- (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; No. 89 of 1994 s.19.]*

### **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 a corporation or for which a corporation is otherwise responsible, by reason of which the ability of a corporation 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 corporation

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 corporation having charge or control of the operation of any part of a supply system of the corporation thereby affected, requires the immediate exercise of the powers conferred by subsection (2) or which in the opinion of the corporation 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 corporation (which reference shall in any event be made as soon as practicable) then an officer or servant of the corporation 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 corporation may, as it seems fit and the circumstances shall reasonably allow, make such order as the corporation 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 corporation itself shall in the circumstances be empowered to exercise and as are specified in the order; and

(b) the corporation 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 corporation 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 corporation 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 corporation, 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 corporation or any officer or servant of the corporation, 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 corporation or any officer or servant of the corporation 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 corporation 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 a corporation or any officer or servant of a corporation 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;  
No. 89 of 1994 ss.39 and 41.]*

**Corporation may not be bound to supply**

**58.** (1) Except in so far as —

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

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

(2) Notwithstanding that a corporation 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 corporation 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 corporation, will require an expenditure which the corporation 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 corporation requires;
- (b) is such that, in the opinion of the corporation, 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 corporation, 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 corporation, 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 corporation, whether or not a prescribed requirement, applicable thereto; or

- (ii) any service apparatus provided or installed by or belonging to the corporation has been interfered with or has not been maintained in compliance with a requirement previously made known by the corporation, 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 corporation or an officer, servant or agent of the corporation.

(3) Where a corporation 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 corporation may nevertheless effect or continue such supply on such terms and conditions as the corporation thinks fit.

(4) Where any contract or agreement executed by a corporation 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; No. 89 of 1994 ss.20, 39 and 41.]*

### **Corporation may supply, with or without contract**

**59.** Where a corporation in the performance of its functions enters into contracts in writing for, or agreements in relation to, the supply or sale of energy or for providing apparatus or works required in connection with the supply or sale of energy or for maintenance or repair purposes, in relation to any such contract or agreement the charges, conditions and any other matters relating to supply which have been or are prescribed pursuant to

regulations or by-laws made under this Act shall be applicable unless the contract or agreement otherwise expressly provides.

*[Section 59 amended by No. 89 of 1994 s.21.]*

**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 a corporation 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 corporation 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.

**s. 61**

*[(3) repealed]*

(4) From and after the repudiation of a contract under this section a corporation 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 corporation may recover the charges applicable to that supply or sale as though no such contract had applied.

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

*[Section 60 amended by No. 89 of 1994 ss.22, 39 and 41.]*

**Agreements to supply beyond normal range**

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

- (a) to pay the corporation 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 corporation otherwise than on the basis of a contract;
- (b) to pay to the corporation within 3 months, or such further period as the corporation may agree, after the

agreement is made such amount as the corporation by that agreement may specify by way of capital contribution, being the amount which the corporation considers will be required in order to enable the corporation to extend the supply system beyond the normal point of supply in order to effect the supply requested;

- (c) to pay to the corporation a maintenance provision, being the amount which the corporation 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 corporation, by way of a capitalized amount calculated by reference to the capital contribution which in the opinion of the corporation 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 corporation, having regard to the circumstances of the case, may require and for the purposes of this section and of all agreements made under this section, or section 32A of the *State Electricity Commission Act 1945* 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) A corporation may require the due payment of any instalments payable pursuant to subsection (1) to be secured by security to the satisfaction of the corporation or to be guaranteed

s. 61

by the applicant or some other person, or by both the applicant and such other person either jointly or severally.

(3) A corporation 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 corporation 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), a corporation, at the expiration of the period referred to in subsection (1) (c) as agreed upon and specified in any agreement made between the corporation and the applicant pursuant to that subsection, or earlier if the corporation so elects, shall refund any amount held by the corporation 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) A corporation may terminate the supply of energy agreed to be supplied to the applicant pursuant to this section —

- (a) if any moneys due to the corporation 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 corporation pursuant to subsection (1),

without in any way affecting the right of the corporation 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 corporation by any person to resume the supply of energy to that land, the corporation 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 corporation and the applicant.

(7) Where a corporation determines that it is not practicable to supply energy to any place the corporation 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 corporation, 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; No. 89 of 1994 ss.23, 39, 40 and 41.]*

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

**62.** (1) Subject to section 60 (2), a consumer of energy supplied by a corporation shall pay to the corporation such rates, charges, fees, rentals and other sums as may be due to the corporation pursuant to this Act or any other Act in respect of the supply of energy or a matter connected therewith or any

service, apparatus or other thing provided by the corporation 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 corporation provides a standby service secondary to those generating works, the corporation 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 a corporation, or the occupier of such part of any premises as is supplied with energy by a corporation separately from any other part of those premises, shall for the purposes of this Act or any other Act be deemed to be the consumer as regards those premises, or that part of those premises, as the case may require.

(3) Where a corporation 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 corporation 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 a corporation 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 a corporation 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 corporation 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 corporation was so enabled or an account was paid shall be jointly and severally liable for the payment of unpaid charges, but the



corporation 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 a corporation shall be considered by the corporation 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, a corporation 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 a corporation 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 corporation 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, a corporation 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 a corporation 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 a corporation from a person to whom or on whose behalf energy is supplied on any premises,

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

(11) The amount of the security which the corporation 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 corporation 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 a corporation shall be re-assessed; or
- (b) a deposit is made or any other security is given that a corporation considers to be no longer appropriate for the purpose for which it was required, the corporation 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 a corporation is sufficient to safeguard the financial interest of the corporation, the corporation 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 corporation if default occurs in respect of those premises for any reason.

[(15) *repealed*]

(16) A corporation shall pay, or give credit for, interest on money held by the corporation 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 a corporation and to the possession of which the corporation is

**s. 63**

entitled, and the supply effected to or on behalf of that consumer is terminated, the corporation 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; No. 89 of 1994 ss.24, 39, 40 and 41.]*

**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 corporation shall adjust the charges for the relevant period affected by the change by reference to the date on which the change is to take effect or by reference to the date on which the change is applied to any applicable account, whichever results in the lower charge.

*[Section 63 amended by No. 89 of 1994 s.41.]*

**Meters**

**64.** (1) The extent, characteristics, and value of the energy supplied by a corporation to any premises, or any part of any premises separately so supplied, shall, unless otherwise agreed by the corporation 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 corporation.

(2) In relation to any supply or proposed supply of energy by a corporation to any premises, or to any part of any premises separately so supplied, the corporation 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 corporation 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 corporation, and remove or replace the same.

(3) A corporation 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 corporation.

(4) A corporation 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 corporation, but in any such case, except where the contract relating to the supply of that meter otherwise provides, the corporation 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; No. 89 of 1994 ss.39, 40 and 41.]*

**Metered accounts**

**65.** (1) Except where pursuant to section 66 the meter is deemed not to be in proper order, the reading ascertained by a corporation 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 corporation 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 corporation and produced on behalf of the corporation, 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 a corporation, or of any officer or servant of a corporation 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 corporation 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 corporation; 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 corporation 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 corporation otherwise agrees.

(6) Where an account is submitted upon the basis of an assessment, it shall be clearly marked as such and the corporation 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 a corporation 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

s. 66

a person to whom an account is submitted by way of estimate may at any time require the corporation to read the meter applicable as soon as is practicable thereafter and to render him an account adjusted by reference to the reading so ascertained, but where it proves not to be practicable so to adjust the account that account shall thereafter be assessed pursuant to subsection (3).

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

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

whichever may result in the lower charge.

*[Section 65 amended by No. 89 of 1994 ss.39 and 41.]*

### **Meter tests**

**66.** (1) Where a person who is alleged to be liable to a corporation for the payment of the charges in respect of any premises, or any part of any premises separately supplied, so demands the corporation 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 corporation.

(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 corporation.

(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 corporation; or
- (b) on the basis of testing the meter under consideration by a testing laboratory approved by the corporation,

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

[Section 66 amended by No. 89 of 1994 ss.39, 40 and 41.]

s. 67

**Circumventing meters**

**67.** (1) Where a corporation 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 corporation 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 a 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 corporation 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 corporation in consequence of the wrongful act in respect of which the offender is convicted.

(3) Subsection (2) does not affect the right of a corporation 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 a corporation 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; No. 89 of 1994 ss.39 and 41.]*

### **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 a corporation, the person who is liable under this Act to pay to the corporation 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 a corporation is placed on any premises, or on any part of any

s. 68

premises, in connection with the supply of energy to those premises, it remains the property of the corporation and the occupier of those premises or that part of those premises shall be liable to the corporation in respect of any damage to that service apparatus howsoever caused.

[Section 67A inserted by No. 24 of 1986 s.28; amended by No. 89 of 1994 ss.25, 39 and 41.]

### **Inspectors**

**68.** (1) A corporation may appoint an officer of the corporation to be an inspector.

[(2) *repealed*]

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

[(4) *repealed*]

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

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

subsection when that person is accompanied by, and acting in the course of his duties on behalf of, an inspector.

(7) In the exercise of his powers under this section an inspector shall conform so far as is practicable to any reasonable requirement of a person owning or using the land, premises, or thing inspected which is requested by that person in order to prevent the working of any business or the conduct of any operations being thereby obstructed; but subject to the compliance by the inspector with the requirements of this Act an inspector may for the purpose of the exercise of his powers and the discharge of his duties require a person having the custody or control of any land, premises or thing in respect to which the inspector is 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 notice on or into any land, premises or thing where any plant, works or apparatus of the corporation is or may be situated and inspect all such plant, works or apparatus;
- (b) if the inspector has reasonable cause to believe that a consumer is attempting to circumvent or prevent the due regulation or recording of the supply of energy to the consumer by the corporation, enter without notice on or into any land, premises or thing where any plant, works or apparatus of the consumer is or may be situated and inspect all such plant, works or apparatus; and
- (c) take with him such persons as he thinks competent and necessary to assist him in making any inspection.

[(d) *deleted*]

s. 69

*[(9) and (10) repealed]*

*[Section 68 amended by No. 101 of 1981 s.18; No. 24 of 1986 s.29; No. 89 of 1994 s.26.]*

### **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.

*[70, 71, 72, 73. Repealed by No. 89 of 1994 s.27.]*

### **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 a corporation 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 a corporation, 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.

*[Section 74 amended by No. 89 of 1994 s.39.]*

### **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 by a corporation in the performance of its functions;
  - (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 a corporation;
  - (c) interrupts, impedes or obstructs the transmission, distribution or supply of energy by a corporation;

*Energy Corporations (Powers) Act 1979*

s. 75

- (d) removes, defaces, damages, alters or interferes with any notice, sign, order or written instruction attached by or with the authority of a corporation to any undertaking, works or thing the property of or under the control or management of the corporation or to any service apparatus or consumer installation; or
- (e) without the approval in writing of a corporation affixes any poster, sign, advertisement or notice to any undertaking, works or thing the property of or under the control or management of the corporation 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 a corporation, 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 corporation concerned as to the whereabouts in that street of any such system, undertaking, works or thing.

(4) Any person who without authority, or without having given to a corporation the notice (if any) required by or under this Act of his intention, so to do opens any ground so as to uncover or expose any works or other thing the property of or under the control or management of the corporation 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;  
No. 89 of 1994 ss.28, 39 and 41.]*



### **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 a corporation 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 corporation to use such force as is reasonably necessary to remove him therefrom.

*[Section 76 amended by No. 24 of 1986 s.42; No. 89 of 1994 ss.39 and 41.]*

### **Restraint of persons**

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

*[Section 77 amended by No. 89 of 1994 s.39.]*

### **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

**s. 79**

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 a corporation or any inspector, or any other person to whom section 68 (6) applies, lawfully performing any function commits an offence and is liable on conviction to a penalty not exceeding \$2 000.

(2) Subject to section 69, a person who without reasonable excuse fails to furnish to a corporation, or to any other person to whom section 68 (6) applies who is lawfully performing any function any access to apparatus or any facility or other assistance which that person may lawfully and reasonably be required to furnish in order to enable the corporation 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; No. 89 of 1994 ss.29, 39 and 41.]*

**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.

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

### **Power to institute and conduct proceedings**

**84.** (1) A corporation 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 a corporation may be entitled in civil proceedings.

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

*[Section 84 amended by No. 89 of 1994 ss.31, 39, 40 and 41.]*

### **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 a corporation, 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 corporation;
- (b) any order of the corporation to prosecute;
- (c) the particular or general appointment of any officer of the corporation to take proceedings against any person;
- (d) the powers of any officer of the corporation to prosecute;
- (e) the appointment of a person as an officer of the corporation;
- (f) the presence of a quorum at any meeting at which any order is made or any act is done by the corporation.

(2) The production of —

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

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

(3) Where a record is produced and identified as the minutes, or an excerpt from, the minutes of the board of directors of a corporation, 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 42 of the *Interpretation Act 1984*, or which is invalid.

*[Section 87 amended by No. 101 of 1981 s.19; No. 24 of 1986 s.42; No. 89 of 1994 ss.32, 39 and 41.]*

**Evidence of documents issued by a corporation**

88. (1) All documents whatever purporting to be issued or written by or under the direction of a corporation and purporting to be signed by, or to bear the facsimile signature of a director or the chief executive officer of the corporation 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 corporation 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 chief executive officer of the corporation 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; No. 89 of 1994 ss.33, 39 and 41.]*

**[89, 90, 91, 92, 93, 94, 95, 96. Repealed by No. 89 of 1994 s.34.]**



[97. *Repealed by No. 60 of 1994 s.13.*]

[98, 98A, 99, 100, 101, 102. *Repealed by No. 89 of 1994 s.34.*]

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

[104, 105, 106, 107, 108. *Repealed by No. 89 of 1994 s.34.*]

[109. *Repealed by No. 101 of 1981 s.31.*]

[110, 111, 112, 113, 114. *Repealed by No. 89 of 1994 s.34.*]

[115, 116, 117, 118. *Repealed by No. 98 of 1985 s.3.*]

[119. *Repealed by No. 89 of 1994 s.34.*]

[119A. *Repealed by No. 126 of 1987 s.121.*]

**Corporation to make good damage, and may be liable to pay compensation**

120. In the exercise of the powers conferred by section 49, or where a corporation is otherwise empowered to enter any land, premises or other thing, the corporation 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 corporation and for which the corporation is not otherwise responsible or unless this Act or any contract or agreement relating thereto

*Energy Corporations (Powers) Act 1979*

**s. 121**

otherwise provides, the corporation shall pay forthwith adequate compensation for, or otherwise make good, the physical damage done to the land, premises or thing by the corporation'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; No. 89 of 1994 ss.35, 39 and 41.]*

**Actions for damages, generally**

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

(2) No action shall be maintained against a corporation 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 corporation within such period as the corporation may by notice in writing require of him where that request is made by the corporation 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; No. 89 of 1994 ss.36, 39, 40 and 41.]*

**Protection**

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

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

## **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 a corporation.

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

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

- (a) contracts or agreements to which a corporation is, or proposes to become, a party, whether for the purpose of obtaining or of furnishing a supply of energy; or
- (b) tariffs, including particular charges or charges made pursuant to by-laws; or
- (c) the doing of acts or things that are, or are of a kind, necessary to give effect to any such contract, agreement or tariff.

*[Section 123 amended by No. 24 of 1986 ss.40 and 42;  
No. 30 of 1987 s.9; No. 89 of 1994 s.39.]*

## **By-laws**

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

(1a) By-laws made by a corporation shall make provision only in respect of energy, or the supply of energy, of a kind which

s. 124

is within the corporation's functions, and in respect of related matters.

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

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

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

- (a) the establishment, installation, construction, management, maintenance, repair, use and protection of the undertakings, works and other property of, or under the control or management of, the corporation;
- (b) preventing or remedying the waste, misuse or undue consumption of, or any undue or improper interference with the enjoyment by any other person of, any energy supply whether generated or produced and distributed or supplied by the corporation or any other person, body or authority;
- (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 energy supplied or services provided by the corporation;

- (iaa) subject to subsection (4a), the payment of an additional amount by way of interest at the prescribed rate to be made where the payment of any amount exceeding \$1 000 in relation to energy supplied or services performed by the corporation is not paid in full on the date when it is due as specified by the corporation or within such time as is fixed by the corporation;
- (ia) any formula, index or other base to be used for the purposes of calculating or ascertaining any fee or charge that is to apply to or in relation to a service provided by the corporation or a supply of energy;
- (ii) the making of a fixed charge in respect of a supply effected, whether or not 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 to the corporation:

- (viii) the apportionment and assessment of accounts;
  - (ix) the manner, in so far as not otherwise provided for in this Act, of adjustment of consumer accounts where errors or inaccuracies are found in the method of charging in, or in the calculation of, such accounts;
  - (x) the payment of interest on deposits to secure the payment of accounts;
  - (xi) generally as to the liability of persons for payment to the corporation in respect of supply or services;
- (e) providing for the recovery by action or summary proceedings of any charges and other amounts payable to the corporation;
- [(f) and (g) deleted]*
- (h) enabling the corporation to repair meters, fittings or other apparatus used in connection with the supply of energy by the corporation to any person or authority;
- (j) prohibiting any alteration of or interference with any works, meters, or apparatus of the corporation without the consent of the corporation;
- (k) in the case of by-laws made by the Electricity Corporation, 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 that corporation;

*[(l) and (m) deleted]*

- (n) the measures that may be taken where any supply system is, in the opinion of the corporation, 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 corporation, to obviate damage to any portion of a supply system that is the property of or under the control or management of the corporation;
- (p) prescribing the point at, or the circumstances in, which the property in energy supplied passes from the corporation 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 whereby such limitation may be achieved; and
- (r) prescribing forms and other documents and the circumstances in which they are required under this Act, the fees and charges (other than such as are provided for in paragraph (d)) payable and the matters in respect of which fees, charges or other amounts shall be payable, and the refund or remission of any fees, charges or other amounts.

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

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

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

s. 125

- (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 its supply systems or any of them or of consumer installations,

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

*[Section 124 amended by No. 24 of 1986 ss.41 and 42; No. 6 of 1991 s.3; No. 89 of 1994 ss.38, 39 and 41.]*

### **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 a corporation considers valid any requirement imposed by the corporation cannot be conformed to, the corporation 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.

*[Section 125 amended by No. 89 of 1994 ss.39 and 41.]*

*Energy Corporations (Powers) Act 1979*

[**Schedule.** *Repealed by No. 60 of 1994 s.13.*]

---

## *Energy Corporations (Powers) Act 1979*

### NOTES

<sup>1</sup> This reprint is a compilation as at 25 May 1995 of the *Energy Corporations (Powers) Act 1979* and includes the 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)	Short title subsequently amended. (See note under section 1.)
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> section 4	63 of 1981	13 October 1981	13 October 1981	
<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: 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	

*Energy Corporations (Powers) Act 1979*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Financial Administration and Audit) Act 1985 Schedule</i>	98 of 1985	4 December 1985	1 July 1986 (see section 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 section 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)	
<i>State Energy Commission Amendment Act 1987</i>	30 of 1987	29 June 1987	29 June 1987	
<i>Acts Amendment (Public Service) Act 1987 section 32, item 45 Schedule 2</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)	
<i>Acts Amendment (Land Administration) Act 1987 section 121</i>	126 of 1987	31 December 1987	16 September 1988 (see <i>Gazette</i> 16 September 1988 p.3637)	

## *Energy Corporations (Powers) Act 1979*

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Accountability) Act 1989</i> section 13	5 of 1989	26 April 1989	1 July 1989 (see <i>Gazette</i> 30 June 1989 p.1893)	
<i>State Energy Commission Amendment Act 1991</i>	6 of 1991	5 June 1991	25 February 1992 (see <i>Gazette</i> 25 February 1992 p.961)	
<i>Financial Administration Legislation Amendment Act 1993</i> sections 11 and 15	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	
<i>Local Government (Superannuation) Legislation Amendment Act 1994</i> section 13	60 of 1994	7 November 1994	24 December 1994 (see <i>Gazette</i> 23 December 1994 p.7070)	
<i>Planning Legislation Amendment Act (No. 2) 1994</i> section 46	84 of 1994	13 January 1995	1 March 1995 (see <i>Gazette</i> 21 February 1995 p.567)	
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994</i> Part 2	89 of 1994	15 December 1994	1 January 1995 (see section 2 (2) and <i>Gazette</i> 23 December 1994 p.7069)	Section 34 (2) saving <sup>3</sup> , Part 3 transitional <sup>4</sup>

## *Energy Corporations (Powers) Act 1979*

<sup>2</sup> Now see the *Interpretation Act 1984*

<sup>3</sup> Section 34 (2) of Act No. 89 of 1994 reads as follows —

“

(2) Any appeal commenced under section 91 of the principal Act before the commencement of this section may be continued and dealt with under the principal Act as if this section had not been passed.

”

<sup>4</sup> Part 3 of Act No. 89 of 1994 reads as follows —

“

### **PART 3 — TRANSITIONAL PROVISIONS FOR SUCCESSION FROM COMMISSION TO NEW CORPORATIONS**

#### *Division 1 — Preliminary*

#### **Intention**

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

#### **Definitions**

43. In this Part, unless the contrary intention appears —

“assets” means —

- (a) property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and
- (b) without limiting paragraph (a) includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from,

*Energy Corporations (Powers) Act 1979*

accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

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

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

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

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

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

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

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

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

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

*Energy Corporations (Powers) Act 1979*

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

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

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

- (a) how assets, rights and liabilities of the Commission are to be allocated to the Electricity Corporation and the Gas Corporation; and
- (b) any proceedings in which the Electricity Corporation or the Gas Corporation is to be, or both of those corporations are to be, substituted for the Commission as a party or parties.

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

- (a) the Electricity Corporation;
- (b) the Gas Corporation; or
- (c) both of those corporations either jointly or as tenants in common in equal or unequal shares.

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

- (a) provide for the allocation of income in respect of any asset;
- (b) in respect of a particular liability, allocate a specified share of the liability to each of the corporations;
- (c) provide for the transfer, debiting, crediting, closing or otherwise dealing with any account, reserve, fund, provision, profit or liability for any levy; and



## *Energy Corporations (Powers) Act 1979*

- (d) contain such incidental or supplementary provisions as the Minister thinks fit.
- (4) The transfer order may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the commencement day.
- (5) Where for any reason it is not practicable to allocate any asset, right or liability to a corporation, or to both of the corporations, under this section before the commencement date —
  - (a) the transfer order is to specify that the asset, right or liability is to be allocated under this subsection; and
  - (b) the Minister may make a further order under this section in respect of that asset, right or liability not later than 90 days after the commencement day.
- (6) An order under subsection (5) is to have effect from the commencement day.
- (7) The Commission is to be taken to continue to hold an asset or right, and to be liable for a liability, to which subsection (5) applies until an order is made under that subsection.

### **Transfer of assets and liabilities to the Electricity Corporation**

45. (1) On and after the commencement day —
- (a) the assets and rights of the Commission allocated to the Electricity Corporation by the transfer order vest in that corporation by force of this section;
  - (b) the liabilities of the Commission (including a share of a liability) allocated to the Electricity Corporation by the transfer order become, by force of this section, the liabilities of that corporation;

*Energy Corporations (Powers) Act 1979*

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

and

## *Energy Corporations (Powers) Act 1979*

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

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

### **Transfer of assets and liabilities to the Gas Corporation**

46. (1) On and after the commencement day —

- (a) the assets and rights of the Commission allocated to the Gas Corporation by the transfer order vest in that corporation by force of this section;
- (b) the liabilities of the Commission (including a share of a liability) allocated to the Gas Corporation by the transfer order become, by force of this section, the liabilities of that corporation;
- (c) subject to section 49, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Gas Corporation were substituted for the Commission in the agreement or instrument;
- (d) the Gas Corporation is a party to any proceedings by or against the Commission commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 44 (1) (b);
- (e) any proceedings or remedy that might have been commenced by or available against or to the Commission in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Gas Corporation;

## *Energy Corporations (Powers) Act 1979*

- (f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Commission (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Gas Corporation;
- (g) the Commission is to deliver to the Gas Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
  - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
  - (ii) proceedings referred to in paragraph (d);and
- (h) all of the provisions of the transfer order relevant to this section have effect.

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

### **Transfer of assets and liabilities to both corporations**

47. On and after the commencement day —

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

*Energy Corporations (Powers) Act 1979*

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

*Energy Corporations (Powers) Act 1979*

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

and

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

**Unallocated assets and liabilities**

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

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

## *Energy Corporations (Powers) Act 1979*

effect) is to be taken to have been done or omitted by, to or in respect of the State; and

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

### **References to Commission in Government agreements**

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

- (a) the Electricity Corporation;
- (b) the Gas Corporation;
- (c) both those corporations either jointly or as tenants in common in equal or unequal shares;
- (d) a Minister of the Crown or the State; or
- (e) the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*.

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

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

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

## *Energy Corporations (Powers) Act 1979*

### **Debentures and inscribed stock**

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

- (a) those sections and regulations remained in force; and
- (b) references in those sections and regulations to the “Commission” were references to a corporation or the corporations jointly or severally in accordance with the transfer order.

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

### **Guarantees in respect of Commission**

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

- (a) any provision of this Act, including without limitation the transfer of any liability of the Commission under section 45, 46 or 47 to a corporation or the corporations jointly; or
- (b) any transfer, vesting or assumption of any liability of the Commission to, in or by a corporation or the corporations jointly by any other means.

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

- (a) the commencement day; or



## *Energy Corporations (Powers) Act 1979*

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

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

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

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

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

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

- (a) in the case of the Electricity Corporation, the *Electricity Corporation Act 1994*; and
- (b) in the case of the Gas Corporation, the *Gas Corporation Act 1994*.

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

### **Commission to complete necessary transactions**

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

- (a) the Commission is to be taken to continue to hold or be liable for that asset, right or liability until the same is effectively vested in

## *Energy Corporations (Powers) Act 1979*

or succeeded to by the corporation concerned or both of the corporations in accordance with this Part; and

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

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

### **Exemption from State taxation**

53. (1) In this section —

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

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

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

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

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

## *Energy Corporations (Powers) Act 1979*

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

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

### **Registration of documents**

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

(2) Without limiting subsection (1), a statement in an instrument executed by the Electricity Corporation or the Gas Corporation that any estate or interest in land or other property has become vested in it or in the corporations jointly or in specified shares under section 45, 46 or 47 is evidence of that fact.

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

### **Saving**

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

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

## *Energy Corporations (Powers) Act 1979*

- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

### ***Division 3 — Staff***

#### **Transition of employment**

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

#### **Employees' rights preserved**

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

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

## *Energy Corporations (Powers) Act 1979*

### ***Division 4 — General transitional provisions***

#### **Annual report for part of a year**

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

#### **Completion of things commenced**

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

#### **Continuing effect of things done**

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

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

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

#### **Immunity to continue**

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

## *Energy Corporations (Powers) Act 1979*

### **Agreements and instruments generally**

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

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

- (a) to which the Commission was a party; or
- (b) which contains a reference to the Commission,

has effect after that day as if —

- (c) the relevant corporation were substituted for the Commission as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the Commission were (unless the context otherwise requires) a reference to the relevant corporation.

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

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

### **Commission to perform necessary transitional functions**

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

- (a) reporting as required by section 58; and

## *Energy Corporations (Powers) Act 1979*

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

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

(3) Despite the provisions of the principal Act —

- (a) the members of the Commission immediately before the commencement day cease to hold office on that day;
- (b) the Commission is to be constituted by a person appointed by the Minister; and
- (c) the Commission is to perform the functions referred to in subsection (1) through that person.

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

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

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

### **Further transitional provision may be made**

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

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

*Energy Corporations (Powers) Act 1979*

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

- (a) to affect, in a manner prejudicial to any person (other than the State, the Electricity Corporation, the Gas Corporation or any authority of the State), the rights of that person existing before the day of its publication; or
- (b) to impose liabilities on any person (other than the State, the Electricity Corporation, the Gas Corporation or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

”