

Western Australia

Gas Corporation Act 1994

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Defined Terms



Western Australia

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Gas Corporation Act 1994

An Act to establish a corporation with the function of supplying gas, and with functions necessary for and related to that purpose, to make provision as to access to any distribution system of the corporation, and for connected purposes.

[Long title amended by No. 53 of 1997 s.52; No. 65 of 1998 s.89.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Gas Corporation Act 1994*¹.

2. Commencement

- (1) Except as provided in subsection (2), this Act comes into operation on the day on which Part 2 of the *Energy Corporations (Transitional and Consequential Provisions) Act 1994* comes into operation¹.
- (2) Sections 90, 91, 92 and 93 come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“**board**” means the board of directors provided for by section 7;

“**chief executive officer**” means the officer appointed under section 13 and, except in section 13, includes an acting chief executive officer under subsection (5) of that section;

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

“**corporation**” means the body established by section 4;

“**director**” means a member of the board;

“**executive officer**” means a member of the staff of the corporation designated under section 18 as an executive officer;

“**function**”, except in sections 28(1), (2) and (4) and 30, includes powers, duties and authorities;

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

- (a) as a fuel; or

(b) in any chemical process;

“member of staff” means a person engaged under section 15;

“non-executive director” means a director appointed under section 7(1)(b);

“subsidiary” means —

- (a) a body that would be a subsidiary within the meaning of the Corporations Law if the corporation were a body corporate to which the Corporations Law applies; and
- (b) an interest or other rights of the corporation in a unit trust, joint venture or partnership where the interest or other rights of the corporation in connection with the unit trust, joint venture or partnership entitle the corporation to —
 - (i) control the composition of the governing body of the unit trust, joint venture or partnership;
 - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
 - (iii) control the business affairs of the unit trust, joint venture or partnership,

but, except in sections 71, 72 and 74, does not include the corporate vehicle as defined in section 5(2) of the *Gas Corporation (Business Disposal) Act 1999* or a subsidiary of the corporate vehicle within the meaning of the Corporations Law;

“Treasurer” means the Treasurer of the State.

[Section 3 amended by No. 58 of 1999 s.58.]

Part 2 — Gas Corporation

Division 1 — Establishment of Gas Corporation

4. Gas Corporation established as a body corporate

- (1) There is established a body called the Gas Corporation.
- (2) The corporation is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the corporation in its corporate name.
- (4) The corporation may use, and operate under, one or more trading names approved by the Minister being —
 - (a) an abbreviation or adaptation of its corporate name; or
 - (b) a name other than its corporate name.

5. Agent of Crown

The corporation is an agent of the Crown and enjoys the status, immunities and privileges of the Crown except as otherwise —

- (a) provided by section 27; or
- (b) prescribed by the regulations.

6. Corporation and officers not part of Public Service

- (1) The corporation is not, and is not to become, part of the Public Service.
- (2) Neither the chief executive officer nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

Division 2 — Board of directors

7. Board of directors

- (1) The corporation is to have a board of directors comprising —
 - (a) the chief executive officer for the time being; and
 - (b) not less than 3 nor more than 6 other persons appointed as non-executive directors by the Governor on the nomination of the Minister.
- (2) In making nominations for appointment to the board the Minister is to ensure that —
 - (a) each nomination is made only after consultation with the board; and
 - (b) no member of staff other than the chief executive officer is a director.
- (3) Where a vacancy occurs in an office of non-executive director the board may recommend a candidate to the Minister.
- (4) Subsection (2)(a) does not apply —
 - (a) to the initial appointments to the board; or
 - (b) where the nominee was recommended by the board under subsection (3).

[Section 7 amended by No. 58 of 1999 s.59.]

8. Functions of board

The board is the governing body of the corporation with authority, subject to this Act, in the name of the corporation, to perform the functions, determine the policies and control the affairs of the corporation.

9. Provisions as to board's constitution and proceedings

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

10. Remuneration

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

11. Conflict of duties

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

12. Committees

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

15. Staff

- (1) The power to engage and manage the staff of the corporation is vested in the board.
- (2) The power conferred by subsection (1) —
 - (a) includes powers to determine remuneration and other terms and conditions of service and to remove, suspend and discipline staff; and
 - (b) does not preclude the delegation of any matter under section 37.
- (3) The remuneration of members of staff and other terms and conditions of employment are not to be less favourable than is provided for in —
 - (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
 - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Nothing in this section affects the operation of the *Workplace Agreements Act 1993*.

16. Minimum standards for staff management

- (1) The board must, after consultation with the Commissioner for Public Sector Standards, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the corporation.
- (2) In subsection (1) “**management**” includes recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment.
- (3) In complying with subsection (1) the board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.

- (4) Section 13(3) is not affected by the requirements of subsection (3).
- (5) The Commissioner for Public Sector Standards may at any time recommend to the board any amendment that he or she thinks should be made to an instrument issued under this section.
- (6) The board may —
 - (a) amend an instrument issued under this section; or
 - (b) revoke it and substitute a new instrument,but, except where subsection (5) applies, is to do so only after consultation with the Commissioner for Public Sector Standards.

17. Reports to Commissioner for Public Sector Standards

- (1) The Commissioner for Public Sector Standards may in writing require the board —
 - (a) to report to him or her on the observance of the minimum standards in force under section 16; and
 - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a requirement made under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on the content or observance of the minimum standards in force under section 16.

18. Designation of executive officers

For the purposes of section 22, the board may designate a member of the staff of the corporation as an executive officer by resolution —

- (a) passed by the board; and

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(b) notified in writing to the employee,
and may in the same manner revoke such a designation.

19. Superannuation

- (1) The corporation may grant, or make provision for the grant of, retirement benefits to members of staff and, for that purpose may —
- (a) establish, manage and control; or
 - (b) enter into an arrangement with any body for the establishment, management and control by such body either alone or jointly with the corporation of,

any fund or scheme for the purpose of providing for such retirement benefits.
- (2) The corporation may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) “**members of staff**” includes —
- (a) dependants of members of staff; and
 - (b) former members of staff and their dependants.
- (4) Nothing in this section affects the operation of the *Superannuation and Family Benefits Act 1938* or the *Government Employees Superannuation Act 1987* in relation to the corporation or any member of staff.

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

20. Duties of, and relating to, directors

Schedule 2 has effect in relation to —

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

21. Chief executive officer, duties imposed

- (1) Clauses 2 to 11, 15 and 16 of Schedule 2 apply to the chief executive officer in his or her capacity as such in addition to their application to him or her in the capacity of director.
- (2) Clauses 4 and 7 to 11 of Schedule 2 apply to a former chief executive officer in his or her capacity as such in addition to their application to him or her in the capacity of former director.
- (3) This section and section 20 do not operate so as to make a chief executive officer or a former chief executive officer liable to be punished twice for the same act or omission.

22. Executive officers, duties imposed

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

23. Members of staff, duties imposed

- (1) Clauses 4, 5 and 7 to 11 of Schedule 2 apply to any person engaged under section 15, other than an executive officer, as if references to a director were replaced by references to a person so engaged.
- (2) Clauses 4, 5 and 7 to 11 of Schedule 2 apply to a person formerly engaged under section 15, other than an executive officer, as if references to a former director were replaced by references to a person formerly so engaged.

24. Codes of conduct

- (1) The board must, after consultation with the Commissioner for Public Sector Standards, prepare and issue a code or codes of

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conduct setting out minimum standards of conduct and integrity to be observed by members of staff.

- (2) In complying with subsection (1) the board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.
- (3) The board may, after consultation with the Commissioner for Public Sector Standards, amend any code of conduct in force under subsection (1) or revoke it and substitute a new code of conduct.
- (4) In this section and in sections 25 and 26 “members of staff” includes the chief executive officer.

25. Reports to Commissioner for Public Sector Standards

- (1) The Commissioner for Public Sector Standards may in writing require the board —
 - (a) to report to him or her on the observance by members of staff of any code of conduct in force under section 24; and
 - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a requirement made under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on any matter relating to the observance by members of staff of a code of conduct in force under section 24 that the Commissioner thinks should be brought to the Minister’s attention.

26. Reports to Minister

- (1) The board, when it delivers to the Minister its annual report under section 63, is also to deliver to the Minister a separate

report on the observance by members of staff of any code of conduct in force under section 24.

- (2) The board is to give to the Commissioner for Public Sector Standards a copy of each report under subsection (1).

Part 3 — Functions and powers

Division 1 — Functions, powers and related provisions

27. Compliance with written laws

Nothing in this Act is to be read as conferring on the corporation in the performance of its functions any immunity from the operation of any written law.

28. Functions

- (1) The functions of the corporation are —
 - (a) to acquire, exchange, manufacture, modify, blend, transport, distribute, market and otherwise supply gas;
 - (b) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a);
 - (c) to use its expertise and resources to provide consultative, advisory or other services for profit;
 - (d) to develop and turn to account any technology, software or other intellectual property that relates to a function referred to in paragraph (a) or (b);
 - (e) to manufacture and market any product that relates to a function referred to in paragraph (a), (b) or (d).
- (2) It is also a function of the corporation —
 - (a) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1)(a) and (b) is not affected;
 - (b) to do anything that the corporation determines to be conducive or incidental to the performance of a function referred to in subsection (1); or
 - (c) to do anything that it is authorised to do by any other written law.

- (2a) Where the performance of any of the corporation's functions referred to in subsection (1)(a) requires that the corporation hold a licence under the *Energy Coordination Act 1994*, the corporation may only perform that function in accordance with the terms and conditions of such a licence.
- (3) The corporation may perform any of its functions in the State or elsewhere.
- (4) This section or section 29 does not impose on the corporation any duty to perform any function that is enforceable by proceedings in a court.
- (5) Subsection (4) does not apply to any direction given under this Act by the Governor or the Minister, or affect the operation of section 94.

[Section 28 amended by No. 57 of 1997 s.64; No. 20 of 1999 s.10(2).]

29. Corporation to act in accordance with policy instruments

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

30. Powers

- (1) The corporation may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1) or the other powers conferred on the corporation by this Act or any other Act, the corporation may for the purpose of performing any function —
 - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
 - (b) enter into any contract or arrangement including a contract or arrangement with any person for the

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- distribution, transportation or supply of gas by that person on behalf of the corporation;
- (c) apply for the grant or transfer of any mining tenement, petroleum licence or other licence or authority to the corporation;
 - (d) acquire, establish and operate —
 - (i) any undertaking (including any necessary tenements and licences) for the production, recovery, conversion or processing of any fuel or source of energy; and
 - (ii) any associated undertaking;
 - (e) produce and deal in —
 - (i) any by-product resulting from; or
 - (ii) any equipment, facilities or system associated with,
the performance of any function of the corporation;
 - (f) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the corporation;
 - (g) subject to sections 33 and 34, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;
 - (h) carry out any investigation, survey, exploration or boring;
 - (i) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research;
 - (j) for the purposes of section 28(1)(d), apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
 - (k) promote and market the corporation and its activities.

- (3) The corporation may —
- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
 - (b) make any *ex gratia* payment that the board considers to be in the corporation's interest;
 - (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the corporation.
- (4) If the generality of any power conferred on the corporation by this Act is restricted by any provision of the *Energy Corporations (Powers) Act 1979* that restriction applies, despite this Act.
- (5) In subsection (2) —
- “business arrangement”** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
- “participate”** includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

31. Corporation to act on commercial principles

- (1) The corporation in performing its functions must —
- (a) act in accordance with prudent commercial principles; and
 - (b) endeavour to make a profit, consistently with maximising its long term value.
- (2) If there is any conflict or inconsistency between the duty imposed by subsection (1) and —
- (a) a direction given by the Minister under this Act; or
 - (b) any provision in Schedule 6,

the direction, or provision of that Schedule, prevails.

[Section 31 amended by No. 65 of 1998 s.89.]

32. Interruption etc. of supply

- (1) The corporation may interrupt, suspend or restrict the supply of gas provided by it if in its opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.
- (2) The corporation is not liable for any loss or damage which arises from any such interruption, suspension or restriction except to the extent that an agreement to which the corporation is a party provides otherwise.
- (3) This section is in addition to the provisions of sections 48, 57 and 58 of the *Energy Corporations (Powers) Act 1979* and does not limit those provisions.
- (4) This section has effect despite any provision of Schedule 6.

[Section 32 amended by No. 65 of 1998 s.89.]

33. Subsidiaries

- (1) The corporation must obtain the approval of the Minister before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.
- (2) The corporation must ensure that the memorandum and articles of association of every subsidiary of the corporation that under a written law is required to have a memorandum and articles of association —
 - (a) contain provisions to the effect of those required by Schedule 4;
 - (b) are consistent with this Act; and
 - (c) are not amended in a way that is inconsistent with this Act.
- (3) The corporation must, to the maximum extent practicable, ensure that every subsidiary of the corporation complies with its memorandum and articles of association and with this Act.

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

34. Transactions which require Ministerial approval

- (1) Despite sections 28 and 30, the corporation must obtain the approval of the Minister before a transaction to which this section applies is entered into.
- (2) This section applies to a transaction if —
- (a) it is to be entered into by the corporation or a subsidiary of the corporation;
 - (b) it is not exempt under section 35; and
 - (c) the corporation's liability exceeds the prescribed amount.
- (3) For the purposes of subsection (2)(c) the corporation's liability is the amount or value of the consideration or the amount to be paid or received by the corporation or a subsidiary, ascertained as at the time when the transaction is entered into.
- (4) The prescribed amount is the greater of —
- (a) a sum equal to 1% of the written down value of the corporation's consolidated fixed assets and investments as appearing in its last audited accounts; or
 - (b) the sum of \$15 million.
- (5) In this section and section 35 "**transaction**" —
- (a) includes a contract or other arrangement or any exercise of the power conferred by section 30(2)(g); and
 - (b) does not include any transaction under section 83 or 85.

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35. Exemptions from section 34

- (1) The Minister may by order exempt a transaction or class of transaction from the operation of section 34 either unconditionally or on specified conditions.
- (2) An order under subsection (1) may be revoked or amended by the Minister.
- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transactions or class of transaction to which it relates to enable the transaction or class to be identified.
- (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause it to be laid before each House of Parliament or dealt with in accordance with section 96.

36. Minister to be consulted on major initiatives

In addition to section 34, the corporation must consult the Minister before it enters upon a course of action that in its opinion —

- (a) amounts to a major initiative; or
- (b) is likely to be of significant public interest.

37. Delegation

- (1) The corporation may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
 - (a) a director or directors;
 - (b) a member or members of staff;
 - (c) a committee established under section 12; or
 - (d) any other person.

- (3) A delegate cannot subdelegate the performance of any function unless he or she is expressly authorised by the instrument of delegation to do so.
- (4) A function performed by a delegate is to be taken to be performed by the corporation.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section is to be read as limiting the ability of the corporation to act through its officers and agents in the normal course of business.

Division 2 — Arrangements authorised, approved or directed by Governor

38. Governor may make certain regulations

- (1) Regulations under section 100 may authorise or approve —
 - (a) any arrangement involving or relating to the corporation or any subsidiary or the performance by the corporation of any of its functions;
 - (b) any act or thing done or proposed to be done in the State by the corporation or any subsidiary in the performance of its functions; or
 - (c) any other matter or thing necessary or convenient to facilitate or give effect to the authorisation or approval.
- (2) For the purposes of subsection (1) —
 - (a) **“arrangement”** includes any contract, arrangement or understanding, or any market practice or market or customer restriction, division, allocation or segregation of any nature, or a course of conduct or dealing; and

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- (b) a reference to any act or thing done or proposed to be done includes a reference to an omission or proposed omission to do that act or thing.

39. Directions by Governor

- (1) The Governor may from time to time by instrument in writing served on the corporation direct the corporation not to sell or supply gas within, or for delivery or consumption within, an area or areas of the State specified in the instrument.
- (2) Sections 41, 42 and 43(4) of the *Interpretation Act 1984* apply to an instrument under this section as if it were a regulation.
- (3) A direction under this section has effect and is to be complied with by the corporation despite any other written law.

Division 3 — Protection of persons dealing with corporation

40. Person dealing with corporation may make assumptions

- (1) A person having dealings with the corporation is entitled to make the assumptions mentioned in section 42.
- (2) In any proceedings in relation to the dealings, any assertion by the corporation that the matters that the person is entitled to assume were not correct must be disregarded.

41. Third party may make assumptions

- (1) A person having dealings with a person who has acquired, or purports to have acquired, title to property from the corporation (whether directly or indirectly) is entitled to make the assumptions mentioned in section 42.
- (2) In any proceedings in relation to the dealings, any assertion by the corporation or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

42. Assumptions that may be made

The assumptions that a person is, because of section 40 or 41 entitled to make are —

- (a) that, at all relevant times, this Act has been complied with;
 - (b) that a person who is held out by the corporation to be a director, the chief executive officer, an executive officer, a member of staff or an agent of a particular kind —
 - (i) has been properly appointed; and
 - (ii) has authority to perform the functions customarily performed by a director, the chief executive officer, an executive officer, a member of staff or an agent of that kind, as the case may require;
 - (c) that a member of staff or agent of the corporation who has authority to issue a document on behalf of the corporation has authority to warrant that the document is genuine;
 - (d) that a member of staff or agent of the corporation who has authority to issue a certified copy of a document on behalf of the corporation has authority to warrant that the copy is a true copy;
 - (e) that a document has been properly sealed by the corporation if —
 - (i) it bears what appears to be an imprint of the corporation's seal; and
 - (ii) the sealing of the document appears to comply with section 97;
- and
- (f) that the directors, chief executive officer, members of staff and agents of the corporation have properly performed their duties to the corporation.

43. Exception to sections 40 and 41

- (1) Despite sections 40 and 41, a person is not entitled to assume a matter mentioned in section 42 if —
 - (a) the person has actual knowledge that the assumption would be incorrect; or
 - (b) because of the person's connection or relationship with the corporation, the person ought to know that the assumption would be incorrect.

- (2) If, because of subsection (1), a person is not entitled to make a particular assumption —
 - (a) if the assumption is in relation to dealings with the corporation, section 40(2) does not apply to any assertion by the corporation in relation to the assumption; or
 - (b) if the assumption is in relation to an acquisition or purported acquisition from the corporation of title to property, section 41(2) does not apply to any assertion by the corporation or another person in relation to the assumption.

Part 4 — Provisions as to accountability

Division 1 — Strategic development plans

44. Draft strategic development plan to be submitted to Minister

- (1) The board must in each year prepare, and submit to the Minister for his or her agreement, a draft strategic development plan for the corporation and any subsidiary.
- (2) Each draft strategic development plan is to be submitted not later than 2 months before the start of the next financial year.

45. Transitional provision

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

46. Matters to be included in strategic development plan

- (1) The strategic development plan must set out economic and financial objectives and operational targets and how those objectives and targets will be achieved.
- (2) The matters which are to be considered in the preparation of the strategic development plan include competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure and personnel requirements.
- (3) A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.

47. Strategic development plan to be agreed if possible

The board and the Minister must endeavour to reach agreement on the draft strategic development plan as soon as possible, and in any event not later than one month before the start of the next financial year.

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

- (1) The Minister may return the draft strategic development plan to the board and request it to —
 - (a) consider or further consider any matter and deal with the matter in the draft plan; and
 - (b) revise the draft plan in the light of its consideration or further consideration.
- (2) The board must comply with the request as soon as is practicable.
- (3) If a draft strategic development plan has not been agreed to by the Minister by one month before the start of the next financial year, the Minister may, by written notice, direct the board —
 - (a) to take specified steps in relation to the draft plan; or
 - (b) to make specified modifications to the draft plan.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 96.

49. Strategic development plan pending agreement

- (1) If the Minister has not agreed to a draft strategic development plan before the start of a financial year, the latest draft plan is to be the strategic development plan for the corporation and any subsidiary until a draft strategic development plan is agreed to under section 50.
- (2) In subsection (1) "**latest draft plan**" means the draft strategic development plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

50. Minister's agreement to draft strategic development plan

When a draft strategic development plan is agreed to by the Minister, it becomes the strategic development plan for the relevant financial year or the remainder of the year, as the case may be.

51. Modifications of strategic development plan

- (1) A strategic development plan may be modified by the board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the board to modify the strategic development plan.
- (3) Before giving the direction the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 96.

52. Concurrence of Treasurer

The Minister is not to —

- (a) agree to a draft strategic development plan under section 50; or
- (b) agree to or direct any modification of a strategic development plan under section 51,

except with the concurrence of the Treasurer.

Division 2 — Statement of corporate intent

53. Draft statement of corporate intent to be submitted to Minister

- (1) The board must in each year prepare, and submit to the Minister for his agreement, a draft statement of corporate intent for the corporation and any subsidiary.

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Division 2 Statement of corporate intent

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- (2) Each draft statement of corporate intent is to be submitted not later than 2 months before the start of the next financial year.

54. Transitional provision

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

55. Matters to be included in statement of corporate intent

- (1) The statement of corporate intent must be consistent with the strategic development plan under Division 1 for the corporation and any subsidiary.
- (2) The statement of corporate intent for the corporation and any subsidiary must specify —
- (a) the performance targets and other measures by which performances may be judged in relation to objectives for the relevant financial year;
 - (b) an outline of objectives;
 - (c) an outline of the nature and scope of the functions proposed to be performed during the relevant financial year;
 - (d) an outline of main undertakings during the relevant financial year;
 - (e) the dividend policy for the relevant financial year;
 - (f) accounting policies that apply to the preparation of accounts;
 - (g) the type of information to be given to the Minister, including information to be given in quarterly and annual reports;
 - (h) the nature and extent of community service obligations that are to be performed;

- (i) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations;
 - (j) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
 - (k) such other matters as may be agreed on by the Minister and the board.
- (3) The Minister may exempt the corporation from including any matter, or any aspect of a matter, mentioned in subsection (1) in the statement of corporate intent.
- (4) In subsection (2) “**community service obligations**” means obligations to perform functions that it is not in the commercial interests of the corporation to perform.

56. Statement of corporate intent to be agreed if possible

The board and the Minister must endeavour to reach agreement on the draft statement as soon as possible and, in any event not later than the start of the next financial year.

57. Minister’s powers in relation to draft statement of corporate intent

- (1) The Minister may return the draft statement of corporate intent to the board and request it to —
- (a) consider or further consider any matter and deal with the matter in the draft statement; and
 - (b) revise the draft statement in the light of its consideration or further consideration.
- (2) The board must comply with the request as soon as is practicable.

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Division 2 Statement of corporate intent

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- (3) If a draft statement of corporate intent has not been agreed to by the Minister by one month before the start of the financial year, the Minister may, by written notice, direct the board —
 - (a) to take specified steps in relation to the draft statement;
or
 - (b) to make specified modifications to the draft statement.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 96.

58. Statement of corporate intent pending agreement

- (1) If the Minister has not agreed to a draft statement of corporate intent before the start of a financial year, the latest draft statement is to be the statement of corporate intent for the corporation and any subsidiary until a draft statement of corporate intent is agreed to under section 59.
- (2) In subsection (1) “**latest draft statement**” means the draft statement of corporate intent submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

59. Minister’s agreement to draft statement of corporate intent

- (1) When a draft statement of corporate intent is agreed to by the Minister, it becomes the statement of corporate intent for the relevant financial year or the remainder of the year as the case may be.
- (2) The Minister must within 14 days after he or she agrees to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 96.

- (3) The board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

60. Modifications of statement of corporate intent

- (1) A statement of corporate intent may be modified by the board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the board to modify the statement of corporate intent, and the board must comply with any such direction.
- (3) Before giving the direction, the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 96.

61. Concurrence of Treasurer

The Minister is not to —

- (a) agree to a draft statement of corporate intent under section 59; or
- (b) agree to or direct any modification of a statement of corporate intent under section 60,

except with the concurrence of the Treasurer.

Division 3 — Quarterly and annual reports

62. Quarterly reports

- (1) The corporation must, for each of the first 3 quarters of a financial year, give to the Minister a separate report on the operations of the corporation and of each subsidiary.
- (2) A quarterly report is to be prepared on a consolidated basis.

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Division 3 Quarterly and annual reports

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- (3) A quarterly report must be given to the Minister —
 - (a) within one month after the end of the quarter; or
 - (b) if another period after the end of the quarter is agreed between the board and the Minister, within the agreed period.
- (4) The corporation must give a copy of each quarterly report to the Treasurer.
- (5) A quarterly report must include the information required to be given in the report by a relevant statement of corporate intent under Division 2.
- (6) Subject to section 65, the Minister shall, after consultation with the board, make a quarterly report available to the public.

63. Annual reports

- (1) The corporation must prepare and deliver to the Minister in each year a separate annual report on the operations of each of —
 - (a) the corporation, which is to be done —
 - (i) on a consolidated basis and in accordance with clauses 35 and 36 of Schedule 3; and
 - (ii) on a segmented basis if the operations of the corporation are divided into segments under subsection (2)(a);
 - and
 - (b) any subsidiary, which is to be done in accordance with clauses 35 and 36 of Schedule 3.
- (2) For the purposes of subsection (1)(a)(ii) —
 - (a) the operations of the corporation may be divided into such segments as are agreed between the corporation and the Minister and, if there is a gas transmission system, as defined in section 90, are to be divided into

the following segments or such other segments as may be agreed between the corporation and the Minister —

- (i) the operations relating to that system; and
- (ii) the distribution and supply of gas;

and

- (b) separate profit and loss accounts and balance sheets are to be prepared in respect of each of those segments.
- (3) All of the reports under subsection (1) are to be sent to the Minister at the same time.
 - (4) The Minister must within 21 days after the day on which a copy of an annual report of the corporation is delivered to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with section 96.
 - (5) The annual report referred to in subsection (1)(b) is not required to be laid before Parliament or dealt with under section 96.

[Section 63 amended by No. 53 of 1997 s.52.]

64. Contents of annual reports

- (1) The annual report in respect of the corporation or a subsidiary must —
 - (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the corporation or the subsidiary;
 - (b) include a comparison of the performance of the corporation or the subsidiary with any relevant statement of corporate intent;
 - (c) include particulars of any directions given by the Minister under section 48(3), 51(2), 57(3), 60(2), 67(1), 73(4) or 82(3) —
 - (i) that apply to the corporation or the subsidiary;and

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- (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year;
- and
- (d) include particulars of the impact on the financial position, profits and losses and prospects of the corporation or the subsidiary of any modifications to —
 - (i) the statement of corporate intent; and
 - (ii) any directions given by the Minister under section 67(1),that were given during the relevant financial year.
- (2) The annual report in respect of the corporation must also include a summary of the report referred to in section 26.
- (3) The requirements of this section are in addition to clauses 35 and 36 of Schedule 3.

65. Deletion of commercially sensitive matters from reports

- (1) The board may request the Minister to delete from the copies of a quarterly or annual report (and accompanying documents) that are to be made public, a matter that is of a commercially sensitive nature.
- (2) The Minister may, despite section 64, comply with a request under subsection (1).

Division 4 — Ministerial directions, general provisions

66. Directions to corporation

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

67. Minister may give directions

- (1) The Minister may give directions in writing to the corporation generally with respect to the performance of its functions and, subject to section 68, the corporation is to give effect to any such direction.
- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 96 —
 - (a) within 14 days after the direction is given; or
 - (b) if the direction is the subject of a notification under section 68, within 14 days after it is confirmed under that section.

68. Directions contrary to commercial interest

- (1) Where a direction under section 67 is given and the board determines that —
 - (a) it would be inconsistent with section 31(1) for the corporation to comply with the direction; or
 - (b) there is some other reason why it should not so comply,the board is to notify the Minister in writing within 7 days of receipt of the direction, of its determination and the reason for it.
- (2) Where the board gives such a notice to the Minister —
 - (a) the Minister is to consult with the Treasurer and having regard to those consultations the Minister is to cancel or confirm the direction; and
 - (b) the corporation is not required to give effect to the direction unless it is so confirmed.

69. When directions take effect

- (1) A direction under section 67 becomes effective —
 - (a) on the expiry of 7 days after its receipt by the board or of such longer period as the Minister may, at the request of the board, determine; or
 - (b) if subsection (1) of section 68 applies, on its being confirmed under subsection (2) of that section.
- (2) If the board asks the Minister to extend the 7 day period under subsection (1), the Minister must consider the request and notify the board of his or her decision before the 7 day period has expired.

Division 5 — Consultation and provision of information

70. Consultation

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

71. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the corporation and any subsidiary; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the chief executive officer or the board to furnish information to the Minister;
 - (b) request the chief executive officer or the board to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the corporation and any subsidiary to obtain the information and furnish it to the Minister.
- (3) The chief executive officer or the board is to —
 - (a) comply with a request under subsection (2); and
 - (b) make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) Where the chief executive officer or the board furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the chief executive officer or the board the public disclosure of the information would adversely affect the commercial interests of the corporation or any subsidiary.
- (5) In this section —
 - “**document**” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
 - “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the corporation.

72. Minister to be kept informed

The corporation must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the corporation and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the corporation and its subsidiaries; and
- (b) give the Minister reports and information that he or she requires for the making of informed assessments of matters mentioned in paragraph (a); and

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- (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of the corporation's —
 - (i) objectives outlined in its statement of corporate intent; or
 - (ii) targets under its strategic development plan,promptly inform the Minister of the matters and its opinion in relation to them.

73. Notice of financial difficulty

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

- (4) For the purposes of subsection (3) the Minister may give directions to the corporation including a direction requiring the corporation or any subsidiary to cease or limit the performance of any function.
- (5) The board must give effect to any such direction and must ensure that it is complied with in relation to any relevant subsidiary.
- (6) The Minister must within 14 days after a direction has been given under subsection (4) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 96.

Division 6 — General

74. Protection

- (1) The corporation, a subsidiary of the corporation or a person performing functions under this Act is not liable —
 - (a) in respect of any claim arising as a consequence of the disclosure of information or documents under section 62, 63, 70, 71, 72, 73 or clause 3 or 5 of Schedule 6; or
 - (b) for the fact of having done or omitted anything that is required to be done or omitted by a direction given under section 48(3), 51(2), 57(3), 60(2), 67(1), 73(4) or 82(3).
- (2) Subsection (1) does not extend to the manner in which any thing is done or omitted if it is done or omitted contrary to clause 2 or 3 of Schedule 2.

[Section 74 amended by No. 65 of 1998 s.89.]

Part 5 — Financial provisions

Division 1 — General

75. Capital and allotment of shares

- (1) The amount of the authorised capital of the corporation and the number and nominal value of the shares into which it is to be divided are to be prescribed by regulation.
- (2) All of the shares are to be allotted to the Minister and are to be paid for in the manner agreed between the Minister and the board and approved by the Treasurer.
- (3) Shares in the authorised capital of the corporation are not to be held otherwise than by the Minister.
- (4) For the purpose of holding shares under this section, the Minister is a corporation sole with perpetual succession, a common seal and power to do all such things as are required for giving effect to this section.

76. Bank account

- (1) The corporation may have an account or accounts at any bank or banks, and money received by and expenditure of the corporation is to be paid to or from such an account.
- (2) In subsection (1) “**bank**” means —
 - (a) in relation to a bank in Australia —
 - (i) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth;
 - (ii) a body which carries on State banking in Western Australia within the meaning of section 51(xiii) of the Commonwealth Constitution; and
 - (iii) the Reserve Bank of Australia;

and

- (b) in relation to a bank not in Australia, a bank approved by the Treasurer.

[Section 76 amended by No. 26 of 1999 s.83(2).]

77. Investment

Funds of the corporation may be invested, until they are required for the performance of the corporation's functions, in such investments as the board determines.

78. Exemption from rates

No local government rate or charge is to be imposed or levied on any land vested in, or under the management and control of, the corporation that is used or reserved exclusively for the purpose of providing works, undertakings or facilities necessary to the performance of the functions of the corporation.

Division 2 — Payments to State

79. Payment of amount in lieu of rates

The corporation is to pay to the Treasurer in respect of a financial year a sum equal to the amount of any local government rate or charge that, apart from section 78, the corporation would have been liable to pay in respect of that financial year.

[80. Repealed by No. 55 of 1996 s.10(2).]

81. Determination of amounts under section 79

Amounts payable under section 79 —

- (a) are to be determined in accordance with such principles;
and
(b) are to be paid at such time or times,

as the Treasurer may direct.

[Section 81 amended by No. 55 of 1996 s.10(2).]

82. Dividend

- (1) A dividend under this section is to be —
 - (a) calculated with respect to the net profits of the corporation for a financial year after first taking into account any amounts payable to the Treasurer under section 79 and the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*; and
 - (b) paid to the Treasurer, in accordance with subsection (5).
- (2) The board, as soon as practicable after the end of each financial year, is to make a recommendation to the Minister as to the amount of the dividend (if any) that the board recommends as appropriate for that financial year.
- (3) The Minister, with the concurrence of the Treasurer —
 - (a) may accept a recommendation under subsection (2); or
 - (b) after consultation with the board, is to direct that some other amount is to be paid.
- (4) The Minister is to cause the text of any direction given under subsection (3) to be laid before each House of Parliament within 14 days after the direction is given or dealt with in accordance with section 96.
- (5) The corporation is to pay the dividend —
 - (a) as soon as practicable after the amount is fixed under subsection (3); and
 - (b) in any case not later than —
 - (i) 6 months after the end of the financial year to which the dividend relates; or
 - (ii) such other time as may be agreed between the Treasurer and the board.

[Section 82 amended by No. 55 of 1996 s.10(2).]

Division 3 — Borrowing

83. Borrowing

- (1) The corporation may, subject to section 84 —
 - (a) borrow or re-borrow moneys;
 - (b) obtain credit;
 - (c) issue, acquire, hold or dispose of debt paper;
 - (d) create and issue capital instruments; or
 - (e) otherwise arrange for financial accommodation to be extended to the corporation.
- (2) Capital instruments under subsection (1)(d) —
 - (a) may be described in any way determined by the corporation; and
 - (b) are to be created and issued on such terms as the corporation determines and the Minister approves.
- (3) The corporation is to keep such registers for the purposes of this section as may be prescribed.
- (4) In subsection (1) “**debt paper**” means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.

84. Borrowing limits

- (1) The Minister may, with the concurrence of the Treasurer and in accordance with subsections (2), (3) and (4), by notice to the corporation, impose monetary limits on the exercise of the powers conferred by section 83.
- (2) The monetary limit is to be determined for the exercise of those powers in the financial year following the commencement of this Part.

- (3) That limit may be varied for any subsequent financial year and any limit for the time being in force may also be varied for a subsequent financial year.
- (4) A limit for the time being in force continues to apply until it is so varied.
- (5) The corporation must comply with any limit for the time being in force.
- (6) A liability of the corporation is not unenforceable or in any way affected by a failure of the corporation to comply with this section.
- (7) No person dealing with the corporation is bound or concerned to enquire whether the corporation has complied or is complying with this section.

85. Hedging transactions

- (1) The corporation may in connection with the exercise of any power conferred by section 83 —
 - (a) enter into an agreement or arrangement to effect any of the following transactions —
 - (i) a foreign exchange transaction;
 - (ii) a forward foreign exchange transaction;
 - (iii) a currency swap;
 - (iv) a forward currency swap;
 - (v) a foreign currency cap, a foreign currency collar or a foreign currency floor;
 - (vi) a forward interest rate agreement;
 - (vii) an interest rate swap;
 - (viii) a forward interest rate swap;
 - (ix) an interest rate cap, an interest rate collar or an interest rate floor;

- (x) an option for interest rate or currency management purposes;
 - (xi) a futures contract or a futures option within the meaning of the Corporations Law; or
 - (xii) a transaction of such other class as is approved in writing by the Minister, with the concurrence of the Treasurer, as a class of transactions to which this paragraph applies;
- (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
- (i) 2 or more transactions permitted under paragraph (a); or
 - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 83.
- (2) In subsection (1)(a) “**interest rate**” includes coupon rate, discount rate and yield.

Division 4 — Guarantees

86. Guarantees

- (1) The Treasurer may with the concurrence of the Minister, in the name and on behalf of the Crown, guarantee the performance by the corporation, in the State or elsewhere, of any financial obligation of the corporation arising under section 83.
- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
 - (a) is by this subsection guaranteed by the State; and

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- (b) is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from the corporation or otherwise in respect of any payment made by the Treasurer under a guarantee to be paid into the Consolidated Fund.

87. Charges for guarantee

- (1) The Treasurer may, after consultation with the board, fix charges to be paid by the corporation to the Treasurer for the benefit of the Consolidated Fund in respect of a guarantee given under section 86.
- (2) Payments by the corporation to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

Division 5 — Financial administration and audit

88. Limited application of *Financial Administration and Audit Act 1985*

Despite anything in the *Financial Administration and Audit Act 1985* that Act, other than the provisions referred to in clauses 38(2) and 45(4) of Schedule 3, does not apply to the corporation or any person performing functions under this Act.

89. Financial administration and audit

- (1) Schedule 3 has effect in relation to the financial administration and audit of the corporation.
- (2) That schedule may be amended by regulations made by the Governor in accordance with subsections (3) and (4).

(3) Where —

- (a) a provision of the Corporations Law the substance of which is contained in Schedule 3 is amended or repealed; or
- (b) the Corporations Law is amended by the insertion of a new provision relating to a matter provided for by Schedule 3,

the Minister may recommend to the Governor, as soon as is practicable after the amendment or repeal comes into force, that regulations making equivalent provisions be made under subsection (2).

(4) The reference to equivalent provisions in subsection (3) is to regulations in such form that Schedule 3 as amended will in the opinion of the Minister be substantially the same as the corresponding provisions of the Corporations Law but with such modifications as are consistent with the policy of this Act.

89A. Additional financial reporting relating to the disposal of the business

(1) Nothing in Division 3, this Division or Schedule 3 prevents the corporation from preparing financial statements for a half-yearly or lesser period, and having those financial statements audited by a registered company auditor, if the board considers that it is desirable to do so for the purposes of the implementation of Parts 2 and 3 of the *Gas Corporation (Business Disposal) Act 1999*.

(2) In subsection (1) —

“registered company auditor” means a person who is for the time being registered as an auditor or taken to be registered as an auditor under Part 9.2 of the Corporations Law.

[Section 89A inserted by No. 58 of 1999 s.60.]

Part 6 — Accounting provisions for gas distribution system

[Heading inserted by No. 65 of 1998 s.89.]

90. Definition

In this Part —

“gas distribution system” means the gas distribution system identified in accordance with section 91.

[Section 90 inserted by No. 65 of 1998 s.89.]

[90A. Repealed by No. 65 of 1998 s.89.]

91. Identification of gas distribution system

(1) The corporation must —

- (a) prepare a schedule identifying in detail the system or systems of gas pipelines, mains, and gas service pipes operated by the corporation, including all associated equipment, that constitutes or constitute the gas distribution system; and
- (b) provide to any person a copy of that schedule upon payment to the corporation by that person of the prescribed fee.

[Section 91 inserted by No. 65 of 1998 s.89.]

92. Accounts of the corporation’s operations relating to the gas distribution system

The corporation must —

- (a) determine, with the approval of the Minister —
 - (i) all income, expenditure, assets and liabilities relating to the gas distribution system; and

- (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the gas distribution system;
 - (b) ensure that its accounts and records are in such form as to enable —
 - (i) all income, expenditure, assets and liabilities relating to the gas distribution system to be properly recorded and distinguished from the corporation's other income, expenditure, assets and liabilities; and
 - (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the gas distribution system to be appropriately apportioned to the gas distribution system;
 - (c) prepare annually from those accounts and records an audited —
 - (i) profit and loss statement which gives a true and fair view of its profit and loss relating solely to the gas distribution system for the relevant year; and
 - (ii) balance sheet which gives a true and fair view of its state of affairs relating solely to the gas distribution system at the end of the relevant year;
- and
- (d) provide to any person copies of that profit and loss statement and balance sheet, upon payment to the corporation by that person of the prescribed fee.

[Section 92 inserted by No. 65 of 1998 s.89.]

93. Enforcement

The obligations imposed on the corporation by this Part create duties that are enforceable by civil proceedings in a court, but a breach of any such duty does not —

- (a) give rise to an action for damages; or
- (b) constitute a breach of section 177 of *The Criminal Code*.

[Section 93 inserted by No. 65 of 1998 s.89.]

[94 and 95. Repealed by No. 65 of 1998 s.89.]

Part 7 — Miscellaneous

96. Supplementary provision as to laying document before Parliament

- (1) If —
- (a) at the commencement of a period referred to in section 35(4), 48(5), 51(4), 57(5), 59(2), 60(4), 63(4), 67(2), 73(6), 82(4) or clause 13(7) of Schedule 2 in respect of a document a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,

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

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

96A. Minister may waive certain requirements

- (1) In this section —
- “specified obligation”** means —
- (a) an obligation under Part 4 Division 1, Part 4 Division 2, section 62 or section 63;

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- (b) an obligation under Schedule 3 (including an obligation under the *Financial Administration and Audit Act 1985* as applied by clause 45(4));
 - (c) an obligation under Schedule 6 clause 5(1)(c) or (d);
 - (d) an obligation under Schedule 6 clause 5(3)(b) or any related obligation under the regulations; or
 - (e) an obligation under the regulations to provide a summary of audited books and records relating to the gas distribution system as defined in section 90.
- (2) The Minister may, by notice published in the *Gazette*, relieve the board or the corporation from compliance with a specified obligation either generally or in such circumstances or cases as are set out in the notice.
- (3) A notice under this section —
- (a) has effect according to its terms; and
 - (b) may be amended or revoked by another notice under this section.
- (4) This section does not authorise the Minister to relieve the board or the corporation from compliance with a specified obligation unless the Minister considers that —
- (a) compliance with the obligation would impede, or be inconsistent with, the implementation of Parts 2 and 3 of the *Gas Corporation (Business Disposal) Act 1999* or could adversely affect the outcome of that implementation; or
 - (b) having regard to the implementation of Parts 2 and 3 of the *Gas Corporation (Business Disposal) Act 1999* —
 - (i) there is no significant need for the obligation to be complied with; or
 - (ii) compliance with the obligation would involve an unjustifiable use of resources.

[Section 96A inserted by No. 58 of 1999 s.61.]

97. Execution of documents

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

98. Contract formalities

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of the corporation may make, vary or discharge a contract in the name of or on behalf of the corporation in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the corporation and other parties to the contract.
- (3) Subsection (1) does not prevent the corporation from making, varying or discharging a contract under its common seal.

99. Delegation by Treasurer

- (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, delegate to an officer of the Treasury the performance of any function vested in the Treasurer by this Act.
- (2) A function performed by a delegate is to be taken to be performed by the Treasurer.
- (3) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

100. Regulations

- (1) The Governor may make any regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) If there is any conflict or inconsistency between a provision made by regulations under this Act and a provision made by regulations under the *Gas Standards Act 1972* or the *Liquid Petroleum Gas Act 1956*, the latter prevails.

Schedule 1 — Provisions as to constitution and proceedings of board

[Section 9]

1. Definition

In clauses 2, 3, 4 and 5(1) “**director**” does not include the chief executive officer in his or her capacity as a director.

2. Term of office

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

3. Resignation and removal

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

4. Chairperson and deputy chairperson

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

Schedule 1 Provisions as to constitution and proceedings of board

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

5. Alternate directors

- (1) Where a director is unable to act because of sickness, absence or other cause, the Minister may in writing appoint another person to act temporarily in his or her place, and while so acting according to the tenor of the appointment that other person is to be taken to be a director and is entitled to remuneration under section 10.
- (2) Except where there is a person acting in his or her place under section 13(5), the chief executive officer may, in writing delivered to the person presiding at a meeting of the board, nominate a senior officer of the corporation approved by the board to represent him or her at that meeting if he or she is unable to attend by reason of sickness, absence or other cause; and while so attending the person so nominated is to be taken to be a director.
- (3) No act or omission of a person acting in place of another under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

6. Meetings

- (1) The first meeting of the board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of the board may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 4(3), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 7.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.

Provisions as to constitution and proceedings of board **Schedule 1**

- (5) At any meeting of the board —
- (a) 3 directors constitute a quorum; and
 - (b) in the case of an equality of votes the person presiding has a casting vote in addition to his or her deliberative vote.

7. Telephone and video meetings

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

8. Resolution may be passed without meeting

- (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all directors and is assented to by not less than 3 directors that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board.
- (2) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
 - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
 - (c) a director may signify assent to a document by signing the document or by notifying the corporation of the director's assent in person or by post, facsimile transmission, telephone or other method of written, audio or audio-visual communication.

Schedule 1 Provisions as to constitution and proceedings of board

- (3) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

9. Minutes of meetings etc.

The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 8.

10. Leave of absence

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

11. Board to determine own procedures

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

Schedule 2 — Provisions as to duties of directors and related provisions

[Sections 20, 21, 22 and 23]

Division 1 — Preliminary

1. Interpretation

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

Division 2 — Certain duties stated

2. Duty to act honestly

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

Penalty:

- (a) if the contravention was committed with intent to deceive or defraud the corporation, or creditors of the corporation or creditors of any other person or for any other fraudulent purpose, \$20 000 or imprisonment for 5 years, or both;
- (b) otherwise, \$5 000.

3. Duty to exercise reasonable care and diligence

- (1) A director must at all times exercise the degree of care and diligence in the performance of his or her functions, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the corporation's circumstances.

Penalty: \$5 000.

4. Duty not to make improper use of information

A director or a former director must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for

Schedule 2 Provisions as to duties of directors and related provisions

himself or herself or for any other person or to cause detriment to the corporation.

Penalty: \$20 000 or imprisonment for 5 years, or both.

5. Duty not to make improper use of position

A director must not, whether within or outside the State, make improper use of his or her position as to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

Penalty: \$20 000 or imprisonment for 5 years, or both.

6. Fiduciary duty

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

Division 3 — Recovery from director

7. Payment of compensation may be ordered

Where —

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

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the corporation of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

Provisions as to duties of directors and related provisions **Schedule 2**

8. Civil proceedings for recovery from director

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

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Division 4 — Relief of director

9. Director, etc. may be relieved from liability

Without limiting section 74, for the purposes of clause 6, 7 or 8 if it appears to the court that a person —

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

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

10. Director, etc. may apply for relief

- (1) Without limiting section 74, where a person has reason to believe that any claim will or might be made against him or her under clause 6, 7 or 8 the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 6, 7 or 8.

11. Case may be withdrawn from jury

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

Schedule 2 Provisions as to duties of directors and related provisions

partly from liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

Division 5 — Disclosure etc. of personal interests

12. Disclosure of interests in contracts

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

Penalty: \$1 000 or imprisonment for 6 months, or both.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

13. Voting by interested directors

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

(a) must not vote whether at a meeting or otherwise —

(i) on the matter; or

(ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;

and

(b) must not be present while —

(i) the matter; or

(ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

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

Provisions as to duties of directors and related provisions Schedule 2

director of the corporation or of a subsidiary. This subclause does not apply if the corporation is the insurer.

- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
 - (a) specifies the director, the interest and the matter; and
 - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 6(5) of Schedule 1, if a director is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as the board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 96.

Division 6 — Other prohibited conduct

14. Prohibition on loans to directors and related person

- (1) The corporation must not, whether directly or indirectly —
 - (a) make a loan to a director, a spouse of a director or a relative of a director or spouse; or
 - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.

Schedule 2 Provisions as to duties of directors and related provisions

- (2) A director who is knowingly concerned in a contravention of subclause (1) by the corporation (whether or not in relation to the director) commits an offence.

Penalty:

- (a) if the contravention was committed with intent to deceive or defraud the corporation or creditors of the corporation or creditors of any other person or for any other fraudulent purpose, \$20 000 or imprisonment for 5 years, or both;
- (b) otherwise, \$5 000.
- (3) In subclause (1) —
- “relative” means —
- (a) a parent or remoter lineal ancestor; or
- (b) son, daughter or remoter issue; or
- (c) a brother or sister.

15. Directors or auditor not to be indemnified for certain matters

- (1) The corporation or a subsidiary must not —
- (a) indemnify a person who is or has been a director or auditor of the corporation against a liability incurred by the person as a director or auditor; or
- (b) exempt such a person from such a liability.
- (2) Any agreement or arrangement is void so far as it provides for the corporation or a subsidiary to do anything that subclause (1) prohibits.
- (3) Subclause (1) does not prevent a person from being indemnified against a civil liability to a person, other than the corporation or a subsidiary, unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person —
- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in obtaining relief under clause 9 or 10.

Provisions as to duties of directors and related provisions **Schedule 2**

- (5) The corporation or a subsidiary must not pay, or agree to pay, a premium, in respect of a contract insuring a person who is or has been a director or auditor of the corporation against a liability —
 - (a) incurred by the person as such a director or auditor; and
 - (b) arising out of conduct involving —
 - (i) a wilful breach of duty in relation to the corporation; or
 - (ii) without limiting subparagraph (i), a contravention of clause 4 or 5.
- (6) In subclause (5) “pay” includes pay indirectly through one or more interposed entities.
- (7) If subclause (5) is contravened, the contract is void so far as it insured the person against such a liability.
- (8) Subclauses (5) and (7) do not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal and whatever their outcome.

16. False information etc.

- (1) A director must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
 - (a) the Treasurer or the Minister; or
 - (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

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

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

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

Schedule 2 Provisions as to duties of directors and related provisions

- (2) A director must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
- (a) the Treasurer or the Minister; or
 - (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,
- being information whether in documentary or any other form, relating to the affairs of the corporation that —
- (c) is false or misleading in a material particular; or
 - (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,
- without having taken reasonable steps to ensure that the information —
- (e) was not false or misleading in a material particular; and
 - (f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

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

- (3) The references in subclauses (1) and (2) to a director making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of the corporation include references to a director making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that director with respect to the affairs of the corporation.
- (4) Where information is made available or furnished to a person referred to in subclauses (1)(a) or (b) or (2)(a) or (b) in response to a question asked by that person, the question and information are to be considered together in determining whether the information was false or misleading.

[Schedule 2 amended by No. 10 of 1998 s.37(2).]

Schedule 3 — Financial administration and audit

[Section 89(1)]

Division 1 — Preliminary

1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —
- “**accounts**” means profit and loss accounts and balance sheets and includes statements, reports and notes, other than auditor’s reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets;
- “**Board**” means the Australian Accounting Standards Board established under Part 12 of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth;
- “**chief entity**” has the meaning given by clause 14(2);
- “**Commission**” means the Australian Securities and Investments Commission established under Part 2 of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth.
- “**consolidated accounts**”, in relation to the corporation, means all of the following —
- (a) a consolidated profit and loss account that clause 15 requires to be made out in relation to a financial year of the corporation;
 - (b) a consolidated balance sheet that clause 16 requires to be made out in relation to that financial year;
 - (c) statements, reports and notes, other than a director’s report or an auditor’s report, attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet;
- “**control**”, in relation to an entity, has the meaning given by clause 13;
- “**economic entity**” has the meaning given by clause 12;
- “**entity**” has the meaning given by clause 12;

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“financial statements”, in relation to a financial year of the corporation, means the accounts and consolidated accounts (if any) of the corporation required by this Schedule to be made out in relation to that financial year;

“financial year” means the 12 month period ending on 30 June but where this Act commences on a day other than the commencement of a financial year the period of the first financial year shall be that part of the 12 month period commencing on the commencement day of this Act and ending on 30 June;

“parent entity” has the meaning given by clause 12;

“profit and loss” means —

- (a) in relation to the corporation, the profit and loss resulting from operations of the corporation;
- (b) in relation to an entity, the profit and loss resulting from operations of the entity; and
- (c) in relation to 2 or more entities, or in relation to an economic entity, constituted by 2 or more such entities, the profit or loss resulting from the operations of those entities;

“regulations” means regulations made under the Corporations Law;

“reporting entity” has the meaning given by clause 12.

- (2) In this Schedule, unless the contrary intention appears expressions (including the expressions **“accounting records”**, **“accounting standard”**, **“applicable accounting standards”**, **“company”**, and **“corporation”**) have the respective meanings given to them by Part 1.2 of the Corporations Law.

Division 2 — Accounting standards

2. Application of accounting standards — general
(cf. s.284 Corporations Law)

The accounting standards as applied from time to time to listed companies pursuant to the Corporations Law apply to the corporation.

3. Application of accounting standards, financial years
(cf. s.285 Corporations Law)

- (1) Except so far as the contrary intention appears in an accounting standard, an accounting standard applies to —
 - (a) the first financial year of the corporation that ends after the commencement of the last-mentioned accounting standard; and
 - (b) later financial years of the corporation.
- (2) Despite anything in an accounting standard, but subject to subclause (4), an accounting standard does not apply to a financial year of the corporation ending before the commencement of the last-mentioned accounting standard.
- (3) The corporation may elect in writing that an accounting standard that, apart from subclause (4), does not apply to a particular financial year of the corporation shall apply to that financial year.
- (4) An election under subclause (3) has effect accordingly.

4. Interpreting accounting standards
(cf. s.286 Corporations Law)

- (1) An expression has in an accounting standard the same meaning as it has in this Schedule.
- (2) Part 1.2 of the Corporations Law applies in relation to an accounting standard as if the accounting standard's provisions were provisions of this Schedule.
- (3) This clause has effect except so far as the contrary intention appears in an accounting standard.

5. Severing invalid provisions
(cf. s.286A Corporations Law)

- (1) An accounting standard is to be interpreted subject to the Corporations Law.
- (2) It is intended that where, but for this clause, an accounting standard would have been interpreted as being inconsistent with the

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Corporations Law, the accounting standard is nevertheless to be valid in so far as it is not so inconsistent.

6. Evidence of text of accounting standard
(cf. s.286B Corporations Law)

A document that purports —

- (a) to be issued or published by or on behalf of the Board or the Commission; and
- (b) to set out the text of —
 - (i) a specified instrument as in force at a specified time under section 32 of the *Corporations Act 1989* of the Commonwealth; or
 - (ii) a specified provision of such an instrument,

or a copy of such a document, is, in proceedings under this Act, *prima facie* evidence that —

- (c) the specified instrument was in force at that time under that section; and
- (d) the text set out in the document is the text referred to in paragraph (b).

Division 3 — Accounting records

7. Accounting records
(cf. s.289 Corporations Law)

- (1) The corporation shall —
 - (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
 - (b) so keep its accounting records that —
 - (i) true and fair accounts of the corporation can be prepared from time to time; and
 - (ii) its accounts can be conveniently and properly audited.

- (2) The corporation shall retain the accounting records kept by it under this clause for 7 years after the completion of the transactions to which they relate.
- (3) The corporation shall keep its accounting records at such place or places as the board thinks fit.
- (4) The Minister may by writing require the corporation to produce —
 - (a) at a specified place within Australia that is reasonable in the circumstances; and
 - (b) within a specified period of at least 14 days,specified accounting records of the corporation that are kept outside Australia.
- (5) Where accounting records of the corporation are kept outside Australia, the corporation shall keep at a place within Australia determined by the board such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts, and any documents required by this Schedule to be attached to the accounts, to be prepared.
- (6) The corporation shall lodge written notice with the Treasurer of the place in Australia where statements and records kept under subclause (3) are kept, unless the statements and records are kept at the principal place of business of the corporation.
- (7) The Supreme Court may, on application by a director of the corporation, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the corporation.
- (8) Where a registered company auditor inspects the accounting records pursuant to an order of the Supreme Court under subclause (7), he or she shall not disclose to a person other than the director on whose application the order was made any information acquired by him or her in the course of his or her inspection.

Division 4 — Financial years of the corporation and the entities it controls

8. Synchronisation

(cf. s.290 Corporations Law)

- (1) Subject to this clause, the board must do whatever is necessary to ensure that the financial year of each entity that the corporation controls coincides with the financial year of the corporation.
- (2) Subclause (1) must be complied with in relation to a particular entity within 12 months after the corporation began to control the entity.
- (3) Subject to any order of the Minister under this clause, where the financial year of the corporation coincides with the financial year of an entity that the corporation controls, the board must do whatever is necessary to prevent either financial year from being changed in such a way that those financial years no longer coincide.
- (4) Where the board is of the opinion that there is good reason why the financial year of an entity that the corporation controls should not coincide with the financial year of the corporation they may apply in writing to the Minister for an order authorising the entity to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the corporation.
- (5) The application shall be supported by a statement in writing made in accordance with a resolution of the board signed by not less than 2 directors and stating the reasons for seeking the order.
- (6) The Minister may require the directors making the application to supply such information relating to the operations of the corporation, and of any entity that the corporation controls or has controlled during a financial year, as the Minister thinks necessary for the purpose of determining the application.
- (7) The Minister may engage a registered company auditor to investigate and report to him or her on the application.
- (8) The Minister may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he or she thinks fit, and shall serve a copy of the order on the corporation.

- (9) Where an application is made under subclause (4) in relation to an entity —
- (a) subclause (1) does not apply in relation to the entity until the determination day for the application; and
 - (b) subject to subclause (10), the period within which the board is required to comply with subclause (1) in relation to the entity is the period of 12 months beginning on that day.
- (10) Where an order is made under this clause authorising an entity controlled by the corporation to have, or to adopt, a financial year that does not coincide with that of the corporation, compliance with the order (including any limitations, terms or conditions set out in it) are to be taken to be compliance with subclause (1) in relation to the entity.
- (11) Where an application is made under subclause (4) in relation to an entity, another application cannot be made under that subclause in relation to the entity within 3 years after the date of the first-mentioned application unless —
- (a) the first-mentioned application resulted in the making of an order granting the application or granting it subject to limitations, terms or conditions; or
 - (b) the Minister is satisfied that there has been a substantial change in the relevant facts or circumstances since that day.

Division 5 — Accounts of the corporation

9. Profit and loss account
(cf. s.292 Corporations Law)

The board shall, before 30 September in each year cause to be made out a profit and loss account for the immediately preceding financial year that gives a true and fair view of the corporation's profit or loss for that financial year.

10. Balance sheet
(cf. s.293 Corporations Law)

The board shall, before 30 September in each year, cause to be made out a balance sheet as at the end of the immediately preceding

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financial year that gives a true and fair view of the corporation's state of affairs as at the end of that financial year.

11. Steps to be taken before accounts made out
(cf. s.294 Corporations Law)

- (1) This clause shall be complied with before the corporation's accounts are made out under clauses 9 and 10 in relation to a financial year.
- (2) The board shall take reasonable steps —
 - (a) to find out what has been done about writing off bad debts and making provision for doubtful debts; and
 - (b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.
- (3) The board shall take reasonable steps to find out whether any current assets, other than bad or doubtful debts, are unlikely to realise (whether directly or indirectly) in the ordinary course of business their value as shown in the corporation's accounting records and, if so, to cause —
 - (a) the value of those assets to be written down to an amount that they might be expected so to realise; or
 - (b) adequate provision to be made for the difference between their value as so shown and the amount that they might be expected to realise.
- (4) The board shall take reasonable steps —
 - (a) to find out whether the value of any non-current asset is shown in the corporation's accounting records at an amount that, having regard to the asset's value to the corporation as a going concern, exceeds the amount that it would have been reasonable for the corporation to spend to acquire the asset as at the end of the financial year; and
 - (b) unless adequate provision for writing down the value of that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the value of that asset.

**Division 6 — Consolidated accounts of the
corporation and the entities it controls**

12. Entities, parent entities, economic entities and reporting entities
(cf. s.294A Corporations Law)

- (1) Where regulations define the expression **“entity”**, **“parent entity”**, **“economic entity”**, or **“reporting entity”**, those definitions shall apply for the purposes of this Schedule in relation to the corporation in relation to prescribed financial years.
- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where an accounting standard —
 - (a) deals with the making out of consolidated accounts by companies;
 - (b) applies to a financial year of a company; and
 - (c) defines the expression **“entity”**, **“parent entity”**, **“economic entity”** or **“reporting entity”**,

the definition in the accounting standard also has effect for the purposes of this Schedule as they apply in relation to the corporation in relation to that financial year.

- (4) Despite subclauses (2) and (3), each of the following is an entity for the purposes of this Schedule —
 - (a) a company;
 - (b) a recognised company;
 - (c) any other corporation;
 - (d) a partnership;
 - (e) an unincorporated body;
 - (f) a person in a capacity as trustee of a trust that has only one trustee.
- (5) Despite subclauses (2) and (3), where a trust has 2 or more trustees, those trustees, in their capacity as such, together constitute an entity.

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13. When one entity controls another

(cf. s.294B Corporations Law)

- (1) Where regulations make provision for or in relation to determining, as they apply in relation to a company in relation to prescribed financial years, whether or not an entity controls another entity, those regulations shall apply for the purposes of this Schedule.
- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where, because of a provision of an accounting standard that —
 - (a) deals with the making out of consolidated accounts by companies; and
 - (b) applies to a financial year of a company,

an entity is taken for the purposes of that accounting standard to control another entity, the first-mentioned entity is also taken to control the other entity for the purpose of this Schedule as they apply in relation to the corporation in relation to that financial year.

14. Applications of Division

(cf. s.295 Corporations Law)

- (1) The later provisions of this Division apply where the corporation —
 - (a) controlled another entity during all or part of a financial year of the corporation; or
 - (b) controls another entity at the end of a financial year of the corporation,

and, for the purposes of this Schedule as it applies in relation to the corporation in relation to that financial year, the corporation is the parent entity in an economic entity that is a reporting entity.

- (2) The corporation is a chief entity in relation to that financial year for the purposes of this Schedule.

15. Consolidated profit and loss account

(cf. s.295A Corporations Law)

- (1) The board must cause to be made out, before 30 September in each year immediately following the relevant financial year, a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the corporation and the entities it controlled from time to time during that financial year (even if the corporation did not control the same entities throughout that financial year).
- (2) To avoid doubt, if the corporation did not control a particular entity throughout that financial year, the consolidated profit and loss account must relate to the entity's profit or loss for each part of that financial year throughout which the corporation controlled the entity, but not to the entity's profit or loss for any other part.

16. Consolidated balance sheet

(cf. s.295B Corporations Law)

The board must cause to be made out, before 30 September in each year immediately following the relevant financial year, a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs, as at the year's end, of the economic entity constituted by the corporation and the entities that it controls at the year's end.

Division 7 — Requirements for financial statements

17. Audit of financial statements

(cf. s.296 Corporations Law)

- (1) The board shall take reasonable steps to ensure that the corporation's financial statements for a financial year are audited by the Auditor General as required by this Schedule before 30 September in each year immediately following the relevant financial year.
- (2) The board shall cause to be attached to or endorsed on the corporation's financial statements for a financial year the Auditor General's report on those financial statements.

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18. Financial statement to comply with Corporations Law Regulations
(cf. s.297 Corporations Law)

- (1) The board shall ensure that the corporation's financial statements for a financial year comply with such of the requirements as are prescribed from time to time for a company under the Corporations Law and as are relevant to the financial statements.
- (2) Where the corporation's financial statements for a financial year, as prepared in accordance with subclause (1), would not otherwise give a true and fair view of the matters with which that subclause requires them to deal, the board shall add such information and explanations as will give a true and fair view of those matters.

19. Financial statements to comply with applicable accounting standards
(cf. s.298 Corporations Law)

Subject to clause 18 the board shall ensure that the corporation's financial statements for a financial year are made out in accordance with applicable accounting standards.

20. Additional information to give a true and fair view
(cf. s.299 Corporations Law)

- (1) If the corporation's financial statement for a financial year, as prepared in accordance with clauses 18 and 19, would not otherwise give a true and fair view of the matters with which this Schedule requires them to deal, the board must add such information and explanations as will give a true and fair view of those matters.
- (2) Nothing in subclause (1), or in clause 18 or 19, limits the generality of a provision of this Division or of Division 5 or 6, other than this clause or clause 18 or 19.

21. Inclusion of comparative amounts for items required by accounting standards
(*cf. s.300 Corporations Law*)

- (1) Where —
- (a) clause 19 requires the corporation's financial statements for a financial year to specify a particular amount (in this subclause called the "current year amount"); and
 - (b) that clause required the corporation's financial statements for the previous financial year to specify an amount that, within the meaning of an applicable accounting standard, is a corresponding amount in relation to the current year amount,
- the board shall ensure that the first-mentioned financial statements —
- (c) set out the corresponding amount in such a way as to allow easy comparison between the current year amount and the corresponding amount; and
 - (d) if the current year amount has been determined on a different basis from the corresponding amount —
 - (i) include a note to that effect; and
 - (ii) set out the corresponding amount in such a way as to draw attention to the note.
- (2) For the purposes of this clause, clause 19 requires the corporation's financial statements for a financial year to specify an amount if, and only if, the board —
- (a) are required to ensure that the financial statements included an amount relating to the matter to which the first-mentioned amount relates; and
 - (b) would not have been so required if that clause had not applied in relation to the financial year.

Division 8 — Directors' statements

22. Statement to be attached to accounts
(*cf. s.301 Corporations Law*)

- (1) The board shall cause to be attached to the corporation's accounts that are or are included in the corporation's financial statements for a financial year a statement complying with this clause and clause 24(2).

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- (2) The statement shall state whether or not, in the board's opinion —
 - (a) the profit and loss account gives a true and fair view of the corporation's profit or loss for the financial year; and
 - (b) the balance sheet gives a true and fair view of the corporation's state of affairs as at the end of the financial year.
- (3) In forming its opinion for the purposes of subclause (2), the board shall have regard to circumstances that have arisen, and information that has become available, since the end of the financial year and that would, if the accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.
- (4) If adjustments have not been made in the accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- (5) The statement shall state whether or not, in the board's opinion, there are, when the statement is made, reasonable grounds to believe that the corporation will be able to pay its debts as and when they fall due.
- (6) If the applicable accounting standards in relation to the accounts include accounting standards that apply to the financial year because of an election under clause 3 the statement shall specify those accounting standards and state that they so apply.

23. Statement to be attached to consolidated accounts
(cf. s.302 Corporations Law)

- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of the corporation, the board must cause to be attached to them a statement that complies with this clause and subclause 24(2).
- (2) The statement must state whether or not, in the board's opinion, the consolidated accounts —
 - (a) have been made out in accordance with Divisions 6 and 7; and

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- (b) in particular, give a true and fair view of the matters with which they deal.
- (3) In forming their opinion for the purposes of subclause (2), the board must have regard to circumstances that have arisen, and information that has become available, since the end of that financial year and that would, if the consolidated accounts had been made out when the statement is made, have affected the determination of an amount or a particular in them.
- (4) If adjustments have not been made in the consolidated accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the consolidated accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the consolidated accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- (5) If the applicable accounting standards include in relation to the consolidated accounts accounting standards that apply to the financial year because of an election made under clause 3, the statement shall specify those accounting standards and state they so apply.

24. Statements under this Division
(cf. s.303 Corporations Law)

- (1) The board shall comply with clause 22, or clauses 22 and 23, as the case requires, in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- (2) A statement required by clause 22 or 23 in relation to a financial year of the corporation shall —
 - (a) be made in accordance with a resolution of the board;
 - (b) be made out not later than 30 September in each year in respect of the immediately preceding financial year;
 - (c) specify the day on which it was made; and
 - (d) be signed by at least 2 directors.

Division 9 — Directors' reports

25. Report on the corporation where it is not a chief entity
(cf. s.304 Corporations Law)

- (1) If the corporation is not a chief entity in relation to a particular financial year the board shall cause to be made out a report complying with this Division other than clause 26.
- (2) The report shall state the names of the directors in office on the day the report is made out.
- (3) The report shall state the corporation's principal activities in the course of the financial year and any significant change in the nature of those activities that occurred during the financial year.
- (4) The report shall state the net amount of the corporation's profit or loss for the financial year after provision for any amounts paid or payable in lieu of Commonwealth income tax under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*.
- (5) The report shall state the amount (if any) that the board recommends should be paid by way of dividend under section 82.
- (6) The report shall state the amounts (if any) that have been paid or declared by way of dividend under section 82 since the start of the financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division.
- (7) The report shall contain a review of the corporation's operations during the financial year and of the results of those operations.
- (8) The report shall give particulars of any significant change in the corporation's state of affairs that occurred during the financial year.
- (9) The report shall give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect —
 - (a) the corporation's operations;
 - (b) the results of those operations; or
 - (c) the corporation's state of affairs,in financial years after the financial year.

- (10) The report shall refer to —
- (a) likely developments in the corporation's operations; and
 - (b) the expected results of those operations,
- in financial years after the financial year.

26. Report on corporation where it is a chief entity
(cf. s.305 Corporations Law)

- (1) If the corporation is a chief entity in relation to a particular financial year the board shall cause to be made out a report complying with this Division, other than clause 25.
- (2) The report shall state the names of the directors in office on the day the report is made out.
- (3) The report must state —
 - (a) the principal activities, during the financial year, of the economic entity constituted by the corporation and the entities it controlled from time to time during the financial year (even if the corporation did not control the same entities throughout the financial year); and
 - (b) any significant change in the nature of those activities that occurred during the financial year.
- (4) The report must state the net amount of the consolidated profit or loss, for the financial year, of the economic entity referred to in subclause (3), after —
 - (a) provision for income tax and any amounts paid or payable in lieu of Commonwealth income tax under the *State Enterprises (Commonwealth Tax Equivalent) Act 1996*; and
 - (b) deducting any amounts that should properly be attributed to an entity that is neither the corporation nor an entity that the corporation controlled at the relevant time.
- (5) The report shall state the amount (if any) that the board recommends should be paid by way of dividend under section 82.
- (6) The report shall state the amounts (if any) that have been paid or declared by way of dividend under section 82 since the start of the

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financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division.

- (7) The report must contain a review of —
 - (a) the operations, during the financial year, of the economic entity constituted by the corporation and the entities it controlled from time to time during the financial year (even if the corporation did not control the same entities throughout the year); and
 - (b) the results of those operations.
- (8) The report must give particulars of any significant change in the state of affairs of the economic entity referred to in subclause (3)(a) that occurred during the financial year.
- (9) To avoid doubt, if the corporation controlled a particular entity throughout some, but not all, of the financial year, the report need not relate to the entity's activities, operations or state of affairs during a period throughout which the corporation did not control the entity, or to the results of such operations.
- (10) The report must give particulars of any matters or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect —
 - (a) the operations, in financial years after the financial year, of the economic entity constituted by the corporation and the entities it controls from time to time; or
 - (b) the results of those operations; or
 - (c) the state of affairs, in financial years after the financial year, of that economic entity.
- (11) The report must refer to —
 - (a) likely developments in the operations referred to in subclause (9)(a); and
 - (b) the expected results of those operations.

27. Report may omit prejudicial information

(cf. s.306 Corporations Law)

If the board believes on reasonable grounds that to include in the report particular information clause 25(10) or 26(11) requires would be likely to result in unreasonable prejudice to the corporation —

- (a) the first-mentioned information need not be so included; and
- (b) if it is not so included, the report shall state that some or all, as the case requires, of the information required by that subclause has not been so included.

28. Additional information required in report

(cf. s.307 Corporations Law)

- (1) The report shall contain, or have attached to it, a statement that, in relation to each of the directors, sets out, as at the day the report is made out —
 - (a) particulars of the directors' qualifications, experience and special responsibilities (if any);
 - (b) particulars of any interest which the director has disclosed —
 - (i) in accordance with clause 12 of Schedule 2; and
 - (ii) since the date of the last report made out in relation to the corporation under this Division.
- (2) The report must also contain, or have attached to it, a statement that sets out —
 - (a) how many meetings of the board (including meetings of committees of directors) were held during a financial year, or would have been held if a quorum had been present; and
 - (b) in relation to each person who was a director of the corporation throughout the financial year, how many of the meetings referred to in paragraph (a) the person attended; and
 - (c) in relation to each person who was such a director during some but not all of the financial year —
 - (i) how many of the meetings referred to in paragraph (a) were held while the person was such a director; and

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- (ii) how many of the meetings referred to in paragraph (a) the person attended while he or she was such a director.

29. Benefits under contracts with directors
(cf. s.309 Corporations Law)

- (1) The report must set out whether or not, during or since the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that —
 - (a) the director; or
 - (b) a firm of which the director is a member; or
 - (c) an entity in which the director has a substantial financial interest,

has made (during that or any other financial year) with —

- (d) the corporation; or
 - (e) an entity that the corporation controlled, or a body corporate that was related to the corporation, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).
- (2) If so, the report shall set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.
- (3) Subclauses (1) and (2) do not apply to —
 - (a) a benefit included in the aggregate amount of emoluments received, or due and receivable, by directors shown, in accordance with the regulations in force for the purposes of clause 18, in the corporation's financial statements for the financial year; or
 - (b) the fixed salary of a full-time employee of —
 - (i) the corporation; or
 - (ii) an entity that controlled, or a body corporate that was related to the corporation, at a relevant time.

30. Indemnifying officer or auditor
(cf. s.309A Corporations Law)

- (1) If —
- (a) during or since the financial year, the corporation has indemnified against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
 - (b) but for subclause (3) or (4) of clause 15 of Schedule 2, subclause (1) of that clause would have prohibited the corporation from indemnifying the person against that liability,

the report must set out —

- (c) the person's name; and
 - (d) the nature of the liability; and
 - (e) how much the corporation paid, and what else the corporation did, by way of indemnifying the person against the liability.
- (2) If —
- (a) during or since the financial year, the corporation has made a relevant agreement (as defined in section 9 of the Corporations Law) for indemnifying against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
 - (b) but for subclause (3) or (4) of clause 15 of Schedule 2, subclause (1) of that clause would prohibit the corporation from indemnifying the person against that liability,

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

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

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- (3) If —
- (a) during or since the financial year, the corporation has paid, or agreed to pay, a premium in respect of a contract insuring against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
 - (b) but for subclause (8) of clause 15 of Schedule 2, subclause (5) of that clause would have prohibited the corporation from paying, or agreeing to pay, the premium,
- the report must —
- (c) name the person and state that the corporation has paid, or agreed to pay, a premium in respect of a contract insuring the person against a liability; and
 - (d) set out, except so far as prohibited by the contract itself, the nature of the liability and the amount of the premium.
- (4) Nothing in this clause limits the generality of clause 29.

31. Reports generally
(cf. s.310 Corporations Law)

- (1) The board shall comply with this Division in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- (2) A report that this Division requires in relation to a financial year shall —
 - (a) be made out in accordance with a resolution of the board;
 - (b) be made out not later than 30 September in each year immediately following the relevant financial year;
 - (c) specify the day on which it was made out; and
 - (d) be signed by at least 2 directors.

Division 10 — Financial statements and directors' reports

32. Rounding off amounts
(cf. s.311 Corporations Law)

Regulations made under section 100 may permit the corporation subject to such conditions, exceptions or qualifications (if any) as are

specified in the regulations, to insert in any accounts or report under this Schedule in substitution for an amount that the corporation would, but for this clause, be required or permitted to set out in the accounts or report an amount that is ascertained in accordance with the regulations and is not more than \$500 greater or less than the first-mentioned amount.

33. Where corporation is a chief entity, board to obtain all necessary information

(cf. s.312 Corporations Law)

- (1) Subject to subclause (3), the board where the corporation is a chief entity in relation to a particular financial year the board shall not cause to be made out the consolidated accounts referred to in Division 6, the statement referred to in clause 23 or the report referred to in clause 26 unless they have available to them sufficient information, about each entity that the corporation controlled during all or part of, or at the end of the financial year, to enable them to ensure —
 - (a) that the consolidated accounts —
 - (i) will be made out in accordance with Divisions 6 and 7; and
 - (ii) in particular, will give a true and fair view of the matters with which they must deal;
 - and
 - (b) that neither the statement nor the report will be false or misleading in a material particular.
- (2) Reporting officers of an entity that the corporation controlled during all or part of, or at the end of, a particular financial year of the corporation must, at the request of the board, supply to the corporation all the information that is required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1).
- (3) Where the directors of the corporation, having taken all such steps as are reasonably available to them, are unable to obtain from the reporting officers of an entity the information required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1) within the period by which those

Schedule 3 Financial administration and audit

consolidated accounts, that statement and that report are respectively required, by the provisions referred to in that subclause, to be prepared —

- (a) the board shall cause to be made out those consolidated accounts, that statement and that report without incorporating in, or including with, those consolidated accounts, or incorporating in that statement or report, as the case requires, the information relating to the entity but —
 - (i) they shall include in those consolidated accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall include in those consolidated accounts, that statement and that report such qualifications and explanations as are necessary to prevent those consolidated accounts, that statement and that report from being misleading; and
 - (ii) they may qualify accordingly that part of that statement that is made under clause 23(2);

and

- (b) where the board has caused to be made out those consolidated accounts, that statement and that report in accordance with paragraph (a), they shall, within one month after receiving any of that information from the reporting officers of the entity lodge with the Minister a statement setting out or summarising the information and containing such qualifications and explanations, by the board, of those consolidated accounts, that statement or that report as are necessary having regard to the information received from those reporting officers of the entity.
- (4) In this clause “**reporting officers**”, in relation to an entity, means —
- (a) in the case of a corporation, the corporation’s directors; or
 - (b) otherwise, the entity’s officers.

34. Relief from requirements as to accounts and reports
(cf. s.313 Corporations Law)

- (1) The board may apply to the Treasurer for an order relieving them or relieving the corporation from compliance with specified

requirements of this Schedule relating to accounts or consolidated accounts or to the report required by Division 9.

- (2) On an application under subclause (1), the Treasurer may make an order relieving the board or the corporation from compliance with all or any of the specified requirements either unconditionally or on condition that the board or the corporation complies with such other requirements relating to the accounts or consolidated accounts or to the report as the Treasurer imposes.
- (3) An application under subclause (1) is to be in writing supported by a statement in writing made in accordance with a resolution of the board, signed by not less than 2 directors and stating the reasons for seeking an order.
- (4) If the board makes an application under subclause (1), the Treasurer may require it to supply such information relating to the operations of the corporation and of any entity which the corporation controls or has controlled during a financial year, as the Treasurer thinks necessary for the purpose of determining the application.
- (5) A reference in subclause (2) to requirements of this Schedule relating to accounts or consolidated accounts does not include a reference to the requirements of clause 7.
- (6)
 - (a) Where the Treasurer makes an order under subclause (2) the Treasurer is to cause the text of the order to be laid before each House of Parliament within 14 days after the order is made.
 - (b) If at the commencement of the period referred to in paragraph (a) a House of Parliament is not sitting and the Treasurer is of the opinion that that House will not sit during that period, the Treasurer is to transmit a copy of the order to the Clerk of that House and the copy of the order so transmitted is to be —
 - (i) taken to have been laid before that House;
 - (ii) printed by authority of the Clerk of that House; and
 - (iii) taken to be a document published by order or under the authority of that House.

Schedule 3 Financial administration and audit

- (c) The laying of a copy of a document deemed to have occurred under paragraph (b) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.
- (7) The Treasurer is not to make an order in relation to the corporation unless in relation to each requirement of this Schedule that is specified in the order, the Treasurer is of the opinion that compliance with the requirement —
 - (a) would render accounts or consolidated accounts, or a report required by Division 9 misleading;
 - (b) would be inappropriate to the circumstances of the corporation; or
 - (c) would impose unreasonable burdens on the corporation or an officer of the corporation.
- (8) The reference in subclause (7) to an order in relation to the corporation is a reference to an order under subclause (2) relieving the board or the corporation from compliance with specified requirements of this Schedule.
- (9) The Treasurer may make an order under subclause (2) that is limited to a specified period and may from time to time either on application by the board, or without any such application, revoke or suspend the operation of the order.
- (10) The revocation or suspension under subclause (8) of an order does not take effect until notice of the revocation or suspension is served on the corporation.

35. Minister to receive a copy of the annual report

- (1) The corporation shall as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 63.
- (2) In subclause (1) “**the prescribed day**” is the 5th working day after receipt by the corporation under clause 39(2) of the Auditor General’s report.

36. Minister entitled to financial statements and reports
(cf. s.315 Corporations Law)

The annual report of the corporation required by section 63 of this Act is to contain the following documents relevant to the financial year to which the report relates —

- (a) a copy of the corporation's financial statements for that financial year;
- (b) a copy of each statement that Division 8 requires in relation to that financial year;
- (c) a copy of each statement that Division 9 requires in relation to that financial year;
- (d) a copy of the Auditor General's report on the financial statements;
- (e) a copy of any order of the Treasurer under clause 34.

37. Contravention
(cf. s.318 Corporations Law)

- (1) Subject to this clause, if a director fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the provisions of this Schedule other than Divisions 2 and 3, the director contravenes this subclause.
- (2) The penalty applicable to a contravention of subclause (1) is —
 - (a) in a case to which paragraph (b) does not apply, \$5 000; or
 - (b) if the offence was committed with intent to deceive or defraud the Minister or the Treasurer or creditors of the corporation, \$20 000 or imprisonment for 5 years or both.
- (3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the provisions of this Schedule relating to the form and content of the accounts or consolidated accounts of the corporation by reason of an omission from the accounts or consolidated accounts, it is a defence if it is proved that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by Division 5 and 6 to be dealt with in the accounts or consolidated accounts, as the case may be.

Schedule 3 Financial administration and audit

- (4) After the end of the period within which Division 5, 6, 7 or 8 requires the board to cause a document to be made out, the Minister may require the board to produce the document on a specified day, at a specified place, to a specified person.
- (5) A request under subclause (4) must be made by writing given to each of the directors.
- (6) In a proceeding for a contravention of Division 5, 6, 8 or 9, proof of contravention of a requirement made under subclause (4) is *prima facie* evidence that the document was not made out within the period referred to in that subclause.

38. Audit

- (1) If the Auditor General cannot complete the audit of the corporation by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for his inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before both Houses of Parliament, within 7 sitting days of receiving that report.
- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of the corporation.

39. Auditor General must report
(*cf. s.331A Corporations Law*)

- (1) The Auditor General is to send a report to the Minister on —
 - (a) the corporation's financial statements required for the purposes of clause 36; and
 - (b) the corporation's accounting records and other records relating to those financial statements.
- (2) The Auditor General is to give the report to the directors as soon as is practicable after it has been given to the Minister under subclause (1).

40. Report to state whether financial statements properly drawn up
(*cf. s.331B Corporations Law*)

- (1) The report must state whether or not, in the Auditor General's opinion, the financial statements are properly drawn up —
 - (a) so as to give a true and fair view of the matters with which Divisions 5, 6 and 7 require them to deal; and

- (b) in accordance with this Schedule; and
 - (c) in accordance with applicable accounting standards.
- (2) If, in the Auditor General's opinion, the financial statements are not drawn up in accordance with a particular applicable accounting standard, the report must give particulars of the quantified financial effect on the financial statements of failing to draw them up in accordance with that accounting standard.
- (3) If the Auditor General is not satisfied about a matter referred to in subclause (1) or (2), the report must state why not.

41. Matters affecting consolidated accounts
(cf. s.331C Corporations Law)

- (1) If the financial statements include consolidated accounts, the report must specify each entity that the corporation controlled during all or a part of, or at the end of, the financial year, but of which the Auditor General has not acted as auditor.
- (2) If —
- (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity of the kind referred to in subclause (1); and
 - (b) the Auditor General has not examined those accounts and the auditor's report (if any) on those accounts,

the report on the financial statements must specify that entity.

- (3) If —
- (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity that the corporation controlled during all or part of, or at the end of, the financial year; and
 - (b) the Auditor General's report on those accounts was made subject to any qualification, or included any comment made under clause 43 or a corresponding previous law,

the report on the financial statements must —

- (c) specify the entity; and
- (d) give particulars of the qualification or comment.

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42. Defects, irregularities and omissions
(cf. s.331D Corporations Law)

The report must describe —

- (a) any defect or irregularity in the financial statements; and
- (b) any matter that the financial statements do not set out and to which one must have regard in order to obtain a true and fair view of the matters with which the financial statements deal.

43. Auditor General's report to cover adequacy of information
(cf. s.331E Corporations Law)

- (1) It is the Auditor General's duty to form an opinion about each of the matters set out in subclause (2), and the report must set out particulars of any deficiency, failure or shortcoming in respect of any of those matters.
- (2) These are the matters —
 - (a) whether the Auditor General has obtained all the information and explanations he or she needed;
 - (b) whether the corporation has kept proper accounting records, and other records (including registers), as required by this Schedule;
 - (c) whether the returns received from branch offices of the corporation are adequate;
 - (d) if the corporation is a chief entity in relation to the financial year concerned —
 - (i) whether the accounts of entities that were used in preparing the consolidated accounts of the corporation in relation to the financial year are in form and content appropriate and proper for such use;
 - (ii) whether the Auditor General has received satisfactory information and explanations as required by the Auditor General for the purposes of forming an opinion about the matter referred to in subparagraph (i);

- (iii) whether the procedures and methods used in arriving at the amounts taken into the consolidated accounts were appropriate to the circumstances of preparing the consolidated accounts.

44. Minister entitled to inspect auditor's report
(cf. s.331F Corporations Law)

The Minister is entitled to inspect the report at any reasonable time.

45. Powers and duties of Auditor General as to reports on accounts
(cf. s.332 Corporations Law)

- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of the corporation —
 - (a) the Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers, of each entity that the corporation controlled during all or part of, or at the end of, that financial year, even if the corporation no longer controls the entity; and
 - (b) the Auditor General is entitled to require from any officer or auditor of such an entity (at the corporation's expense), such information and explanations about the entity's affairs as the Auditor General needs in order to report on the consolidated accounts.
- (2) The Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers of the corporation, and is entitled to require from any officer of the corporation such information and explanations as the Auditor General desires for the purposes of audit.
- (3) If the Auditor General in the course of the performance of duties as auditor of the corporation and its subsidiaries, is satisfied that —
 - (a) there has been a contravention of any provision of this Schedule; and
 - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the

Schedule 3 Financial administration and audit

financial statements or by bringing the matter to the notice of the board of the corporation,

the Auditor General is to forthwith report the matter to the Minister in writing.

- (4) The provisions of sections 78 to 91 (inclusive) and section 95 of the *Financial Administration and Audit Act 1985* apply to the corporation as if it were a statutory authority named in Schedule 1 of that Act.

46. Extension of time

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.
- (2) Where the Minister grants an extension of time under subclause (1), the provisions of clause 34(5)(b) shall, with all necessary changes, apply to the memorandum evidencing the extension as if it were an order for the purposes of that paragraph.

[Schedule 3 amended by No. 55 of 1996 s.10(2); No. 26 of 1999 s.83(3).]

Schedule 4 — Provisions to be included in articles of association of subsidiaries

[Section 33]

1. Disposal of shares

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

2. Directors

- (1) The directors of the subsidiary are to be appointed by the corporation, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the corporation and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 4 and in the memorandum and articles of association of the subsidiary.

3. Further shares

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

4. Subsidiaries of subsidiary

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister.
- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times comply with this Act.

Schedule 4 Provisions to be included in articles of association of subsidiaries

- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association and with the requirements of this Act.

[Schedules 5, 6 repealed by No. 65 of 1998 s.89.]

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Notes

¹ This reprint is a compilation as at 28 April 2000 of the *Gas Corporation Act 1994* and includes all amendments effected by the other Acts referred to in the following Table.^{1a}

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Gas Corporation Act 1994</i>	87 of 1994	15 December 1994	Sections 90, 91 and 93: proclaimed 1 January 1995 (see section 2(2) and <i>Gazette</i> 23 December 1994 p.7069); section 92: proclaimed 1 January 1997 (see section 2(2) and <i>Gazette</i> 29 December 1995 p.6225); balance operative 1 January 1995 (see section 2)	
<i>State Enterprises (Commonwealth Tax Equivalents) Act 1996</i> , section 10(2)	55 of 1996	11 November 1996	Deemed operative 1 July 1996 (see sections 2 and 3(3))	
<i>Dampier to Bunbury Pipeline Act 1997</i> , Division 4 of Schedule 4	53 of 1997	12 December 1997	Sch 4, Div 4, (except clauses 16, 17(1) and (2), 18 and 20) operative on 'pipeline transfer time' 11.00 a.m. 25 March 1998 (see clause 11 and <i>Gazette</i> 25 March 1998 p.1655); balance operative 12 December 1997 (see section 2(1))	Clause 19, Schedule 4 Transitional ² ; Clause 20, Schedule 4 Validation ³

Gas Corporation Act 1994

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 64</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2(1))	
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 37</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Gas Pipelines Access (Western Australia) Act 1998, section 89 (Schedule 3, Division 7)</i>	65 of 1998	15 January 1999	Subdivision 2 of Division 7 to Schedule 3: proclaimed 9 February 1999 (see section 2 and <i>Gazette</i> 8 February 1999 p.441); Subdivision 3 of Division 7 to Schedule 3 operative 1 January 2000 (see clause 28)	Clause 22(2) of Schedule 3: transitional ⁴ ; Clause 31 of Schedule 3: transitional ⁵
<i>Energy Coordination Amendment Act 1999, section 10(2)</i>	20 of 1999	24 June 1999	Proclaimed 16 October 1999 (see section 2 and <i>Gazette</i> 15 October 1999 p.4865)	
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 83</i>	26 of 1999	29 June 1999	Proclaimed 1 July 1999 (see section 2(1) and <i>Gazette</i> 30 June 1999 p.2905)	
<i>Gas Corporation (Business Disposal) Act 1999, sections 58 to 61 ^{1a}</i>	58 of 1999	24 December 1999	24 December 1999 (see section 2(1))	

NB. This Act is affected by the *Gas Standards Act 1972* (No. 15 of 1972) and the *Liquid Petroleum Gas Act 1956* (No. 58 of 1956).

^{1a} As at the date of this reprint section 87 of the *Gas Corporation (Business Disposal) Act 1999* (No. 58 of 1999) was not operative. It reads as follows —

“

87. Miscellaneous amendments

The enactments set out in the Table to this section are amended by deleting “*Corporations*” and inserting instead (in the appropriate printing font) —

“ *Operators* ”.

Table

Act	Provision
<i>Gas Corporation Act 1994</i>	section 30(4) section 32(3)

”

Also at the date of this reprint Subdivision 3 of Division 3 of Part 6 of the *Gas Corporation (Business Disposal) Act 1999* (No. 58 of 1999) was not operative. It reads as follows —

“

Subdivision 3 — *Gas Corporation Act 1994*

93. Repeal

The *Gas Corporation Act 1994* is repealed.

94. Winding up of affairs of Gas Corporation

- (1) When the *Gas Corporation Act 1994* is repealed the Minister responsible for the administration of the *Energy Coordination Act 1994* (in this section called “**the Minister**”) is required to wind up the affairs of the former Gas Corporation as soon as is practicable, and for the purpose of winding up those affairs —
 - (a) all real and personal property and every right or interest in it that immediately before the repeal were vested in the Gas Corporation pass to and become vested in the Minister without any transfer or assignment;
 - (b) all records and data of the Gas Corporation pass to the Minister;
 - (c) all rights, liabilities and obligations of the Gas Corporation that existed immediately before the repeal devolve on the Minister;
 - (d) all contracts, agreements and undertakings made by and with the Gas Corporation and having effect immediately before the repeal have effect as contracts, agreements and

- undertakings made by and with the Minister and may be enforced by or against the Minister accordingly; and
- (e) any legal or other proceedings or any remedies that might, but for the repeal, have been commenced or continued by or against or have been available to the Gas Corporation may be commenced or continued by or against or are available to the Minister, as the case requires.
- (2) A reference in subsection (1)(a), (c), (d) or (e) to the Minister is a reference to the Minister in the name and on behalf of the State.
 - (3) For the purposes described in subsection (1) a reference to the Gas Corporation in —
 - (a) a law of the State in force; or
 - (b) a document in existence,immediately before the repeal is to be construed as a reference to the Minister unless in the context it would be inappropriate to do so.
 - (4) This section does not apply to anything for which this Act has made other provision.

Also at the date of this reprint Subdivision 1 of Division 5 of Part 6 (subject to section 2(5)) of the *Gas Corporation (Business Disposal) Act 1999* (No. 58 of 1999) was not operative. It reads as follows —

Subdivision 1 — *Gas Corporation Act 1994*

110. Part 6 repealed

Part 6 of the *Gas Corporation Act 1994* is repealed.

² Clause 19(1), (2) and (3) of Schedule 4 of the *Dampier to Bunbury Pipeline Act 1997* (No. 53 of 1997) reads as follows —

19. Unsold parts of corporation's DBNGP system

- (1) If some, but not all, of the pipelines that are part of the corporation's DBNGP system are assigned under Part 3, any of them that are not assigned, and all associated equipment, become part of the gas distribution system defined in section 90 of the principal Act even though they may not yet be identified by the

corporation in a schedule in accordance with clause 3(2) of Schedule 6 to the principal Act.

- (2) As soon as is practicable after any part of the corporation's DBNGP system becomes part of the gas distribution system under subclause (1), the corporation is to prepare another schedule in accordance with clause 3(2) of Schedule 6 to the principal Act.
- (3) Nothing in this clause prevents anything that becomes part of the gas distribution system under subclause (1) from subsequently becoming part of the gas transmission system as defined in section 90 of the principal Act.

”

³ Clause 20 of Schedule 4 of the *Dampier to Bunbury Pipeline Act 1997* (No. 53 of 1997) reads as follows —

“

20. Validation

A regulation purporting to have been made under the principal Act, and anything purporting to have been done under the Act or the regulations, is and always was as valid and effective as it would have been if the amendments made by clauses 16, 17(1) and (2), and 18 had at all relevant times been made.

”

⁴ Clause 22(2) of Schedule 3 to the *Gas Pipelines Access (Western Australia) Act 1998* (No. 65 of 1998) reads as follows —

“

- (2) Any proceedings for the hearing and determination of a dispute by the referee, as defined in section 90 of the principal Act immediately before the commencement of clause 21(b), that have been commenced but not completed before that commencement, may be continued and determined by the referee, and any appeal may be brought and disposed of, as if clause 21(b) and this clause had not been enacted.

”

⁵ Clause 31 of Schedule 3 to the *Gas Pipelines Access (Western Australia) Act 1998* (No. 65 of 1998) reads as follows —

“

31. Transitional provisions

- (1) Despite the repeals effected by clauses 29 and 30, the repealed access scheme continues to apply in relation to the gas distribution

system, as defined in the repealed section 90 of the principal Act, until an Access Arrangement is approved under the Gas Pipelines Access (Western Australia) Law in relation to that system.

- (2) The Governor may make regulations —
- (a) modifying the repealed access scheme for the purposes of subclause (1); and
 - (b) making such provision as is necessary or expedient for the transition from the repealed access scheme to the Gas Pipelines Access (Western Australia) Law including without limitation provision in relation to —
 - (i) matters in progress; and
 - (ii) dispute proceedings that have been begun.
- (3) In this clause —
- “repealed access scheme”** means —
- (a) Part 6 of the principal Act repealed by clause 29;
 - (b) Schedule 6 to that Act repealed by clause 30;
 - (c) the *Gas Distribution Regulations 1996*; and
 - (d) the *Gas Referee Regulations 1995*.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
accounting records.....	Sch. 3, cl. 1(2)
accounting standard.....	Sch. 3, cl. 1(2)
accounts.....	Sch. 3, cl. 1(1)
applicable accounting standards.....	Sch. 3, cl. 1(2)
arrangement.....	38(2)(a)
bank.....	76(2)
board.....	3, Sch. 3, cl. 1(1)
business arrangement.....	30(5)
chief entity.....	Sch. 3, cl. 1(1)
chief executive officer.....	3
Commission.....	Sch. 3, cl. 1(1)
Commissioner for Public Sector Standards.....	3
community service obligations.....	55(4)
company.....	Sch. 3, cl. 1(2)
consolidated accounts.....	Sch. 3, cl. 1(1)
control.....	Sch. 3, cl. 1(1)
corporation.....	3, Sch. 3, cl. 1(2)
current year amount.....	Sch. 3, cl. 21(1)
debt paper.....	83(4)
director.....	3, Sch. 1, cl. 1
document.....	71(5)
economic entity.....	Sch. 3, cl. 1(1), cl. 12(1), (3)
entity.....	Sch. 3, cl. 1(1), cl. 12(1), (3)
executive officer.....	3
financial statements.....	Sch. 3, cl. 1(1)
financial year.....	Sch. 3, cl. 1(1)
function.....	3
gas.....	3
gas distribution system.....	90
information.....	71(5)
interest rate.....	85(2)
latest draft plan.....	49(2)
latest draft statement.....	58(2)
management.....	16(2)
member of staff.....	3
members of staff.....	19(3), 24(4)
non-executive director.....	3
parent entity.....	Sch. 3, cl. 1(1), cl. 12(1), (3)
participate.....	30(5)

Gas Corporation Act 1994

Defined Terms

pay Sch. 2, cl. 15(6)
profit and loss Sch. 3, cl. 1(1)
public service officer 11(2)
registered company auditor 89A(2)
regulations Sch. 3, cl. 1(1)
relative Sch. 2, cl. 14(3)
reporting entity Sch. 3, cl. 1(1), cl. 12(1), (3)
reporting officers Sch. 3, cl. 33(4)
specified obligation 96A(1)
subsidiary 3
the prescribed day Sch. 3, cl. 35(2)
transaction 34(5)
Treasurer 3