

Western Australia

Electricity Corporation Act 1994

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Electricity Corporation Act 1994

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Western Australia

Electricity Corporation Act 1994

An Act to establish a corporation with the function of supplying electricity, and with functions necessary for and related to that purpose, to make provision as to access to the corporation's transmission and distribution systems and as to new generation by the corporation, and for connected purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Electricity 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 and 93 come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Interpretation

- (1) 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;
 - “**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;
 - “**director**” means a member of the board;
 - “**electricity**” includes electrical energy of any kind however produced, stored, transported or consumed;
 - “**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;

“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 determined to be a subsidiary of the corporation under subsection (2); or
- (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;

“Treasurer” means the Treasurer of the State.

- (2) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the corporation.

[Section 3 amended by No. 10 of 2001 s. 64; No. 74 of 2003 s. 49; No. 33 of 2004 s. 21.]

Part 2 — Western Power Corporation

[Heading amended by No. 24 of 2000 s. 14(1).]

Division 1 — Establishment of Western Power Corporation

[Heading amended by No. 24 of 2000 s. 14(2).]

4. Western Power Corporation: corporate identity and status

- (1) The body corporate established by this section as enacted before the commencement of section 14 of the *Statutes (Repeals and Minor Amendments) Act 2000* is continued under the corporate name Western Power Corporation without affecting its corporate identity or its rights and obligations.
- (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.

[Section 4 inserted by No. 24 of 2000 s. 14(3).]

5. Corporation not agent of Crown

The corporation is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

[Section 5 inserted by No. 24 of 2000 s. 14(3).]

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 4 nor more than 8 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. 53 of 2003 s. 103.]

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 subsection (1) “**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.

Division 3 — Staff

13. Chief executive officer

- (1) There is to be a chief executive officer of the corporation.
- (2) The powers —
 - (a) to appoint and remove the chief executive officer; and
 - (b) to fix and alter his or her terms and conditions of service,are vested in the board.
- (3) The board is to obtain the concurrence of the Minister before it exercises any of the powers conferred by subsection (2).
- (4) Subject to any provision of his or her terms and conditions of service, the chief executive officer may resign his or her office by giving notice in writing to the board.
- (5) The board may appoint a person to act in place of the chief executive officer —
 - (a) during a vacancy in that office; or
 - (b) during any period when the chief executive officer is unable to carry out his or her duties or is absent from the State.
- (6) Despite subsection (2), the Minister is to appoint the initial chief executive officer.

[Section 13 amended by No. 10 of 1998 s. 32(1).]

14. Role of chief executive officer

Subject to the control of the board, the chief executive officer is responsible for, and has the necessary powers to administer, the day to day operations of the corporation.

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 Part VID of the *Industrial Relations Act 1979*.

[Section 15 amended by No. 20 of 2002 s. 27; amended in Gazette 15 Aug 2003 p. 3692.]

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
- (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 *State Superannuation Act 2000* in relation to the corporation or any member of staff.

[Section 19 amended by No. 43 of 2000 s. 42.]

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 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.

[Section 23 amended by No. 24 of 2000 s. 14(4).]

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

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 62, 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. *Repealed by No. 24 of 2000 s. 14(5).*]

28. Functions

- (1) The functions of the corporation are —
 - (a) to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity;
 - (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.
- (3) Subject to subsection (3a), the corporation may perform any of its functions in the State or elsewhere.
- (3a) Without limiting section 66, the Minister may under that section direct the corporation —

- (a) not to perform a function specified in the direction;
 - (b) not to perform a function specified in the direction to an extent, or except to an extent, specified in the direction; or
 - (c) not to perform a function specified in the direction in or in relation to an area, or except in or in relation to an area, specified in the direction.
- (3b) Subsection (3a) does not authorise a direction of a kind mentioned in section 38A(1).
- (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 Minister, or affect the operation of section 94.

[Section 28 amended by No. 33 of 2004 s. 22.]

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;
 - (c) apply for the grant or transfer of any mining tenement, petroleum licence or other licence or authority to the corporation;

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- (d) acquire, establish and operate —
 - (i) any undertaking (including any necessary tenements and licences) for the production, recovery, conversion, processing or transport of any fuel or source of energy; and
 - (ii) any associated undertaking;
 - (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 Operators (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.

[Section 30 amended by No. 58 of 1999 s. 87.]

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 maximizing 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 5, 6 or 7,the direction, or provision of that Schedule, prevails.

31A. Segregation of functions

- (1) Regulations under section 100 may provide for, and in relation to —

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- (a) the segregation of any segment of the corporation's operations mentioned in section 62(2) from the other functions or operations of the corporation; or
 - (b) the segregation from the corporation of any subsidiary of the corporation that has any functions or operations of a specified kind.
- (2) Regulations referred to in subsection (1) may make provision for, or in relation to —
- (a) the keeping of accounts and records;
 - (b) financial reporting;
 - (c) the apportionment of income, expenditure, assets and liabilities;
 - (d) the protection of information;
 - (e) the conduct of officers of the corporation; and
 - (f) controls and procedures, and the conferral of functions on a specified person, to ensure that any required segregation is effective.

[Section 31A inserted by No. 33 of 2004 s. 23.]

32. Interruption etc. of supply

- (1) The corporation may interrupt, suspend or restrict the supply of electricity 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 Operators (Powers) Act 1979* and does not limit those provisions.
- (4) This section has effect despite any provision of Schedule 5 or 6.

[Section 32 amended by No. 58 of 1999 s. 87.]

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 \$20 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 82 or 84.

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 or approved 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
 - (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.

38A. 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 —
 - (a) within, or for delivery or consumption within, a specified area or specified areas of the State;
 - (b) in specified quantities; or
 - (c) to specified customers or a specified class of customers.
- (2) In subsection (1) —

“specified” means specified in the instrument.

- (3) Sections 41, 42 and 43(4) of the *Interpretation Act 1984* apply to an instrument under this section as if it were a regulation.
- (4) A direction under this section has effect and is to be complied with by the corporation despite any other written law.
[Section 38A inserted by No. 58 of 1999 s. 45.]

Division 3 — Protection of persons dealing with corporation

39. Person dealing with corporation may make assumptions

- (1) A person having dealings with the corporation is entitled to make the assumptions mentioned in section 41.
- (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.

40. 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 41.
- (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.

41. Assumptions that may be made

The assumptions that a person is, because of section 39 or 40 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.

42. Exception to sections 39 and 40

- (1) Despite sections 39 and 40, a person is not entitled to assume a matter mentioned in section 41 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 39(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 40(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

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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 49.
- (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.

49. 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.

50. 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.

51. Concurrence of Treasurer

The Minister is not to —

- (a) agree to a draft strategic development plan under section 49; or
- (b) agree to or direct any modification of a strategic development plan under section 50,

except with the concurrence of the Treasurer.

Division 2 — Statement of corporate intent

52. 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.

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

53. 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.

54. 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 (2) 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.

[Section 54 amended by No. 24 of 2000 s. 14(6).]

55. 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.

56. 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.
- (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.

57. 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 58.
- (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.

58. 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 a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

[Section 58 amended by No. 24 of 2000 s. 14(7).]

59. 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.

60. Concurrence of Treasurer

The Minister is not to —

- (a) agree to a draft statement of corporate intent under section 58; or
- (b) agree to or direct any modification of a statement of corporate intent under section 59,

except with the concurrence of the Treasurer.

Division 3 — Quarterly and annual reports

61. 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.
- (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 64, the Minister shall, after consultation with the board, make a quarterly report available to the public.

62. 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;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 are to be divided into the following segments or such other segments as may be agreed between the corporation and the Minister —
 - (i) the generation of electricity within the South West interconnected system;
 - (ii) the transmission and distribution of electricity within the South West interconnected system;
 - (iii) the sale of electricity within the South West interconnected system;
 - (iv) the Pilbara interconnected system; and
 - (v) the remote power systems;and

- (b) separate profit and loss accounts and balance sheets are to be prepared in respect of each of those segments.
- (2a) In subsection (2) —
 - “**South West interconnected system**” has the meaning given to that term in section 3 of the *Electricity Industry Act 2004*.
- (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 62 amended by No. 33 of 2004 s. 24.]

63. 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 47(3), 50(2), 56(3), 59(2), 66(1), 72(4) or 81(3) —
 - (i) that apply to the corporation or the subsidiary; and
 - (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 66(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.

64. 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 63, comply with a request under subsection (1).

Division 4 — Ministerial directions, general provisions

65. 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.

66. Minister may give directions

- (1) The Minister may give directions in writing to the corporation with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to section 67, 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 67, within 14 days after it is confirmed under that section.

[Section 66 amended by No. 33 of 2004 s. 25.]

67. Directions contrary to commercial interest

- (1) Where a direction under section 66 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.

68. When directions take effect

- (1) A direction under section 66 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 67 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

69. 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.

70. 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.
- (2a) A request under subsection (2)(a) may specify a time before which the information is to be furnished.
- (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.

[Section 70 amended by No. 53 of 2003 s. 104.]

70A. Provision of information in compiled form

- (1) Subsection (2) applies if the Minister wishes to obtain from the corporation information that —
- (a) is not itself in the possession of the corporation or a subsidiary; but
 - (b) is capable of being assembled or compiled from information in the possession of the corporation or a subsidiary.
- (2) The Minister may request the chief executive officer or the board to furnish to the Minister a document containing information that —
- (a) is of a specified description;
 - (b) is presented in a specified way;
 - (c) relates to a specified period; or
 - (d) has some other specified characteristic,
- or that comes within 2 or more of the preceding paragraphs.

- (3) A request under subsection (2) may specify a time before which the document is to be furnished.
- (4) The chief executive officer or the board is to comply with a request under subsection (2) and is to take, or cause to be taken, whatever steps are necessary in order to do so.
- (5) Section 70(1) applies to a document prepared or compiled for the purposes of this section in the same way as it applies to other information in the possession of the corporation or a subsidiary.
- (6) Section 70(4) applies where a document is furnished under this section in the same way as it applies where information is furnished under that section.

[Section 70A inserted by No. 53 of 2003 s. 105.]

71. 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;
- (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
- (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.

72. 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

73. 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 61, 62, 69, 70, 70A, 71, 72, clause 4 or 6 of Schedule 5, clause 4 or 6 of Schedule 6 or clause 2 or 4 of Schedule 7; 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 47(3), 50(2), 56(3), 59(2), 66(1), 72(4) or 81(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 73 amended by No. 53 of 2003 s. 106.]

Part 5 — Financial provisions

Division 1 — General

74. 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.

75. 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; and
 - (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 75 amended by No. 26 of 1999 s. 76(2).]

76. 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.

77. 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

78. 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 77, the corporation would have been liable to pay in respect of that financial year.

[79. Repealed by No. 55 of 1996 s. 10(3).]

80. Determination of amounts under section 78

Amounts payable under section 78 —

(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 80 amended by No. 55 of 1996 s. 10(3).]

81. 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 78 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 81 amended by No. 55 of 1996 s. 10(3).]

Division 3 — Borrowing

82. Borrowing

- (1) The corporation may, subject to section 83 —
- (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.

83. 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 82.

- (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.

84. Hedging transactions

- (1) The corporation may in connection with the exercise of any power conferred by section 82 —
 - (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; 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 82.
- (2) In subsection (1)(a) “**interest rate**” includes coupon rate, discount rate and yield.

[Section 84 amended by No. 10 of 2001 s. 65; No. 21 of 2003 s. 12.]

Division 4 — Guarantees

85. 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 82.
- (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

- (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.

86. 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 85.
- (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

87. 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.

88. 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) If —
- (a) a provision of Schedule 3 that set out the substance of a provision of —
 - (i) the Corporations Law (as in force at any time before the commencement of the Corporations Act); or
 - (ii) the Corporations Act,does not accurately reflect the corresponding provision of the Corporations Act;
 - (b) the Corporations Act does not contain a provision that corresponds to a provision of Schedule 3 that set out the substance of a provision of —
 - (i) the Corporations Law (as in force at any time before the commencement of the Corporations Act); or
 - (ii) the Corporations Act;or
 - (c) the Corporations Act contains a provision relating to a matter provided for by Schedule 3, the substance of which is not set out in Schedule 3,

the Minister may recommend to the Governor, as soon as practicable after the circumstance in paragraph (a), (b) or (c) arises, that regulations be made under subsection (2).

- (4) The regulations are to be 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 Act, but with such modifications as are consistent with the policy of this Act.

[Section 88 amended by No. 10 of 2001 s. 66.]

Part 6 — Access, pricing and procurement

89. Definitions

(1) In this Part and in Schedules 5, 6 and 7 —

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

“electricity distribution system” means —

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

“electricity transmission capacity” means the capacity of the electricity transmission system to transport electricity, consistent with the need to maintain the continuity and integrity of that system;

“electricity transmission system” means —

- (a) the part or parts of the system operated by the corporation for the transportation of electricity that is

or are prescribed by the regulations for the purposes of this paragraph; and

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

“new generation” means any new or additional electricity supply or generation;

“prescribed pricing policy” means a policy or practice of charging different prices to different users or classes of users in different circumstances that is —

- (a) specified in the regulations; and
- (b) prescribed for the purposes of Schedule 5 clause 2(1a) or Schedule 6 clause 2(1a);

“referee” means a person appointed to the office of referee under the regulations;

“regulations” means the regulations referred to in section 95.

- (2) In this Part **“user”** means a person who has an arrangement with the corporation for access to either or both of electricity transmission capacity and electricity distribution capacity, and includes the corporation to the extent that it has access to either or both of electricity transmission capacity and electricity distribution capacity.

[Section 89 amended by No. 53 of 2003 s. 107.]

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90. Access to, and pricing for, electricity transmission capacity

Schedule 5 has effect with respect to access to, and pricing for, electricity transmission capacity.

91. Access to, and pricing for, electricity distribution capacity

Schedule 6 has effect with respect to access to, and pricing for, electricity distribution capacity.

92. Procurement of new generation

Schedule 7 has effect with respect to the process by which the corporation procures new generation.

93. Progressive introduction of access to electricity transmission capacity and electricity distribution capacity

(1) The Minister, by order or orders published in the *Government Gazette*, is to prescribe the manner and timing of the progressive introduction of the corporation's obligations under —

- (a) subclause (1) of clause 2 of Schedule 5; and
- (b) subclause (1) of clause 2 of Schedule 6,

and those subclauses are to have effect accordingly.

(2) An order under subsection (1) may be amended by further order made by the Minister and published in the *Government Gazette*.

94. Enforcement

(1) The obligations imposed on the corporation by this Part and by Schedules 5, 6 and 7 create duties that are enforceable either —

- (a) by civil proceedings in a court; or
- (b) by proceedings before the referee,

as prescribed by the regulations, but no breach of those obligations gives rise to an action for damages.

(2) A grant of access under clause 2 of Schedule 5 or clause 2 of Schedule 6 to a user and the terms and conditions of that grant are to be taken to constitute a contract between the corporation

and the user, and rights and obligations under the grant are enforceable accordingly.

- (3) Nothing in subsection (1) affects —
 - (a) the enforceability of any contract, including a deemed contract under subsection (2), to which the corporation is a party; or
 - (b) the availability of damages for a breach of any such contract.
- (4) Sections 177 and 178 of *The Criminal Code* do not apply to the obligations created by or under this Part and Schedules 5, 6 and 7.

95. Regulations for access and pricing

- (1) Regulations may be made under section 100 providing, whether generally or to meet particular cases, for —
 - (a) access to, and pricing for, electricity transmission capacity;
 - (b) access to, and pricing for, electricity distribution capacity; and
 - (c) a process by which disputes connected with, arising out of or in relation to the matters the subject of this Part and Schedules 5 and 6 may be resolved.
- (2) Regulations referred to in subsection (1) are to give effect to and be consistent with, but are not to be limited to, the provisions of Schedules 5 and 6.
- (3) Regulations referred to in subsection (1)(c) may provide for —
 - (a) the creation of an office of referee;
 - (b) appointments to, and qualifications for holding, that office;
 - (ba) the protection and immunities of the referee;
 - (c) the administration of the office of referee, including without limitation remuneration and staffing;

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- (d) the referee to have jurisdiction to hear and determine disputes, and in the case of prescribed disputes, for that jurisdiction to be exclusive of the jurisdiction of courts and other tribunals to hear or determine prescribed disputes (including without limitation disputes about the meaning and effect of this Act and the regulations);
- (e) the disputes or classes of disputes which are prescribed disputes;
- (f) the determination of a referee to be final and binding on all parties to a dispute, and not to be subject to appeal except to a single Judge on a question of law;
- (g) the extent (if any) of the application to the dispute resolution process of the rules of natural justice or any other rules, process or scheme of review;
- (h) the practice and procedure to be followed including —
 - (i) the application or otherwise of the rules of evidence;
 - (ii) in relation to witnesses —
 - (I) the compulsion to attend or to both attend and produce documents; and
 - (II) their examination and cross-examination on oath or affirmation;
 - (iii) the rights (if any) to legal representation;
 - (iv) confidentiality;
 - (v) costs, including without limitation the method by which the amount of costs is to be ascertained;
- (ha) the protection, immunities and liabilities of witnesses;
 - (i) the powers of the referee, including without limitation the powers —
 - (i) to make awards, including as to damages, costs and interest;

- (ii) to order parties to a dispute to do or refrain from doing any thing, permanently or for a specified time;
 - (iii) to make orders for specific performance; and
 - (iv) to undertake investigations and perform other acts of his or her own motion;
 - (j) the status and enforcement of determinations of a referee, including without limitation the conferral of jurisdiction on the Supreme Court to enter and enforce those determinations as judgments of that Court;
 - (k) references from the referee to a single Judge; and
 - (l) the transfer of proceedings between the referee and the Supreme Court, and the adjournment, stay or dismissal of concurrent legal proceedings or arbitrations.
- (4) The regulations are not to empower the referee to make a determination that is inconsistent with this Act and the regulations.

[Section 95 amended by No. 53 of 2003 s. 108.]

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

- (1) The Minister may, by instrument published in the *Government Gazette*, declare that a specified relevant provision does not have effect on and after a specified day, and a declaration so made has effect accordingly.
- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that the matters to which the relevant provision relates are adequately dealt with, or will be adequately dealt with on and after the specified day, under —
 - (a) Part 8 of the *Electricity Industry Act 2004* and the Code established under that Part; or

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- (b) Part 9 of the *Electricity Industry Act 2004* and the regulations made and market rules established under that Part.
- (3) A declaration is not to be made after the expiration of the period of 2 years beginning on the day of the insertion of subsection (1) into this Act by the *Electricity Legislation Amendment Act 2004*.
- (4) Regulations made under section 100 may —
- (a) repeal any specified provision that has ceased to have effect because of a declaration;
 - (b) effect any repeal of or amendment to any other provision of this Part or Schedule 5, 6 or 7 that is consequential on a repeal referred to in paragraph (a); and
 - (c) prescribe any matter that it is necessary or convenient to prescribe for transitional or savings purposes in relation to a declaration or in relation to a repeal or amendment referred to in paragraph (a) or (b).
- (5) In this section —
- “declaration”** means a declaration made under subsection (1);
- “relevant provision”** means any of section 90, 91, 92 or 93 or Schedule 5, 6 or 7, or any portion of any of those sections or Schedules;

“specified” means specified in the declaration.

[Section 95A inserted by No. 33 of 2004 s. 26.]

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), 47(5), 50(4), 56(5), 58(2), 59(4), 62(4), 66(2), 72(6), 81(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.

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).

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- (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 *Electricity Act 1945*, the latter prevails.

Schedule 1

[Section 9]

Provisions as to constitution and proceedings of board

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).

Provisions as to constitution and proceedings of board Schedule 1

- (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.

Schedule 1 Provisions as to constitution and proceedings of board

- (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 a majority of the directors who signify a response, and the majority comprises 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.

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- (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 1 amended by No. 24 of 2000 s. 14(8).]

Schedule 2

[Sections 20, 21, 22 and 23]

Provisions as to duties of directors and related provisions

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

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

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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 Act 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.

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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 73, 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 73, 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

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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: \$6 000.

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

[Clause 12 amended by No. 50 of 2003 s. 57(2).]

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

Schedule 2 Provisions as to duties of directors and related provisions

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 or de facto partner of a director or a relative of a director or spouse or de facto partner of a director; or
 - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse or de facto partner of a director or a relative of a director or spouse or de facto partner of a director.

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- (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.

[Clause 14 amended by No. 28 of 2003 s. 48.]

15. Directors and auditors 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.

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- (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.

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- (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. 32(2); No. 10 of 2001 s. 67; No. 28 of 2003 s. 48; No. 50 of 2003 s. 57(2).]

Schedule 3 — Financial administration and audit

[section 88(1)]

Division 1 — Preliminary

1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —
“**financial year**” has the meaning given by clause 23(1);
“**regulations**” means regulations made under the Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions “**accounting standard**”, “**company**” and “**financial records**”) have the respective meanings given to them by Part 1.2 of the Corporations Act.

Division 2 — Financial records

2. Obligation to keep financial records (*cf. s. 286 Corporations Act*)

- (1) The corporation must keep written financial records that —
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The financial records must be retained for 7 years after the transaction covered by the records are completed.

3. Physical format (*cf. s. 288 Corporations Act*)

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

4. Place where records are kept
(cf. s. 289 Corporations Act)

- (1) The corporation may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- (3) The corporation must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct the corporation to produce specified financial records that are kept outside Australia.
- (5) The direction must —
 - (a) be in writing;
 - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
 - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

5. Director access
(cf. s. 290 Corporations Act)

- (1) A director has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
 - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
 - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

Division 3 — Financial reporting

Subdivision 1 — Annual financial reports and directors' reports

6. Preparation of annual financial reports and directors' reports
(cf. s. 292 Corporations Act)

A financial report and a directors' report must be prepared for each financial year by the corporation before 30 September.

7. Contents of annual financial report
(cf. s. 295 Corporations Act)

- (1) The financial report for a financial year consists of —
 - (a) the financial statements for the year;
 - (b) the notes to the financial statements; and
 - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
 - (a) a profit and loss statement for the year;
 - (b) a balance sheet as at the end of the year;
 - (c) a statement of cash flows for the year; and
 - (d) if required by the accounting standards — a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (3) The notes to the financial statements are —
 - (a) disclosures required by the regulations;
 - (b) notes required by the accounting standards; and
 - (c) any other information necessary to give a true and fair view.
- (4) The directors' declaration is a declaration by the directors —
 - (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards;
 - (b) that the financial statements and notes give a true and fair view;

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- (c) whether, in the directors' opinion, there are reasonable grounds to believe that the corporation, will be able to pay its debts as and when they become due and payable; and
 - (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
 - (i) clause 8 (compliance with accounting standards and regulations); and
 - (ii) clause 9 (true and fair view).
 - (5) The declaration must —
 - (a) be made in accordance with a resolution of the directors;
 - (b) specify the date on which the declaration is made; and
 - (c) be signed by at least 2 directors.
- 8. Compliance with accounting standards and regulations**
(cf. s. 296 Corporations Act)
 - (1) The financial report for a financial year must comply with the accounting standards.
 - (2) The financial report must comply with any further requirements in the regulations.
- 9. True and fair view**
(cf. s. 297 Corporations Act)
 - (1) The financial statements and notes for a financial year must give a true and fair view of —
 - (a) the financial position and performance of the corporation; and
 - (b) if consolidated financial statements are required — the financial position and performance of the consolidated entity.
 - (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.
- 10. Annual directors' report**
(cf. s. 298 Corporations Act)
 - (1) The corporation must prepare a directors' report for each financial year.

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- (2) The report must include —
 - (a) the general information required by clause 11; and
 - (b) the specific information required by clause 12.
- (3) The report must —
 - (a) be made in accordance with a resolution of the directors;
 - (b) specify the date on which the report is made; and
 - (c) be signed by at least 2 directors.

11. Annual directors' report — general information
(cf. s. 299 Corporations Act)

- (1) The directors' report for a financial year must —
 - (a) contain a review of operations during the year of the corporation and the results of those operations;
 - (b) give details of any significant changes in the corporation's state of affairs during the year;
 - (c) state the corporation's principal activities during the year and any significant changes in the nature of those activities during the year;
 - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
 - (i) the corporation's operations in future financial years;
 - (ii) the results of those operations in future financial years; or
 - (iii) the corporation's state of affairs in future financial years;
 - (e) refer to likely developments in the corporation's operations in future financial years and the expected results of those operations; and
 - (f) if the corporation's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory — give details of the corporation's performance in relation to environmental regulation.

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- (2) If accounting standards require consolidated financial statements, the report must be on the consolidated entity of which the corporation is part.
- (3) The report may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to —
 - (a) the corporation; or
 - (b) if consolidated financial statements are required — the consolidated entity or any entity (including the corporation) that is part of the consolidated entity.
- (4) If material is omitted from the report, the report must say so.

12. Annual directors' report — specific information
(cf. s. 300 Corporations Act)

- (1) The directors' report for a financial year must include details of —
 - (a) dividends or distributions paid during the year;
 - (b) dividends or distributions recommended or declared for payment, but not paid, during the year; and
 - (c) the name of each person who has been a director of the corporation at any time during or since the end of the year and the period for which they were a director.
- (2) 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 Schedule 2 clause 15(3) or (4), 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;
 - (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.
- (3) If —

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- (a) during or since the financial year, the corporation has made a relevant agreement (as defined in section 9 of the Corporations Act) 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 Schedule 2 clause 15(3) or (4), 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;
- (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.

(4) 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 Schedule 2 clause 15(8), 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.

(5) The report must also include details of —

- (a) each director's qualifications, experience and special responsibilities;
- (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and

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- (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

13. Annual directors' report — other specific information
(cf. s. 300A Corporations Act)

The directors' report for a financial year must also include —

- (a) discussion of board policy for determining the nature and amount of emoluments of board members and senior executives of the corporation;
- (b) discussion of the relationship between such policy and the corporation's performance; and
- (c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the corporation receiving the highest emolument.

14. Audit of annual financial report
(cf. s. 301 Corporations Act)

The corporation must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 38 and 45 and obtain an auditor's report.

Subdivision 2 — Audit and auditor's report

15. Audit opinion
(cf. s. 307 Corporations Act)

The Auditor General must form an opinion about —

- (a) whether the financial report is in accordance with this Schedule, including —
 - (i) clause 8 (compliance with accounting standards and regulations); and
 - (ii) clause 9 (true and fair view);
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit;
- (c) whether the corporation has kept financial records sufficient to enable a financial report to be prepared and audited; and

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- (d) whether the corporation has kept other records and registers as required by this Schedule.

16. Auditor General's report on annual financial report
(cf. s. 308 Corporations Act)

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —
 - (a) clause 8 (compliance with accounting standards and regulations); and
 - (b) clause 9 (true and fair view).
- (2) If not of that opinion, the Auditor General's report must say why.
- (3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.
- (4) If it is not practicable to quantify the effect fully, the report must say why.
- (5) The Auditor General's report must describe —
 - (a) any defect or irregularity in the financial report; and
 - (b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.
- (6) The report must specify the date on which it is made.
- (7) The Auditor General must give a copy of the report to the directors as soon as practicable after it has been given to the Minister.

17. Auditor General's power to obtain information
(cf. s. 310 Corporations Act)

The Auditor General —

- (a) has a right of access at all reasonable times to the books of the corporation; and
- (b) may require any officer to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

18. Assisting Auditor General
(cf. s. 312 Corporations Act)

An officer of the corporation must —

- (a) allow the Auditor General access to the books of the corporation; and
- (b) give the Auditor General any information, explanation or assistance required under clause 17.

Subdivision 3 — Special provisions about consolidated financial statements

19. Directors and officers of controlled entity to give information
(cf. s. 323 Corporations Act)

If the corporation has to prepare consolidated financial statements, a director or officer of a controlled entity must give the corporation all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

20. Auditor General's power to obtain information from controlled entity
(cf. s. 323A Corporations Act)

- (1) Where the financial report includes consolidated financial statements, the Auditor General —
 - (a) has a right of access at all reasonable times to the books of any controlled entity; and
 - (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.
- (2) The information, explanations or other assistance required under subclause (1)(b) is to be given at the expense of the corporation.

21. Controlled entity to assist the Auditor General
(cf. s. 323B Corporations Act)

If the corporation has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must —

- (a) allow the Auditor General access to the controlled entity's books; and

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- (b) give the Auditor General any information, explanation or assistance required under clause 20.

22. Application of subdivision to entity that has ceased to be controlled
(cf. s. 323C Corporations Act)

Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the corporation when its financial report is being prepared or audited.

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

23. Financial years
(cf. s. 323D Corporations Act)

- (1) The financial year of the corporation is the 12 month period ending on 30 June.
- (2) Where the corporation has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
- (3) It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

Division 4 — Accounting standards

24. Accounting standards
(cf. s. 334 Corporations Act)

- (1) An accounting standard applies to —
 - (a) periods ending after the commencement of the standard; or
 - (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) The corporation may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors.

25. Equity accounting
(cf. s. 335 Corporations Act)

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

26. Interpretation of accounting standards
(cf. s. 337 Corporations Act)

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

27. Evidence of text of accounting standard
(cf. s. 339 Corporations Act)

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —
 - (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
 - (b) a specified provision of a standard of that kind.
- (2) It also applies to a copy of a document of that kind.
- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under this Act that —
 - (a) the specified standard was in force at that time under that section; and
 - (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

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Division 5 — Exemptions and modifications

28. Treasurer's power to make specific exemption orders
(cf. s. 340 Corporations Act)

- (1) On an application made in accordance with subclause (3) in relation to the corporation, the Treasurer may make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —
 - (a) the directors;
 - (b) the corporation;
 - (c) the Auditor General.
- (2) The order may —
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period.
- (3) The application must be —
 - (a) authorised by a resolution of the directors;
 - (b) in writing and signed by a director; and
 - (c) lodged with the Treasurer.
- (4) The Treasurer must give the corporation written notice of the making, revocation or suspension of the order.
- (5) If the Treasurer makes an order under subclause (1) 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.
- (6) If at the commencement of the period referred to in subclause (5) 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 —
 - (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.
- (7) The laying of a copy of a document that is taken to have occurred because of subclause (6)(a) is to be recorded in the Minutes, or Votes

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and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

29. Criteria for specific exemption orders and class orders
(cf. s. 342 Corporations Act)

To make an order under clause 28, the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

- (a) make the financial report or other reports misleading;
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

30. 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 28(5) shall, with all necessary changes, apply to the memorandum evidencing the extension as if it were an order for the purposes of that subclause.

Division 6 — Sanctions for contraventions of this Schedule

31. Contravention of Divisions 2 and 3
(cf. s. 344 Corporations Act)

- (1) A director of the corporation contravenes this subclause if he or she fails to take all reasonable steps to comply with, or to secure compliance with, Division 2 or 3.
- (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.

Schedule 3 Financial administration and audit

- (3) Subclause (1) does not apply to clause 17, 18, 20 or 21.

Division 7 — Miscellaneous

35. Deadline for reporting to the Minister
(cf. s. 315 Corporations Act)

- (1) In subclause (2) —
“**the prescribed day**” means the 10th working day after receipt by the directors under clause 16 of the Auditor General’s report.
- (2) 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 62 of this Act.

36. Annual financial reporting to the Minister
(cf. s. 314 Corporations Act)

The annual report of the corporation under section 62 is to contain the following documents —

- (a) the financial report for the year;
- (b) the directors’ report for the year;
- (c) the Auditor General’s report on the financial report;
- (d) a copy of any order of the Treasurer under clause 28.

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 or her 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.

45. Powers and duties of the Auditor General

- (1) If the Auditor General in the course of the performance of duties as auditor of the corporation and its subsidiaries, is satisfied that —

Financial administration and audit Schedule 3

- (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 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 80 and 82 to 91 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.

[Schedule 3 inserted in Gazette 1 Nov 2002 p. 5375-87.]

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

Schedule 4

[Section 33]

Provisions to be included in articles of association of subsidiaries

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.
- (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.

Schedule 5

[Section 90]

Access to, and pricing for, electricity transmission capacity

1. Definitions

In this Schedule —

“**firm capacity**” means, subject to any provision made by the regulations, the largest portion of electricity transmission capacity which the corporation can make reliably available from or to a particular point, whether or not that capacity is committed to existing users;

“**new capacity**” means any increase in firm capacity or non-firm capacity which would arise from any enhancement to or expansion of the electricity transmission system;

“**non-firm capacity**” means that portion of electricity transmission capacity from or to a particular point which is not firm capacity, whether or not that portion of electricity transmission capacity is committed to existing users;

“**spare capacity**” means any portion of firm capacity or non-firm capacity not committed to existing users;

“**standby power**” means electricity generated by any person under an arrangement relating to the provision of standby, backup or emergency electricity for loads associated with a user, and includes such electricity generated by that user;

“**user**” means a person who has an arrangement with the corporation for access to electricity transmission capacity, and includes the corporation to the extent that it has access to electricity transmission capacity.

2. Obligation to provide access

- (1) The corporation must, to the extent prescribed under section 93, make available access to spare capacity and new capacity on a non-discriminatory basis and on a first come first served basis to any existing or prospective user seeking access to either or both of those capacities.

Schedule 5 Access to, and pricing for, electricity transmission capacity

- (1a) It is not discriminatory for the corporation to make access available under subclause (1) on the basis of a prescribed pricing policy.
- (2) Terms and conditions on which access to electricity transmission capacity is made available, including to existing users, are to be specified in the regulations.
- (3) The regulations may make provision for the following —
 - (a) the duration of any arrangement with the corporation for access to electricity transmission capacity;
 - (b) the nature of the service to be provided by the corporation to the user, including without limitation the further subclassification of firm capacity and non-firm capacity;
 - (c) the nature of circumstances beyond the corporation's control or to be deemed to be beyond its control, and the extent to which those circumstances relieve the corporation of its obligations under this Act, the regulations and any contract (including a deemed contract under section 94(2)) between the corporation and a user;
 - (d) the circumstances in which access to spare capacity which is non-firm capacity is to be made available;
 - (e) prices, including without limitation —
 - (i) the different prices for subclassifications of electricity transmission capacity;
 - (ii) the different components of prices and the classes of users to which those components apply;
 - (iii) the circumstances in which the corporation may change the prices payable by existing users; and
 - (iv) the circumstances in which the corporation may agree to transport electricity at prices different from the prescribed prices;
 - (f) secondary markets in electricity transmission capacity;
 - (g) capacity reservation arrangements;
 - (h) permissible input and output points;
 - (i) quality of supply at input and output points;
 - (j) reliability of supply;
 - (k) disconnection;

Access to, and pricing for, electricity transmission capacity Schedule 5

- (l) metering;
 - (m) balancing of electricity supply and electricity demand;
 - (n) treatment of electricity losses from the electricity transmission system;
 - (o) electricity exchange;
 - (p) supply of standby power and transmission of standby power;
 - (q) safety;
 - (r) emergencies and maintenance;
 - (s) security for financial obligations, the manner of calculation of financial obligations, and payment arrangements;
 - (t) capital investment and other costs payable by users in addition to prices, including without limitation investment in input and output facilities; and
 - (u) procedures for review by an independent expert of the anticipated costs of requested new capacity.
- (4) The corporation may enter into written contracts with users for access to electricity transmission capacity, but to the extent that a provision of a contract is inconsistent with those terms and conditions which are specified in the regulations as being essential terms and conditions, the provision is of no effect.

[Clause 2 amended by No. 53 of 2003 s. 109(2).]

2A. Costs of corporation in connection with application

- (1) The regulations may require a person who makes an application to the corporation seeking access as mentioned in clause 2(1) to pay to the corporation —
- (a) at the time of making the application; or
 - (b) at the time or times otherwise provided by the regulations,
- the reasonable costs of the corporation —
- (c) in dealing with the application under the regulations; and
 - (d) if applicable, in negotiating the terms and conditions on which access is made available.
- (2) The regulations may provide for the applicant to pay an estimated amount pending a final determination of the costs of the corporation.

Schedule 5 Access to, and pricing for, electricity transmission capacity

[Clause 2A inserted by No. 53 of 2003 s. 109(3).]

3. Standby power and preservation of system continuity and integrity

In order to maintain the continuity and integrity of the electricity transmission system —

- (a) a condition of access to electricity transmission capacity is that the corporation is entitled to details of the user's arrangements, if any, in relation to the supply of standby power and the transmission of standby power;
- (b) the corporation at all times has the right to disconnect loads associated with a user from the electricity transmission system in circumstances where those loads require standby power and the supply or transmission of that standby power is for any reason inadequate at that time; and
- (c) in addition to paragraph (b), the corporation at all times has reasonable rights to disconnect any user in emergency circumstances or for maintenance purposes.

4. Obligation to provide information

(1) The corporation must prepare annually —

- (a) a report on past and current demand for electricity transmission capacity;
 - (b) a forecast of future demand for electricity transmission capacity;
 - (c) a report on current firm capacity, non-firm capacity and spare capacity;
 - (d) a report on plans for new capacity currently being considered by the corporation;
 - (e) a forecast of —
 - (i) the expected costs of maintaining electricity transmission capacity and providing new capacity; and
 - (ii) any capital investment required for that maintenance or provision;
- and
- (f) a report on the costs of the electricity transmission system,

Access to, and pricing for, electricity transmission capacity Schedule 5

and must provide to any person copies of those reports and forecasts, upon payment to the corporation by that person of the prescribed fee.

- (2) The corporation must provide to any existing or prospective user within a reasonable time of request a report and forecast of firm capacity, non-firm capacity, and spare capacity, as applicable to that user's particular requirements, upon payment to the corporation by that user of the prescribed fee.

5. Obligation to meet capacity needs

The corporation must incur costs and make capital investment to —

- (a) maintain electricity transmission capacity; and
- (b) provide new capacity within a reasonable time if requested by any existing or prospective user,

if there is a reasonable commercial prospect that it will recover within a reasonable time from existing or prospective users those costs, that capital investment, and a reasonable rate of return on that capital investment.

6. Accounts, pricing objectives and transparency

- (1) The corporation must —
 - (a) for the purposes of subclauses (2) and (3) determine, with the approval of the Minister —
 - (i) all income, expenditure, assets and liabilities relating to the electricity transmission system; and
 - (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the electricity transmission 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 electricity transmission 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

Schedule 5 Access to, and pricing for, electricity transmission capacity

- electricity transmission system to be appropriately apportioned to the electricity transmission 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 electricity transmission 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 electricity transmission 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.
- (2) The corporation must adopt pricing methods which have as their objective the recovery within a reasonable time from users of —
- (a) the costs of maintaining and providing electricity transmission capacity;
 - (b) the capital investment in the electricity transmission system; and
 - (c) a reasonable rate of return on that capital investment.
- (3) The corporation must —
- (a) make publicly available a schedule of the terms and conditions of access to electricity transmission capacity;
 - (b) prepare and make publicly available a schedule of indicative prices for that access which provides sufficient detail to allow existing or prospective users to calculate the electricity transmission prices likely to apply in any reasonable circumstance; and
 - (c) make publicly available such details of its pricing methods as are sufficient to indicate to existing or prospective users how prices for that access are established,
- and must provide to any person copies of those schedules and details, upon payment to the corporation by that person of the prescribed fee.

Access to, and pricing for, electricity transmission capacity Schedule 5

[Schedule 5 amended by No. 53 of 2003 s. 109(2)-(3).]

Schedule 6

[Section 91]

Access to, and pricing for, electricity distribution capacity

1. Definitions

In this Schedule —

“**new capacity**” means any increase in electricity distribution capacity which would arise from any enhancement to or expansion of the electricity distribution system;

“**spare capacity**” means any portion of electricity distribution capacity not committed to existing users;

“**standby power**” means electricity generated by any person under an arrangement relating to the provision of standby, backup or emergency electricity for loads associated with a user, and includes such electricity generated by that user;

“**user**” means a person who has an arrangement with the corporation for access to electricity distribution capacity, and includes the corporation to the extent that it has access to electricity distribution capacity.

2. Obligation to provide access

- (1) The corporation must, to the extent prescribed under section 93, make available access to spare capacity and new capacity on a non-discriminatory basis and on a first come first served basis to any existing or prospective user seeking access to either or both of those capacities.
- (1a) It is not discriminatory for the corporation to make access available under subclause (1) on the basis of a prescribed pricing policy.
- (2) Terms and conditions on which access to electricity distribution capacity is made available, including to existing users, are to be specified in the regulations.
- (3) The regulations may make provision for the following —
 - (a) the duration of any arrangement with the corporation for access to electricity distribution capacity;

Access to, and pricing for, electricity distribution capacity Schedule 6

- (b) the nature of the service to be provided by the corporation to the user, including without limitation the further subclassification of electricity distribution capacity;
- (c) the nature of circumstances beyond the corporation's control or to be deemed to be beyond its control, and the extent to which those circumstances relieve the corporation of its obligations under this Act, the regulations and any contract (including a deemed contract under section 94(2)) between the corporation and a user;
- (d) prices, including without limitation —
 - (i) the different prices for subclassifications of electricity distribution capacity;
 - (ii) the different components of prices and the classes of users to which those components apply;
 - (iii) the circumstances in which the corporation may change the prices payable by existing users; and
 - (iv) the circumstances in which the corporation may agree to transport electricity at prices different from the prescribed prices;
- (e) secondary markets in electricity distribution capacity;
- (f) capacity reservation arrangements;
- (g) permissible input and output points;
- (h) quality of supply at input and output points;
- (i) reliability of supply;
- (j) disconnection;
- (k) metering;
- (l) balancing of electricity supply and electricity demand;
- (m) treatment of electricity losses from the electricity distribution system;
- (n) electricity exchange;
- (o) supply of standby power and transmission and distribution of standby power;
- (p) safety;
- (q) emergencies and maintenance;

Schedule 6 Access to, and pricing for, electricity distribution capacity

- (r) security for financial obligations, the manner of calculation of financial obligations, and payment arrangements;
 - (s) capital investment and other costs payable by users in addition to prices, including without limitation investment in input and output facilities; and
 - (t) procedures for review by an independent expert of electricity distribution capacity, and of the anticipated costs of requested new capacity.
- (4) The corporation may enter into written contracts with users for access to electricity distribution capacity, but to the extent that a provision of a contract is inconsistent with those terms and conditions which are specified in the regulations as being essential terms and conditions, the provision is of no effect.

[Clause 2 amended by No. 53 of 2003 s. 110(2).]

2A. Costs of corporation in connection with application

- (1) The regulations may require a person who makes an application to the corporation seeking access as mentioned in clause 2(1) to pay to the corporation —
- (a) at the time of making the application; or
 - (b) at the time or times otherwise provided by the regulations,
- the reasonable costs of the corporation —
- (c) in dealing with the application under the regulations; and
 - (d) if applicable, in negotiating the terms and conditions on which access is made available.
- (2) The regulations may provide for the applicant to pay an estimated amount pending a final determination of the costs of the corporation.

[Clause 2A inserted by No. 53 of 2003 s. 110(3).]

Access to, and pricing for, electricity distribution capacity Schedule 6

3. Preservation of system continuity and integrity

In order to maintain the continuity and integrity of the electricity distribution system —

- (a) a condition of access to electricity distribution capacity is that the corporation is entitled to details of —
 - (i) the user's arrangements, if any, in relation to the supply of standby power and the transmission and distribution of standby power; and
 - (ii) any generation or distribution of electricity in connection with loads associated with a user within premises not owned by the corporation;
- (b) the corporation at all times has the right to disconnect loads associated with a user from the electricity distribution system in circumstances where the supply, transmission or distribution of any generation associated with that user is for any reason inadequate at that time; and
- (c) in addition to paragraph (b), the corporation at all times has reasonable rights to disconnect any user in emergency circumstances or for maintenance purposes.

4. Obligation to provide information

The corporation must provide to any existing or prospective user, within a reasonable time of request, a report and forecast of electricity distribution capacity, as applicable to that user's particular requirements, upon payment to the corporation by that user of the prescribed fee.

5. Obligation to meet capacity needs

The corporation must incur costs and make capital investment to —

- (a) maintain electricity distribution capacity; and
- (b) provide new capacity within a reasonable time if requested by any existing or prospective user,

if there is a reasonable commercial prospect that it will recover within a reasonable time from existing or prospective users those costs, that capital investment, and a reasonable rate of return on that capital investment.

Schedule 6 Access to, and pricing for, electricity distribution capacity

6. Accounts, pricing objectives and transparency

- (1) The corporation must —
- (a) for the purposes of subclauses (2) and (3) determine, with the approval of the Minister —
 - (i) all income, expenditure, assets and liabilities relating to the electricity distribution system; and
 - (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the electricity 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 electricity 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 electricity distribution system to be appropriately apportioned to the electricity 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 electricity 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 electricity 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.
- (2) The corporation must adopt pricing methods which have as their objective the recovery within a reasonable time from users of —
- (a) the costs of maintaining and providing the capacity of the electricity distribution system to transport electricity;

Access to, and pricing for, electricity distribution capacity Schedule 6

- (b) the capital investment in the electricity distribution system;
and
 - (c) a reasonable rate of return on that capital investment.
- (3) The corporation must —
- (a) make publicly available a schedule of the terms and conditions of access to electricity distribution capacity;
 - (b) prepare and make publicly available a schedule of indicative prices for that access which provides sufficient detail to allow existing or prospective users to calculate the electricity distribution prices likely to apply in any reasonable circumstance; and
 - (c) make publicly available such details of its pricing methods as are sufficient to indicate to existing or prospective users how prices for that access are established,

and must provide to any person copies of those schedules and details, upon payment to the corporation by that person of the prescribed fee.

[Schedule 6 amended by No. 53 of 2003 s. 110(2)-(3).]

Schedule 7

[Section 92]

Procurement of new generation

1. Definitions

In this Schedule —

“**electricity system**” means the systems or each of them operated by the corporation for generation, transmission and distribution of electricity at any voltages;

“**load characteristics**” means the relationship between load on the electricity system and time;

“**substantial new generation**” means new generation which has a capacity in megawatts equal to or greater than 3% of total installed capacity, and which cannot be made available by increases in the performance of the electricity system in its then current state;

“**total installed capacity**” means the total capacity in megawatts of all electricity supply or generation connected into that portion of the electricity system which is known as the South-West Interconnected System, whether or not that supply or generation is owned or controlled by the corporation.

2. Obligation to provide information

- (1) The corporation must prepare annually forecasts covering a minimum forecast period of 10 years and reports, which give sufficient information to allow interested parties to make proposals in relation to, and to participate in any procurement process by the corporation for, new generation.
- (2) The forecasts must deal with, but are not to be limited to, the following matters —
 - (a) electricity demand on the electricity system in terms of capacity (in kilowatts) and energy (in kilowatt-hours);
 - (b) relevant analyses of the load characteristics of the electricity system, including without limitation reasonable load duration curves and reasonable daily load curves;

Procurement of new generation Schedule 7

- (c) any potential discrepancy between electricity demand and electricity supply on the electricity system; and
 - (d) possible solutions to remedy any such potential discrepancy.
- (3) The reports must deal with, but are not to be limited to, the following matters —
 - (a) the corporation's commitments to purchase electricity in terms of capacity (in kilowatts) and energy (in kilowatt-hours);
 - (b) the corporation's current inventories of, and commitments to purchase, fuel for electricity generation, in terms of quantities of fuel but not in terms of the price paid or to be paid for that fuel; and
 - (c) reasonable details of the corporation's generating plant, including without limitation the extent of utilization of plant and the fuel or fuels used.
- (4) The corporation must provide to any person copies of the forecasts and reports, upon payment to the corporation by that person of the prescribed fee.

3. Obligation to conduct a competitive procurement process for substantial new generation and to minimize electricity costs

- (1) The corporation must, whenever it requires any substantial new generation, procure that substantial new generation through a non-discriminatory and open procurement process.
- (2) The corporation must —
 - (a) whenever it procures any new generation, at all times seek to minimize the total delivered cost of electricity, subject only to maintaining the reliability and safety of the electricity system;
 - (b) ensure that all proposals for new generation receive fair and equitable consideration;
 - (c) ensure that, if the corporation participates as a prospective supplier or generator in a procurement process required by subclause (1), it is treated equally with all other existing or prospective suppliers or generators and does not receive any special treatment or benefit; and

Schedule 7 Procurement of new generation

- (d) take into consideration the effect that each proposal for new generation will have upon the utilization and operation of the electricity system and upon the corporation's existing contracts for the purchase and sale of electricity.
- (3) The corporation may procure substantial new generation only with the approval of the Minister.

4. Obligation to disclose electricity procurement process

The corporation must prepare and make publicly available a description of the process to be adopted in the procurement of any particular substantial new generation, and must provide to any person a copy of that description upon payment to the corporation by that person of the prescribed fee.

Notes

¹ This is a compilation of the *Electricity Corporation Act 1994* and includes the amendments made by the other written laws referred to in the following table ^{1a, 3}. The table also contains information about any reprint.

Compilation table

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

Reprint of the *Electricity Corporation Act 1994* as at 4 Jan 2000 (includes amendments listed above except those in the *Gas Corporation (Business Disposal) Act 1999* s. 87)

Electricity Corporation Act 1994

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 14	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 42	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 22	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Electricity Corporation (Act Amendment) Regulations 2002</i> (see <i>Gazette</i> 1 Nov 2002 p. 5375-87)			1 Nov 2002
Reprint 2: The Electricity Corporation Act 1994 as at 3 Jan 2003 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 4 ²	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 (No. GN42))
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 18	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 57	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 21 (see <i>Gazette</i> 15 Aug 2003 p. 3685-92)			15 Sep 2003 (see r. 2)
<i>Energy Legislation Amendment Act 2003</i> s. 102-108, 109(1)-(3) and 110(1)-(3)	53 of 2003	8 Oct 2003	8 Oct 2003 (see s. 2(1) and (2))
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 49	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Electricity Legislation Amendment Act 2004 Pt. 2 Div. 2</i>	33 of 2004	20 Oct 2004	24 Nov 2004 (see s. 2 and <i>Gazette</i> 23 Nov 2004 p. 5243)

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

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Energy Legislation Amendment Act 2003</i> s. 109(4)-(5), 110(4) and 111 ⁴	53 of 2003	8 Oct 2003	To be proclaimed (see s. 2(1) and (2))
<i>Electricity Corporations Act 2005</i> s. 139 ⁵	18 of 2005	13 Oct 2005	To be proclaimed (see s.2(2))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15 ⁶	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

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

“

2. Commencement

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

3. Interpretation

In this Part —

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

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

“**statutory rule**” means a regulation, rule or by-law.

4. Validation

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

”.

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

“

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

Division 1 — Preliminary

42. Intention

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

43. Definitions

In this Part, unless the contrary intention appears —

“**assets**” means —

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) the Minister may make a further order under this section in respect of that asset, right or liability not later than 90 days after the commencement day.
- (6) An order under subsection (5) is to have effect from the commencement day.
- (7) The Commission is to be taken to continue to hold an asset or right, and to be liable for a liability, to which subsection (5) applies until an order is made under that subsection.

45. Transfer of assets and liabilities to the Electricity Corporation

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

receipts, books of account and other records (however compiled, recorded or stored) relating to —

- (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
- (ii) proceedings referred to in paragraph (d);

and

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

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

46. Transfer of assets and liabilities to the Gas Corporation

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

- (g) the Commission is to deliver to the Gas Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
 - (ii) proceedings referred to in paragraph (d);and
 - (h) all of the provisions of the transfer order relevant to this section have effect.
- (2) Subsection (1) (c) and (e) has effect subject to any provision of the transfer made under section 44 (3) (b).

47. Transfer of assets and liabilities to both corporations

On and after the commencement day —

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

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

48. Unallocated assets and liabilities

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

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

act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the State; and

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

49. References to Commission in Government agreements

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

50. Debentures and inscribed stock

- (1) Without limiting section 45, 46 or 47 any debentures or inscribed stock which devolve under any of those sections, and the determination of rights and obligations in respect of the same, continue to be governed by sections 108 and 111 of the principal Act and regulations made under section 110 of that Act, despite the repeal of those sections, as if —
 - (a) those sections and regulations remained in force; and
 - (b) references in those sections and regulations to the “Commission” were references to —
 - (i) a new corporation; or
 - (ii) 2 or more of the new corporations jointly or severally,

in accordance with a transfer order.

- (1a) In subsection (1)(b) —
“**new corporation**” and “**transfer order**” have the meanings given to those terms in section 142(1) of the *Electricity Corporations Act 2005*.
- (2) The Governor may, by further regulations, amend or repeal the regulations referred to in subsection (1).

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

51. Guarantees in respect of Commission

- (1) A guarantee under section 30 or 108 of the principal Act as in force immediately before the commencement day is not affected by —
- (a) any provision of this Act, including without limitation the transfer of any liability of the Commission under section 45, 46 or 47 to a corporation or the corporations jointly; or
 - (b) any transfer, vesting or assumption of any liability of the Commission to, in or by a corporation or the corporations jointly by any other means.
- (2) Any guarantee referred to in subsection (1) is to continue in force and is to be read and construed, on and from —
- (a) the commencement day; or
 - (b) the day on which the transfer, vesting or assumption by any other means referred to in subsection (1) is effective,

as if it were a guarantee of the liabilities of the corporation which have been transferred, vested or assumed to, in or by it.
- (3) Despite its repeal by section 34, section 106(1) of the principal Act is to be taken to continue to apply for the purposes of subsection (2).
- (4) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee referred to in subsection (1).
- (5) Division 4 of Part 5 of the relevant Act is to be taken to apply to a liability of a corporation referred to in subsection (1) if a guarantee of that liability cannot be preserved under this section (whether because the guarantee is governed otherwise than by the law of the State or for any other reason).
- (6) In subsection (5) “**relevant Act**” means —

- (a) in the case of the Electricity Corporation, the *Electricity Corporation Act 1994*; and
 - (b) in the case of the Gas Corporation, the *Gas Corporation Act 1994*.
- (7) By virtue of this subsection, any sum paid by the Treasurer under a guarantee referred to in subsection (1) constitutes a charge on the assets of the relevant corporation or the corporations jointly, as the case may require.

52. Commission to complete necessary transactions

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

53. Exemption from State taxation

- (1) In this section —
- “**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
- (a) anything that occurs by the operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this

Part, or for a purpose connected with or arising out of, giving effect to this Part.

- (3) The Treasurer or a person authorized by the Treasurer may, on request by the Electricity Corporation or the Gas Corporation, certify in writing that —
 - (a) a specified thing occurred by the operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

54. Registration of documents

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

55. Saving

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

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

- (e) as releasing or allowing the release of any surety.

Division 3 — Staff

56. Transition of employment

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

57. Employees' rights preserved

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

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

Division 4 — General transitional provisions

58. Annual report for part of a year

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

59. Completion of things commenced

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

60. Continuing effect of things done

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

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

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

61. Immunity to continue

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

62. Agreements and instruments generally

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

63. Commission to perform necessary transitional functions

- (1) Despite the repeal of section 7 of the principal Act by section 8 of this Act, the Commission continues in existence for the purpose of —
 - (a) reporting as required by section 58; and
 - (b) performing the functions described in sections 44(7), 45(1)(g), 46(1) (g), 47(h), 48(f) and 52.
- (2) The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, also continues in existence for the purpose described in subsection (1) (a).

- (3) Despite the provisions of the principal Act —
 - (a) the members of the Commission immediately before the commencement day cease to hold office on that day;
 - (b) the Commission is to be constituted by a person appointed by the Minister; and
 - (c) the Commission is to perform the functions referred to in subsection (1) through that person.
- (4) The person referred to in subsection (3)(b) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (5) The Commission as constituted under this section has the powers that are necessary or convenient for the purposes of subsection (1).
- (6) Each of the corporations is to provide the clerical or other assistance that the Commission reasonably requires for performing the functions described in subsection (1) in respect of that corporation.

64. Further transitional provision may be made

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

”.

⁴ On the date as at which this compilation was prepared, the *Energy Legislation Amendment Act 2003* s. 109(4)-(5), 110(4) and 111 had not come into operation. They read as follows:

“

109. Schedule 5 amended

- (4) Clause 4(1) is amended by deleting “prepare annually” and inserting instead —
“ , not later than the prescribed day in each year, prepare ”.
- (5) Clause 4(2) is repealed and the following subclauses are inserted instead —

“

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

”.

”.

“

110. Schedule 6 amended

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

“

4. Obligation to provide information

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

”.

111. Schedule 7 amended

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

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

”.

⁵ On the date as at which this compilation was prepared, the *Electricity Corporations Act 2005* s. 139, which gives effect to Sch. 5 Div. 4 had not come into operation. It reads as follows:

“

139. Amendments to other Acts

The Acts mentioned in Schedule 5 are amended as set out in that Schedule.

”.

Schedule 5 Division 4 reads as follows:

“

Division 4 — *Electricity Corporation Act 1994*

7. The Act amended

The amendments in this Division are to the *Electricity Corporation Act 1994*.

8. Long title amended

The long title is repealed and the following long title is inserted instead —

“

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

”.

9. Section 1 amended

Section 1 is amended by deleting “Corporation” and inserting instead —

“ *Transmission and Distribution Systems (Access)* ”.

10. Sections 2 and 3 replaced by section 2

Sections 2 and 3 are repealed and the following section is inserted instead —

“

2. Terms used in this Act

In this Act, unless the contrary intention appears —

“**corporation**” means each of —

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

(b) the Regional Power Corporation established by section 4(1)(d),

of the Electricity Corporations Act 2005;

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

(a) the North West interconnected system; or

(b) the South West interconnected system as defined in section 3 of the Electricity Corporations Act 2005;

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

(a) located in the Pilbara region of the State; and

(b) into which electricity is supplied by one or more of the electricity generation plants at Dampier, Port Hedland and Cape Lambert,

as expanded or altered from time to time.

”.

11. Parts 2, 3, 4 and 5 repealed

Parts 2, 3, 4 and 5 are repealed.

12. Part 6 heading replaced

The heading to Part 6 is deleted and the following heading is inserted instead —

“

Part 6 — Access to electricity transmission and distribution systems

”.

13. Section 89 amended

(1) Section 89(1) is amended as follows:

(a) by deleting “, 6 and 7” and inserting instead —
“ and 6 ”;

(b) in the definition of “electricity distribution capacity” —
(i) by inserting before “means” —

“

, in relation to the electricity distribution system operated by a corporation,

”; and

- (ii) by deleting “electricity distribution” in the second place where it occurs;
- (c) in the definition of “electricity distribution system” by inserting before “means” —
“ , in relation to a corporation, ”;
- (d) in the definition of “electricity transmission capacity” —
 - (i) by inserting before “means” —

“

, in relation to the electricity transmission system operated by a corporation,

”;

- (ii) by deleting “electricity transmission” in the second place where it appears;
 - (e) in the definition of “electricity transmission system” by inserting before “means” —
“ , in relation to a corporation, ”;
 - (f) by deleting the definition of “new generation”.
- (2) Section 89(2) is amended by inserting before “means” —
“ , in relation to a corporation, ”.
 - (3) After section 89(2) the following subsection is inserted —

“

- (3) In this Part and in Schedules 5 and 6, in relation to the Regional Power Corporation referred to in the definition of “corporation” in section 2, references to the electricity transmission system or the electricity distribution system operated by a corporation —
 - (a) in Schedule 5 clause 6 and Schedule 6 clause 6 are references to —
 - (i) the North West interconnected system; and
 - (ii) all isolated systems,as if they were a single electricity system; and
 - (b) otherwise, are references to any electricity transmission system or electricity distribution system operated by that corporation.

”.

14. Sections 92 and 93 repealed

Sections 92 and 93 are repealed.

15. Section 94 amended

- (1) Section 94(1) is amended by deleting “the corporation by this Part and by Schedules 5, 6 and 7” and inserting instead —
“ a corporation by this Part and by Schedules 5 and 6 ”.
- (2) Section 94(2) is amended by inserting after “access” —
“ by a corporation ”.
- (3) Section 94(3)(a) is amended by deleting “the corporation” and inserting instead —
“ a corporation ”.
- (4) Section 94(4) is amended by deleting “, 6 and 7.” and inserting instead —
“ and 6. ”.

16. Section 95 amended

Section 95(1) is amended by deleting “100” and inserting instead —
“ 96 ”.

17. Section 95A amended

- (1) Section 95A(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that the matters to which the relevant provision relates —
 - (a) no longer need to be dealt with, or will no longer need to be dealt with on and after the specified day, under this Act or any other written law; or
 - (b) are adequately dealt with, or will be adequately dealt with on and after the specified day, under —
 - (i) another provision of this Act; or
 - (ii) Part 8 of the *Electricity Industry Act 2004* and the Code established under that Part.
- (3) A declaration is not to be made after the expiration of the period of 18 months beginning on the day on which Schedule 5 clause 17 of the *Electricity Corporations Act 2005* comes into operation.

”.

- (2) Section 95A(4) is amended as follows:

-
- (a) by deleting “100” and inserting instead —
“ 96 ”;
 - (b) in paragraph (a) by inserting after “specified” —
“ relevant ”.
- (3) Section 95A(5) is amended in the definition of “relevant provision” —
- (a) by deleting “, 91, 92 or 93” and inserting instead —
“ or 91 ”;
 - (b) by deleting “, 6 or 7” and inserting instead —
“ or 6 ”.

18. Section 96 inserted

After section 95A the following section is inserted in Part 6 —

“

96. Regulations

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

”.

19. Part 7 and Schedules 1, 2, 3 and 4 repealed

Part 7 and Schedules 1, 2, 3 and 4 are repealed.

20. Schedule 5 amended

- (1) The amendments in this clause are to Schedule 5.
- (2) Clause 1 is amended as follows:
 - (a) in the definition of “firm capacity” —
 - (i) by inserting before “means” —

“

, in relation to the electricity transmission system operated by a corporation,

”; and

- (ii) by inserting after “particular point” —
“ in that system ”;
- (b) in the definition of “new capacity” —
 - (i) by inserting before “means” —

“
 , in relation to the electricity transmission system operated by
 a corporation,
 ”; and
 (ii) by deleting “electricity transmission”;
 (c) in the definition of “non-firm capacity” —
 (i) by inserting before “means” —

“
 , in relation to the electricity transmission system operated by
 a corporation,
 ”; and
 (ii) by inserting after “particular point” —
 “ in that system ”;
 (d) in the definition of “spare capacity” by inserting before
 “means” —

“
 , in relation to the electricity transmission system operated by
 a corporation,
 ”;
 (e) in the definition of “user” by inserting before “means” —
 “ , in relation to a corporation, ”.

(3) Clause 2(1) is repealed and the following subclause is inserted
 instead —

“
 (1) A corporation must make available access to spare capacity and
 new capacity of the electricity transmission system operated by the
 corporation on —
 (a) a non-discriminatory basis; and
 (b) a first come first served basis,
 to any existing or prospective user seeking access to either or both
 of those capacities.
 ”.
 (4) Clause 2(1a) and (3) are amended by deleting “the corporation” in
 each place where it appears and inserting instead —
 “ a corporation ”.
 (5) Clause 2(3)(c) is amended by deleting “the corporation’s” and
 inserting instead —

- “ a corporation’s ”.
- (6) Clause 2(4) is amended by deleting “The corporation” and inserting instead —
“ A corporation ”.
- (7) Clause 2A(1) is amended by deleting “the corporation” in the first place where it appears and inserting instead —
“ a corporation ”.
- (8) Clause 2A(2) is amended by deleting “the corporation.” and inserting instead —
“ a corporation. ”.
- (9) Clause 3 is amended as follows:
(a) by inserting after “transmission system” in the first place where it appears —
“ operated by a corporation ”;
(b) in paragraph (a) by inserting after “capacity” —
“ of that system ”.
- (10) Clause 4 is repealed and the following clause is inserted instead —

“

4. Obligation to provide information

- (1) A corporation must, not later than the prescribed day in each year, prepare —
- (a) a report on past and current demand for electricity transmission capacity of the electricity transmission system operated by the corporation (the “**system**”);
- (b) a forecast of future demand for such electricity transmission capacity;
- (c) a report on current firm capacity, non-firm capacity and spare capacity of the system;
- (d) a report on plans for new capacity currently being considered by the corporation for the system;
- (e) a forecast of —
- (i) the expected costs of —
- (I) maintaining the electricity transmission capacity of; and
- (II) providing new capacity for, the system; and
- (ii) any capital investment required for that maintenance or provision;

- and
- (f) a report on the costs of the system,
and must provide to any person copies of those reports and forecasts, upon payment to the corporation by that person of the prescribed fee.
- (2) Any existing or prospective user may request a corporation to provide a report and forecast of firm capacity, non-firm capacity, and spare capacity of the electricity transmission system operated by the corporation as applicable to that user's particular requirements. ”.
- (11) Clause 5 is amended as follows:
- (a) by deleting “The corporation” and inserting instead —
“ A corporation ”;
- (b) by deleting paragraphs (a) and (b) and “and” after paragraph (a) and inserting instead —
- “
- (a) maintain the electricity transmission capacity of the electricity transmission system operated by the corporation; and
- (b) provide new capacity in that system within a reasonable time if requested by any existing or prospective user,
- ”.
- (12) Clause 6(1) is amended as follows:
- (a) by deleting “The corporation” and inserting instead —
“ A corporation ”;
- (b) in paragraph (a)(i) by inserting after “system” —
“ operated by the corporation (the “**system**”) ”;
- (c) in paragraphs (a)(ii), (b) and (c) by deleting “electricity transmission” in each place where it occurs.
- (13) Clause 6(2) is repealed and the following subclause is inserted instead —
- “
- (2) A corporation must adopt pricing methods which have as their objective the recovery within a reasonable time from users of —
- (a) the costs of maintaining and providing the electricity transmission capacity of the electricity transmission system operated by the corporation;
- (b) the capital investment in that system; and

- (c) a reasonable rate of return on that capital investment.

”.

- (14) Clause 6(3) is amended as follows:

- (a) by deleting “The corporation” and inserting instead —
“ A corporation ”;
- (b) by deleting paragraph (a) and inserting the following paragraph instead —

“

- (a) make publicly available a schedule of the terms and conditions of access to electricity transmission capacity of the electricity transmission system operated by the corporation;

”.

21. Schedule 6 amended

- (1) The amendments in this clause are to Schedule 6.

- (2) Clause 1 is amended as follows:

- (a) in the definition of “new capacity” —
(i) by inserting before “means” —

“

, in relation to the electricity distribution system operated by a corporation,

”; and

- (ii) by deleting “electricity distribution”;
- (b) in the definition of “spare capacity” by inserting before “means” —

“

, in relation to the electricity distribution system operated by a corporation,

”;

- (c) in the definition of “user” by inserting before “means” —
“ , in relation to a corporation, ”.

- (3) Clause 2(1) is repealed and the following subclause is inserted instead —

“

- (1) A corporation must, to the extent prescribed by order under subclause (1b), make available access to spare capacity and new

capacity of the electricity distribution system operated by the corporation on —

- (a) a non-discriminatory basis; and
- (b) a first come first served basis,

to any existing or prospective user seeking access to either or both of those capacities.

”.

- (4) Clause 2(1a) is amended by deleting “the corporation” and inserting instead —

“ a corporation ”.

- (5) After clause 2(1a) the following subclauses are inserted —

“

- (1b) The Minister, by order or orders published in the *Gazette*, is to prescribe the manner and timing of a corporation’s obligations under subclause (1).

- (1c) An order under subclause (1b) may be amended by further order made by the Minister and published in the *Gazette*.

”.

- (6) Clause 2(3) is amended by deleting “the corporation” in each place where it appears and inserting instead —

“ a corporation ”.

- (7) Clause 2(3)(c) is amended by deleting “the corporation’s” and inserting instead —

“ a corporation’s ”.

- (8) Clause 2(4) is amended by deleting “The corporation” and inserting instead —

“ A corporation ”.

- (9) Clause 2A is amended as follows:

- (a) in subclause (1) by deleting “the corporation” in the first place where it appears and inserting instead —

“ a corporation ”;

- (b) in subclause (2) by deleting “the corporation” and inserting instead —

“ a corporation ”.

- (10) Clause 3 is amended as follows:

- (a) by inserting after “distribution system” in the first place where it appears —

- “ operated by a corporation ”;
- (b) in paragraph (a) by inserting after “capacity” —
“ of that system ”.
- (11) Clause 4 is repealed and the following clause is inserted instead —
”.

4. Obligation to provide information

Any existing or prospective user may request a corporation to provide a report and forecast of electricity distribution capacity of the electricity distribution system operated by the corporation as applicable to that user’s particular requirements.

- (12) Clause 5 is amended as follows:
- (a) by deleting “The corporation” and inserting instead —
“ A corporation ”;
- (b) by deleting paragraphs (a) and (b) and “and” after paragraph (a) and inserting instead —
“
- (a) maintain the electricity distribution capacity of the electricity distribution system operated by the corporation; and
- (b) provide new capacity in that system within a reasonable time if requested by any existing or prospective user,
- ”.

- (13) Clause 6(1) is amended as follows:
- (a) by deleting “The corporation” and inserting instead —
“ A corporation ”;
- (b) in paragraph (a)(i) by inserting after “system” —
“ operated by the corporation (the “**system**”) ”;
- (c) in paragraphs (a)(ii), (b) and (c) by deleting “electricity distribution” in each place where it appears.

- (14) Clause 6(2) is repealed and the following subclause is inserted instead —
“
- (2) A corporation must adopt pricing methods which have as their objective the recovery within a reasonable time from users of —
- (a) the costs of maintaining and providing the electricity distribution capacity of the electricity distribution system operated by the corporation;

- (b) the capital investment in that system; and
- (c) a reasonable rate of return on that capital investment.

”.

(15) Clause 6(3) is amended as follows:

- (a) by deleting “The corporation” and inserting instead —
“ A corporation ”;
- (b) by deleting paragraph (a) and inserting the following paragraph instead —

“

- (a) make publicly available a schedule of the terms and conditions of access to electricity distribution capacity of the electricity distribution system operated by the corporation;

”.

22. Schedule 7 repealed and saving provisions

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

”.

⁶ On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

15. Acts in Schedule 2 amended

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

”.

Schedule 2, cl. 19 reads as follows:

“

Schedule 2 — Consequential amendments

[s. 15]

19. Electricity Corporations Act 2005

- (1) Section 60(3) is amended as follows —
- (a) by deleting “*Town Planning and Development Act 1928* sections 7B(7) and 10AB(1)” and inserting instead —

“

Planning and Development Act 2005 sections 221 and 218

”.

- (b) in paragraph (b) by deleting “town” and inserting instead —

“ local ”.

- (2) Section 60(5) is amended by deleting “*Town Planning and Development Act 1928*” and inserting instead —

“ *Planning and Development Act 2005* ”.

”.