

Electricity Corporations Amendment Bill 2013

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Electricity Corporations Act 2005* amended

3.	Act amended	3
4.	Long title replaced	3
5.	Section 3 amended	3
6.	Section 4 amended	3
7.	Section 5 amended	4
8.	Section 8 amended	4
9.	Section 14 amended	4
10.	Part 3 Division 1 Subdivision 2 heading amended	4
11.	Section 35 amended	5
12.	Section 36 amended	6
13.	Section 37 amended	6
14.	Sections 38 to 40 replaced	7
	38. Wholesale acquisition or supply of electricity	7
	39. Matters for regulations or wholesale arrangements	8
	40. Disclosure of information to fines Registrar	11
15.	Section 41 amended	11
16.	Section 43 amended	12
17.	Part 3 Division 1 Subdivision 4 deleted	12
18.	Section 50 amended	12
19.	Section 52 amended	13
20.	Section 54 amended	14
21.	Section 59 amended	14
22.	Section 62 replaced	14

Contents

62.	Segregation of functions	14	
63A.	Matters for regulations or segregation arrangements	15	
23.	Part 3 Division 2 deleted	18	18
24.	Section 75 amended	18	
25.	Section 81 amended	18	
26.	Section 83 amended	18	
27.	Section 87 amended	18	
28.	Section 106 amended	19	
29.	Section 107 amended	19	
30.	Section 108 amended	19	
31.	Section 114 amended	20	
32.	Section 120 amended	20	
33.	Section 134 amended	20	
34.	Section 140 amended	20	
35.	Part 10 inserted	21	
	Part 10 — Provisions for merger of corporations		
	Division 1 — Preliminary		
193.	Purpose of Part	21	
194.	Terms used	21	
195.	Saving	22	
	Division 2 — Merger		
196.	Merger of corporations	23	
197.	Corporations to implement or facilitate merger	23	
	Division 3 — Directions by Minister		
198.	Minister may give directions	24	
199.	Directions to be laid before Parliament	24	
	Division 4 — Devolution of assets, rights, liabilities and proceedings and related provisions		
200.	Assets, rights and liabilities	25	
201.	Proceedings and remedies	25	
202.	Continuation of guarantees	25	
203.	Joint tenancies preserved	26	
204.	Exemption from State taxation	26	
205.	Registration of documents	27	
	Division 5 — Staff		
206.	Members of staff	28	
207.	Preservation of rights	28	
	Division 6 — Other provisions		
208.	Renaming of continuing corporation does not affect status	29	
209.	Compliance with policy instruments	29	
210.	Financial reporting: merging corporation	29	

	211. Financial reporting: continuing corporation	30	
	212. Continuation of certain directions	31	
	213. Amount in lieu of rates	31	
	214. Dividends	32	
	215. Completion of things commenced	32	
	216. Continuing effect of things done	32	
	217. Immunity to continue	33	
	218. Agreements, instruments and documents	33	
	219. Treasurer may give indemnity and guarantee	33	
	220. Government agreements not affected	34	
	221. Transitional regulations	34	
36.	Schedule 1 clause 6 amended	35	
	Part 3 — Other Acts amended		
37.	<i>Constitution Acts Amendment Act 1899</i> amended	36	
38.	<i>Economic Regulation Authority Act 2003</i> amended	36	
39.	<i>Electricity Industry Act 2004</i> amended	36	
40.	<i>Energy Arbitration and Review Act 1998</i> amended	37	
41.	<i>Energy Operators (Powers) Act 1979</i> amended	38	
42.	<i>Equal Opportunity Act 1984</i> amended	38	
43.	<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> amended	38	
44.	<i>Public Sector Management Act 1994</i> amended	39	
45.	<i>Public Works Act 1902</i> amended	39	
46.	<i>State Records Act 2000</i> amended	40	

Western Australia

LEGISLATIVE ASSEMBLY

Electricity Corporations Amendment Bill 2013

A Bill for

An Act to amend the *Electricity Corporations Act 2005* to provide for the merger of electricity corporations, to consequentially amend other Acts, and for other purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Electricity Corporations Amendment Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the heading to Part 2 and sections 3, 32, 33, 34 and 35 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Electricity Corporations Act 2005* amended**

2 **3. Act amended**

3 This Part amends the *Electricity Corporations Act 2005*.

4 **4. Long title replaced**

5 Delete the long title and insert:

6

7 **An Act to provide for the establishment and operation of**
8 **electricity corporations and for related matters.**

9

10 **5. Section 3 amended**

11 (1) In section 3(1) delete the definitions of:

12 ***Electricity Generation Corporation***

13 ***Electricity Retail Corporation***

14 (2) In section 3(1) insert in alphabetical order:

15

16 ***Electricity Generation and Retail Corporation*** means
17 the body established by section 4(1)(a) as renamed
18 under section 4(2A);

19

20 **6. Section 4 amended**

21 (1) Delete section 4(1)(c).

22 (2) After section 4(1) insert:

23

24 (2A) From the time at which the *Electricity Corporations*
25 *Amendment Act 2013* section 6 comes into operation,
26 the corporate name of the body established by
27 subsection (1)(a) is the Electricity Generation and
28 Retail Corporation.

29

s. 7

1 **7. Section 5 amended**

2 In section 5 delete “A corporation is not” and insert:

3

4 For the purposes of any law of the State, a corporation is to be
5 regarded as not being

6

7 Note: The heading to amended section 5 is to read:

8 **Corporations not to be regarded as agents of State for purposes**
9 **of State laws**

10 **8. Section 8 amended**

11 (1) In section 8(1) delete “6,” and insert:

12

13 8,

14

15 (2) Delete section 8(4) and insert:

16

17 (4) In making nominations for appointment to the board of
18 a corporation the Minister is to ensure that each
19 nomination is made only after consultation with the
20 board.

21

22 (3) In section 8(6) delete “(a)” (1st occurrence).

23 **9. Section 14 amended**

24 Delete section 14(4).

25 **10. Part 3 Division 1 Subdivision 2 heading amended**

26 In the heading to Part 3 Division 1 Subdivision 2 after
27 “**Generation**” insert:

28

29 **and Retail**

30

1 **11. Section 35 amended**

2 (1) In section 35:

3 (a) after “Generation” insert:

4

5 and Retail

6

7 (b) after paragraph (c) insert:

8

9 (da) to supply electricity to consumers and services
10 which improve the efficiency of electricity
11 supply and the management of demand; and

12 (db) to purchase or otherwise acquire electricity for
13 the purposes of paragraph (da); and

14

15 (c) in paragraph (e)(ii) delete “corporation;” and insert:

16

17 corporation; and

18

19 (d) after paragraph (e)(ii) insert:

20

21 (iii) to provide retail support services to that
22 corporation;

23

24 (e) after paragraph (e) insert:

25

26 (fa) to provide telecommunications services; and

27

28 (2) In section 35 after each of paragraphs (a), (b), (c) and (d) insert:

29

30 and

31

s. 12

1 **12. Section 36 amended**

2 In section 36(a) delete “function under section 35(e)(i),” and
3 insert:

4
5 functions under section 35(e)(i) and (iii),
6

7 **13. Section 37 amended**

8 (1) After section 37(2) insert:

9
10 (3A) Subsection (1) does not apply to the performance of the
11 corporation’s functions under section 35(b) to acquire
12 and transport gas.

13 (3B) Subsection (1) does not apply to the performance of the
14 corporation’s function under section 35(b) to supply
15 gas so far as the performance involves only the supply
16 of gas to the Regional Power Corporation.
17

18 (2) After section 37(4) insert:

19
20 (5) Regulations may be made authorising the corporation
21 to perform one or more of its functions under
22 section 35 (including functions referred to in
23 subsections (2), (3A), (3B) and (3)) in a part or parts of
24 the State not served by the South West interconnected
25 system.

26 (6) Regulations referred to in subsection (5) are in addition
27 to and do not affect subsections (2), (3A), (3B) and (3)
28 unless a provision of the regulations is declared by the
29 regulations to have effect despite any conflict or
30 inconsistency with any of those subsections.
31

1 **14. Sections 38 to 40 replaced**

2 Delete sections 38, 39 and 40 and insert:

3

4 **38. Wholesale acquisition or supply of electricity**

5 (1) Regulations may be made providing for and in relation
6 to, or authorising the Minister to approve arrangements
7 (*wholesale arrangements*) providing for and in relation
8 to —

9 (a) the wholesale acquisition or supply of
10 electricity by the corporation; and

11 (b) the acquisition or supply by the corporation of
12 goods and services relating to the wholesale
13 acquisition or supply of electricity (*wholesale*
14 *products*).

15 (2) Without limiting subsection (1), wholesale
16 arrangements may be in the form of rules or a code.

17 (3) Wholesale arrangements are not subsidiary legislation
18 for the purposes of the *Interpretation Act 1984* and
19 section 42 of that Act does not apply to them or to an
20 instrument amending or repealing them.

21 (4) The *Interpretation Act 1984* sections 43 (other than
22 subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59,
23 75 and 76 and Part VIII apply to wholesale
24 arrangements as if they were subsidiary legislation.

25 (5) Regulations referred to in subsection (1) may —

26 (a) set out the process for the approval, amendment
27 and repeal of wholesale arrangements; and

28 (b) provide for the publication, commencement,
29 and laying before each House of Parliament, of
30 wholesale arrangements and instruments
31 amending or repealing them.

s. 14

- 1 (6) If there is a conflict or inconsistency between a
2 provision of regulations referred to in subsection (1)
3 and a provision of wholesale arrangements, the
4 provision of the regulations prevails.
- 5 **39. Matters for regulations or wholesale arrangements**
- 6 (1) In this section —
- 7 *approved instrument* means an instrument referred to
8 in subsection (2)(b) that is approved under the
9 regulations or wholesale arrangements;
- 10 *specified* means specified in the regulations or
11 wholesale arrangements;
- 12 *terms and conditions* includes pricing and pricing
13 methodology;
- 14 *wholesale arrangements* has the meaning given in
15 section 38(1);
- 16 *wholesale products* has the meaning given in
17 section 38(1)(b).
- 18 (2) Regulations referred to in section 38(1), or wholesale
19 arrangements, may —
- 20 (a) set out requirements to be complied with, or
21 standards or principles to be observed, by the
22 corporation in relation to —
- 23 (i) the wholesale acquisition or supply of
24 electricity by the corporation; or
- 25 (ii) the acquisition or supply of wholesale
26 products by the corporation;
- 27 and
- 28 (b) without limiting paragraph (a), require the
29 corporation to lodge with a specified person an
30 instrument setting out the terms and conditions
31 that are to apply to —
- 32 (i) the wholesale acquisition or supply by
33 the corporation of a specified amount of

- 1 electricity or an amount of electricity
2 determined in a specified manner; or
- 3 (ii) the acquisition or supply by the
4 corporation of specified wholesale
5 products or wholesale products of a
6 specified class;
- 7 and
- 8 (c) set out the process for the approval of an
9 instrument referred to in paragraph (b),
10 including the matters to be taken into account
11 when deciding whether to give approval; and
- 12 (d) set out the process for the amendment or
13 replacement of an approved instrument; and
- 14 (e) impose obligations on the corporation,
15 including an obligation to give an undertaking
16 to a specified person in respect of a specified
17 matter or class of matter; and
- 18 (f) confer functions on the Minister, the Economic
19 Regulation Authority or any other specified
20 person; and
- 21 (g) provide for the rights of persons to be supplied
22 with electricity or wholesale products —
- 23 (i) in accordance with requirements,
24 standards or principles set out in the
25 regulations or wholesale arrangements;
26 or
- 27 (ii) on terms and conditions set out in an
28 approved instrument;
- 29 and
- 30 (h) provide for matters of an incidental or
31 supplementary nature.

s. 14

- 1 (3) Regulations referred to in section 38(1) may —
- 2 (a) provide that a provision of the regulations or
- 3 wholesale arrangements that —
- 4 (i) imposes an obligation on the
- 5 corporation; and
- 6 (ii) is specified in the regulations or of a
- 7 class specified in the regulations,
- 8 is a civil penalty provision for the purposes of
- 9 the regulations; and
- 10 (b) prescribe, for a contravention of a civil penalty
- 11 provision —
- 12 (i) an amount not exceeding \$100 000; and
- 13 (ii) in addition a daily amount not
- 14 exceeding \$20 000,
- 15 that may, in accordance with the regulations, be
- 16 demanded from or imposed upon the
- 17 corporation; and
- 18 (c) provide for demands for the payment of
- 19 amounts referred to in paragraph (b) and the
- 20 enforcement of demands for their payment; and
- 21 (d) provide for and regulate the taking of
- 22 proceedings in respect of alleged
- 23 contraventions by the corporation of provisions
- 24 of the regulations or wholesale arrangements,
- 25 provide for the orders that can be made and
- 26 other sanctions that can be imposed in those
- 27 proceedings and provide for the enforcement of
- 28 those orders and sanctions; and
- 29 (e) provide for the manner in which amounts
- 30 received by way of civil penalties are to be
- 31 dealt with and applied; and
- 32 (f) provide for the review by a specified person of
- 33 decisions made under the regulations or
- 34 wholesale arrangements.

- 1 (4) In subsection (3)(b)(ii) —
2 *daily amount* means an amount for each day or part of
3 a day during which the contravention continues.
- 4 (5) If wholesale arrangements confer functions on a
5 person —
- 6 (a) the functions are to be taken to be conferred by
7 this Act; and
- 8 (b) the person is authorised to perform the
9 functions.

10 **40. Disclosure of information to fines Registrar**

- 11 (1) The corporation must disclose to the Registrar
12 appointed under the *Fines, Penalties and Infringement*
13 *Notices Enforcement Act 1994* the names and addresses
14 of the persons who are supplied electricity or gas by
15 the corporation, but not photographs or signatures of
16 such persons.
- 17 (2) Information disclosed under subsection (1) may be
18 used in the performance of the Registrar’s functions
19 under the *Fines, Penalties and Infringement Notices*
20 *Enforcement Act 1994* but not for any other purpose.
- 21 (3) The disclosure of information under subsection (1) is to
22 be free of charge.
23

24 **15. Section 41 amended**

25 In section 41(g) delete “Corporation, the Electricity” and insert:

26

27 and
28

s. 16

1 **16. Section 43 amended**

2 After section 43(2) insert:

3

4 (3) Regulations may be made authorising the corporation
5 to perform one or more of its functions under
6 section 41 (including functions referred to in
7 subsection (2)) in a part or parts of the State not served
8 by the South West interconnected system.

9 (4) Regulations referred to in subsection (3) are in addition
10 to and do not affect subsection (2) unless a provision of
11 the regulations is declared by the regulations to have
12 effect despite any conflict or inconsistency with that
13 subsection.
14

15 **17. Part 3 Division 1 Subdivision 4 deleted**

16 Delete Part 3 Division 1 Subdivision 4.

17 **18. Section 50 amended**

18 (1) In section 50:

19 (a) in paragraph (d) after “Electricity” insert:

20

21 Generation and
22

23 (b) in paragraph (d) delete “44(a);” and insert:

24

25 35(da); and
26

27 (c) in paragraph (h) after “Generation” insert:

28

29 and Retail
30

1 (2) In section 50 after each of paragraphs (a) to (c) and (e) to (h)
2 insert:

3

4 and

5

6 **19. Section 52 amended**

7 After section 52(2) insert:

8

9 (3) Subsections (1) and (2) do not apply to the
10 performance of the corporation's functions of
11 acquiring, transporting and supplying gas so far as the
12 performance involves only either or both of the
13 following —

14 (a) the acquisition and transport of gas from the
15 Electricity Generation and Retail Corporation;

16 (b) the supply and transport of gas to the Electricity
17 Generation and Retail Corporation.

18 (4) Regulations may be made authorising the
19 corporation —

20 (a) to perform one or more of the functions
21 referred to in subsection (1) in respect of
22 electricity systems in a part or parts of the State
23 outside the area of operations; and

24 (b) to perform one or more of the functions
25 referred to in subsection (2) in a part or parts of
26 the State outside the area of operations.

27 (5) Regulations referred to in subsection (4) are in addition
28 to and do not affect subsection (3) unless a provision of
29 the regulations is declared by the regulations to have
30 effect despite any conflict or inconsistency with that
31 subsection.

32

s. 20

1 **20. Section 54 amended**

2 In section 54(2) after “Electricity” (2nd and 3rd occurrences)
3 insert:

4
5 Generation and
6

7 **21. Section 59 amended**

8 In section 59(3)(j) delete “42(b), 45(b)” and insert:

9
10 42(b)
11

12 **22. Section 62 replaced**

13 Delete section 62 and insert:

14
15 **62. Segregation of functions**

16 (1) Regulations may be made providing for and in relation
17 to, or authorising the Minister to approve arrangements
18 (*segregation arrangements*) providing for and in
19 relation to —

20 (a) the division of the functions or operations of a
21 corporation into segments; and

22 (b) the segregation of any such segment of a
23 corporation from the other functions or
24 operations of the corporation; and

25 (c) the segregation from a corporation of any
26 subsidiary of the corporation that has any
27 functions or operations of a specified kind.

28 (2) Without limiting subsection (1), segregation
29 arrangements may be in the form of rules or a code.

- 1 (3) Segregation arrangements are not subsidiary legislation
2 for the purposes of the *Interpretation Act 1984* and
3 section 42 of that Act does not apply to them or to an
4 instrument amending or repealing them.
- 5 (4) The *Interpretation Act 1984* sections 43 (other than
6 subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59,
7 75 and 76 and Part VIII apply to segregation
8 arrangements as if they were subsidiary legislation.
- 9 (5) Regulations referred to in subsection (1) may —
10 (a) set out the process for the approval, amendment
11 and repeal of segregation arrangements; and
12 (b) provide for the publication, commencement,
13 and laying before each House of Parliament, of
14 segregation arrangements and instruments
15 amending or repealing them.
- 16 (6) If there is a conflict or inconsistency between a
17 provision of regulations referred to in subsection (1)
18 and a provision of segregation arrangements, the
19 provision of the regulations prevails.

20 **63A. Matters for regulations or segregation**
21 **arrangements**

- 22 (1) In this section —
23 *segregation arrangements* has the meaning given in
24 section 62(1);
25 *specified* means specified in the regulations or
26 segregation arrangements.
- 27 (2) Regulations referred to in section 62(1), or segregation
28 arrangements, may —
29 (a) set out requirements to be complied with, or
30 standards or principles to be observed, by a
31 corporation in relation to dealings between one
32 segment of the corporation and another

s. 22

- 1 segment of the corporation in respect of a
2 specified matter or class of matter; and
- 3 (b) provide for the keeping of accounts and
4 records; and
- 5 (c) provide for financial reporting and performance
6 reporting; and
- 7 (d) provide for the apportionment of income,
8 expenditure, assets and liabilities; and
- 9 (e) provide for the protection of information; and
- 10 (f) provide for controls and procedures to ensure
11 that any required segregation is effective; and
- 12 (g) impose obligations on a corporation, including
13 an obligation to give an undertaking to a
14 specified person in respect of a specified matter
15 or class of matter; and
- 16 (h) confer functions on the Minister, the Economic
17 Regulation Authority or any other specified
18 person; and
- 19 (i) provide for matters of an incidental or
20 supplementary nature.
- 21 (3) Regulations referred to in section 62(1) may —
- 22 (a) provide that a provision of the regulations or
23 segregation arrangements that —
- 24 (i) imposes an obligation on a corporation;
25 and
- 26 (ii) is specified in the regulations or of a
27 class specified in the regulations,
28 is a civil penalty provision for the purposes of
29 the regulations; and
- 30 (b) prescribe, for a contravention of a civil penalty
31 provision —
- 32 (i) an amount not exceeding \$100 000; and

- 1 (ii) in addition a daily amount not
2 exceeding \$20 000,
3 that may, in accordance with the regulations, be
4 demanded from or imposed upon a corporation;
5 and
- 6 (c) provide for demands for the payment of
7 amounts referred to in paragraph (b) and the
8 enforcement of demands for their payment; and
- 9 (d) provide for and regulate the taking of
10 proceedings in respect of alleged
11 contraventions by a corporation of provisions
12 of the regulations or segregation arrangements,
13 provide for the orders that can be made and
14 other sanctions that can be imposed in those
15 proceedings and provide for the enforcement of
16 those orders and sanctions; and
- 17 (e) provide for the manner in which amounts
18 received by way of civil penalties are to be
19 dealt with and applied; and
- 20 (f) provide for the review by a specified person of
21 decisions made under the regulations or
22 segregation arrangements.
- 23 (4) In subsection (3)(b)(ii) —
24 ***daily amount*** means an amount for each day or part of
25 a day during which the contravention continues.
- 26 (5) If segregation arrangements confer functions on a
27 person —
28 (a) the functions are to be taken to be conferred by
29 this Act; and
30 (b) the person is authorised to perform the
31 functions.
32

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1 **23. Part 3 Division 2 deleted**

2 Delete Part 3 Division 2.

3 **24. Section 75 amended**

4 In section 75(1) delete “*Trade Practices Act 1974* of the
5 Commonwealth” and insert:

6

7 *Competition and Consumer Act 2010* (Commonwealth)

8

9 **25. Section 81 amended**

10 In section 81:

11 (a) in paragraph (b) delete “them.” and insert:

12

13 them; and

14

15 (b) after paragraph (b) insert:

16

17 (c) facilitate the economically efficient
18 performance of their functions under this Act.

19

20 **26. Section 83 amended**

21 In section 83(1) delete “81(a) or (b).” and insert:

22

23 81(a), (b) or (c).

24

25 **27. Section 87 amended**

26 In section 87 delete “*Trade Practices Act 1974* of the
27 Commonwealth” and insert:

28

29 *Competition and Consumer Act 2010* (Commonwealth)

1

2 **28. Section 106 amended**

3 (1) In section 106(2)(b) delete “prescribed by regulations made for
4 the purposes of section 62.” and insert:

5

6 required under regulations or segregation arrangements referred
7 to in section 62(1).

8

9 (2) In section 106(5)(b) delete “made for the purposes of
10 section 62.” and insert:

11

12 and segregation arrangements referred to in section 62(1).

13

14 **29. Section 107 amended**

15 In section 107(1)(a)(ii) delete “prescribed by regulations made
16 for the purposes of section 62;” and insert:

17

18 required under regulations or segregation arrangements referred
19 to in section 62(1);

20

21 **30. Section 108 amended**

22 (1) In section 108(1)(c) delete “ made for the purposes of
23 section 62;” and insert:

24

25 and segregation arrangements referred to in section 62(1); and

26

27 (2) In section 108(1) after each of paragraphs (a) and (b) insert:

28

29 and

s. 31

1

2 **31. Section 114 amended**

3 (1) In section 114(1) in the definition of *corporation* delete
4 “Corporation or the Electricity” and insert:

5

6 and

7

8 (2) In section 114(2) delete “35(b) or 44(f), by instrument served on
9 a” and insert:

10

11 35(b), by instrument served on the

12

13 **32. Section 120 amended**

14 In section 120(1)(b) delete “119(4) or 126(3).” and insert:

15

16 119(4), 126(3) or 198(1).

17

18 **33. Section 134 amended**

19 In section 134(1)(a) after “146 or” insert:

20

21 199 or

22

23 **34. Section 140 amended**

24 In section 140(2) delete “Act.” and insert:

25

26 Act or the *Electricity Corporations Amendment Act 2013*.

27

1 **35. Part 10 inserted**

2 After section 192 insert:

3

4 **Part 10 — Provisions for merger of corporations**

5 **Division 1 — Preliminary**

6 **193. Purpose of Part**

7 The purpose of this Part is to provide for the merger of
8 the Electricity Retail Corporation with the body
9 established by section 4(1)(a), and for related
10 transitional matters.

11 **194. Terms used**

12 In this Part —

13 ***amending Act*** means the *Electricity Corporations*
14 *Amendment Act 2013*;

15 ***asset*** means property of any kind whether tangible or
16 intangible, real or personal, corporeal or incorporeal
17 and includes without limitation —

- 18 (a) a chose in action;
- 19 (b) goodwill;
- 20 (c) a right, interest or claim of any kind in or to
21 property,

22 whether arising from, accruing under, created or
23 evidenced by or the subject of, an instrument or
24 otherwise and whether liquidated or unliquidated,
25 actual, contingent or prospective;

26 ***continuing corporation*** means the body established by
27 section 4(1)(a);

s. 35

1 **EGRC** means the continuing corporation as renamed as
2 the Electricity Generation and Retail Corporation under
3 section 4(2A);

4 **Government agreement** has the meaning given in the
5 *Government Agreements Act 1979* section 2;

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

10 **merger** means —

11 (a) the actions effected by the coming into
12 operation of section 6 of the amending Act; and

13 (b) the merging of the Electricity Retail
14 Corporation into the EGRC under
15 section 196(1);

16 **merger provisions** means the following —

17 (a) section 6 of the amending Act;

18 (b) this Part;

19 (c) transitional regulations;

20 **merger time** means the time at which section 6 of the
21 amending Act comes into operation;

22 **merging corporation** means the Electricity Retail
23 Corporation;

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

26 **transitional regulations** has the meaning given in
27 section 221.

28 **195. Saving**

29 (1) The operation of any of the merger provisions is not to
30 be regarded —

31 (a) as a breach of contract or confidence or
32 otherwise as a civil wrong; or

- 1 (b) as a breach of any contractual provision
2 prohibiting, restricting or regulating the
3 assignment or transfer of assets, rights or
4 liabilities or the disclosure of information; or
5 (c) as giving rise to any right to damages or
6 compensation; or
7 (d) as giving rise to any remedy by a party to an
8 instrument or as causing or permitting the
9 termination of any instrument, because of a
10 change in the beneficial or legal ownership of
11 any asset, right or liability; or
12 (e) as causing any contract or instrument to be void
13 or otherwise unenforceable; or
14 (f) as releasing or allowing the release of any
15 surety.
- 16 (2) The merger provisions are additional to any relevant
17 provisions of the *Interpretation Act 1984*.

Division 2 — Merger

196. Merger of corporations

- 19 (1) At the merger time the Electricity Retail Corporation
20 ceases to be a corporation under this Act and merges
21 into the EGRC.
22
23 (2) From the merger time the EGRC is a continuation of
24 the merging corporation.

197. Corporations to implement or facilitate merger

- 25 (1) A corporation is to do anything that is prescribed by
26 transitional regulations and anything else that may be
27 necessary or expedient to provide for, implement or
28 facilitate the merger.
29

s. 35

- 1 (2) Subsection (1) applies —
2 (a) before the merger time — to the merging
3 corporation and the continuing corporation; and
4 (b) after the merger time — to the EGRC.
- 5 (3) The function conferred by subsection (1) is in addition
6 to any other function that a corporation has.

7 **Division 3 — Directions by Minister**

8 **198. Minister may give directions**

- 9 (1) The Minister may give directions in writing to the
10 continuing corporation or the merging corporation
11 requiring it to take any step that the Minister considers
12 necessary or convenient for achieving the purpose of
13 this Part.
- 14 (2) The reference in subsection (1) to the taking of any
15 step includes refraining from taking any step that the
16 corporation might otherwise take.
- 17 (3) A corporation is to give effect to a direction given to it
18 under subsection (1) despite any other provision of this
19 Act.
- 20 (4) This section has effect despite the *Statutory*
21 *Corporations (Liability of Directors) Act 1996*
22 section 6(a).

23 **199. Directions to be laid before Parliament**

24 The Minister must, within 14 days after a direction is
25 given under section 198(1), cause the text of the
26 direction to be laid before each House of Parliament or
27 dealt with under section 134.

1 **Division 4 — Devolution of assets, rights, liabilities and**
2 **proceedings and related provisions**

3 **200. Assets, rights and liabilities**

- 4 (1) At the merger time —
- 5 (a) the assets and rights of the merging corporation
6 that were immediately before that time vested
7 in the merging corporation vest in the EGRC by
8 force of this subsection; and
- 9 (b) the liabilities of the merging corporation
10 immediately before that time become the
11 liabilities of the EGRC by force of this
12 subsection.
- 13 (2) In determining the profits of the EGRC for the
14 purposes of section 126, assets that vest in the EGRC
15 by force of subsection (1) are not to be regarded as
16 income.

17 **201. Proceedings and remedies**

18 From the merger time, any proceedings or remedy that,
19 immediately before that time, might have been brought
20 or continued by, or available against or to, the merging
21 corporation may be brought or continued by, and are or
22 is available against or to, the EGRC.

23 **202. Continuation of guarantees**

- 24 (1) This section applies to —
- 25 (a) a guarantee given under section 130; and
26 (b) a guarantee continued in force by section 173,
- 27 that was in force immediately before the merger time in
28 respect of the merging corporation.

s. 35

- 1 (2) A guarantee to which this section applies continues in
2 force and is to be read and construed, from the merger
3 time, as if it were a guarantee in respect of the EGRC.
- 4 (3) The Treasurer may enter into any instrument
5 confirming the continued liability of the State under a
6 guarantee to which this section applies.
- 7 (4) By virtue of this subsection, any sum paid by the
8 Treasurer under a guarantee to which this section
9 applies in respect of the EGRC constitutes a charge on
10 the assets of that corporation.

11 **203. Joint tenancies preserved**

- 12 (1) This section applies to an asset held by the merging
13 corporation as a joint tenant with another person.
- 14 (2) The vesting of an asset to which this section applies in
15 the EGRC under this Part does not sever the joint
16 tenancy, and the EGRC holds the asset as a joint tenant
17 with the other person.

18 **204. Exemption from State taxation**

- 19 (1) In this section —
20 *State tax* includes duty under the *Duties Act 2008* and
21 any other tax, duty, fee, levy or charge under a law of
22 the State.
- 23 (2) State tax is not payable in relation to —
24 (a) anything that occurs by the operation of the
25 merger provisions; or
26 (b) anything done (including a transaction entered
27 into or an instrument or document of any kind
28 made, executed, lodged or given) under this
29 Part, or to give effect to the merger provisions,
30 or for a purpose connected with or arising out
31 of giving effect to the merger provisions.

- 1 (3) The Treasurer or a person authorised by the Treasurer
2 may, at the request of the EGRC, certify in writing that
3 a specified thing —
- 4 (a) occurred by the operation of the merger
5 provisions; or
- 6 (b) was done under this Part, or to give effect to the
7 merger provisions, or for a purpose connected
8 with or arising out of giving effect to the
9 merger provisions.
- 10 (4) For all purposes and in all proceedings, a certificate
11 under subsection (3) is conclusive evidence of the
12 matters it certifies, except so far as the contrary is
13 shown.

14 **205. Registration of documents**

- 15 (1) In this section —
- 16 *relevant officials* means —
- 17 (a) the Registrar of Titles under the *Transfer of*
18 *Land Act 1893*; and
- 19 (b) the Registrar of Deeds and Transfers under the
20 *Registration of Deeds Act 1856*; and
- 21 (c) the Minister administering the *Land*
22 *Administration Act 1997*; and
- 23 (d) any other person authorised by a written law to
24 record and give effect to the registration of
25 documents relating to transactions affecting any
26 estate or interest in land or any other property.
- 27 (2) The relevant officials are to take notice of the merger
28 provisions and are empowered to record and register in
29 the appropriate manner the documents necessary to
30 show the effect of those provisions.

s. 35

- 1 (3) Without limiting subsection (2), a statement in an
2 instrument is evidence of the facts stated if —
3 (a) the instrument is executed by the EGRC; and
4 (b) the statement is to the effect that any estate or
5 interest in land or other property has become
6 vested in the EGRC under section 200(1).

7 **Division 5 — Staff**

8 **206. Members of staff**

- 9 (1) At the merger time, a person who immediately before
10 the merger time was a member of staff of the merging
11 corporation becomes a member of staff of the EGRC.
12 (2) The operation of subsection (1) does not constitute a
13 retrenchment or redundancy.

14 **207. Preservation of rights**

- 15 (1) Except as otherwise agreed by the relevant member of
16 staff, the operation of section 206 (1) does not —
17 (a) affect his or her remuneration and other terms
18 and conditions of employment; or
19 (b) prejudice his or her existing or accruing rights;
20 or
21 (c) affect any rights under a superannuation
22 scheme; or
23 (d) interrupt continuity of service.
24 (2) For the purposes of subsection (1)(d), the service of a
25 member of staff with the merging corporation is to be
26 taken to have been with the EGRC.
27 (3) Nothing in section 206 or this section prevents the
28 exercise by the EGRC of its powers in relation to the
29 management of members of staff.

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Division 6 — Other provisions

208. Renaming of continuing corporation does not affect status

The renaming of the continuing corporation as the Electricity Generation and Retail Corporation under section 4(2A) does not affect its continuity or legal status.

209. Compliance with policy instruments

Despite section 58, the EGRC is not required to perform its functions in accordance with its strategic development plan and its statement of corporate intent in the period starting at the merger time and ending on the next 30 June.

210. Financial reporting: merging corporation

- (1) In this section —
 - annual reporting provisions* means sections 107 and 108, Schedule 4 Division 3 Subdivision 1 and Schedule 4 clauses 32 and 33;
 - quarter* means a quarter of a financial year.
- (2) It is a function of the EGRC to perform the duties set out in this section in respect of the merging corporation.
- (3) If the merger time coincides with the end of a quarter of the merging corporation, the EGRC is to comply with section 106 in respect of the merging corporation for that quarter.
- (4) If the merger time is after the end of a quarter of the merging corporation (the *last quarter*), the EGRC is to —
 - (a) comply with section 106 in respect of the merging corporation to the extent that that

s. 35

- 1 section has not been complied with for the last
2 quarter; and
- 3 (b) comply with section 106 in respect of the
4 merging corporation for the period starting at
5 the end of the last quarter and ending at the
6 merger time as if that period were a quarter.
- 7 (5) If the merger time coincides with the end of a financial
8 year of the merging corporation, the EGRC is to
9 comply with the annual reporting provisions in respect
10 of the merging corporation for that financial year.
- 11 (6) If the merger time is after the end of a financial year of
12 the merging corporation (the *last financial year*), the
13 EGRC is to —
- 14 (a) comply with the annual reporting provisions in
15 respect of the merging corporation to the extent
16 that those provisions have not been complied
17 with for the last financial year; and
- 18 (b) comply with the annual reporting provisions in
19 respect of the merging corporation for the
20 period starting at the end of the last financial
21 year and ending at the merger time as if that
22 period were a financial year.
- 23 (7) In order to enable the EGRC to perform its duties
24 under this section, section 106 and the annual reporting
25 provisions apply with —
- 26 (a) any modifications prescribed by transitional
27 regulations; and
- 28 (b) any other appropriate modifications.

29 **211. Financial reporting: continuing corporation**

- 30 (1) In this section —
31 *annual reporting provisions* has the meaning given in
32 section 210(1).

- 1 (2) If the merger time is after the end of a financial year of
2 the continuing corporation (the *last financial year*), the
3 EGRC is to comply with the annual reporting
4 provisions in respect of the continuing corporation as if
5 each of the following periods were a financial year —
6 (a) the period starting at the end of the last
7 financial year and ending at the merger time;
8 (b) the period starting at the merger time and
9 ending on the next 30 June.
- 10 (3) For the purposes of subsection (2), the annual reporting
11 provisions apply with —
12 (a) any modifications prescribed by transitional
13 regulations; and
14 (b) any other appropriate modifications.

15 **212. Continuation of certain directions**

- 16 (1) A direction under section 111(1) that was in force in
17 respect of the merging corporation immediately before
18 the merger time continues in force, from the merger
19 time, as if it were a direction given under
20 section 111(1) to the EGRC.
- 21 (2) An instrument under section 114(2) that was in force in
22 respect of the merging corporation immediately before
23 the merger time continues in force, from the merger
24 time, as if it were an instrument served under
25 section 114(2) on the EGRC.

26 **213. Amount in lieu of rates**

- 27 (1) If immediately before the merger time the merging
28 corporation has not paid an amount required to be paid
29 under section 124, the EGRC is to pay the amount to
30 the Treasurer.

s. 35

- 1 (2) Any amount that has to be paid to the Treasurer in
2 accordance with subsection (1) is to be paid from the
3 funds of the EGRC.

4 **214. Dividends**

- 5 (1) In this section —
6 *dividend function* means a function of a corporation or
7 its board under section 126.

- 8 (2) If immediately before the merger time a dividend
9 function has yet to be performed by the merging
10 corporation or its board, the EGRC or its board is to
11 perform the function after the merger time as if the
12 EGRC were the merging corporation.

- 13 (3) Any amount that has to be paid to the Treasurer in
14 accordance with subsection (2) is to be paid from the
15 funds of the EGRC.

16 **215. Completion of things commenced**

17 Anything commenced to be done by the merging
18 corporation before the merger time may be continued
19 by the EGRC.

20 **216. Continuing effect of things done**

- 21 (1) In this section —
22 *relevant act* means an act, matter or thing done or
23 omitted to be done before the merger time by, to or in
24 respect of the merging corporation.
25 (2) To the extent that a relevant act has force or
26 significance at the merger time it is to be taken, from
27 the merger time, to have been done or omitted by, to or
28 in respect of the EGRC so far as the act, matter or thing
29 is relevant to the EGRC.

1 (3) This section does not affect the operation of any other
2 provision of this Part.

3 **217. Immunity to continue**

4 If the merging corporation had the benefit of any
5 immunity in respect of an act, matter or thing done or
6 omitted before the merger time, the immunity
7 continues in that respect for the benefit of the EGRC.

8 **218. Agreements, instruments and documents**

9 (1) In this section —

10 *agreement* includes a Government agreement;

11 *former name* means “Electricity Generation
12 Corporation”;

13 *new name* means “Electricity Generation and Retail
14 Corporation”.

15 (2) An agreement, instrument or document subsisting
16 immediately before the merger time that contains —

17 (a) a reference to the merging corporation or to the
18 continuing corporation by its former name; or

19 (b) a reference to a body that under Part 9 is to be
20 read as, or has effect as if it were, a reference to
21 the merging corporation or the continuing
22 corporation,

23 has effect from the merger time as if the reference
24 were, unless the context otherwise requires, a reference
25 to the continuing corporation by its new name.

26 **219. Treasurer may give indemnity and guarantee**

27 (1) In this section —

28 *liability* includes civil liability under the *Corporations*
29 *Act 2001* (Commonwealth);

s. 35

- 1 **relevant person** means a person who is or has been a
2 director, the chief executive officer, or a member of
3 staff, of the merging corporation.
- 4 (2) The Treasurer may, in the name and on behalf of the
5 State, give to a relevant person an indemnity against
6 liability or a guarantee of payment in respect of —
- 7 (a) the doing of anything, whether before or after
8 the merger time, that is required to achieve the
9 purpose of this Part; or
- 10 (b) an omission to do anything, whether before or
11 after the merger time, if the omission is
12 required to achieve the purpose of this Part.
- 13 (3) The payment of any money under an indemnity or
14 guarantee given under this section is to be made by the
15 Treasurer and charged to the Consolidated Account,
16 which this section appropriates to the necessary extent.

17 **220. Government agreements not affected**

18 The merger provisions do not prejudice or in any way
19 affect any right or obligation of a party to a
20 Government agreement.

21 **221. Transitional regulations**

- 22 (1) Regulations (**transitional regulations**) may
23 prescribe —
- 24 (a) things to be done by the merging corporation or
25 the continuing corporation to provide for,
26 implement or facilitate the merger; and
- 27 (b) anything necessary or expedient to be
28 prescribed for providing for a matter or issue of
29 a transitional nature that arises in relation to the
30 merger.

- 1 (2) Transitional regulations may provide that specific
2 provisions of any written law —
- 3 (a) do not apply to or in relation to any matter; or
- 4 (b) apply with specific modifications to or in
5 relation to any matter.
- 6 (3) If transitional regulations provide that a state of affairs
7 specified or described in the regulations is to be taken
8 to have existed, or not to have existed, at and from a
9 time that is earlier than the day on which the
10 regulations are published in the *Gazette* but not earlier
11 than the merger time, the regulations have effect
12 according to their terms.
- 13 (4) If transitional regulations contain a provision referred
14 to in subsection (3), the provision does not operate so
15 as —
- 16 (a) to affect in a manner prejudicial to any person
17 (other than the State, an authority of the State
18 or the EGRC) the rights of that person existing
19 before the day of publication of those
20 regulations; or
- 21 (b) to impose liabilities on any person (other than
22 the State, an authority of the State or the
23 EGRC) in respect of anything done or omitted
24 to be done before the day of publication of
25 those regulations.
- 26

27 **36. Schedule 1 clause 6 amended**

28 Delete Schedule 1 clause 6(5)(a) and insert:

- 29
- 30 (a) a number of directors equal to at least half the
31 number of directors in office constitutes a quorum;
32 and
- 33

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Part 3 — Other Acts amended

37. Constitution Acts Amendment Act 1899 amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3:
 - (a) in the item relating to the Electricity Generation Corporation after “Generation” insert:

and Retail
 - (b) delete the item relating to the Electricity Retail Corporation.

38. Economic Regulation Authority Act 2003 amended

- (1) This section amends the *Economic Regulation Authority Act 2003*.
- (2) In section 20(5) in the definition of **relevant entity** delete paragraph (c) and insert:
 - (c) a body established by the *Electricity Corporations Act 2005* section 4(1).

39. Electricity Industry Act 2004 amended

- (1) This section amends the *Electricity Industry Act 2004*.
- (2) In section 3 delete the definitions of:
electricity corporation
Electricity Generation Corporation
Electricity Retail Corporation

1 (3) In section 3 insert in alphabetical order:

2

3 *electricity corporation* means —

4 (a) the Electricity Generation and Retail
5 Corporation; or

6 (b) the Electricity Networks Corporation; or

7 (c) the Regional Power Corporation;

8 *Electricity Generation and Retail Corporation* has the
9 meaning given in the *Electricity Corporations Act 2005*
10 section 3(1);

11

12 (4) In section 54A(1) in the definition of *corporation* after
13 “Electricity” insert:

14

15 Generation and

16

17 (5) In section 71(4)(a) after “Electricity” insert:

18

19 Generation and

20

21 **40. *Energy Arbitration and Review Act 1998* amended**

22 (1) This section amends the *Energy Arbitration and Review*
23 *Act 1998*.

24 (2) Delete section 50(2A) and insert:

25

26 (2A) The Board has the functions conferred on it under the
27 *Electricity Industry Act 2004*, the *Gas Services*
28 *Information Act 2012* or any other written law.

29

s. 41

- 1 (3) In section 80(5) delete the definition of *electricity corporation*
2 and insert:

3

4 *electricity corporation* means a body established by the
5 *Electricity Corporations Act 2005* section 4(1).
6

7 **41. *Energy Operators (Powers) Act 1979* amended**

- 8 (1) This section amends the *Energy Operators (Powers) Act 1979*.

- 9 (2) In section 4(1) delete the definition of *electricity corporation*
10 and insert:

11

12 *electricity corporation* means a body established by the
13 *Electricity Corporations Act 2005* section 4(1);
14

15 **42. *Equal Opportunity Act 1984* amended**

- 16 (1) This section amends the *Equal Opportunity Act 1984*.

- 17 (2) Delete section 139(1)(c) and insert:

18

19 (c) each of the bodies established by the *Electricity*
20 *Corporations Act 2005* section 4(1); and
21

22 **43. *Fines, Penalties and Infringement Notices Enforcement***
23 ***Act 1994* amended**

- 24 (1) This section amends the *Fines, Penalties and Infringement*
25 *Notices Enforcement Act 1994*.

- 26 (2) In section 3(1) delete the definition of *Electricity Retail*
27 *Corporation*.

1 (3) In section 3(1) insert in alphabetical order:
2

3 *Electricity Generation and Retail Corporation* has the
4 meaning given in the *Electricity Corporations Act 2005*
5 section 3(1);
6

7 (4) In section 5(4)(b) after “Electricity” insert:
8

9 Generation and
10

11 (5) In section 10(b) after “Electricity” insert:
12

13 Generation and
14

15 Note: The heading to amended section 10 is to read:

16 **Registrar has access to records of Director General and**
17 **Electricity Generation and Retail Corporation**

18 **44. *Public Sector Management Act 1994* amended**

19 (1) This section amends the *Public Sector Management Act 1994*.

20 (2) Delete Schedule 1 item 21 and insert:
21

21 21 A body established by the *Electricity Corporations Act 2005*
 section 4(1)
22

23 **45. *Public Works Act 1902* amended**

24 (1) This section amends the *Public Works Act 1902*.

25 (2) Delete section 5B(1)(c) and insert:
26

27 (c) in the case of the Minister of the Crown
28 referred to in section 5A(d), to a body

s. 46

1 established by the *Electricity Corporations*
2 *Act 2005* section 4(1) or to an officer of such a
3 body; or
4

5 **46. *State Records Act 2000* amended**

6 (1) This section amends the *State Records Act 2000*.

7 (2) Delete Schedule 3 item 1 and insert:
8

9 1. A body established by the *Electricity Corporations Act 2005*
10 section 4(1).
11

12
