Western Australia

Electricity Corporations Act 2005

Incorporating the amendments proposed by the *Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019* Pt. 3 Div. 4 (Bill No. 142-1)

Western Australia

Electricity Corporations Act 2005

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Western Australia

Electricity Corporations Act 2005

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

[Long title inserted: No. 25 of 2013 s. 4.]

[This compilation shows amendments proposed by Bill No. 142-1 (Pt. 3 Div. 4).]

Part 1 — Preliminary

1. Short title

This is the *Electricity Corporations Act 2005* [1].

2. Commencement

(1) Except as stated in subsection (2), this Act comes into operation on the day on which it receives the Royal Assent [1].

(2) The provisions of —

(a) Parts 2, 3, 4, 5, 6, 7 and 8; and

(b) Part 9, other than sections 141, 142, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153(1) and 179; and

(c) Schedules 1, 2, 3, 4 and 5,

come into operation on a day fixed by proclamation [1].

(3) Different days may be fixed under subsection (2) for different provisions.

(4) A day is not to be fixed for the purposes of subsection (2) until the Minister is of the opinion that the transfer order or transfer orders required by section 147(1) has or have been made.

3. Terms used

(1) In this Act, unless the contrary intention appears —

board means a board of directors provided for by section 8;

chief executive officer means an officer appointed under section 14 and, except in sections 14 and 16, includes an acting chief executive officer appointed under section 17;

corporation means a body established by section 4(1);

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

director means a member of a board;

Economic Regulation Authority means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

electricity includes electrical energy of any kind however produced, stored, transported or consumed;

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

Electricity Networks Corporation means the body established by section 4(1)(b);

executive officer means a member of the staff of a corporation designated under section 20 as an executive officer;

function includes powers, duties and authorities, except in —

(a) Part 3 Division 1 Subdivisions 1 to 6; and

(b) sections 56 and 59;

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

(a) as a fuel; or

(b) in any chemical process;

member of staff means a person engaged under section 18;

non-executive director, in relation to a corporation, means a director other than the chief executive officer if he or she is a director of the corporation;

Regional Power Corporation means the body established by section 4(1)(d);

South West interconnected system means the interconnected transmission and distribution systems, generating works and associated works —

(a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and

(b) into which electricity is supplied by one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar,

as expanded or altered from time to time;

subsidiary, in relation to a corporation, means —

(a) a body determined to be a subsidiary of the corporation under subsection (2); and

(b) an interest or other rights of the corporation in a unit trust, joint venture or partnership where the interest or other rights of the corporation in connection with the unit trust, joint venture or partnership entitle the corporation to —

(i) control the composition of the governing body of the unit trust, joint venture or partnership; or

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

[Section 3 amended: No. 39 of 2010 s. 75(2); No. 25 of 2013 s. 5.]

Part 2 — Electricity Corporations

Division 1 — Establishment of corporations

4. Corporations established

(1) Each of the following is established as a body corporate with perpetual succession —

(a) the Electricity Generation Corporation;

(b) the Electricity Networks Corporation;

[(c) deleted]

(d) the Regional Power Corporation.

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

(2) Proceedings may be taken by or against a corporation in its corporate name.

(3) A 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 amended: No. 25 of 2013 s. 6.]

5. Corporations not to be regarded as agents of State for purposes of State laws

For the purposes of any law of the State, a corporation is to be regarded as not being an agent of the State and does not have the status, immunities and privileges of the State.

[Section 5 amended: No. 25 of 2013 s. 7.]

6. Corporations and officers not part of Public Service

(1) A corporation is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.

(2) Neither —

(a) the chief executive officer; nor

(b) any member of staff,

of a corporation is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

7. Head office of Regional Power Corporation

The head office of the Regional Power Corporation is to be located in a part of the State that is not served by the South West interconnected system.

Division 2 — Boards of directors

8. Boards of directors

(1) A corporation is to have a board of directors comprising not less than 4, nor more than 8, persons appointed by the Governor on the nomination of the Minister.

(2) The chief executive officer of a corporation may be a director of the corporation.

(3) A member of staff of a corporation is not to be a director of the corporation.

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

(5) Where a vacancy occurs in the membership of a board, the board may recommend a candidate to the Minister.

(6) Subsection (4) does not apply —

(a) to the initial appointments to a board; or

(b) where the nominee was recommended by a board under subsection (5).

[Section 8 amended: No. 25 of 2013 s. 8.]

9. Role of boards

The board of a corporation —

(a) is its governing body; and

(b) in the name of the corporation and subject to this Act, is to perform the functions, determine the policies and control the affairs of the corporation.

10. Provisions about constitution and proceedings of boards

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

11. Remuneration

(1) A non-executive director of a corporation is to be paid out of the funds of the corporation such remuneration and allowances as are determined by the Minister in the case of that corporation and that director.

(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.

12. Conflict of duties

(1) In subsection (2) —

public service officer means a person who is employed in the Public Service under the *Public Sector Management Act 1994* Part 3.

(2) 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 State in respect of the duties and liabilities imposed on directors by this Act.

13. Committees

(1) The board of a corporation may —

(a) appoint committees of such directors of the corporation 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 by which it was appointed.

(3) A committee may invite any person, including a member of staff of the corporation concerned, 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

Subdivision 1 — Chief executive officer

14. Appointment

(1) A corporation is to have a chief executive officer.

(2) The powers —

(a) to appoint and remove the chief executive officer of a corporation; and

(b) subject to sections 15A and 15B, to fix and alter his or her terms and conditions of service,

are vested in the board of the corporation.

(3) Despite subsection (2), the Minister is to appoint the initial chief executive officer of a corporation.

[(4) deleted]

(5) The board is to obtain the concurrence of the Minister before it exercises any of the powers conferred by subsection (2).

(6) Subsection (5) does not apply to the exercise by the board of the power to determine or set remuneration to which section 15A or 15B applies.

[Section 14 amended: No. 25 of 2013 s. 9; No. 46 of 2016 s. 13.]

15A. Remuneration of chief executive officer while corporation is not a Government entity

(1) In this section —

remuneration has the meaning given in the *Salaries and Allowances Act 1975* section 4(1).

(2) This section applies when the corporation to which it relates is not a Government entity as defined in the *Salaries and Allowances Act 1975* section 7C(1).

(3) The remuneration, including any variation to the remuneration, of the chief executive officer of a corporation is to be determined by the board on the recommendation of the Minister.

(4) Subsection (3) —

(a) applies regardless of whether the chief executive officer was appointed on, before or after the day on which the

Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2016 Part 3 comes into operation; but

(b) does not require the board to re-determine the remuneration of the person who, immediately before that day, holds office as the corporation's chief executive officer.

[Section 15A inserted: No. 46 of 2016 s. 14.]

15B. Remuneration of chief executive officer while corporation is a Government entity

(1) In this section —

remuneration has the meaning given in the *Salaries and Allowances Act 1975* section 4(1).

(2) This section applies when the corporation to which it relates is a Government entity as defined in the *Salaries and Allowances Act 1975* section 7C(1).

(3) The remuneration of the chief executive officer of a corporation who is an executive officer, as defined in the *Salaries and Allowances Act 1975* section 7C(1), is to be set by the board within the range determined by the Salaries and Allowances Tribunal under section 7C(2) of that Act.

(4) Any variation to the remuneration of the chief executive officer of a corporation who, because of the *Salaries and Allowances Act 1975* section 7C(4) is not an executive officer as defined in section 7C(1) of that Act, is to be determined by the board on the recommendation of the Minister.

[Section 15B inserted: No. 46 of 2016 s. 14.]

15. Role of chief executive officer

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

16. Resignation

(1) The chief executive officer of a corporation may resign from office by giving notice in writing to the board of the corporation.

(2) If the chief executive officer's terms and conditions of service deal with the matter of resignation, the right to resign under

subsection (1) can only be exercised in accordance with those terms and conditions.

17. Acting appointments

The board of a corporation may appoint a person to act in place of the chief executive officer of the corporation —

(a) during a vacancy in that office; or

(b) during any period when the chief executive officer is on leave or otherwise unable to carry out his or her duties or is absent from the State.

Subdivision 2 — Other staff

18. Powers in relation to staff

(1) The power to engage and manage the staff of a corporation is vested in its 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 71.

(3) The remuneration of a member of staff and other terms and conditions of employment are to be such that the overall entitlements do not, on balance, disadvantage the person in comparison to the entitlements he or she would have under —

(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 Act, other than section 19(2), affects the operation of the *Industrial Relations Act 1979* Part VID.

19. Certain industrial matters excluded from employment agreements

(1) There are excluded from the operation of the *Industrial Relations Act 1979* Part II Division 2B —

(a) any matters dealt with by an instrument issued under section 21 except —

(i) rates of remuneration; and

(ii) leave; and

(iii) hours of duty; and

(iv) matters that are similar to matters prescribed for the purposes of the *Public Sector Management Act 1994* section 99(1)(a)(iv) [2];

and

(b) matters concerning the management of the staff that are similar to matters prescribed for the purposes of the *Public Sector Management Act 1994* section 99(1)(c) [2].

(2) A matter referred to in subsection (1) cannot be varied or affected by an employer-employee agreement made under the *Industrial Relations Act 1979* Part VID.

20. Designation of executive officers

For the purposes of section 29, the board of a corporation 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.

Subdivision 3 — Minimum standards for staff management

21. Standards to be set out in instrument

(1) The board of a corporation must, after consultation with the Public Sector Commissioner, 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) a board is to have regard to the principles set out in the *Public Sector Management Act 1994* section 8.

(4) Section 14(5) is not affected by the requirements of subsection (3).

(5) The Public Sector Commissioner may at any time recommend to a board any amendment that he or she thinks should be made to an instrument issued under this section.

(6) A 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 Public Sector Commissioner.

[Section 21 amended: No. 39 of 2010 s. 75(3).]

22. Reports to Public Sector Commissioner

(1) The Public Sector Commissioner may in writing require a board —

(a) to report to him or her on the observance of the minimum standards in force under section 21; and

(b) to make the reports at such times, but not more often than half-yearly, as the Commissioner may specify.

(2) A board must comply with a requirement made under subsection (1).

(3) The Public Sector Commissioner may at any time report to the Minister on the content or observance of the minimum standards in force under section 21.

[Section 22 amended: No. 39 of 2010 s. 75(3).]

Subdivision 4 — Joint policy on staff transfers

23. Corporations to have joint policy approved by Minister

(1) The corporations must have, and comply with, a joint policy on staff transfers that has been approved or determined by the Minister under this section.

(2) The purpose of the joint policy referred to in subsection (1) is to ensure that members of staff of the corporations and of their subsidiaries have the opportunity to transfer between the corporations and their subsidiaries —

(a) for temporary or permanent employment; or

(b) on secondment or temporary deployment; or

(c) for training,

without loss of entitlements.

(3) Within 2 months after the commencement of this section, the corporations must jointly prepare a draft policy statement for the purposes of subsection (1) and submit it to the Minister.

(4) The Minister may —

(a) approve a draft policy statement submitted under subsection (3); or

(b) request that it be amended and approve it in an amended form.

(5) If a policy statement has not been approved by the Minister within a period that he or she considers reasonable and notifies to the corporations, the Minister may determine the contents of the policy statement.

24. Amendment of policy statement

(1) With the approval of the Minister, the corporations may jointly —

(a) amend a policy statement for the time being in force under section 23; or

(b) revoke it and replace it with another policy statement.

(2) The Minister may, in writing, direct the corporations —

(a) to amend a policy statement for the time being in force under section 23 in a specified way; or

(b) to revoke it and replace it with another policy statement containing specified provisions,

and the corporations are to comply with any such direction.

25. Consultation with staff

A corporation must —

(a) in preparing the draft policy statement under section 23(3); and

(b) before agreeing to make any amendment or replacement under section 24(1),

consult the members of its staff and the staff of its subsidiaries by making the draft statement, amendment or replacement, as the case may be, available for their comment.

Subdivision 5 — General

26. Superannuation

(1) In this section —

members of staff includes —

(a) a chief executive officer; and

(b) dependants of members of staff; and

(c) former members of staff and their dependants.

(2) A corporation may grant, or make provision for the grant of, retirement benefits to members of staff of the corporation 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.

(3) The corporation concerned may make contributions to any fund or scheme referred to in subsection (2).

(4) Subsections (2) and (3) have effect subject to the *State Superannuation Act 2000* section 30.

(5) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to a corporation or any member of staff.

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

27. Duties of, and relating to, directors

Schedule 2 has effect in relation to —

(a) the duties of directors; and

(b) the duties of a corporation in respect of directors and related persons; and

(c) the other matters provided for in that Schedule.

28. Chief executive officer, duties imposed

(1) Schedule 2 clauses 2 to 11, 15 and 16 apply to the chief executive officer of a corporation in his or her capacity as such in addition, if he or she is a director of the corporation, to their application to him or her in that capacity.

(2) Schedule 2 clauses 4 and 7 to 11 apply to a former chief executive officer in his or her capacity as such in addition, if he or she was a director of the corporation, to their application to him or her in the capacity of former director.

(3) This section and section 27 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.

29. Executive officers, duties imposed

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

(2) Schedule 2 clauses 4 and 7 to 11 apply to a former executive officer as if references to a former director were replaced by references to a former executive officer.

30. Members of staff, duties imposed

(1) Schedule 2 clauses 4, 5 and 7 to 11 apply to any person engaged under section 18, other than an executive officer, as if references to a director were replaced by references to a person so engaged.

(2) Schedule 2 clauses 4 and 7 to 11 apply to a person formerly engaged under section 18, other than an executive officer, as if references to a former director were replaced by references to a person formerly so engaged.

31. Codes of conduct

(1) In this section and in sections 32 and 33 —

members of staff includes a chief executive officer.

(2) The board of a corporation must, after consultation with the Public Sector Commissioner, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff of the corporation.

(3) In complying with subsection (2) a board is to have regard to the principles set out in the *Public Sector Management Act 1994* section 9.

(4) A board may, after consultation with the Public Sector Commissioner, amend any code of conduct in force under subsection (2) or revoke it and substitute a new code of conduct.

[Section 31 amended: No. 39 of 2010 s. 75(3).]

32. Reports to Public Sector Commissioner

(1) The Public Sector Commissioner may in writing require the board of a corporation —

(a) to report to him or her on the observance of any code of conduct in force under section 31 by members of staff of the corporation; and

(b) to make the reports at such times, but not more often than half-yearly, as the Commissioner may specify.

(2) A board must comply with a requirement made under subsection (1).

(3) The Public Sector Commissioner may at any time report to the Minister on any matter that the Commissioner thinks should be brought to the Minister's attention relating to the observance by members of staff of a corporation of a code of conduct in force under section 31.

[Section 32 amended: No. 39 of 2010 s. 75(3).]

33. Reports to Minister

(1) The board of a corporation, when it delivers to the Minister its annual report under section 107, must also deliver to the Minister a separate report on the observance of any code of conduct in force under section 31 by members of staff of the corporation.

(2) A board must give to the Public Sector Commissioner a copy of each report under subsection (1).

[Section 33 amended: No. 39 of 2010 s. 75(3).]

Part 3 — Functions and powers of corporations

Division 1 — Functions, powers and related provisions

Subdivision 1 — Preliminary

34. Terms used

(1) In this Division —

acquire, in relation to electricity or gas, includes acquire by way of exchange;

ancillary services means services that are necessary or expedient for the security or reliability of an electricity system;

energy efficient technologies means technologies, including but not limited to operating software, designed to improve the efficiency of electricity generation plant and equipment;

renewable sources means sources of energy that are replaced rapidly by natural processes, including sunlight, wind, biomass, water in motion and geothermal activity;

telecommunication services means services for carrying communications by one or more of the following means —

(a) guided electromagnetic energy;

(b) unguided electromagnetic energy;

(c) optical signals;

(d) other similar means.

(2) References in this Division to the performance of a corporation's functions being limited to the South West interconnected system are —

(a) in the case of a function relating to electricity, references to performing the function for the purposes of that system or customers served by that system;

(b) in the case of the functions of —

(i) supplying gas or steam; or

(ii) providing telecommunication services,

references to performing those functions within the area served by that system.

Subdivision 2 — Electricity Generation and Retail Corporation

[Heading amended: No. 25 of 2013 s. 10.]

35. Principal functions

The functions of the Electricity Generation and Retail Corporation (in this Subdivision called the ***corporation***) are, subject to this Subdivision —

(a) to generate, purchase or otherwise acquire, and supply electricity from sources of energy including renewable sources; and

(b) to acquire, transport and supply —

(i) gas; and

(ii) steam;

and

(c) to acquire, develop, operate and supply energy efficient technologies; and

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

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

(d) to provide ancillary services; and

(e) by agreement with the Regional Power Corporation —

(i) to provide consultative and advisory services to that corporation in relation to electricity generation; and

(ii) to operate and maintain any electricity generation plant or equipment on behalf of that corporation; and

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

and

(fa) to provide telecommunications services; and

(f) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

[Section 35 amended: No. 25 of 2013 s. 11.]

36. Other functions

It is also a function of the corporation —

(a) in addition to its functions under section 35(e)(i) and (iii), to use its expertise and resources to provide consultative, advisory or other services for profit; or

(b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 35; or

(c) to manufacture and market any product that relates to a function under section 35 or paragraph (b); or

(d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 35 so long as the proper performance of the function is not affected; or

(e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 35 or this section; or

(f) to do anything that it is authorised to do by any other written law.

[Section 36 amended: No. 25 of 2013 s. 12.]

37. Restriction on area in which corporation may operate

(1) Within the State the performance of the corporation's functions under section 35 is limited to the South West interconnected system.

(2) Subsection (1) does not apply to the performance of the corporation's functions under section 35(a) so far as the performance involves only —

(a) the generation and supply of electricity from renewable sources; or

(b) the purchase or other acquisition and supply of electricity so generated.

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

(3B) Subsection (1) does not apply to the performance of the corporation's function under section 35(b) to supply gas so far

as the performance involves only the supply of gas to the Regional Power Corporation.

(3) Subsection (1) does not apply to the performance of the corporation's functions under subparagraph (ii) of section 35(e), but the functions under that subparagraph do not authorise the corporation to own or control any electricity generation plant or equipment.

(4) If —

(a) the sources of energy used to generate electricity are a combination of renewable sources and diesel or renewable sources and gas; and

(b) the renewable sources comprise a substantial proportion of those sources of energy,

then for the purposes of subsection (2) the electricity is taken to be generated from renewable sources.

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

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

[Section 37 amended: No. 8 of 2009 s. 50(2); No. 25 of 2013 s. 13.]

38. Wholesale acquisition or supply of electricity

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

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

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

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

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

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

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

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

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

(6) If there is a conflict or inconsistency between a provision of regulations referred to in subsection (1) and a provision of wholesale arrangements, the provision of the regulations prevails.

[Section 38 inserted: No. 25 of 2013 s. 14.]

39. Matters for regulations or wholesale arrangements

(1) In this section —

approved instrument means an instrument referred to in subsection (2)(b) that is approved under the regulations or wholesale arrangements;

specified means specified in the regulations or wholesale arrangements;

terms and conditions includes pricing and pricing methodology;

wholesale arrangements has the meaning given in section 38(1);

wholesale products has the meaning given in section 38(1)(b).

(2) Regulations referred to in section 38(1), or wholesale arrangements, may —

(a) set out requirements to be complied with, or standards or principles to be observed, by the corporation in relation to —

(i) the wholesale acquisition or supply of electricity by the corporation; or

(ii) the acquisition or supply of wholesale products by the corporation;

and

(b) without limiting paragraph (a), require the corporation to lodge with a specified person an instrument setting out the terms and conditions that are to apply to —

(i) the wholesale acquisition or supply by the corporation of a specified amount of electricity or an amount of electricity determined in a specified manner; or

(ii) the acquisition or supply by the corporation of specified wholesale products or wholesale products of a specified class;

and

(c) set out the process for the approval of an instrument referred to in paragraph (b), including the matters to be taken into account when deciding whether to give approval; and

(d) set out the process for the amendment or replacement of an approved instrument; and

(e) impose obligations on the corporation, including an obligation to give an undertaking to a specified person in respect of a specified matter or class of matter; and

(f) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and

(g) provide for the rights of persons to be supplied with electricity or wholesale products —

(i) in accordance with requirements, standards or principles set out in the regulations or wholesale arrangements; or

(ii) on terms and conditions set out in an approved instrument;

and

(h) provide for matters of an incidental or supplementary nature.

(3) Regulations referred to in section 38(1) may —

(a) provide that a provision of the regulations or wholesale arrangements that —

(i) imposes an obligation on the corporation; and

(ii) is specified in the regulations or of a class specified in the regulations,

is a civil penalty provision for the purposes of the regulations; and

(b) prescribe, for a contravention of a civil penalty provision —

(i) an amount not exceeding $100 000; and

(ii) in addition a daily amount not exceeding $20 000,

that may, in accordance with the regulations, be demanded from or imposed upon the corporation; and

(c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and

(d) provide for and regulate the taking of proceedings in respect of alleged contraventions by the corporation of provisions of the regulations or wholesale arrangements, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and

(e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and

(f) provide for the review by a specified person of decisions made under the regulations or wholesale arrangements.

(4) In subsection (3)(b)(ii) —

daily amount means an amount for each day or part of a day during which the contravention continues.

(5) If wholesale arrangements confer functions on a person —

(a) the functions are to be taken to be conferred by this Act; and

(b) the person is authorised to perform the functions.

[Section 39 inserted: No. 25 of 2013 s. 14.]

*[**40.** Deleted: Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 cl. 119.]*

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

~~(1) The corporation must disclose to the Registrar appointed under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the names and addresses of the persons who are supplied electricity or gas by the corporation, but not photographs or signatures of such persons.~~

~~(2) Information disclosed under subsection (1) may be used in the performance of the Registrar's functions under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* but not for any other purpose.~~

~~(3) The disclosure of information under subsection (1) is to be free of charge.~~

~~*[Section 40 inserted: No. 25 of 2013 s. 14.]*~~

Subdivision 3 — Electricity Networks Corporation

41. Principal functions

The functions of the Electricity Networks Corporation (in this Subdivision called the ***corporation***) are —

(a) to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems and provide and improve electricity transmission and distribution services; and

(b) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8 (which relates to network access) and regulations and Code made under that Part; and

(c) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 9 (which relates to the wholesale electricity market) and regulations and market rules made under that Part; and

(d) to provide services that improve the efficiency of electricity supply and the management of demand on electricity transmission and distribution systems; and

(e) to provide ancillary services; and

(f) by agreement with the Regional Power Corporation, to operate and maintain electricity transmission and distribution systems on behalf of that corporation; and

(g) by agreement with the Electricity Generation and Retail Corporation and the Regional Power Corporation, to

provide procurement, financial and commercial services to those corporations; and

(h) to provide telecommunication services; and

(i) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

[Section 41 amended: No. 25 of 2013 s. 15.]

42. Other functions

It is also a function of the corporation —

(a) in addition to its functions under section 41(f) and (g), to use its expertise and resources, other than those relating to the functions referred to in section 41(c), to provide consultative, advisory or other services for profit; or

(b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 41(a) or (d) to (i); or

(c) to manufacture and market any product that relates to a function —

(i) under section 41(a) or (d) to (i); or

(ii) under paragraph (b) of this section;

or

(d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 41(a) or (d) to (i) so long as the proper performance of the function is not affected; or

(e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 41 or this section; or

(f) to do anything that it is authorised to do by any other written law.

43. Restriction on area in which corporation may operate

(1) Within the State the performance of the corporation's functions under section 41 is limited to the South West interconnected system.

(2) Subsection (1) does not apply to the performance of the corporation's functions under section 41(f) and (g), but the functions under section 41(f) or (i) do not authorise the corporation to own or control any electricity transmission or distribution system.

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

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

[Section 43 amended: No. 25 of 2013 s. 16.]

[Subdivision 4 (s. 44-50A) deleted: No. 25 of 2013 s. 17.]

Subdivision 5 — Regional Power Corporation

50. Principal functions

The functions of the Regional Power Corporation (in this Subdivision called the ***corporation***) are —

(a) to generate, purchase or otherwise acquire electricity from sources of energy including renewable sources; and

(b) to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems and provide and improve electricity transmission and distribution services; and

(c) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8 (which relates to network access) and regulations and Code made under that Part; and

(d) to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand and which, so far as is practicable, are comparable to services provided by the Electricity Generation and Retail Corporation in the performance of its functions under section 35(da); and

(e) to acquire, transport and supply —

(i) gas; and

(ii) steam;

and

(f) to acquire, develop, operate and supply energy efficient technologies; and

(g) to provide ancillary services; and

(h) by agreement with the Electricity Generation and Retail Corporation, to operate and maintain any electricity generation plant or equipment on behalf of that corporation; and

(i) to provide telecommunication services; and

(j) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in this section.

[Section 50 amended: No. 25 of 2013 s. 18.]

51. Other functions

It is also a function of the corporation —

(a) to use its expertise and resources to provide consultative, advisory or other services for profit; or

(b) to develop and turn to account any technology, software or other intellectual property that relates to a function under section 50 other than the function under section 50(c); or

(c) to manufacture and market any product that relates to a function under section 50 or paragraph (b); or

(d) to use or exploit for profit the fixed assets it has for the purpose of performing a function under section 50, other than the function under section 50(c), so long as the proper performance of the function is not affected; or

(e) to do anything that the corporation determines to be conducive or incidental to the performance of a function under section 50 or this section; or

(f) to do anything that it is authorised to do by any other written law.

52. Restriction on area in which corporation may operate

(1) Within the State the performance of the corporation's functions under section 50(a) to (g) and (i) and (j) relating to electricity is limited to electricity systems in those parts of the State (the ***area of operations***) that are not served by the South West interconnected system.

(2) Within the State the performance of the corporation's functions of —

(a) supplying gas or steam; or

(b) providing telecommunication services,

is limited to supply or provision within the area of operations.

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

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

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

(4) Regulations may be made authorising the corporation —

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

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

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

[Section 52 amended: No. 25 of 2013 s. 19.]

Subdivision 6 — Special function in respect of certain assets and liabilities

53. Administration under delegated power

(1) In this section —

unallocated asset or liability means an asset, right or liability that, under section 169 is to be dealt with by the Minister.

(2) Regulations may be made —

(a) declaring —

(i) any specified unallocated asset or liability; or

(ii) any specified group of such assets or liabilities,

to be an asset or liability or group to which this section applies (the ***declared matters***); and

(b) designating a corporation to act in respect of the declared matters.

(3) If regulations are in force designating a corporation to act in respect of declared matters —

(a) the Minister may, in writing, delegate his or her powers or duties under section 166 in respect of those matters to that corporation; and

(b) it is a function of the corporation to exercise the powers or duties so delegated.

(4) A corporation exercising or performing a power or duty that has been delegated to it under this section is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

(5) A corporation may exercise or perform a power or duty that has been delegated to it under this section through an officer or agent.

(6) The regulations may prescribe provisions of this Act that —

(a) do not apply; or

(b) apply with specified modifications, other than in relation to quality and reliability of supply,

to the declared matters or the exercise of the powers or duties under this section.

(7) Regulations referred to in subsection (6) cannot limit or otherwise affect community service obligations, as defined in section 99(1), to be performed by a corporation under this Act.

Subdivision 7 — Use of distribution systems for the retail supply of electricity

54. Electricity Networks Corporation and Regional Power Corporation not to supply services for certain purposes

(1) In this section —

customer, ***distribution licence*** and ***integrated regional licence*** have the meanings given to those terms in the *Electricity Industry Act 2004* section 3;

prescribed customer means a customer of a class prescribed by order under subsection (4);

services has the meaning given to that term in the *Electricity Industry Act 2004* section 103.

(2) A distribution licence does not authorise the Electricity Networks Corporation, or a subsidiary of that corporation, to

supply services for the purpose of the supply of electricity to a prescribed customer by a person other than the Electricity Generation and Retail Corporation or a subsidiary of the Electricity Generation and Retail Corporation.

(3) A distribution licence or an integrated regional licence does not authorise the Regional Power Corporation, or a subsidiary of that corporation, to supply services for the purpose of the supply of electricity to a prescribed customer by a person other than that corporation or a subsidiary of that corporation.

(4) The Minister may, by order published in the *Gazette* —

(a) declare a class of customers to be prescribed customers for the purposes of subsection (2) or (3); and

(b) amend or revoke an order made under paragraph (a).

(5) Without limiting subsection (4)(a), a class of customers may be declared by reference to —

(a) the amount of electricity that has been consumed by a customer within a specified period; or

(b) an estimate made by a specified person or a person of a specified class of the amount of electricity that will be consumed by a customer within a specified period.

(6) In subsection (5) —

specified means specified in the order.

(7) An order under subsection (4) cannot come into operation before the *Electricity Transmission and Distribution Systems (Access) Act 1994* section 91 [3] and Schedule 6 clause 2(1) [3] have ceased to have effect.

(8) Subsections (2) and (3) have effect despite the *Electricity Industry Act 2004* Part 8.

[Section 54 amended: No. 25 of 2013 s. 20.]

55. Review as to introduction of further retail competition

(1) The Minister is to cause a review to be undertaken of the operation of section 54 and any orders under section 54(4) as soon as practicable after the end of the period of 3 years beginning on the coming into operation of this section.

(2) The purpose of the review is to consider whether or not further competition (including full competition) in the retail supply of electricity should be introduced by amending or revoking any order under section 54(4) that is then in operation.

(3) As soon as practicable after the review is completed, the Minister is to cause a report based on the review to be laid before each House of Parliament.

Subdivision 8 — Provisions applying to functions of all corporations

56. Corporations may act at their discretion

The fact that a corporation has a function given to it by this Act does not impose a duty on it to do any particular thing and, subject to —

(a) this Act; and

(b) any direction given to the corporation under this Act,

it has a discretion as to how and when it performs the function.

57. Where corporation may operate

A corporation may perform any of its functions —

(a) outside the State; and

(b) except as provided in this Division, in any area of the State.

58. Corporation to act in accordance with policy instruments

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

59. Powers

(1) In subsection (3)(g) —

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.

(2) A corporation has all the powers it needs to perform its functions under this Act or any other written law.

(3) A corporation may for the purpose of performing any function —

(a) acquire, hold, manage, improve, develop and dispose of any real or personal property; and

(b) enter into any contract or arrangement; and

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

(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;

and

(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; and

(f) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the corporation; and

(g) subject to sections 64 and 68, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and

(h) carry out any investigation, survey, exploration or boring; and

(i) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and

(j) for the purposes of section 36(b), 42(b) or 51(b), as the case may be, 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.

(4) A corporation may —

(a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community; and

(b) undertake community service obligations within the meaning in section 99(1); and

(c) make any ex gratia payment that the board considers to be in the corporation's interest; and

(d) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the corporation.

(5) Subsection (3) or (4) does not limit subsection (2) or the other powers of a corporation under this Act or any other written law.

(6) If the generality of a power conferred on a corporation by this Act is restricted by a provision of the *Energy Operators (Powers) Act 1979* that restriction applies, despite this Act.

[Section 59 amended: No. 25 of 2013 s. 21.]

60. Certain works exempt from planning laws

(1) In this section —

corporation means each of —

(a) the Electricity Networks Corporation; and

(b) the Regional Power Corporation;

electricity distribution system and ***electricity transmission system*** have the meanings given to those terms in the *Electricity Transmission and Distribution Systems (Access) Act 1994* section 89.

(2) This section applies to the carrying out by a corporation of works for the extension, expansion or enhancement of an electricity distribution system or an electricity transmission system.

(3) Despite the *Planning and Development Act 2005* sections 218 and 221, a corporation is not required to comply with the provisions of —

(a) an interim development order; or

(b) a local planning scheme; or

(c) an improvement scheme,

in force under that Act in carrying out the works referred to in subsection (2).

(4) However, a corporation —

(a) is to carry out the works, so far as is reasonably practicable —

(i) in keeping with the design and intent of; and

(ii) so as not to destroy the amenity of,

any relevant scheme or order referred to in subsection (3); and

(b) is to consult with the responsible authority at the time when a proposal for any works referred to in subsection (2) is being formulated to ensure that paragraph (a) will be complied with.

(5) A corporation is to give the Minister and the Minister responsible for the administration of the *Planning and Development Act 2005* written notice of a proposal to carry out works referred to in subsection (2) if those works will not comply with the provisions of an order or scheme referred to in subsection (3).

(6) A corporation is to include in its annual report under section 107 details of any works carried out by the corporation during the relevant financial year that did not comply with the provisions of an order or scheme referred to in subsection (3).

[Section 60 amended: No. 38 of 2005 s. 15; No. 28 of 2010 s. 31.]

61. Corporation to act on commercial principles

(1) A corporation in performing its functions must —

(a) act in accordance with prudent commercial principles; and

(b) endeavour to make a profit, consistently with maximising its long term value.

(2) In respect of the function of the Electricity Networks Corporation referred to in section 41(c) —

(a) subsection (1) does not apply; and

(b) the corporation is required to ensure, so far as is practicable, that the reasonable cost of performing the function does not exceed its revenue from doing so.

(3) If there is any conflict or inconsistency between the duty imposed by subsection (1) and —

(a) a direction given under this Act; or

(b) any provision in the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 or 6[3],

the direction, or provision of that Schedule, prevails.

62. Segregation of functions

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

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

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

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

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

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

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

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

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

(b) provide for the publication, commencement, and laying before each House of Parliament, of segregation arrangements and instruments amending or repealing them.

(6) If there is a conflict or inconsistency between a provision of regulations referred to in subsection (1) and a provision of segregation arrangements, the provision of the regulations prevails.

[Section 62 inserted: No. 25 of 2013 s. 22.]

63A. Matters for regulations or segregation arrangements

(1) In this section —

segregation arrangements has the meaning given in section 62(1);

specified means specified in the regulations or segregation arrangements.

(2) Regulations referred to in section 62(1), or segregation arrangements, may —

(a) set out requirements to be complied with, or standards or principles to be observed, by a corporation in relation to dealings between one segment of the corporation and another segment of the corporation in respect of a specified matter or class of matter; and

(b) provide for the keeping of accounts and records; and

(c) provide for financial reporting and performance reporting; and

(d) provide for the apportionment of income, expenditure, assets and liabilities; and

(e) provide for the protection of information; and

(f) provide for controls and procedures to ensure that any required segregation is effective; and

(g) impose obligations on a corporation, including an obligation to give an undertaking to a specified person in respect of a specified matter or class of matter; and

(h) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and

(i) provide for matters of an incidental or supplementary nature.

(3) Regulations referred to in section 62(1) may —

(a) provide that a provision of the regulations or segregation arrangements that —

(i) imposes an obligation on a corporation; and

(ii) is specified in the regulations or of a class specified in the regulations,

is a civil penalty provision for the purposes of the regulations; and

(b) prescribe, for a contravention of a civil penalty provision —

(i) an amount not exceeding $100 000; and

(ii) in addition a daily amount not exceeding $20 000,

that may, in accordance with the regulations, be demanded from or imposed upon a corporation; and

(c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and

(d) provide for and regulate the taking of proceedings in respect of alleged contraventions by a corporation of provisions of the regulations or segregation arrangements, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and

(e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and

(f) provide for the review by a specified person of decisions made under the regulations or segregation arrangements.

(4) In subsection (3)(b)(ii) —

daily amount means an amount for each day or part of a day during which the contravention continues.

(5) If segregation arrangements confer functions on a person —

(a) the functions are to be taken to be conferred by this Act; and

(b) the person is authorised to perform the functions.

[Section 63A inserted: No. 25 of 2013 s. 22.]

63. Interruption or restriction of supply

(1) A corporation may interrupt, suspend or restrict the generation, transport or supply of electricity if in its opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.

(2) Subsection (1) does not apply if the *Electricity Industry Act 2004* section 31(1) applies to the activity that is interrupted, suspended or restricted.

(3) A 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.

(4) This section is in addition to the provisions of —

(a) the *Energy Operators (Powers) Act 1979* sections 48, 57 and 58; and

(b) regulations made under the *Electricity Industry Act 2004* section 124,

and does not limit those provisions.

(5) This section has effect despite any provision of the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 or 6.

64. Acquisition of subsidiary

(1) A corporation must obtain the approval of the Minister before it —

(a) forms or acquires a subsidiary; or

(b) enters into any transaction that will result in the formation or acquisition of a subsidiary.

(2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.

65. Control of subsidiary

(1) A corporation must ensure that the constitution of every subsidiary of the corporation that under a written law or the Corporations Act is required to have a constitution —

(a) contains provisions to the effect of those required by Schedule 3; and

(b) is consistent with this Act; and

(c) is not amended in a way that is inconsistent with this Act.

(2) A corporation must, to the maximum extent practicable, ensure that every subsidiary of the corporation complies with its constitution and with this Act.

(3) A director, the chief executive officer or a member of staff of a corporation may with the approval of the board of the corporation become —

(a) a member of the management committee of an incorporated association; or

(b) a director of a company,

that is or is to be a subsidiary of the corporation and may represent the interests of the corporation on that committee or the board of directors of that company.

(4) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of a corporation.

[Section 65 amended: No. 30 of 2015 s. 216.]

66. Corporations Act, provisions affecting

(1) Neither —

(a) section 65(1) or (2); nor

(b) provisions referred to in section 65(1)(a) included in the constitution of a subsidiary,

make a corporation or the Minister a director of a subsidiary for the purposes of the Corporations Act.

(2) The following provisions are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the Corporations legislation as defined in the Corporations Act section 9 —

(a) section 65;

(b) subsection (1);

(c) Schedule 3.

67. Disposals that require Ministerial order

(1) In this section —

dispose of means enter into any arrangement or series of arrangements that results in a corporation ceasing to have at least 75% of the beneficial interest in a significant asset;

significant asset means any property of a corporation (including any contract, shares in a company or interest in a joint venture) that has a value exceeding the greater of —

(a) the sum equal to 5% 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 $100 million.

(2) A corporation must not dispose of a significant asset except under and in accordance with an order (a ***disposal order***) made by the Minister under this section.

(3) A corporation that intends to dispose of a significant asset must consult with the Minister before undertaking the disposal.

(4) The Minister may make a disposal order —

(a) authorising a corporation to dispose of a significant asset and to do so on such terms and conditions as may be specified in the order; and

(b) if the Minister thinks fit, prescribing the process to be followed by the corporation in undertaking the disposal.

(5) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to a disposal order as if it were a regulation.

68. Other transactions that require Ministerial approval

(1) In this section and section 69 —

transaction —

(a) includes a contract or other arrangement or any exercise of the power conferred by section 59(3)(g); but

(b) does not include —

(i) a disposal to which section 67 applies; or

(ii) any transaction under section 127 or 129.

(2) Despite anything in this Part, a corporation must obtain the approval of the Minister before a transaction to which this section applies is entered into.

(3) This section applies to a transaction if —

(a) it is to be entered into by a corporation or a subsidiary of the corporation; and

(b) it is not exempt under section 69; and

(c) the corporation's liability exceeds the prescribed amount.

(4) For the purposes of subsection (3)(c) a corporation's liability is —

(a) the amount or value of the consideration; or

(b) the amount to be paid or received by the corporation or a subsidiary,

ascertained as at the time when the transaction is entered into.

(5) The prescribed amount in relation to a corporation is the greater of —

(a) the sum equal to 1% of the written down value of the consolidated fixed assets and investments of the corporation, as appearing in its last audited accounts; or

(b) the sum of $20 million.

69. Exemptions from s. 68

(1) The Minister may by order exempt a transaction or class of transaction from the operation of section 68 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 a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

70. Minister to be consulted on major initiatives

A 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,

whether or not the course of action involves a transaction to which section 68 applies.

71. Delegation

(1) A corporation may delegate any power or duty of the corporation under —

(a) another provision of this Act; or

(b) another written law.

(2) A delegation under subsection (1) may be made to —

(a) a director or directors; or

(b) a chief executive officer; or

(c) a member or members of staff; or

(d) a committee established under section 13; or

(e) any other person.

(3) The delegation must be in writing executed by the corporation.

(4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(5) A person exercising or performing a power or duty that has been delegated to the person 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 limits the ability of a corporation to perform a function through an officer or agent.

72. Disclosure of information in compliance with request under *Fines, Penalties and Infringement Notices Enforcement Act 1994*

(1) If a corporation is given a request to disclose information under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 100A, the corporation must disclose information in compliance with the request.

(2) The information disclosed in compliance with a request referred to in subsection (1) may include the names and addresses of customers of the corporation but must not include photographs or signatures of those customers.

(3) The disclosure of information is to be free of charge.

[Section 72 inserted: Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 cl. 120.]

[Division 2 (s. 73~~2~~-74) deleted: No. 25 of 2013 s. 23.]

Division 3 — Arrangements authorised or approved by Governor

75. Governor may make certain regulations

(1) Regulations may be made authorising or approving any arrangement, act, matter or thing in relation to a corporation for the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and the Competition Code.

(2) Regulations referred to in subsection (1) may authorise or approve —

(a) any arrangement involving or relating to a corporation or any subsidiary or the performance by a corporation or any subsidiary of any of its functions; or

(b) any act or thing done or proposed to be done in the State by a 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.

(3) For the purposes of this section —

(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.

[Section 75 amended: No. 25 of 2013 s. 24.]

Division 4 — Protection of persons dealing with a corporation

76. Person dealing with corporation may make assumptions

(1) A person having dealings with a corporation is entitled to make the assumptions mentioned in section 78.

(2) In any proceedings in relation to the dealings, any assertion by the corporation concerned that the matters that the person is entitled to assume were not correct must be disregarded.

77. Third party may make assumptions

(1) A person (the ***third party***) having dealings with a person (the ***second party***) who has acquired, or purports to have acquired, title to property from a corporation (whether directly or indirectly) is entitled to make the assumptions mentioned in section 78.

(2) In any proceedings in relation to the dealings, any assertion by the corporation concerned or the second party that the matters that the third party is entitled to assume were not correct must be disregarded.

78. Assumptions that may be made

The assumptions that a person is, because of section 76 or 77, entitled to make are —

(a) that, at all relevant times, this Act has been complied with; and

(b) that a person who is held out by a 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;

and

(c) that a member of staff or agent of a corporation who has authority to issue a document on behalf of a corporation has authority to warrant that the document is genuine; and

(d) that a member of staff or agent of a 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; and

(e) that a document has been properly sealed by a 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 135;

and

(f) that the directors, chief executive officer, members of staff and agents of a corporation have properly performed their duties to the corporation.

79. Exception to s. 76 and 77

(1) Despite sections 76 and 77, a person is not entitled to assume a matter mentioned in section 78 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 concerned, 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 in relation to dealings with a corporation, section 76(2) does not apply to any assertion by the corporation in relation to the assumption.

(3) If, because of subsection (1), the third party is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from a corporation of title to property,

section 77(2) does not apply to any assertion by the corporation or the second party in relation to the assumption.

Part 4 — Operation of corporations, imposition of requirements

80. Terms used

In this Part —

corporation includes a subsidiary of a corporation;

prescribed contract means a contract referred to section 82(1);

specified means specified in a prescribed contract.

81. Object of this Part

The object of this Part is to confer on the Minister power to determine arrangements between the corporations in order to —

(a) encourage the development of competition in the generation, wholesaling and retailing of electricity; and

(b) establish the terms and conditions of the initial arrangements that are to have effect between them; and

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

[Section 81 amended: No. 25 of 2013 s. 25.]

82. Minister may prescribe contracts

(1) The Minister may by order prescribe provisions that are to have effect as a contract between —

(a) a specified corporation and another specified corporation; or

(b) 2 or more specified corporations.

(2) The Minister is to cause an order under subsection (1) to be served on each of the corporations concerned.

83. Matters that may be provided for

(1) A prescribed contract may provide for such matters as the Minister considers necessary or expedient to achieve a purpose mentioned in section 81(a), (b) or (c).

(2) Without limiting subsection (1), a prescribed contract may include provision for —

(a) a specified amount of electricity, or an amount of electricity determined in a specified manner, to be supplied or made available by a corporation to another corporation for a specified purpose; and

(b) the prices to be paid or price limits that are to apply.

(3) A prescribed contract may set out —

(a) the rights and obligations of the corporations concerned; and

(b) arrangements and procedures that are to apply between them; and

(c) requirements that are to be complied with by each of the corporations; and

(d) any incidental or supplementary provision that the Minister considers it necessary or expedient to include in the contract.

[Section 83 amended: No. 25 of 2013 s. 26.]

84. Amendment or cancellation

(1) The Minister may —

(a) vary or add to the provisions of a prescribed contract; or

(b) cancel the contract and replace it with another prescribed contract.

(2) The Minister is to cancel, without replacing, a prescribed contract made for the purpose mentioned in section 81(a) when he or she considers that the State electricity market is operating in an open and competitive manner.

(3) An amendment or cancellation is to be made by order served on the corporations concerned.

85. Enforcement

(1) A prescribed contract is taken to have been entered into between the corporations concerned, and the rights and obligations under the contract are enforceable accordingly.

(2) A prescribed contract has effect despite any other provision of this Act.

86. Advice of Economic Regulation Authority to be obtained

(1) Before the Minister cancels a prescribed contract under section 84(2) the Minister must obtain, and take into account, the views of the Economic Regulation Authority on the effect that the proposed cancellation is likely to have on the encouragement of competition in the generation, wholesaling and retailing of electricity.

(2) It is a function of the Economic Regulation Authority to give advice for the purposes of subsection (1).

87. Trade practices exemption

For the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and the Competition Code, each of the following —

(a) the making of an order under section 82(1) or 84;

(b) a prescribed contract;

(c) anything done under, or to give effect to, a prescribed contract,

is specifically authorised to the extent that it would otherwise contravene that Act or that Code.

[Section 87 amended: No. 25 of 2013 s. 27.]

Part 5 — Provisions about accountability

Division 1 — Strategic development plans

88. Draft strategic development plan to be submitted to Minister

(1) The board of a corporation 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) The Minister may from time to time, with the concurrence of the Treasurer, by notice in writing to a corporation —

(a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or

(b) cancel a notice given under paragraph (a).

(3) Each draft strategic development plan is to be submitted not later than —

(a) the day fixed under subsection (2); or

(b) if there is for the time being no day so fixed, 2 months before the start of the next financial year.

89. Transitional provision

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

90. 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 (where appropriate), 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.

(4) The regulations may make provision, not inconsistent with this section, for and in relation to the form and content of strategic development plans.

(5) The regulations may also make special provision —

(a) for and in relation to the content of strategic development plans for the Electricity Networks Corporation; and

(b) for the Minister administering the *Electricity Industry Act 2004* to be consulted on the content of those plans,

so far as they apply to the performance of that corporation's functions under section 41(c).

(6) Regulations are not to be made for subsections (4) and (5) except after consultation with the Treasurer.

91. Strategic development plan to be agreed if possible

The board of a corporation and the Minister must endeavour —

(a) to reach agreement on the draft strategic development plan as soon as possible, and in any event not later than the start of the next financial year; and

(b) to reach such agreement at the same time as they reach agreement on the draft statement of corporate intent under section 100.

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

(1) The Minister may return the draft strategic development plan to a 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 board and the Minister have not reached agreement on a draft strategic development plan 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 134.

93. Strategic development plan pending agreement

(1) In subsection (3) —

latest draft plan means the draft strategic development plan submitted, or last submitted, by the board concerned 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.

(2) This section applies if the board of a corporation and the Minister have not reached agreement on a draft strategic development plan for the corporation and any subsidiary before the start of a financial year.

(3) 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 94.

94. Minister's agreement to draft strategic development plan

When the board of a corporation and the Minister have reached agreement on a draft strategic development plan for the corporation and any subsidiary, it becomes the strategic development plan for the corporation and any subsidiary for the relevant financial year or the remainder of the year, as the case may be.

95. Modifications of strategic development plan

(1) A strategic development plan may be modified by a board with the agreement of the Minister.

(2) The Minister may, by written notice, direct a board to modify the strategic development plan.

(3) Before giving a direction to a board under subsection (2) 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 134.

96. Concurrence of Treasurer

The Minister is not to —

(a) agree to a draft strategic development plan under section 94; or

(b) agree to or direct any modification of a strategic development plan under section 95,

except with the concurrence of the Treasurer.

Division 2 — Statement of corporate intent

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

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

(2) The Minister may from time to time, with the concurrence of the Treasurer, by notice in writing to a corporation —

(a) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1); or

(b) cancel a notice given under paragraph (a).

(3) Each draft statement of corporate intent is to be submitted not later than —

(a) the day fixed under subsection (2); or

(b) if there is for the time being no day so fixed, 2 months before the start of the next financial year.

98. Transitional provision

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

99. Matters to be included in statement of corporate intent

(1) In subsection (3) —

community service obligations means obligations to perform functions or to meet performance targets that it is not in the commercial interests of the corporation concerned to perform or to meet.

(2) The statement of corporate intent of a corporation must be consistent with the strategic development plan under Division 1 for the corporation and any subsidiary.

(3) The statement of corporate intent for a 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; and

(b) an outline of objectives; and

(c) an outline of the nature and scope of the functions proposed to be performed during the relevant financial year; and

(d) an outline of main undertakings during the relevant financial year; and

(e) the dividend policy for the relevant financial year; and

(f) accounting policies that apply to the preparation of accounts; and

(g) the type of information to be given to the Minister, including information to be given in quarterly and annual reports; and

(h) the nature and extent of community service obligations that are to be performed; and

(i) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations; and

(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.

(4) The Minister may exempt a corporation from including any matter, or any aspect of a matter, mentioned in subsection (3) in its statement of corporate intent.

(5) The regulations may make provision, not inconsistent with this section, for and in relation to the form and content of statements of corporate intent.

(6) The regulations may also make special provision —

(a) for and in relation to the content of statements of corporate intent for the Electricity Networks Corporation; and

(b) for the Minister administering the *Electricity Industry Act 2004* to be consulted on the content of those statements,

so far as they apply to the performance of the corporation's functions under section 41(c).

(7) Regulations are not to be made for subsections (5) and (6) except after consultation with the Treasurer.

100. Statement of corporate intent to be agreed if possible

The board of a corporation and the Minister must endeavour —

(a) 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; and

(b) to reach such agreement in accordance with section 91(b).

101. Minister's powers in relation to draft statement of corporate intent

(1) The Minister may return the draft statement of corporate intent to a 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 board and the Minister have not reached agreement on a draft statement of corporate intent 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 134.

102. Statement of corporate intent pending agreement

(1) In subsection (3) —

latest draft statement means the draft statement of corporate intent submitted, or last submitted, by the board concerned 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.

(2) This section applies if the board of a corporation and the Minister have not reached agreement on a draft statement of corporate intent for the corporation and any subsidiary before the start of a financial year.

(3) 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 103.

103. Minister's agreement to draft statement of corporate intent

(1) When the board of a corporation and the Minister have reached agreement on a draft statement of corporate intent for the corporation and any subsidiary, 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 agreeing 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 134.

(3) A 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.

(4) Any copy of a statement of corporate intent to which subsection (3) applies must —

(a) contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear; and

(b) be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.

(5) Nothing in subsection (3) affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

104. Modifications of statement of corporate intent

(1) A statement of corporate intent may be modified by a board with the agreement of the Minister.

(2) The Minister may, by written notice, direct a board to modify the statement of corporate intent, and the board must comply with any such direction.

(3) Before giving a direction to a board under subsection (2), 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 134.

105. Concurrence of Treasurer

The Minister is not to —

(a) agree to a draft statement of corporate intent under section 103; or

(b) agree to or direct any modification of a statement of corporate intent under section 104,

except with the concurrence of the Treasurer.

Division 3 — Quarterly and annual reports

106. Quarterly reports

(1) A 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 by a corporation —

(a) on a consolidated basis; and

(b) for any segment of the corporation required under regulations or segregation arrangements referred to in section 62(1).

(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 Minister and the board concerned, within the agreed period.

(4) A corporation must give a copy of each quarterly report to the Treasurer.

(5) A quarterly report must —

(a) include the information required to be given in the report by a relevant statement of corporate intent under Division 2; and

(b) comply with regulations and segregation arrangements referred to in section 62(1).

(6) Subject to section 109, the Minister must, after consultation with the board concerned, make a quarterly report available to the public.

[Section 106 amended: No. 25 of 2013 s. 28.]

107. Annual reports

(1) A 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 Schedule 4 clauses 32 and 33; and

(ii) for any segment of the corporation required under regulations or segregation arrangements referred to in section 62(1);

and

(b) any subsidiary, which is to be done in accordance with Schedule 4 clauses 32 and 33.

(2) All of the reports under subsection (1) are to be sent to the Minister at the same time.

(3) The Minister must, within 21 days after the day on which an annual report of a 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 134.

(4) An annual report on the operations of a subsidiary is not required to be laid before Parliament or dealt with in accordance with section 134.

[Section 107 amended: No. 25 of 2013 s. 29.]

108. Contents of annual reports

(1) The annual report in respect of a 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; and

(b) include a comparison of the performance of the corporation or the subsidiary with any relevant statement of corporate intent; and

(c) comply with regulations and segregation arrangements referred to in section 62(1); and

(d) include particulars of any directions given by the Minister under section 92(3), 95(2), 101(3), 104(2), 111(1), 119(4), 126(3) or 127A(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

(e) 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 111(1),

that were given during the relevant financial year.

(2) The annual report in respect of a corporation must also include a summary of the report referred to in section 33.

(3) The requirements of this section are in addition to Schedule 4 clauses 32 and 33.

[Section 108 amended: No. 25 of 2013 s. 30; No. 16 of 2015 s. 4.]

109. Deletion of commercially sensitive matters from reports

(1) The board of a corporation may request the Minister to delete a matter that is of a commercially sensitive nature from the copies of a quarterly or annual report (and accompanying documents) relating to the corporation that are to be made public.

(2) The Minister may, despite section 108, comply with a request under subsection (1).

(3) If the Minister complies with a request under subsection (1) the copies of the report are to include a statement that a matter has been deleted from it under this section.

(4) Nothing in this section affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

Division 4 — Ministerial directions

110. Directions to corporation

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

111. Directions generally

(1) The Minister may give directions in writing to a corporation with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to section 112, the corporation is to give effect to any such direction.

(2) Without limiting subsection (1) and despite anything in Part 3, the Minister may under that subsection direct a corporation —

(a) not to perform a function specified in the direction; or

(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.

(3) Subsection (2) does not authorise a direction of a kind mentioned in section 114.

(4) Despite subsection (1), the Minister cannot give a direction to the Electricity Networks Corporation with respect to the exercise or performance of any power or duty of that corporation under the *Electricity Industry Act 2004* Part 9 or regulations or market rules made under that Part.

(5) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with in accordance with section 134 —

(a) within 14 days after the direction is given; or

(b) if the direction is the subject of a notice under section 112(1), within 14 days after it is confirmed under section 112(2).

112. Directions contrary to commercial interest

(1) Where a direction under section 111 is given to a corporation and the board of the corporation determines that —

(a) it would be inconsistent with section 61(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 a 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.

113. When directions take effect

(1) A direction under section 111 becomes effective —

(a) on the expiry of 7 days after its receipt by the board concerned or of such longer period as the Minister may, at the request of the board, determine; or

(b) if it is the subject of a notice under section 112(1), on its being confirmed under section 112(2).

(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.

114. Directions relating to supply of gas

(1) In this section —

corporation means the Electricity Generation and Retail Corporation;

specified means specified in the instrument referred to in subsection (2).

(2) The Minister may, despite section 35(b), by instrument served on the corporation direct it not to sell or supply gas —

(a) within, or for delivery or consumption within, a specified area or specified areas of the State; or

(b) in specified quantities; or

(c) to specified customers or a specified class of customers.

(3) The corporation must comply with a direction in an instrument under subsection (2).

(4) The Minister may —

(a) amend or revoke an instrument under subsection (2); or

(b) revoke the instrument and replace it with another instrument.

(5) An amendment or revocation is to be made by instrument served on the corporation.

(6) The Minister must, within 14 days after an instrument is served on the corporation under this section, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

[Section 114 amended: No. 25 of 2013 s. 31.]

Division 5 — Consultation and provision of information

115. Consultation

The board of a corporation 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.

116. Minister to have access to information

(1) In this section —

document includes any tape, disk 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.

(2) The Minister is entitled —

(a) to have information in the possession of a 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.

(3) For the purposes of subsection (2) the Minister may —

(a) request the chief executive officer or the board of a corporation to furnish information to the Minister;

(b) request the chief executive officer or the board of a corporation to give the Minister access to information;

(c) for the purposes of paragraph (b) make use of the staff of a corporation and any subsidiary to obtain the information and furnish it to the Minister.

(4) A request under subsection (3)(a) may specify a time before which the information is to be furnished.

(5) The chief executive officer or the board of a corporation is to —

(a) comply with a request under subsection (3); and

(b) make staff and facilities available to the Minister for the purposes of subsection (3)(c).

(6) Where the chief executive officer or the board of a corporation 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.

117. Provision of information in compiled form

(1) Subsection (2) applies if the Minister wishes to obtain from a 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 of the corporation to furnish to the Minister a document containing information that —

(a) is of a specified description; or

(b) is presented in a specified way; or

(c) relates to a specified period; or

(d) has some other specified characteristic,

or that comes within 2 or more of paragraphs (a) to (d).

(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 of a corporation 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 116(2) 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 a corporation or a subsidiary.

(6) Section 116(6) applies where a document is furnished under this section in the same way as it applies where information is furnished under that section.

118. Minister to be kept informed

A corporation must —

(a) keep the Minister reasonably informed of the operations, financial performance and financial position of the corporation and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the corporation and its subsidiaries; and

(b) give the Minister reports and information that he or she requires for the making of informed assessments of matters mentioned in paragraph (a); and

(c) if matters arise that in the opinion of the board of the corporation 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.

119. Notice of financial difficulty

(1) The board of a corporation 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; and

(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 a corporation including a direction requiring the corporation or any subsidiary to cease or limit the performance of any function.

(5) The board of a corporation 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 is given under subsection (4), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

Division 6 — Protection from liability

120. No liability for certain acts or omissions

(1) A corporation, a subsidiary of a 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 —

(i) section 106, 107, 115, 116, 117, 118 or 119; or

(ii) the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 4 or 6 [3] or Schedule 6 clause 4 or 6 [3];

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 92(3), 95(2), 101(3), 104(2), 111(1), 119(4), 126(3), 127A(3) or 198(1).

(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 Schedule 2 clause 2 or 3.

[Section 120 amended: No. 25 of 2013 s. 32; No. 16 of 2015 s. 5.]

Part 6 — Financial provisions

Division 1 — General

121. Bank account

(1) A 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 has the meaning given to that term in the *Financial Management Act 2006* section 3.

[Section 121 amended: No. 77 of 2006 Sch. 1 cl. 53(1).]

122. Investment

Funds of a corporation that are not being used for the performance of the corporation's functions may be invested in such investments as the board of the corporation determines.

123. Exemption from rates

Land is not rateable land for the purposes of the *Local Government Act 1995* if it is —

(a) vested in, or under the management and control of, a corporation; and

(b) 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

124. Payment of amount in lieu of rates

A corporation must pay to the Treasurer in respect of a financial year an amount equal to the sum of all local government rates and charges that, but for —

(a) section 123; and

(b) the *Local Government Act 1995* section 6.26(2)(a)(i),

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

125. Determination of amounts under s. 124

Amounts payable under section 124 —

(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.

126. Dividend

[(1) deleted]

(2) The board of a corporation, as soon as practicable after the end of each financial year, is to make a recommendation to the Minister as to —

(a) whether the corporation should pay to the Treasurer a dividend for the year; and

(b) if so, the amount that should be paid.

(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 the corporation to pay a dividend of an amount specified in the direction.

(4) The Minister must, within 14 days after a direction is given under subsection (3), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

(5) A corporation is to pay any dividend —

(a) as soon as is 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 126 amended: No. 16 of 2015 s. 6.]

127A. Interim dividend

(1) If the Minister considers that payment by a corporation of an interim dividend is justified, the Minister may give written

notice to the board of the corporation informing it that an interim dividend is to be paid to the Treasurer.

(2) As soon as is practicable after it receives a notice under subsection (1) the board is to make a recommendation to the Minister as to the amount of the interim dividend that the board recommends as appropriate.

(3) The Minister, with the Treasurer's concurrence —

(a) may accept a recommendation under subsection (2); or

(b) after consultation with the board, is to direct the corporation to pay an interim dividend of an amount specified in the direction.

(4) The corporation is to pay the interim dividend —

(a) as soon as is practicable after the amount is fixed under subsection (3); and

(b) in any case not later than —

(i) 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.

(5) The Minister must, within 14 days after a direction is given under subsection (3), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 134.

[Section 127A inserted: No. 16 of 2015 s. 7.]

127B. Amount of dividend

(1) In this section —

solvent has the meaning given in the *Corporations Act 2001* (Commonwealth) section 95A(1).

(2) The board of a corporation must, before recommending the amount of a dividend under section 126(2) or 127A(2), be satisfied that —

(a) the corporation's assets will, immediately before the dividend is paid, exceed its liabilities; and

(b) the excess is sufficient for the payment of the dividend; and

(c) the corporation will, immediately after the dividend is paid, be solvent.

(3) The Minister must, before giving a direction to a corporation under section 126(3) or 127A(3) as to the amount of a dividend, be satisfied that —

(a) the corporation's assets will, immediately before the dividend is paid, exceed its liabilities; and

(b) the excess is sufficient for the payment of the dividend; and

(c) the corporation will, immediately after the dividend is paid, be solvent.

(4) For the purposes of subsection (3), it is sufficient for the Minister to be satisfied on the advice of the board of the corporation.

[Section 127B inserted: No. 16 of 2015 s. 7.]

Division 3 — Borrowing

127. Borrowing

(1) In subsection (2)(c) —

debt paper means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.

(2) A corporation may, subject to section 128 —

(a) borrow or re-borrow moneys; or

(b) obtain credit; or

(c) issue, acquire, hold or dispose of debt paper; or

(d) create and issue capital instruments; or

(e) otherwise arrange for financial accommodation to be extended to the corporation.

(3) Capital instruments created and issued by a corporation under subsection (2)(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 Treasurer approves.

(4) A corporation is to keep such registers for the purposes of this section as may be prescribed.

128. Borrowing limits

(1) The Treasurer may, in accordance with subsections (2), (3) and (4), by notice to a corporation, impose monetary limits on the exercise by the corporation of the powers conferred by section 127.

(2) The monetary limit in respect of a corporation is to be determined for the exercise of those powers in the financial year following the commencement of this section.

(3) That limit in respect of a corporation 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 in respect of a corporation continues to apply until it is so varied.

(5) A corporation must comply with any limit for the time being in force in respect of it.

(6) A liability of a 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 a corporation is bound or concerned to enquire whether the corporation has complied or is complying with this section.

129. Hedging transactions

(1) A corporation may in connection with the exercise of any power conferred by section 127 —

(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;

(xii) a transaction of such other class as is approved in writing by the Treasurer as a class of transactions to which this paragraph applies;

or

(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 127.

(2) In subsection (1)(a) —

interest rate includes coupon rate, discount rate and yield.

Division 4 — Guarantees

130. Guarantees

(1) The Treasurer may with the concurrence of the Minister, in the name and on behalf of the State, guarantee the performance by a corporation, in the State or elsewhere, of any financial obligation of the corporation —

(a) arising under section 127; or

(b) to which it becomes subject under Part 9.

(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 Account, and this subsection appropriates that Account accordingly.

(4) The Treasurer is to cause any amounts received or recovered from a corporation or otherwise in respect of any payment made by the Treasurer under a guarantee to be paid into the Consolidated Account.

[Section 130 amended: No. 77 of 2006 s. 4 and 5(1).]

131. Charges for guarantee

(1) The Treasurer may, after consultation with the board of a corporation, fix charges to be paid by the corporation to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 130.

(2) Payments by a corporation to the Treasurer in respect of any charges under subsection (1) are required to be made at such times, and in such instalments, as the Treasurer determines.

[Section 131 amended: No. 77 of 2006 s. 4.]

Division 5 — Financial administration and audit

132. Limited application of *Financial Management Act 2006* and *Auditor General Act 2006*

Despite anything in the *Financial Management Act 2006* or the *Auditor General Act 2006*, those Acts, other than the provisions referred to in Schedule 4 clauses 34(2) and 35(2), do not apply to a corporation or any person performing functions under this Act.

[Section 132 amended: No. 77 of 2006 Sch. 1 cl. 53(2).]

133. Financial administration and audit

(1) Schedule 4 has effect in relation to the financial administration and audit of a corporation.

(2) Schedule 4 may be amended by regulations made by the Governor in accordance with subsections (3) and (4).

(3) If —

(a) a provision of Schedule 4 that sets out the substance of a provision of the Corporations Act, does not accurately reflect the corresponding provision of the Corporations Act as in force for the time being; or

(b) the Corporations Act as in force for the time being does not contain a provision that corresponds to a provision of Schedule 4 that sets out the substance of a provision of the Corporations Act; or

(c) the Corporations Act as in force for the time being contains a provision relating to a matter provided for by Schedule 4, the substance of which is not set out in Schedule 4,

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 4 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.

(5) If because of the amendment of Schedule 4 by regulations under subsection (2) it is necessary or expedient to —

(a) delete or alter a reference in this Act to a provision of Schedule 4; or

(b) include in this Act a reference to a provision of Schedule 4; or

(c) make some other consequential modification to this Act,

the regulations may amend this Act for the purpose of deleting, altering or including the reference or making the modification.

(6) Regulations are not to be made under subsection (2) except with the Treasurer's concurrence.

Part 7 — Miscellaneous

134. Supplementary provision for laying document before Parliament

(1) If —

(a) at the commencement of a period referred to in section 69(4), 92(5), 95(4), 101(5), 103(2), 104(4), 107(3), 111(5), 114(6), 119(6), 126(4), 127A(5), 146 or 199 or Schedule 2 clause 13(7) 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 taken to have been laid before that House.

(3) The laying of a copy of a document that is taken to have occurred under subsection (2) 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.

[Section 134 amended: No. 25 of 2013 s. 33; No. 16 of 2015 s. 8.]

135. Execution of documents

(1) A corporation is to have a common seal.

(2) A document is duly executed by a corporation if —

(a) the common seal of the corporation is affixed to it in the presence of —

(i) 2 directors; or

(ii) a director and the chief executive officer; or

(iii) a director and an executive officer;

or

(b) it is signed on behalf of the corporation by a person or persons referred to in subsection (4).

(3) The common seal of a corporation is not to be affixed to a document except in accordance with this section.

(4) A corporation may, by writing under its common seal, authorise a director, the chief executive officer, 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 a 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 executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.

(7) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

136. 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 a 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 concerned and other parties to the contract.

(3) Subsection (1) does not prevent a corporation from making, varying or discharging a contract under its common seal.

137. Delegation by Treasurer

(1) In subsection (2) —

Treasury officer means an officer of the department that principally assists the Minister administering the *Financial Management Act 2006* in the administration of that Act.

(2) The Treasurer may delegate to a Treasury officer any power or duty of the Treasurer under another provision of this Act.

(3) The delegation must be in writing signed by the Treasurer.

(4) An officer to whom a power or duty is delegated under this section cannot delegate that power or duty.

(5) An officer exercising or performing a power or duty that has been delegated to the officer under this section is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

[Section 137 amended: No. 77 of 2006 Sch. 1 cl. 53(3).]

138. Regulations

(1) 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.

(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.

Part 8 — Amendments to other written laws

*[**139.** Omitted under the Reprints Act 1984 s. 7(4)(e).]*

140. Power to amend subsidiary legislation

(1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.

(2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of this Act or the *Electricity Corporations Amendment Act 2013*.

(3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

[Section 140 amended: No. 25 of 2013 s. 34.]

Part 9 — Transitional provisions for succession from Western Power Corporation to new corporations

Division 1 — Preliminary

141. Purpose of this Part

The purpose of this Part is to provide for transitional matters in relation to the repeals effected by Schedule 5 clauses 11 and 19 and in particular to provide for —

(a) the Electricity Generation Corporation; and

(b) the Electricity Networks Corporation; and

(c) the Electricity Retail Corporation; and

(d) the Regional Power Corporation,

to stand in place of, and be the successors to, Western Power Corporation, except so far as section 169 applies.

142. Terms used

(1) In this Part, unless the contrary intention appears —

1994 Act means the *Energy Corporations (Transitional and Consequential Provisions) Act 1994*;

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

(a) a chose in action;

(b) goodwill;

(c) a right, interest or claim of any 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;

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

new corporation means one or more of —

(a) the Electricity Generation Corporation; or

(b) the Electricity Networks Corporation; or

(c) the Electricity Retail Corporation; or

(d) the Regional Power Corporation,

as the case may require;

principal Act means the *Electricity Corporation Act 1994*[4];

records means registers, papers, documents, minutes, receipts, books of account and other records, however compiled, recorded or stored;

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

transfer order means an order made under section 147, as amended under section 153 or corrected under section 189(1), and includes any schedule to a transfer order;

Western Power Corporation means the body corporate that was the corporation under the principal Act section 4(1) before that section was repealed by Schedule 5 clause 11.

(2) For the purposes of this Part, a reference in an agreement or instrument to the Electricity Corporation referred to in the principal Act section 4(1) repealed by the *Statutes (Repeals and Minor Amendments) Act 2000* section 14(3) is to be taken to be or include a reference to Western Power Corporation, unless the context otherwise requires.

143. Saving

The operation of any provision of this Part is not to be regarded —

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

(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; or

(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; or

(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 2 — Powers conferred on Minister

144. Power for certain agreements to be made before commencement day

(1) The purpose of this section is —

(a) to provide for agreements to be made under subsection (2) before the commencement day; and

(b) to bring into existence the bodies corporate referred to in section 4(1) to the limited extent necessary for those agreements to be made.

(2) The Minister may, in the name and on behalf of each body corporate mentioned in subsection (1), agree in writing with Western Power Corporation, for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth section 38-325, that the transfer of assets, rights and liabilities, or of some assets, rights and liabilities, to a new corporation under this Division is the supply of a going concern.

(3) Western Power Corporation is authorised to enter into the agreements referred to in subsection (2).

(4) By this section —

(a) section 4(1) has effect; and

(b) a body corporate referred to in that section is established,

to the extent necessary for the purposes of subsection (2), but to no further extent.

145. Minister may give directions

(1) The Minister may give directions in writing to Western Power Corporation requiring it to take any step that the Minister considers necessary or convenient for achieving the purpose of this Part.

(2) The reference in subsection (1) to the taking of any step includes refraining from taking any step that Western Power Corporation might otherwise take.

(3) Without limiting subsection (1), a direction under that subsection may require Western Power Corporation to act in accordance with the instructions of a committee of persons appointed by the Minister and given responsibility for the implementation of reform in the electricity industry.

(4) Western Power Corporation is to give effect to a direction under subsection (1) despite anything in the principal Act.

(5) This section has effect despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a).

146. Directions to be laid before Parliament

The Minister must, within 14 days after a direction is given under section 145(1), cause the text of the direction to be laid before each House of Parliament or dealt with under section 134.

Division 3 — Passing of Western Power Corporation's assets and liabilities to new corporations or the State

Subdivision 1 — Making of transfer orders

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

(1) As soon as is practicable after this section comes into operation the Minister is to make and publish in the *Gazette* one or more orders specifying —

(a) how assets, rights and liabilities —

(i) of Western Power Corporation; or

(ii) of a kind referred to in section 150,

are to be allocated among the new corporations; and

(b) any proceedings in which one or more of the new corporations is to replace Western Power Corporation as a party or parties; and

(c) the new corporation that, under section 158(b), is to receive the records described in that section.

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

(a) a new corporation; or

(b) one or more of the new 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; and

(b) in respect of a particular liability, allocate a specified share of the liability to one or more of the new corporations; and

(c) provide for the transfer, debiting, crediting or closing of, or for otherwise dealing with, any account, reserve, fund, provision, profit or liability for any levy; and

(d) specify any person or thing by describing the person or thing as a member of a class; and

(e) for any asset or right or class of assets or rights —

(i) ascribe a value to; or

(ii) provide for the manner in which a value is to be determined for,

the asset or right or assets or rights of that class; and

(f) for any liability or class of liabilities —

(i) specify the amount of; or

(ii) provide for the manner in which an amount is to be determined for,

the liability or class of liabilities; and

(g) contain such incidental or supplementary provisions as the Minister thinks fit.

(4) Except where section 151 applies, a transfer order cannot be made after the commencement day.

148. Order may provide for transfer to subsidiary

(1) A transfer order may provide that —

(a) an asset or right that is allocated to a new corporation is to vest in; or

(b) a liability, or a share of a liability, that is allocated to a new corporation is to become the liability of,

a subsidiary of the new corporation.

(2) If a transfer order so provides, Western Power Corporation is to be taken —

(a) to continue to hold the asset or right; or

(b) to be liable for the liability,

until a further order is made under section 155.

149. Transfer order schedules

A transfer order may allocate assets, rights or liabilities by reference to schedules in which they are specified, and those schedules —

(a) need not be published in the *Gazette*; but

(b) must be available for inspection by the public at a place identified in the order.

150. Treatment of certain internal arrangements of Western Power Corporation

(1) An instrument that provides for arrangements between different parts of the business and operations of Western Power Corporation may be specified in a transfer order as if it created contractual rights and liabilities.

(2) An instrument specified as described in subsection (1) is to be regarded as if its provisions were contractual provisions between different legal entities.

(3) The definitions of ***liability*** and ***right*** in section 142 include contractual liabilities and rights that are to be regarded as arising because of subsection (2), and those liabilities and rights may be dealt with accordingly under this Part.

151. Power to make subsequent order

(1) If for any reason it is not practicable to allocate any asset, right or liability to one or more of the new corporations under section 147 before the commencement day —

(a) a transfer order is to specify that the asset, right or liability is to be allocated under this section; and

(b) the Minister may make a further order under section 147 in respect of that asset, right or liability not later than 6 months after the commencement day.

(2) An order under subsection (1) is to have effect from the commencement day.

(3) Western Power Corporation is to be taken —

(a) to continue to hold an asset or right; or

(b) to be liable for a liability,

to which subsection (1) applies until the further order is made.

152. References in Government agreements

(1) In this section —

Government agreement has the meaning given to that term in the *Government Agreements Act 1979* section 2.

(2) A transfer order is to specify for each provision in a Government agreement in which there is —

(a) a reference to Western Power Corporation; or

(b) a reference to a body that under the 1994 Act section 49 is to be read as a reference to Western Power Corporation,

whether that reference is to be read as a reference to —

(c) a specified new corporation; or

(d) 2 or more specified new corporations.

(3) A transfer order may, where subsection (2)(d) applies, specify that a reference is to be read as a reference to new corporations jointly or as tenants in common in equal or unequal shares.

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

153. Amendment of transfer orders

(1) The Minister may, before the commencement day, by further order published in the *Gazette*, amend a transfer order.

(2) The Minister may, after the commencement day, by order published in the *Gazette* —

(a) make any provision that is necessary to rectify any unintentional omission from a transfer order; or

(b) amend a provision of a transfer order of the kind provided for by section 147(3)(e), (f) or (g) or section 152.

(3) An order under subsection (2) may be made so as to have effect from the commencement day.

(4) To the extent that a provision of an order under subsection (2) 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 or a new corporation), the rights of that person existing before the day of its publication; or

(b) to impose liabilities on any person (other than the State or a new corporation) in respect of anything done or omitted to be done before the day of publication.

Subdivision 2 — Operation of transfer orders

154. Allocation to one new corporation

(1) This section applies where assets, rights or liabilities of Western Power Corporation are allocated to a new corporation by a transfer order.

(2) On the commencement day the assets and rights vest in the new corporation by force of this subsection.

(3) On the commencement day the liabilities (including a share of a liability) become, by force of this subsection, the liabilities of the new corporation.

(4) Any agreement or instrument relating to the assets, rights and liabilities referred to in subsections (2) and (3) has effect on and after the commencement day, by force of this subsection, as if a reference to the relevant new corporation were substituted in the agreement or instrument for a reference to —

(a) Western Power Corporation; or

(b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,

except to the extent that —

(c) any provision of a transfer order made under section 147(3)(b); or

(d) section 159; or

(e) the relevant context,

otherwise requires.

(5) Subject to any provision of a transfer order made under section 147(3)(b), any proceedings or remedy that, before the commencement day, might have been —

(a) commenced by; or

(b) available against or to,

Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2) and (3), on and after that day —

(c) may be commenced by the relevant new corporation; and

(d) are available against or to the relevant new corporation.

(6) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2) and (3) is to be taken, on and after that day, to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the relevant new corporation, to the extent that the act, matter or thing has any force or effect.

(7) All other provisions of a transfer order relevant to this section also have effect on and after the commencement day.

155. Order for transfer to subsidiary

(1) If a transfer order makes a provision under section 148, the Minister may after the commencement day by order published in the *Gazette*, declare that —

(a) the relevant asset or right is vested in; or

(b) the relevant liability, or share of a liability, has become the liability of,

a specified subsidiary of the new corporation.

(2) An order cannot be made under subsection (1) later than 6 months after the commencement day.

(3) An order under subsection (1) has effect according to its tenor.

(4) If an order is made under this section —

(a) section 154(4), (5) and (6) have effect, with all necessary changes, in relation to any asset, right or liability referred to in the order as if references to "the

relevant new corporation" were references to the subsidiary concerned; and

(b) Western Power Corporation must, as soon as is practicable after the order is made, deliver to the subsidiary all records relating to the assets, rights and liabilities to which the order applies.

156. Allocation to more than one new corporation

(1) This section applies where assets, rights or liabilities of Western Power Corporation are allocated by a transfer order to 2 or more of the new corporations.

(2) On the commencement day, the assets and rights allocated to 2 or more of the new corporations jointly vest in those corporations jointly by force of this subsection.

(3) On the commencement day, the assets and rights allocated to 2 or more of the new corporations as tenants in common, by force of this subsection, vest in those corporations as tenants in common in the shares specified in a transfer order.

(4) On the commencement day, the liabilities allocated to 2 or more of the new corporations jointly by a transfer order become, by force of this subsection, the liabilities of those corporations jointly.

(5) Any agreement or instrument relating to the assets, rights and liabilities referred to in subsections (2), (3) and (4) has effect on and after the commencement day, by force of this subsection, as if a reference to the relevant new corporations were substituted in the agreement or instrument for a reference to —

(a) Western Power Corporation; or

(b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,

except to the extent that —

(c) any provision of a transfer order made under section 147(3)(b); or

(d) section 159; or

(e) the relevant context,

otherwise requires.

(6) Subject to any provision of a transfer order made under section 147(3)(b), any proceedings or remedy that, before the commencement day, might have been —

(a) commenced by; or

(b) available against or to,

Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2), (3) and (4), on and after that day —

(c) may be commenced by; and

(d) are available against or to,

the relevant new corporations jointly or severally in accordance with a transfer order.

(7) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the assets, rights and liabilities referred to in subsections (2), (3) and (4) is to be taken, on and after that day, to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the relevant new corporations jointly or severally in accordance with the transfer order, to the extent that that act, matter or thing has any force or effect.

(8) All other provisions of a transfer order relevant to this section also have effect on and after the commencement day.

157. Replacement of Western Power Corporation in proceedings

(1) In accordance with any provision of a transfer order made under section 147(1)(b), on and after the commencement day —

(a) a new corporation is a party; or

(b) 2 or more of the new corporations jointly are parties,

as the case may be, to any proceedings by or against Western Power Corporation commenced before the commencement day.

(2) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to proceedings mentioned in subsection (1) is to be taken, on and after that day, to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the relevant new corporation or corporations, to the extent that the act, matter or thing has any force or effect.

158. Handing over of records

As soon as is practicable after the commencement day, Western Power Corporation is to deliver to —

(a) the relevant new corporation; or

(b) the corporation that under section 147(1)(c) is specified in a transfer order for the purposes of this paragraph,

as the case may require, all records relating to —

(c) where section 154 applies, the assets, rights and liabilities referred to in section 154(2) and (3); and

(d) where section 156 applies, the assets, rights and liabilities referred to in section 156(2), (3) and (4); and

(e) where section 157 applies, the proceedings referred to in that section.

159. Changes to Government agreements

On and after the commencement day a reference to —

(a) Western Power Corporation; or

(b) a body that under the 1994 Act section 49 is to be read as a reference to Western Power Corporation,

that in accordance with a provision of a transfer order made under section 152 is to be read as a reference to —

(c) a specified new corporation; or

(d) 2 or more specified new corporations,

has effect by force of this section as provided in the order.

Subdivision 3 — Re-allocation of assets, rights and liabilities

160. Order for re-allocation

(1) The Minister may, by order published in the *Gazette*, declare that any asset or right that vested in a new corporation, or 2 or more of the new corporations, under section 154(2), 156(2) or 156(3) is instead —

(a) vested in another new corporation; or

(b) vested, or vested differently, in 2 or more of the new corporations jointly or as tenants in common in equal or unequal shares.

(2) The Minister may, by order published in the *Gazette*, declare that —

(a) a liability; or

(b) a share of a liability referred to in section 147(3)(b),

that became a liability of a new corporation, or 2 or more of the new corporations, under section 154(3) or 156(4) is instead —

(c) the liability of another new corporation; or

(d) the joint liability of 2 or more of the new corporations or of a different combination of new corporations.

(3) If an order under this section provides for —

(a) an asset or right to be vested in; or

(b) a liability, or a share of a liability, to become a liability of,

2 or more of the new corporations, the order is to specify the corporation that, under section 162(b), is to receive the records described in that section.

(4) An order cannot be made under this section later than 6 months after the commencement day.

161. Re-allocation to have effect from commencement day

(1) In this section —

corporation or corporations previously concerned means the corporation or corporations —

(a) in which the assets or rights to which an order under section 160 applies were vested; or

(b) which was or were subject to any liability to which such an order applies,

immediately before the order was made.

(2) Except as otherwise provided in the order, an order under section 160 has effect from the commencement day as if —

(a) any asset or right to which the order applies had never been vested in; and

(b) any liability to which the order applies had never been the liability of,

the corporation or corporations previously concerned.

(3) Despite subsection (1), a corporation previously concerned is not —

(a) required to account for any benefit received; or

(b) entitled to reimbursement for any liability discharged,

before the day on which an order is made, except to the extent that provision is otherwise made in the order.

(4) An order under section 160 may make any savings or transitional provision that is necessary or expedient in relation to any asset, right or liability to which it applies including provisions in respect of —

(a) any —

(i) agreement or instrument; or

(ii) proceedings or remedy,

relating to the asset, right or liability; or

(b) any act, matter or thing —

(i) done; or

(ii) omitted to be done,

by, to or in respect of Western Power Corporation or a new corporation.

(5) An order under section 160 cannot be made so as —

(a) to affect the rights of any person other than the State or a new corporation; or

(b) to impose liabilities on any person other than the State or a new corporation.

162. Handing over of records

If an order is made under section 160, the corporation or corporations previously concerned must, as soon as is practicable after the order is made, deliver to —

(a) the relevant new corporation; or

(b) the new corporation specified as mentioned in section 160(3),

all records relating to the assets, rights and liabilities to which the order applies.

Subdivision 4 — Order that allocated assets or liabilities pass instead to the State

163. Minister may order s. 169 is to apply

(1) The Minister may, by order published in the *Gazette*, declare that, on and after a day specified in the order —

(a) any asset or right that vested in —

(i) a new corporation, or 2 or more of the new corporations, under section 154(2), 156(2) or 156(3); or

(ii) a subsidiary of a new corporation, by order under section 155(1);

or

(b) any —

(i) liability; or

(ii) share of a liability referred to in section 147(3)(b),

that became a liability of —

(iii) a new corporation, or 2 or more of the new corporations, under section 154(3) or 156(4); or

(iv) a subsidiary of a new corporation, by order under section 155(1),

is instead to be dealt with under section 169(3) or (4).

(2) An order cannot be made under this section later than 6 months after the commencement day.

164. Effect of order

(1) An order under section 163 has effect according to its tenor in relation to the assets, rights and liabilities to which it applies.

(2) Any agreement or instrument relating to the assets, rights and liabilities referred to in subsection (1) has effect on and after the day specified in the order (the ***specified day***), by force of this subsection, as if the State were substituted in the agreement or instrument for the new corporation, or a subsidiary, or new corporations previously entitled or liable (the ***corporation or corporations previously concerned***), except to the extent that —

(a) any provision of a transfer order made under section 147(3)(b); or

(b) section 159; or

(c) the relevant context,

otherwise requires.

(3) Subject to any provision of a transfer order made under section 147(3)(b), any proceedings or remedy that, before the specified day, might have been —

(a) commenced by; or

(b) available against or to,

the corporation or corporations previously concerned in relation to the assets, rights and liabilities referred to in subsection (1), on and after that day —

(c) may be commenced by the State; and

(d) are available against or to the State.

(4) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the specified day by, to or in respect of the corporation or corporations previously concerned in relation to the assets, rights and liabilities referred to in subsection (1) is to be taken, on and after that day, to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the State, to the extent that that act, matter or thing has any force or effect.

165. Handing over of records

As soon as is practicable after the specified day, the corporation or corporations previously concerned must deliver to the Minister all records relating to the assets, rights and liabilities referred to in section 164(1).

Subdivision 5 — Replacement of party in proceedings

166. Order for replacement

(1) The Minister may, by order published in the *Gazette*, declare that, on and after a day specified in the order (the ***specified day***), a new corporation or 2 or more of the new corporations that became a party or parties to proceedings under section 157(1) are replaced by another new corporation or other new corporations jointly.

(2) If an order provides for 2 or more of the new corporations to be parties to proceedings, the order is to specify the corporation that, under section 168(b), is to receive the records described in that section.

(3) An order cannot be made under this section later than 6 months after the commencement day.

167. Effect of order

(1) An order under section 166 has effect according to its tenor.

(2) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the specified day by, to or in respect of the corporation or corporations that have been replaced in relation to the proceedings is to be taken, on and after that day, to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the relevant new corporation or the relevant new corporations jointly, to the extent that that act, matter or thing has any force or effect.

168. Handing over of records

As soon as is practicable after the specified day, the corporation or corporations that have been replaced must deliver to —

(a) the relevant new corporation; or

(b) the new corporation specified as mentioned in section 166(2),

all records relating to the proceedings.

Subdivision 6 — Assets, liabilities and proceedings not otherwise provided for

169. Unallocated assets and liabilities to be dealt with by Minister

(1) This section applies to —

(a) any asset or right of Western Power Corporation that under this Division does not vest in; and

(b) any liability of Western Power Corporation that under this Division does not become a liability of,

a new corporation or 2 or more of the new corporations or a subsidiary of a new corporation.

(2) This section has effect subject to —

(a) any order made under section 151 or 153(2)(a); and

(b) regulations made under section 189(1) or (2).

(3) An asset or right to which this section applies is to be dealt with —

(a) after the commencement day; or

(b) where an order under section 163(1) applies, after the day specified in the order,

as the Minister directs.

(4) A liability to which this section applies, so far as it is properly due, is to be discharged —

(a) after the commencement day; or

(b) where an order under section 163(1) applies, after the day specified in the order,

in such manner and from such source as the Minister, with the approval of the Treasurer, directs.

(5) The Minister has the powers that are necessary or convenient for the purposes of this section.

170. Provisions incidental to s. 169

(1) This section does not apply to assets, rights and liabilities for which provision is made in section 164.

(2) Any agreement or instrument relating to the assets, rights and liabilities referred to in section 169 has effect on and after the commencement day, by force of this subsection, as if a reference to the State were substituted in the agreement or instrument for a reference to —

(a) Western Power Corporation; or

(b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,

except to the extent that —

(c) section 159; or

(d) the relevant context,

otherwise requires.

(3) Any proceedings or remedy that, before the commencement day, might have been commenced by or available against or to Western Power Corporation in relation to the assets, rights and liabilities referred to in section 169, on and after that day may be commenced by and are available against or to the State.

(4) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the assets, rights and liabilities referred to in section 169 is to be taken on and after that day to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the State, to the extent that the act, matter or thing has any force or effect.

171. State to be party to proceedings if no provision made

(1) If —

(a) immediately before the commencement day Western Power Corporation is a party to any proceedings; and

(b) no provision is made under section 147(1)(b) for it to be replaced as a party to those proceedings,

the State is, on and from the commencement day, by force of this subsection a party to those proceedings in place of Western Power Corporation.

(2) Any act, matter or thing —

(a) done; or

(b) omitted to be done,

before the commencement day by, to or in respect of Western Power Corporation in relation to the proceedings is to be taken, on and after that day, to have been —

(c) done; or

(d) omitted to be done,

by, to or in respect of the State, to the extent that the act, matter or thing has any force or effect.

172. Handing over of records

As soon as is practicable after the commencement day, Western Power Corporation is to deliver to the Minister all records relating to —

(a) assets, rights and liabilities that, after that day, are to be dealt with under section 169(3) and (4); and

(b) any proceedings to which section 171 applies.

Subdivision 7 — Other matters relating to passing of assets and liabilities

173. Continuation of guarantees in respect of Western Power Corporation

(1) This section applies to —

(a) a guarantee under the principal Act section 85(1); and

(b) a guarantee continued in force by the 1994 Act section 51,

that was in force immediately before the commencement day.

(2) A guarantee referred to in subsection (1) is not affected by —

(a) any provision of, or made under, this Part, including without limitation a transfer of any liability of Western Power Corporation to a new corporation, or a subsidiary, or to 2 or more new corporations —

(i) under section 154 or 156; or

(ii) by order under section 155(1) or 160(2); or

(iii) by regulations under Division 7;

or

(b) any transfer, vesting or assumption of any liability of Western Power Corporation to, in or by a new corporation or 2 or more new corporations by any other means.

(3) A 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 a transfer, vesting or assumption by any other means referred to in subsection (1) is effective,

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

(4) Despite its repeal by Schedule 5 clause 11, the principal Act section 85(3) is to be taken to continue to apply for the purposes of subsection (3).

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

(6) By virtue of this subsection, any sum paid by the Treasurer under a guarantee referred to in subsection (1) in respect of a new corporation constitutes a charge on the assets of the corporation.

174. Guarantees to which s. 173 does not apply

(1) Subject to subsection (2), Part 6 Division 4 is to be taken to apply to a liability of a new corporation if a guarantee of that liability cannot be preserved under section 173, whether because

the guarantee is governed otherwise than by the law of the State or for any other reason.

(2) If —

(a) a guarantee (the ***original guarantee***) cannot be preserved as mentioned in subsection (1); and

(b) the lender requests the Treasurer to exercise powers referred to in that subsection to give a guarantee in the same terms as the original guarantee,

the Treasurer is to comply with that request.

175. Certain joint tenancies preserved

(1) In this section —

Gas Corporation assignee has the meaning given to the term ***assignee*** in the *Gas Corporation (Business Disposal) Act 1999* section 14.

(2) The vesting of any asset held by Western Power Corporation as a joint tenant with a Gas Corporation assignee in a new corporation or a subsidiary —

(a) by this Part; or

(b) by an order or regulations made under this Part,

does not sever the joint tenancy, and the new corporation or the subsidiary holds the asset as a joint tenant with the Gas Corporation assignee.

176. Western Power Corporation to complete necessary transactions

(1) This section applies if —

(a) an asset, right or liability to which this Part applies is required to be vested in or succeeded to by a new corporation or 2 or more new corporations; but

(b) that vesting or succession cannot be properly effected by operation of this Part, whether because the matter is governed otherwise than by the law of the State, or for any other reason.

(2) Western Power Corporation —

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

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

(b) is to take all practicable steps for the purpose of ensuring that such vesting or succession occurs.

(3) The fact that subsection (2)(a) applies to an asset, right or liability that is allocated to a new corporation or 2 or more new corporations under this Part does not affect the duty of the corporation or corporations to account for and report on that asset, right or liability under this Act.

177. 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 —

(i) under this Part; or

(ii) to give effect to this Part; or

(iii) for a purpose connected with or arising out of, giving effect to this Part,

including a transaction entered into or an instrument or document of any kind made, executed, lodged or given.

(3) The Treasurer or a person authorised by the Treasurer may, at the request of a new corporation, certify in writing that a specified thing —

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

(b) was done —

(i) under this Part; or

(ii) to give effect to this Part; or

(iii) 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.

178. Registration of documents

(1) In subsection (2) —

relevant officials means —

(a) the Registrar of Titles; or

(b) the Registrar of Deeds; or

(c) the Ministers respectively administering the *Mining Act 1978* and the *Land Administration Act 1997*; or

(d) any other person authorised 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.

(2) The relevant officials are to take notice of the provisions of —

(a) this Part and any regulations made under Division 7; and

(b) a transfer order or any other order made under this Part,

and are empowered to record and register in the appropriate manner the documents necessary to show the effect of those provisions.

(3) Without limiting subsection (1), a statement in an instrument is evidence of the facts stated if —

(a) the instrument is executed by a new corporation, or a subsidiary, or 2 or more new corporations; and

(b) the statement is to the effect that any estate or interest in land or other property has become vested in —

(i) the new corporation, or a subsidiary; or

(ii) 2 or more new corporations jointly or in specified shares,

under section 154 or 156, an order under section 155(1) or 160(1) or regulations made under Division 7.

Division 4 — Staff

179. Transition of employment

(1) Western Power Corporation may, before the commencement day —

(a) determine which new corporation is to be, on and from that day, the employer of each person who is a member of staff, as defined in the principal Act, before the commencement day; and

(b) give to each such person a notice in writing of the determination made in respect of him or her.

(2) A notice given to a person under subsection (1)(b) is to have effect, after the commencement of section 18, as if it were an agreement made under that section between —

(a) the person; and

(b) the board of the new corporation specified in the notice,

for the employment of that person as a member of the staff of that corporation.

180. Employees' rights preserved

Except as otherwise agreed by an employee, the change from employment by Western Power Corporation to employment by a new corporation does not —

(a) affect the employee's remuneration and other terms and conditions of employment; or

(b) prejudice the employee's existing or accruing rights; or

(c) affect any rights under a superannuation scheme; or

(d) interrupt continuity of service.

Division 5 — Contracts with tariff customers

181. Minister to prescribe contracts

(1) In this section —

tariff customer means a person who, immediately before the commencement day, was supplied with electricity by Western Power Corporation or a subsidiary of that corporation (otherwise than under a written contract) in relation to which the person was liable to pay fees and charges prescribed under the *Energy Operators (Powers) Act 1979* section 124 or the *Electricity Industry Act 2004* section 132.

(2) A tariff customer is to be taken on and from the commencement day to have entered into a contract with —

(a) the Electricity Retail Corporation; or

(b) the Regional Power Corporation,

as the case requires, for the supply of electricity.

(3) The Minister, by order published in the *Gazette*, is to prescribe a form of contract for the purposes of subsection (2), and the

contract referred to in that subsection is to be taken to be in the form so prescribed.

(4) An order under subsection (3) —

(a) may specify different forms of contract in respect of different classes of tariff customers; and

(b) may be amended, replaced or revoked by the Minister by order published in the *Gazette*.

Division 6 — Other transitional provisions

182. Annual report

(1) Western Power Corporation is to —

(a) do all things that are necessary to ensure that any annual report under the principal Act section 62 that —

(i) was required for a financial year before the commencement day; but

(ii) was not sent to the Minister before that day,

is completed and sent to the Minister; and

(b) prepare a report under that section for the period from the preceding 1 July to the commencement day.

(2) If the period referred to in subsection (1)(b) is less than a year the report is to be prepared as if that period were a full financial year.

(3) Despite the repeals effected by Schedule 5 clauses 11 and 19, the reports referred to in subsection (1) are to be completed and dealt with in accordance with the provisions contained in the principal Act Part 4 Division 3 and Schedule 3.

183. Continuation of certain directions given to Western Power Corporation

(1) The *Western Power Corporation (Gas Supply) Direction 2000* continues in force on and after the commencement day as if —

(a) it were an instrument under section 114(2) served on each of the Electricity Generation Corporation and the Electricity Retail Corporation; and

(b) references in it to the corporation were references to each of the corporations mentioned in paragraph (a).

(2) The direction given to Western Power Corporation under the principal Act section 66 on 7 April 2005 (which relates to

generating works) continues in force on and after the commencement day as if it were a direction given to the Electricity Generation Corporation under section 111.

184. Completion of things commenced

Anything commenced to be done by Western Power Corporation under the principal Act before the commencement day may be continued by a new corporation so far as the doing of that thing is, after the commencement day —

(a) within the functions of; and

(b) relevant to,

the new corporation.

185. 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 Western Power Corporation, to the extent that the act, matter or thing —

(a) has any force; and

(b) is not governed by section 154(6), 156(7), 157(2), 164(4), 170(4), 171(2) or 183(1) or (2),

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

186. Immunity to continue

If Western Power Corporation had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, the immunity continues in that respect for the benefit of a new corporation so far as the act, matter or thing is relevant to that corporation.

187. Agreements and instruments generally

(1) In this section —

instrument includes subsidiary legislation;

relevant new corporation, in relation to an agreement or instrument, means any new corporation that after the commencement day has the function of Western Power Corporation in the performance of which the agreement or instrument was made.

(2) This section applies to an agreement or instrument subsisting immediately before the commencement day that does not come within the provisions of section 154(4), 156(5), 159, 170(2) or 183(1) or (2).

(3) An agreement or instrument to which this section applies that contains a reference to —

(a) Western Power Corporation; or

(b) a body that under the 1994 Act Part 3 is to be read as a reference to Western Power Corporation,

has effect on and after the commencement day as if any reference in the agreement or instrument to Western Power Corporation, or the body, were, unless the context otherwise requires, a reference to any relevant new corporation.

188. Western Power Corporation to perform necessary transitional functions

(1) Despite the repeal of the principal Act section 4 by Schedule 5 clause 11, Western Power Corporation continues in existence so that it can —

(a) perform the functions described in sections 148(2), 151(3), 158, 162, 172, 176 and 182; and

(b) perform any other function required for the purposes of this Part that may be prescribed by regulations made by the Governor.

(2) For the purpose of subsection (1), Western Power Corporation —

(a) is to be constituted by a person or persons appointed by the Minister; and

(b) is to perform the functions referred to in subsection (1) through that person or those persons,

and that subsection does not affect the abolition of the board of Western Power Corporation by virtue of the repeal of the principal Act Part 2 Division 2.

(3) The person or persons referred to in subsection (2)(a) hold office at the pleasure of the Minister and on such terms and conditions as the Minister determines.

(4) Western Power Corporation as constituted under this section has the powers that are necessary or convenient for the purposes of subsection (1).

(5) A new corporation is to provide the clerical or other assistance that Western Power Corporation reasonably requests it to provide for the purpose of performing the functions described in subsection (1).

Division 7 — Making of further provision by regulation

189. Powers of rectification and similar matters

(1) If in the opinion of the Minister —

(a) an error has been made in a provision of a transfer order that cannot be rectified by the making of an order under section 160(1) or (2); or

(b) there has been an omission from a transfer order that cannot be rectified under section 153(2),

the Governor may by regulations make such provision as is necessary or expedient to correct, and deal with any consequences of, the error or omission.

(2) If in the opinion of the Minister it is necessary, later than the period of 6 months after the commencement day —

(a) to make an order referred to in section 151(1)(b); or

(b) to make a declaration of the kind provided for by section 160(1) or (2); or

(c) to make an order of the kind referred to in section 155(1), 163(1) or 166(1),

the Governor may by regulations make such provision as could have been made under that section before the expiration of the period of 6 months.

(3) Regulations under this section may make any provision of an incidental or supplementary nature that may be expedient.

190. Further provision may be made by regulation

(1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to achieve the purpose described in section 141, the Governor may make that provision by regulations.

(2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of —

(a) this Part; or

(b) a transfer order or other order under this Part,

the Governor may by regulations —

(c) modify that provision to remove the anomaly; and

(d) make such provision as is necessary or expedient to achieve the purpose described in section 141 in the intended manner.

191. Regulations may operate from commencement day

(1) Regulations may be made under this Division to have effect from the commencement day.

(2) To the extent that a provision of such regulations 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 or a new corporation), the rights of that person existing before the day of its publication; or

(b) to impose liabilities on any person (other than the State or a new corporation) in respect of anything done or omitted to be done before the day of publication.

Division 8 — Indemnities and guarantees

192. Treasurer may give indemnity and guarantee

(1) The Treasurer may, in the name and on behalf of the State, give to —

(a) a person who is or has been a director or officer of Western Power Corporation or of a subsidiary of that corporation; or

(b) a member or alternate member of a committee referred to in section 145(3),

an indemnity against liability or a guarantee of payment in respect of —

(c) the doing of anything, whether before or after the commencement day, that is required to achieve the purpose of this Part; or

(d) an omission to do anything, whether before or after the commencement day, if the omission is required to achieve the purpose of this Part.

(2) The payment of any money under an indemnity or guarantee given under this section is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

(3) In subsection (1) —

liability includes civil liability under the *Corporations Act 2001* of the Commonwealth.

[Section 192 amended: No. 77 of 2006 s. 4.]

Part 10 — Provisions for merger of corporations

[Heading inserted: No. 25 of 2013 s. 35.]

Division 1 — Preliminary

[Heading inserted: No. 25 of 2013 s. 35.]

193. Purpose of Part

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

[Section 193 inserted: No. 25 of 2013 s. 35.]

194. Terms used

In this Part —

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

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

(a) a chose in action;

(b) goodwill;

(c) a right, interest or claim of any 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;

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

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

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

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

merger means —

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

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

merger provisions means the following —

(a) section 6 of the amending Act;

(b) this Part;

(c) transitional regulations;

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

merging corporation means the Electricity Retail Corporation;

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

transitional regulations has the meaning given in section 221.

[Section 194 inserted: No. 25 of 2013 s. 35.]

195. Saving

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

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

(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; or

(c) as giving rise to any right to damages or compensation; or

(d) 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; or

(e) as causing any contract or instrument to be void or otherwise unenforceable; or

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

(2) The merger provisions are additional to any relevant provisions of the *Interpretation Act 1984*.

[Section 195 inserted: No. 25 of 2013 s. 35.]

Division 2 — Merger

[Heading inserted: No. 25 of 2013 s. 35.]

196. Merger of corporations

(1) At the merger time the Electricity Retail Corporation ceases to be a corporation under this Act and merges into the EGRC.

(2) From the merger time the EGRC is a continuation of the merging corporation.

[Section 196 inserted: No. 25 of 2013 s. 35.]

197. Corporations to implement or facilitate merger

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

(2) Subsection (1) applies —

(a) before the merger time — to the merging corporation and the continuing corporation; and

(b) after the merger time — to the EGRC.

(3) The function conferred by subsection (1) is in addition to any other function that a corporation has.

[Section 197 inserted: No. 25 of 2013 s. 35.]

Division 3 — Directions by Minister

[Heading inserted: No. 25 of 2013 s. 35.]

198. Minister may give directions

(1) The Minister may give directions in writing to the continuing corporation or the merging corporation requiring it to take any step that the Minister considers necessary or convenient for achieving the purpose of this Part.

(2) The reference in subsection (1) to the taking of any step includes refraining from taking any step that the corporation might otherwise take.

(3) A corporation is to give effect to a direction given to it under subsection (1) despite any other provision of this Act.

(4) This section has effect despite the *Statutory Corporations (Liability of Directors) Act 1996* section 6(a).

[Section 198 inserted: No. 25 of 2013 s. 35.]

199. Directions to be laid before Parliament

The Minister must, within 14 days after a direction is given under section 198(1), cause the text of the direction to be laid

before each House of Parliament or dealt with under section 134.

[Section 199 inserted: No. 25 of 2013 s. 35.]

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

[Heading inserted: No. 25 of 2013 s. 35.]

200. Assets, rights and liabilities

(1) At the merger time —

(a) the assets and rights of the merging corporation that were immediately before that time vested in the merging corporation vest in the EGRC by force of this subsection; and

(b) the liabilities of the merging corporation immediately before that time become the liabilities of the EGRC by force of this subsection.

(2) In determining the profits of the EGRC for the purposes of section 126, assets that vest in the EGRC by force of subsection (1) are not to be regarded as income.

[Section 200 inserted: No. 25 of 2013 s. 35.]

201. Proceedings and remedies

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

[Section 201 inserted: No. 25 of 2013 s. 35.]

202. Continuation of guarantees

(1) This section applies to —

(a) a guarantee given under section 130; and

(b) a guarantee continued in force by section 173,

that was in force immediately before the merger time in respect of the merging corporation.

(2) A guarantee to which this section applies continues in force and is to be read and construed, from the merger time, as if it were a guarantee in respect of the EGRC.

(3) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee to which this section applies.

(4) By virtue of this subsection, any sum paid by the Treasurer under a guarantee to which this section applies in respect of the EGRC constitutes a charge on the assets of that corporation.

[Section 202 inserted: No. 25 of 2013 s. 35.]

203. Joint tenancies preserved

(1) This section applies to an asset held by the merging corporation as a joint tenant with another person.

(2) The vesting of an asset to which this section applies in the EGRC under this Part does not sever the joint tenancy, and the EGRC holds the asset as a joint tenant with the other person.

[Section 203 inserted: No. 25 of 2013 s. 35.]

204. Exemption from State taxation

(1) In this section —

State tax includes duty under the *Duties Act 2008* 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 the merger provisions; 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 the merger provisions, or for a purpose connected with or arising out of giving effect to the merger provisions.

(3) The Treasurer or a person authorised by the Treasurer may, at the request of the EGRC, certify in writing that a specified thing —

(a) occurred by the operation of the merger provisions; or

(b) was done under this Part, or to give effect to the merger provisions, or for a purpose connected with or arising out of giving effect to the merger provisions.

(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.

[Section 204 inserted: No. 25 of 2013 s. 35.]

205. Registration of documents

(1) In this section —

relevant officials means —

(a) the Registrar of Titles under the *Transfer of Land Act 1893*; and

(b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; and

(c) the Minister administering the *Land Administration Act 1997*; and

(d) any other person authorised 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.

(2) The relevant officials are to take notice of the merger provisions and are empowered to record and register in the appropriate manner the documents necessary to show the effect of those provisions.

(3) Without limiting subsection (2), a statement in an instrument is evidence of the facts stated if —

(a) the instrument is executed by the EGRC; and

(b) the statement is to the effect that any estate or interest in land or other property has become vested in the EGRC under section 200(1).

[Section 205 inserted: No. 25 of 2013 s. 35.]

Division 5 — Staff

[Heading inserted: No. 25 of 2013 s. 35.]

206. Members of staff

(1) At the merger time, a person who immediately before the merger time was a member of staff of the merging corporation becomes a member of staff of the EGRC.

(2) The operation of subsection (1) does not constitute a retrenchment or redundancy.

[Section 206 inserted: No. 25 of 2013 s. 35.]

207. Preservation of rights

(1) Except as otherwise agreed by the relevant member of staff, the operation of section 206(1) does not —

(a) affect his or her remuneration and other terms and conditions of employment; or

(b) prejudice his or her existing or accruing rights; or

(c) affect any rights under a superannuation scheme; or

(d) interrupt continuity of service.

(2) For the purposes of subsection (1)(d), the service of a member of staff with the merging corporation is to be taken to have been with the EGRC.

(3) Nothing in section 206 or this section prevents the exercise by the EGRC of its powers in relation to the management of members of staff.

[Section 207 inserted: No. 25 of 2013 s. 35.]

Division 6 — Other provisions

[Heading inserted: No. 25 of 2013 s. 35.]

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.

[Section 208 inserted: No. 25 of 2013 s. 35.]

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.

[Section 209 inserted: No. 25 of 2013 s. 35.]

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 section has not been complied with for the last quarter; and

(b) comply with section 106 in respect of the merging corporation for the period starting at the end of the last quarter and ending at the merger time as if that period were a quarter.

(5) If the merger time coincides with the end of a financial year of the merging corporation, the EGRC is to comply with the annual reporting provisions in respect of the merging corporation for that financial year.

(6) If the merger time is after the end of a financial year of the merging corporation (the ***last financial year***), the EGRC is to —

(a) comply with the annual reporting provisions in respect of the merging corporation to the extent that those provisions have not been complied with for the last financial year; and

(b) comply with the annual reporting provisions in respect of the merging corporation for the period starting at the end of the last financial year and ending at the merger time as if that period were a financial year.

(7) In order to enable the EGRC to perform its duties under this section, section 106 and the annual reporting provisions apply with —

(a) any modifications prescribed by transitional regulations; and

(b) any other appropriate modifications.

[Section 210 inserted: No. 25 of 2013 s. 35.]

211. Financial reporting: continuing corporation

(1) In this section —

annual reporting provisions has the meaning given in section 210(1).

(2) If the merger time is after the end of a financial year of the continuing corporation (the ***last financial year***), the EGRC is to comply with the annual reporting provisions in respect of the continuing corporation as if each of the following periods were a financial year —

(a) the period starting at the end of the last financial year and ending at the merger time;

(b) the period starting at the merger time and ending on the next 30 June.

(3) For the purposes of subsection (2), the annual reporting provisions apply with —

(a) any modifications prescribed by transitional regulations; and

(b) any other appropriate modifications.

[Section 211 inserted: No. 25 of 2013 s. 35.]

212. Continuation of certain directions

(1) A direction under section 111(1) that was in force in respect of the merging corporation immediately before the merger time continues in force, from the merger time, as if it were a direction given under section 111(1) to the EGRC.

(2) An instrument under section 114(2) that was in force in respect of the merging corporation immediately before the merger time continues in force, from the merger time, as if it were an instrument served under section 114(2) on the EGRC.

[Section 212 inserted: No. 25 of 2013 s. 35.]

213. Amount in lieu of rates

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

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

[Section 213 inserted: No. 25 of 2013 s. 35.]

214. Dividends

(1) In this section —

dividend function means a function of a corporation or its board under section 126.

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

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

[Section 214 inserted: No. 25 of 2013 s. 35.]

215. Completion of things commenced

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

[Section 215 inserted: No. 25 of 2013 s. 35.]

216. Continuing effect of things done

(1) In this section —

relevant act means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of the merging corporation.

(2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the EGRC so far as the act, matter or thing is relevant to the EGRC.

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

[Section 216 inserted: No. 25 of 2013 s. 35.]

217. Immunity to continue

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

[Section 217 inserted: No. 25 of 2013 s. 35.]

218. Agreements, instruments and documents

(1) In this section —

agreement includes a Government agreement;

former name means “Electricity Generation Corporation”;

new name means “Electricity Generation and Retail Corporation”.

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

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

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

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

[Section 218 inserted: No. 25 of 2013 s. 35.]

219. Treasurer may give indemnity and guarantee

(1) In this section —

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

relevant person means a person who is or has been a director, the chief executive officer, or a member of staff, of the merging corporation.

(2) The Treasurer may, in the name and on behalf of the State, give to a relevant person an indemnity against liability or a guarantee of payment in respect of —

(a) the doing of anything, whether before or after the merger time, that is required to achieve the purpose of this Part; or

(b) an omission to do anything, whether before or after the merger time, if the omission is required to achieve the purpose of this Part.

(3) The payment of any money under an indemnity or guarantee given under this section is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

[Section 219 inserted: No. 25 of 2013 s. 35.]

220. Government agreements not affected

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

[Section 220 inserted: No. 25 of 2013 s. 35.]

221. Transitional regulations

(1) Regulations (***transitional regulations***) may prescribe —

(a) things to be done by the merging corporation or the continuing corporation to provide for, implement or facilitate the merger; and

(b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.

(2) Transitional regulations may provide that specific provisions of any written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specific modifications to or in relation to any matter.

(3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

(4) If transitional regulations contain a provision referred to in subsection (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State, an authority of the State or the EGRC) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State, an authority of the State or the EGRC) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 221 inserted: No. 25 of 2013 s. 35.]

Schedule 1 — Provisions about the constitution and proceedings of boards

[s. 10]

1. Term used: director

In clauses 2, 3, 4 and 5(1) —

director does not, if the chief executive officer is a director, include him or her in that capacity.

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 appointment, and is eligible for reappointment.

(2) Periods of appointment are to be fixed in a way that results in approximately one-third of the directors retiring each year.

(3) 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 the director was appointed has expired.

(4) A director's duties are not required to be performed on a full-time basis.

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, if he or she is a director, is not eligible for appointment under subclause (1).

(3) Where the chairperson is unable to act because of sickness, accident or other cause, the deputy chairperson is to act in the chairperson's 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) The Minister may in writing appoint a person to act temporarily in place of a director who is unable to act because of sickness, absence or other cause.

(2) A person appointed under subclause (1), while acting according to the tenor of the appointment —

(a) is to be taken to be a director; and

(b) is entitled to remuneration under section 11.

(3) Where the chief executive officer of a corporation is a director he or she may, in writing delivered to the chairperson of the board of the corporation or the person presiding at a meeting of the board, appoint a senior officer of the corporation to represent him or her at a meeting if —

(a) he or she is unable to attend by reason of sickness, absence or other cause; and

(b) the senior officer is a person who has been approved by the board for the purposes of this subclause.

(4) While attending a meeting by virtue of such a nomination the officer is to be taken to be a director.

(5) Subclause (3) does not apply if there is a person acting in place of the chief executive officer under section 17.

(6) 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 a 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 a 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 a 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.

(5) At any meeting of a board —

(a) a number of directors equal to at least half the number of directors in office constitutes a quorum; and

(b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

[Clause 6 amended: No. 25 of 2013 s. 36.]

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 audiovisual 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) a document containing a statement to the effect that an act, matter or thing has been done or a resolution has been passed is sent or given to all directors of a corporation; and

(b) the document is assented to by a majority of the directors who signify a response; and

(c) that 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 of the corporation.

(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;

and

(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 —

(i) by signing the document; or

(ii) by notifying the corporation of the director's assent in person or by post, facsimile transmission, telephone, email or other method of written, electronic, audio or audiovisual communication.

(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 and records

A board is to ensure that an accurate record is kept and preserved of —

(a) the proceedings at each meeting of the board; and

(b) each resolution passed under clause 8.

10. Leave of absence

A 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, a board may determine its own procedures.

Schedule 2 — Provisions about the duties of directors and related provisions

[s. 27]

Division 1 — Preliminary

1. Attempts to commit offences

A person who attempts (within the meaning in *The Criminal Code* section 4) 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

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

(2) A person who contravenes subclause (1) —

(a) with intent to deceive or defraud —

(i) the corporation concerned; or

(ii) creditors of that corporation or of any other person;

or

(b) for any other fraudulent purpose,

commits a crime and is liable to a fine of $20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of $12 000 or imprisonment for 3 years, or both.

(3) If subclause (2) does not apply, a person who contravenes subclause (1) commits an offence and is liable to a fine of $5 000.

3. Duty to exercise reasonable care and diligence

A director of a corporation 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

(1) A director of a corporation 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 —

(a) to gain, directly or indirectly, an advantage —

(i) for himself or herself; or

(ii) for any other person;

or

(b) to cause detriment to the corporation.

(2) A person who contravenes subclause (1) commits a crime and is liable to a fine of $20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of $12 000 or imprisonment for 3 years, or both.

5. Duty not to make improper use of position

(1) A director of a corporation must not, whether within or outside the State, make improper use of his or her position as such —

(a) to gain, directly or indirectly, an advantage —

(i) for himself or herself; or

(ii) for any other person;

or

(b) to cause detriment to the corporation.

(2) A person who contravenes subclause (1) commits a crime and is liable to a fine of $20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of $12 000 or imprisonment for 3 years, or both.

6. Fiduciary duty

(1) A director of a corporation has —

(a) the same fiduciary relationship with the corporation; and

(b) the same duties to the corporation to act with loyalty and in good faith,

as a director of a company incorporated 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

(1) If —

(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 concerned 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.

(2) Any such order may be enforced as if it were a judgment of the court.

8. Civil proceedings for recovery from director

If a person contravenes clause 2, 3, 4 or 5, the corporation concerned 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 from liability

9. Court may grant relief

Without limiting section 120, 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; and

(b) has acted honestly; and

(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. Application for relief

(1) Without limiting section 120, 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 to be relieved either wholly or partly from liability sought to be enforced against the person —

(a) withdraw the case in whole or in part from the jury; and

(b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

Division 5 — Personal interests of directors, disclosure and voting

12. Disclosure

(1) In subclause (2) —

notifiable interest means an interest in the matter that will, under clause 13(1), disqualify the director from voting on the matter at a meeting of the board unless allowed to do so by a resolution under clause 13(3) or a declaration under clause 13(6).

(2) A director of a corporation who has a notifiable 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 of the corporation.

Penalty: $5 000.

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

13. Voting by interested directors

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

(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 of a corporation 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 director of the corporation or of a subsidiary, but 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 Schedule 1 clause 6(5), 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 a 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 dealt with in accordance with section 134.

Division 6 — Other prohibited conduct

14. Prohibition on loans to directors and related persons

(1) In subclause (2)(e) —

relative means —

(a) a parent or remoter lineal ancestor; or

(b) son, daughter or remoter issue; or

(c) a brother or sister.

(2) A corporation must not, whether directly or indirectly —

(a) make a loan; or

(b) give a guarantee or provide security in connection with a loan made,

to —

(c) a director; or

(d) a spouse or de facto partner of a director; or

(e) a relative of a director or of a spouse or de facto partner of a director.

(3) A director of a corporation who is knowingly concerned in a contravention of subclause (2) by the corporation (whether or not in relation to the director) —

(a) with intent to deceive or defraud —

(i) the corporation concerned; or

(ii) creditors of the corporation concerned or of any other person;

or

(b) for any other fraudulent purpose,

commits a crime and is liable to a fine of $20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of $12 000 or imprisonment for 3 years, or both.

(4) If subclause (3)(a) or (b) does not apply the director commits an offence and is liable to a fine of $5 000.

15. Directors and auditors not to be indemnified for certain matters

(1) A 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 a 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 a 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.

(5) A 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 or misleading information

(1) A director of a corporation 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.

(2) A director of a corporation 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 of a corporation —

(a) making available or furnishing; or

(b) authorising or permitting the making available or furnishing of,

information relating to the affairs of the corporation include references to a director —

(c) making available or furnishing; or

(d) 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 3 — Provisions to be included in constitution of subsidiary

[s. 65]

1. Disposal of shares

(1) A 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 concerned, 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 concerned and the subsidiary.

(3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 5 and in the constitution 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 —

(a) form; or

(b) participate in the formation of; or

(c) acquire,

any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.

(2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times complies with this Act.

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

[This compilation shows amendments proposed by Bill No. 142-1 (Pt. 3 Div. 4).]

Schedule 4 — Financial administration and audit

[s. 133(1)]

Division 1 — Preliminary

1. Terms used

(1) In this Schedule, unless the contrary intention appears —

financial year has the meaning given to that term in clause 23(1);

regulations means regulations made under the Corporations Act.

(2) In this Schedule, unless the contrary intention appears, terms (including the terms ***accounting standard***, ***company*** and ***financial records***) have the meanings given to them in the Corporations Act Part 1.2.

Division 2 — Financial records

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

(1) A 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 is completed.

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

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 kept
(cf. Corporations Act s. 289)

(1) A 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) A corporation must give the Treasurer written notice of the place where the information is kept.

(4) The Minister may direct a corporation to produce specified financial records that are kept outside Australia.

(5) The direction must —

(a) be in writing; and

(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. Corporations Act s. 290)

(1) A director of a corporation has a right of access to the financial records of the corporation 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. Corporations Act s. 292)

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

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

(1) The financial report for a financial year consists of —

(a) the financial statements for the year; and

(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; and

(b) a balance sheet as at the end of the year; and

(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; and

(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; and

(b) that the financial statements and notes give a true and fair view; and

(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; and

(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. Corporations Act s. 296)

(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. Corporations Act s. 297)

(1) The financial statements and notes in respect of a corporation 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 under clause 7(2)(d) — the financial position and performance of the consolidated entity of which the corporation is a part.

(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. Corporations Act s. 298)

(1) A corporation must prepare a directors' report for each financial year.

(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; and

(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. Corporations Act s. 299)

(1) The directors' report in respect of a corporation for a financial year must —

(a) contain a review of operations during the year of the corporation and the results of those operations; and

(b) give details of any significant changes in the corporation's state of affairs during the year; and

(c) state the corporation's principal activities during the year and any significant changes in the nature of those activities during the year; and

(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; or

(ii) the results of those operations in future financial years; or

(iii) the corporation's state of affairs in future financial years;

and

(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.

(2) If consolidated financial statements are required under clause 7(2)(d), the report must be on the consolidated entity of which the corporation concerned is part.

(3) The report in respect of a corporation 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 under clause 7(2)(d) — the consolidated entity or any entity (including the corporation concerned) 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. Corporations Act s. 300)

(1) The directors' report for a financial year must include details of —

(a) dividends or distributions paid during the year; and

(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 concerned 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; and

(d) the nature of the liability; and

(e) how much the corporation paid, and what else the corporation did, by way of indemnifying the person against the liability.

(3) If —

(a) during or since the financial year, the corporation concerned 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; and

(d) the nature of the liability; and

(e) how much the relevant agreement provides for the corporation to pay, and what else it provides for the corporation to do, by way of indemnifying the person against the liability.

(4) If —

(a) during or since the financial year, the corporation concerned 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; and

(b) the number of meetings of the board held during the year and each director's attendance at those meetings; and

(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. Corporations Act s. 300A)

The directors' report in respect of a corporation 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; and

(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. Corporations Act s. 301)

A corporation must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 34 and 35 and obtain an auditor's report.

Subdivision 2 — Audit and auditor's report

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

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);

and

(b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit; and

(c) whether the corporation concerned has kept financial records sufficient to enable a financial report to be prepared and audited; and

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

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

(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 of the corporation concerned as soon as practicable after it has been given to the Minister.

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

The Auditor General —

(a) has a right of access at all reasonable times to the books of a corporation; and

(b) may require any officer of the corporation to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

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

An officer of a 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. Corporations Act s. 323)

If a 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. Corporations Act s. 323A)

(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 concerned.

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

If a 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

(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. Corporations Act s. 323C)

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 concerned 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. Corporations Act s. 323D)

(1) The financial year of a corporation is the 12 month period ending on 30 June.

(2) Where a 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. Corporations Act s. 334)

(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) A 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 of the corporation.

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

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. Corporations Act s. 337)

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. Corporations Act s. 339)

(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).

Division 5 — Exemptions and modifications

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

(1) On an application made in accordance with subclause (3) in relation to a 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; and

(b) in writing and signed by a director; and

(c) lodged with the Treasurer.

(4) The Treasurer must give the corporation concerned 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.

(7) A copy of an order transmitted to the Clerk of a House is to be taken to have been laid before that House.

(8) The laying of a copy of an order that is taken to have occurred under subclause (7) 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.

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

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; or

(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 or 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) apply, with all necessary changes, 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. Corporations Act s. 344)

(1) A director of a corporation must take all reasonable steps to comply with, or to secure compliance with, Divisions 2 and 3.

(2) A person who contravenes subclause (1) with intent to deceive or defraud the Minister or the Treasurer or creditors of the corporation, is guilty of a crime and is liable to a fine of $20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of $12 000 or imprisonment for 3 years, or both.

(3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of $5 000.

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

Division 7 — Miscellaneous

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

(1) In subclause (2) —

prescribed day means the tenth working day after receipt by the directors under clause 16 of the Auditor General's report.

(2) A corporation must, 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 107.

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

The annual report of a corporation under section 107 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.

34. Audit

(1) If the Auditor General cannot complete the audit of a 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) The *Auditor General Act 2006* section 21 applies to the audit of the corporation.

[Clause 34 amended: No. 77 of 2006 Sch. 1 cl. 53(4).]

35. Powers and duties of Auditor General

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

(a) there has been a contravention of any provision of this Schedule; and

(b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the

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.

(2) The *Auditor General Act 2006* sections 14, 16 to 18, 24 to 37, 45 and 46 apply to the corporation as if it were a statutory authority named in Schedule 1 to the *Financial Management Act 2006*.

[Clause 35 amended: No. 77 of 2006 Sch. 1 cl. 53(5).]

[Schedule 5 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

[1] This is a compilation of the *Electricity Corporations Act 2005* and includes the amendments made by the other written laws referred to in the following table [5]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Electricity Corporations Act 2005 [6]	18 of 2005	13 Oct 2005	Pt. 1, s. 141, 142, 144-152, 153(1) and 179: 13 Oct 2005 (see s. 2(1)); Pt. 2-8, s. 143, 153(2)-(4), 154-178, 180-192, Sch. 1-4 and Sch. 5 (other than cl. 21(2)(a)(ii)): 1 Apr 2006 (see s. 2(2) and *Gazette* 31 Mar 2006 p. 1153); Sch. 5 cl. 21(2)(a)(ii) deleted by No. 8 of 2009 s. 50(3)(b)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1) and Sch. 1 cl. 53	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 50	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Reprint 1: The *Electricity Corporations Act 2005* as at 14 May 2010 (includes amendments listed above)			
Approvals and Related Reforms (No. 4) (Planning) Act 2010 s. 31	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and *Gazette* 19 Nov 2010 p. 5709)
Public Sector Reform Act 2010 s. 75	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 4 Div. 2	48 of 2012	29 Nov 2012	21 Aug 2013 (see s. 2(b) and *Gazette* 20 Aug 2013 p. 3815)
Electricity Corporations Amendment Act 2013 Pt. 2 (s. 3-36)	25 of 2013	18 Dec 2013	Pt. 2 heading and s. 3 and 32-35: 19 Dec 2013 (see s. 2(b)); Pt. 2 other than s. 3 and 32-35: 1 Jan 2014 (see s. 2(c) and *Gazette* 27 Dec 2013 p. 6465)
Reprint 2: The *Electricity Corporations Act 2005* as at 18 Jul 2014 (includes amendments listed above)			

[This compilation shows amendments proposed by Bill No. 142-1 (Pt. 3 Div. 4).]

Short title	Number and year	Assent	Commencement
Electricity Corporations Amendment Act 2015	16 of 2015	25 Jun 2015	s. 1 and 2: 25 Jun 2015 (see s. 2(a)); Act other than s. 1 and 2: 26 Jun 2015 (see s. 2(b))
Associations Incorporation Act 2015 s. 216	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and *Gazette* 24 Jun 2016 p. 2291-2)
Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2016 Pt. 3 Div. 2	46 of 2016	7 Dec 2016	8 Dec 2016 (see s. 2(b))
Reprint 3: The *Electricity Corporations Act 2005* as at 7 Jun 2019 (includes amendments listed above)			
Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 Pt. 3 Div. 4	Current Bill No. 142-2		

[2] Deleted by the *Public Sector Reform Act 2010* s. 57.

[3] Deleted by the *Electricity Transmission and Distribution Systems (Repeal and Related Provisions) Regulations 2007* r. 5 and 6.

[4] Now known as the *Electricity Transmission and Distribution Systems (Access) Act 1994*.

[5] The amendment in the *State Superannuation Amendment Act 2007* s. 81 is not included because it was deleted by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.

[6] Schedule 5 clause 21(2)(a)(ii) of this Act had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 50(3)(b).