
ELECTRICITY LEGISLATION (AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2003

EXPLANATORY MEMORANDUM

The *Electricity Legislation (Amendments and Transitional Provisions) Bill 2003* is one of three Bills necessary to facilitate implementation of the Government's electricity reform agenda. The Bills give effect to the recommendations made by the Electricity Reform Task Force in October 2002 and endorsed by the Government in November 2002.

The electricity reforms include:

- establishing a wholesale market for the South West interconnected system;
- restructuring Western Power into four new Government owned entities in the form of the Electricity Generation Corporation, Retail Corporation, Networks Corporation and Regional Power Corporation;
- establishing an independent licensing regime for electricity industry participants;
- establishing an Electricity Access Code to provide for third party access to electricity networks in Western Australia; and
- implementing measures to protect customers in a competitive electricity market.

This Bill provides for a number of transitional provisions and amendments to several Acts as a result of the restructure of Western Power.

The Bill amends the *Electricity Corporation Act 1994* to repeal all provisions except those relating to access to Western Power's transmission and distribution systems. The Bill amends the name of the Act to the *Electricity Transmission and Distribution Systems (Access) Act 1994*. This Act will allow for the continuation of Western Power's obligations to provide third party access to its transmission and distribution capacity until such time as the Networks Corporation and the Regional Power Corporation, as appropriate, have access arrangements approved by the Economic Regulation Authority under a new Electricity Access Code.

The Bill also provides for the making of a Transfer Order, by the Minister for Energy, specifying how the assets, rights and liabilities of Western Power are to be allocated to the four new corporations. The Transfer Order will give effect to the legal establishment of the new entities. The Bill also includes provision for unallocated assets or liabilities.

In addition to provisions contained within the *Electricity Corporations Bill 2003* to require the new corporations to develop an employee transfer policy, this Bill ensures that the restructure will not affect an employee's remuneration, existing or accruing rights or interrupt continuity of service.

The Bill also makes consequential amendments to a number of other Acts to replace the term "Western Power Corporation" with reference to one or more of its successor entities.

Security of electricity supply is essential for consumers and the economy as a whole. The Government has moved to refine powers in the event of a system emergency. This Bill amends the *Energy Operators (Powers) Act 1979* to extend emergency powers to all operators of distribution and transmission systems, not just the Western Power successor entities. The Bill places an obligation on system operators to notify the Minister of a system emergency and empowers the Minister to make appropriate orders to ensure continuity of supply.

The Minister will also have the power to delegate the role to make orders to an energy operator. This will ensure that appropriate skills can resolve the emergency in a timely manner. Importantly, in the event of an emergency that would have immediate consequences, system operators will be authorised to take any action considered necessary to mitigate or avoid the emergency.

The establishment of an independent licensing regime under the Electricity Industry Bill gives rise to a number of amendments to the *Electricity Act 1945*. This Bill repeals provisions of the Electricity Act relating to commercial regulation. The remaining provisions of the Electricity Act relate to certain technical and safety matters that are administered by the Director of Energy Safety.

The Bill also amends the *Parliamentary Commissioners Act 1971* to enable the Parliamentary Commissioner, or State Ombudsman, to act as the independent Electricity Ombudsman and provide an accessible dispute resolution service to electricity customers in the interim period until an industry scheme is developed. The State Ombudsman will also fulfill this role for the gas industry.

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Part 1 - Preliminary

This Bill provides for a number of transitional provisions and amendments to several Acts as a result of the restructure of Western Power, the creation of Western Power's successor entities and the restructuring of the Western Australian electricity industry.

Clause 1 Short title

This clause formally titles the Bill.

Clause 2 Commencement

This clause states when the various Parts of the Bill come into effect. Various provisions need to come into effect at different times because the disestablishment of Western Power, creation of Western Power's successors entities and restructuring of the Western Australian electricity industry will occur in several stages. Some provisions come into effect when the Bill receives Royal Assent. The remaining provisions come into effect upon proclamation. Proclamation is not to take place in respect of some provisions until the Minister for Energy is satisfied that the transfer order or transfer orders required under clause 24(1) (which transfer Western Power's assets, rights, liabilities and legal proceedings to its successor entities) have been made. In addition, there is a requirement that some provisions be proclaimed to come into effect on the same day.

Part 2 - Electricity Corporation Act 1994 amended

This Part essentially amends the existing *Electricity Corporation Act 1994* so as to repeal all provisions except those relating to access to the electricity transmission and distribution systems. To the extent allowed by industry reform objectives, most of the repealed provisions are mirrored in the proposed *Electricity Corporations Bill 2003* or the proposed *Electricity Industry Bill 2003*. This Part amends the remaining provisions so as to allow for the continuation of Western Power's existing obligations to provide third party access to its transmission and distribution capacity. These obligations will remain in force until such time as the Electricity Networks Corporation and the Regional Electricity Corporation (as appropriate) have an access arrangement approved by the Economic Regulation Authority under a new Electricity Access Code, pursuant to the proposed *Electricity Industry Bill 2003*.

Clause 3 The Act amended

This clause provides that the amendments in this Part are to the *Electricity Corporation Act 1994*.

Clause 4 Long title amended

This clause repeals the long title (which referred to the establishment of Western Power) and inserts a new long title, which reflects that the amended Act primarily deals with access to the electricity transmission and distribution systems.

Clause 5 Section 1 amended

This clause amends the short title of the Act from the *Electricity Corporation Act 1994* to the *Electricity Transmission and Distribution Systems (Access) Act 1994*.

Clause 6 Sections 2 and 3 replaced by section 2

This clause repeals section 2 (which provided for the Act's commencement) and section 3 (definitions) as these sections will no longer be applicable to the amended Act. This clause inserts a new section 2 which defines "corporation" for the purposes of the amended Act as the Electricity Networks Corporation or the Regional Electricity Corporation. These are the 2 successor entities that will own electricity transmission and distribution systems. In addition, definitions relating to "isolated system" and "North West interconnected system" are included.

Clause 7 Parts 2, 3, 4 and 5 repealed

This clause repeals Part 2 (establishment of Western Power), Part 3 (Western Power's functions and powers), Part 4 (Western Power's accountability) and Part 5 (financial provisions relating to Western Power). Largely, similar provisions are contained in the proposed *Electricity Corporations Bill* as applying to the successor Western Power entities.

Clause 8 Part 6 heading replaced

This clause replaces the heading of Part 6 with "Access to electricity transmission and distribution systems". The previous heading was "Access, pricing and procurement".

Clause 9 Section 89 amended

This clause amends the definitions of "electricity distribution capacity", "electricity distribution system", "electricity transmission capacity", "electricity transmission system" and "user" in section 89, so that these definitions only apply to the successor Western Power entities under the amended Act. This clause also deletes the definition of "new generation", as this issue is addressed in the proposed *Electricity Corporations Bill*.

Additionally, a new sub-section 89(3) is added which provides that for the purposes of Schedule 5 clause 6 and Schedule 6 clause 6, the North West interconnected system and all isolated systems which will be owned and operated by Regional Power Corporation are to be regarded as a single electricity system. This is to enable the Regional Power Corporation to produce reports on an aggregated basis and not detailed individual reports for each of the North West interconnected system and the 26 isolated systems.

Clause 10 Sections 92 and 93 repealed

This clause repeals sections 92 and 93 from the existing Act. Section 92 related to the procurement of new generation. Provisions dealing with the procurement of new generation are contained in the proposed *Electricity Corporations Bill*. Section 93 provided for the progressive introduction of electricity transmission and distribution retail contestability. The current electricity transmission and distribution access orders (made under section 93 of the existing Act) which apply to Western Power will need to be repealed and new orders created which only apply to the Electricity Networks Corporation (responsible for providing access to electricity transmission and distribution capacity in the SWIS) and the Regional Electricity Corporation (responsible for providing access to electricity transmission and distribution capacity outside the SWIS). This will be necessary to introduce a successive tranche of contestability from 1 January 2005.

Access orders for access to the electricity systems owned by Electricity Networks Corporation and Regional Power Corporation are now to be made by the Minister under Schedule 6, clause 2.

Clause 11 Section 94 amended

This clause makes minor consequential amendments to section 94.

Clause 12 Section 95 amended

This clause makes a minor consequential amendment to section 95.

Clause 13 Section 96 inserted

This clause inserts a new section in the amended Act which provides that the Governor may make regulations in relation to all matters that are required, permitted, necessary or convenient for giving effect to the purposes of the amended Act.

Clause 14 Part 7 and Schedules 1, 2, 3 and 4 repealed

This clause repeals Part 7 and Schedules 1, 2, 3 and 4. Part 7 contained miscellaneous provisions relating to Western Power such as how documents are to be executed; Schedule 1 contained provisions as to constitution and proceedings of the board; Schedule 2 contained provisions as to duties of directors and related provisions; Schedule 3 contained provisions as to the financial administration and audit of the Corporation; and Schedule 4 contained provisions to be included in articles of association of subsidiaries of the Corporation. Similar provisions in relation to the successor Western Power entities are contained in the proposed *Electricity Corporations Bill*.

Clause 15 **Schedule 5 amended**

Schedule 5 caters for access to transmission capacity. One of the key features of the proposed suite of legislation is the establishment of a Western Australian Electricity Access Code. This Code will provide for obligatory third party access to designated infrastructure. Heads of power to establish the Code will be provided for under the proposed *Electricity Industry Bill* with the Code itself to be effected through regulations. Until such time as State Networks' access arrangement is approved under the proposed Electricity Access Code, Schedules 5 and 6 of the existing Act will need to remain in effect (as will the *Electricity Transmission Regulations 1996*, *Electricity Distribution Regulations 1997* and *Electricity Referee and Dispute Resolution Regulations 1997*). References to "the corporation" (ie, Western Power) in Schedules 5 and 6 will be replaced with references to both Electricity Networks Corporation and Regional Power Corporation, imposing equivalent obligations and powers on these entities as were previously placed upon Western Power.

Clause 16 **Schedule 6 amended**

Schedule 6 caters for access to distribution capacity. See further explanatory comments in relation to clause 15. In addition, the current electricity and distribution orders made pursuant to section 93 of the existing Act will need to be repealed and new orders created which apply to State Networks and the Regional Power Corporation. New clauses 2(1b) and 2(1c) of Schedule 6 empower the Minister to make these replacement orders.

Clause 17 **Schedule 7 repealed**

This clause repeals Schedule 7, which related to the procurement of new generation. Provisions similar to those contained in Schedule 7 are contained in the proposed *Electricity Corporations Bill*. However, Schedule 7 is taken to be retained only in relation to any procurement of new generation already underway.

Part 3 - Transitional provisions for succession from Western Power Corporation to new corporations

Division 1 - Preliminary

Clause 18 Purpose of this Part

This clause states that the purpose of Part 3 of the Bill is to provide for the four new successor entities to be the successors to Western Power.

Clause 19 Terms used in this Part

This clause provides for definitions of "asset", "commencement day", "Electricity Generation Corporation", "Electricity Networks Corporation", "Electricity Retail Corporation", "liability", "new corporation", "principal Act", "records", "Regional Electricity Corporation", "right", "subsidiary", "the 1994 Act", "transfer order" and "Western Power Corporation".

Clause 20 Saving

This clause is a saving provision which prevents the operation of a provision of the Bill from being regarded as a breach of contract, as giving rise to a remedy because of the change in the ownership of an asset or liability, as causing an instrument to be void or unenforceable, or as releasing or allowing the release of any surety. This provision is a usual statutory provision where a statutory transfer of assets and liabilities is provided for. It ensures that contracts can be assigned in the manner contemplated in the transfer order even though the terms of the contract may provide for assignment to be prohibited or limited.

Division 2 - Certain powers conferred on Minister

Clause 21 Power for certain agreements to be made before commencement day

This clause enables the Minister, on behalf of the successor Western Power entities, and Western Power to agree in writing before the commencement day that the transfer of assets, rights and liabilities from Western Power to the successor Western Power entities under Division 2 of the Bill is the supply of a going concern. This agreement in writing will satisfy one of the requirements of section 38-325 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*. Consequently, no GST will be payable on that supply. If the other requirements of that section are satisfied the supply will be within the exemption from GST provided for in the section.

As the agreement contemplated by this clause must be made before the commencement day, subclause establishes the successor Western Power entities to the limited extent necessary to achieve the purposes of this clause.

It should be noted that the vesting of the assets, rights and liabilities of Western Power in the successor entities is not regarded as being a supply for consideration for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* in the first instance so no GST should be attracted as a result of the statutory vesting. This section enables the supply to be brought within a specific exemption to the imposition of GST in the event the Australian Taxation Office formed an adverse view on this threshold question.

Clause 22 **Minister may give directions**

This clause empowers the Minister to give directions in writing to Western Power requiring it to take any step (or refraining from taking any step) that the Minister considers necessary or convenient for achieving the purpose of Part 3 of the Bill, being the succession from Western Power to the successor Western Power entities.

The clause states that a direction can be given which requires Western Power to allow its functions to be performed by a committee appointed by the Minister, namely the Energy Reform Implementation Steering Committee, and to follow instructions of that committee. The clause further states that Western Power must comply with such directions even where there is any conflict or inconsistency between compliance with the direction and a provision of the *Electricity Corporation Act 1994*.

A similar provision was contained in the Gas Corporation (Business Disposal) Act 1999.

Clause 23 **Directions to be laid before Parliament**

This clause requires the Minister to cause the text of any direction made under clause 22 to be laid before each House of Parliament.

Division 3- Passing of Western Power Corporation's assets and liabilities to new corporations

Subdivision 1 - Making of transfer orders

Clause 24 Minister to make order for allocation of assets and liabilities

This clause provides that, as soon as practicable after this clause comes into force, the Minister may make and publish in the *Gazette* a transfer order or orders to give effect to the allocation of assets, rights, liabilities and legal proceedings from Western Power to the successor Western Power entities. A transfer order is to specify the assets, rights, liabilities and legal proceedings which are to be assigned.

This is the provision pursuant to which the assets and liabilities of Western Power will be transferred to one or more of the successor Western Power entities (and where applicable, whether as joint tenants or tenants in common).

This clause also describes other matters that may be specified in a transfer order, including that a transfer order may:

- allocate values to assets and liabilities;
- provide for the allocation of income in respect of an asset;
- allocate a specified share of a particular liability to one or more of the successor Western Power entities;
- provide for the dealing with accounts, funds, profits and liability for levies; and
- such incidental or supplementary provisions as the Minister thinks fit.

This clause prohibits a transfer order from being made after the commencement day, except under clause 27 (which enables subsequent transfer orders to be made within six months of the commencement day).

Clause 25 Order may provide for transfer to subsidiary

This clause provides that an asset, right or liability may be allocated in a transfer order to a subsidiary of a successor Western Power entities. The Minister then makes a subsequent order under clause 32, which allows time for the subsidiary to be created, and the asset, right or liability vests in, or is assumed by, the subsidiary.

Clause 26 Transfer order schedules

This clause provides that a transfer order may allocate assets, rights or liabilities by reference to schedules (which need not be published in the *Gazette* but must be available for public inspection).

Clause 27 Treatment of certain internal arrangements of Western Power Corporation

This clause provides that arrangements between internal divisions of Western Power may be specified in a transfer order as if the arrangements created contractual rights and liabilities between different legal entities. This is intended to give legal status to what has previously been important to internal arrangements, such as the understanding as to the basis upon which Western Power's retail business had access to the electricity distribution system operated by the Western Power networks business which as between separate legal entities should have the status and certainty of contracts.

Clause 28 Power to make subsequent order

This clause provides that if it is impracticable to allocate any asset, right or liability under clause 24 before the commencement day, then the decision as to allocation can be deferred as follows:

- the transfer order made under clause 24 is to specify that the relevant asset, right or liability is to be allocated under this clause 28; and
- the Minister may make a further transfer order under clause 24 in respect of that asset, right or liability within six months of the commencement day.

Any such subsequent transfer order is to have effect from the commencement day and Western Power is taken to hold the relevant asset, right, or liability until the subsequent transfer order is made, and is expressly continued in existence for this purpose.

Clause 29 References in Government agreements

This clause requires a transfer order to specify that where there is a reference to Western Power in a Government agreement, then that reference is to be read as a reference to one or more particular successor entities (and where applicable, whether as joint tenants or tenants in common).

Clause 30 **Amendment of transfer orders**

This clause provides that the Minister may:

- before the commencement day, make a further order to amend a transfer order; and
- after the commencement day, make a further order to rectify any unintentional omission from a transfer order or to amend a provision of a transfer order described in clause 24(3)(d) or (e) (the allocation of values to assets and liabilities) or clause 29 (changes references to Western Power in Government agreements to references to the successor Western Power entities).

These further orders must be published in the *Gazette*.

This clause further provides that, in relation to further orders made after the commencement day:

- such orders can be made so as to take effect from the commencement day; and
- if a provision of such an order has effect before it is published in the *Gazette*, the provision does not operate so as to prejudicially affect, or impose liabilities on, a person in respect of anything done or not done before the day of publication.

Subdivision 2 - Operation of transfer orders

Clause 31 **Allocation to one new corporation**

This clause describes the consequences of a transfer order where assets, rights, liabilities and legal proceedings of Western Power are transferred to one of the successor Western Power entities. On and from the commencement day, these assets, rights, liabilities and legal proceedings vest in, or are assumed by, the relevant successor Western Power entity. This clause also describes that references to Western Power in such things as contracts are substituted with references to the relevant successor Western Power entity, except to the extent that any provision of a transfer order, clause 36 of the Bill (regarding Government agreements) or the relevant context otherwise requires.

This clause further provides that any legal proceedings, remedies, acts or things that may have been commenced or done by Western Power before the commencement day may be commenced or done by the relevant successor Western Power entity after the commencement day.

Clause 32 Order for transfer to subsidiary

This clause provides for the Minister, where a transfer order makes a provision under clause 25, to declare that the asset, right or liability is vested in, or assumed by, a specified subsidiary of a successor Western Power entity.

Clause 33 Allocation to more than one new corporation

This clause describes the consequences of a transfer order where assets, rights, liabilities and legal proceedings of Western Power are transferred to two or more successor Western Power entities. On and from the commencement day, these assets, rights, liabilities and legal proceedings vest in, or are assumed by, the relevant successor Western Power entities. This clause also describes that references to Western Power in such things as contracts are substituted with references to the relevant successor Western Power entities, except to the extent that any provision of a transfer order, clause 33 of the Bill (regarding Government agreements) or the relevant context otherwise requires.

This clause further provides that any legal proceedings, remedies, acts or things that may have been commenced or done by Western Power before the commencement day may be commenced or done by the relevant successor Western Power entities after the commencement day.

Clause 34 Replacement of Western Power Corporation in proceedings

This clause provides for the consequences of a successor Western Power entity (or two or more successor entities jointly) being included as the party replacing Western Power as a party in any proceedings. On and after the commencement day the successor entity or entities becomes a party to the proceedings in place of Western Power.

Clause 35 Handing over of records

This clause provides that as soon as practicable after the commencement day, Western Power must deliver to the relevant successor Western Power entity or entities all records relating to the assets, rights, liabilities and legal proceedings transferred to that entity or those entities under the transfer order.

Clause 36 Changes to Government agreements

This clause provides that on and after the commencement day, a reference to Western Power in a Government agreement that is to be read as a reference to one or more successor Western Power entities (pursuant to a provision of the transfer order made under clause 29) has effect as provided in the transfer order.

Subdivision 3 - Re-allocation of assets, rights and liabilities

Clause 37 Order for re-allocation

This clause empowers the Minister to make re-allocation orders under which any assets, rights or liabilities that were vested in one or more successor Western Power entities pursuant to a transfer order are reallocated and vest (or vest differently) in another successor Western Power entity or entities on and from the day specified in that re-allocation order.

Orders under this clause can only be made within 6 months of the commencement day and must be published in the *Gazette*.

Clause 38 Re-allocation to have effect from commencement day

This clause describes the effect of re-allocation orders made under clause 34 37 of the Bill, being essentially that such orders have effect according to their tenor. On and from the commencement day specified in the re-allocation order, the re-allocated assets, rights and liabilities vest in, or are assumed by, the successor Western Power entity or entities specified in the re-allocation order.

A corporation previously concerned is not required to account for any benefit nor is it entitled to be reimbursed for any liability discharged in the period between the vesting and the reallocation.

A reallocation order may make any necessary or expedient savings or transitional provision.

References to the initial successor Western Power entity or entities in such things as contracts before the re-allocation are substituted with references to the successor Western Power entity or entities specified in the re-allocation order.

Any legal proceedings, remedies, acts or things that may have been commenced or done by the initial successor Western Power entity or entities before the re-allocation may be commenced or done by the successor Western Power entity or entities specified in the re-allocation order.

Clause 39 Handing over of records

This clause provides that as soon as practicable after the day specified in the re-allocation order, the initial successor Western Power entity or entities must deliver to the relevant successor Western Power entity or entities specified in the re-allocation order all records relating to the assets, rights, liabilities or legal proceedings transferred to that entity or those entities under the re-allocation order.

Subdivision 4 - Other matters relating to passing of assets and liabilities Order that allocated assets or liabilities pass instead to the State

Clause 40 **Minister may order that section 46 is to apply**

This clause provides that an asset, right or liability that vested in, or was assumed by, a successor Western Power entity is instead to be dealt with under section 46, which section deals with assets, rights and liabilities which are unallocated in the transfer order.

Clause 41 **Effect of order**

This clause provides that an order made under section 40 has effect in accordance with its tenor. The State is substituted in any agreement or instrument instead of the successor Western Power Corporation or subsidiary previously entitled or liable.

Clause 42 **Handing over of records**

This clause provides that the successor Western Power entity or entities previously concerned must deliver to the Minister all records relating to the assets, rights and liabilities referred to in clause 41.

Subdivision 5 - Replacement of party in proceedings

Clause 43 **Order for replacement**

This clause provides that the Minister may declare that on or after a day specified in the order a successor Western Power entity or two or more successor entities that became a party or parties to proceedings under clause 34 are to be replaced by another successor entity or entities. This enables proceedings which may have been inadvertently allocated to a successor entity to be retained by the State. An order cannot be made later than 6 months after the commencement date.

Clause 44 **Effect of order**

This clause provides that an order under section 43 has effect according to its tenor.

Clause 45 **Handing over of records**

This clause provides that the successor Western Power entity or entities that have been replaced as a party to proceedings must deliver to the relevant successor entity or entities all records relating to the proceedings.

Subdivision 6 – Assets, liabilities and proceedings not otherwise provided for

Clause 46 Unallocated assets and liabilities to be dealt with by Minister

This clause provides that all assets, rights, obligations and liabilities of Western Power which were not transferred to one or more of the successor Western Power entities by the transfer order will be dealt with after the commencement day as follows:

- assets and rights are to be dealt with as the Minister directs; and
- liabilities are to be discharged as the Minister, with the approval of the Treasurer, directs.

The dealings described above are subject to deferred allocation orders (clause 28), rectification orders (clause 30) and rectification regulations (clause 65(1) and (2)).

The State as the sovereign entity will have all appropriate powers to assume the assets, rights and liabilities and to continue claims and legal proceedings assumed pursuant to this clause.

Clause 47 Provisions incidental to section 46

This clause provides for the incidental consequences of matters not being allocated to a successor Western Power entity as follows:

- references to Western Power in agreements are to be substituted by references to the State (except to the extent that clause 36 of the Bill (in relation to Government agreements) or the relevant context otherwise requires);
- any legal proceedings that might have been commenced by Western Power may be commenced by the State; and
- any act, matter or thing done or omitted to be done by Western Power is taken to have been done or omitted to be done by the State.

The dealings described above are subject to deferred allocation orders (clause 28), rectification orders (clause 30) and rectification regulations (clause 65(1) and (2)).

The State as the sovereign entity will have all appropriate powers to assume the assets, rights and liabilities and to continue claims and legal proceedings assumed pursuant to this clause.

Clause 48 State to be party to proceedings if no provision made

This clause provides that if no provision is made in a transfer order for Western Power to be replaced as a party to any proceedings to which it is a party, then the State is, on and from the commencement date, a party to those proceedings in place of Western Power.

Clause 49 Handing over of records

This clause provides that Western Power is to deliver to the Minister all records relating to unallocated assets, rights and liabilities.

Subdivision 7 – Other matters relating to passing of assets and liabilities

Clause 50 Continuation of guarantees in respect of Western Power Corporation

This clause provides that:

guarantees given by the Treasurer under section 85 of the *Electricity Corporation Act 1994* to guarantee Western Power's repayment of debt; and

guarantees continued in force by section 51 of the *Energy Corporations (Transitional and Consequential Provisions) Act 1994* (being those guarantees given by in respect of SECWA, the liability for which was transferred to Western Power upon the disaggregation of SECWA),

are not affected by the Bill or by any transfer of Western Power's liabilities to one or more successor Western Power entities and are to continue in force as if the guarantee was given by the assignee successor Western Power entity or entities.

Section 85(3) of the *Electricity Corporation Act* (which provides that monies payable by the Treasurer under a guarantee is guaranteed by the State and is to be made by the Treasurer and charged to the consolidated fund) is to be taken to continue to apply for the purposes of this clause despite its repeal under clause 7 of the Bill.

This clause also empowers the Treasurer to enter into any instrument confirming the continued liability of the State under a guarantee (eg. to a third party lender which regards itself as unfairly prejudiced by the transfer of the guarantee to a successor Western Power entity). This clause further provides that any sum paid by the Treasurer under a guarantee in respect of a successor Western Power entity constitutes a charge on the assets of that entity.

Clause 51 **Guarantees to which section 50 does not apply**

This clause provides that for those guarantees that cannot be preserved under clause 50 of the Bill (for example, because the guarantee is not governed by Western Australian law):

Part 6 Division 4 of the *Electricity Corporations Bill* (which mirrors the existing provisions dealing with guarantees in the *Electricity Corporation Act 1994*) applies to the successor Western Power entity to which that guarantee has been assigned; and if the lender requests the Treasurer to give a guarantee in the same terms as the original guarantee, then the Treasurer is to comply with that request.

Clause 52 **Certain joint tenancies preserved**

This clause provides that the vesting of property which is jointly held by Western Power Corporation and an assignee from the former Gas Corporation in a successor Western Power entity does not sever the joint tenancy. This means that a statutory transfer of an interest held as a joint tenant by Western Power in an asset with a Gas Corporation assignee will continue as a joint tenancy between the successor Western Power entity and the Gas Corporation assignee.

Clause 53 **Western Power to complete necessary transactions**

This clause provides that if an asset, right or liability cannot be properly vested in one or more of the successor Western Power entities, then Western Power is taken to continue to hold and be liable for that asset, right or liability until the vesting is effected and is to take all practicable steps to ensure that such vesting occurs.

This clause also provides that any vesting that cannot be properly effected does not affect the duty of the successor Western Power entity or entities to account for, and report on, the asset, right or liability under the proposed *Electricity Corporations Act 2003*.

Clause 54 **Exemption from State taxation**

This clause provides that State tax (including stamp duty and other taxes) is not payable in relation to anything that occurs or is done under Part 3 of the Bill. This clause further provides that a successor Western Power entity can request the Treasurer to certify in writing that a thing occurred or was done under Part 3, and such a certificate is conclusive evidence of that fact.

Clause 55 Registration of documents

This clause provides that the "relevant officials" (who are persons charged under various statutes with registering relevant documents) are to record and register the documents necessary to show the effect of the transfer or other orders made under Part 3 of the Bill. This clause further provides that if one or more of the successor Western Power entities states in an instrument that any estate or interest in land has become vested in it, then the statement is evidence of that fact.

Division 4 - Staff

Clause 56 Transition of employment

This clause provides for the transfer of employees from Western Power to the successor Western Power entities by deeming employment contracts made between Western Power and its employees before the transfer to continue as if they were made by the board of the relevant successor Western Power entity. Western Power is to determine which successor Western Power entity is to be the employer of each person who is a member of staff of Western Power, and notify each person in writing of the determination, before the commencement day. Such notice is to have effect as if it were an agreement made between the person and the board of the successor Western Power entity for the employment of that person as a member of the staff of the successor entity.

Clause 57 Employees' rights preserved

This clause maintains current levels of employee remuneration and provides for the retention and transfer of employee entitlements to the successor Western Power entities.

Division 5 – Contracts with tariff customer

Clause 58 Minister to prescribe contracts

This clause provides for the Minister to prescribe a form of contract. The clause provides for any person who was a tariff customer of Western Power to be taken to have entered into a contract with either the Electricity Retail Corporation or the Regional Power Corporation for the supply of electricity in the form of the contract prescribed by the Minister.

This clause is necessary to implement the transition of tariff customers to contract customers, consistent with the requirements of the Electricity Industry Bill that licensees supplying electricity to customers must do so under approved contracts. This is a transitional provision to achieve that outcome for existing tariff customers.

Division 6 - Other transitional provisions

Clause 59 Annual report

This clause provides that Western Power is to prepare an annual report under section 62 of the *Electricity Corporation Act 1994* for the period from the preceding 1 July to the commencement day as if that period were a full financial year.

This clause also provides for Western Power to finalise any annual report that had not been sent to the Minister before the commencement day.

Clause 60 Completion of things commenced

This clause provides that anything commenced by Western Power under the *Electricity Corporation Act 1994* before the commencement day may be continued by a successor Western Power entity provided that the doing of that thing is within the functions of, and is relevant to, the successor Western Power entity.

Clause 61 Continuing effect of things done

Anything done or omitted to be done by Western Power:

- before the commencement day; and
- to the extent that the thing has any force and is not governed by clauses 31(6), 33(7), 34(2), 41(4), 47(4) or 48(2) (dealing with the consequences of an allocation under a transfer under or a re-allocation order), is to be taken to have been done by a successor Western Power entity so far as the thing is relevant to that entity.

Clause 62 Immunity to continue

This clause continues the benefit of any immunity protecting Western Power before the commencement day for the benefit of a successor Western Power entity so far as the thing is relevant to that entity.

Clause 63 Agreements and instruments generally

This clause provides that an agreement or instrument which:

- had Western Power as a party; and
- does not come within clauses 31(4), 33(5), 36 or 47(2);

has effect after the commencement day as if any relevant successor Western Power entity was substituted as the party to the agreement and references in the agreement to Western Power were references to any relevant successor Western Power entity.

Clause 64 Western Power to perform necessary transitional functions

This clause provides that, despite the repeal of section 4 of the *Electricity Corporation Act 1994* by clause 7 of the Bill, Western Power continues in existence for the purposes of fulfilling various reporting and other functions required by the Bill. This clause further provides that Western Power, for those purposes, is to be constituted by a person appointed by the Minister (on such terms and conditions as the Minister determines) and is to perform the functions through that person. Western Power, constituted by that person, has all powers that are necessary or convenient for the specified purposes.

The clause also provides that a successor Western Power entity is to provide such clerical or other assistance as Western Power (constituted by the relevant person) may reasonably request.

Division 7 - Making of further provision by regulation

Clause 65 Powers of rectification and similar matters

This clause empowers the Governor to make regulations if the Minister believes that:

- there is an error in a transfer order which cannot be rectified by making a reallocation order under clause 37(1), 37(2); or
- there has been an omission from a transfer order which cannot be rectified under clause 30(2).

Such regulations may make any provision to correct and deal with the consequences of that error or omission. This clause also empowers the Governor to make regulations if the Minister believes that it is necessary to make an order under clause 28(1)(b) (deferred allocation order) or a declaration described in clause 37(1) and 37(2) (re-allocation order), but the six month period in which such orders and declarations can be made has expired.

Such regulations may make such provision as could have been made under clause 28(1)(b) or 34(1), 32(1), 37(1) or (2), 40(1) or 43(1) (as applicable) within the six month period.

Clause 66 Further provision may be made by regulation

This clause empowers the Governor to make:

- provision in regulations for any matter or thing necessary or convenient to achieve the purpose described in clause 18 of the Bill if there is no sufficient provision in Part 3 of the Bill; and
- regulations which rectify an anomaly which the Minister believes arises in the carrying out of any provision of Part 3 of the Bill.

Pursuant to clause 67, such regulations may have effect from the commencement day.

Clause 67 Regulations may operate from the commencement day

This clause provides that regulations made under Division 7 may have effect from the commencement day, other than for the purposes of clause 52(2)(b) (making regulations to make a re-allocation order). This clause further provides that if a provision of such regulations has effect before it is published in the *Gazette*, the provision does not operate so as to prejudicially affect, or impose liabilities on, a person in respect of anything done or not done before the day of publication.

Division 8 – Indemnities and guarantee

Clause 68 Treasurer may give indemnity and guarantee

This clause provides for the Treasurer to be able to give an indemnity or guarantee of a payment to a person who is or has been a director or officer of Western Power or of a subsidiary of Western Power or a member or alternate member of the Electricity Reform Implementation Steering Committee.

An equivalent provision was included in the *Gas Corporation (Business Disposal) Act 1999*, and provides for the Government to indemnify non-executive directors of Western Power and non-public service members of the Electricity Reform Implementation Steering Committee against any liability they may incur in discharging their duties in the reform process.

Part 4 - Consequential amendments

This Part makes a number of consequential amendments to items of legislation in furtherance of the purposes of the Bill. In a number of cases, amendments are required to substitute the phrase “Western Power Corporation” with a reference to all or some of the successor entities to Western Power that are to be established under the *Electricity Corporations Bill*.

Division 1 – Energy Operators (Powers) Act 1979 amended

Clause 69 The Act amended

This clause provides that amendments in this Division are to the *Energy Operators (Powers) Act 1979*.

Clause 70 Long title amended

This clause repeals the reference to “Western Power Corporation” and replaces it with a reference to the corporations proposed to be established under the proposed *Electricity Corporations Bill*.

Clause 71 Section 4 amended

This clause inserts definitions for each of the Western Power successor entities, and deletes the definition of “Western Power Corporation”. Additionally, the definition of “energy operator” is deleted and replaced with a new definition that reflects the disestablishment of Western Power and the creation of an electricity industry licensing regime in the *Electricity Industry Bill*. The principal new feature of the new definition in relation to electricity industry energy operators is that the meaning of a reference to “energy operator” in a provision of the *Energy Operators (Powers) Act 1979* is to be determined by the operation of clause 45(1) of the *Electricity Industry Bill*. The meaning of the term “energy operator” in respect of the gas industry licensing regime has been retained in the Bill.

Clause 72 Section 46 amended

This clause makes minor, consequential amendments to section 46.

Clause 73 Section 123 amended

This clause amends section 123, which gives the Governor power to make regulations to give effect to the *Energy Operations (Powers) Act 1979*, or to facilitate the operation of the Electricity Corporation (i.e. Western Power).

This clause replaces references to “the Electricity Corporation” with “a corporation”, and thus will now cater for the successor entities to Western Power.

Clause 74 Section 124 amended

This clause makes a number of changes to the power making by-laws under section 124.

Section 124 is amended to allow Electricity Networks Corporation or Regional Power Corporation to exercise the by-law making power currently exercised by Western Power. Clause 74(3) amends section 124(1a) by referring to “electricity”, rather than energy generally. Clause 74(4) makes a minor, consequential amendment. Clause 74(5) replaces “Western Power Corporation” with “energy operator” in section 124(5), which deals with the making of declarations relating to certain matters, including system frequency.

Division 2 – Amendments to some other Acts

Clause 75 *Constitution Acts Amendment Act 1899* amended

References to “Western Power Corporation” in this Act are repealed and replaced with references to the successor entities of Western Power.

Clause 76 *Electricity Act 1945* amended

The definition of “Western Power Corporation” in this Act is repealed.

Clause 77 *Energy Corporations (Transitional and Consequential Provisions) Act 1994* amended

This clause amends section 50 of the *Energy Corporations (Transitional and Consequential Provisions) Act 1994* which essentially provides that any debentures or inscribed stock which devolved to Western Power or Gas Corporation upon the disaggregation of the State Energy Commission of Western Australia (“**SECWA**”) continue to be governed by certain sections of the *State Energy Commission Act 1979* despite the repeal of those sections, as if those sections remained in force and references to SECWA in those sections were references to, Western Power or Gas Corporation.

This section is amended so that it refers to the successor entities of Western Power.

Clause 78 ***Equal Opportunity Act 1984* amended**

Section 139(1)(c) of the *Equal Opportunity Act* applies to Part IX of that Act to Western Power. Part IX deals with equal opportunity in public employment.

The reference to “Western Power Corporation” in this section is repealed and replaced with a reference to the successor entities of Western Power.

Clause 79 ***Explosives and Dangerous Goods Act 1961* amended**

Section 63(eb) specifically excludes any pipeline operated by Western Power from the ambit of the *Explosives and Dangerous Goods Act*.

The reference to “Western Power Corporation” in section 63(eb) is repealed and replaced with references to the Electricity Generation Corporation, the Electricity Networks Corporation and the Regional Power Corporation.

Clause 80 ***Gas Pipelines Access (Western Australia) Act 1998* amended**

Sections 44 and 80 of the *Gas Pipelines Access (Western Australia) Act 1998* allow the Gas Pipelines Access Regulator and Western Australian Gas Disputes Arbitrator, respectively, to make use of government staff, other than an officer or employee of an “energy corporation”, which term is defined to include the Electricity Corporation (ie. Western Power) established under the *Electricity Corporation Act 1994*.

References to “energy corporation” in sections 44 and 80 are repealed and replaced with a reference to “electricity corporation”, which is then defined as the successor entities of Western Power. This amendment also effectively removes the reference to Gas Corporation, which was disestablished in 2000.

Clause 81 ***Land Administration Act 1997* amended**

Section 159 of the *Land Administration Act 1997* gives the Minister responsible for the *Land Administration Act 1997* the power to delegate certain functions in relation to the compulsory acquisition of land and compensation, to various Ministers, including the Minister responsible for the administration of the *Energy Operators (Powers) Act 1979*. Section 160(1)(c) in turn gives the Minister for Energy the power to delegate powers delegated under section 159 to Western Power Corporation.

A reference to “Western Power Corporation” in section 160(1)(c) is repealed and replaced with the Electricity Networks Corporation and Regional Power Corporation.

**Clause 82 *Metropolitan Region Town Planning Scheme Act 1959*
amended**

Under section 35C of the *Metropolitan Region Town Planning Scheme Act 1959*, the Western Australian Planning Commission may (with the approval of the Minister), if it considers that any land in the metropolitan area may be required for one or more of the purposes specified in the Second Schedule to that Act, declare that land to be a planning control area. The Second Schedule of that Act lists a number of purposes for which land may be required, for the purposes of Section 35C. One of the purposes listed is “Western Power Corporation.”

This Act is amended by replacing “Western Power Corporation” as a purpose for which land may be required in the Second Schedule with “the generation, transmission and distribution of electricity.”

Clause 83 *Public Sector Management Act 1994* amended

Western Power Corporation is listed in Schedule 1 of the *Public Sector Management Act 1994* as an entity which is not a public sector organisation for the purposes of that Act

The reference to “Western Power Corporation” in Schedule 1 is repealed and replaced with a reference to the successor entities of Western Power.

Clause 84 *Public Works Act 1902* amended

Section 5A of the *Public Works Act 1902* gives the Minister responsible for that Act the power to delegate certain functions to various Ministers, including the Minister charged with the administration of the *Electricity Corporation Act 1994*. Section 5B(1)(c) allows the Minister charged with the administration of the *Electricity Corporation Act* to delegate any of the powers delegated under section 5A to Western Power or an officer of Western Power.

The reference to the *Electricity Corporation Act 1994* in 5A(d) is replaced with a reference to the *Electricity Corporations Act 2003*. Additionally, the reference to “Western Power Corporation” in s5B(1)(c) is replaced with a reference to each of the successor entities of Western Power.

Clause 85 *State Records Act 2000* amended

The “Electricity Corporation” established under the *Electricity Corporation Act 1994* is listed as an organisation under Schedule 3 of the *State Records Act 2000*.

The reference to “Electricity Corporation” in Schedule 3 is repealed and replaced with a reference to the successor entities of Western Power.

Clause 86 ***Town Planning and Development Act 1928* amended**

Section 27A of the *Town Planning and Development Act 1928* deals with, among other things, the creation of easements over land in favour of certain persons or authorities where the requirements of section 27A(1) are satisfied. Paragraph (iv) of the provision specifies "the Western Power Corporation under the *Electricity Corporation Act 1994* for the purpose of the supply of electricity or access to electricity supply works" as such a person or authority.

This clause deletes the reference to the Western Power Corporation, as described above, and replaces it with a reference to the holder of a distribution licence or integrated regional licence (as defined in the *Electricity Industry Bill*) for the purpose of the supply of electricity from, or access to, a distribution system.

Part 5 – General amendments

This Part makes general amendments to a number of statutes in furtherance of the electricity industry reform measures to be implemented under the *Electricity Industry Bill*.

Division 1 – Electricity Act 1945 amended

Clause 87 The Act amended

This clause provides that amendments in this Division are to the *Electricity Act 1945*.

Clause 88 Long title amended

This long title deletes “to consolidate and amend the law relating to the establishment and control of electricity generating stations and to the transmission, distribution and use of electricity;” and retains those elements of the long title providing for examination and licensing of persons in respect to carrying out works relating to electricity, and for the examination, prohibition and approval of electrical appliances.

These amendments cater for the repeal of provisions of the Act that are not concerned with the technical and safety regulation of electricity supply. The provisions of the Act that will remain after the repeals effected under Division 1 of Part 5 of the Bill are intended to deal with only technical and safety regulation. All other aspects of the regulation of the electricity industry are addressed under the *Electricity Industry Bill*.

Clause 89 Section 5 amended

In section 5 of the Bill, the definitions are amended by replacing “supply authority” with the term “network operator”, and inserting definitions for each of “distribution licensee”, “exempt operator”, “network operator” and “transmission licensee”, which are related to terms defined in the *Electricity Industry Bill*.

In addition, a number of definitions, which are no longer used in the Act, are deleted. These are “concessionaire”, “Coordinator”, “Department” or “Government Department”, “electric installation”, “linking up scheme”, “public authority” and “supply authority”.

Clause 90 Section 6 repealed

Section 6, which applies the Act to Western Power, is repealed.

Clause 91 **Part II heading repealed**

The heading which refers to “Supply authorities”, is deleted and replaced with “Network Operators’ Obligations”.

Clause 92 **Part II Divisions 1 and 2 repealed**

This clause repeals a number of aspects of the Act which have been supplanted by elements of the *Electricity Industry Bill*. These repeals relate to: the erection of generating stations; plans of proposed generating stations; the powers of local governments to engage in electricity generation, supply and compulsory land acquisition; obligations of supply authorities to pay for damage done; linking up schemes between suppliers of bulk electricity; methods of metering bulk electricity supply; local government joint electricity supply schemes; standard forms of concession agreements; general powers of a supply authority; obligations of a supply authority to in relation to interference with a public authority’s works, and the obligation to reinstate; power of a supply authority to let meters or apparatus; power of a supply authority to enter into a contract to supply electricity; the power to discontinue supply in the case of illegal or fraudulent interference with works; and, the power of supply authority’s officer to enter premises.

Clause 93 **Part II Division 3 heading deleted**

The heading “specific obligations of supply authorities” is repealed.

Clause 94 **Section 25 amended**

Section 25 imposes specific obligations on supply authorities. This has been amended to replace references to “supply authority” with “network operator”. Aspects of section 25(1)(c) requiring that a supply of electricity be sufficient to ensure that all consumers entitled to be supplied are supplied are deleted.

Clause 95 **Section 32 amended**

Section 32 gives the Governor power to make regulations for a number of matters relating to the Act. The power of the Minister to make regulations has been repealed for each of: limits within which supply of electricity is compulsory or permissive; securing a regular and sufficient supply of electricity; limitations on charges; the enforcement of the duties of a concessionaire; and, the basis of charging by a supply authority. Each of these aspects is dealt with within the *Electricity Industry Bill*. In other regulation making powers, the term “network operator” is inserted in place of “supply authority”. Clause 95(2) removes the aspect in section 32(2) dealing with the restriction of the regulations to local government districts. Additionally, and for transitional purposes, sections 32(5) and (6) are repealed.

Clause 96 Sections 34, 35, 36, 37, 38, 39, 40 and 41 repealed

A number of sections are repealed, dealing with: exemption of service apparatus from any execution under process of law; power to cut off supply; powers where electricity is wasted or misused; power to remove appliances; treatment of an incoming tenant when an outgoing tenant is in arrears; duties of a supply authority in relation to meters; control of meters and fittings; and, the evidential value of meter records. These sections are now provided for under the new regulatory regime imposed by the *Electricity Industry Bill*.

Clause 97 Section 42 replaced

This clause repeals the existing section 42 and inserts a replacement section 42. The replacement provision does not address the matters addressed in the subsections (1)(b), (1)(ii) and (2) of the repealed provision. In respect of subsection (1)(b), it is no longer considered appropriate to continue the prohibition on controlling or interfering with the manner in which electricity supplied is used. In respect of subsection (1)(ii), it is inappropriate to continue the restraints on the use of electricity set out in that subsection. In respect of subsection (2), it is inappropriate to provide for the continuation of such a dispute resolution mechanism given the new regulatory regime implemented under the *Electricity Industry Bill*.

Clause 98 Sections 43 and 44 repealed

Sections 43 and 44, which relate to uniform charges and zoning, and the obligation to supply, are repealed as matters under these provisions are now dealt with under the *Electricity Industry Bill*.

Clause 99 Section 45 amended

“Supply authority” is replaced with “network operator” in this provision.

Clause 100 Sections 46, 47, 48, 49, 50 and 51 repealed

A number of sections are repealed, dealing with: power of the Coordinator to relieve a gas company from any obligation to supply; illegal interference with works; obtaining supply under a false name; unauthorised use; the alteration of meters; and, summary remedies for damage to electric works. These powers are now dealt with in the *Electricity Industry Bill*, or are powers which are inappropriate to be held by an operator following industry reforms pursuant to the *Electricity Industry Bill*.

Clause 101 Section 53 amended

“Supply authority” is replaced with “network operator” in this provision.

Division 2 – Energy Operators (Powers) Act 1979 amended

Clause 102 The Act amended

This clause provides that amendments in this Division are to the *Energy Operators (Powers) Act 1979*.

Clause 103 Section 4 amended

This clause provides for the repeal of the definitions of “concessionaire” and “linking up scheme”, which will no longer be relevant following the repeal of provisions of the *Electricity Act 1945*.

Clause 104 Section 38 amended

Section 38(5) deletes “or deemed to be vested in an energy operator pursuant to section 44” as section 44 has been repealed.

Clause 105 Section 43 amended

A new subsection (1aa) is inserted after section 43(1). The new subsection is concerned with works and other things placed upon, in, over or through land by a person pursuant to an agreement or arrangement with an energy operator under which the property in the works or other things is to pass to the energy operator on the occurrence of a transfer event. The subsection provides that such works or things are to be taken to have been lawfully placed and that, on and from the transfer event, are and continue to be the property of the energy operator (unless the energy operator otherwise specifies or determines). It also provides the energy operator with a right of access to the works and other things for the purposes of performing its energy operator's functions.

Clause 106 Section 45 amended

The reference to “Western Power Corporation” is deleted from this section.

Clause 107 Section 57 amended

This clause makes extensive amendments to section 57, which confers certain powers in the event of a supply system emergency. “Supply system” has been replaced with the term “distribution system” meaning that section 57 is to apply to emergency circumstances arising in relation to distribution or transmission works, but not to generating works.

This clause also restructures the section. In basic terms, the Minister will be given power to respond to a distribution system emergency, although the operator of a system will have power to respond immediately, where that is required by the nature of the emergency.

Clause 107 replaces the existing section 57(1) with a new provision which defines the meaning of certain terms, including "system emergency". If a system emergency exists, the operator of a distribution system is required to notify the Minister of the emergency pursuant to a new subclause (1a). In the event that an immediate response is required, section 57(2) empowers that operator to take action to avoid or mitigate the emergency, but the operator must still notify the Minister as soon as is practicable. As the result of amendments made by clause 107(3), the Minister has powers under 57(2) to make orders to respond to the emergency situation, or to take all measures necessary to diminish the effect of, or terminate, the emergency.

The Minister may also delegate powers under section 57(3) to an energy operator under a new section 57(3)(c). Further, a new subsection (9e) confers power on the Minister to do all things that the Minister considers are necessary to prevent the occurrence of a system emergency.

New subsections (9) to (9d) are inserted. These give significant powers to a person authorised under section 57 to enter land or premises to do things that are necessary to exercise any power under that section. These new powers of entry are equivalent to the emergency powers of entry afforded under Schedule 3 of the *Energy Coordination Act 1994*.

Finally, penalties for contravening an order or obstructing a person acting under this provision have been modified. Penalties have been increased such that they are now equivalent to penalties under Schedule 3 of the *Energy Coordination Act 1994*.

Division 3 – Parliamentary Commissioner Act 1971 amended

Clause 108 The Act amended

This clause provides that amendments in this Division are to the *Parliamentary Commissioner Act 1971*.

Clause 109 Section 34 amended

Reference in this provision to "gas" is replaced with "energy" to empower the Ombudsman to deal with energy matters – gas and electricity – generally. Further, "energy ombudsman scheme" is inserted, which references the ombudsman scheme created under the *Electricity Industry Bill*.