

South Australia

Electricity Corporations (Restructuring and Disposal) Act 1999

An Act to make provision for the restructuring and disposal of all or part of the assets of electricity corporations; to amend the *Electricity Corporations Act 1994*; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electricity Corporations (Restructuring and Disposal) Act 1999*.

2—Commencement

- (1) This Act (other than section 13 and Parts 2, 3 and 4 of Schedule 3) will come into operation on a day to be fixed by proclamation.
- (2) Section 13 comes into operation on the day on which this Act is assented to by the Governor.
- (3) Parts 2, 3 and 4 of Schedule 3 will come into operation in accordance with provisions contained in that Schedule.

3—Interpretation

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

asset means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity,

and includes, in relation to a transfer made or lease granted by a transfer order, sale/lease agreement or special order, a present or future cause of action in favour of the transferor or lessor;

authorised project—see section 5;

body includes a Minister;

cause of action includes any right to bring, defend or participate in legal proceedings;

dispose of an asset includes grant a lease in respect of the asset;

document includes a disc, tape or other medium in which information is stored;

electricity corporation means—

- (a) RESI (formerly ETSA); or
- (c) an electricity transmission corporation established under the *Electricity Corporations Act 1994*; or
- (d) a subsidiary of a body referred to in a preceding paragraph of this definition;

electricity infrastructure has the same meaning as in the *Electricity Act 1996*;

employee includes an officer;

employee transfer order—see section 23;

ETSA means ETSA Corporation established under the *Electricity Corporations Act 1994*;

instrument includes a written agreement, undertaking or understanding, a legislative instrument and a judgment, order or process of a court;

lease includes—

- (a) a sub-lease or other derivative of a lease; and
- (b) a licence or an agreement to grant a lease or licence,

(and **lessor** and **lessee** have corresponding meanings and include successors and assigns);

leased asset means an asset in respect of which a lease is granted by a transfer order or sale/lease agreement;

legal proceedings includes an arbitration and an administrative proceeding;

liability means a present, future or contingent liability (arising either at law or in equity) and includes—

- (a) a duty or non-pecuniary obligation; and
- (b) in relation to a transfer made or lease granted by a transfer order, sale/lease agreement or special order, a present or future cause of action against the transferor or lessor;

public lighting infrastructure means poles, equipment, fittings or wiring associated with the provision of lighting in a street or other public place;

purchaser includes a person who acquires a leasehold interest or rights in respect of an asset;

RESI means RESI Corporation continued in existence under the *Electricity Corporations Act 1994*;

SAGC means SA Generation Corporation established under the *Electricity Corporations Act 1994*;

sale/lease agreement—see section 13;

security means—

- (a) a mortgage or charge; or
- (b) a guarantee or indemnity; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of a liability;

specially issued licence means a licence under the *Electricity Act 1996* issued in accordance with an order of the Minister under Part 5;

special order—see section 16;

State-owned company means—

- (a) a company incorporated under the *Corporations Law* all the shares of which are held by Ministers of the Crown, nominated by the Minister by notice in the Gazette as a State-owned company for the purposes of this Act; or
- (b) a subsidiary of such a company;

statutory corporation has the same meaning as in the *Public Corporations Act 1993*;

subsidiary, in relation to a body corporate, means—

- (a) a company that is a subsidiary of the body corporate within the meaning of the *Corporations Law*; or
- (b) a body corporate established as a subsidiary of the body corporate under the *Public Corporations Act 1993*; or
- (c) a company that is classified by the Minister by notice in the Gazette as a subsidiary of the body corporate;

transfer order—see section 8;

transferred asset means an asset transferred by a transfer order, sale/lease agreement or special order;

transferred instrument—see sections 8, 14 and 16;

transferred liability means a liability transferred by a transfer order, sale/lease agreement or special order;

vesting order—see section 12.

- (2) The Minister may, by notice in the Gazette, vary or revoke a notice issued for the purposes of a definition contained in subsection (1).

4—Application of Act

It is the intention of the Parliament that—

- (a) this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament; and
- (b) the provisions of this Act, and orders and agreements made and other things done under this Act, have effect in relation to assets, liabilities, transactions, acts and matters situated, arising, entered into, done or occurring within or outside the State whether the applicable law would, apart from this Act, be South Australian law or the law of another place; and
- (c) a court, tribunal or other body exercising judicial powers in a place outside the State apply South Australian law to the determination of any question about the effect of this Act, or the effect of an order or agreement made or other thing done under this Act, despite any inconsistent law of that other place.

Part 2—Preparatory action

5—Preparation for restructuring and disposal

- (1) The following actions (collectively referred to as the *authorised project*) are authorised:
 - (a) determination of the most appropriate means of disposing of the assets and liabilities of an electricity corporation;
 - (b) examination of the assets and liabilities of an electricity corporation or assets and liabilities of a body by which assets or liabilities have been acquired under a transfer order;

- (c) action that the Minister authorises in preparation for disposal of assets and liabilities of an electricity corporation or assets and liabilities of a body by which assets or liabilities have been acquired under a transfer order.
- (2) The authorised project is to be carried out by—
- (a) persons employed by the Crown and assigned to work on the project; and
 - (b) employees of an electricity corporation or State-owned company assigned to work on the project; and
 - (c) other persons whose services are engaged by the Crown or an electricity corporation or State-owned company for the purpose of carrying out the project; and
 - (d) other persons approved by the Minister whose participation or assistance is, in the opinion of the Minister, reasonably required for the purposes of the project.
- (3) The Minister (or the Minister's delegate) may, despite any other law or instrument, authorise prospective purchasers and their agents to have access to information in the possession or control of—
- (a) an electricity corporation; or
 - (b) a body by which assets or liabilities have been acquired under a transfer order,

that should, in the Minister's opinion (or the delegate's opinion), be made available to the prospective purchasers for the purposes of the authorised project.

- (4) Members of the governing body and employees of an electricity corporation or a body by which assets or liabilities have been acquired under a transfer order must, despite any other law or instrument—
- (a) allow persons engaged on the authorised project access to information in the possession or control of the electricity corporation or body that is reasonably required for, or in connection with, the carrying out of the authorised project; and
 - (b) do whatever is necessary to facilitate the provision of the information to persons entitled to access to the information under subsection (3); and
 - (c) provide other co-operation, assistance and facilities that may be reasonably required for, or in connection with, the carrying out of the authorised project.
- (5) A person who is in a position to grant or refuse access to information to which this section relates may deny access to a person who seeks access to the information unless the person produces a certificate issued by the Minister (or the Minister's delegate) certifying that the person is entitled to access to information under this section and the basis of the entitlement.

6—Authority to disclose and use information

The disclosure or use of information in the possession or control of—

- (a) an electricity corporation or a body by which assets or liabilities have been acquired under a transfer order; or

- (b) a current or former member of the governing body or employee of an electricity corporation or body by which assets or liabilities have been acquired under a transfer order; or
- (c) persons involved in the authorised project,

as reasonably required for, or in connection with, the carrying out of the authorised project is authorised despite any other law or instrument to the contrary.

7—Evidentiary provision

- (1) In legal proceedings, a certificate of the Minister (or the Minister's delegate) certifying that action described in the certificate forms part of the authorised project, or that a person named in the certificate was at a particular time engaged on the authorised project, must be accepted as proof of the matter so certified in the absence of proof to the contrary.
- (2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted as such in the absence of proof to the contrary.

Part 3—Restructuring and disposal

8—Orders to effect transfers, leases and other restructuring

- (1) The Minister may, by order in writing (a *transfer order*), do one or more of the following:
 - (a) transfer to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, assets or liabilities (or both) of an electricity corporation;
 - (b) transfer to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, assets or liabilities (or both) of a body by which assets or liabilities have been acquired under a transfer order;
 - (c) grant to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, a lease, easement or other rights in respect of assets of or available to an electricity corporation;
 - (d) grant to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, a lease, easement or other rights in respect of assets of or available to a body by which assets have been acquired under a transfer order;
 - (e) extinguish a lease, easement or other rights held by a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, in consequence of a transfer order.
- (2) If—
 - (a) an electricity corporation has an easement in relation to electricity infrastructure on, above or under land; and

- (b) the Minister, by a transfer order, transfers part of the infrastructure, or grants a lease or other rights in respect of part of the infrastructure, to a body of a kind referred to in subsection (1),

the Minister may, by the transfer order, transfer to the body rights conferred by the easement but limited so they operate in relation to that part of the infrastructure (which rights will be taken to constitute a separate registrable easement) and may, by a subsequent transfer order, transfer to the same or a different body rights conferred by the easement but limited so they operate in relation to another part of the infrastructure, whether on, above or under the same or a different part of the land (which rights will also be taken to constitute a separate registrable easement).

- (3) In exercising powers under this section in relation to assets or liabilities of, or available to, a body other than the Minister, the Minister is to be taken to be acting as the agent of the other body.
- (4) A transfer order takes effect on the date of the order or on a later date specified in the order.
- (5) A transfer order effects the transfer and vesting of an asset or liability, or the grant or extinguishment of a lease, easement or other rights, in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.
- (6) The transfer of a liability from a body discharges the body from the liability.
- (7) If a transfer order so provides—
- (a) a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the transfer order;
 - (b) a security to which a leased asset is subject ceases to apply to the asset on the grant of the lease by the transfer order.
- (8) A transfer order may provide that references to a body of a kind referred to in subsection (1) (the *first body*) in a specified instrument or an instrument of a specified class (a *transferred instrument*) are replaced by references to another body of a kind referred to in subsection (1) (the *second body*), and in that case—
- (a) the instrument is modified as provided in the order; and
 - (b) the second body accordingly succeeds to the rights and liabilities of the first body under the instrument as from the date on which the transfer order takes effect or the date on which the instrument takes effect (whichever is the later).
- (9) The Minister may, by order in writing, declare that the effect of the whole or part of a transfer order is reversed and in that case (despite the provisions of any other law or instrument)—
- (a) the order will be taken to have come into effect contemporaneously with the transfer order; and
 - (b) transfers or grants identified in the order are cancelled and will be taken never to have been made; and
 - (c) transferred instruments identified in the order are to be construed as if they had never been affected by the transfer order.
- (10) A power may not be exercised under this section in relation to a company that has ceased to be a State-owned company.

9—Subcontracting performance of obligations to State-owned companies

Despite any other law or instrument, an electricity corporation may, if authorised to do so by the Minister, subcontract to a State-owned company the performance of all or part of the electricity corporation's obligations under a contract.

10—Conditions of transfer order

- (1) The Minister may, by order in writing, fix the conditions on which a transfer order operates.
- (2) An order under this section may be varied or revoked by the Minister by further order (but not in relation to a company that has ceased to be a State-owned company).
- (3) The conditions attaching to a transfer order may, for example, do one or more of the following:
 - (a) assign a value to particular transferred assets, or transferred assets of a particular class;
 - (b) assign a value to particular transferred liabilities, or transferred liabilities of a particular class;
 - (c) assign a net value to particular transferred assets and liabilities, or transferred assets and liabilities of particular classes;
 - (d) impose liabilities (in terms set out in the order) on the transferee reflecting the value or net value assigned by the Minister to transferred assets, or transferred assets and liabilities.

11—Conversion of electricity corporation to State-owned company

If the Governor so declares by proclamation, Schedule 2 applies to an electricity corporation specified in the proclamation.

12—Vesting orders

- (1) In any case where there appears to the Minister to be a dispute or doubt as to the ownership of public lighting infrastructure, the Minister may, by order in writing (a *vesting order*), declare that the ownership of public lighting infrastructure specified in the order is vested in an electricity corporation, State-owned company or council specified in the order.
- (2) Before making a vesting order that relates to public lighting infrastructure, the Minister must consult with the council of the area affected.
- (3) A vesting order effects the vesting of the specified public lighting infrastructure in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

13—Disposal of electricity assets and limitations on disposal

- (1) The Crown, an instrumentality of the Crown or a statutory corporation must not sell or transfer prescribed electricity assets.
- (2) If a prescribed company or a subsidiary of a prescribed company owns prescribed electricity assets, shares in the prescribed company—
 - (a) must not be issued; or

- (b) if owned by an instrumentality of the Crown or a statutory corporation—must not be sold or transferred.
- (3) Subject to the limitations under subsections (1) and (2), the Minister may by agreement (a *sale/lease agreement*) with another (the *purchaser*) do one or more of the following:
 - (a) transfer to the purchaser assets or liabilities (or both) of an electricity corporation;
 - (b) grant to the purchaser a lease, easement or other rights in respect of assets of or available to an electricity corporation;
 - (c) transfer to the purchaser assets or liabilities (or both) of a State-owned company;
 - (d) transfer to the purchaser shares in a State-owned company;
 - (e) grant to the purchaser a lease, easement or other rights in respect of assets of or available to a State-owned company;
 - (f) transfer to the purchaser assets or liabilities (or both) that have been acquired by a Minister, any instrumentality of the Crown or a statutory corporation under this Act;
 - (g) grant to the purchaser a lease, easement or other rights in respect of assets that have been acquired by a Minister, any instrumentality of the Crown or a statutory corporation under this Act.
- (4) Subsections (1) and (2) do not apply to—
 - (a) the sale or transfer of prescribed electricity assets to the Crown, an instrumentality of the Crown or a statutory corporation;
 - (b) the issuing, sale or transfer of shares to an instrumentality of the Crown or a statutory corporation;
 - (c) the sale or disposal of prescribed electricity assets in the ordinary course of the maintenance, repair, replacement or upgrading of equipment;
 - (d) the exercise by a person other than the Crown, an instrumentality of the Crown or a statutory corporation of a right under an instrument executed before 17 November 1998;
 - (e) the performance by the Crown, an instrumentality of the Crown or a statutory corporation of an obligation under an instrument executed before 17 November 1998.
- (5) The Minister must cause a copy of each relevant long term lease, and a prescribed report relating to the lease, to be laid before each House of Parliament—
 - (a) not later than 14 sitting days after the end of two years from the date on which the first relevant long term lease was made; or

- (b) if, before the end of the period referred to in paragraph (a), sale/lease agreements have been made providing for the disposal of all prescribed electricity assets of or available to an electricity corporation, State-owned company, Minister or any instrumentality of the Crown or statutory corporation (whether by the granting of a lease or the disposal of shares)—not later than 14 sitting days after the date on which the last such sale/lease agreement was made.

- (6) In this section—

prescribed company means a company any of the shares in which are owned by an instrumentality of the Crown or a statutory corporation other than as a passive investment only;

prescribed electricity assets means any of the following situated in South Australia:

- (a) electricity generating plant (other than plant with a generating capacity of less than 10 MW);
- (b) powerlines (within the meaning of the *Electricity Act 1996*);
- (c) substations for converting, transforming or controlling electricity;
- (d) land on which infrastructure of a kind referred to in paragraph (a) or (c) is situated,

but does not include anything excluded from the ambit of the definition by resolution passed by each House of Parliament;

prescribed report, in relation to a relevant long term lease, means a report prepared at the request of the Minister—

- (a) summarising the principal features of the lease and any related sale/lease agreement or other transaction; and
- (b) stating, in present value terms, the total amount paid or to be paid to the State under or in connection with the lease and any related sale/lease agreement or other transaction;

relevant lease means—

- (a) a lease granted by a sale/lease agreement; or
- (b) a lease granted by a transfer order the lessee under which is a company that has been acquired by a purchaser under a sale/lease agreement;

relevant long term lease means a relevant lease that confers a right to the use or possession of the assets for a term extending to a time, or commencing, more than 25 years after the making of the lease;

right includes a contingent or future right.

14—Provisions relating to sale/lease agreements

- (1) If—
- (a) an electricity corporation or State-owned company has an easement in relation to electricity infrastructure on, above or under land; and

- (b) the Minister, by a sale/lease agreement, transfers part of the infrastructure, or grants a lease or other rights in respect of part of the infrastructure, to a purchaser,

the Minister may, by the sale/lease agreement, transfer to the purchaser rights conferred by the easement but limited so they operate in relation to that part of the infrastructure (which rights will be taken to constitute a separate registrable easement) and may, by a subsequent sale/lease agreement, transfer to the same or a different purchaser rights conferred by the easement but limited so they operate in relation to another part of the infrastructure, whether on, above or under the same part or a different part of the land (which rights will also be taken to constitute a separate registrable easement).

- (2) A sale/lease agreement may transfer assets or liabilities (or both) to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, with effect at the end of the term of a lease (whether granted by the agreement, a transfer order or otherwise) or in specified circumstances.
- (3) In exercising powers in relation to assets or liabilities of, or available to, a body other than the Minister, the Minister is to be taken to be acting as the agent of the other body.
- (4) A sale/lease agreement effects the transfer and vesting of an asset or liability or shares, or the grant of a lease, easement or other rights, in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.
- (5) The transfer of a liability by a sale/lease agreement operates to discharge the transferor and the Crown from the liability.
- (6) Unless the sale/lease agreement otherwise provides—
 - (a) the transfer of an asset by a sale/lease agreement operates to discharge the asset from any trust in favour of the Crown;
 - (b) the transfer of the shares in an electricity corporation or State-owned company by a sale/lease agreement operates to discharge the assets of the company from any trust in favour of the Crown.
- (7) If a sale/lease agreement so provides—
 - (a) a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the sale/lease agreement;
 - (b) a security to which a leased asset is subject ceases to apply to the asset on the grant of the lease by the sale/lease agreement.
- (8) A sale/lease agreement may provide that instruments identified in the agreement, or to be identified as provided in the agreement, are to be transferred instruments.
- (9) If an instrument is identified in, or under, a sale/lease agreement as a transferred instrument, the instrument operates, as from a date specified in the agreement, subject to any modifications specified in the agreement.

15—Subcontracting performance of obligations to purchasers

Despite any other law or instrument, an electricity corporation or State-owned company may, if authorised to do so by the Minister, subcontract to a purchaser under a sale/lease agreement the performance of all or part of the electricity corporation's or State-owned company's obligations under a contract.

16—Special orders

- (1) The Minister may, by order in writing (a *special order*), transfer assets or liabilities (or both) of the purchaser under a sale/lease agreement to another body or bodies.
- (2) A special order may only be made at the request of the purchaser made within 12 months of the date of the sale/lease agreement and with the consent of the other body or bodies.
- (3) Only one special order may be made at the request of the same purchaser.
- (4) In exercising powers under this section in relation to assets or liabilities of the purchaser, the Minister is to be taken to be acting as the agent of the purchaser.
- (5) A special order takes effect on the date of the order or on a later date specified in the order.
- (6) A special order effects the transfer and vesting of an asset or liability in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.
- (7) A special order may provide that instruments identified in the order, or to be identified as provided in the order, are to be transferred instruments.
- (8) If an instrument is identified in, or under, a special order as a transferred instrument, the instrument operates, as from a date specified in the order, subject to any modifications specified in the order.

17—Terms of leases and related instruments

- (1) The Minister is to endeavour to ensure that a prescribed long term lease in respect of prescribed electricity assets or a related instrument contains terms under which—
 - (a) the lessee's right or option to renew or extend the lease must be exercised not less than five years before the commencement of the term of that renewal or extension; and
 - (b) the risk of non-payment of rent (including amounts to be paid on the exercise of a right or option to renew or extend the lease) is addressed at the commencement of the lease by the provision of adequate security or other means; and
 - (c) the lessee must provide adequate security in respect of compliance with requirements as to the condition of the leased assets at the expiration or earlier termination of the lease; and
 - (d) the lessor accepts no liability for, and provides no warranty or indemnity as to, a consequence arising from—
 - (i) the lessee's use of the leased assets in trade or business; or

- (ii) pool prices in the National Electricity Market or a similar or derivative market relating to the supply of electricity; or
 - (iii) competition between participants in the National Electricity Market or a similar or derivative market relating to the supply of electricity; or
 - (iv) regulatory change in the electricity supply industry; and
 - (e) the lessee must indemnify the lessor for any liability of the lessor to a third party arising from the lessee's use or possession of the leased assets; and
 - (f) the lessee must have adequate insurance against risks arising from the use or possession of the leased assets; and
 - (g) the lessee must ensure compliance with all regulatory requirements applicable to the use or possession of the leased assets; and
 - (h) the lessor is entitled to terminate the lease if a breach of the lessee's obligations of any of the following kinds, or any other serious breach, remains unremedied after reasonable notice:
 - (i) failure to obtain or retain—
 - (A) a licence or registration required for the use of the leased assets for their intended purpose in the electricity supply industry under the *Electricity Act 1996* or the *National Electricity (South Australia) Law*; or
 - (B) a similar licence, registration or other authority required under subsequent legislation;
 - (ii) non-payment of rent;
 - (iii) substantial cessation of use of the leased assets for their intended purpose in the electricity supply industry; and
 - (i) the lessor has a right or option, at the expiration or earlier termination of the lease, to acquire assets that form part of the business involved in the use of the leased assets for their intended purpose in the electricity supply industry.
- (2) If a prescribed long term lease is granted in respect of prescribed electricity assets and the lease and prescribed report relating to the lease are laid before a House of Parliament in accordance with section 13, a report stating the extent to which the lease complies with the requirements set out in subsection (1) and giving reasons for any non-compliance must be laid before that House of Parliament at the same time.
- (3) Non-compliance with this section does not affect the validity of a prescribed long term lease.
- (4) A provision included in a prescribed lease or related instrument that deals with—
- (a) the circumstances or conditions under which the lease may be terminated by the lessor or lessee; or
 - (b) the application of a security provided in relation to the lease; or
 - (c) the pre-payment of amounts payable by way of rent under the lease and the retention of such amounts by the lessor; or

- (d) the continuance of the lease despite the occurrence of unintended or unforeseen circumstances; or
- (e) the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances; or
- (f) the amount payable in consequence of a breach of the lease; or
- (g) the liability of the lessor in relation to the leased assets,

will have effect according to its terms and despite any law or rule to the contrary.

- (5) In this section—

electricity supply industry means the industry involved in the generation, transmission, distribution, supply or sale of electricity;

National Electricity Market means the market regulated by the *National Electricity Law*;

prescribed company has the same meaning as in section 13;

prescribed electricity assets has the same meaning as in section 13;

prescribed lease means—

- (a) a lease granted by a sale/lease agreement; or
- (b) a lease granted by a transfer order the lessee under which is, or was when the lease was granted, a prescribed company or subsidiary of a prescribed company or any instrumentality of the Crown or a statutory corporation;

prescribed long term lease means a prescribed lease that confers a right to the use or possession of the assets for a term extending to a time, or commencing, more than 25 years after the making of the lease;

right has the same meaning as in section 13.

18—Government guarantee

- (1) Subject to subsection (2), a Government guarantee has no application in relation to—
- (a) transferred liabilities (unless the liabilities are transferred to a public corporation and the guarantee under section 28 of the *Public Corporations Act 1993* applies or the liabilities are transferred back to the electricity corporation to whose liabilities the guarantee originally applied); or
 - (b) liabilities of a company that was an electricity corporation or State-owned company before the shares in the company were transferred to a purchaser under a sale/lease agreement.
- (2) If the Treasurer declares by order in writing that a Government guarantee continues to apply in relation to specified liabilities and a specified transferee or company, the Government guarantee will be taken to continue to apply (indefinitely or for a period specified in or determined in accordance with the order) to the liabilities as if the specified transferee or company were the electricity corporation to whose liabilities the guarantee originally applied.
- (3) The Treasurer may, from time to time, fix charges to be paid by the transferee in respect of a guarantee continued under this section and determine the times and manner of their payment.

- (4) If a Government guarantee is continued by an order under this section, the Treasurer must cause a report to be laid before each House of Parliament not later than 14 sitting days after the making of the order, giving details of the guarantee and the liabilities to which the guarantee relates including the maximum amount that might become payable under the guarantee.
- (5) In this section—
- Government guarantee** means—
- (a) a guarantee under section 28 of the *Public Corporations Act 1993*;
 - (b) a guarantee or indemnity given by an electricity corporation;
 - (c) a guarantee or indemnity under section 19 of the *Public Finance and Audit Act 1987*.

19—Supplementary provisions

- (1) If—
- (a) the transfer of a liability under this Act, and the consequent discharge from the liability, is not recognised under the law of a place outside South Australia; and
 - (b) the transferor is required under the law of that place to make a payment in satisfaction of the liability,
- the transferor is entitled to be indemnified by the transferee for the payment.
- (2) Subject to any contrary provision in a transfer order, sale/lease agreement or special order, the following provisions apply in relation to transferred assets and liabilities:
- (a) if a security held by the transferor is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability—
 - (i) the security is available to the transferee as security for the discharge of the liabilities to which it relates including, where the security relates to future liabilities, liabilities incurred after the transfer; and
 - (ii) the transferee is entitled to the same rights and priorities and is subject to the same liabilities under the security as those to which the transferor would have been entitled or subject if there had been no transfer;
 - (b) if a transferred asset consists of a right to the possession or use of property under a lease or other instrument, the transferor incurs no liability (nor does the right to possession become liable to forfeiture) because the transferor has parted with possession of the property, or permitted the possession or use of the property by another person, contrary to the terms of the lease or instrument;
 - (c) an instruction, order, authority or notice given to the transferor before the transfer takes effect is, so far as it is referable to a transferred asset or liability, taken to have been given to the transferee;

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- (d) the transferee is entitled to possession of all documents to which the transferor was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or liability and any other asset or liability;
 - (e) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by the transferor, is (if the transferor's liability under the instrument or order is a transferred liability) payable by the transferee in the same way as if it had been drawn by or on, or accepted or endorsed (as the case may be) by the transferee;
 - (f) the transferee has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from the transferor as the transferor would have had if there had been no transfer;
 - (g) in legal proceedings about a transferred asset or liability, evidence that would have been admissible by or against the transferor if there had been no transfer may be given in evidence by or against the transferee;
 - (h) legal proceedings in respect of a transferred asset or liability that had commenced before the transfer may be continued and completed by or against the transferee.
- (3) Subject to any contrary provision in a transfer order or sale/lease agreement, the following provisions apply in relation to leased assets:
- (a) if a security held by the lessor is referable to a leased asset, then, so far as it is referable to the leased asset—
 - (i) the security is available to the lessee as security for the discharge of the liabilities to which it relates including, where the security relates to future liabilities, liabilities incurred after the grant of the lease; and
 - (ii) the lessee is entitled to the same rights and priorities and is subject to the same liabilities under the security as those to which the lessor would have been entitled or subject if there had been no lease;
 - (b) if the lease is derivative of another lease (the *head lease*), the lessor incurs no liability (nor does the head lease become liable to forfeiture) because the lessor has granted the derivative lease, or has parted with possession of property, or permitted the possession or use of property by another person, contrary to the terms of the head lease;
 - (c) an instruction, order, authority or notice given to the lessor before the granting of the lease is, so far as it is referable to a leased asset, taken to have been given to the lessee;
 - (d) the lessee is entitled to possession of all documents to which the lessor was entitled immediately before the granting of the lease that are entirely referable to a leased asset and is entitled to access to, and copies of, all documents that are referable to both a leased asset and any other asset or liability;
 - (e) the lessee has the same right to ratify a contract or agreement relating to a leased asset as the lessor would have had if there had been no lease;

- (f) in legal proceedings about a leased asset, evidence that would have been admissible by or against the lessor if there had been no lease may be given in evidence by or against the lessee;
- (g) legal proceedings in respect of a leased asset that had commenced before the granting of the lease may be continued and completed by or against the lessee.

20—Evidentiary provision

- (1) The Minister (or the Minister's delegate) may certify—
 - (a) whether specified assets or liabilities are or are not transferred assets or liabilities and the identity of the transferee;
 - (b) whether specified assets are or are not leased assets and the identity of the lessee;
 - (c) whether specified instruments are or are not transferred instruments;
 - (d) any other matter with respect to a transfer or grant under this Act.
- (2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

21—Application of proceeds of sale/lease agreement

- (1) The Treasurer may only apply proceeds of a sale/lease agreement under this Act as follows:
 - (a) in payment of an amount equal to any payment made by an electricity corporation, or a body by which assets or liabilities have been acquired under a transfer order, on the termination or surrender of a lease entered into before 17 November 1998;
 - (b) in payment of the costs of restructuring and disposal of assets of electricity corporations and preparatory action taken for that purpose;
 - (c) in payment to an account at the Treasury to be used for the purposes of a scheme to limit differences between electricity prices charged to classes of consumers in non-metropolitan areas and those charged to corresponding consumers in metropolitan areas;
 - (d) in payment to an account at the Treasury to be used for the purposes of retiring State debt.
- (2) Any income from investment of money paid into an account at the Treasury under subsection (1) must be applied for the purposes of retiring State debt.
- (3) An amount paid by way of security will not be regarded as proceeds of a sale/lease agreement for the purposes of this section.
- (4) An electricity corporation must, if the Treasurer so directs, make a specified payment to the Treasurer.
- (5) A State-owned company must, if the Treasurer so directs, make a specified payment to the Treasurer.

- (6) The Minister must establish, maintain and operate a scheme (funded initially by the account referred to in subsection (1)(c) and subsequently by money appropriated for the purpose) for the purposes of ensuring that the electricity price charged to any small customer who is supplied electricity through the transmission network in South Australia, but not generally through a metropolitan transmission network connection point, will not exceed 101.7% of the electricity price charged to a corresponding small customer, with the same levels and patterns of consumption, who is generally supplied through a metropolitan transmission network connection point.

- (7) In this section—

metropolitan transmission network connection point means a transmission network connection point situated at—

- (a) the East Terrace substation, Adelaide; or
- (b) the Happy Valley substation, Happy Valley; or
- (c) the Kilburn substation, Dry Creek; or
- (d) the Lefevre substation, Outer Harbor; or
- (e) the Magill substation, Magill; or
- (f) the Morphett Vale East substation, Woodcroft; or
- (g) the Northfield substation, Northfield; or
- (h) the Osborne substation, Osborne; or
- (i) the Parafield Gardens West substation, Parafield Gardens; or
- (j) the Para substation, Gould Creek; or
- (k) the Torrens Island substation, Torrens Island;

small customer means a customer with electricity consumption levels (in respect of a single site) of less than 160 MW.h per year.

22—Auditor-General's report on relevant long term leases

- (1) The Auditor-General must be provided with a copy of each relevant long term lease within the period of seven days after the prescribed date.
- (2) The Auditor-General must, within the period of six months after the prescribed date, examine each relevant long term lease that has been provided under subsection (1) and any related transactions and prepare a report on—
- (a) the proportion of the proceeds of the leases used to retire State debt; and
 - (b) the amount of interest on State debt saved as a result of the application of those proceeds.
- (3) The Auditor-General—
- (a) must incorporate in the report under subsection (2) a report on the probity of the processes leading up to the making of each relevant long term lease; and
 - (b) for that purpose may, before, during and after the completion of those processes, require reports from the person appointed by the Treasurer (or otherwise on behalf of the Crown) to be the probity auditor in relation to the making of that lease.

- (4) Section 34 of the *Public Finance and Audit Act 1987* applies to the examination of a lease and any related transactions by the Auditor-General under this section.
- (5) The Auditor-General must deliver copies of a report prepared under this section to the President of the Legislative Council and the Speaker of the House of Assembly.
- (6) The President of the Legislative Council and the Speaker of the House of Assembly must not later than the first sitting day after receiving a report under this section, lay copies of the report before their respective Houses of Parliament.
- (7) If a report has been prepared under this section but copies have not been laid before both Houses of Parliament when a writ for a general election of the members of the House of Assembly is issued, the Auditor-General must cause the report to be published.
- (8) In this section—

prescribed date means the earlier of the following:

- (a) if sale/lease agreements have been made providing for the disposal of all prescribed electricity assets of or available to an electricity corporation, State-owned company, Minister or any instrumentality of the Crown or statutory corporation (whether by the granting of a lease or the disposal of shares)—the date on which the last such sale/lease agreement was made; or
- (b) the second anniversary of the date on which the first relevant long term lease was granted;

prescribed electricity assets has the same meaning as in section 13;

relevant lease means—

- (a) a lease granted by a sale/lease agreement; or
- (b) a lease granted by a transfer order the lessee under which is a company that has been acquired by a purchaser under a sale/lease agreement;

relevant long term lease means a relevant lease in respect of prescribed electricity assets that confers a right to the use or possession of the assets for a term extending to a time, or commencing, more than 25 years after the making of the lease;

right has the same meaning as in section 13.

Part 4—Staff

23—Transfer of staff

- (1) Action must be taken to ensure that all employees engaged in a business to which a sale/lease agreement relates are taken over as employees of the purchaser, a company related to the purchaser or the company acquired by the purchaser under the sale/lease agreement.
- (2) For the purposes of this section, the Minister may, by order in writing (an ***employee transfer order***)—
 - (a) transfer employees of an electricity corporation to positions in the employment of a State-owned company;

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- (b) transfer back to an electricity corporation an employee transferred to the employment of a State-owned company;
 - (c) transfer employees of an electricity corporation to positions in the employment of a purchaser under a sale/lease agreement or a company related to the purchaser;
 - (d) transfer employees of a State-owned company to positions in the employment of a purchaser under a sale/lease agreement or a company related to the purchaser.
 - (3) An employee transfer order takes effect on the date of the order or on a later date specified in the order.
 - (4) An employee transfer order may be varied or revoked by the Minister by further order in writing made before the order takes effect.
 - (5) An employee transfer order has effect by force of this Act and despite the provisions of any other law or instrument.
 - (6) A transfer under this section does not—
 - (a) affect the employee's remuneration; or
 - (b) interrupt continuity of service; or
 - (c) constitute a retrenchment or redundancy.
 - (7) Except with the employee's consent, a transfer under this section must not involve—
 - (a) any reduction in the employee's status; or
 - (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience.
 - (8) However, an employee's status is not reduced by—
 - (a) a reduction of the scope of the business operations for which the employee is responsible; or
 - (b) a reduction in the number of employees under the employee's supervision or management,if the employee's functions in their general nature remain the same as, or similar to, the employee's functions before the transfer.
 - (9) An employee's terms and conditions of employment are subject to variation after the transfer in the same way as before the transfer.
 - (10) A person whose employment is transferred from one body (the *former employer*) to another (the *new employer*) under this section is taken to have accrued as an employee of the new employer an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the former employer.
 - (11) A transfer under this section does not give rise to any remedy or entitlement arising from the cessation or change of employment.
 - (12) For the purposes of construing a contract applicable to a person whose employment is transferred under this section, a reference to the former employer is to be construed as a reference to the new employer.

- (13) A company and a purchaser are related for the purposes of this section if they are related bodies corporate within the meaning of the *Corporations Law*.

24—Separation packages and offers of alternative public sector employment

- (1) Subject to this section, any action that a private sector employer takes from time to time as a consequence of a transferred employee's position being identified as surplus to the employer's requirements must consist of or include an offer of a separation package that complies with this section.
- (2) If a private sector employer makes an offer to a transferred employee under subsection (1) after the end of the employee's first two years after becoming a transferred employee, an offer must also be made to the employee of public sector employment with a rate of pay that is at least equivalent to the rate of pay of the employee's position immediately before the employee's relocation to public sector employment.
- (3) A transferred employee who is made an offer of a separation package under subsection (1) must be allowed—
- (a) if an offer of public sector employment is also made under subsection (2)—at least one month from the date of the offer of public sector employment to accept either of the offers;
 - (b) in any other case—at least one month to accept the offer.
- (4) If a transferred employee has been offered both a separation package and public sector employment under this section and has failed to accept either offer within the period allowed, the employee is taken to have accepted the offer of a separation package.
- (5) The employment of a transferred employee may not be terminated as a consequence of the employee's position being identified, within the employee's first two years after becoming a transferred employee, as surplus to a private sector employer's requirements unless the employee has accepted (or is taken to have accepted) an offer under this section or otherwise agreed to the termination.
- (6) A separation package offered to a transferred employee under this section must include an offer of a payment of an amount not less than the lesser of the following:
- (a) $(8 + 3CYS)WP$;
 - (b) $104WP$,

where—

CYS is the number of the employee's continuous years of service in relevant employment determined in the manner fixed by the Minister by order in writing; and

WP is the employee's weekly rate of pay determined in the manner fixed by the Minister by order in writing.

- (7) An order of the Minister—
- (a) may make different provision in relation to the determination of an employee's continuous years of service or weekly rate of pay according to whether the relevant employment was full-time or part-time, included periods of leave without pay or was affected by other factors; and

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- (b) may be varied by the Minister by further order in writing made before any employee becomes a transferred employee; and
- (c) must be published in the Gazette.
- (8) A person who relocates to public sector employment as a result of acceptance of an offer under this section is taken to have accrued as an employee in public sector employment an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the relocation, as an employee of the private sector employer.
- (9) It is a condition of an offer of a separation package or public sector employment under this section that the employee waives any right to compensation or any payment arising from the cessation or change of employment, other than, if the employee accepts (or is taken to have accepted) a separation package, the right to superannuation payments or other payments to which the employee would be entitled on resignation assuming that the employee were not surplus to the employer's requirements.
- (10) If an employee is relocated to public sector employment as a result of acceptance of an offer under this section—
- (a) the employee may not be retrenched from public sector employment; and
- (b) the employee's rate of pay in public sector employment may not be reduced except for proper cause associated with the employee's conduct or physical or mental capacity.
- (11) Subsection (1) does not apply if the action that a private sector employer takes as a consequence of an employee's position being identified as surplus to the employer's requirements consists only of steps to relocate the employee to another position in the employment of that employer or a related employer in the electricity supply industry with—
- (a) functions that are in their general nature the same as, or similar to, the functions of the surplus position; and
- (b) a principal workplace or principal work depot not more than 45 kilometres distant by the shortest practicable route by road from the principal workplace or principal work depot of the surplus position; and
- (c) a rate of pay that is at least equivalent to the rate of pay of the surplus position.
- (12) For the purposes of subsection (5), the employment of a transferred employee is taken not to have been terminated by reason only of the fact that the employee has been relocated to another position in the employment of the same employer or a related employer in the electricity supply industry if the rate of pay of that position is at least equivalent to the rate of pay of the employee's previous position.
- (13) In this section—
- award or agreement** means award or agreement under the *Industrial and Employee Relations Act 1994* or the *Workplace Relations Act 1996* of the Commonwealth as amended from time to time;
- electricity supply industry** has the same meaning as in the *Electricity Act 1996*;

private sector employer means—

- (a) a purchaser under a sale/lease agreement or a company that was an electricity corporation or State-owned company before the shares in the company were transferred to a purchaser under a sale/lease agreement; or
- (b) an employer who is related to a purchaser or company referred to in paragraph (a);

public sector employment means employment in the Public Service of the State, or by an instrumentality of the Crown or a statutory corporation;

rate of pay includes an amount paid to an employee to maintain the employee's rate of pay in a position at the same level as the rate of pay of a position previously occupied by the employee;

relevant employment means—

- (a) employment by The Electricity Trust of South Australia, an electricity corporation or a State-owned company; or
- (b) employment by a private sector employer;

transferred employee means an employee—

- (a) who—
 - (i) was transferred by an employee transfer order to the employment of a purchaser under a sale/lease agreement; or
 - (ii) was in the employment of a company that was an electricity corporation or a State-owned company when the shares in the company were transferred to a purchaser under a sale/lease agreement; and
 - (b) who has remained continuously in the employment of that purchaser or company or in the employment of an employer related to that purchaser or company since the making of the relevant sale/lease agreement; and
 - (c) whose employment is subject to an award or agreement.
- (14) Employers are related for the purposes of this section if—
- (a) one takes over or otherwise acquires the business or part of the business of the other; or
 - (b) they are related bodies corporate within the meaning of the *Corporations Law*; or
 - (c) a series of relationships can be traced between them under paragraph (a) or (b).

Part 5—Licences under Electricity Act

25—Licences under Electricity Act

- (1) The Minister may, by order in writing, require that a licence under the *Electricity Act 1996* authorising specified operations be issued to a State-owned company, or to the purchaser under a sale/lease agreement, in accordance with specified requirements as to the term and conditions of the licence and rights conferred by the licence.

- (2) The requirements of the Minister as to the conditions of a licence must be consistent with the provisions of the *Electricity Act 1996* as to such conditions.
- (3) The Minister may, by order in writing, require that a licence issued to a State-owned company in accordance with an order under subsection (1) be transferred to a purchaser under a sale/lease agreement.
- (4) The Minister may, by order in writing, require that a licence issued to a purchaser in accordance with an order under subsection (1), or transferred to a purchaser in accordance with an order under subsection (3), be transferred to the transferee under a special order.
- (5) An order under this section must be given effect to without the need for the State-owned company, or the purchaser, to apply for the licence or agreement to the transfer of the licence and despite the provisions of the *Electricity Act 1996* and section 7 of the *Independent Industry Regulator Act 1999*.
- (6) An order may not be made more than once under this section for the issue of a licence in respect of the same electricity generating plant.
- (7) An order may not be made more than once under this section for the issue of a licence in respect of the same electricity retailing business.
- (8) A licence issued to a State-owned company in accordance with an order under this section may not be suspended or cancelled under the *Electricity Act 1996* on the ground of any change that has occurred in the officers or shareholders of the company associated with the company's ceasing to be a State-owned company.

Part 6—Miscellaneous

26—Provision of capital to State-owned company

- (1) Any one or more Ministers of the Crown may subscribe capital to a State-owned company.
- (2) The Treasurer may, on conditions the Treasurer considers appropriate—
 - (a) advance loan capital to a State-owned company; and
 - (b) transfer non-pecuniary assets of the Crown to a State-owned company.
- (3) Capital subscriptions and advances are, subject to any contrary direction by the Treasurer, to be paid out of the Consolidated Account (which is appropriated to the necessary extent).
- (4) An instrument to give effect to a transaction under this section is exempt from stamp duty.

27—Contract or arrangement between electricity corporation and State-owned company

An electricity corporation may enter into a contract or arrangement with a State-owned company under which the State-owned company may make use of the services of employees or the facilities of the electricity corporation.

28—Amount payable by State-owned company in lieu of tax

- (1) If the results achieved by a State-owned company from its operations over a designated period give rise to a presumptive liability for income tax, the company must, at such time as the Treasurer stipulates, pay to the Treasurer, for the credit of the Consolidated Account, a sum equal to the amount of the presumptive liability.
- (2) The Treasurer may require a State-owned company to make other payments in respect of a designated period in lieu of taxes under the law of the State or the Commonwealth from which the company was exempt during the designated period because of the company's relationship to the Crown.
- (3) In this section—

date of divestiture means—

- (a) in the case of a State-owned company that is not a subsidiary of another State-owned company—
 - (i) if the shares of the State-owned company are sold by or at the direction of the Minister—the date the sale is completed; or
 - (ii) if the shares of the State-owned company are offered for public subscription—the date shares are first allotted to subscribers who respond to the public offer; or
- (b) in the case of a State-owned company that is a subsidiary of another State-owned company—
 - (i) if the subsidiary's shares are sold by or at the direction of the Minister before the date of divestiture for that other State-owned company—the date the sale is completed; or
 - (ii) if not—the date of divestiture for that other State-owned company;

designated period is a period of 12 months or less falling before the date of divestiture of the company—

- (a) extending from the date of the company's incorporation to the following 30 June or the date of divestiture of the company (whichever is first);
- (b) extending from 1 July in one year to 30 June in the next;
- (c) extending from 30 June to the date of divestiture of the company;

presumptive liability to income tax, in relation to a State-owned company, means a liability for income tax that would have existed under the *Income Tax Assessment Act 1936*, or the *Income Tax Assessment Act 1997*, of the Commonwealth (as amended from time to time) if—

- (a) the company were liable to income tax under that Act; and
- (b) the designated period were a year of income within the meaning of that Act.

29—Relationship of electricity corporation or State-owned company and Crown

- (1) An electricity corporation is an instrumentality of the Crown but ceases to be such an instrumentality when it ceases to be an electricity corporation.

- (2) A company that is a State-owned company is an instrumentality of the Crown but ceases to be such an instrumentality when it ceases to be a State-owned company.

30—Electricity infrastructure severed from land

Electricity infrastructure or public lighting infrastructure the subject of a transfer order, vesting order, sale/lease agreement or special order is to be taken to be transferred, vested or leased (as the case may be) by the order or agreement as if the infrastructure were personal property severed from any land to which it is affixed or annexed and owned separately from the land.

31—Registering authorities to note transfer

The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application by the Minister or a person nominated by the Minister for the purpose, register or record a transfer, grant or extinguishment under this Act.

32—Stamp duty

- (1) No stamp duty is payable under a law of the State in respect of—
- (a) a transfer, grant or extinguishment effected by a transfer order;
 - (b) any transfer or assignment of assets or liabilities by an electricity corporation to a State-owned company.
- (2) No person has an obligation under the *Stamp Duties Act 1923*—
- (a) to lodge a statement or return relating to a transaction referred to in subsection (1); or
 - (b) to include information about such a transaction in a statement or return.

33—Interaction between this Act and other Acts

- (1) This Act has effect despite the provisions of the *Real Property Act 1886* or any other law.
- (2) A transaction under this Act is not subject to—
- (a) the *Land and Business (Sale and Conveyancing) Act 1994*; or
 - (b) the *Retail and Commercial Leases Act 1995*; or
 - (c) Part 4 of the *Development Act 1993*.
- (3) An application under section 223LD of the *Real Property Act 1886* for the division of land, or an application under section 14 of the *Community Titles Act 1996* for the division of land by a plan of community division, that is certified in writing by the Minister as being for the purposes of a transaction under this Act need not be accompanied by a certificate under Part 4 of the *Development Act 1993*.

35—Exclusion of Crown liability as owner etc of leased assets

- (1) The Governor may, by proclamation, declare that the lessor of assets the subject of a lease granted by a transfer order or sale/lease agreement, and the Crown, will, despite any other Act or law, be immune from civil or criminal liability in connection with the lease or those assets (other than a liability under the lease to the lessee) to the extent specified in the proclamation.
- (2) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subsection (1) with the consent of the lessee for the time being of the assets.
- (3) A proclamation under this section has effect according to its terms.

36—Effect of things done or allowed under Act

Nothing done, authorised or allowed by or under this Act or a transfer order, vesting order, sale/lease agreement, special order or employee transfer order—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or any other obligee wholly or in part from an obligation.

37—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act or an Act amended by this Act.

Schedule 1—Special provisions

1—Electricity infrastructure taken not to have merged with land

- (1) This clause applies to electricity infrastructure that is or was owned or operated by an electricity corporation or State-owned company and is situated on, above or under land that does not or did not belong to the electricity corporation or State-owned company.
- (2) Subject to any agreement in writing to the contrary, the ownership of electricity infrastructure to which this clause applies will be taken never to have been affected by its affixation or annexation to the land.

2—Statutory easement relating to infrastructure

- (1) A body specified by proclamation for the purposes of this clause will have an easement over land where—
 - (a) electricity infrastructure owned or operated by the body is on, above or under the land and the land does not belong to the body; and

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- (b) that infrastructure was, before a date specified in the proclamation, owned or operated by an electricity corporation or State-owned company and the land did not belong to the electricity corporation or State-owned company.
- (2) The easement entitles the specified body—
- (a) to maintain the relevant electricity infrastructure on, above or under the land affected by the easement;
- (b) to enter the land, by its agents or employees, at any reasonable time, for the purpose of operating, examining, maintaining, repairing, modifying or replacing the relevant electricity infrastructure;
- (c) to bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.
- (3) The powers conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by persons lawfully occupying the land.
- (4) Section 47(3) to (10) of the *Electricity Act 1996* (and any regulations made for the purposes of any of those provisions) apply to the carrying out of work under this clause on public land (within the meaning of that section) in the same way as to the carrying out of work on public land under that section.
- (5) The specified body must make good any damage caused by the exercise of powers under this clause as soon as practicable or pay reasonable compensation for the damage.
- (6) If the specified body has an easement relating to electricity infrastructure over another person's land otherwise than by virtue of this clause or clause 5 of Schedule 2 of the *Electricity Corporations Act 1994*, the application of the easement under this clause to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.
- (6a) If the specified body is an electricity corporation, the application of any easement that the body has under clause 5 of Schedule 2 of the *Electricity Corporations Act 1994* is excluded.
- (7) The specified body may, by instrument in writing—
- (a) suspend or limit rights or impose conditions on the exercise of rights arising under the easement under this clause; or
- (b) surrender (in whole or in part) the easement under this clause,
- and such an instrument has effect according to its terms.
- (7a) Nothing prevents more than one body from having an easement under this clause over the same land or in relation to the same electricity infrastructure.
- (8) An easement under this clause need not be registered.
- (9) However, the Registrar-General must, on application by the specified body, note an easement under this clause on each certificate of title, or Crown lease, affected by the easement.
- (10) An application under this clause—
- (a) need not include a plan of the easement;

- (b) must include a schedule of all certificates of title and Crown leases affected by the easement.
- (11) The Registrar-General is entitled to act on the basis of information included in the application and is not obliged to do anything to verify the accuracy of that information.

2A—Building and development work for substations and transformers regarded as complying

All building and development work carried out before 30 September 1999 in relation to substations or transformers owned or operated by an electricity corporation or State-owned company at that date will be regarded as complying with the statutory and regulatory requirements applicable at the time the work was carried out.

3—Liability of certain bodies to council rates or amounts in lieu of rates

- (1) The following provisions apply in relation to the liability of a State-owned company to pay rates under the *Local Government Act 1934*, despite the provisions of that Act:
- (a) a State-owned company is liable to pay rates;
 - (b) land and buildings of a State-owned company are rateable property within the meaning of that Act;
 - (c) the following are not rateable property within the meaning of that Act:
 - (i) plant or equipment used by a State-owned company in connection with the generation, transmission or distribution of electricity (whether or not the plant or equipment is situated on land owned by the corporation);
 - (ii) easements, rights of way or other similar rights (including such rights arising by virtue of a licence) that have been granted or operate in connection with the generation, transmission or distribution of electricity.
- (2) Despite the *Local Government Act 1934*, the following are not rateable property within the meaning of that Act:
- (a) plant or equipment (other than electricity generating plant and substations for converting, transforming or controlling electricity) used by a body specified by proclamation for the purposes of this clause in connection with the generation, transmission or distribution of electricity (whether or not the plant or equipment is situated on land owned by the body);
 - (b) easements, rights of way or other similar rights (including such rights arising by virtue of a licence) that have been granted or operate in connection with the generation, transmission or distribution of electricity.
- (3) Despite the *Local Government Act 1934*, the Governor may, by proclamation, declare that the rates payable under that Act in respect of specified land on which is situated any electricity generating plant, or substation for converting, transforming or controlling electricity, used by a body specified in the proclamation are reduced to a specified amount or an amount determined in a specified manner.

- (4) The holder of a licence authorising the generation of electricity at Torrens Island must, as required by proclamation, make payments to the Treasurer for the credit of the Consolidated Account of amounts determined in accordance with the provisions of the proclamation (being provisions framed having regard to rates imposed under the *Local Government Act 1934* in the adjoining council areas).
- (5) A proclamation made for the purposes of this clause may not be revoked and may be varied only by regulation and if the variation reduces the future liabilities of the body to which the proclamation relates.

4—ETSA's inscribed debenture stock

- (1) Debentures or inscribed debenture stock referred to in clause 6 of Schedule 2 of the *Electricity Corporations Act 1994* will be taken to have been issued by a person or body specified by proclamation for the purposes of this clause.
- (2) The specified person or body must be the Treasurer or a person or body whose liabilities are guaranteed by the Treasurer.
- (3) The specified person or body—
 - (a) may, on the application of the owner of any such debentures, convert them into inscribed debenture stock; and
 - (b) must keep a register of inscribed debenture stock (the *Register*).
- (4) Inscribed debenture stock will be taken to have been issued, and debentures will be taken to have been converted into inscribed debenture stock, when the name of the owner, and the amount and description of the stock, and any other particulars determined by the specified person or body, are entered in the Register.
- (5) A person whose name is inscribed in the Register as the owner of inscribed debenture stock will be taken to be the owner of that stock and may dispose of and transfer it in the manner prescribed by this clause and may give effectual receipts for any money paid by way of consideration for the stock.
- (6) The specified person or body may, if it thinks reasonable cause exists for doing so, issue to any person a certificate stating that any person was (on a day and at an hour mentioned in the certificate) inscribed in the Register as the owner of a specified amount of inscribed debenture stock.
- (7) A certificate issued under subclause (6) will, in the absence of evidence to the contrary, be taken to be evidence of the fact stated in it.
- (8) The legal ownership of inscribed debenture stock is not transferred from the owner whose name is inscribed in the Register to any other person until—
 - (a) that owner and the transferee have executed a transfer in a form fixed by the specified person or body, and the name of the transferee and the amount of the stock have been entered in the Register; or
 - (b) a person to whom the title to the stock has passed on death or bankruptcy or otherwise by operation of law has produced to the specified person or body such reasonable evidence of title as the specified person or body requires, and that person's name has been entered in the Register as the owner of the stock.

- (9) No notice of any trust, express, implied or constructive, affecting inscribed debenture stock, may be received by the specified person or body or entered in the Register or any other book kept by the specified person or body.
- (10) Subject to the provisions of this clause relating to the transfer and transmission of inscribed debenture stock and notice of trusts, equitable interests may be enforced against the owners of inscribed debenture stock.

5—Agreement between Minister and licensee about environmental compliance

- (1) Subject to this clause, an agreement may be made between the Minister and the holder of a specially issued licence requiring the licensee to undertake programs directed towards reducing the adverse effects on the environment of the operations authorised by the licence and containing provisions dealing with and limiting the licensee's environmental protection obligations in relation to those operations.
- (2) The Minister may not make an agreement with a licensee under this clause—
 - (a) if the licence was issued or transferred to the purchaser under a sale/lease agreement—more than one month after the issue or transfer of the licence to the purchaser; or
 - (b) if paragraph (a) does not apply and the licence was issued to a State-owned company—more than one month after the company ceases to be a State-owned company.
- (3) It is a precondition to the making of an agreement under this clause that the Environment Protection Authority approves the terms of the agreement.
- (4) An agreement under this clause has effect as a contract for the period specified in the agreement and is binding on, and operates for the benefit of, the licensee who entered into the agreement, successive holders of the licence and a person who holds some subsequently granted licence under the *Electricity Act 1996* authorising operations to which the agreement relates.
- (5) The *Environment Protection Act 1993* and any statutory instruments under that Act are to be construed subject to an agreement under this clause and, to the extent of any inconsistency between that Act or statutory instrument and the agreement, the agreement prevails.
- (6) Any adverse effects on the environment specifically permitted by an agreement under this clause are to be taken—
 - (a) not to constitute a contravention of the *Environment Protection Act 1993* or any statutory instrument under that Act; and
 - (b) not to give rise to any liability under any Act or at law.
- (7) An agreement under this clause may be varied by further agreement between the Environment Protection Authority and the licensee for the time being bound by the agreement.
- (8) An agreement or variation of an agreement under this clause must be published in the Gazette.
- (9) In this clause—

Minister means the Minister to whom the administration of the *Environment Protection Act 1993* is committed.

6—Proclamations

- (1) The Governor may make proclamations for the purposes of this Schedule.
- (2) Except as otherwise provided in this Schedule, the Governor may, by subsequent proclamation, vary or revoke a proclamation made for the purposes of this Schedule.

Schedule 2—Conversion of electricity corporation to State-owned company

1—Steps before conversion of electricity corporation to company

- (1) As from a date specified by proclamation, the electricity corporation is to have a share capital.
- (2) The proclamation may contain requirements for the issuing of shares by the electricity corporation to specified Ministers of the Crown, including (without limitation) requirements as to the number of shares to be issued, the rights to be attached to the shares, the issue price of the shares and the consideration to be given for the shares.
- (3) The Ministers to whom shares in the electricity corporation are issued are not members of the electricity corporation at any time before its conversion to a company limited by shares merely because the Ministers hold those shares.
- (4) The electricity corporation is authorised (with the approval of the Minister) to take such action as is necessary or desirable to be taken for the purpose of its being registered as a proprietary or public company limited by shares under Part 5B.1 of the *Corporations Law* (Registering a body corporate as a company), including (without limitation) action to adopt a constitution approved by the Minister.
- (5) The electricity corporation must take such action of a kind referred to in subclause (4) as is required by the proclamation.

2—Membership of the electricity corporation following conversion

- (1) The Ministers, as holders of shares in the electricity corporation at the time of its conversion to a company limited by shares, become (by force of this subclause) members of the electricity corporation at the time of that conversion.
- (2) The Ministers are, in relation to membership of the electricity corporation following its conversion, entitled to the same rights, privileges and benefits, and are subject to the same duties, liabilities and obligations, as if they had become members of the electricity corporation immediately prior to its conversion.

3—Continuity of electricity corporation and construction of references to electricity corporation

- (1) Without limiting any provision of the *Corporations Law*, the electricity corporation as converted into a company limited by shares is a continuation of, and the same legal entity as, the electricity corporation as it existed before the conversion.
- (2) After the conversion, a reference in any instrument to the electricity corporation is to be read as a reference to the electricity corporation as converted into a company limited by shares.

4—Proclamations

The Governor may make proclamations for the purposes of this Schedule.

Schedule 3—Amendments relating to superannuation

Part 1—Preliminary

1—Commencement

- (1) Parts 2, 3 and 4 of this Schedule come into operation in accordance with a notice or notices by the Treasurer published in the Gazette.
- (2) A notice may—
 - (a) fix the same day or different days for different provisions of Parts 2, 3 and 4 to come into operation;
 - (b) suspend the operation of specified provisions of Part 2, 3 or 4 until a day or days to be fixed by subsequent notice or notices.

- (3) In this clause—

provision means—

- (a) a clause, or a paragraph of a clause, of this Schedule; or
- (b) a clause of a schedule (including a clause of the Trust Deed) inserted or substituted by this Schedule; or
- (c) a clause of Schedule 1 of the *Electricity Corporations Act 1994* (including a clause of the Trust Deed) inserted by clause 4 of this Schedule; or
- (d) a subclause or a paragraph or subparagraph of a clause referred to in paragraph (b) or (c) or a paragraph or subparagraph of such a subclause.

Part 4—Amendment of Schedule 1 of the *Electricity Corporations Act 1994*

Note—

Clause 4(h), (j)-(l), (p), (r), (u), (y) and (zc) had not come into operation at the date of the publication of this version.

4—Amendment of Schedule

Schedule 1 of the *Electricity Corporations Act 1994* as substituted by Part 2 of this Schedule is amended—

- (h) *by striking out Part D;*
- (j) *by renumbering the clauses of the Trust Deed in numerical order following the amendments to be made by the following paragraphs of this clause and by making consequential changes to cross references;*

Note—

New clauses inserted by subsequent paragraphs of this clause are given the number they will have after the renumbering.;

- (k) *by striking out clause 1 of the Trust Deed and substituting the following clause:*

1—Operation of Deed

This Deed came into operation at the same time as Schedule 1 of the Electricity Corporations Act 1994 as substituted by the Electricity Corporations (Restructuring and Disposal) Act 1999.;

- (l) *by inserting the following definition after the definition of **commencement of this Deed** in subclause (1) of clause 2 of the Trust Deed:*

***electricity corporation** has the same meaning as in the Electricity Corporations Act 1994.;*

- (p) *by inserting after subclause (1) of clause 2 of the Trust Deed the following subclause:*

(1a) A term defined in the relevant law has the same meaning in this Deed.;

- (r) *by inserting the following clause after clause 3 of the Trust Deed:*

4—Amendment of Deed

- (1) *Subject to the relevant law, the Trustee may, by instrument in writing, amend or replace this Deed.*
- (2) *Where the amendment or replacement of this Deed would result in an increase in the contribution to be made by an employer or increase the liability of the employer under the Scheme in any other way, the Deed cannot be amended or replaced without the approval of the employer.*
- (3) *An amendment or replacement of this Deed will be taken to come into operation on the date specified in the instrument amending or replacing the Deed whether being a date before or after the date on which the instrument was made.;*
- (u) *by striking out "Subject to subclause (3)" from subclause (1) of clause 5 of the Trust Deed and substituting "Subject to the relevant law and to subclause (3)";*
- (y) *by inserting the following clauses after clause 10 of the Trust Deed:*

11—Application of Superannuation Industry (Supervision) Act 1993

- (1) *The Trustee must give notice to the Australian Prudential Regulation Authority electing that the Superannuation Industry (Supervision) Act 1993 of the Commonwealth is to apply to the Scheme.*
- (2) *The Trustee must, after the election referred to in subclause (1), comply with all relevant provisions of the relevant law unless exempted from compliance with a specified provision or provisions by the authority administering the law concerned.*

12—Application of relevant law in certain circumstances

- (1) *A person who has a discretion under this Deed or the Rules must not exercise that discretion without the consent of the Trustee if the relevant law so requires.*
- (2) *A person must not give a direction to the Trustee pursuant to this Deed or the Rules in contravention of the relevant law.*
- (3) *A covenant that is required by the relevant law to be included in this Deed will be taken to be included and will be binding on the Trustee and each member, or each member of the governing body, of the Trustee.*

13—Resolution of inconsistency

A provision of clause 11 or 12 that is inconsistent with any other provision of this Deed or the Rules will prevail to the extent of the inconsistency.

14—Term of office of Trustee

- (1) *The Trustee, holds office until—*
 - (a) *it retires from office by written notice to the employers; or*
 - (b) *a person is appointed as a receiver, receiver and manager or liquidator of the Trustee or a court approves a scheme of management providing for its dissolution; or*
 - (c) *it is disqualified from holding office as Trustee of the Scheme.*
- (2) *Subclause (1) does not apply to the Board.*

15—Appointment of new Trustee

- (1) *When the office of Trustee becomes vacant the employers must, by a majority decision, appoint another Trustee.*
- (2) *Only a body that is a constitutional corporation for the purposes of section 19 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth may be appointed as Trustee of the Scheme.*
- (3) *An act of the Trustee is not invalid by reason only of a defect in its appointment.*

16—Powers of Trustee

- (1) *The Trustee may delegate any of its functions, powers or duties under this Deed or the Rules to any person.*
- (2) *The delegation—*
 - (a) *must be by instrument in writing;*
 - (b) *may be absolute or conditional;*

- (c) *does not derogate from the power of the Trustee to act in any matter;*
- (d) *is revocable at will by the Trustee.*
- (3) *The Trustee has all other powers that are necessary or desirable for the proper administration of the Scheme in accordance with the relevant law.*

17—Conflict of interest

A member, or a member of the governing body, of the Trustee will not be taken to have a conflict of interest in relation to any matter being considered by the Trustee by reason only of the fact that he or she is entitled, or potentially entitled, to benefits under the Scheme.;

- (zc) *by inserting in clause 13 of the Trust Deed after paragraph (b) of subclause (1) of that clause ", or the exclusion of liability is prohibited by the relevant law."*

Legislative history

Notes

- In this version provisions that are uncommenced appear in italics.
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Electricity Corporations (Restructuring and Disposal) Act 1999* amended the following:

Development Act 1993

Environment Protection Act 1993

Mining Act 1971

Superannuation Act 1988

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1999	36	<i>Electricity Corporations (Restructuring and Disposal) Act 1999</i>	1.7.1999	29.7.1999 (<i>Gazette</i> 29.7.1999 p528) except s 13—1.7.1999; s 2(2) and except Sch 3 Pts 2 & 3—1.12.1999 (<i>Gazette</i> 23.9.1999 p1214) and except Sch 4 (c1l 8—11)—24.2.2000 (<i>Gazette</i> 24.2.2000 p1070) and except Sch 4 (c1l 12—15)—deleted by 74/1999 without coming into operation and except Sch 3 (cl 4(g), (n), (o), (q), (v)—(x), (z), (za), (zb), (zd))—29.5.2002 (<i>Gazette</i> 23.5.2002 p1951) and except Sch 3 (cl 4(i), (s), (t))—30.6.2002 (<i>Gazette</i> 23.5.2002 p1951) and except Sch 3 (cl 4(a)—(f), (m))—9.2.2006 (<i>Gazette</i> 9.2.2006 p474) and except Sch 3 (cl 4(h), (j)—(l), (p), (r), (u), (y), (zc))—uncommenced
1999	74	<i>Statutes Amendment (Electricity) Act 1999</i>	25.11.1999	Pt 4 ss 18 & 19—30.11.1999; s 2(5); ss 15—17—2.12.1999 (<i>Gazette</i> 2.12.1999 p2952); s 14(a) & (c)—20.1.2000 (<i>Gazette</i> 20.1.2000 p294); ss 14(b) & 20—31.3.2000 (<i>Gazette</i> 30.3.2000 p1899)

2006	35	<i>Statutes Amendment (Electricity Industry Superannuation Scheme) Act 2006</i>	14.12.2006	Pt 3 (s 5)—1.2.2007 (<i>Gazette 1.2.2007 p323</i>)
2012	54	<i>Statutes Amendment and Repeal (Budget 2012) Act 2012</i>	6.12.2012	Pt 4 (s 14)—15.2.2013 (<i>Gazette 7.2.2013 p262</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	9.2.2006
Pt 1		
s 3		
s 3(1)		
electricity corporation	amended by 74/1999 s 14(a)	20.1.2000
	(b) deleted by 74/1999 s 14(b)	31.3.2000
RESI	inserted by 74/1999 s 14(c)	20.1.2000
Pt 3		
s 13		
s 13(6)		
prescribed electricity assets	amended by 74/1999 s 15	2.12.1999
Pt 4		
s 24		
s 24(9)	amended by 35/2006 s 5	1.2.2007
Pt 6		
s 34	<i>expired: s 34(2)—omitted under Legislation Revision and Publication Act 2002</i>	<i>(29.7.2001)</i>
s 35	substituted by 74/1999 s 16	2.12.1999
Sch 1		
cl 2		
cl 2(6)	amended by 74/1999 s 17(a)	2.12.1999
cl 2(6a)	inserted by 74/1999 s 17(b)	2.12.1999
cl 2(7)	substituted by 74/1999 s 17(c)	2.12.1999
cl 2(7a)	inserted by 74/1999 s 17(c)	2.12.1999
cl 2A	inserted by 74/1999 s 17(d)	2.12.1999
Sch 3		
Pt 2	<i>amended by 74/1999 s 18</i>	<i>30.11.1999</i>
	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>9.2.2006</i>
Pt 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>9.2.2006</i>

Pt 4		
cl 4	amended by 74/1999 s 19	30.11.1999
	(a)—(l), (m), (g), (i), (n), (o), (q), (s), (t), (v)—(x), (z), (za), (zb) and (zd) omitted under <i>Legislation Revision and Publication Act 2002</i>	9.2.2006
<i>Sch 4 before omission</i>		
cls 12—15	<i>deleted by 74/1999 s 20</i>	31.3.2000
<i>Sch 4</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	9.2.2006

Historical versions

Reprint No 1—2.12.1999

Reprint No 2—20.1.2000

Reprint No 3—31.3.2000

Reprint No 4—29.5.2002

Reprint No 5—30.6.2002

9.2.2006