

SOUTH AUSTRALIA

ELECTRICITY CORPORATIONS ACT 1994

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 July 1996.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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ELECTRICITY CORPORATIONS ACT 1994

being

Electricity Corporations Act 1994 No. 89 of 1994
[Assented to 15 December 1994]¹

as amended by

Electricity Corporations (ETSA Board) Amendment Act 1995 No. 54 of 1995 [Assented to 3 August 1995]²
Electricity Corporations (Schedule 4) Amendment Act 1996 No. 43 of 1996 [Assented to 20 June 1996]³

¹ Came into operation 1 July 1995: *Gaz.* 29 June 1995, p. 2978.

² Came into operation 25 January 1996: *Gaz.* 25 January 1996, p. 804.

³ Came into operation 1 July 1996: *Gaz.* 20 June 1996, p. 2970.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1. Entries in bold type indicate the amendments incorporated since the last reprint.*

An Act to provide for the supply of electrical energy; to establish a corporation or corporations for that purpose; to repeal certain Acts; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Electricity Corporations Act 1994*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Object

3. The object of this Act is to establish a corporation or corporations for the generation, transmission and distribution of electricity for the benefit of the people and economy of the State.

Interpretation

4. In this Act, unless the contrary intention appears—

"**board**", in relation to an electricity corporation, means the board of directors established under this Act as the governing body of the electricity corporation;

"**director**" means a member of the board of an electricity corporation;

"**electricity corporation**" means—

- (a) ETSA; or
- (b) an electricity generation corporation established under Part 3; or
- (c) an electricity transmission corporation established under Part 4; or
- (d) a subsidiary of a body referred to in a preceding paragraph of this definition;

"**ETSA**" means *ETSA Corporation* established under Part 2;

"**subsidiary**" has the same meaning as in the *Public Corporations Act 1993*.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Interpretation—Electricity generation corporation and functions

5. (1) For the purposes of this Act, an **electricity generation corporation** has electricity generation functions.

(2) For the purposes of this Act, **electricity generation functions** of a corporation include the following:

- (a) generating and supplying electricity;
- (b) carrying out research and works (including exploration and mining) to develop, secure and utilise energy and fuels;
- (c) carrying out research to develop greater use of renewable energy sources;

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- (d) trading in electricity and fuels;
- (e) providing consultancy and other services within areas of the corporation's expertise;
- (f) commercial development and marketing of products, processes and intellectual property produced or created in the course of the corporation's operations;
- (g) any other function conferred on the corporation by regulation or under any other Act.

Interpretation—Electricity transmission corporation and functions

6. (1) For the purposes of this Act, an **electricity transmission corporation** has electricity transmission and system control functions.

(2) For the purposes of this Act, **electricity transmission and system control functions** of a corporation include the following:

- (a) transmitting electricity;
- (b) coordinating operation of the generation, transmission and distribution facilities of the South Australian electricity supply system;
- (c) controlling the security of the South Australian electricity supply system;
- (d) operating and administering wholesale market trading arrangements for electricity;
- (e) trading in electricity;
- (f) carrying out research and development related to the corporation's functions;
- (g) providing consultancy and other services within areas of the corporation's expertise;
- (h) commercial development and marketing of products, processes and intellectual property produced or created in the course of the corporation's operations;
- (i) any other function conferred on the corporation by regulation or under any other Act.

Interpretation—Electricity distribution functions

7. For the purposes of this Act, **electricity distribution functions** of a corporation include the following:

- (a) distributing, supplying and retailing electricity;
- (b) meeting obligations to ensure security of electricity supply to customers;
- (c) generating electricity on a minor scale or local basis;
- (d) trading in electricity and fuels;
- (e) carrying out research and works directed towards energy conservation and actively encouraging, advising and assisting customers and potential customers of the corporation in energy conservation and in the efficient and effective use of energy;
- (f) carrying out research and development related to the corporation's functions;
- (g) providing consultancy and other services within areas of the corporation's expertise;

- (h) commercial development and marketing of products, processes and intellectual property produced or created in the course of the corporation's operations;
- (i) any other function conferred on the corporation by regulation or under any other Act.

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**PART 2
ETSA CORPORATION**

DIVISION 1—ESTABLISHMENT OF ETSA CORPORATION

Establishment of ETSA Corporation

8. (1) *ETSA Corporation* is established.

(2) ETSA—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has the functions and powers assigned or conferred by or under this or any other Act.

Application of Public Corporations Act 1993

9. ETSA is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Functions of ETSA

10. (1) ETSA has—

(a) electricity distribution functions; and

(b) subject to Part 3, electricity generation functions; and

(c) subject to Part 4, electricity transmission and system control functions.

(2) ETSA may perform its functions within and outside the State.

Powers of ETSA

11. (1) ETSA has all the powers of a natural person together with powers conferred on it under this or any other Act.

(2) ETSA may exercise its powers within and outside the State.

ETSA to furnish Treasurer with certain information

12. (1) ETSA must furnish the Treasurer with such information or records in the possession or control of ETSA as the Treasurer may require in such manner and form as the Treasurer may require.

(2) Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

Common seal and execution of documents

13. (1) The common seal of ETSA must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) ETSA may, by instrument under the common seal of ETSA, authorise a director, an employee of ETSA (whether nominated by name or by office or title) or any other person to execute documents on behalf of ETSA subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of ETSA.

(4) A document is duly executed by ETSA if—

(a) the common seal of ETSA is affixed to the document in accordance with this section; or

(b) the document is signed on behalf of ETSA by a person or persons in accordance with an authority conferred under this section.

DIVISION 2—BOARD

Establishment of board

14. (1) A board of directors is established as the governing body of ETSA.

(2) The board consists of—

(a) six members appointed by the Governor; and

(b) the chief executive officer.

(3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of ETSA's functions and the proper discharge of its business and management obligations.

(4) At least two members of the board must be women and two men.

(5) One director (who must not be the chief executive officer) will be appointed by the Governor to chair meetings of the board.

(6) The Governor may appoint a director (who must not be the chief executive officer) to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(7) On the office of an appointed director becoming vacant, a person may be appointed under this section to the vacant office.

Conditions of membership

15. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove an appointed director from office on the recommendation of the Minister.

(3) The Minister may recommend the removal of an appointed director on any ground that the Minister considers sufficient.

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- (4) The office of an appointed director becomes vacant if the director—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by notice in writing to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

16. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Remuneration

17. An appointed director is entitled to be paid from the funds of ETSA such remuneration, allowances and expenses as may be determined by the Minister.

Board proceedings

18. (1) A quorum of the board consists of four members.

(2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.

(3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:

- (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
- (b) in any other case—a director (who must not be the chief executive officer) chosen by the directors present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
- (b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
- (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the board may determine its own procedures.

DIVISION 3—STAFF

Staff of ETSA

19. (1) The chief executive officer of ETSA will be appointed by the board with the approval of the Minister.

(2) ETSA may appoint such other employees as it thinks necessary or desirable.

(3) An employee's appointment will be on terms and conditions fixed by ETSA.

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**PART 3
ELECTRICITY GENERATION CORPORATION**

DIVISION 1—ESTABLISHMENT OF CORPORATION

Establishment of corporation

20. (1) An electricity generation corporation may be established by the Governor by regulation.

(2) The regulations must name the corporation.

(3) ETSA ceases to have electricity generation functions on and from the date specified for that purpose in the regulations.

Interpretation

21. In the remaining provisions of this Part, a reference to the generation corporation is a reference to an electricity generation corporation established under section 20.

Corporate capacity

22. The generation corporation—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has the functions and powers assigned or conferred by or under this or any other Act.

Application of Public Corporations Act 1993

23. The generation corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Functions may be performed within or outside State

24. The generation corporation may perform its functions within and outside the State.

Powers of corporation

25. (1) The generation corporation has all the powers of a natural person together with powers conferred on it under this or any other Act.

(2) The generation corporation may exercise its powers within and outside the State.

Corporation to furnish Treasurer with certain information

26. (1) The generation corporation must furnish the Treasurer with such information or records in the possession or control of the corporation as the Treasurer may require in such manner and form as the Treasurer may require.

(2) Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

Common seal and execution of documents

27. (1) The common seal of the generation corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The generation corporation may, by instrument under the common seal of the corporation, authorise a director, an employee of the corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the corporation subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the generation corporation.

(4) A document is duly executed by the generation corporation if—

(a) the common seal of the corporation is affixed to the document in accordance with this section; or

(b) the document is signed on behalf of the corporation by a person or persons in accordance with an authority conferred under this section.

DIVISION 2—BOARD

Establishment of board

28. (1) A board of directors is established as the governing body of the generation corporation.

(2) The board consists of—

(a) four members appointed by the Governor; and

(b) the chief executive officer.

(3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the generation corporation's functions and the proper discharge of its business and management obligations.

(4) At least one member of the board must be a woman and one a man.

(5) One director (who must not be the chief executive officer) will be appointed by the Governor to chair meetings of the board.

(6) The Governor may appoint a director (who must not be the chief executive officer) to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(7) On the office of an appointed director becoming vacant, a person may be appointed under this section to the vacant office.

Conditions of membership

29. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove an appointed director from office on the recommendation of the Minister.

(3) The Minister may recommend the removal of an appointed director on any ground that the Minister considers sufficient.

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- (4) The office of an appointed director becomes vacant if the director—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by notice in writing to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

30. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Remuneration

31. An appointed director is entitled to be paid from the funds of the generation corporation such remuneration, allowances and expenses as may be determined by the Minister.

Board proceedings

32. (1) A quorum of the board consists of three members.

(2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.

(3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:

- (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
- (b) in any other case—a director (who must not be the chief executive officer) chosen by the directors present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
- (b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
- (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the board may determine its own procedures.

DIVISION 3—STAFF

Staff of corporation

33. (1) The chief executive officer of the generation corporation will be appointed by the board with the approval of the Minister.

(2) The generation corporation may appoint such other employees as it thinks necessary or desirable.

(3) An employee's appointment will be on terms and conditions fixed by the generation corporation.

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**PART 4
ELECTRICITY TRANSMISSION CORPORATION**

DIVISION 1—ESTABLISHMENT OF CORPORATION

Establishment of corporation

34. (1) An electricity transmission corporation may be established by the Governor by regulation.

(2) The regulations must name the corporation.

(3) ETSA ceases to have electricity transmission and system control functions on and from the date specified for that purpose in the regulations.

Interpretation

35. In the remaining provisions of this Part, a reference to the transmission corporation is a reference to an electricity transmission corporation established under section 34.

Corporate capacity

36. The transmission corporation—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has the functions and powers assigned or conferred by or under this or any other Act.

Application of Public Corporations Act 1993

37. The transmission corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Functions may be performed within or outside State

38. The transmission corporation may perform its functions within and outside the State.

Powers of corporation

39. (1) The transmission corporation has all the powers of a natural person together with powers conferred on it under this or any other Act.

(2) The transmission corporation may exercise its powers within and outside the State.

Corporation to furnish Treasurer with certain information

40. (1) The transmission corporation must furnish the Treasurer with such information or records in the possession or control of the corporation as the Treasurer may require in such manner and form as the Treasurer may require.

(2) Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

Common seal and execution of documents

41. (1) The common seal of the transmission corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The transmission corporation may, by instrument under the common seal of the corporation, authorise a director, an employee of the corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the corporation subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the transmission corporation.

(4) A document is duly executed by the transmission corporation if—

(a) the common seal of the corporation is affixed to the document in accordance with this section; or

(b) the document is signed on behalf of the corporation by a person or persons in accordance with an authority conferred under this section.

DIVISION 2—BOARD

Establishment of board

42. (1) A board of directors is established as the governing body of the transmission corporation.

(2) The board consists of—

(a) four members appointed by the Governor; and

(b) the chief executive officer.

(3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the transmission corporation's functions and the proper discharge of its business and management obligations.

(4) At least one member of the board must be a woman and one a man.

(5) One director (who must not be the chief executive officer) will be appointed by the Governor to chair meetings of the board.

(6) The Governor may appoint a director (who must not be the chief executive officer) to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(7) On the office of an appointed director becoming vacant, a person may be appointed under this section to the vacant office.

Conditions of membership

43. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

(2) The Governor may remove an appointed director from office on the recommendation of the Minister.

(3) The Minister may recommend the removal of an appointed director on any ground that the Minister considers sufficient.

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- (4) The office of an appointed director becomes vacant if the director—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by notice in writing to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

44. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Remuneration

45. An appointed director is entitled to be paid from the funds of the transmission corporation such remuneration, allowances and expenses as may be determined by the Minister.

Board proceedings

46. (1) A quorum of the board consists of three members.

(2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.

(3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:

- (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
- (b) in any other case—a director (who must not be the chief executive officer) chosen by the directors present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
- (b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
- (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the board may determine its own procedures.

DIVISION 3—STAFF

Staff of corporation

47. (1) The chief executive officer of the transmission corporation will be appointed by the board with the approval of the Minister.

(2) The transmission corporation may appoint such other employees as it thinks necessary or desirable.

(3) An employee's appointment will be on terms and conditions fixed by the transmission corporation.

**PART 5
MISCELLANEOUS**

Mining at Leigh Creek

48. (1) A sale or lease of any seam of coal vested in the Crown at or near Leigh Creek or a contract for any such sale or lease or a right to mine any such seam of coal cannot be made or granted by or on behalf of the Crown except under an Act specifically authorising that sale, lease, contract or right.

(2) Without limiting the generation corporation's powers, the corporation may—

- (a) mine (by open or closed working) any seams of coal, vested in the Crown or the corporation, at or near Leigh Creek; and
- (b) mine (by open or closed working) any substance, vested in the Crown or the corporation, discovered in the course of operations for the mining of coal; and
- (c) treat, grade, or otherwise prepare for sale, and use, sell or otherwise dispose of any coal or other substance so mined.

(3) In this section—

"**generation corporation**" means—

- (a) ETSA; or
- (b) if an electricity generation corporation is established under Part 3—that corporation.

Liability of electricity corporations to council rates

48A. (1) An electricity corporation is liable to pay rates under the *Local Government Act 1934*.

(2) For rating purposes under the *Local Government Act 1934*—

- (a) land and buildings of an electricity corporation are ratable property within the meaning of that Act; and
- (b) the following are not ratable property within the meaning of that Act:
 - (i) plant or equipment used by an electricity corporation 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.

(3) This section operates despite any provisions of the *Local Government Act 1934* or the *Public Corporations Act 1993* and an electricity corporation does not have any liability under the *Public Corporations Act 1993* to pay to the Treasurer any amount as the equivalent of rates under the *Local Government Act 1934*.

Regulations

49. The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

SCHEDULE 1

Superannuation

PART A—PRELIMINARY

Interpretation

1. In this schedule, unless the contrary intention appears—

"**actuary**" means—

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia; or
- (b) a partnership at least one member of which must be a Fellow or Accredited Member of the Institute of Actuaries of Australia; or
- (c) a body corporate that employs or engages a Fellow or Accredited Member of the Institute of Actuaries of Australia for the purpose of providing actuarial advice;

"**contributor**" means a person who has made contributions under the contributory scheme or a previous scheme or arrangement for the provision of superannuation benefits for employees and includes an employee or former employee who has ceased making contributions unless his or her rights in relation to superannuation have been exhausted and no derivative rights exist in relation to that person;

"**contributory scheme**" means the ETSA Contributory Superannuation Scheme;

"**employee**" means an employee of an electricity corporation;

"**employer participant**" means an electricity corporation the employees or former employees of which are contributors;

"**Fund**" means the ETSA Superannuation Fund established by this schedule;

"**non-contributory scheme**" means a non-contributory superannuation scheme maintained under Part H;

"**Rules**" means the rules made under Part C or Part H as the context requires;

"**Superannuation Board**" means the ETSA Superannuation Board.

PART B—SUPERANNUATION BOARD

Superannuation Board

2. (1) The *ETSA Superannuation Board* is established.

(2) The Superannuation Board—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) is a semi-government authority for the purposes of Division 4 of Part 2 of the *Public Finance and Audit Act 1987*; and
- (e) has the functions and powers assigned or conferred under this schedule.

(3) Where a document appears to bear the common seal of the Superannuation Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Superannuation Board.

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Function of Superannuation Board

3. The Superannuation Board is responsible for all aspects of the administration of this schedule and the Rules (including the management and investment of the Fund).

Superannuation Board's membership

4. (1) The Superannuation Board consists of the following members:

- (a) four members elected by the contributors; and
- (b) one member appointed by ETSA on the nomination of the Treasurer; and
- (c) three other members appointed by ETSA.

(2) ETSA must appoint a member to be the presiding member of the Superannuation Board.

(3) ETSA may appoint a deputy to a member of the Superannuation Board and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Superannuation Board.

(4) The appointment of a deputy to a member is subject to the same nomination requirements (if any) as the appointment of the member.

(5) Subject to subclause (6), a member of the Superannuation Board will be elected or appointed for a term of three years.

(6) A member elected or appointed to fill a casual vacancy will be elected or appointed for the balance of the term of his or her predecessor.

(7) The office of a member of the Superannuation Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-elected or reappointed; or
- (c) resigns by written notice to ETSA; or
- (d) is removed from office by ETSA on the ground of—
 - (i) mental or physical incapacity to carry out official duties satisfactorily; or
 - (ii) neglect of duty; or
 - (iii) misconduct.

Procedure at meetings of Superannuation Board

5. (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by those present.

(2) Subject to subclause (3), the Superannuation Board may act despite vacancies in its membership.

(3) Five members constitute a quorum for a meeting of the Superannuation Board.

(4) Each member present at a meeting of the Superannuation Board is entitled to one vote on a matter arising for determination at the meeting and the person presiding has, in the event of an equality of votes, a casting vote.

(5) Subject to this schedule, the Superannuation Board may determine its own procedures.

(6) The Superannuation Board must keep minutes of its proceedings.

ETSA to provide staff, etc., for Superannuation Board

6. (1) ETSA must provide the Superannuation Board with the staff and facilities necessary to enable the Superannuation Board to carry out its functions.

(2) Employer participants other than ETSA must make contributions towards the costs incurred by ETSA under subclause (1) in amounts determined in accordance with the Rules.

PART C—ETSA SUPERANNUATION SCHEME

Contributory scheme

7. (1) ETSA must maintain a superannuation scheme to be known as the *ETSA Contributory Superannuation Scheme*.

(2) ETSA must make rules that provide for membership of the contributory scheme, contributions and benefits and other matters relating to the establishment and operation of the contributory scheme.

(3) The Rules—

(a) must conform to the provisions of this schedule (except Part H); and

(b) must be approved by the Treasurer; and

(c) may be varied or replaced by ETSA with the approval of the Treasurer.

(4) The Rules may provide—

(a) that contributors, or a class of contributors, have the option of transferring to another division or subdivision of the Fund or of terminating their membership of the contributory scheme;

(b) that the exercise of an option referred to in paragraph (a) operates retrospectively;

(c) for the transfer of contributors to a contributory superannuation scheme established by an electricity corporation other than ETSA.

(5) ETSA can only replace the Rules on the recommendation of the Superannuation Board and can only vary the Rules on the recommendation of the Superannuation Board or in order to bring them into conformity with the *Superannuation Act 1988*.

(6) A variation or replacement of the Rules will be taken to come into operation on the date specified in the instrument whether being a date before or after the date on which the instrument was made or the date on which the Treasurer gave his or her approval.

(7) Section 10(3) and (4) of the *Subordinate Legislation Act 1978* do not apply to rules made under this clause.

(8) A right to a pension under the contributory scheme cannot be assigned but this subclause does not prevent the making of a garnishee order in relation to a pension.

PART D—PAYMENT OF CONTRIBUTIONS AND BENEFITS

Payment of benefits

8. (1) Any payment to be made under the Rules to, or in relation to, a contributor must be made out of the Consolidated Account (which is appropriated to the necessary extent).

(2) The Treasurer may reimburse the Consolidated Account by charging the relevant subdivision of the Fund and employer participants in accordance with proportions determined by the Rules.

(3) Where a subdivision of the Fund is exhausted, the amount that would otherwise be charged against it under subclause (2) will be charged against the employer participants in proportions determined by an actuary appointed by ETSA.

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PART E—FUND**Fund**

9. (1) The *ETSA Superannuation Fund* is established.
- (2) The assets of the Fund belong (both at law and in equity) to the Crown.
- (3) The Fund is subject to the management and control of the Superannuation Board.
- (4) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) periodic contributions reflecting the contributions paid to the Treasurer by contributors with respect to the relevant period.
- (5) All interest and accretions arising from investment of the Fund must be paid into the Fund.
- (6) The Fund will be treated as made up of three major divisions in respect of the following categories of contributors:
- (a) contributors to The Electricity Trust of South Australia Retiring Gratuities for Wages Employees Scheme (1962) (excluding those contributors who fall within the category referred to in paragraph (c));
- (b) contributors to the Electricity Trust of South Australia Superannuation Fund pursuant to the *ETSA Superannuation Scheme Regulations 1975* (excluding those contributors who fall within the category referred to in paragraph (c));
- (c) contributors—
- (i) whose contributions commenced on or after 1 February 1991; or
- (ii) who have under the Rules become contributors to the division of the contributory scheme established for the benefit of contributors referred to in subparagraph (i).
- (7) The Superannuation Board may further divide the Fund into subdivisions according to the different investments that may be allowed to be made of the money contained in the subdivisions.
- (8) Each subdivision of the Fund will be proportioned to—
- (a) the aggregate balance, as at a date determined by the Superannuation Board, of contribution accounts comprised in that subdivision of the Fund; and
- (b) the amount (if any) as at the date referred to in paragraph (a), that represents income of the Fund referable to contributors within that subdivision of the Fund that is not reflected in contribution accounts; and
- (c) the amount (if any) as at the date referred to in paragraph (a), that is referable to contributions of contributors within that subdivision of the Fund whose contribution accounts have been closed; and
- (d) subsequent contributions and payments referable to contributors within that subdivision of the Fund; and
- (e) subsequent income of the Fund attributable to investment of that subdivision of the Fund.
- (9) The following amounts will be paid from the Fund:
- (a) administrative costs and other expenses related to the management and investment of the Fund;
- (b) the prescribed percentage of the other costs of administering the contributory scheme;
- (c) any reimbursement of the Consolidated Account that the Treasurer charges against the Fund in pursuance of this schedule.

(10) Different percentages may be prescribed under subclause (9)(b) in respect of the different subdivisions of the contributory scheme and in that event the prescribed percentage will be paid from the appropriate subdivision of the Fund.

(11) The Superannuation Board must determine the value of each subdivision of the Fund as at the end of each financial year.

Investment of the Fund

10. (1) Subject to this clause, the Fund will be invested in a manner determined by the Superannuation Board.

(2) For the purposes of this clause, the Superannuation Board may, with the authorisation of the Treasurer (which may be specific or general), enter into any transaction or undertake any activity for the purpose of investment or for purposes incidental, ancillary or otherwise related to investment.

(3) Unless the Treasurer specifically authorises the investment, the Fund may not be invested—

(a) in property outside Australia; or

(b) in real property outside the State; or

(c) derivatives.

(4) A certificate signed by the Treasurer certifying that a particular transaction or activity, or a particular kind of transaction or activity, is authorised under this clause will be accepted in any legal proceedings as conclusive evidence of the matter so certified.

Accounts and audit

11. (1) The Superannuation Board must keep proper accounts of receipts and payments in relation to the Fund and must, in respect of each financial year, prepare financial statements in relation to the Fund in a form approved by the Treasurer.

(2) The accounts and financial statements must distinguish between the subdivisions of the Fund and the investments in which money from each of those subdivisions has been invested.

(3) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund and the financial statements.

PART F—CONTRIBUTORS' ACCOUNTS

Contributors' accounts

12. (1) The Superannuation Board must maintain accounts in the names of all contributors.

(2) A contributor's account must be debited with any payment that is, under this schedule or the Rules, to be charged against that account.

(3) At the end of each financial year each contributor's account that has a credit balance will be increased to reflect a rate of return determined by the Superannuation Board in relation to the contribution accounts in the relevant subdivision of the Fund for the relevant financial year.

(4) In determining a rate of return for the purposes of subclause (3), the Superannuation Board should have regard to—

(a) the net rate of return achieved by investment of the relevant subdivision of the Fund over the financial year; and

(b) the desirability of reducing undue fluctuations in the rate of return on contributors' accounts.

(5) Where, under subclause (4)(b), the Superannuation Board determines a rate of return that is at variance with the net rate of return achieved by investment of the relevant subdivision of the Fund, the Superannuation Board must include its reasons for the determination in its report for the relevant financial year.

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(6) Where it is necessary to determine the balance of a contributor's account at some time other than the end of the financial year, the balance will be extrapolated by applying a percentage rate of return on accounts in the relevant subdivision of the Fund estimated by the Superannuation Board.

(7) The Superannuation Board must, within six months after the end of each financial year, provide each contributor referred to in subclause (8) with a written statement of the amount standing to the credit of the contributor's account at the end of the financial year and the amount by which the balance of the account has been increased under subclause (3) in respect of that financial year.

(8) Subclause (7) applies to—

- (a) contributors who are employees;
- (b) contributors who have elected to preserve their accrued superannuation benefits.

PART G—REPORTS

Reports

13. (1) The Superannuation Board must, on or before 31 October in each year, submit a report to the Treasurer on the operation of this schedule and the Rules and on the management and investment of the Fund during the financial year ending on 30 June in that year.

(2) The report under subclause (1) must include—

- (a) the audited accounts of the Fund for the relevant financial year; and
- (b) a copy of the valuation of the Fund made as at the end of the relevant financial year.

(3) An actuary appointed by ETSA must, in relation to the triennium ending on 30 June 1996, and thereafter in relation to each succeeding triennium, report to—

- (a) the employer participants and the Treasurer on the employer costs of the contributory scheme at the time of making the report and during the foreseeable future; and
- (b) the employer participants, the Superannuation Board and the Treasurer on the ability of the Fund to meet its current and future liabilities,

(and the reports must be submitted within 12 months after the end of the relevant triennium).

(4) ETSA must, in consultation with the Superannuation Board, whenever necessary, appoint an actuary for the purposes of subclause (3).

(5) The Treasurer must, within six days after receiving a report under this clause, have copies of the report laid before both Houses of Parliament.

PART H—NON-CONTRIBUTORY SUPERANNUATION SCHEME

Interpretation

14. In this Part, unless the contrary intention appears—

"**Commonwealth Act**" means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

"**employee**" means an employee of an electricity corporation in relation to whom a superannuation guarantee charge is required to be paid under the Commonwealth Act.

Non-contributory scheme

15. (1) A non-contributory superannuation scheme or non-contributory superannuation schemes must be maintained for the benefit of—

- (a) employees who are not members of the contributory scheme;

- (b) those members of the contributory scheme in relation to whom the benefits accruing under that scheme are not sufficient to reduce the charge percentage under the Commonwealth Act to zero;
- (c) those members of the contributory scheme to whom a benefit is not for the time being accruing under that scheme.

(2) The electricity corporation responsible for a non-contributory scheme must make rules that provide for membership of the scheme, contributions, benefits and other matters relating to the establishment and operation of the scheme.

(3) The Rules—

- (a) must conform to the provisions of this Part; and
- (b) must be approved by the Treasurer; and
- (c) may be varied or replaced by the electricity corporation with the approval of the Treasurer.

(4) A variation or replacement of the Rules will be taken to come into operation on the date specified in the instrument whether being a date before or after the date on which the instrument was made or the date on which the Treasurer gave his or her approval.

(5) The benefits provided by the Rules to, or in relation to, an employee must not exceed the minimum amount required to avoid payment of the superannuation guarantee charge in respect of the employee under the Commonwealth Act.

(6) Section 10(3) and (4) of the *Subordinate Legislation Act 1978* do not apply to rules made under this clause.

Payment of benefits

16. Benefits under a non-contributory scheme must be paid in accordance with the Rules by the electricity corporation responsible for the scheme and any other electricity corporation whose employees are to receive benefits under the scheme.

Accounts and audit

17. (1) The electricity corporation responsible for a non-contributory scheme, or, in the case of ETSA's scheme, the Superannuation Board, must, in respect of each financial year, keep proper accounts of payments to, or in relation to, employees to whom benefits have accrued under the scheme and must prepare financial statements in relation to those payments in a form approved by the Treasurer.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts and financial statements referred to in subclause (1).

Report

18. (1) The electricity corporation responsible for a non-contributory scheme, or, in the case of ETSA's scheme, the Superannuation Board, must, on or before 31 October in each year, submit a report to the Treasurer on the operation of the scheme under this Part during the financial year ending on 30 June in that year.

(2) The report must include a copy of the financial statements in respect of the scheme for the financial year to which the report relates.

(3) The Treasurer must, within six sitting days after receiving a report under this clause, have copies of the report laid before both Houses of Parliament.

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PART I—EXCLUSION OF AWARDS, ETC., RELATING TO SUPERANNUATION

Exclusion of awards, etc., relating to superannuation

19. An electricity corporation cannot be required by or under the *Industrial and Employee Relations Act 1994* or by an award, enterprise agreement or industrial agreement to make a payment—

- (a) in the nature of superannuation; or
- (b) to a superannuation fund,

for the benefit of a member of the contributory scheme or of a person to whom benefits accrue under the non-contributory scheme.

SCHEDULE 2

Repeal and Transitional Provisions

Acts repealed

1. The following Acts are repealed:

- (a) *Electricity Trust of South Australia Act 1946*;
- (b) *The Adelaide Electric Supply Company Act 1944*;
- (c) *The Adelaide Electric Supply Company's Acts 1897 to 1931*;
- (d) *Electricity Act 1943*;
- (e) *Electricity (Country Areas) Subsidy Act 1962*;
- (f) *Electricity Supplies (Country Areas) Act 1950*;
- (g) *Electricity Supply (Industries) Act 1963*;
- (h) *The Electricity Trust of South Australia (Penola Undertaking) Act 1967*;
- (i) *Local Electricity Undertakings (Securities for Loans) Act 1950*.

Interpretation

2. In this schedule—

"**the repealed Act**" means the *Electricity Trust of South Australia Act 1946*;

"**the Trust**" means the Electricity Trust of South Australia established under the repealed Act.

Transitional provisions relating to Trust

3. (1) ETSA is the same body corporate as the Electricity Trust of South Australia established under the repealed Act.

(2) A reference in an Act or instrument to the Trust is (where the context admits) to be read as a reference to ETSA.

(3) The offices of the members of the Trust are vacated on the commencement of this Act.

Transitional provisions relating to superannuation

4. (1) The ETSA Superannuation Board is the same body corporate as the Electricity Trust of South Australia Superannuation Board established under the repealed Act.

(2) The ETSA Superannuation Fund is the same fund as the Electricity Trust of South Australia Superannuation Fund established under the repealed Act.

(3) The ETSA Contributory Superannuation Scheme is the same scheme as the Electricity Trust of South Australia Contributory Superannuation Scheme established under the repealed Act.

(4) The Electricity Trust of South Australia Non-Contributory Superannuation Scheme established under the repealed Act continues as a non-contributory superannuation scheme under schedule 1.

(5) The Rules in force under Part 4B of the repealed Act continue in force as Rules under schedule 1.

Statutory easement

5. (1) An electricity corporation has an easement over land where—

- (a) a part of the transmission or distribution system operated by the corporation is on, above or under the land and the land does not belong to the corporation; and

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(b) that part of the transmission or distribution system was as at 1 November 1988 on, above or under the land and the land did not then belong to the Trust.

(2) The easement entitles the electricity corporation—

(a) to maintain the relevant part of the transmission or distribution system 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 examining, maintaining, repairing, modifying or replacing the relevant part of the transmission or distribution system;

(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 other persons.

(4) If there is any inconsistency between this clause and an instrument to which the electricity corporation is a party, the terms of the instrument prevail to the extent of the inconsistency.

(5) An easement under this clause need not be registered.

(6) In this clause—

"**cable**" includes any kind of electrical conductor;

"**transmission or distribution system**" means—

- (a) the network of cables by which an electricity corporation transmits or distributes electricity;
- (b) the associated transformers and equipment of an electrical or other kind;
- (c) structures for the support of any such cables, transformers or equipment,

and includes any cable, transformer, equipment or structure used on a temporary basis for purposes related to the maintenance, repair or replacement of any part of the transmission or distribution system.

Inscribed debenture stock

6. (1) This Act does not affect rights or liabilities in respect of debentures issued by the Trust before the commencement of this Act.

(2) ETSA—

(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**").

(3) 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 ETSA, are entered in the Register.

(4) 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.

(5) ETSA 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.

(6) A certificate issued under subclause (5) will, in the absence of evidence to the contrary, be taken to be evidence of the fact stated in it.

(7) 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 ETSA, 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 ETSA such reasonable evidence of title as ETSA requires, and that person's name has been entered in the Register as the owner of the stock.

(8) No notice of any trust, express, implied or constructive, affecting inscribed debenture stock, may be received by ETSA or entered in the Register or any other book kept by ETSA.

(9) 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.

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SCHEDULE 3

Transfer of Assets, Liabilities and Staff between Electricity Corporations

PART A—PRELIMINARY

Interpretation

1. In this schedule—

"**asset**" means property including property held in a fiduciary capacity;

"**document**" includes any disc, tape or other medium in which information is stored;

"**guarantee**" includes indemnity;

"**instrument**" includes a legislative instrument and a judgment, order or process of a court;

"**land**" includes an estate or interest in land;

"**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 duty or non-pecuniary obligation;

"**property**" means real or personal property and includes—

(a) a chose in action; and

(b) a present, future or contingent right, privilege, interest or power;

"**security**" means—

(a) a mortgage, charge, lien, or pledge; or

(b) a guarantee; or

(c) any other security for, or instrument relating to, the payment of money or the discharge of any other liability;

"**transferee**", in relation to a transferred asset or liability, means the body to which the asset or liability has been transferred;

"**transferor**", in relation to a transferred asset or liability, means the body from which the asset or liability has been transferred;

"**transferred asset**" means an asset transferred under this schedule;

"**transferred liability**" means a liability transferred under this schedule.

Ministerial directions relating to transfers

2. The Minister may give directions to an electricity corporation requiring it to carry out work directed towards the transfer of assets and liabilities between the corporation and another electricity corporation or proposed electricity corporation.

Territorial application of schedule

3. (1) This schedule applies both within and outside the State.

(2) This schedule applies outside the State to the full extent of the extra-territorial legislative power of the State.

PART B—TRANSFER OF ASSETS AND LIABILITIES

Transfer of assets and liabilities to electricity corporation

4. (1) The Minister may, by order in writing, transfer assets or liabilities (or both) between electricity corporations.

(2) An order under this clause may be varied or revoked by the Minister by further order in writing made before the order takes effect.

(3) An order may not be made under this clause transferring assets or liabilities (or both) to or from an electricity generation corporation or an electricity transmission corporation established under Part 3 or 4 more than 12 months after the establishment of the corporation (other than an order effecting a transfer between such a corporation and a subsidiary of the corporation).

(4) A transfer of an asset or liability under this clause operates by force of this schedule and despite the provisions of any other law or instrument.

(5) A transfer of a liability under this clause operates to discharge the transferor from the liability.

Conditions of transfer

5. (1) The Minister may, by order in writing, fix the conditions on which assets or liabilities are transferred to an electricity corporation under this schedule.

(2) An order under this clause may be varied or revoked by the Minister by further order in writing.

(3) The conditions of transfer 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 on the transferee of assets, or assets and liabilities, a liability (in terms set out in the order) to the transferor reflecting the value or net value assigned by the Minister to the assets, or the assets and liabilities.

Indemnity if transfer and discharge of liability not recognised under other law

6. If—

- (a) the transfer of a liability under this schedule 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.

Transitional provisions

7. The following transitional provisions apply in relation to transferred assets and liabilities:

- (a) if an instrument or other document, or oral agreement, understanding or undertaking, is applicable to a transferred asset or liability, then for the purpose of construing the instrument or other document or oral agreement, understanding or undertaking (so far as it applies to the transferred asset or liability)—
 - (i) a reference to the transferor is to be construed as a reference to the transferee; and

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- (ii) a reference to an officer of the transferor is to be construed as a reference to the corresponding officer of the transferee or an officer designated by the chief executive officer of the transferee as the corresponding officer; and
- (b) 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; and
- (c) 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 extends to future liabilities, any such liabilities incurred after the transfer; and
 - (ii) the transferee is entitled to the same rights and priorities and subject to the same liabilities in relation to the security as those to which the transferor would have been entitled or subject if there had been no transfer; and
- (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 that is not transferred; and
- (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; and
- (f) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, the transferee may exercise those rights without giving rise to any liability on the part of the transferor for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement; and
- (g) 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; and
- (h) legal proceedings in respect of a transferred asset or liability commenced by or against the transferor must (subject to discontinuance) be continued and completed by or against the transferee; and
- (i) in legal proceedings relevant to a transferred asset or liability—
 - (i) the transferee will have the same rights and privileges as the transferor would have had if there had been no transfer; and
 - (ii) a document that could have been given in evidence by or against the transferor if there had been no transfer may be given in evidence by or against the transferee; and
- (j) the transferee may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability either in its own name or in the transferor's name.

Registering authorities to note transfer

8. (1) 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—

- (a) must, on the application of the transferee, register or record in the appropriate manner the transfer of any transferred asset or liability; and
- (b) must register an instrument in registrable form, executed by the transferee, relating to property that is a transferred asset even though the transferee is not registered as the proprietor of the property.

(2) If property is registered in the name of an electricity corporation, the Registrar-General or other registering authority may register a dealing with the property by the corporation or another electricity corporation without being concerned to enquire whether the property is or is not a transferred asset.

Exclusion of obligation to enquire

9. (1) A person dealing with an electricity corporation is not obliged to enquire whether property to which the transaction relates is or is not a transferred asset.

(2) If an electricity corporation purports to deal with property as if entitled to it, the transaction is valid even though the corporation purporting to deal with the property is not entitled to do so because the property is, or is not, a transferred asset.

(3) However, this clause does not validate a transaction if the party dealing with the electricity corporation has actual notice of the deficiency of title, or acts fraudulently.

Stamp and other duties or taxes

10. (1) No stamp duty or other duty or tax is payable under a law of the State in respect of—

- (a) any transfer effected by order of the Minister under this Act; or
- (b) any other transfer or assignment of assets or liabilities between electricity corporations; or
- (c) an application or entry made, or receipt given or anything else done for a purpose connected with, or arising out of, such a transfer or assignment.

(2) No person has an obligation under the *Stamp Duties Act 1923* or any other Act—

- (a) to lodge a statement or return relating to a matter referred to in subclause (1); or
- (b) to include in a statement or return a record or information relating to such a matter.

Evidence

11. (1) A certificate issued by the Minister certifying as to the transfer or non-transfer of an asset or liability under this schedule is to be accepted in any legal proceedings as conclusive evidence of the matter so certified.

(2) An apparently genuine document purporting to be a certificate of the Minister under subclause (1) is to be accepted in any legal proceedings as such a certificate in the absence of proof to the contrary.

PART C—TRANSFER OF STAFF

Transfer of staff

12. (1) The Minister may, by order in writing, transfer an employee from a position in the employment of one electricity corporation to a position in the employment of another.

(2) An order under this clause may be varied or revoked by the Minister by further order in writing made before the order takes effect.

(3) A transfer under this clause does not—

- (a) affect the employee's remuneration; or
- (b) interrupt continuity of service; or
- (c) constitute a retrenchment or redundancy.

(4) Except with the employee's consent, a transfer under this clause must not involve—

- (a) any reduction in the employee's status; or

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- (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or
- (c) any change in the employee's place of employment unless the new place of employment is within reasonable commuting distance from the employee's former place of employment.

(5) For the purposes of subclause (4), responsibility for the same or similar business operations that are smaller in scope as a result of a reduction of the business operations, or responsibility for a lesser number of staff, does not, of itself, constitute a reduction in status.

(6) A person who is transferred from one electricity corporation to another under this clause is taken to have accrued as an employee of the corporation to which the person is transferred 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 corporation from which he or she was transferred.

(7) A transfer under this clause does not give rise to a right to any remedy or entitlement arising from cessation or change of employment.

(8) For the purposes of construing a contract applicable to a transferred employee, a reference to the electricity corporation from which the person is transferred is to be construed as a reference to the corporation to which the person is transferred.

PART D—GENERAL**Schedule overrides other laws**

13. This schedule has effect despite the provisions of the *Real Property Act 1886* or any other law.

Effect of things done or allowed under schedule

14. Nothing done or allowed under this schedule—

- (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, 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 other obligee wholly or in part from an obligation.

SCHEDULE 4

Temporary Non-commercial Provisions

Interpretation

1. In this schedule—

"**bush fire**" means a fire that originates in, or spreads through, forest, scrub, grass or other vegetation;

"**cable**" includes any kind of electrical conductor;

"**transmission or distribution system**" means—

- (a) the network of cables by which an electricity corporation transmits or distributes electricity;
- (b) the associated transformers and equipment of an electrical or other kind;
- (c) structures for the support of any such cables, transformers or equipment,

and includes any cable, transformer, equipment or structure used on a temporary basis for purposes related to the maintenance, repair or replacement of any part of the transmission or distribution system;

"**electrical installation**" means the whole or part of any system, equipment or device wherever situated intended for the conveyance, control, measurement or use of electricity supplied or intended to be supplied by an electricity corporation or any other body or person that supplies electricity to the public at a voltage in excess of 40 volts, but does not include any equipment or device connected to and beyond any electrical outlet at which fixed wiring terminates;

"**naturally occurring vegetation**" means vegetation that has not been planted or nurtured by any person;

"**nurture**", in relation to vegetation, means actively assist the growth of the vegetation;

"**the principles of vegetation clearance**" means the regulations dealing with the clearance of vegetation from public and private supply lines;

"**private land**" means—

- (a) land alienated or contracted to be alienated from the Crown in fee simple; or
- (b) land occupied under a lease or licence from the Crown; or
- (c) land dedicated to a particular purpose and placed under the care, control and management of any person (whether or not that person is a Minister, agency or instrumentality of the Crown),

except any such land vested in, or under the care, control or management of, a municipal or district council and dedicated to, or held for, a public purpose;

"**private supply line**" means a part of the transmission or distribution system—

- (a) designed to carry electricity at a voltage of 19 kV or less; and
- (b) situated on, above or under private land; and
- (c) supplying, or intended to supply, electricity to some point on the land;

"**public place**" includes every road, street, footpath, thoroughfare, square, park or other place to which the public are allowed access, but does not include private property;

"**public supply line**" means any part of the transmission or distribution system except a private supply line.

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Standards relating to electricity generation, transmission, distribution and supply

2. The Minister may define and administer standards for the generation, transmission, distribution and supply of electricity to enable the safe and efficient use of electricity and interchange and interconnection between the transmission or distribution system, electricity authorities in other States and private generators of electricity.

Powers of an electricity corporation with respect to land and transmission or distribution system

3. (1) An electricity corporation may acquire land in accordance with the *Land Acquisition Act 1969*.

(2) An electricity corporation may—

- (a) lay or install any part of the transmission or distribution system over or under any public place; and
- (b) excavate a public place for the purpose of—
 - (i) laying or installing any part of the transmission or distribution system; or
 - (ii) inspecting, repairing or replacing any part of the transmission or distribution system previously laid or installed; and
- (c) lay, install, provide or set up on or against the exterior of a building or structure any cable, equipment or structure necessary for securing to that or any other building or structure a proper and complete supply of electricity and for measuring the extent of such supply.

(3) An electricity corporation must, at least seven days before it exercises powers conferred by this clause in relation to a public place, give to the authority in which the control or management of the place is vested notice of its intention to exercise those powers and of the area to be affected.

(4) Notice is not required under subclause (3) in an emergency or in circumstances of imminent danger to life or property.

(5) An electricity corporation must, as soon as practicable, make good any damage to a public place arising from the exercise of powers conferred by this clause.

Subsidies to other suppliers

4. The Minister may direct ETSA to provide a subsidy to another supplier of electricity in the State.

Duty to supply electricity

5. (1) An electricity corporation with electricity transmission and system control functions or electricity distribution functions must ensure that any transmission or distribution system under its control is constructed and maintained in accordance with standards and practices generally accepted as appropriate internationally, or throughout Australia, by the electricity supply industry.

(2) Subject to this clause, the electricity corporations must conduct and co-ordinate their operations so as to ensure as far as practicable that the electricity supply is maintained through the transmission and distribution systems under the control of electricity corporations.

(3) If it is reasonable and economic to do so, an electricity corporation with electricity distribution functions must, on the application of any person, provide a supply of electricity to any land or premises occupied by that person subject to payment of fees and charges and observance of the other conditions of supply from time to time fixed by the corporation.

(4) An electricity corporation may—

- (a) cut off the supply of electricity to any region, area, land or premises if it is, in the corporation's opinion, necessary to do so—
 - (i) to avert danger to any person or property; or
 - (ii) to prevent damage to any part of a generator or the transmission or distribution system through overloading or unstable or abnormal operation; or

(iii) to allow for the inspection, maintenance or repair of any part of the transmission or distribution system; or

(b) cut off the supply of electricity to land or premises on non-observance of the conditions of supply from time to time fixed by the corporation.

(5) If an electricity corporation proposes to cut off a supply of electricity in order to avert danger of a bush fire, the corporation should, if practicable, consult with the Country Fire Services Board, or a delegate of that Board, before doing so.

Immunity from liability in consequence of cutting off or failure of electricity supply

6. An electricity corporation incurs no civil liability in consequence of—

(a) cutting off the supply of electricity to any region, area or premises in pursuance of this Act; or

(b) the failure of an electricity supply.

Duties in relation to vegetation clearance

7. (1) An electricity corporation has a duty to take reasonable steps—

(a) to keep vegetation of all kinds clear of public supply lines under the corporation's control; and

(b) to keep naturally occurring vegetation clear of private supply lines under the corporation's control,

in accordance with the principles of vegetation clearance.

(2) The occupier of private land has (subject to the principles of vegetation clearance) a duty to take reasonable steps to keep vegetation (other than naturally occurring vegetation) clear of any private supply line on the land in accordance with the principles of vegetation clearance.

(3) If vegetation is planted or nurtured in proximity to a public supply line under the control of an electricity corporation contrary to the principles of vegetation clearance, the corporation may remove that vegetation and may recover the cost of so doing as a debt from the person by whom the vegetation was planted or nurtured.

(4) Any costs incurred by an electricity corporation in carrying out work on private land under this clause (other than work that the corporation is required to carry out under a duty imposed by this clause) may be recovered as a debt from the occupier of the land.

(5) This clause operates to the exclusion of common law duties, and other statutory duties, affecting the clearance of vegetation from public and private supply lines, and so operates with respect to vegetation clearance work whether the work is carried out by an electricity corporation itself or by another person acting as a contractor or other agent on behalf of the corporation or in pursuance of a delegation by the corporation.

Role of councils in relation to vegetation clearance

8. (1) An electricity corporation may make an arrangement with a council conferring on the council a specified role in relation to vegetation clearance under this schedule.

(2) The arrangement—

(a) must be in writing and executed by the electricity corporation and the council; and

(b) may contain a delegation by the electricity corporation of a function or power under this schedule; and

(c) may require that the electricity corporation be indemnified for any liability arising from an act or omission of the council under a delegation; and

(d) may provide for the termination of the arrangement by the electricity corporation or the council; and

(e) may provide for the variation of the arrangement by the electricity corporation and the council.

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- (3) A delegation by the electricity corporation for the purposes of the arrangement—
- (a) may be subject to conditions specified in the arrangement; and
 - (b) may be varied or revoked by the electricity corporation in accordance with the terms of the arrangement; and
 - (c) does not prevent the electricity corporation from acting in any matter.
- (4) In this clause—

"**council**" means a council within the meaning of the *Local Government Act 1934*.

Powers of entry, inspection, etc.

9. (1) An electricity corporation may appoint an employee or other suitable person to be an authorised person subject to such conditions as the corporation thinks fit.

- (2) An authorised person appointed by an electricity corporation may, at any reasonable time—
- (a) examine or test any part of the transmission or distribution system or an electrical installation;
 - (b) carry out any work necessary to obtain access to any part of the transmission or distribution system or an electrical installation;
 - (c) inspect or repair any part of the transmission or distribution system or an electrical installation;
 - (d) take any action that may be necessary to avert danger from a fault in the transmission or distribution system or from unstable or abnormal conditions affecting it;
 - (e) inspect public or private supply lines;
 - (f) carry out any vegetation clearance work—
 - (i) that the electricity corporation is required or authorised to carry out under this schedule; or
 - (ii) that the occupier of the land should have (but has not) carried out under the duty imposed by this schedule; or
 - (iii) that the occupier has requested the electricity corporation carry out on his or her behalf (being work that the occupier is obliged to carry out under this schedule);
 - (g) enter land or premises for the purpose of exercising any power under this clause.
- (3) Subject to subclause (4), an authorised person must give—
- (a) reasonable notice of an intention to enter residential premises or land under this clause to the occupier of the residential premises or land; and
 - (b) where vegetation clearance work is to be carried out on the land—at least 60 days written notice, specifying the nature of the work.
- (4) Notice is not required to be given under subclause (3)—
- (a) in an emergency or circumstances of imminent danger to life or property; or
 - (b) for the purposes of taking readings of meters or devices for the measurement of electricity consumption.

(5) Subject to subclause (6), an electricity corporation must, as soon as practicable, make good any damage to land or premises resulting from the exercise of a power under this clause.

(6) Subclause (5) does not apply in relation to—

- (a) damage resulting from action taken to rectify a breach of the conditions on which the electricity corporation supplies electricity; or
- (b) damage to vegetation necessarily caused in the discharge of the electricity corporation's duty with respect to vegetation clearance.

(7) An authorised person may use reasonable force in the exercise of a power conferred by this clause.

(8) An authorised person must—

- (a) be issued with an identity card containing a photograph of the person and stating any conditions of the person's appointment; and
- (b) at the request of a person against whom the authorised person proposes to exercise powers under this clause, produce his or her identity card for inspection by that person.

(9) A person who hinders or obstructs an authorised person in the exercise of powers conferred by this clause is guilty of an offence.

Penalty: Division 6 fine.

(10) An authorised person, or a person assisting an authorised person, who, in the course of exercising powers under this clause—

- (a) addresses offensive language to another person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,

is guilty of an offence.

Penalty: Division 6 fine.

Offences relating to transmission or distribution system, etc.

10. (1) A person who, except as approved by the Minister—

- (a) abstracts or diverts electricity from any part of the transmission or distribution system or interferes with a meter or other device for measuring the consumption of electricity supplied by an electricity corporation; or
- (b) charges another a premium for the cost of electricity supplied by an electricity corporation and paid or payable by that person; or
- (c) contributes electricity to any part of the transmission or distribution system; or
- (d) damages or otherwise interferes with any part of the transmission or distribution system or any electrical installation or other property belonging to an electricity corporation, or under its control; or
- (e) erects a building or structure in proximity to a supply line that is part of the transmission or distribution system contrary to the regulations,

is guilty of an offence.

Penalty: Division 5 fine.

(2) Subject to the regulations, the Minister may give an approval for the purposes of this clause.

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(3) An approval under this clause—

- (a) may be general or specific; and
- (b) will, insofar as the approval operates for the benefit of a particular person, be subject to such conditions as the Minister may fix from time to time by notice in writing served personally or by post on that person.

(4) If, in proceedings for an offence against subclause (1)(a), it is proved that a device has been installed or any other act done, without the Minister's approval, the apparent purpose of which is to abstract or divert electricity to particular land or premises or to affect the proper measurement of electricity supplied to particular land or premises, it will be presumed, in the absence of proof to the contrary, that the occupier of the land or premises installed the device or did the other act with that purpose.

(5) If, in any legal proceedings, a person is alleged to have acted without the Minister's approval, the absence of approval will be presumed in the absence of proof that the necessary approval was in fact given.

(6) If an electricity corporation suffers loss or damage as a result of a contravention of subclause (1), the corporation may recover compensation for the loss or damage from a person guilty of the contravention—

- (a) on application to a court convicting the person of an offence against subclause (1); or
- (b) by action in a court of competent jurisdiction.

(7) Proceedings for an offence against this clause may be commenced at any time within three years of the day on which the offence is alleged to have been committed.

Payments by ETSA

11. (1) In this clause—

"**payment day**" means the last working day that occurs in a quarter;

"**quarter**" means any period of approximately three months concluding on or about the last day of March, June, September or December in any year as may be agreed on by the Treasurer and the electricity corporation.

(2) An electricity corporation with electricity distribution functions must, on or before each payment day, out of its revenues pay to the Treasurer for the purposes of the Consolidated Account, an amount equal to five per cent of its revenues being revenues derived from the sale of electricity during the quarter last preceding the quarter within which the payment day occurs.

(3) For the purposes of subclause (2), the amount of the revenues of the electricity corporation derived from the sale of electricity during a quarter will be quantified by agreement between the Treasurer and the electricity corporation or, in the absence of such an agreement, by the Auditor-General.

Regulations

12. (1) Without limiting the matters in respect of which regulations may be made for the purposes of this Act, the regulations may—

- (a) regulate the positioning of public or private supply lines and associated electrical and other equipment;
- (b) restrict or prohibit the erection of buildings or structures in proximity to public or private supply lines;
- (c) prescribe rules of safety, and standards of workmanship or materials to be adopted in any electrical work, or electrical installation;
- (d) regulate the inspection and testing of electrical installations;
- (e) regulate the clearance of vegetation from public or private supply lines;

- (f) impose penalties (not exceeding a division 7 fine) for breach of, or non-compliance with, a regulation.

(2) Regulations dealing with the clearance of vegetation from public or private supply lines can only be made with the concurrence of the Minister for Environment and Natural Resources.

(3) Regulations may—

- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of an electricity corporation;
- (c) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time.

Expiry

13. (1) The Governor may, by regulation, declare that this schedule, or specified provisions of this schedule, will expire on a day or days specified in the regulations.

(2) A declaration under this clause has effect according to its terms.

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APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 14(2):	amended by 54, 1995, s. 3(a)
Section 14(4):	substituted by 54, 1995, s. 3(b)
Section 18(1):	amended by 54, 1995, s. 4
Section 48A:	inserted by 43, 1996, s. 3
Schedule 4	
Clause 1:	definition of "transmission or distribution system" amended by 43, 1996, s. 4(a) definition of "electrical installation" amended by 43, 1996, s. 4(b)
Clause 3(1), (2), (3) and (5):	amended by 43, 1996, s. 4(c)
Clause 5(1):	amended by 43, 1996, s. 4(d)
Clause 5(2):	substituted by 43, 1996, s. 4(e)
Clause 5(3):	amended by 43, 1996, s. 4(f), (g)
Clause 5(4):	amended by 43, 1996, s. 4(h)-(j)
Clause 5(5):	amended by 43, 1996, s. 4(k), (l)
Clause 6:	amended by 43, 1996, s. 4(m)
Clause 7(1):	substituted by 43, 1996, s. 4(n)
Clause 7(3):	amended by 43, 1996, s. 4(o), (p)
Clause 7(4):	amended by 43, 1996, s. 4(q), (r)
Clause 7(5):	amended by 43, 1996, s. 4(s)
Clause 8(1):	amended by 43, 1996, s. 4(t)
Clause 8(2) and (3):	amended by 43, 1996, s. 4(u)
Clause 9(1):	amended by 43, 1996, s. 4(v), (w)
Clause 9(2):	amended by 43, 1996, s. 4(x), (y)
Clause 9(5):	amended by 43, 1996, s. 4(z)
Clause 9(6):	amended by 43, 1996, s. 4(aa)
Clause 10(1):	amended by 43, 1996, s. 4(ab)
Clause 10(6):	amended by 43, 1996, s. 4(ac), (ad)
Clause 11(1):	definition of "quarter" amended by 43, 1996, s. 4(ae)
Clause 11(2):	amended by 43, 1996, s. 4(af)
Clause 11(3):	amended by 43, 1996, s. 4(ag)
Clause 12(3):	amended by 43, 1996, s. 4(ah)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.