

South Australia



**ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL)
ACT 1999**

No. 36 of 1999

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A.D. 1999

No. 36 of 1999

An Act to make provision for the restructuring and disposal of all or part of the assets of electricity corporations; to amend the Development Act 1993, the Electricity Corporations Act 1994, the Environment Protection Act 1993, the Mining Act 1971 and the Superannuation Act 1988; and for other purposes.

[Assented to 1 July 1999]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

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

Commencement

2. (1) This Act (other than section 13 and Parts 2, 3 and 4 of Schedule 3) will come into operation on a day to be fixed by proclamation.

(2) Section 13 comes into operation on the day on which this Act is assented to by the Governor.

(3) Parts 2, 3 and 4 of Schedule 3 will come into operation in accordance with provisions contained in that Schedule.

Interpretation

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

"asset" means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or

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

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

"authorised project"—see section 5;

"body" includes a Minister;

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

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

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

"electricity corporation" means—

(a) ETSA; or

(b) SAGC; or

(c) an electricity transmission corporation established under the *Electricity Corporations Act 1994*; or

(d) a subsidiary of a body referred to in a preceding paragraph of this definition;

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

"employee" includes an officer;

"employee transfer order"—see section 23;

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

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

"lease" includes—

(a) a sub-lease or other derivative of a lease; and

(b) a licence or an agreement to grant a lease or licence,

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

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

"legal proceedings" includes an arbitration and an administrative proceeding;

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

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

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

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

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

"**sale/lease agreement**"—see section 13;

"**security**" means—

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

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

"**special order**"—see section 16;

"**State-owned company**" means—

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

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

"**subsidiary**", in relation to a body corporate, means—

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

"**transfer order**"—see section 8;

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

"**transferred instrument**"—*see sections 8, 14 and 16;*

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

"**vesting order**"—*see section 12.*

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

Application of Act

4. It is the intention of the Parliament that—

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

**PART 2
PREPARATORY ACTION****Preparation for restructuring and disposal**

5. (1) The following actions (collectively referred to as the **authorised project**) are authorised:

- (a) determination of the most appropriate means of disposing of the assets and liabilities of an electricity corporation;
- (b) examination of the assets and liabilities of an electricity corporation or assets and liabilities of a body by which assets or liabilities have been acquired under a transfer order;
- (c) action that the Minister authorises in preparation for disposal of assets and liabilities of an electricity corporation or assets and liabilities of a body by which assets or liabilities have been acquired under a transfer order.

(2) The authorised project is to be carried out by—

- (a) persons employed by the Crown and assigned to work on the project; and
- (b) employees of an electricity corporation or State-owned company assigned to work on the project; and
- (c) other persons whose services are engaged by the Crown or an electricity corporation or State-owned company for the purpose of carrying out the project; and
- (d) other persons approved by the Minister whose participation or assistance is, in the opinion of the Minister, reasonably required for the purposes of the project.

(3) The Minister (or the Minister's delegate) may, despite any other law or instrument, authorise prospective purchasers and their agents to have access to information in the possession or control of—

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

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

(4) Members of the governing body and employees of an electricity corporation or a body by which assets or liabilities have been acquired under a transfer order must, despite any other law or instrument—

- (a) allow persons engaged on the authorised project access to information in the possession or control of the electricity corporation or body that is reasonably required for, or in connection with, the carrying out of the authorised project; and
- (b) do whatever is necessary to facilitate the provision of the information to persons entitled to access to the information under subsection (3); and

- (c) provide other co-operation, assistance and facilities that may be reasonably required for, or in connection with, the carrying out of the authorised project.

(5) A person who is in a position to grant or refuse access to information to which this section relates may deny access to a person who seeks access to the information unless the person produces a certificate issued by the Minister (or the Minister's delegate) certifying that the person is entitled to access to information under this section and the basis of the entitlement.

Authority to disclose and use information

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

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

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

Evidentiary provision

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

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted as such in the absence of proof to the contrary.

**PART 3
RESTRUCTURING AND DISPOSAL****Orders to effect transfers, leases and other restructuring**

8. (1) The Minister may, by order in writing (a transfer order), do one or more of the following:

- (a) transfer to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, assets or liabilities (or both) of an electricity corporation;
- (b) transfer to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, assets or liabilities (or both) of a body by which assets or liabilities have been acquired under a transfer order;
- (c) grant to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, a lease, easement or other rights in respect of assets of or available to an electricity corporation;
- (d) grant to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, a lease, easement or other rights in respect of assets of or available to a body by which assets have been acquired under a transfer order;
- (e) extinguish a lease, easement or other rights held by a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, in consequence of a transfer order.

(2) If—

- (a) an electricity corporation has an easement in relation to electricity infrastructure on, above or under land; and
- (b) the Minister, by a transfer order, transfers part of the infrastructure, or grants a lease or other rights in respect of part of the infrastructure, to a body of a kind referred to in subsection (1),

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

(3) In exercising powers under this section in relation to assets or liabilities of, or available to, a body other than the Minister, the Minister is to be taken to be acting as the agent of the other body.

(4) A transfer order takes effect on the date of the order or on a later date specified in the order.

(5) A transfer order effects the transfer and vesting of an asset or liability, or the grant or extinguishment of a lease, easement or other rights, in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

(6) The transfer of a liability from a body discharges the body from the liability.

(7) If a transfer order so provides—

- (a) a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the transfer order;
- (b) a security to which a leased asset is subject ceases to apply to the asset on the grant of the lease by the transfer order.

(8) A transfer order may provide that references to a body of a kind referred to in subsection (1) (the **first body**) in a specified instrument or an instrument of a specified class (a **transferred instrument**) are replaced by references to another body of a kind referred to in subsection (1) (the **second body**), and in that case—

- (a) the instrument is modified as provided in the order; and
- (b) the second body accordingly succeeds to the rights and liabilities of the first body under the instrument as from the date on which the transfer order takes effect or the date on which the instrument takes effect (whichever is the later).

(9) The Minister may, by order in writing, declare that the effect of the whole or part of a transfer order is reversed and in that case (despite the provisions of any other law or instrument)—

- (a) the order will be taken to have come into effect contemporaneously with the transfer order; and
- (b) transfers or grants identified in the order are cancelled and will be taken never to have been made; and
- (c) transferred instruments identified in the order are to be construed as if they had never been affected by the transfer order.

(10) A power may not be exercised under this section in relation to a company that has ceased to be a State-owned company.

Subcontracting performance of obligations to State-owned companies

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

Conditions of transfer order

10. (1) The Minister may, by order in writing, fix the conditions on which a transfer order operates.

(2) An order under this section may be varied or revoked by the Minister by further order (but not in relation to a company that has ceased to be a State-owned company).

(3) The conditions attaching to a transfer order may, for example, do one or more of the following:

- (a) assign a value to particular transferred assets, or transferred assets of a particular class;
- (b) assign a value to particular transferred liabilities, or transferred liabilities of a particular class;
- (c) assign a net value to particular transferred assets and liabilities, or transferred assets and liabilities of particular classes;
- (d) impose liabilities (in terms set out in the order) on the transferee reflecting the value or net value assigned by the Minister to transferred assets, or transferred assets and liabilities.

Conversion of electricity corporation to State-owned company

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

Vesting orders

12. (1) In any case where there appears to the Minister to be a dispute or doubt as to the ownership of public lighting infrastructure, the Minister may, by order in writing (a **vesting order**), declare that the ownership of public lighting infrastructure specified in the order is vested in an electricity corporation, State-owned company or council specified in the order.

(2) Before making a vesting order that relates to public lighting infrastructure, the Minister must consult with the council of the area affected.

(3) A vesting order effects the vesting of the specified public lighting infrastructure in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

Disposal of electricity assets and limitations on disposal

13. (1) The Crown, an instrumentality of the Crown or a statutory corporation must not sell or transfer prescribed electricity assets.

(2) If a prescribed company or a subsidiary of a prescribed company owns prescribed electricity assets, shares in the prescribed company—

- (a) must not be issued; or
- (b) if owned by an instrumentality of the Crown or a statutory corporation—must not be sold or transferred.

(3) Subject to the limitations under subsections (1) and (2), the Minister may by agreement (a **sale/lease agreement**) with another (the **purchaser**) do one or more of the following:

- (a) transfer to the purchaser assets or liabilities (or both) of an electricity corporation;
- (b) grant to the purchaser a lease, easement or other rights in respect of assets of or available to an electricity corporation;
- (c) transfer to the purchaser assets or liabilities (or both) of a State-owned company;
- (d) transfer to the purchaser shares in a State-owned company;

- (e) grant to the purchaser a lease, easement or other rights in respect of assets of or available to a State-owned company;
- (f) transfer to the purchaser assets or liabilities (or both) that have been acquired by a Minister, any instrumentality of the Crown or a statutory corporation under this Act;
- (g) grant to the purchaser a lease, easement or other rights in respect of assets that have been acquired by a Minister, any instrumentality of the Crown or a statutory corporation under this Act.

(4) Subsections (1) and (2) do not apply to—

- (a) the sale or transfer of prescribed electricity assets to the Crown, an instrumentality of the Crown or a statutory corporation;
- (b) the issuing, sale or transfer of shares to an instrumentality of the Crown or a statutory corporation;
- (c) the sale or disposal of prescribed electricity assets in the ordinary course of the maintenance, repair, replacement or upgrading of equipment;
- (d) the exercise by a person other than the Crown, an instrumentality of the Crown or a statutory corporation of a right under an instrument executed before 17 November 1998;
- (e) the performance by the Crown, an instrumentality of the Crown or a statutory corporation of an obligation under an instrument executed before 17 November 1998.

(5) The Minister must cause a copy of each relevant long term lease, and a prescribed report relating to the lease, to be laid before each House of Parliament—

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

(6) In this section—

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

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

- (a) electricity generating plant (other than plant with a generating capacity of less than 10 MW);
- (b) powerlines (within the meaning of the *Electricity Act 1996*);
- (c) substations for converting, transforming or controlling electricity;

- (d) land on or under which infrastructure of a kind referred to in paragraph (a), (b) or (c) is situated,

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

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

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

"**relevant lease**" means—

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

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

"**right**" includes a contingent or future right.

Provisions relating to sale/lease agreements

14. (1) If—

- (a) an electricity corporation or State-owned company has an easement in relation to electricity infrastructure on, above or under land; and
- (b) the Minister, by a sale/lease agreement, transfers part of the infrastructure, or grants a lease or other rights in respect of part of the infrastructure, to a purchaser,

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

(2) A sale/lease agreement may transfer assets or liabilities (or both) to a State-owned company, Minister, electricity corporation or any instrumentality of the Crown or statutory corporation, or the Crown, with effect at the end of the term of a lease (whether granted by the agreement, a transfer order or otherwise) or in specified circumstances.

(3) In exercising powers in relation to assets or liabilities of, or available to, a body other than the Minister, the Minister is to be taken to be acting as the agent of the other body.

(4) A sale/lease agreement effects the transfer and vesting of an asset or liability or shares, or the grant of a lease, easement or other rights, in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

(5) The transfer of a liability by a sale/lease agreement operates to discharge the transferor and the Crown from the liability.

(6) Unless the sale/lease agreement otherwise provides—

- (a) the transfer of an asset by a sale/lease agreement operates to discharge the asset from any trust in favour of the Crown;
- (b) the transfer of the shares in an electricity corporation or State-owned company by a sale/lease agreement operates to discharge the assets of the company from any trust in favour of the Crown.

(7) If a sale/lease agreement so provides—

- (a) a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the sale/lease agreement;
- (b) a security to which a leased asset is subject ceases to apply to the asset on the grant of the lease by the sale/lease agreement.

(8) A sale/lease agreement may provide that instruments identified in the agreement, or to be identified as provided in the agreement, are to be transferred instruments.

(9) If an instrument is identified in, or under, a sale/lease agreement as a transferred instrument, the instrument operates, as from a date specified in the agreement, subject to any modifications specified in the agreement.

Subcontracting performance of obligations to purchasers

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

Special orders

16. (1) The Minister may, by order in writing (a **special order**), transfer assets or liabilities (or both) of the purchaser under a sale/lease agreement to another body or bodies.

(2) A special order may only be made at the request of the purchaser made within 12 months of the date of the sale/lease agreement and with the consent of the other body or bodies.

(3) Only one special order may be made at the request of the same purchaser.

(4) In exercising powers under this section in relation to assets or liabilities of the purchaser, the Minister is to be taken to be acting as the agent of the purchaser.

(5) A special order takes effect on the date of the order or on a later date specified in the order.

(6) A special order effects the transfer and vesting of an asset or liability in accordance with its terms by force of this Act and despite the provisions of any other law or instrument.

(7) A special order may provide that instruments identified in the order, or to be identified as provided in the order, are to be transferred instruments.

(8) If an instrument is identified in, or under, a special order as a transferred instrument, the instrument operates, as from a date specified in the order, subject to any modifications specified in the order.

Terms of leases and related instruments

17. (1) The Minister is to endeavour to ensure that a prescribed long term lease in respect of prescribed electricity assets or a related instrument contains terms under which—

- (a) the lessee's right or option to renew or extend the lease must be exercised not less than five years before the commencement of the term of that renewal or extension; and
- (b) the risk of non-payment of rent (including amounts to be paid on the exercise of a right or option to renew or extend the lease) is addressed at the commencement of the lease by the provision of adequate security or other means; and
- (c) the lessee must provide adequate security in respect of compliance with requirements as to the condition of the leased assets at the expiration or earlier termination of the lease; and
- (d) the lessor accepts no liability for, and provides no warranty or indemnity as to, a consequence arising from—
 - (i) the lessee's use of the leased assets in trade or business; or
 - (ii) pool prices in the National Electricity Market or a similar or derivative market relating to the supply of electricity; or
 - (iii) competition between participants in the National Electricity Market or a similar or derivative market relating to the supply of electricity; or
 - (iv) regulatory change in the electricity supply industry; and
- (e) the lessee must indemnify the lessor for any liability of the lessor to a third party arising from the lessee's use or possession of the leased assets; and
- (f) the lessee must have adequate insurance against risks arising from the use or possession of the leased assets; and
- (g) the lessee must ensure compliance with all regulatory requirements applicable to the use or possession of the leased assets; and
- (h) the lessor is entitled to terminate the lease if a breach of the lessee's obligations of any of the following kinds, or any other serious breach, remains unremedied after reasonable notice:
 - (i) failure to obtain or retain—
 - (A) a licence or registration required for the use of the leased assets for their intended purpose in the electricity supply industry under the *Electricity Act 1996* or the *National Electricity (South Australia) Law*; or

- (B) a similar licence, registration or other authority required under subsequent legislation;
 - (ii) non-payment of rent;
 - (iii) substantial cessation of use of the leased assets for their intended purpose in the electricity supply industry; and
- (i) the lessor has a right or option, at the expiration or earlier termination of the lease, to acquire assets that form part of the business involved in the use of the leased assets for their intended purpose in the electricity supply industry.

(2) If a prescribed long term lease is granted in respect of prescribed electricity assets and the lease and prescribed report relating to the lease are laid before a House of Parliament in accordance with section 13, a report stating the extent to which the lease complies with the requirements set out in subsection (1) and giving reasons for any non-compliance must be laid before that House of Parliament at the same time.

(3) Non-compliance with this section does not affect the validity of a prescribed long term lease.

(4) A provision included in a prescribed lease or related instrument that deals with—

- (a) the circumstances or conditions under which the lease may be terminated by the lessor or lessee; or
- (b) the application of a security provided in relation to the lease; or
- (c) the pre-payment of amounts payable by way of rent under the lease and the retention of such amounts by the lessor; or
- (d) the continuance of the lease despite the occurrence of unintended or unforeseen circumstances; or
- (e) the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances; or
- (f) the amount payable in consequence of a breach of the lease; or
- (g) the liability of the lessor in relation to the leased assets,

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

(5) In this section—

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

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

"**prescribed company**" has the same meaning as in section 13;

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

"prescribed lease" means—

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

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

"right" has the same meaning as in section 13.

Government guarantee

18. (1) Subject to subsection (2), a Government guarantee has no application in relation to—

- (a) transferred liabilities (unless the liabilities are transferred to a public corporation and the guarantee under section 28 of the *Public Corporations Act 1993* applies or the liabilities are transferred back to the electricity corporation to whose liabilities the guarantee originally applied); or
- (b) liabilities of a company that was an electricity corporation or State-owned company before the shares in the company were transferred to a purchaser under a sale/lease agreement.

(2) If the Treasurer declares by order in writing that a Government guarantee continues to apply in relation to specified liabilities and a specified transferee or company, the Government guarantee will be taken to continue to apply (indefinitely or for a period specified in or determined in accordance with the order) to the liabilities as if the specified transferee or company were the electricity corporation to whose liabilities the guarantee originally applied.

(3) The Treasurer may, from time to time, fix charges to be paid by the transferee in respect of a guarantee continued under this section and determine the times and manner of their payment.

(4) If a Government guarantee is continued by an order under this section, the Treasurer must cause a report to be laid before each House of Parliament not later than 14 sitting days after the making of the order, giving details of the guarantee and the liabilities to which the guarantee relates including the maximum amount that might become payable under the guarantee.

(5) In this section—

"Government guarantee" means—

- (a) a guarantee under section 28 of the *Public Corporations Act 1993*;
- (b) a guarantee or indemnity given by an electricity corporation;
- (c) a guarantee or indemnity under section 19 of the *Public Finance and Audit Act 1987*.

Supplementary provisions

19. (1) If—

- (a) the transfer of a liability under this Act, and the consequent discharge from the liability, is not recognised under the law of a place outside South Australia; and
- (b) the transferor is required under the law of that place to make a payment in satisfaction of the liability,

the transferor is entitled to be indemnified by the transferee for the payment.

(2) Subject to any contrary provision in a transfer order, sale/lease agreement or special order, the following provisions apply in relation to transferred assets and liabilities:

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

(h) legal proceedings in respect of a transferred asset or liability that had commenced before the transfer may be continued and completed by or against the transferee.

(3) Subject to any contrary provision in a transfer order or sale/lease agreement, the following provisions apply in relation to leased assets:

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

Evidentiary provision

20. (1) The Minister (or the Minister's delegate) may certify—

- (a) whether specified assets or liabilities are or are not transferred assets or liabilities and the identity of the transferee;
- (b) whether specified assets are or are not leased assets and the identity of the lessee;
- (c) whether specified instruments are or are not transferred instruments;
- (d) any other matter with respect to a transfer or grant under this Act.

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

Application of proceeds of sale/lease agreement

21. (1) The Treasurer may only apply proceeds of a sale/lease agreement under this Act as follows:

- (a) in payment of an amount equal to any payment made by an electricity corporation, or a body by which assets or liabilities have been acquired under a transfer order, on the termination or surrender of a lease entered into before 17 November 1998;
- (b) in payment of the costs of restructuring and disposal of assets of electricity corporations and preparatory action taken for that purpose;
- (c) in payment to an account at the Treasury to be used for the purposes of a scheme to limit differences between electricity prices charged to classes of consumers in non-metropolitan areas and those charged to corresponding consumers in metropolitan areas.
- (d) in payment to an account at the Treasury to be used for the purposes of retiring State debt.

(2) Any income from investment of money paid into an account at the Treasury under subsection (1) must be applied for the purposes of retiring State debt.

(3) An amount paid by way of security will not be regarded as proceeds of a sale/lease agreement for the purposes of this section.

(4) An electricity corporation must, if the Treasurer so directs, make a specified payment to the Treasurer.

(5) A State-owned company must, if the Treasurer so directs, make a specified payment to the Treasurer.

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

(7) In this section—

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

- (a) the East Terrace substation, Adelaide; or
- (b) the Happy Valley substation, Happy Valley; or
- (c) the Kilburn substation, Dry Creek; or

- (d) the Lefevre substation, Outer Harbor; or
- (e) the Magill substation, Magill; or
- (f) the Morphett Vale East substation, Woodcroft; or
- (g) the Northfield substation, Northfield; or
- (h) the Osborne substation, Osborne; or
- (i) the Parafield Gardens West substation, Parafield Gardens; or
- (j) the Para substation, Gould Creek; or
- (k) the Torrens Island substation, Torrens Island;

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

Auditor-General's report on relevant long term leases

22. (1) The Auditor-General must be provided with a copy of each relevant long term lease within the period of seven days after the prescribed date.

(2) The Auditor-General must, within the period of six months after the prescribed date, examine each relevant long term lease that has been provided under subsection (1) and any related transactions and prepare a report on—

- (a) the proportion of the proceeds of the leases used to retire State debt; and
- (b) the amount of interest on State debt saved as a result of the application of those proceeds.

(3) The Auditor-General—

- (a) must incorporate in the report under subsection (2) a report on the probity of the processes leading up to the making of each relevant long term lease; and
- (b) for that purpose may, before, during and after the completion of those processes, require reports from the person appointed by the Treasurer (or otherwise on behalf of the Crown) to be the probity auditor in relation to the making of that lease.

(4) Section 34 of the *Public Finance and Audit Act 1987* applies to the examination of a lease and any related transactions by the Auditor-General under this section.

(5) The Auditor-General must deliver copies of a report prepared under this section to the President of the Legislative Council and the Speaker of the House of Assembly.

(6) The President of the Legislative Council and the Speaker of the House of Assembly must not later than the first sitting day after receiving a report under this section, lay copies of the report before their respective Houses of Parliament.

(7) If a report has been prepared under this section but copies have not been laid before both Houses of Parliament when a writ for a general election of the members of the House of Assembly is issued, the Auditor-General must cause the report to be published.

(8) In this section—

"**prescribed date**" means the earlier of the following:

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

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

"**relevant lease**" means—

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

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

"**right**" has the same meaning as in section 13.

**PART 4
STAFF****Transfer of staff**

23. (1) Action must be taken to ensure that all employees engaged in a business to which a sale/lease agreement relates are taken over as employees of the purchaser, a company related to the purchaser or the company acquired by the purchaser under the sale/lease agreement.

(2) For the purposes of this section, the Minister may, by order in writing (an **employee transfer order**)—

- (a) transfer employees of an electricity corporation to positions in the employment of a State-owned company;
- (b) transfer back to an electricity corporation an employee transferred to the employment of a State-owned company;
- (c) transfer employees of an electricity corporation to positions in the employment of a purchaser under a sale/lease agreement or a company related to the purchaser;
- (d) transfer employees of a State-owned company to positions in the employment of a purchaser under a sale/lease agreement or a company related to the purchaser.

(3) An employee transfer order takes effect on the date of the order or on a later date specified in the order.

(4) An employee transfer order may be varied or revoked by the Minister by further order in writing made before the order takes effect.

(5) An employee transfer order has effect by force of this Act and despite the provisions of any other law or instrument.

(6) A transfer under this section does not—

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

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

- (a) any reduction in the employee's status; or
- (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience.

(8) However, an employee's status is not reduced by—

- (a) a reduction of the scope of the business operations for which the employee is responsible; or

- (b) a reduction in the number of employees under the employee's supervision or management,

if the employee's functions in their general nature remain the same as, or similar to, the employee's functions before the transfer.

(9) An employee's terms and conditions of employment are subject to variation after the transfer in the same way as before the transfer.

(10) A person whose employment is transferred from one body (the **former employer**) to another (the **new employer**) under this section is taken to have accrued as an employee of the new employer an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the former employer.

(11) A transfer under this section does not give rise to any remedy or entitlement arising from the cessation or change of employment.

(12) For the purposes of construing a contract applicable to a person whose employment is transferred under this section, a reference to the former employer is to be construed as a reference to the new employer.

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

Separation packages and offers of alternative public sector employment

24. (1) Subject to this section, any action that a private sector employer takes from time to time as a consequence of a transferred employee's position being identified as surplus to the employer's requirements must consist of or include an offer of a separation package that complies with this section.

(2) If a private sector employer makes an offer to a transferred employee under subsection (1) after the end of the employee's first two years after becoming a transferred employee, an offer must also be made to the employee of public sector employment with a rate of pay that is at least equivalent to the rate of pay of the employee's position immediately before the employee's relocation to public sector employment.

(3) A transferred employee who is made an offer of a separation package under subsection (1) must be allowed—

- (a) if an offer of public sector employment is also made under subsection (2)—at least one month from the date of the offer of public sector employment to accept either of the offers;
- (b) in any other case—at least one month to accept the offer.

(4) If a transferred employee has been offered both a separation package and public sector employment under this section and has failed to accept either offer within the period allowed, the employee is taken to have accepted the offer of a separation package.

(5) The employment of a transferred employee may not be terminated as a consequence of the employee's position being identified, within the employee's first two years after becoming a transferred employee, as surplus to a private sector employer's requirements unless the employee has accepted (or is taken to have accepted) an offer under this section or otherwise agreed to the termination.

(6) A separation package offered to a transferred employee under this section must include an offer of a payment of an amount not less than the lesser of the following:

- (a) $(8 + 3\text{CYS})\text{WP}$;
- (b) 104WP ,

where—

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

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

(7) An order of the Minister—

- (a) may make different provision in relation to the determination of an employee's continuous years of service or weekly rate of pay according to whether the relevant employment was full-time or part-time, included periods of leave without pay or was affected by other factors; and
- (b) may be varied by the Minister by further order in writing made before any employee becomes a transferred employee; and
- (c) must be published in the *Gazette*.

(8) A person who relocates to public sector employment as a result of acceptance of an offer under this section is taken to have accrued as an employee in public sector employment an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the relocation, as an employee of the private sector employer.

(9) It is a condition of an offer of a separation package or public sector employment under this section that the employee waives any right to compensation or any payment arising from the cessation or change of employment, other than the right to superannuation payments or other payments to which the employee would be entitled on resignation assuming that the employee were not surplus to the employer's requirements.

(10) If an employee is relocated to public sector employment as a result of acceptance of an offer under this section—

- (a) the employee may not be retrenched from public sector employment; and
- (b) the employee's rate of pay in public sector employment may not be reduced except for proper cause associated with the employee's conduct or physical or mental capacity.

(11) Subsection (1) does not apply if the action that a private sector employer takes as a consequence of an employee's position being identified as surplus to the employer's requirements consists only of steps to relocate the employee to another position in the employment of that employer or a related employer in the electricity supply industry with—

- (a) functions that are in their general nature the same as, or similar to, the functions of the surplus position; and

- (b) a principal workplace or principal work depot not more than 45 kilometres distant by the shortest practicable route by road from the principal workplace or principal work depot of the surplus position; and
- (c) a rate of pay that is at least equivalent to the rate of pay of the surplus position.

(12) For the purposes of subsection (5), the employment of a transferred employee is taken not to have been terminated by reason only of the fact that the employee has been relocated to another position in the employment of the same employer or a related employer in the electricity supply industry if the rate of pay of that position is at least equivalent to the rate of pay of the employee's previous position.

(13) In this section—

"award or agreement" means award or agreement under the *Industrial and Employee Relations Act 1994* or the *Workplace Relations Act 1996* of the Commonwealth as amended from time to time;

"electricity supply industry" has the same meaning as in the *Electricity Act 1996*;

"private sector employer" means—

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

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

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

"relevant employment" means—

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

"transferred employee" means an employee—

- (a) who—
 - (i) was transferred by an employee transfer order to the employment of a purchaser under a sale/lease agreement; or

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

PART 5
LICENCES UNDER ELECTRICITY ACT

Licences under Electricity Act

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

(2) The requirements of the Minister as to the conditions of a licence must be consistent with the provisions of the *Electricity Act 1996* as to such conditions.

(3) The Minister may, by order in writing, require that a licence issued to a State-owned company in accordance with an order under subsection (1) be transferred to a purchaser under a sale/lease agreement.

(4) The Minister may, by order in writing, require that a licence issued to a purchaser in accordance with an order under subsection (1), or transferred to a purchaser in accordance with an order under subsection (3), be transferred to the transferee under a special order.

(5) An order under this section must be given effect to without the need for the State-owned company, or the purchaser, to apply for the licence or agreement to the transfer of the licence and despite the provisions of the *Electricity Act 1996* and section 7 of the *Independent Industry Regulator Act 1999*.

(6) An order may not be made more than once under this section for the issue of a licence in respect of the same electricity generating plant.

(7) An order may not be made more than once under this section for the issue of a licence in respect of the same electricity retailing business.

(8) A licence issued to a State-owned company in accordance with an order under this section may not be suspended or cancelled under the *Electricity Act 1996* on the ground of any change that has occurred in the officers or shareholders of the company associated with the company's ceasing to be a State-owned company.

**PART 6
MISCELLANEOUS****Provision of capital to State-owned company**

26. (1) Any one or more Ministers of the Crown may subscribe capital to a State-owned company.

(2) The Treasurer may, on conditions the Treasurer considers appropriate—

(a) advance loan capital to a State-owned company; and

(b) transfer non-pecuniary assets of the Crown to a State-owned company.

(3) Capital subscriptions and advances are, subject to any contrary direction by the Treasurer, to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

(4) An instrument to give effect to a transaction under this section is exempt from stamp duty.

Contract or arrangement between electricity corporation and State-owned company

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

Amount payable by State-owned company in lieu of tax

28. (1) If the results achieved by a State-owned company from its operations over a designated period give rise to a presumptive liability for income tax, the company must, at such time as the Treasurer stipulates, pay to the Treasurer, for the credit of the Consolidated Account, a sum equal to the amount of the presumptive liability.

(2) The Treasurer may require a State-owned company to make other payments in respect of a designated period in lieu of taxes under the law of the State or the Commonwealth from which the company was exempt during the designated period because of the company's relationship to the Crown.

(3) In this section—

"date of divestiture" means—

(a) in the case of a State-owned company that is not a subsidiary of another State-owned company—

(i) if the shares of the State-owned company are sold by or at the direction of the Minister—the date the sale is completed; or

(ii) if the shares of the State-owned company are offered for public subscription—the date shares are first allotted to subscribers who respond to the public offer; or

(b) in the case of a State-owned company that is a subsidiary of another State-owned company—

- (i) if the subsidiary's shares are sold by or at the direction of the Minister before the date of divestiture for that other State-owned company—the date the sale is completed; or
- (ii) if not—the date of divestiture for that other State-owned company;

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

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

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

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

Relationship of electricity corporation or State-owned company and Crown

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

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

Electricity infrastructure severed from land

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

Registering authorities to note transfer

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

Stamp duty

32. (1) No stamp duty is payable under a law of the State in respect of—

- (a) a transfer, grant or extinguishment effected by a transfer order;
- (b) any transfer or assignment of assets or liabilities by an electricity corporation to a State-owned company.

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

- (a) to lodge a statement or return relating to a transaction referred to in subsection (1); or
- (b) to include information about such a transaction in a statement or return.

Interaction between this Act and other Acts

33. (1) This Act has effect despite the provisions of the *Real Property Act 1886* or any other law.

(2) A transaction under this Act is not subject to—

- (a) the *Land and Business (Sale and Conveyancing) Act 1994*; or
- (b) the *Retail and Commercial Leases Act 1995*; or
- (c) Part 4 of the *Development Act 1993*.

(3) An application under section 223ld of the *Real Property Act 1886* for the division of land, or an application under section 14 of the *Community Titles Act 1996* for the division of land by a plan of community division, that is certified in writing by the Minister as being for the purposes of a transaction under this Act need not be accompanied by a certificate under Part 4 of the *Development Act 1993*.

Correction of statutory references to ETSA, etc.

34. (1) The Governor may, by regulation, amend an Act or statutory instrument containing a reference to the Electricity Trust of South Australia, ETSA, SAGC or electricity authorities as the Governor considers necessary in consequence of action under this Act.

(2) This section expires two years after its commencement.

Exclusion of Crown liability as owner, etc., of leased assets

35. If a lease is granted in respect of assets by a sale/lease agreement, the lessor and the Crown will, despite any other Act or law, be immune from civil or criminal liability (other than a liability under the lease to the lessee) to the extent specified by the Governor by proclamation made on or before the date of the sale/lease agreement.

Effect of things done or allowed under Act

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

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

(f) releases a surety or any other obligee wholly or in part from an obligation.

Regulations

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

SCHEDULE 1
*Special Provisions***Electricity infrastructure taken not to have merged with land**

1. (1) This clause applies to electricity infrastructure that is or was owned or operated by an electricity corporation or State-owned company and is situated on, above or under land that does not or did not belong to the electricity corporation or State-owned company.

(2) Subject to any agreement in writing to the contrary, the ownership of electricity infrastructure to which this clause applies will be taken never to have been affected by its affixation or annexation to the land.

Statutory easement relating to infrastructure

2. (1) A body specified by proclamation for the purposes of this clause will have an easement over land where—

- (a) electricity infrastructure owned or operated by the body is on, above or under the land and the land does not belong to the body; and
- (b) that infrastructure was, before a date specified in the proclamation, owned or operated by an electricity corporation or State-owned company and the land did not belong to the electricity corporation or State-owned company.

(2) The easement entitles the specified body—

- (a) to maintain the relevant electricity infrastructure on, above or under the land affected by the easement;
- (b) to enter the land, by its agents or employees, at any reasonable time, for the purpose of operating, examining, maintaining, repairing, modifying or replacing the relevant electricity infrastructure;
- (c) to bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.

(3) The powers conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by persons lawfully occupying the land.

(4) Section 47(3) to (10) of the *Electricity Act 1996* (and any regulations made for the purposes of any of those provisions) apply to the carrying out of work under this clause on public land (within the meaning of that section) in the same way as to the carrying out of work on public land under that section.

(5) The specified body must make good any damage caused by the exercise of powers under this clause as soon as practicable or pay reasonable compensation for the damage.

(6) If the specified body has an easement relating to electricity infrastructure over another person's land otherwise than by virtue of this clause, the application of the easement under this clause to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.

(7) The specified body may, by instrument in writing, limit rights or impose conditions on the exercise of rights arising under the easement under this clause (and such an instrument has effect according to its terms).

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

(9) However, the Registrar-General must, on application by the specified body, note an easement under this clause on each certificate of title, or Crown lease, affected by the easement.

(10) An application under this clause—

- (a) need not include a plan of the easement;

(b) must include a schedule of all certificates of title and Crown leases affected by the easement.

(11) The Registrar-General is entitled to act on the basis of information included in the application and is not obliged to do anything to verify the accuracy of that information.

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

3. (1) The following provisions apply in relation to the liability of a State-owned company to pay rates under the *Local Government Act 1934*, despite the provisions of that Act:

- (a) a State-owned company is liable to pay rates;
- (b) land and buildings of a State-owned company are rateable property within the meaning of that Act;
- (c) the following are not rateable property within the meaning of that Act:
 - (i) plant or equipment used by a State-owned company in connection with the generation, transmission or distribution of electricity (whether or not the plant or equipment is situated on land owned by the corporation);
 - (ii) easements, rights of way or other similar rights (including such rights arising by virtue of a licence) that have been granted or operate in connection with the generation, transmission or distribution of electricity.

(2) Despite the *Local Government Act 1934*, the following are not rateable property within the meaning of that Act:

- (a) plant or equipment (other than electricity generating plant and substations for converting, transforming or controlling electricity) used by a body specified by proclamation for the purposes of this clause in connection with the generation, transmission or distribution of electricity (whether or not the plant or equipment is situated on land owned by the body);
- (b) easements, rights of way or other similar rights (including such rights arising by virtue of a licence) that have been granted or operate in connection with the generation, transmission or distribution of electricity.

(3) Despite the *Local Government Act 1934*, the Governor may, by proclamation, declare that the rates payable under that Act in respect of specified land on which is situated any electricity generating plant, or substation for converting, transforming or controlling electricity, used by a body specified in the proclamation are reduced to a specified amount or an amount determined in a specified manner.

(4) The holder of a licence authorising the generation of electricity at Torrens Island must, as required by proclamation, make payments to the Treasurer for the credit of the Consolidated Account of amounts determined in accordance with the provisions of the proclamation (being provisions framed having regard to rates imposed under the *Local Government Act 1934* in the adjoining council areas).

(5) A proclamation made for the purposes of this clause may not be revoked and may be varied only by regulation and if the variation reduces the future liabilities of the body to which the proclamation relates.

ETSA's inscribed debenture stock

4. (1) Debentures or inscribed debenture stock referred to in clause 6 of Schedule 2 of the *Electricity Corporations Act 1994* will be taken to have been issued by a person or body specified by proclamation for the purposes of this clause.

(2) The specified person or body must be the Treasurer or a person or body whose liabilities are guaranteed by the Treasurer.

(3) The specified person or body—

- (a) may, on the application of the owner of any such debentures, convert them into inscribed debenture stock; and
- (b) must keep a register of inscribed debenture stock (the Register).

(4) Inscribed debenture stock will be taken to have been issued, and debentures will be taken to have been converted into inscribed debenture stock, when the name of the owner, and the amount and description of the stock, and any other particulars determined by the specified person or body, are entered in the Register.

(5) A person whose name is inscribed in the Register as the owner of inscribed debenture stock will be taken to be the owner of that stock and may dispose of and transfer it in the manner prescribed by this clause and may give effectual receipts for any money paid by way of consideration for the stock.

(6) The specified person or body may, if it thinks reasonable cause exists for doing so, issue to any person a certificate stating that any person was (on a day and at an hour mentioned in the certificate) inscribed in the Register as the owner of a specified amount of inscribed debenture stock.

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

(8) The legal ownership of inscribed debenture stock is not transferred from the owner whose name is inscribed in the Register to any other person until—

- (a) that owner and the transferee have executed a transfer in a form fixed by the specified person or body, and the name of the transferee and the amount of the stock have been entered in the Register; or
- (b) a person to whom the title to the stock has passed on death or bankruptcy or otherwise by operation of law has produced to the specified person or body such reasonable evidence of title as the specified person or body requires, and that person's name has been entered in the Register as the owner of the stock.

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

(10) Subject to the provisions of this clause relating to the transfer and transmission of inscribed debenture stock and notice of trusts, equitable interests may be enforced against the owners of inscribed debenture stock.

Agreement between Minister and licensee about environmental compliance

5. (1) Subject to this clause, an agreement may be made between the Minister and the holder of a specially issued licence requiring the licensee to undertake programs directed towards reducing the adverse effects on the environment of the operations authorised by the licence and containing provisions dealing with and limiting the licensee's environmental protection obligations in relation to those operations.

(2) The Minister may not make an agreement with a licensee under this clause—

- (a) if the licence was issued or transferred to the purchaser under a sale/lease agreement—more than one month after the issue or transfer of the licence to the purchaser; or
- (b) if paragraph (a) does not apply and the licence was issued to a State-owned company—more than one month after the company ceases to be a State-owned company.

(3) It is a precondition to the making of an agreement under this clause that the Environment Protection Authority approves the terms of the agreement.

(4) An agreement under this clause has effect as a contract for the period specified in the agreement and is binding on, and operates for the benefit of, the licensee who entered into the agreement, successive holders of the licence and a person who holds some subsequently granted licence under the *Electricity Act 1996* authorising operations to which the agreement relates.

(5) The *Environment Protection Act 1993* and any statutory instruments under that Act are to be construed subject to an agreement under this clause and, to the extent of any inconsistency between that Act or statutory instrument and the agreement, the agreement prevails.

(6) Any adverse effects on the environment specifically permitted by an agreement under this clause are to be taken—

(a) not to constitute a contravention of the *Environment Protection Act 1993* or any statutory instrument under that Act; and

(b) not to give rise to any liability under any Act or at law.

(7) An agreement under this clause may be varied by further agreement between the Environment Protection Authority and the licensee for the time being bound by the agreement.

(8) An agreement or variation of an agreement under this clause must be published in the *Gazette*.

(9) In this clause—

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

Proclamations

6. (1) The Governor may make proclamations for the purposes of this Schedule.

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

SCHEDULE 2*Conversion of Electricity Corporation to State-owned Company***Steps before conversion of electricity corporation to company**

1. (1) As from a date specified by proclamation, the electricity corporation is to have a share capital.

(2) The proclamation may contain requirements for the issuing of shares by the electricity corporation to specified Ministers of the Crown, including (without limitation) requirements as to the number of shares to be issued, the rights to be attached to the shares, the issue price of the shares and the consideration to be given for the shares.

(3) The Ministers to whom shares in the electricity corporation are issued are not members of the electricity corporation at any time before its conversion to a company limited by shares merely because the Ministers hold those shares.

(4) The electricity corporation is authorised (with the approval of the Minister) to take such action as is necessary or desirable to be taken for the purpose of its being registered as a proprietary or public company limited by shares under Part 5B.1 of the *Corporations Law* (Registering a body corporate as a company), including (without limitation) action to adopt a constitution approved by the Minister.

(5) The electricity corporation must take such action of a kind referred to in subclause (4) as is required by the proclamation.

Membership of the electricity corporation following conversion

2. (1) The Ministers, as holders of shares in the electricity corporation at the time of its conversion to a company limited by shares, become (by force of this subclause) members of the electricity corporation at the time of that conversion.

(2) The Ministers are, in relation to membership of the electricity corporation following its conversion, entitled to the same rights, privileges and benefits, and are subject to the same duties, liabilities and obligations, as if they had become members of the electricity corporation immediately prior to its conversion.

Continuity of electricity corporation and construction of references to electricity corporation

3. (1) Without limiting any provision of the *Corporations Law*, the electricity corporation as converted into a company limited by shares is a continuation of, and the same legal entity as, the electricity corporation as it existed before the conversion.

(2) After the conversion, a reference in any instrument to the electricity corporation is to be read as a reference to the electricity corporation as converted into a company limited by shares.

Proclamations

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

SCHEDULE 3*Amendments relating to Superannuation***PART 1
PRELIMINARY****Commencement**

1. (1) Parts 2, 3 and 4 of this Schedule come into operation in accordance with a notice or notices by the Treasurer published in the *Gazette*.

(2) A notice may—

- (a) fix the same day or different days for different provisions of Parts 2, 3 and 4 to come into operation;
- (b) suspend the operation of specified provisions of Part 2, 3 or 4 until a day or days to be fixed by subsequent notice or notices.

(3) In this clause—

"provision" means—

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

PART 2**SUBSTITUTION OF SCHEDULE 1 OF ELECTRICITY CORPORATIONS ACT 1994****Substitution of Schedule 1**

2. Schedule 1 of the *Electricity Corporations Act 1994* is repealed and the following Schedule is substituted:

**SCHEDULE 1
*Superannuation*****PART A—PRELIMINARY****Interpretation**

1. (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;

"the Board" means the Electricity Industry Superannuation Board—see *Part B*;

"electricity supply industry" has the same meaning as in the *Electricity Act 1996*;

"employer" means—

- (a) a person or body who employs a pre-privatisation member of the Scheme in the electricity supply industry;
- (b) a person or body who employs any other member of the Scheme in the electricity supply industry;
- (c) a public sector employer who employs a pre-privatisation member of the Scheme who accepted an offer made under section 24 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

"member" of the Scheme has the same meaning as in the Trust Deed;

"pre-privatisation member" means a person who was a member of Division 2, 3 or 4 of the Electricity Industry Superannuation Scheme immediately before the commencement of clause 10 but does not include a person who, after the commencement of that clause, ceased to be a member of the Scheme but is subsequently re-admitted to membership of the Scheme;

"private sector employer" means an employer that is not the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

"public sector employer" means an employer that is the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

"the Rules" means the Rules referred to in the Trust Deed;

"the Scheme" means the Electricity Industry Superannuation Scheme—see clause 3 of the Trust Deed;

"the Scheme assets" has the same meaning as in the Trust Deed;

"State-owned company" has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

"the Trust Deed" means the trust deed appearing at the end, and forming part, of this Schedule.

(2) In this Schedule, a reference to a Commonwealth Act is a reference to that Act as amended from time to time or an Act enacted in substitution for that Act.

PART B—THE ELECTRICITY INDUSTRY SUPERANNUATION BOARD

The Electricity Industry Superannuation Board

2. (1) The ETSA Superannuation Board continues in existence under the name *Electricity Industry Superannuation Board*.

(2) The 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 constitutional corporation for the purposes of section 19 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; and
- (e) has the functions and powers assigned or conferred by this Schedule, the Trust Deed and the Rules; and
- (f) is not an agency or instrumentality of the Crown.

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

Function of Board

3. (1) Subject to subclause (2), the Board is the trustee of the Scheme and is responsible for all aspects of the administration of the Scheme pursuant to this Schedule, the Trust Deed and the Rules.

(2) Subject to subclause (3), the Board ceases to be the trustee of the Scheme at the end of the financial year in which, for the first time, all members of the Scheme who are employed in the electricity supply industry are employed by private sector employers.

(3) The private sector employers may, by a majority decision, extend the Board's office as trustee of the Scheme.

(4) If the Board ceases to be the trustee of the Scheme, the Treasurer may, by notice in the *Gazette*, dissolve the Board and in that event any assets of the Board in addition to the Scheme assets will vest in the new trustee of the Scheme and any liabilities of the Board will attach to the new trustee.

Board's membership

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

- (a) two members elected by the members of the Scheme in accordance with the Rules; and
- (b) three members appointed by the employers pursuant to the Rules; and
- (c) one member appointed by the Treasurer; and
- (d) two members appointed by the United Trades and Labor Council; and
- (e) an independent member appointed by the other members of the Board.

(2) In the case of the members elected under subclause (1)(a), and in the case of the members appointed under subclause (1)(b), at least one must be a woman and at least one must be a man.

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

(4) Subject to subclause (5), a member of the Board will be elected or appointed for a term not exceeding three years determined in accordance with the Rules.

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

(6) The office of a member of the 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 the Board; or
- (d) is removed from office by the Treasurer on the ground—
 - (i) of mental or physical incapacity to carry out official duties satisfactorily; or
 - (ii) of neglect of duty; or
 - (iii) of misconduct; or
 - (iv) that the member is a disqualified person within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

Procedure at meetings of Board

5. (1) A meeting of the Board will be chaired by the independent member but, if he or she is absent, the meeting will be chaired by a member of the Board chosen by those present.
- (2) Subject to subclause (3), the Board may act despite vacancies in its membership.
 - (3) Six members of the Board constitute a quorum for a meeting of the Board.
 - (4) Each member present at a meeting of the Board is entitled to one vote on a matter arising for determination at the meeting.
 - (5) A decision of the Board requires the vote of six members of the Board in favour of the decision.
 - (6) Subject to this Schedule, the Trust Deed and the Rules, the Board may determine its own procedures.
 - (7) The Board must keep minutes of its proceedings.

PART C—OWNERSHIP OF SCHEME ASSETS

Ownership of Scheme assets

6. The Scheme assets (excluding assets comprising, or arising from, contributions paid to the Board by private sector employers or amounts paid to the Scheme pursuant to clause 14(2)) belong (both in law and in equity) to the Crown.

PART D—REPORTS

Reports

7. (1) The Board must, on or before 31 October in each year, submit a report to the Treasurer on the operation of this Schedule, the Trust Deed and the Rules and on the management and investment of the Scheme assets during the financial year ending on 30 June in that year.
- (2) The report under subclause (1) must include the audited financial statements of the Scheme for the relevant financial year.
 - (3) An actuary appointed by the Board must, in relation to the triennium ending on 30 June 1999 and thereafter in relation to each succeeding triennium, report to the employers, the Board and the Treasurer—
 - (a) on the employer costs of the Scheme at the time of making the report and during the foreseeable future; and
 - (b) on the ability of the Scheme assets to meet the Scheme's current and future liabilities,
 (each report must be submitted within 12 months after the end of the relevant triennium).

(4) 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.

(5) Where, under the Rules, the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the Scheme assets, the Board must include its reasons for the determination in its report for the relevant financial year.

PART E—TRANSFER OF MEMBERS OF THE NON-CONTRIBUTORY SCHEME

Transfer of members of the non-contributory scheme

8. (1) The Treasurer may, by notice in writing to the Electricity Industry Superannuation Board and the South Australian Superannuation Board before the relevant day, transfer a member of the non-contributory scheme who is no longer employed by an employer within the meaning of this Schedule but who is entitled to preserved benefits in the non-contributory scheme to a superannuation scheme (to be specified in the notice) established by an Act of Parliament.

(2) The trustee of a scheme to whom a person is transferred under subclause (1) must open an employer contribution account in the name of the person and must credit to the account the balance credited in favour of the person in the non-contributory scheme immediately before the transfer.

(3) The Governor may, by regulation, make provisions of a transitional nature in relation to the transfer of a person under this clause.

(4) A regulation under subclause (3) may—

(a) modify the provisions of the Act establishing the scheme to which the person has been transferred in their application to that person;

(b) operate prospectively or retrospectively from a date specified in the regulation.

(5) A notice under subclause (1) must identify the person or persons to whom it applies.

(6) On receipt of the notice, the Electricity Industry Superannuation Board must give notice to each person transferred advising him or her of the transfer.

(7) On the transfer of a person under this clause, his or her entitlements under the non-contributory scheme cease.

(8) The South Australian Superannuation Board may, from time to time, require the Electricity Industry Superannuation Board to provide it with information that is in its possession relating to persons transferred under this clause.

(9) Despite any other Act or law to the contrary, the Electricity Industry Superannuation Board must comply with a requirement under subclause (8).

(10) In this clause—

"the non-contributory scheme" means the non-contributory superannuation scheme maintained under Part H of Schedule 1 of this Act repealed by the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

"the relevant day" means the day on which the approval of the Treasurer ceases to be required for the variation or replacement of the Rules.

PART F—MISCELLANEOUS

Exclusion of awards, etc., relating to superannuation

9. An employer cannot be required by an award or agreement under the *Industrial and Employee Relations Act 1994* to make a payment—

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

for the benefit of a member or of a person to whom benefits accrue under the Scheme.

Closure of Division 2 of the Scheme

10. (1) Subject to subclause (2), a person cannot apply for membership of Division 2 of the Scheme after the commencement of this clause.

(2) Subclause (1) does not apply to a person who is a member of Division 3 or 4 of the Scheme when he or she applies for membership of Division 2.

Treasurer may vary Rules in relation to taxation

11. (1) The Treasurer may, after consultation with the trustee of the Scheme, insert into the Rules a rule or rules relating to changes in benefits for members and employer costs in relation to those benefits, following the Scheme's loss of constitutional protection.

(2) A rule inserted by the Treasurer may—

- (a) prescribe a decrease in the level of gross benefits; or
- (b) require benefits to be paid on an untaxed basis or partly on an untaxed basis; or
- (c) make provisions of the kind referred to in both subparagraphs (a) and (b),

in order to avoid or reduce an increase in employer costs caused by changes in the incidence of taxation as a result of the Scheme's loss of constitutional protection.

(3) Subject to subclause (4), the change in benefits effected by a rule made under this clause must not result in the level of net benefits to which a member, or a person in respect of a member, is entitled being less than the level of net benefits to which he or she would have been entitled if the Scheme had not lost constitutional protection.

(4) The level of net benefits to which a member, or a person in respect of a member, is entitled may be reduced below the level permitted by subclause (3) to avoid or reduce an increase in employer costs attributable to tax under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth in relation to the member.

(5) A rule made under this clause may operate differently in relation to—

- (a) different classes of members;
- (b) different classes of benefits;
- (c) different classes of components of benefits.

(6) A rule made under this clause—

- (a) must be made by notice in writing given to the trustee of the Scheme before the relevant day;
- (b) may be varied or revoked by the Treasurer by notice in writing to the trustee before that day;

(c) is not subject to the *Subordinate Legislation Act 1978*.

(7) The trustee of the Scheme may vary or replace a rule inserted in the Rules under this clause in the same manner as it can vary or replace any of the other rules of the Scheme.

(8) In this clause—

"level of gross benefits" in relation to a member means the amount of the benefits to which the member, or another person in respect of the member, is entitled under the Scheme before tax attributable to those benefits has been paid or allowed for;

"level of net benefits" in relation to a member means the amount of the benefits to which the member, or another person in respect of the member, is entitled after tax attributable to those benefits has been paid or allowed for using the tax rates applicable on the day on which the Scheme loses constitutional protection and based on the assumption that the member has reached the age of 55 years;

"the relevant day" means the day on which the approval of the Treasurer ceases to be required for the variation or replacement of the Rules.

(9) For the purposes of this clause—

(a) benefits are paid on an untaxed basis where the trustee of the Scheme has made an election under the *Income Tax Assessment Act 1936* of the Commonwealth as a result of which the person receiving the benefits is liable for a higher rate of tax in relation to them;

(b) the Scheme loses constitutional protection when it ceases to be a constitutionally protected fund for the purposes of the *Income Tax Assessment Act 1936* of the Commonwealth.

Appeal to trustee against rule under clause 11

12. (1) A member of the Scheme, or if the member has died, a person who is entitled to receive a benefit in respect of the member, may appeal to the trustee of the Scheme on the ground that a rule made under clause 11 has the effect in relation to the member of reducing the level of net benefits to which the member or other person is entitled below the level permitted by clause 11.

(2) An appeal—

(a) must be made in the manner and form determined by the trustee;

(b) may be made at any time before the expiration of six months after benefits have become payable to the member or other person and the member or other person has received a written statement from the trustee as to the amount of the benefits.

(3) If the trustee (after giving the appellant and the employer of the member, or former member, a reasonable opportunity to appear and be heard, either personally or by representative) is satisfied that the appeal should be allowed, it must—

(a) vary the effect of the rule as it applies to, or in respect of, the member; and

(b) determine the amount of the benefits to which the member or other person is entitled following the variation under paragraph (a); and

(c) make any ancillary determination or order that in its opinion is necessary or desirable.

(4) No proceedings for judicial review or for a declaration, injunction, writ, order or other remedy (other than an appeal under this clause) may be brought before a court, tribunal, or other person or body to challenge or question the validity or operation of a rule made under clause 11.

(5) In this clause—

"level of net benefits" has the same meaning as in clause 11.

Separation of Trust Deed from Schedule

13. (1) The Trust Deed ceases to form part of this Schedule on a day to be fixed by the Treasurer for that purpose by notice published in the *Gazette*.

(2) The Trust Deed remains in full force and effect after separation from this Schedule under subclause (1).

Obligations of employers

14. (1) An employer who employs a pre-privatisation member of the Scheme (whether before or after separation of the Trust Deed from this Schedule under clause 13) is bound by the Trust Deed as an employer under the Deed whether that person or body has agreed to be bound or not.

(2) Subject to subclause (4), where the employment of a member is transferred by an employee transfer order under the *Electricity Corporations (Restructuring and Disposal) Act 1999* from an electricity corporation or a State-owned company to a purchaser under a sale/lease agreement within the meaning of that Act, the purchaser is liable (unless the Trust Deed or the Rules expressly provide otherwise) to pay to the Scheme within the period of five years immediately following the transfer of the employment of the member an amount (to be determined by an actuary appointed by the Treasurer) sufficient to meet the unfunded liability of the Scheme in respect of the member's entitlement to benefits that accrued before the transfer of the member's employment to the purchaser.

(3) The Treasurer is liable to pay to the Scheme the amount required to fully satisfy the whole or that part (if any) of the liability of a purchaser under subclause (2) that has not been satisfied by the purchaser within the period of five years immediately following the transfer of the employment of the member to whom the liability relates and, on payment of that amount by the Treasurer, the purchaser is liable to pay the same amount to the Treasurer.

(4) The Treasurer may, by notice in writing to the purchaser, release the purchaser from the whole or part of its liability under subclause (2) and, in that event, the Treasurer must pay to the Scheme the equivalent of the amount by which the purchaser's liability has been reduced.

THE ELECTRICITY INDUSTRY SUPERANNUATION SCHEME TRUST DEED

Operation of Deed

1. (1) This Deed forms part of Schedule 1 of the *Electricity Corporations Act 1994* as substituted by the *Electricity Corporations (Restructuring and Disposal) Act 1999* until the Schedule and this Deed are separated under clause 13 of the Schedule.

(2) This Deed comes into operation at the same time as the Schedule.

Interpretation

2. (1) In this Trust Deed, 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;

"the Board" means the Electricity Industry Superannuation Board continued in existence by Schedule 1 of the *Electricity Corporations Act 1994*;

"commencement of this Deed"—see clause 1;

"electricity supply industry" has the same meaning as in the *Electricity Act 1996*;

"employer" means—

- (a) a person or body who employs a pre-privatisation member of the Scheme in the electricity supply industry;
- (b) a person or body who employs any other member of the Scheme in the electricity supply industry;
- (c) a public sector employer who employs a pre-privatisation member of the Scheme who accepted an offer made under section 24 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

"member" of the Scheme means a person who is a member of the Scheme pursuant to this Deed;

"pre-privatisation member" means a person who was a member of Division 2, 3 or 4 of the Electricity Industry Superannuation Scheme immediately before the commencement of clause 10 of the Schedule but does not include a person who, after the commencement of that clause, ceased to be a member of the Scheme but is subsequently re-admitted to membership of the Scheme;

"private sector employer" means an employer that is not the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

"public sector employer" means an employer that is the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

"repealed schedule" means Schedule 1 of the *Electricity Corporations Act 1994* repealed by the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

"the Rules" means the Rules of the Electricity Industry Superannuation Scheme (being the Rules of the ETSA Contributory Superannuation Scheme and the ETSA Non-Contributory Superannuation Scheme at the commencement of this Deed) as varied or replaced from time to time;

"the Schedule" means Schedule 1 of the *Electricity Corporations Act 1994* as substituted by the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

"the Scheme" means the Electricity Industry Superannuation Scheme—see clause 3;

"the Scheme assets"—see clause 9;

"special deposit account" means a special deposit account established under section 8 of the *Public Finance and Audit Act 1987*;

"State-owned company" has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*.

(2) In this Schedule, a reference to a Commonwealth Act is a reference to that Act as amended from time to time or an Act enacted in substitution for that Act.

(3) The Rules form part of this Deed and accordingly a reference to the Deed includes a reference to the Rules.

(4) Although the Rules form part of the Deed, a provision of the Deed applies to the exclusion of a provision of the Rules to the extent of any inconsistency between them.

(5) In this Deed—

- (a) every word of the masculine gender will be construed as including the feminine gender;
- (b) every word of the feminine gender will be construed as including the masculine gender;
- (c) every word in the singular number will be construed as including the plural number;
- (d) every word in the plural number will be construed as including the singular number;
- (e) every word in either of those genders or numbers will be construed as including a body corporate as well as an individual.

(6) A reference in this Deed to an Act, regulation, rule or other legislative instrument includes a reference to—

- (a) that instrument as amended from time to time; and
- (b) an instrument that replaces or supersedes it; and
- (c) a regulation, rule or other instrument, and a written determination or ruling, made under or in connection with that instrument.

(7) The transfer of employment of a member from one employer to another employer under the Scheme (however effected) will not be taken to involve the termination of the previous employment and does not give rise to an immediate or delayed entitlement to benefits under the Scheme.

(8) The reference to "employer" in subclause (7) includes a person or body who was not an employer for the purposes of this Deed until the employment of the member referred to in that subclause was transferred to the person or body.

Continuation of Scheme

3. (1) The ETSA Contributory Superannuation Scheme continues in existence under the name *Electricity Industry Superannuation Scheme*.

(2) The ETSA Non-Contributory Superannuation Scheme continues in existence as a division of the Electricity Industry Superannuation Scheme.

(3) Subject to subclause (2), the Scheme will be treated as made up of the divisions specified in the Rules.

(4) The Board may divide the Scheme assets into divisions according to the different investments that may be made of those assets.

(5) The Scheme assets will be allocated to the divisions of the Scheme in accordance with the Rules.

Rules of the Scheme

4. (1) The Board may, by instrument in writing, vary or replace the Rules with the approval of the Treasurer.

(2) The *Subordinate Legislation Act 1978* does not apply to, or in relation to, rules made under this clause.

(3) The Rules must conform with the provisions of the Schedule and this Trust Deed.

(4) Where the variation or replacement of a rule would result in an increase in the contribution to be made by an employer or increase the liability of the employer under the Scheme in any other way, the rule cannot be varied or replaced without the approval of the employer.

(5) A variation or replacement of the Rules will be taken to come into operation on the date specified in the instrument varying or replacing the Rules 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.

(6) The Rules may confer discretionary powers.

Reduction in benefits on changes in taxation

5. (1) Subject to subclause (3), where the cost to employers of maintaining the existing level of benefits is increased by a change in the incidence of taxation occurring after the Scheme loses its status as a constitutionally protected fund under the *Income Tax Assessment Act 1936* of the Commonwealth, the level of benefits is reduced to the extent necessary to avoid an increase in that cost.

(2) The extent of the reduction in the level of benefits under subclause (1) must be determined by the Board on the advice of an actuary.

(3) If the Board and all the employers agree that subclause (1) will operate to reduce the level of benefits to a lesser extent than is provided by that subclause, the subclause will operate in accordance with the agreement.

Membership of the Scheme

6. (1) The following persons are members of the Scheme:

- (a) subject to subclause (2), a person who was a contributor under the repealed schedule immediately before the commencement of this Deed; and
- (b) a person who was a member of the non-contributory scheme under the repealed schedule immediately before the commencement of this Deed; and
- (c) all other persons who are accepted as members of the Scheme pursuant to the Rules.

(2) A contributor who died before the commencement of this Deed is a former member of the Scheme for the purposes of this Deed.

(3) A person ceases to be a member of the Scheme on death or when his or her rights in relation to superannuation under the Scheme have been exhausted.

Payment of contributions

7. (1) Contributions payable pursuant to the Rules by members of the Scheme and public sector employers must be paid to the Treasurer.

(2) Contributions payable pursuant to the Rules by private sector employers must be paid to the Board.

(3) Contributions paid to the Board under subclause (2) vest in the Board.

Payment of benefits

8. (1) Subject to subclause (4), any payment to be made under the Rules to, or in respect of, a member, or former member, must be made out of the Consolidated Account (which is appropriated to the necessary extent) or out of a special deposit account established by the Treasurer for that purpose.

(2) The Treasurer may reimburse the Consolidated Account or special deposit account by charging the relevant division or divisions of the Scheme in accordance with the Rules.

(3) Where a division of the Scheme is exhausted, the amount that would otherwise be charged against it under subclause (2) will be charged against the employers in proportions determined by an actuary appointed by the Board.

(4) Part of the benefits payable to, or in respect of, a member or former member who was employed by a private sector employer must be paid in accordance with the Rules from the Scheme assets.

Scheme assets

9. (1) The Scheme assets are subject to the management and control of the Board.

(2) The Scheme assets comprise—

- (a) the assets comprising the ETSA Superannuation Fund at the commencement of this Deed; and
- (b) contributions paid to the Scheme by the Treasurer under subclause (3); and
- (c) contributions paid to the Board by private sector employers; and
- (d) amounts paid to the Scheme pursuant to clause 14 of the Schedule; and
- (e) interest and other income and other accretions arising from investment of the Scheme assets; and
- (f) any other income or assets transferred to the Scheme as part of the Scheme assets; and
- (g) such other assets as are required by the Rules to be included in the Scheme assets.

(3) The Treasurer must pay to the Scheme periodic contributions reflecting the contributions paid to the Treasurer by contributors and public sector employers with respect to the relevant period.

(4) The following amounts will be paid from the Scheme assets:

- (a) any reimbursement of the Consolidated Account or a special deposit account that the Treasurer charges against the Scheme in pursuance of this Deed; and
- (b) amounts paid pursuant to clause 8(4); and
- (c) the costs and other expenses of administering the Scheme; and
- (d) such other amounts as are provided for by the Rules.

Investment of Scheme assets

10. (1) The Board may invest money comprising the Scheme assets that is not immediately required in any manner in which it could invest that money—

- (a) if acting as a trustee; or
- (b) if acting on its own behalf and not as a trustee.

(2) Without limiting subclause (1), the Board may—

- (a) participate in any financial arrangement (usually called a synthetic or derivative investment) for the purpose of risk management or hedging;
- (b) pool Scheme assets with other persons' assets for investment purposes.

Accounts and audit

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

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

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

Insurance

12. The Board may purchase and renew insurance of any kind for the purposes of the Scheme and may pay all insurance premiums from the Scheme assets.

Exclusion of liability and indemnity

13. (1) The Board and the members and former members and the employees and former employees of the Board are not liable in relation to any act or omission in connection with the administration of the Scheme or the Scheme assets in compliance, or purported compliance, with the Schedule, this Deed or the Rules except to the extent that the person—

(a) fails to act honestly; or

(b) intentionally or recklessly fails to exercise proper care and diligence.

(2) If, despite subclause (1), a person referred to in that subclause incurs a liability which the subclause purportedly protects him or her from, the person will be indemnified in respect of that liability from the Scheme assets.

Benefits cannot be assigned

14. A right to a benefit under the Scheme cannot be assigned.

Governing law

15. This Deed is governed by the law of South Australia.

Severance of invalid provision

16. Any provision of this Deed that is—

(a) invalid in whole or in part; or

(b) required to be limited or read down in order to be valid,

is severed or limited or read down to the extent of the invalidity, but the remainder of the provision continues in full force and effect.

Withdrawal of employers and winding up of the Scheme

17. (1) Subject to subclause (2), an employer may withdraw from the Scheme in accordance with the Rules.

(2) An employer who employs one or more pre-privatisation members of the Scheme in the electricity supply industry cannot withdraw from the Scheme without the consent in writing of the member or members concerned.

(3) If all the employers have withdrawn from the Scheme the Board must wind the Scheme up in accordance with the Rules.

PART 3
AMENDMENT OF SUPERANNUATION ACT 1988

Amendment of Act

3. The *Superannuation Act 1988* is amended—

- (a) by striking out from subsections (14), (17) and (18) of section 22 "or the ETSA superannuation scheme" wherever occurring;
- (b) by striking out the definition of "ETSA superannuation scheme" from subsection (19) of section 22;
- (c) by inserting the following Schedule after Schedule 1A:

SCHEDULE 1B

*Transfer of Certain Members of the Electricity Industry
Superannuation Scheme to the State Scheme*

PART 1
PRELIMINARY

Interpretation

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

"the contributory lump sum schemes" means Divisions 2 and 4 of the Electricity Industry Superannuation Scheme providing for contributions by members and lump sum benefits for members;

"Division 4" of the Electricity Industry Superannuation Scheme means the division of the Scheme formerly known as the "R.G. Scheme";

"the Electricity Industry pension scheme" means Division 3 of the Electricity Industry Superannuation Scheme providing for pension benefits;

"the Electricity Industry Superannuation Board" includes a subsequent trustee of the Electricity Industry Superannuation Scheme;

"the Electricity Industry Superannuation Scheme" means the ETSA Contributory and Non-Contributory Superannuation Schemes continued in existence as the Electricity Industry Superannuation Scheme by clause 3 of the Electricity Industry Superannuation Scheme Trust Deed appearing at the end of Schedule 1 of the *Electricity Corporations Act 1994*;

"the relevant day" means the day on which the approval of the Treasurer ceases to be required for the variation or replacement of the Rules of the Electricity Industry Superannuation Scheme;

"the State Scheme" means the scheme of superannuation established by this Act;

"Trustee" means the Electricity Industry Superannuation Board and includes subsequent trustees of the Electricity Industry Superannuation Scheme.

PART 2
TRANSFER OF MEMBERS**Transfer of existing pensioners before the relevant day**

2. (1) The Treasurer may, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7 before the relevant day, transfer a person who is in receipt of a pension under the Electricity Industry Superannuation Scheme from that scheme to the State Scheme.

(2) A person transferred under subclause (1)—

- (a) is entitled to a pension under this Act which, at the time of transfer, is of equivalent value to the pension he or she was receiving immediately before the transfer; and
- (b) except in the case of a person entitled to a derivative benefit, will be taken to be an old scheme contributor; and
- (c) in the case of a person who is entitled to a derivative benefit, will be taken to derive the benefit from an old scheme contributor.

(3) If—

- (a) an old scheme contributor referred to in subclause (2) dies before the expiration of three years after he or she first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
- (b) a person—
 - (i) referred to in subclause (2) who is entitled to a derivative benefit; or
 - (ii) who is entitled to a derivative benefit from an old scheme contributor referred to in paragraph (a),
dies before the expiration of three years after the contributor from whom the benefit was derived—
 - (iii) first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
 - (iv) died while still in employment without ever becoming entitled to such a pension,

and—

- (c) in the case referred to in paragraph (a), no one is entitled to a derivative benefit under this Act in respect of the contributor; or
- (d) in the case referred to in paragraph (b), all derivative entitlements have ceased before the expiration of that period,

the contributor's estate is entitled to a lump sum equivalent to—

- (e) where paragraph (c) applies—the aggregate of the pension payments that the contributor would have received between the date of death and the third anniversary of the commencement of the pension if he or she had survived; or

- (f) where paragraph (d) applies—the aggregate of the pension payments that the contributor from whom the benefit was derived would have received between the date when the derivative entitlement, or the last of the derivative entitlements, ceased and the third anniversary of the commencement of the pension (or the date of the contributor's death) if the contributor had survived during that period,

(the lump sum will be determined on the assumption that the pension will not be adjusted under section 47 during that period).

(4) Where a person who is transferred under this clause was, immediately before the transfer, entitled to commute a part, or the whole, of his or her pension under the Electricity Industry Superannuation Scheme, he or she is entitled to commute the whole or a part of the pension in accordance with this Act within a period that terminates—

- (a) when the period for commutation under the Electricity Industry Superannuation Scheme would have terminated; or
- (b) at the expiration of three months after the transfer,

whichever is the later.

(5) An amount equivalent in value to that part of the Scheme assets of the Electricity Industry Superannuation Scheme that is attributable to the membership of the Scheme of a person transferred to the State Scheme under this clause, or of the contributor from whom a person transferred to the State Scheme under this clause derives benefits, (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets to the Treasurer.

(6) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (5).

Transfer of existing and future pensioners after the relevant day

3. (1) After the relevant day, the Treasurer may, at the request of the Trustee, enter into an agreement with the Trustee under which a person or persons referred to in subclause (2) may be transferred from the Electricity Industry Superannuation Scheme to the State Scheme.

(2) The following persons may be transferred pursuant to an agreement under subclause (1):

- (a) a person who is in receipt of a pension under the Electricity Industry Superannuation Scheme;
- (b) a person who is a member of the Electricity Industry pension scheme and who is presently entitled to receive, but is not yet in receipt of, a pension following the termination of his or her employment;
- (c) a person who is entitled to a pension as a derivative benefit under the Electricity Industry Superannuation Scheme but who is not yet in receipt of the pension.

(3) The Treasurer may, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7, transfer a person from the Electricity Industry Superannuation Scheme to the State Scheme in pursuance of an agreement referred to in subclause (1).

(4) A person transferred under subclause (3)—

- (a) is, in the case of a person who was in receipt of a pension at the time of transfer, entitled to a pension under this Act which, at the time of transfer, is of equivalent value to the pension he or she was receiving immediately before the transfer; and

- (b) is, in the case of a person referred to in subclause (2)(b) or (c), entitled to a pension under this Act which, at the time of transfer, is of equivalent value to the initial pension that he or she would have received if he or she had not been transferred; and
- (c) except in the case of a person entitled to a derivative benefit, will be taken to be an old scheme contributor; and
- (d) in the case of a person who is entitled to a derivative benefit, will be taken to derive the benefit from an old scheme contributor.

(5) If—

- (a) an old scheme contributor referred to in subclause (4) who was in receipt of, or was entitled to, a pension at the time of transfer, dies before the expiration of three years after he or she first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
- (b) a person—
 - (i) referred to in subclause (4) who was in receipt of, or was entitled to, a derivative pension at the time of transfer; or
 - (ii) who is entitled to a derivative benefit from an old scheme contributor referred to in paragraph (a),

dies before the expiration of three years after the contributor from whom the benefit was derived—
 - (iii) first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
 - (iv) died while still in employment without ever becoming entitled to such a pension,

and—

- (c) in the case referred to in paragraph (a), no one is entitled to a derivative benefit under this Act in respect of the contributor; or
- (d) in a case referred to in paragraph (b), all derivative entitlements have ceased before the expiration of that period,

the contributor's estate is entitled to a lump sum equivalent to—

- (e) where paragraph (c) applies—the aggregate of the pension payments that the contributor would have received between the date of death and the third anniversary of the commencement of the pension if he or she had survived; or
- (f) where paragraph (d) applies—the aggregate of the pension payments that the contributor from whom the benefit was derived would have received between the date when the derivative entitlement, or the last of the derivative entitlements, ceased and the third anniversary of the commencement of the pension (or the date of the contributor's death) if the contributor had survived during that period,

(the lump sum will be determined on the assumption that the pension will not be adjusted under section 47 during that period).

(6) Where a person who is transferred under this clause was, immediately before the transfer, entitled to commute a part, or the whole, of his or her pension under the Electricity Industry Superannuation Scheme, he or she is entitled to commute the whole or a part of the pension in accordance with this Act within a period that terminates—

- (a) when the period for commutation under the Electricity Industry Superannuation Scheme would have terminated; or
- (b) at the expiration of three months after the transfer,

whichever is the later.

(7) An amount equivalent in value to that part of the Scheme assets of the Electricity Industry Superannuation Scheme that is attributable to the contributions (and the interest and other income and other accretions arising from investment of those contributions) to the Scheme of a person transferred to the State Scheme under this clause who was in receipt of, or entitled to, a pension at the time of transfer, or of the contributor from whom a person transferred to the State Scheme under this clause derives benefits, (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets to the Treasurer.

(8) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (7).

(9) An amount equivalent in value to the aggregate value of the employer components of benefits payable under this Act to, or in respect of, persons transferred under this clause (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.

Transfer of persons entitled to preserved benefits

4. (1) The Treasurer may, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7 before the relevant day, transfer a person referred to in subclause (2) from the Electricity Industry Superannuation Scheme to the State Scheme.

(2) A person who—

- (a) is a member of the Electricity Industry pension scheme or either of the contributory lump sum schemes; and
- (b) is entitled to preserved benefits in the relevant scheme; and
- (c) is not accruing benefits under any other division of the Electricity Industry Superannuation Scheme,

may be transferred under this clause.

(3) After the transfer—

- (a) a person who had been a member of the Electricity Industry pension scheme will be taken to be an old scheme contributor under this Act; and
- (b) a person who had been a member of either of the contributory lump sum schemes will be taken to be a new scheme contributor under this Act.

(4) The South Australian Superannuation Board must open a contribution account in the name of each person transferred under this clause and must credit to the account an amount equivalent to the amount standing to the credit of the person's contribution account in the Electricity Industry Superannuation Scheme immediately before the transfer.

(5) An amount equivalent to the aggregate of the amounts credited to contribution accounts under subclause (4) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.

(6) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (5).

(7) The Minister must attribute to each person transferred under this clause a number of contribution points that is sufficient to provide the person with an accrued entitlement under this Act at the time of transfer that is equivalent to his or her accrued entitlement under the Electricity Industry Superannuation Scheme immediately before the transfer.

Transfer of certain other persons

5. (1) The Treasurer may, with the consent of the person, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7, transfer a person who is a member of the Electricity Industry Superannuation Scheme and who also falls within the definition of "employee" in section 4 from that scheme to the State Scheme.

(2) After the transfer—

(a) a person who had been a member of the Electricity Industry pension scheme will be taken to be an old scheme contributor under this Act; and

(b) a person who had been a member of either of the contributory lump sum schemes will be taken to be a new scheme contributor under this Act.

(3) The South Australian Superannuation Board must open a contribution account in the name of each person transferred under this clause and must credit to the account an amount equivalent to the amount standing to the credit of the person's contribution account in the Electricity Industry Superannuation Scheme immediately before the transfer.

(4) An amount equivalent to the aggregate of the amounts credited to contribution accounts under subclause (3) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.

(5) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (4).

(6) An amount equivalent in value to the aggregate value of the employer components of those parts of benefits payable under this Act to, or in respect of, persons transferred under this clause that are attributable to contributors' employment up to the time of transfer (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.

(7) The Minister must attribute to each person transferred under this clause (other than a person who was immediately before the transfer a member of Division 4 of the Electricity Industry Superannuation Scheme) a number of contribution points that is sufficient—

(a) to provide the person with an accrued entitlement under this Act at the time of transfer that is not less than his or her accrued entitlement under the Electricity Industry Superannuation Scheme immediately before the transfer; and

(b) in the case of a person who was entitled to defined benefits under the Electricity Industry Superannuation Scheme, to ensure that the level of benefits on retirement at age 60 that the person was to be entitled to under that Scheme are maintained.

(8) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (6) in respect of persons who were immediately before the transfer members of Division 4 of the Electricity Industry Superannuation Scheme, and the South Australian Superannuation Board must open an account under section 47B in the name of each person transferred from Division 4 and credit to each account that part of the contribution paid by the Treasurer that is attributable to the person in whose name the account has been opened.

(9) In the application of Part 4 in relation to a person transferred under this clause who was, immediately before the transfer, a member of Division 4 of the Electricity Industry Superannuation Scheme—

- (a) the number "4.5" wherever appearing in a formula in that Part will be changed to "4.9"; and
- (b) the number "3.86" wherever appearing in such a formula will be changed to "4.2"; and
- (c) the number "420" wherever appearing in such a formula will be changed to "360".

(10) Subject to an election under subclause (11), a person transferred under this clause is required to contribute at the rate of 6 per cent of salary until he or she makes an election under section 23 to contribute at some other rate.

(11) A person may, within 14 days after service of a notice under clause 7(3), elect, in a manner approved by the Board, to contribute at any of the rates set out in section 23.

(12) The Board may, in a particular case, extend the period of 14 days referred to in subclause (11).

PART 3 GENERAL

Employer contributions

6. (1) Money standing to the credit of the fund or funds referred to in clause 18A of Schedule 1 of the *Electricity Corporations Act 1994* (before its repeal by the *Electricity Corporations (Restructuring and Disposal) Act 1999*) must be paid to the Treasurer.

(2) The employer of a person who has been transferred to the State Scheme under clause 5 will be taken to have entered into an arrangement with the Board under section 5.

(3) The terms of the arrangement will be determined by the Treasurer after consultation with the employer.

Notices

7. (1) The Treasurer may serve notice on the Electricity Industry Superannuation Board and the South Australian Superannuation Board transferring a member or members of the Electricity Industry Superannuation Scheme to the State Scheme under this Schedule.

(2) The notice must—

- (a) be in writing; and
- (b) identify the member or members to whom it applies; and
- (c) identify the clause of this Schedule in relation to which it will operate.

(3) On receipt of a notice under subclause (1), the Electricity Industry Superannuation Board must give notice to each member transferred advising him or her of the transfer.

Cessation of entitlements under the Electricity Industry Superannuation Scheme

8. On the transfer of a person to the State Scheme under this Schedule, his or her entitlements under the Electricity Industry Superannuation Scheme cease.

Power to obtain information

9. (1) The South Australian Superannuation Board may, from time to time, require the Electricity Industry Superannuation Board to provide it with information in its possession relating to persons transferred to the State Scheme under this Schedule.

(2) Despite any other Act or law to the contrary, the Electricity Industry Superannuation Board must comply with a requirement under subclause (1).

Transfer effective despite Electricity Corporations Act 1994

10. Transfers under this Schedule have effect despite provisions of Schedule 1 of the *Electricity Corporations Act 1994* as to membership of the Electricity Industry Superannuation Scheme.

Regulations may be made for transitional purposes

11. (1) The Governor may, by regulation, make provisions of a transitional nature in relation to the transfer of persons under this Schedule to the State Scheme.

(2) A regulation made under this clause may—

- (a) modify the provisions of this Act in their application to a person transferred under this Schedule;
- (b) operate prospectively or retrospectively from a date specified in the regulation.

PART 4

AMENDMENT OF SCHEDULE 1 OF THE ELECTRICITY CORPORATIONS ACT 1994

Amendment of Schedule

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

- (a) by striking out the definition of "actuary" from clause 1;
- (b) by striking out the definition of "the Trust Deed" from clause 1 and substituting the following definition:

"the Trust Deed" means the Electricity Industry Superannuation Scheme Trust Deed;;
- (c) by striking out "three" from paragraph (b) of subclause (1) of clause 4 and substituting "four";
- (d) by striking out paragraph (c) of subclause (1) of clause 4;
- (e) by striking out "Treasurer" from paragraph (d) of subclause (5) of clause 4 and substituting "Board";
- (f) by striking out subparagraphs (ii) and (iii) of paragraph (d) of subclause (5) of clause 4;
- (g) by striking out clause 6 and substituting the following clause:

Ownership of Scheme assets

6. (1) The Scheme assets are vested in the Board and if the Board ceases to be the trustee of the Scheme, the Scheme assets are vested in the trustee for the time being of the Scheme.

(2) No stamp duty, financial institutions duty or debits tax is payable under the law of the State in respect of the vesting of Scheme assets in the Board or any other trustee of the Scheme by subclause (1).

(3) No person has an obligation under the *Stamp Duties Act 1923*, the *Financial Institutions Duty Act 1983* or the *Debits Tax Act 1990*—

(a) to lodge a statement or return relating to a matter referred to in subclause (2); or

(b) to include in a statement or return a record or information relating to such a matter.;

(h) by striking out Part D;

(i) by striking out clause 9 and substituting the following clause:

Exclusion of s. 35B of Trustee Act 1936

9. Section 35B of the *Trustee Act 1936* does not apply to, or in relation to, the Scheme.;

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

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

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

Operation of Deed

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

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

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

(m) by inserting the following definition after the definition of "public sector employer" in subclause (1) of clause 2 of the Trust Deed:

"relevant law" means the law for the time being set out in—

(a) the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; and

(b) the *Income Tax Assessment Act 1936* of the Commonwealth; and

(c) the *Superannuation (Resolution of Complaints) Act 1993* of the Commonwealth; and

(d) such other Act, regulation, rule or other legislative instrument as the Trustee determines should be included in this definition.;

(n) by striking out the definition of "special deposit account" from subclause (1) of clause 2 of the Trust Deed;

- (o) by inserting the following definition after the definition of "State-owned company" in subclause (1) of clause 2 of the Trust Deed:

"Trustee" means the Board or any body for the time being appointed to the office of trustee of the Scheme;;

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

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

- (q) by striking out "The Board" from subclause (4) of clause 3 of the Trust Deed and substituting "The Trustee";

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

Amendment of Deed

4. (1) Subject to the relevant law, the Trustee may, by instrument in writing, amend or replace this Deed.

(2) Where the amendment or replacement of this Deed would result in an increase in the contribution to be made by an employer or increase the liability of the employer under the Scheme in any other way, the Deed cannot be amended or replaced without the approval of the employer.

(3) An amendment or replacement of this Deed will be taken to come into operation on the date specified in the instrument amending or replacing the Deed whether being a date before or after the date on which the instrument was made.;

- (s) by striking out subclause (1) of clause 4 of the Trust Deed and substituting the following subclause:

(1) Subject to the relevant law, the Trustee may, by instrument in writing, vary or replace the Rules.;

- (t) by striking out "or the date on which the Treasurer gave his or her approval" from subclause (5) of clause 4 of the Trust Deed;

- (u) by striking out "Subject to subclause (3)" from subclause (1) of clause 5 of the Trust Deed and substituting "Subject to the relevant law and to subclause (3)";

- (v) by striking out "Board" from subclauses (2) and (3) of clause 5 of the Trust Deed and substituting, in each case, "Trustee";

- (w) by striking out clauses 7, 8 and 9 of the Trust Deed and substituting the following clauses:

Payment of benefits

8. Benefits are payable from the Scheme assets in accordance with the Rules.

Scheme assets

9. (1) The Scheme assets are subject to the management and control of the Trustee.

(2) The Scheme assets comprise—

- (a) contributions made by the contributors and the employers to the Scheme pursuant to the Rules; and
- (b) interest and other income and other accretions arising from investment of the Scheme assets; and
- (c) amounts paid to the Scheme pursuant to clause 14 of the Schedule; and

- (d) any other income or assets transferred to the Scheme as part of the Scheme assets; and
 - (e) such other assets as are required by the Rules to be included in the Scheme assets.
- (3) The following amounts will be paid from the Scheme assets:
- (a) benefits that are payable to, or in respect of, members or former members pursuant to the Rules; and
 - (b) the costs and other expenses of administering the Scheme; and
 - (c) such other amounts as are provided for by the Rules.;
- (x) by striking out "Board" wherever occurring in subclauses (1) and (2) of clause 10 of the Trust Deed and substituting, in each case, "Trustee";
- (y) by inserting the following clauses after clause 10 of the Trust Deed:

Application of Superannuation Industry (Supervision) Act 1993

11. (1) The Trustee must give notice to the Australian Prudential Regulation Authority electing that the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth is to apply to the Scheme.

(2) The Trustee must, after the election referred to in subclause (1), comply with all relevant provisions of the relevant law unless exempted from compliance with a specified provision or provisions by the authority administering the law concerned.

Application of relevant law in certain circumstances

12. (1) A person who has a discretion under this Deed or the Rules must not exercise that discretion without the consent of the Trustee if the relevant law so requires.

(2) A person must not give a direction to the Trustee pursuant to this Deed or the Rules in contravention of the relevant law.

(3) A covenant that is required by the relevant law to be included in this Deed will be taken to be included and will be binding on the Trustee and each member, or each member of the governing body, of the Trustee.

Resolution of inconsistency

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

Term of office of Trustee

14. (1) The Trustee, holds office until—

- (a) it retires from office by written notice to the employers; or
- (b) a person is appointed as a receiver, receiver and manager or liquidator of the Trustee or a court approves a scheme of management providing for its dissolution; or
- (c) it is disqualified from holding office as Trustee of the Scheme.

(2) Subclause (1) does not apply to the Board.

Appointment of new Trustee

15. (1) When the office of Trustee becomes vacant the employers must, by a majority decision, appoint another Trustee.

(2) Only a body that is a constitutional corporation for the purposes of section 19 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth may be appointed as Trustee of the Scheme.

(3) An act of the Trustee is not invalid by reason only of a defect in its appointment.

Powers of Trustee

16. (1) The Trustee may delegate any of its functions, powers or duties under this Deed or the Rules to any person.

(2) The delegation—

- (a) must be by instrument in writing;
- (b) may be absolute or conditional;
- (c) does not derogate from the power of the Trustee to act in any matter;
- (d) is revocable at will by the Trustee.

(3) The Trustee has all other powers that are necessary or desirable for the proper administration of the Scheme in accordance with the relevant law.

Conflict of interest

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

(z) by striking out clause 11 of the Trust Deed and substituting the following clause:

Accounts

18. (1) The Trustee must keep proper accounts of receipts and payments in relation to the Scheme and must, in respect of each financial year, prepare financial statements in relation to the Scheme.

(2) The Trustee must, in accordance with the relevant law, appoint an auditor to audit the accounts and financial statements of the Scheme in accordance with that law.

(3) The Trustee must, in accordance with the relevant law, appoint an actuary to prepare reports in relation to the Scheme in accordance with that law.;

(za) by striking out "The Board" from clause 12 of the Trust Deed and substituting "The Trustee";

(zb) by striking out "The Board and the members and former members and the employees and former employees of the Board" from subclause (1) of clause 13 of the Trust Deed and substituting "The Trustee and the members and former members, or members or former members of the governing body, of the Trustee and employees and former employees of the Trustee";

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

(zd) by striking out "Board" from subclause (3) of clause 17 of the Trust Deed and substituting "Trustee".

SCHEDULE 4
Related Amendments

PART 1
AMENDMENT OF DEVELOPMENT ACT 1993

Interpretation

1. The *Development Act 1993* is referred to in this Part as "the principal Act".

Amendment of s. 48—Governor to give decision on development

2. Section 48 of the principal Act is amended by inserting in subsection (1)(b) "or 49A(19)" after "section 49(16a)".

Insertion of Part 4 Division 3A

3. The following Division is inserted after section 49 of the principal Act:

DIVISION 3A—DEVELOPMENT INVOLVING ELECTRICITY INFRASTRUCTURE

Development involving electricity infrastructure

49A. (1) Subject to this section, if a prescribed person proposes to undertake development for the purposes of the provision of electricity infrastructure (within the meaning of the *Electricity Act 1996*), not being development of a kind referred to in section 49(2) or (3), the person must—

- (a) lodge an application for approval containing prescribed particulars with the Development Assessment Commission for assessment by the Development Assessment Commission; and
- (b) if the land in relation to which the development is proposed is within the area of a council—give notice containing prescribed particulars of the proposal to that council in accordance with the regulations.

(2) This section does not apply to development for the purposes of the provision of—

- (a) electricity generating plant with a generating capacity of more than 30 MW; or
- (b) a section of powerlines (within the meaning of the *Electricity Act 1996*) designed to convey electricity at more than 66 kV extending over a distance of more than five kilometres.

(3) No application for approval is required (either under this section or any other provision of this Act), and no notice to a council is required under subsection (1), if the development is of a kind excluded from the provisions of this section by regulation.

(4) The Development Assessment Commission may request the proponent to provide additional documents or information (including calculations and technical details) in relation to the application.

(5) A council may report to the Development Assessment Commission on any matters contained in a notice under subsection (1).

(6) Where a notice is given to a council under subsection (1), and a report from the council is not received by the Development Assessment Commission within two months of the date of the notice, it will be conclusively presumed that the council does not intend to report on the matter.

(7) The Development Assessment Commission must assess an application lodged with it under this section and then prepare a report to the Minister on the matter.

(8) If it appears to the Development Assessment Commission that the proposal is seriously at variance with—

- (a) the provisions of the appropriate Development Plan (so far as they are relevant); or

(b) any code or standard prescribed by the regulations for the purposes of this provision,

specific reference to that fact must be included in the report.

(9) If a council has, in relation to any matters referred to the council under subsection (1), expressed opposition to the proposed development in its report under subsection (5), a copy of the report must be attached to the Development Assessment Commission's report (unless the council has, since providing its report, withdrawn its opposition).

(10) The Development Assessment Commission must, unless the Minister grants an extension of time, furnish its report within three months of its receipt of the relevant application.

(11) Where a request is made under subsection (4), any period between the date of request and the date of compliance is not to be included in the calculation of the three-month period under subsection (10).

(12) The Minister may, after receipt of the report of the Development Assessment Commission under this section (and after taking such action (if any) as the Minister thinks fit)—

(a) approve the development; or

(b) refuse to approve the development.

(13) An approval may be given—

(a) for the whole or part of a proposed development;

(b) subject to such conditions as the Minister thinks fit.

(14) An approval under this section will be taken to be given subject to the condition that, before any building work is undertaken, the building work be certified by a private certifier, or by some person determined by the Minister for the purposes of this provision, as complying with the provisions of the Building Rules to the extent that is appropriate in the circumstances.

(15) A person acting under subsection (14) must—

(a) seek and consider the advice of the Building Rules Assessment Commission before giving a certificate in respect of building work that would be at variance with the performance requirements of the Building Code; and

(b) take into account the criteria, and comply with any requirement, prescribed by the regulations before giving a certificate in respect of building work that would otherwise involve a variance with the Building Rules,

and if the person gives a certificate that involves building work that is at variance with the Building Rules then the person must, subject to the regulations, specify the variance in the certificate.

(16) A person engaged to perform building work for a development approved under this section must—

(a) ensure that the building work is performed in accordance with technical details, particulars, plans, drawings and specifications certified for the purposes of subsection (14); and

(b) comply with the Building Rules (subject to any certificate under subsection (14) that provides for a variance with the Building Rules), and any other requirements imposed under this section.

Penalty: Division 4 fine.

Default penalty: \$200.

(17) A person must not contravene, or fail to comply with, a condition of an approval under this section.

Penalty: Division 3 fine.

Additional penalty.

Default penalty: \$500.

(18) If—

- (a) a council has, in a report under this section, expressed opposition to a development that is approved by the Minister (and the council has not, since providing its report, withdrawn its opposition); or
- (b) the Minister approves a development that is, according to the report of the Development Assessment Commission, seriously at variance with a Development Plan, or a prescribed code or standard,

the Minister must, as soon as practicable, prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

(19) If the Minister approves a development under this section, no other procedure or requirement relating to the assessment of the development under this Act applies and no other development authorisation (including a certificate or approval under Part 6) is required under this Act, although the Minister may, if necessary for the purposes of any other Act, issue any other development authorisation under this Act (which will then be taken, for the purposes of that other Act, to have been issued by a relevant authority under this Act).

(20) Despite a preceding subsection, if the Minister directs that an EIS, PER or DR be prepared with respect to a development otherwise within the ambit of this section then—

- (a) this section ceases to apply to the development; and
- (b) the proponent must not undertake the development without the approval of the Governor under section 48; and
- (c) unless section 48(2)(a) applies, the development becomes, according to a determination of the Major Developments Panel, subject to the processes and procedures prescribed by Division 2 with respect to the preparation and consideration of an EIS, a PER or a DR.

(21) No appeal lies against a decision of the Minister under this section.

PART 2 AMENDMENT OF ELECTRICITY CORPORATIONS ACT 1994

Interpretation

4. The *Electricity Corporations Act 1994* is referred to in this Part as "the principal Act".

Amendment of long title

5. The long title of the principal Act is amended by striking out "to provide for the assets of electricity corporations to remain in public ownership;".

Repeal of s. 3

6. Section 3 of the principal Act is repealed.

Insertion of s. 7A

7. The following section is inserted after section 7 of the principal Act:

Power of Minister to vary functions

7A. The Minister may, by direction to an electricity corporation, relieve it of functions, add to its functions or otherwise vary its functions as the Minister considers necessary or expedient in consequence of—

- (a) action taken under the *Electricity Corporations (Restructuring and Disposal) Act 1999*; or
- (b) the operation of the *National Electricity (South Australia) Law* and the National Electricity Code (as defined in that Law).

Amendment of s. 14—Establishment of board

8. Section 14 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) The board consists of not less than four nor more than six members appointed by the Governor, of whom one may be the chief executive officer.;

(b) by striking out subsection (4) and substituting the following subsection:

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

(c) by striking out from subsection (7) "an appointed director" and substituting "a director".

Amendment of s. 15—Conditions of membership

9. Section 15 of the principal Act is amended—

(a) by striking out from subsection (2) "an appointed director" and substituting "a director";

(b) by striking out from subsection (3) "an appointed director" and substituting "a director";

(c) by striking out from subsection (4) "an appointed director" and substituting "a director".

Amendment of s. 17—Remuneration

10. Section 17 of the principal Act is amended by striking out "An appointed director" and substituting "A director".

Amendment of s. 18—Board proceedings

11. Section 18 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A quorum of the board consists of one-half of the total number of members of the board (ignoring any fraction resulting from the division) plus one.

Amendment of s. 28—Establishment of board

12. Section 28 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) The board consists of not less than four nor more than six members appointed by the Governor, of whom one may be the chief executive officer.;

(b) by striking out subsection (4) and substituting the following subsection:

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

(c) by striking out from subsection (7) "an appointed director" and substituting "a director".

Amendment of s. 29—Conditions of membership

13. Section 29 of the principal Act is amended—

(a) by striking out from subsection (2) "an appointed director" and substituting "a director";

(b) by striking out from subsection (3) "an appointed director" and substituting "a director";

(c) by striking out from subsection (4) "an appointed director" and substituting "a director".

Amendment of s. 31—Remuneration

14. Section 31 of the principal Act is amended by striking out "An appointed director" and substituting "A director".

Amendment of s. 32—Board proceedings

15. Section 32 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A quorum of the board consists of one-half of the total number of members of the board (ignoring any fraction resulting from the division) plus one.

Repeal of s. 47A

16. Section 47A of the principal Act is repealed.

Amendment of s. 48—Mining at Leigh Creek

17. Section 48 of the principal Act is amended by striking out from subsection (1) "under an Act specifically authorising that sale, lease, contract or right" and substituting "as authorised by or under regulations made under the *Electricity Corporations (Restructuring and Disposal) Act 1999*".

**PART 3
AMENDMENT OF ENVIRONMENT PROTECTION ACT 1993**

Interpretation

18. The *Environment Protection Act 1993* is referred to in this Part as "the principal Act".

Amendment of s. 7—Interaction with other Acts

19. Section 7 of the principal Act is amended by inserting before paragraph (a) of subsection (3) the following paragraph:

(a1) the *Electricity Corporations (Restructuring and Disposal) Act 1999*; and.

PART 4
AMENDMENT OF MINING ACT 1971

Interpretation

20. The *Mining Act 1971* is referred to in this Part as "the principal Act".

Amendment of s. 17—Royalty

21. Section 17 of the principal Act is amended by inserting in subsection (8) "or some other basis" after "recovered".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor