

Schedule 2 — Compensation if land injuriously affected

[s. 42]

1. Definitions

In this Schedule —

“**affected land**” means land a right, title, or interest in which is injuriously affected as described in section 42.

2. Claiming compensation

- (1) A claim for compensation under section 42 is made by submitting the claim to the DBNGP Land Access Minister within the time prescribed by, and otherwise in accordance with, the regulations.
- (2) The claim for compensation may extend not only to land in the DBNGP corridor but also to any other affected land of the claimant.

3. Doubt about whether claimant is a land holder

If there is a question as to whether the claimant is a land holder, the claim is to be received and dealing with it under this Schedule may be postponed while issues that are relevant to the question of whether the claimant is a land holder are being resolved.

4. Disposing of claim by purchase or other acquisition

- (1) If a claim is made in accordance with this Schedule for compensation, the DBNGP Land Access Minister may —
 - (a) purchase by agreement the affected land or any estate or interest of the claimant in the affected land; or
 - (b) if the DBNGP Land Access Minister gives written notice within 3 months of the receipt of the claim that the DBNGP Land Access Minister intends to do so, compulsorily take under Part 9 of the *Land Administration Act 1997* the whole or part of the affected land.
- (2) Compensation under section 42 and this Schedule is to be given for injurious affection only in respect of land, or an estate or interest in land, that has not been purchased or taken in accordance with this clause.

5. Giving compensation

- (1) If the DBNGP Land Access Minister and the claimant agree on compensation that is sufficient to compensate the claimant, the DBNGP Land Access Minister is to compensate the claimant as agreed.
- (2) The compensation to be given is to be assessed on the basis of values applying at the time at which the claim for compensation is made in accordance with this Schedule, and, subject to subclause (4), is to

include interest computed from 60 days after the day on which the claim was made on the balance of compensation outstanding from time to time at the rate determined under section 142 of the *Supreme Court Act 1935* in respect of judgment debts that applies at the time at which the claim for compensation is made.

- (3) If a claim for compensation has been made under this Schedule and compensation is to be given, the DBNGP Land Access Minister may offer and give to the claimant, an advance on account of the compensation due, and the advance may be received and retained by the claimant without prejudice to any rights under section 42 and this Schedule.
- (4) If an offer is made to the claimant under subclause (3) and the offer is not accepted by the claimant within 30 days of the day on which the offer was made, no interest is thereafter payable under subclause (2) to the extent of the amount or value of what was offered.

6. Adjudication on claims

- (1) If the DBNGP Land Access Minister and the claimant do not agree upon any question as to —
 - (a) whether, or for what, the claimant is entitled to compensation;
or
 - (b) the amount or manner of the compensation to be given,either party may cause the question to be determined in the same manner as if it were a question required to be determined under Part 10 of the *Land Administration Act 1997* as to compensation payable.
- (2) Except as otherwise stated in section 42 or this Schedule, Part 10 of the *Land Administration Act 1997* applies for the purposes of the determination of the question, with such modifications as the circumstances require.
- (3) In proceedings under this clause for the determination of a question each party is to bear their own costs but this subclause does not prevent the court from making an order as to the payment of fees payable to the court or a member of it.

7. Matters affecting assessment of compensation

- (1) If land is developed after it becomes subject to restrictions under section 41, whether or not approval is given to the land being developed, the development is to be disregarded in dealing with any claim for compensation under section 42 and this Schedule.
- (2) A person is not entitled to be compensated in respect of any matter or thing under section 42 and this Schedule if compensation in respect of it has been awarded under another enactment or a Commonwealth law, and any compensation given under section 42 and this Schedule

is to be brought into account in awarding compensation in respect of the same matter or thing under another enactment.

- (3) If compensation has previously been given under section 42 and this Schedule to any person in respect of any land, or any estate or interest in land, no further compensation is to be given under section 42 and this Schedule to that or any other person in respect of injurious affection to the same estate or interest in that land except to the extent that further injurious affection results that is of a kind or degree not taken into account in assessing the previous compensation.

[Schedule 2 amended by No. 53 of 1997 s.52.]

[Schedule 3 repealed by No. 58 of 1999 s.43.]

Schedule 4 — Amendments to, or modification of, certain Acts

[s.52]

Division 1 — Amendments to this Act because of *Land Administration Act 1997*

1. Principal provisions

In this Division the provisions of this Act that come into operation on the day on which this Act receives the Royal Assent are referred to as the principal provisions.

2. Commencement day

The commencement day for this Division is the day fixed under section 2 (1) of the *Land Administration Act 1997*.

3. Section 22 (4) amended

Section 22 (4) of the principal provisions is amended in the definition of “relevant official” by deleting “Ministers respectively administering the Land Act 1933 and” and substituting the following —

“

Minister administering

”.

4. Section 29 (2) amended

Section 29 (2) (b) of the principal provisions is amended by deleting “under the *Land Acquisition and Public Works Act 1902*” and substituting the following —

“

under Part 9 of the *Land Administration Act 1997*

”.

5. Section 44 (3) amended

Section 44 (3) of the principal provisions is amended in the definition of “relevant official” —

- (a) by inserting “or” after paragraph (a);
- (b) by deleting “; or” at the end of paragraph (b) and substituting a comma; and
- (c) by deleting paragraph (c).

6. Schedule 2, clause 4 (1) amended

Schedule 2, clause 4 (1) (b), of the principal provisions is amended by deleting “under the *Land Acquisition and Public Works Act 1902* ” and substituting the following —

“

under Part 9 of the *Land Administration Act 1997*

”.

7. Schedule 2, clause 6 amended

Schedule 2, clause 6, of the principal provisions is amended in each of subclauses (1) and (2) by deleting “Part III of the *Land Acquisition and Public Works Act 1902*” and substituting the following —

“

Part 10 of the *Land Administration Act 1997*

”.

[Division 2 repealed]

[Division 3 repealed]

Division 4 — *Gas Corporation Act 1994*

10. Principal Act

In this Division the *Gas Corporation Act 1994* is referred to as the principal Act.

11. Commencement

The commencement time for this Division, except clauses 16, 17 (1) and (2), 18, and 20, is the pipeline transfer time.

12. Long title amended

The long title to the principal Act is amended by deleting “**the corporation’s transmission and distribution systems**” and substituting the following —

“

any transmission and distribution systems of the corporation

”.

13. Section 63 amended

Section 63 of the principal Act is amended —

“

- (a) in subsection (1) (a) (ii), by inserting after “basis” the following —

if the operations of the corporation are divided into segments under subsection (2) (a)

”;

and

- (b) by deleting subsection (2) (a) and substituting the following paragraph —

“

(a) the operations of the corporation may be divided into such segments as are agreed between the corporation and the Minister and, if there is a gas transmission system, as defined in section 90, are to be divided into the following segments or such other segments as may be agreed between the corporation and the Minister —

- (i) the operations relating to that system; and
- (ii) the distribution and supply of gas;

”.

14. Section 90 amended

Section 90 of the principal Act is amended —

- (a) by deleting the definition of “gas transmission capacity” and substituting the following definition —

“**gas transmission capacity**” means, subject to any provision made by the regulations, the capacity of the gas transmission system to transport gas;

”;

- (b) by deleting the definition of “gas transmission system” and substituting the following definition —

“**gas transmission system**” means so much, if any, of the gas pipeline system or systems operated by the corporation, including all associated equipment, as is identified by the corporation in accordance with clause 3 (3) of Schedule 5;

”.

15. Section 91 repealed and a section substituted

Section 91 of the principal Act is repealed and the following section is substituted —

“

91. Access to, and pricing for, gas transmission capacity

If there is a gas transmission system, Schedule 5 has effect with respect to access to, and pricing for, gas transmission capacity and, even if there is not a gas transmission system, clause 3 (3) of that Schedule has effect..

”.

16. Section 95 amended

Section 95 (3) of the principal Act is amended —

(a) in paragraph (h), by inserting after subparagraph (ii) the following subparagraph —

“

(ia) the production of documents;

”.

(b) in paragraph (i), by inserting after subparagraph (ii) the following subparagraph —

“

(ia) to order parties to a dispute to enter into a contract under clause 2 (4) of Schedule 5 or clause 2 (4) of Schedule 6, as the case requires, on prescribed terms and conditions; and

”.

(c) by inserting after paragraph (i) the following paragraph —

“

(ia) the protection from liability of witnesses in proceedings before the referee;

”.

17. Schedule 5 amended

(1) Clause 2 (3) of Schedule 5 to the principal Act is amended by inserting after paragraph (h) the following paragraph —

“

(ha) rights and title to gas, including without limitation —

(i) provisions resulting in, or to do with, the transfer, extinguishment, or conferral, of rights or title to gas;

(ii) provisions giving protection from liability arising from anything referred to in subparagraph (i);

”.

- (2) After clause 2 (3) of Schedule 5 to the principal Act the following subclause is inserted —

“

- (3a) Without limiting subclause (3) (k), the regulations may include provisions to do with restricting or stopping flow that discriminate between shippers on such basis as is fair and reasonable or is in the public interest.

”.

- (3) Clause 3(3) of the Schedule 5 to the principal Act is amended by inserting after “detail” the following —

“

what, if anything, the Minister has advised the corporation should, for the time being, be

”.

- (4) Clause 6 (4) (a) of Schedule 5 to the principal Act is deleted and the following paragraph is substituted —

“

- (a) means a contract in respect of the transport of gas in a pipeline that —
- (i) was made before the pipeline becomes part of the gas transmission system; and
 - (ii) is binding on the corporation;

”.

18. Schedule 6 amended

- (1) Clause 2 (3) of Schedule 6 to the principal Act is amended by inserting after paragraph (g) the following paragraph —

“

- (ga) rights and title to gas, including without limitation —
- (i) provisions resulting in, or to do with, the transfer, extinguishment, or conferral, of rights or title to gas;
 - (ii) provisions giving protection from liability arising from anything referred to in subparagraph (i);

”.

- (2) After clause 2 (3) of Schedule 6 to the principal Act the following subclause is inserted —

“

- (3a) Without limiting subclause (3) (j), the regulations may include provisions to do with restricting or stopping flow that discriminate between users on such basis as is fair and reasonable or is in the public interest.

”.

[19. *repealed*]

20. **Validation**

A regulation purporting to have been made under the principal Act, and anything purporting to have been done under the Act or the regulations, is and always was as valid and effective as it would have been if the amendments made by clauses 16, 17 (1) and (2), and 18 had at all relevant times been made.

Division 5 — *Land Acquisition and Public Works Act 1902*

21. **Principal Act**

In this Division the *Land Acquisition and Public Works Act 1902* * is referred to as the principal Act.

[* Reprinted as at 3 June 1997.]

22. **Section 5A amended**

Section 5A of the principal Act is amended by inserting after paragraph (da) the following paragraph —

“

- (db) the DBNGP Land Access Minister established by section 29 (1) of the *Dampier to Bunbury Pipeline Act 1997*;

”.

23. **Section 5B amended**

Section 5B (1) of the principal Act is amended by inserting after paragraph (ca) the following paragraph —

“

- (cb) in the case of the DBNGP Land Access Minister established by section 29 (1) of the *Dampier to Bunbury Pipeline Act 1997*, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department;

”.

24. Sections 29, 29A, and 29B not to apply

Sections 29, 29A, and 29B of the principal Act do not apply to or in relation to land in the DBNGP corridor as defined in section 27 of this Act.

25. Application of section 33A

For the purposes of section 33A of the principal Act, the DBNGP Land Access Minister is a local authority.

26. Section 33F not to apply

Section 33F of the principal Act does not apply to or in relation to the taking of land for the purpose of a conferral of rights by the DBNGP Land Access Minister under section 34 of this Act.

27. Section 45A not to apply

Section 45A of the principal Act does not apply to or in relation to —

- (a) the taking of land for the purposes of this Act; or
- (b) the determination of a question arising upon a claim for compensation under section 42 of this Act.

28. Taking of land to be as if for the conferral of rights

When applying the principal Act, the taking of land for the purposes of Part 4 or Schedule 2 of this Act is to be regarded as being for the purpose of the conferral of rights under Part 4 of this Act, whether or not rights have already been conferred under that Part in respect of the land.

Division 6 — *Land Administration Act 1997*

29. Principal Act

In this Division the *Land Administration Act 1997** is referred to as the principal Act.

[Act No. 30 of 1997.]*

30. Commencement day

The commencement day for this Division is the day fixed under section 2 (1) of the principal Act.

31. Section 159 amended

Section 159 of the principal Act is amended by inserting after paragraph (d) the following paragraph —

“

- (da) the DBNGP Land Access Minister established by section 29 (1) of the *Dampier to Bunbury Pipeline Act 1997*;

”.

32. Section 160 amended

Section 160 (1) of the principal Act is amended by inserting after paragraph (d) the following paragraph —

“

- (da) in the case of the DBNGP Land Access Minister established by section 29 (1) of the *Dampier to Bunbury Pipeline Act 1997*, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department;

”.

33. Section 167 not to apply

Section 167 of the principal Act does not apply to or in relation to the taking of land for the purpose of a conferral of rights by the DBNGP Land Access Minister under section 34 of this Act.

34. Sections 187-191 not to apply

Sections 187 to 191 of the principal Act do not apply to or in relation to land in the DBNGP corridor as defined in section 27 of this Act.

35. Taking of land to be as if for the conferral of rights

When applying the principal Act, the taking of land for the purposes of Part 4 or Schedule 2 of this Act is to be regarded as being for the purpose of, and the land is to be regarded as being required for the purpose of, the conferral of rights under Part 4 of this Act, whether or not rights have already been conferred under that Part in respect of the land.

Division 7 — *Local Government Act 1995*

36. Payment in place of local government rates

- (1) The DBNGP Land Access Minister is not liable to pay rates in respect of land in the DBNGP corridor.
- (2) A holder of rights conferred under section 34 of this Act or the holder’s nominee approved under section 34 (3) of this Act is not, as the holder of those rights or the holder’s nominee, liable to pay rates.

- (3) The DBNGP Land Access Minister is to pay to each local government in the district of which there is any utilized corridor land an amount equivalent to the rates that would have been assessable in the hands of an owner holding the fee simple in the land whose rates were assessable on the basis of unimproved value.
- (4) An amount payable under subclause (3) is to be treated for the purposes of Part 4 of this Act as a part of the cost of administering that Part.
- (5) In this clause —
 - “**DBNGP corridor**” and “**DBNGP Land Access Minister**” have the meanings given by section 27 of this Act;
 - “**rates**” means rates under the *Local Government Act 1995*;
 - “**utilized corridor land**” means land in the DBNGP corridor in respect of which rights under section 34 of this Act are held, regardless of whether rights are held by one holder or several holders.

Division 8 — *Petroleum Pipelines Act 1969*

37. Principal Act

In this Division the *Petroleum Pipelines Act 1969* * is referred to as the principal Act.

[* *Reprinted as at 19 February 1992.*
For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p.173.]

38. Act applies to DBNGP

- (1) Any pipeline in the privatized DBNGP system is a pipeline for the purposes of the principal Act despite the exceptions to the definition of “pipeline” in that Act.
- (2) At the pipeline transfer time —
 - (a) the DBNGP owner, as defined in section 46 of this Act, becomes, and is to be registered as, the holder of a licence granted under the principal Act the term, conditions, and other details of which are as determined by the Minister responsible for the administration of the principal Act; and
 - (b) consent to the operation of the pipelines in the privatized DBNGP system is to be regarded as having been given under section 36 of the principal Act.
- (3) Subsection (2) (b) does not remove the requirement for consent under section 36 of the principal Act to be obtained in any other circumstance in which the principal Act requires it.

39. Section 7 (power of Minister to authorize entry)

The power given by section 7 (1) of the principal Act to the Minister referred to in that provision is not to be exercised in respect of land in the DBNGP corridor, as defined in section 27 of this Act, until the DBNGP Land Access Minister, as defined in that section, has been consulted.

40. Section 8 (application for licence)

Obtaining rights under section 34 of this Act in respect of land or being approved under subsection (3) of that section as the nominee of the holder of those rights is to be regarded, for the purposes of section 8 (1) (f) of the principal Act, as acquiring the land.

41. Section 12 (conditions of licence)

For the purposes of section 12 (3) of the principal Act —

- (a) rights conferred under section 34 of this Act in respect of land are capable of being a sufficient authority over the land; and
- (b) becoming the holder of those rights or the holder's nominee approved under section 34 (3) of this Act is a sufficient acquisition of those rights.

42. Section 21 (access provisions)

Section 21 of the principal Act does not apply to the privatized DBNGP system.

43. Section 27 (removal of property)

- (1) For the purpose of enabling a direction to be given in an instrument under section 27 of the principal Act to a licence holder, property of the licence holder or a nominee of the licence holder approved under section 34 (3) of this Act that —
 - (a) was assigned under Part 3 of this Act to the property holder or a person through whom the property holder took the property; and
 - (b) is in the DBNGP corridor as defined in section 27 of this Act,may be specified in the instrument as if it had been brought there by a person engaged or concerned in the operations authorized by the licence.
- (2) In this clause —
 - “licence holder”** means a person who is or was the holder of a licence under the principal Act;
 - “property holder”** means the licence holder or a nominee of the licence holder approved under section 34 (3) of this Act.

44. Section 34 (pipeline standards, specifications, and conditions)

- (1) Any pipeline that was part of the corporation's DBNGP system is to be taken, for the purposes of the principal Act, to have been constructed in accordance with any standards, specifications, and conditions prescribed under that Act.
- (2) A licence under the principal Act cannot impose any standards, specifications, or conditions in respect of a pipeline described in subclause (1) except to the extent that they relate to the operation or maintenance of the pipeline.

[Division 9 repealed]

Division 10 — Zoning legislation

46. Operation of pipeline to be regarded as permissible use

- (1) For the purposes of any written law under which restrictions are placed on the purposes for which land may be used, the operation of any pipeline in the DBNGP corridor as contemplated by this Act is to be regarded as being within the purposes for which land in the DBNGP corridor may be used.
- (2) In subclause (1) —
“DBNGP corridor” has the meaning given to that term in section 27 of this Act.

[Schedule 4 amended by No. 58 of 1999 ss.44 and 72.]