



Western Australia

Energy Coordination Act 1994

Reprinted as at 5 May 2000

Western Australia

Energy Coordination Act 1994

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Notes

Defined Terms



Western Australia

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Energy Coordination Act 1994

An Act to provide for —

- **a scheme for licensing the supply of gas in certain areas of the State;**
- **a public officer to coordinate and advise on energy policy, to administer the licensing scheme and with functions under certain written laws relating to energy supply; and**
- **a public officer with functions under certain written laws relating to energy safety,**

and to confer powers, and make related provisions.

[Long title amended by No. 20 of 1999 s.4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Energy Coordination Act 1994*¹.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“**Coordinator**” means the Coordinator of Energy referred to in section 4;

“**Director**” means the Director of Energy Safety referred to in section 5;

“**distribution licence**” means a licence having the classification referred to in section 11D(1)(a);

“**distribution system**” means —

(a) a system of pipelines, mains, and gas service pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of gas to customers; or

(b) any other part of the gas distribution system (as defined in section 90 of the *Gas Corporation Act 1994*) at the time when a distribution licence is first issued for all or any part of that system (regardless of the pressure at which it is designed to operate),

and any associated apparatus, facilities, structures, plant, or equipment;

“**electricity**” includes electrical energy of any kind however produced, stored, transported or consumed;

“energy” means electricity, gas and thermal energy however derived;

“gas” means any gas or mixture of gases, whether naturally occurring or manufactured, intended for use —

- (a) as a fuel; or
- (b) in any chemical process;

“inspector” means a person designated as an inspector under section 12;

“licence” means a distribution licence or trading licence;

“licensee” means the holder of a licence and any transferee of the licence under section 11R;

“small use customer” means a customer whose consumption of gas is less than 1 terajoule per year;

“supply”, in relation to gas, means —

- (a) the transportation of gas through a distribution system; or
- (b) the sale to small use customers of gas transported through a distribution system;

“supply area” means an area for the time being constituted as such under section 11A;

“trading licence” means a licence having the classification referred to in section 11D(1)(b).

[Section 3 amended by No. 20 of 1999 s.5; No. 58 of 1999 s.47.]

Part 2 — Coordinator of Energy, and Director of Energy Safety

4. Coordinator of Energy

A Coordinator of Energy is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

5. Director of Energy Safety

A Director of Energy Safety is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

6. Coordinator's functions

The functions of the Coordinator are —

- (a) to assist the Minister in planning and coordinating the provision of energy in the State;
- (aa) to administer the licensing scheme provided for by Part 2A;
- (b) to perform the functions vested in the Coordinator by or under the *Electricity Act 1945* and the *Gas Undertakings Act 1947* or any other written law;
- (c) to advise the Minister on all aspects of energy policy, including —
 - (i) the energy needs of the State;
 - (ii) ways of using energy and sources of energy, including renewable energy;
 - (iii) the introduction and encouragement of competition in the energy industry;
 - (iv) ways of promoting and achieving open access to transmission and distribution systems;
 - (v) ways of achieving greater efficiency in the use of energy;
 - (vi) the use of energy policy to assist in achieving other policy objectives of government;

- (vii) matters relating to the operation of relevant legislation;
- (d) for the purposes of paragraphs (a), (b) and (c) —
 - (i) to monitor the operation of the State's energy industry and its participants; and
 - (ii) to consult with interested groups and persons;
- (e) to undertake, sponsor and coordinate research, development and demonstration relating to energy;
- (f) to promote the development of commercial applications of renewable energy;
- (g) to produce and publish information and reports on energy-related matters; and
- (h) to provide support in the resolution of disputes about energy-related matters.

[Section 6 amended by No. 20 of 1999 s.6.]

7. Director's functions

The functions of the Director are —

- (a) those vested in the Director by or under —
 - (i) the *Electricity Act 1945*;
 - (ii) the *Gas Standards Act 1972*;
 - (iii) the *Liquid Petroleum Gas Act 1956*; and
 - (iv) any other written law;and
- (b) the provision of advice on safety and technical standards in the gas supply industry to the Western Australian Independent Gas Pipelines Access Regulator referred to in section 27 of the *Gas Pipelines Access (Western Australia) Act 1998*.

[Section 7 inserted by No. 65 of 1998 s.89.]

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8. Staff

Officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Coordinator and the Director to perform their functions.

9. Delegation

- (1) Each of the Coordinator and the Director may by instrument in writing delegate to an officer referred to in section 8 the performance of any of his or her functions including functions under a written law, but not including the power to delegate under this section.
- (2) The Coordinator's powers under subsection (1) also extend to delegation of functions to the Director.
- (3) A delegation may be general or as otherwise provided by the instrument of delegation.
- (4) A delegate remains subject to the direction and control of the delegator.
- (5) Performance of a function by a delegate is to be treated as performance by the delegator.

10. Minister may give directions

- (1) The Minister may give directions in writing to the Coordinator or the Director with respect to the performance of his or her functions, either generally or in relation to a particular matter, and he or she is to give effect to any such direction.
- (1a) The Minister must not under subsection (1) direct the Coordinator with respect to the performance of the Coordinator's functions under Part 2A in respect of a particular person or a particular application.
- (2) The text of any direction given under subsection (1) is to be —
 - (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and

- (b) included in the annual report submitted by the relevant accountable officer under section 62 of the *Financial Administration and Audit Act 1985*.

[Section 10 amended by No. 20 of 1999 s.7.]

11. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Coordinator or the Director; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Coordinator or the Director to furnish information to the Minister;
 - (b) request the Coordinator or the Director to give the Minister access to information; and
 - (c) for the purposes of paragraph (b) make use of the staff referred to in section 8 to obtain the information and furnish it to the Minister.
- (3) The Coordinator or the Director is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
 - “**document**” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
 - “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Coordinator or the Director.

Part 2A — Licensing of gas supply

[Heading inserted by No. 20 of 1999 s.8.]

Division 1 — Supply areas

[Heading inserted by No. 20 of 1999 s.8.]

11A. Constitution of supply areas

- (1) The Governor may by order published in the *Gazette* —
 - (a) constitute an area as a supply area;
 - (b) add an area to, or excise an area from, a supply area; or
 - (c) cancel the status of an area as a supply area.
- (2) An order is not to be made under subsection (1) excising an area from a supply area or cancelling the status of an area as a supply area unless the Governor is satisfied that the supply of gas provided in the area in question will, after the excision or cancellation, continue to be of an acceptable standard.
- (3) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (1) as if the order were a regulation.

[Section 11A inserted by No. 20 of 1999 s.8.]

11B. Areas need not be continuous

A supply area may be one continuous area or be made up of 2 or more separate areas.

[Section 11B inserted by No. 20 of 1999 s.8.]

11C. Consultation

Where it is proposed that an order be made under section 11A, the Minister must, before the order is made, consult with any licensee who will be materially affected by the proposed order.

[Section 11C inserted by No. 20 of 1999 s.8.]

Division 2 — Licence classification and area of operation

[Heading inserted by No. 20 of 1999 s.8.]

11D. Classification of licences

- (1) Licences are classified as follows —
- (a) distribution, which authorises the licensee —
 - (i) to construct a distribution system and to transport gas through the system; or
 - (ii) to transport gas through an existing distribution system, and if required for that purpose to make alterations to the system,and to operate and maintain the system; or
 - (b) trading, which authorises the licensee to sell to small use customers gas transported through a distribution system.
- (2) A licence is to be designated by reference to one of the classifications referred to in subsection (1).

[Section 11D inserted by No. 20 of 1999 s.8.]

11E. Area to which licence applies

A licence is to be designated to apply to —

- (a) one or more supply areas; or
- (b) one or more parts of a supply area,

specified in the licence.

[Section 11E inserted by No. 20 of 1999 s.8.]

Division 3 — Licensing requirements

[Heading inserted by No. 20 of 1999 s.8.]

11F. Licensing extends to statutory providers

The requirements of this Division apply to a person despite the fact that the person, in supplying gas, is performing a function that —

- (a) is authorised or provided for by or under a written law; or
- (b) has been approved under a written law.

[Section 11F inserted by No. 20 of 1999 s.8.]

11G. Requirement for licence

- (1) A person must not in a supply area or part of a supply area —
 - (a) construct, alter or operate a distribution system; or
 - (b) transport gas through a distribution system,

except under the authority of a distribution licence granted by the Coordinator that applies to that area or that part of that area.

Penalty: \$100 000 and a daily penalty of \$5 000.

- (2) A person must not in a supply area or part of a supply area sell to small use customers gas transported through a distribution system except under the authority of a trading licence granted by the Coordinator that applies to that area or that part of that area.

Penalty: \$100 000 and a daily penalty of \$5 000.

[Section 11G inserted by No. 20 of 1999 s.8.]

11H. Power to exempt

- (1) The Governor may by order published in the *Gazette* provide for exemptions from section 11G.

- (2) The Governor must not make an order under subsection (1) unless he or she is satisfied that it would not be contrary to the public interest to do so.
- (3) The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters —
 - (a) environmental considerations;
 - (b) social welfare and equity considerations, including community service obligations;
 - (c) economic and regional development, including employment and investment growth;
 - (d) the interests of gas customers generally or of a class of gas customers;
 - (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
 - (f) the importance of competition in gas industry markets;
 - (g) any other matter that he or she considers relevant.
- (4) Section 43(4) and (7) to (9) of the *Interpretation Act 1984* apply to an order under subsection (1) as if the order were subsidiary legislation.

[Section 11H inserted by No. 20 of 1999 s.8.]

11I. Transitional provision

- (1) This section applies to every person (an “**existing operator**”) that immediately before the commencement of an order under section 11A is undertaking any activity that, after that commencement, is required to be licensed under section 11G.
- (2) An existing operator that wishes to apply for a licence in respect of an activity referred to in subsection (1) must do so within 4 months after the commencement of the relevant order.

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Division 4 Licence application, grant, etc.

s. 11J

- (3) An existing operator is to be treated as if the person were the holder of the relevant licence —
- (a) until the expiry of 12 months after the commencement of the relevant order; or
 - (b) until —
 - (i) a licence of that kind is granted to the person or is refused; and
 - (ii) in the case of a refusal, the time for an application for review of the decision under section 11ZH expires without an application being made or an application is made but is unsuccessful,
- whichever happens first.
- (4) For the purposes of paragraph (b)(ii) of subsection (3) an application is unsuccessful if it —
- (a) results in the refusal referred to in paragraph (b)(i) of that subsection being confirmed; or
 - (b) is withdrawn, discontinued or dismissed.

[Section 11I inserted by No. 20 of 1999 s.8.]

Division 4 — Licence application, grant, etc.

[Heading inserted by No. 20 of 1999 s.8.]

11J. Restriction on operation of this Division and Division 8

This Division and Division 8 have effect subject to sections 90 and 92 of the *Gas Pipelines Access (Western Australia) Act 1998*.

[Section 11J inserted by No. 20 of 1999 s.8.]

11K. Coordinator to consider public interest

- (1) The Coordinator must not exercise a power conferred by this Division unless he or she is satisfied that it would not be contrary to the public interest to do so.
- (2) The Coordinator, in determining whether the exercise of the power would not be contrary to the public interest, may take into account one or more of the matters referred to in section 11H(3).

[Section 11K inserted by No. 20 of 1999 s.8.]

11L. Application for licence

- (1) An application for a licence is to be —
 - (a) made in a form approved by the Coordinator; and
 - (b) accompanied by the prescribed application fee.
- (2) Without limiting subsection (1)(a), an applicant for a licence is to inform the Coordinator of —
 - (a) the nature of the business activities undertaken or to be undertaken by the applicant in the gas industry in the State;
 - (b) in the case of an application for a trading licence —
 - (i) the methods or principles that the applicant proposes to apply in determining its prices or charges; and
 - (ii) the terms and conditions of any proposed standard customer contract between the applicant and any purchaser of gas from the applicant;
 - (c) the methods or standards that the applicant proposes to apply in supplying gas; and
 - (d) in the case of an application for a distribution licence, the nature and extent of the construction, alteration, operation or maintenance of a distribution system undertaken or to be undertaken for the transportation of gas.

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- (3) The applicant must also provide such other information (including information as to surveys carried out) as the Coordinator may require for the proper consideration of the application.

[Section 11L inserted by No. 20 of 1999 s.8.]

11M. Terms and conditions of licence

- (1) A licence is subject to such terms and conditions as are determined by the Coordinator.
- (2) Without limiting subsection (1), the terms and conditions may include provisions relating to any matter provided for by Schedule 1.

[(3) repealed]

- (4) Subject to subsection (3), the terms and conditions of a licence must be substantially similar to the terms and conditions of any other licence with the same classification under section 11D(1) that applies in the same supply area or part of a supply area.
- (5) The terms and conditions of a licence must not be inconsistent with —
- (a) the Gas Pipelines Access (Western Australia) Law; or
 - (b) regulations made under section 15 of the *Gas Standards Act 1972*.

[Section 11M inserted by No. 20 of 1999 s.8; amended by No. 58 of 1999 s.48.]

11N. Coordinator may grant more than one licence for supply area

- (1) The Coordinator may grant in respect of a supply area or part of a supply area more than one licence of a particular classification.

- (2) In subsection (1) —
“**classification**” means a classification referred to in section 11D(1).

[Section 11N inserted by No. 20 of 1999 s.8.]

11O. Duration of licence

A licence may be granted or renewed for such period as the Coordinator thinks fit, but the period cannot exceed —

- (a) in the case of a distribution licence, 21 years from the date of its grant or renewal; or
- (b) in the case of a trading licence, 10 years from the date of its grant or renewal.

[Section 11O inserted by No. 20 of 1999 s.8.]

11P. Renewal of licence

An application for the renewal of a licence is to be —

- (a) made in a form approved by the Coordinator; and
- (b) accompanied by the prescribed application fee.

[Section 11P inserted by No. 20 of 1999 s.8.]

11Q. Licence fee

- (1) A licensee must pay to the Coordinator the prescribed licence fee —
 - (a) within one month from the day of grant or renewal of the licence; and
 - (b) within one month from each anniversary of that day during the term of the licence.
- (2) Regulations made under section 26 may prescribe different licence fees for each of the classifications referred to in section 11D(1).

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- (3) The Coordinator may recover any outstanding licence fee in a court of competent jurisdiction as a debt due by the licensee to the Crown.

[Section 11Q inserted by No. 20 of 1999 s.8.]

11R. Transfer of licence

- (1) A licence cannot be transferred except with the approval of the Coordinator.
- (2) Approval for the purposes of subsection (1) may be given on such terms and conditions as are determined by the Coordinator.
- (3) An application for approval to transfer a licence is to be —
- (a) made in a form approved by the Coordinator; and
 - (b) accompanied by the prescribed application fee.

[Section 11R inserted by No. 20 of 1999 s.8.]

11S. Decisions as to grant, renewal or transfer

- (1) Subject to section 11K, the Coordinator must grant, renew or approve the transfer of a licence if he or she is satisfied that the applicant —
- (a) has, and is likely to retain; or
 - (b) will acquire within a reasonable time after the grant, renewal or transfer, and is then likely to retain,

the financial and technical resources to undertake the activities authorised, or to be authorised, by the licence.

- (2) The Coordinator must take all reasonable steps to make a decision in respect of an application for —
- (a) the grant or renewal of a licence; or
 - (b) approval to transfer a licence,

within 90 days after the application is made.

[Section 11S inserted by No. 20 of 1999 s.8.]

11T. Notice of decisions

- (1) The Coordinator must ensure that notice of the grant, renewal or transfer of a licence is published in the *Gazette* as soon as is practicable after the grant, renewal or transfer.
- (2) The notice is to include —
 - (a) the date of the grant, renewal or transfer;
 - (b) the name and business address of the licensee;
 - (c) the term of the licence;
 - (d) the supply area or areas, or the part or parts of a supply area, to which the licence applies; and
 - (e) the place where a copy of the licence and any plan may be inspected under section 11U.
- (3) The Coordinator must ensure that written notice of a decision to refuse to grant, renew, or approve the transfer of, a licence, together with a statement of the reasons for the decision, is given to the applicant within 14 days after the decision is made.

[Section 11T inserted by No. 20 of 1999 s.8.]

11U. Licences to be available for inspection

The Coordinator is to make available at the Coordinator's office for inspection by members of the public during normal office hours —

- (a) a copy of every licence, as in force from time to time; and
- (b) if any supply area or part of a supply area to which a licence applies is specified by reference to a plan, a copy of the plan.

[Section 11U inserted by No. 20 of 1999 s.8.]

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s. 11V

11V. Other laws not affected

- (1) The grant, renewal or transfer of a licence does not affect the licensee's obligations to comply with any other written law in relation to the matters covered by the licence.
- (2) Without limiting subsection (1) or sections 90 and 92 of the *Gas Pipelines Access (Western Australia) Act 1998*, a licence has effect subject to the Gas Pipelines Access (Western Australia) Law.

[Section 11V inserted by No. 20 of 1999 s.8.]

11W. Amendment of licence

- (1) The Coordinator may determine that a licence is to be amended.
- (2) A licence must specify the procedure to be followed in making such a determination, including the manner in which an amendment is to be notified to the licensee, and the determination may only be made in accordance with that procedure.
- (3) An amendment cannot take effect until it is notified to the licensee under the procedure referred to in subsection (2).
- (4) If a licence is amended under this section the Coordinator must ensure that notice is published in the *Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 11U.
- (5) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

[Section 11W inserted by No. 20 of 1999 s.8.]

Division 5 — Interruption etc. of supply

[Heading inserted by No. 20 of 1999 s.8.]

11X. Interruption etc. of supply

- (1) A licensee may interrupt, suspend or restrict the supply of gas provided by the licensee if in the licensee's opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.
- (2) A licensee is not liable for any loss or damage that arises from any such interruption, suspension or restriction except to the extent that an agreement to which the licensee is a party provides otherwise.
- (3) A licensee must take reasonable steps to minimise the extent or duration of any such interruption, suspension or restriction.
- (4) This section is in addition to —
 - (a) the provisions of section 48 of the *Energy Corporations (Powers) Act 1979* that apply to a licensee by operation of section 11ZO; and
 - (b) any contractual rights that the licensee may have to interrupt, suspend or restrict the supply of gas,

and does not limit those provisions or rights.

[Section 11X inserted by No. 20 of 1999 s.8.]

Division 6 — Duties included in licences

[Heading inserted by No. 20 of 1999 s.8.]

11Y. Asset management system

- (1) It is a condition of every distribution licence that the licensee is to —
 - (a) provide for an asset management system in respect of the licensee's assets;

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- (b) notify details of the system and any substantial changes to it to the Coordinator; and
 - (c) not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the grant of the licence, provide the Coordinator with a report by an independent expert acceptable to the Coordinator as to the effectiveness of the system.
- (2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the supply of gas and in the operation and maintenance of, and, where relevant, the construction or alteration of, the distribution system.

[Section 11Y inserted by No. 20 of 1999 s.8.]

11Z. Compliance with technical standards

It is a condition of every licence that the licensee is to comply with the standards prescribed under the *Gas Standards Act 1972* and the *Liquid Petroleum Gas Act 1956* to the extent that those standards apply to the supply of gas by the licensee.

[Section 11Z inserted by No. 20 of 1999 s.8.]

11ZA. Performance audit

- (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the grant of the licence, provide the Coordinator with a performance audit conducted by an independent expert acceptable to the Coordinator.
- (2) A performance audit is an audit of the effectiveness of measures taken by the licensee to meet —
- (a) the standards referred to in section 11Z; and
 - (b) performance criteria specified in the licence.

- (3) The Coordinator is to present to the Minister a report on each performance audit within 2 months after his or her receipt of the audit.

[Section 11ZA inserted by No. 20 of 1999 s.8.]

Division 7 — Enforcement

[Heading inserted by No. 20 of 1999 s.8.]

11ZB. Failure to comply with licence

- (1) If, in the opinion of the Minister, a licensee contravenes a licence, the Minister may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.
- (2) If, in the opinion of the Minister, a licensee fails to comply with a notice under subsection (1), the Minister may, subject to section 11ZC, do one or more of the following —
- (a) serve a letter of reprimand on the licensee;
 - (b) order the licensee to pay a monetary penalty fixed by the Minister but not exceeding \$100 000;
 - (c) cause the contravention to be rectified to the satisfaction of the Minister.
- (3) Persons authorised by the Minister may enter any premises and do all things that are necessary for the purposes of subsection (2)(c).
- (4) The Minister may recover —
- (a) a penalty imposed under subsection (2)(b); or
 - (b) the costs and expenses of any action taken under subsection (2)(c),

in a court of competent jurisdiction as a debt due by the licensee to the Crown.

[Section 11ZB inserted by No. 20 of 1999 s.8.]

11ZC. Right of licensee to make submissions

The Minister is not to take any action under section 11ZB(2)(b) or (c) unless he or she has notified the licensee of the proposed action and given the licensee a reasonable opportunity to make submissions on the matter.

[Section 11ZC inserted by No. 20 of 1999 s.8.]

11ZD. Exception where public health endangered

If, in the opinion of the Minister, the health or safety of members of the public is or may be at risk as a result of the contravention of a licence, the Minister may cause the contravention to be rectified under section 11ZB(2)(c) without —

- (a) serving notice on the licensee under section 11ZB(1); or
- (b) complying with section 11ZC.

[Section 11ZD inserted by No. 20 of 1999 s.8.]

11ZE. Cancellation of licence

- (1) The Governor may cancel a licence if he or she is satisfied that the licensee —
 - (a) is in default as defined in subsection (2);
 - (b) has failed to pay a licence fee as required under section 11Q;
 - (c) in the case of a company, is an externally administered corporation within the meaning of the Corporations Law; or
 - (d) has within a period of 24 months been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10 000 or more or imprisonment for 12 months or more.

- (2) For the purposes of subsection (1)(a) a licensee is in default if the Governor is satisfied that —
- (a) the licensee has failed to comply with a term or condition of the licence;
 - (b) the failure is material in terms of the operation of the licence as a whole;
 - (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister’s opinion paragraph (b) applies to it; and
 - (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.
- (3) If a licence is cancelled under this section the Coordinator must ensure that notice of the cancellation is published in the *Gazette*.
- (4) Regulations may be made under section 26 providing, in the event of a licence being cancelled, for —
- (a) the vesting of assets, rights and interests of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling gas to be supplied after the cancellation;
 - (b) the conferral of powers and duties for that purpose;
 - (c) the discharge or assignment of liabilities;
 - (d) the disposal of property; and
 - (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).
- (5) If —
- (a) a distribution licence is cancelled under this section; and
 - (b) regulations of the kind referred to in subsection (4) (a) are made,

Division 9 applies, with all necessary changes, for the purpose of enabling gas to be supplied after the cancellation, as if

references in that Division to a licensee were references to the person in whom the assets, rights and interests of the former licensee are vested under the regulations.

[Section 11ZE inserted by No. 20 of 1999 s.8.]

11ZF. Duty to leave system in safe condition

- (1) Following the cancellation of a distribution licence under section 11ZE, the former licensee —
 - (a) is to ensure that any distribution system constructed or operated by the former licensee under the licence is left in a safe condition; and
 - (b) is not to remove any part of such a system except with the approval of the Minister.
- (2) If, in the opinion of the Minister, a former licensee contravenes subsection (1), the Minister may cause the contravention to be rectified to the satisfaction of the Minister.
- (3) Persons authorised by the Minister may enter any land or premises and do all things that are necessary for the purposes of subsection (2).
- (4) The Minister may recover the costs and expenses of any action taken under subsection (2) in a court of competent jurisdiction as a debt due by the former licensee to the Crown.

[Section 11ZF inserted by No. 20 of 1999 s.8.]

11ZG. Minister to be informed

The Coordinator is to —

- (a) monitor and report to the Minister on compliance by licensees with their licences;
- (b) inform the Minister about any failure by a licensee to meet performance criteria or other requirements of the licence; and

- (c) provide advice to the Minister for the purposes of sections 11ZB, 11ZD and 11ZF.

[Section 11ZG inserted by No. 20 of 1999 s.8.]

Division 8 — Review

[Heading inserted by No. 20 of 1999 s.8.]

11ZH. Review of Coordinator’s decision

- (1) In this section —
 “Board” means the Western Australian Gas Review Board established by the *Gas Pipelines Access (Western Australia) Act 1998*.
- (2) A person adversely affected by a decision of the Coordinator —
 - (a) to refuse to grant or renew a licence;
 - (b) to refuse to approve the transfer of a licence;
 - (c) as to the length of the period for which a licence is granted or renewed;
 - (d) as to any term or condition of a licence; or
 - (e) to amend a licence under section 11W,

may apply to the Board for a review of the decision within 14 days after receiving notice in writing of the decision from the Coordinator.

- (3) The Board must make its determination on the review within 90 days after receiving the application for review.
- (4) The Board may extend, or further extend, the period referred to in subsection (3) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension either because of its complexity or because of other special circumstances.

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- (5) If the Board extends the period, it must, before the end of the period, notify the applicant of the extension and the reasons for it.
- (6) An application under this section does not operate to stay the decision unless the Board otherwise determines.
- (7) On the application of a party to proceedings under this section, the Board may conduct the proceedings in the absence of the public.
- (8) The Board may require the Coordinator to give information and other assistance, and to make reports, as specified by the Board.
- (9) In proceedings under this section, the Board may make an order affirming, or setting aside or varying immediately or as from a specified future date, the decision under review and, for the purposes of the review, may exercise the same powers with respect to the subject matter of the decision as may be exercised with respect to that subject matter by the Coordinator.
- (10) The Board may make such orders (if any) as to costs in respect of a proceeding as it thinks fit.
- (11) The Board may refuse to review a decision if it considers that the application for review is trivial or vexatious.
- (12) A determination by the Board on the review of a decision has the same effect as if it were made by the Coordinator.
- (13) A reference in Part 6, Division 2 of the *Gas Pipelines Access (Western Australia) Act 1998* to proceedings before the Board includes a reference to proceedings under this section.

[Section 11ZH inserted by No. 20 of 1999 s.8.]

Division 9 — Powers in relation to land

[Heading inserted by No. 20 of 1999 s.8.]

11ZI. When this Division applies

The powers conferred by this Division may, subject to section 11ZE(5), only be exercised in relation to a distribution licence.

[Section 11ZI inserted by No. 20 of 1999 s.8.]

11ZJ. Power of public authority to grant easements etc.

(1) A public authority may grant to a licensee, on such terms and conditions as are agreed between the authority and the licensee, a relevant interest in respect of land held by the public authority in fee simple.

(2) In this section —

“public authority” means —

- (a) a Minister of the Crown;
- (b) an agency, authority or instrumentality of the Crown in right of the State or a local government; or
- (c) a body, whether corporate or unincorporate, that is established or continued for a public purpose by or under a written law and prescribed for the purposes of this definition;

“relevant interest” means a lease, easement, licence or other authority necessary or expedient to enable the licensee to construct, alter, operate or maintain a distribution system.

[Section 11ZJ inserted by No. 20 of 1999 s.8.]

11ZK. Taking of interest or easement for purposes of licence

(1) For the purpose of enabling a licensee to supply gas as authorised by a licence, an interest in land or easement over land

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may be taken under Part 9 of the *Land Administration Act 1997* as if for a public work within the meaning of that Act.

- (2) The power conferred by subsection (1) may only be exercised on the recommendation of the Minister responsible for the administration of this Act.
- (3) Any costs and expenses incurred in the taking of an interest or easement under subsection (1) —
 - (a) are to be paid by the licensee; and
 - (b) may be recovered in a court of competent jurisdiction as a debt due by the licensee to the Crown.
- (4) For the purposes of subsection (1) a reference to an interest in land in Part 9 of the *Land Administration Act 1997* includes an easement over land.

[Section 11ZK inserted by No. 20 of 1999 s.8.]

11ZL. Vesting of interest or easement

- (1) Despite anything in Part 9 of the *Land Administration Act 1997*, on the taking of an interest in land or easement over land under section 11ZK, the interest or easement vests in the licensee.
- (2) Part 9 of the *Land Administration Act 1997* applies, with all necessary changes, in relation to the recording or registering of the interest or easement taken under section 11ZK.

[Section 11ZL inserted by No. 20 of 1999 s.8.]

11ZM. Proceedings and liability

- (1) Proceedings in respect of compensation, or otherwise for the purpose of complying with Parts 9 and 10 of the *Land Administration Act 1997*, are to be taken against the licensee.
- (2) The licensee is liable in respect of the taking of an interest in land or easement over land under section 11ZK to the same extent as the Minister responsible for the administration of the

Land Administration Act 1997 would have been liable if the taking had been for the purpose of a public work.

[Section 11ZM inserted by No. 20 of 1999 s.8.]

11ZN. Easements in gross

An easement may be taken under section 11ZK without there being a dominant tenement and there may be made appurtenant or annexed to any such easement another easement or the benefit of a restriction as to the user of the land.

[Section 11ZN inserted by No. 20 of 1999 s.8.]

Division 10 — Extension of *Energy Corporations (Powers) Act 1979* to licensees

[Heading inserted by No. 20 of 1999 s.8.]

11ZO. Extension of certain provisions of *Energy Corporations (Powers) Act 1979*

- (1) A reference to a corporation in a provision of the *Energy Corporations (Powers) Act 1979* referred to in Part 1 of Schedule 2 includes —
 - (a) the holder of a distribution licence;
 - (b) any transferee of a distribution licence under section 11R; and
 - (c) any person in whom the assets, rights and interests of a former holder of a distribution licence are vested under regulations referred to in section 11ZE(4).
- (2) A reference to a corporation in a provision of the *Energy Corporations (Powers) Act 1979* referred to in Part 2 of Schedule 2 includes —
 - (a) the holder of a trading licence;
 - (b) any transferee of a trading licence under section 11R; and

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- (c) any person in whom the assets, rights and interests of a former holder of a trading licence are vested under regulations referred to in section 11ZE(4).
- (3) Regulations may be made under section 26 in terms that —
 - (a) restrict the operation of, or add a further requirement to, a prescribed provision in relation to a licensee or class of licensees;
 - (b) impose conditions or restrictions on the doing of any thing authorised by a prescribed provision by a licensee or a member of a class of licensees;
 - (c) prohibit a licensee or a member of a class of licensees from doing any thing authorised by a prescribed provision; or
 - (d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing authorised by a prescribed provision.

- (4) In subsection (3) —

“licensee” includes a person referred to in subsection (1)(c) or (2)(c);

“prescribed provision” means a provision of the *Energy Corporations (Powers) Act 1979* referred to in Part 1 or 2 of Schedule 2.

[Section 11ZO inserted by No. 20 of 1999 s.8.]

Part 3 — Inspectors

12. Designation of inspectors

- (1) The Coordinator may designate persons to be inspectors for the purposes of the *Electricity Act 1945*.
- (2) The Director may designate persons to be inspectors for the purposes of —
 - (a) the *Electricity Act 1945*; or
 - (b) the *Gas Standards Act 1972*,or both of those Acts.
- (3) An instrument of designation of an inspector is to specify —
 - (a) the classification of that inspector by reference to the form of energy to which his or her powers relate;
 - (b) the powers of inspection that the inspector may exercise; and
 - (c) any limitations or restrictions that apply to that exercise.
- (4) A person is not to be designated as an inspector unless he or she has the qualifications or experience, or both, prescribed for the classification that applies to him or her.
- (5) Nothing in this section precludes the designation of the Director as an inspector under this section.

13. Certificates of designation

- (1) The Coordinator or the Director, as the case may require, is to issue to an inspector a certificate specifying the matters referred to in section 12(3) that apply to that inspector.
- (2) An inspector must produce the certificate whenever requested to do so by any person apparently having charge of any land, premises, or thing in respect of which the inspector has exercised or is about to exercise any power.

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- (3) Production of the certificate is evidence in any court of the designation, classification and powers of the inspector to whom that certificate relates.

14. Powers of inspection etc.

An inspector may, subject to this Part and the terms of his or her designation as an inspector —

- (a) enter without notice on or into any land, premises or thing where he or she has reason to believe that the generation, transmission, distribution, supply, or use of the form of energy to which his or her powers relate is or may be taking place irrespective of the source or origin of the energy, or where he or she has reason to believe any plant, works, apparatus or installation used for any of those purposes is or may be situated;
- (b) require any person having the control or custody of any land, premises or thing which the inspector is authorised to inspect to furnish reasonable access to it and other reasonable assistance;
- (c) inspect any plant, works, apparatus or installation used or intended to be used for or in connection with the generation, transmission, distribution, supply or use of the form of energy to which his or her powers relate;
- (d) make any inspection, examination, sampling, inquiry or test, and request any information (including by way of answers to questions) and production of any records or other documents, that he or she considers necessary or desirable to ascertain —
 - (i) whether any Act to which his or her powers extend, or any requirement made under that Act, is being or has been complied with;
 - (ii) whether any order, condition, restriction, or limitation is being or has been observed;

- (iii) the cause, results and other aspects of any failure of any system, plant, works, apparatus or installation, including damage and other matters arising from or suspected of being related to the failure;
- (iv) the cause of any death, personal injury or damage to property which is or may be attributable to the form of energy to which his or her powers relate.

15. Incriminating statements

Where a person, before making a statement or answering a question for the purposes of section 14(d), objects to having to make it on the ground that the statement might tend to incriminate him, any statement made after that objection —

- (a) is not admissible in evidence in any prosecution against that person for any offence other than an offence against section 20;
- (b) if recorded, in writing or otherwise, must set out the fact of the objection having been made.

16. Inspector may be accompanied

An inspector may be accompanied by any person that the inspector thinks necessary to assist the inspector in the performance of his or her functions.

17. Inspector to comply with reasonable requests

In the performance of his or her functions an inspector is to comply so far as is practicable with any reasonable requirement of a person owning or using the land, premises, or thing inspected.

18. Inspector may issue order

- (1) If an inspector is of the opinion that any thing that the inspector is authorised to inspect —
 - (a) does not conform with any Act to which his or her powers extend; or

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(b) is unsafe,

the inspector may exercise either or both of the powers conferred by subsection (2).

(2) An inspector may —

(a) by order in writing prohibit the use of that thing absolutely or except in accordance with any condition or restriction; and

(b) disconnect the supply of energy to that thing, or to the premises on which it is situated, until the inspector is satisfied that the thing conforms with the Act or is safe.

19. Appeal

(1) Any person aggrieved by any order made by an inspector under section 18 may appeal in the prescribed manner to —

(a) the Coordinator, if the inspector was designated under section 12 by the Coordinator; or

(b) the Director, if the inspector was designated under section 12 by the Director.

(2) The Coordinator or the Director, as the case may be, may confirm, reverse or vary the order and his or her decision is final.

(3) An order has effect pending the determination of the appeal.

20. Offences etc.

(1) A person must not without reasonable excuse —

(a) obstruct an inspector, or a person to whom section 16 applies, in the performance of his or her functions; or

(b) fail to comply with a requirement under section 14(b).

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

- (2) A person must not without reasonable excuse, and subject to section 15, fail to comply with a request under section 14(d).
Penalty for an individual: \$5 000.
Penalty for a body corporate: \$20 000.
- (3) A person must not give false or misleading information in response to a request under section 14(d).
Penalty for an individual: \$5 000.
Penalty for a body corporate: \$20 000.
- (4) A person must not contravene or fail to comply with an order under section 18.
Penalty for an individual: \$5 000.
Penalty for a body corporate: \$20 000.

Part 4 — Obtaining of information by Coordinator

21. Coordinator may require information to be given

- (1) The Coordinator may request a person, or the occupier of any premises, to give prescribed information to the Coordinator, including information by way of periodical returns at specified times, if —
 - (a) the information is required to enable the Coordinator to perform his or her functions; and
 - (b) the Coordinator has reasonable grounds for believing that the person is able to give the information.
- (2) The request must —
 - (a) be made by written notice given to the person or the occupier; and
 - (b) specify the time before which the information is to be given.
- (3) The information must be given —
 - (a) in writing; and
 - (b) before the time specified in the request.
- (4) In this section “**prescribed information**”, in relation to a person or occupier, means information as to —
 - (a) the quantity, quality, service or supply of any energy held or required by the person or occupier in the State, or imported into the State by the person or occupier;
 - (b) facilities available to or held by the person or occupier for storing or distributing energy;
 - (c) any works, plant, equipment, apparatus or process that consumes energy and that is used by or available to the person or occupier.

22. Trade secrets

- (1) Where a request is made under section 21 a person may object to complying with it on the ground that it will result in the disclosure of a trade secret.
- (2) An objection must be made in writing served on the Minister within 7 days after the request is received.
- (3) The Minister may by notice in writing exempt the objector from the obligation to comply with the request either in whole or in part.
- (4) If the Minister refuses to exempt the objector or grants a partial exemption the objector may, within 21 days of receiving notice of the Minister's decision, appeal to a Judge of the District Court sitting in chambers.
- (5) The Judge may make such order on the appeal, including an order as to costs, as he or she thinks fit and that decision is final.
- (6) For the purposes of this section “**trade secret**” means any knowledge or information relating to technology, marketing, energy, or energy resources or reserves, or as to the business of the person objecting, that might reasonably be expected adversely to affect the business or interests of that person if disclosed to any other person.

[Section 22 amended by No. 57 of 1997 s.53.]

23. Obligation to comply with request

- (1) Subject to section 22, a person must not, without reasonable excuse, fail to comply with a request under section 21.
Penalty for an individual: \$5 000.
Penalty for a body corporate: \$20 000.
- (2) A person must not give false or misleading information in response to a request under section 21.
Penalty for an individual: \$5 000.
Penalty for a body corporate: \$20 000.

24. Confidentiality

- (1) The Coordinator, the Director or any person performing functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —
- (a) for the purpose of performing functions under this Act; or
 - (b) as required or allowed by this Act or under a written law; or
 - (c) with the written consent of the person to whom the information relates.

Penalty: (a) in the case of information to which section 21 applies, \$10 000 and imprisonment for 12 months;

(b) in any other case \$5 000.

- (2) Subsection (1) does not apply to the disclosure of any summary or statistical information that could not reasonably be expected to enable particulars relating to any person or business to be ascertained.

Part 5 — General

24A. Gas supply system emergencies

- (1) Schedule 3 applies with respect to gas supply system emergencies.
- (2) To the extent that Schedule 3 or anything in an order under that Schedule is inconsistent with any safety provision of the *Petroleum Pipelines Act 1969* or of a licence under that Act or under Part 2A of the *Energy Coordination Act 1994*, the safety provision prevails and the inconsistent provision of Schedule 3 or the order has no effect.
- (3) In subsection (2) —
“**safety provision**” means a provision the effect of which is to protect a person from injury or property from damage
[Section 24A inserted by No. 58 of 1999 s.49.]

25. Establishment of committees

- (1) The Minister may establish committees for the purpose of considering and advising on a particular matter specified by the Minister.
- (2) Subject to subsection (3), the Minister may —
 - (a) prescribe the membership, constitution and procedures of; and
 - (b) discharge, alter, or reconstitute,any such committee.
- (3) The Coordinator or his nominee is to be the chairperson of every committee established under this section.
- (4) The Minister may determine that a member of a committee is to receive remuneration or an allowance, and if the Minister so determines he or she is to fix the remuneration or allowance on

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the recommendation of the Minister for Public Sector Management.

- (5) Subject to this section, a committee may determine its own procedure.
- (6) The Coordinator is to provide a committee with such support services as it may reasonably require.

26. Regulations

- (1) The Governor may make any regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may —
 - (a) fix the fees and charges, or the means of determining the fees and charges, that, unless otherwise agreed, are to be payable by customers of a prescribed class in relation to —
 - (i) the supply of gas in prescribed circumstances; or
 - (ii) the provision of any prescribed service;
 - (b) deal with any other matter relating to the fixing or determination of fees and charges;
 - (c) where fees and charges, or the means of determining fees and charges, are fixed under paragraph (a), require a person supplying the gas or providing the service to offer customers of the prescribed class a form of contract that has been approved by the Coordinator.
- (3) Without limiting subsection (1), regulations may provide —
 - (a) for the determination or approval by the Coordinator of gas quality specifications for the purposes of a contract in relation to the sale, supply or transportation of gas

transported (or to be transported) through the privatised DBNGP system; and

(b) for the giving of effect to the determination or approval.

(4) Regulations referred to in subsection (3)(b) may provide that they apply despite being inconsistent with any provisions in the contract.

(5) In subsection (3) —

“privatised DBNGP system” has the same meaning as it has in the *Dampier to Bunbury Pipeline Act 1997*.

[Section 26 amended by No. 58 of 1999 ss.50 and 109.]

27. Review

(1) The Minister is to carry out a review of the operations and effectiveness of the Coordinator and the Director as soon as is practicable after the expiry of 5 years from the commencement of this Act and in the course of that review the Minister is to consider and have regard to —

(a) the desirability of the continuation of the functions of the Coordinator and the Director; and

(b) such other matters as appear to the Minister to be relevant to the operations and effectiveness of the Coordinator and the Director.

(2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause that report to be laid before each House of Parliament as soon as practicable.

Schedule 1 — Licence terms and conditions

[s. 11M]

A licence may include provisions —

- (a) requiring the licensee to enter into agreements on specified terms or on terms of a specified type, other than agreements relating to the provision of access to gas distribution capacity that are covered by the Gas Pipelines Access (Western Australia) Law;
- (b) requiring the licensee to observe specified industry codes with such modifications or exemptions as may be determined by the Coordinator;
- (c) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
- (d) preventing the licensee from engaging in or undertaking specified business activities or any other business in the gas industry in the State;
- (e) if the licence is a trading licence, specifying methods or principles to be applied by the licensee in determining its fees or charges;
- (f) specifying methods or standards to be applied in supplying gas under the authority of the licence;
- (g) specifying procedures for surrender of the licence;
- (h) requiring the licensee to provide specified information relating to the activities of the licensee under the licence to the Coordinator in the manner and form determined by the Coordinator;
- (i) regulating the construction, alteration, operation or maintenance of a distribution system;
- (ia) if the licence is a distribution licence, requiring the licensee to undertake an extension of, or an expansion to, the distribution system located within an area specified in the licence;
- (ib) if the licence is a trading licence, requiring the licensee to ensure the supply of gas to existing or new customers who require it, in such circumstances as may be specified in the licence whether by reference to a class of gas customer, the amount of gas to be supplied to the customer or customers of a class, where the gas is to be consumed, or any other factor;

- (ic) if the licence is a trading licence, regulating the extent to which the licensee's gas customers may be of a particular class;
- (id) requiring the licensee to lodge with the Coordinator securities in an amount and of a nature acceptable to the Coordinator securing the performance by the licensee of the requirements, responsibilities and obligations under the licence.
- (j) relating to the performance of functions by the licensee including —
 - (i) the range of functions that may be performed by the licensee;
 - (ii) performance criteria to be met by the licensee; and
 - (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;
- (k) if the licence is a trading licence, specifying —
 - (i) the terms and conditions of any customer contract which an owner or occupier of land is required to enter into with the licensee in the absence of any express agreement between the customer and the licensee to the contrary; and
 - (ii) any limitation on the capacity of the parties by express agreement to exclude, modify or restrict the terms and conditions of the customer contract;
- (l) if the licence is a trading licence, specifying standards of customer service to be applied in supplying gas under the authority of the licence;
- (m) relating to obligations of the licensee with respect to public authorities and other licensees; and
- (n) relating to the disposal or transfer of property, rights or liabilities of a specified kind either during the term of the licence or on or after its expiration by effluxion of time including provisions —
 - (i) prohibiting any disposal or transfer of property except with the approval of a specified person;

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- (ii) prohibiting the giving of any encumbrance over specified property except with the approval of the Coordinator;
- (iii) requiring the transfer of property, rights or liabilities of a specified kind to a specified person on or within a specified time after the expiration of the licence;
- (iv) with respect to the consideration to be provided in respect of any disposal or transfer;
- (v) with respect to the arbitration of disputes that arise in connection with any disposal or transfer; and
- (vi) of a supplementary, consequential or transitional nature in relation to any disposal or transfer.

[Schedule 1 inserted by No. 20 of 1999 s.9; amended by No. 58 of 1999 s.51.]

Schedule 2 — Provisions of *Energy Corporations (Powers) Act 1979* that apply to licensees

[s. 11ZO]

**Part 1 — Provisions applicable in relation to distribution
licences**

s. 4(1)	s. 48	s. 75
(definition of	s. 49	s. 76
“service	s. 50	s. 77
apparatus”)	s. 51	s. 79
s. 4(2)	s. 52	s. 84(2) & (3)
s. 40	s. 53	s. 120
s. 43	s. 66	s. 121
s. 46(7), (8),	s. 67	
(11), (12),	s. 67A	
(14) & (16)	s. 74	

**Part 2 — Provisions applicable in relation to trading
licences**

s. 4(1)	s. 43	s. 67
(definition of	s. 46(7), (8),	s. 67A
“service	(11) & (16)	s. 74
apparatus”)	s. 48	s. 79
s. 4(2)	s. 66	s. 84(2) & (3)

[Schedule 2 inserted by No. 20 of 1999 s.9.]

Schedule 3 — Gas supply system emergencies

[s. 24A]

1. Definitions

(1) In this Schedule —

“**emergency**” means —

- (a) any event or circumstance in relation to a supply system by reason of which the supply of gas from it is, or in the opinion of the Coordinator may reasonably be expected to be, seriously affected; or
- (b) any event or circumstance in relation to any act, matter or thing by reason of which the supply of gas from a supply system is, or in the opinion of the Coordinator may reasonably be expected to be, seriously affected,

that, in the opinion of the operator of the supply system, requires the immediate exercise of powers given by clause 2 or, in the opinion of the Coordinator, requires the exercise of powers given by clause 3(1) or 4;

“**emergency order**” means an order under clause 3(1);

“**seriously affected**” means affected to the extent that —

- (a) any life or property is or may be endangered; or
- (b) the supply of gas to a significant proportion of the users of gas delivered either directly or indirectly by the supply system is, may be, or should be, reduced or terminated;

“**supply system**” means the privatised DBNGP system within the meaning of the *Dampier to Bunbury Pipeline Act 1997* or any distribution system operated within the State.

(2) For the purposes of the definition of “emergency” the supply of gas from a supply system is to be regarded as being affected if the obtaining or manner of delivery of gas from it is affected.

2. Action by operator

(1) If a state of emergency exists in relation to a supply system, the operator of the supply system is to notify the Coordinator of the state of emergency as soon as practicable after becoming aware of it.

- (2) If a state of emergency exists which, by reason of the nature of the emergency, does not reasonably allow sufficient time for the emergency to be avoided or mitigated or the continued transport and supply of gas to be ensured through the exercise by the Coordinator of powers given by clause 3, the operator of the supply system concerned may take any immediate measures that seem appropriate to avoid or mitigate the emergency, or to ensure the continued transport and supply of gas, in a manner that seems appropriate.

3. Emergency order

- (1) If a state of emergency exists, the Coordinator may make any order that the Coordinator considers necessary and the circumstances reasonably allow, to —
- (a) provide for —
 - (i) gas to be transported to or by any person or class of persons, or upon any premises or class of premises, within the whole or any portion of the State, or for any particular purpose or purposes; and
 - (ii) the control, regulation, imposition of restrictions upon, curtailment, interruption, prohibition, or termination, of the supply or use of gas to or by any person or class of persons, or upon any premises or class of premises, within the whole or any portion of the State, or for any particular purpose or purposes, for any period or periods specified in the order;
 - (b) provide for the exemption of any person or class of persons, or of any premises or class of premises, or of any place or institution or class of place or institution, from the operation of the whole or part of the order;
 - (c) provide for the delegation, either generally or specifically, to any person or body of any authority or discretion of the Coordinator under this Schedule.
- (2) An emergency order has effect —
- (a) in the portion of the State specified in it; and

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- (b) on and from the time the order is made, or such later time as is specified in the order,

and it ceases to have effect 7 days after it first has effect, unless previously renewed or cancelled.

- (3) An emergency order is to be —
 - (a) published for general information in any portion of the State affected by the order as soon as practicable and in a manner that the Coordinator considers likely to be appropriate having regard to the circumstances and what may be practicable;
 - (b) confirmed thereafter by notice in the *Gazette* setting out —
 - (i) the time and date on which it was made; and
 - (ii) the time, date and manner of its original publication;and
 - (c) if the manner of publication under paragraph (a) was not by means of a notice in a newspaper, made known in that manner as soon as circumstances permit.
- (4) An emergency order may be renewed, cancelled or varied by the Coordinator by a subsequent order.

4. Emergency action by Coordinator

If a state of emergency exists, the Coordinator may take any measures considered appropriate in relation to the emergency, or in relation to the consequences of that emergency, to diminish the effect of, or to terminate, that emergency, including measures to discontinue supply to any person considered by the Coordinator to be contravening an emergency order.

5. Liability to punishment continues

The cancellation or variation of an emergency order does not affect —

- (a) any penalty or punishment incurred, imposed, or liable to be incurred or imposed, before the cancellation or variation; or
- (b) any investigation or legal proceedings in respect of such a penalty or punishment,

despite any other enactment.

6. Protection

Despite any obligation or duty that a person has to effect or continue any supply of gas, neither that person, the Coordinator, the State, any Minister of the Crown, nor an officer or servant of any of them, is liable for —

- (a) any interruption, diminution, or termination of any supply that arises by reason of any act done in good faith in the exercise or in purported exercise of powers given by this Schedule; or
- (b) any loss or damage consequential upon an interruption, diminution, or termination of supply referred to in paragraph (a).

7. Powers of entry

- (1) While a state of emergency exists and for so long afterwards as the circumstances reasonably require, a person given powers by this Schedule may, without notice and without any warrant other than this subclause, immediately enter onto or into any land, premises or thing if it is necessary to do so to exercise any of those powers.
- (2) Any question as to what is a necessary entry may be determined by the person exercising the power of entry, and in any proceedings the question is to be presumed, in the absence of evidence to the contrary, to have been determined in good faith.
- (3) A person exercising the power of entry given by this clause is required, as soon as practicable, to —
 - (a) remove or cause to be removed any machinery, equipment or other thing that the person brought or caused to be brought onto or into the land, premises, or thing for the purpose for which entry was made; and
 - (b) make good any physical damage caused in the course of exercising the powers for the purposes of which entry was made, or pay compensation or effect restoration, rehabilitation or restitution.
- (4) If entry is effected under this clause for the purpose of exercising powers under clause 3 or 4, the Coordinator may recover as a debt from the operator of the supply system concerned the costs of any

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expenses incurred in dealing with that emergency, including any expenses incurred in complying with obligations under subclause (3).

- (5) While an emergency order is in force, any person authorised by the Coordinator in writing to do so may, without prior notice, enter premises supplied with gas and there make any search or examination necessary to determine whether the order is, in respect of those premises, being contravened in any respect.

8. Offences

- (1) A person —
- (a) obstructing a person in the exercise of a function under this Schedule; or
 - (b) contravening an emergency order,

commits an offence.

- (2) The penalty for an offence under subclause (1) is —
- (a) in the case of an individual, \$5 000;
 - (b) in the case of a body corporate, \$50 000.

[Schedule 3 inserted by No. 58 of 1999 s.52.]

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Notes

¹ This reprint is a compilation as at 5 May 2000 of the *Energy Coordination Act 1994* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Energy Coordination Act 1994</i>	71 of 1994	9 December 1994	Proclaimed 1 January 1995 (see section 2 and <i>Gazette</i> 23 December 1994 p.7069)	
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 53	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Gas Pipelines Access (Western Australia) Act 1998</i> , section 89	65 of 1998	15 January 1999	Proclaimed 9 February 1999 (see section 2 and <i>Gazette</i> 8 February 1999 p.441)	
<i>Energy Coordination Amendment Act 1999</i>	20 of 1999	24 June 1999	Proclaimed 16 October 1999 (see section 2 and <i>Gazette</i> 15 October 1999 p.4865)	
<i>Gas Corporation (Business Disposal) Act 1999</i> , sections 47-52, 74-75 and 109	58 of 1999	24 December 1999	Sections 46 to 52: operative 24 December 1999 (see section 2(1)); section 109 operative 1 January 2000 (see section 2(7)); sections 74-75 deemed operative immediately before distribution licence granted (see section 2(2))	

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
Board.....	11ZH(1)
classification	11N(2)
Coordinator	3
Director	3
distribution licence.....	3
distribution system.....	3
document.....	11(4)
electricity	3
emergency.....	Sch. 3, cl.1(1)
emergency order.....	Sch. 3, cl.1(1)
energy.....	3
existing operator.....	11I(1)
gas	3
information.....	11(4)
inspector	3
licence	3
licensee.....	3, 11ZO(4)
prescribed information	21(4)
prescribed provision.....	11ZO(4)
privatised DBNGP system	26(5)
public authority	11ZJ(2)
relevant interest.....	11ZJ(2)
safety provision.....	24A(3)
seriously affected	Sch. 3, cl.1(1)
small use customer.....	3
supply.....	3
supply area	3
supply system.....	Sch. 3, cl.1(1)
trade secret	22(6)
trading licence.....	3