

Western Australia

Gas Services Information Act 2012

As at 10 Apr 2012

No. 5 of 2012

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Gas Services Information Act 2012

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Defined Terms

Western Australia

Gas Services Information Act 2012

No. 5 of 2012

An Act to provide for the establishment and operation of a gas bulletin board and the preparation and publication of a gas statement of opportunities, and for related purposes.

[Assented to 10 April 2012]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Gas Services Information Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

- (1) In this Act —

Board has the meaning given in the *Energy Arbitration and Review Act 1998* section 49;

civil monetary liability means a liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include a liability to pay a civil penalty under this Act;

gas market participant means —

- (a) a service provider;
- (b) a user;
- (c) a producer;
- (d) a storage provider;
- (e) a person prescribed by the regulations for the purposes of this definition;

GBB means the gas bulletin board;

GSOO means the gas statement of opportunities;

operator means the person on whom functions are conferred under section 7(2)(a);

protected information means information given to the operator under an obligation under this Act or another Act —

- (a) that is specified to be confidential by the person who gave it (unless it is not reasonable in the circumstances to so specify the information); or
- (b) that by its nature is confidential; or
- (c) that is classified as confidential under the regulations or the rules;

rules means the rules made under section 8;

user means a person who —

- (a) is a party to a contract with a service provider under which the service provider provides or intends to provide a pipeline service to that person by means of a pipeline; or
- (b) has a right under an access determination to be provided with a pipeline service by means of a pipeline; or
- (c) is an end user of a class prescribed by the regulations for the purposes of this paragraph.

(2) Unless the contrary intention appears, a term has the same meaning in this Act as it has in the *National Gas Access (Western Australia) Law* except that, for the purposes of this Act, the definition of **pipeline** is to be read as —

- (a) not including a pipeline that is a part of a distribution system (as defined in the *Energy Coordination Act 1994* section 3(1)); and
- (b) including a meter station or gate station, through which gas may flow into a distribution system (as so defined).

Part 2 — Gas bulletin board and gas statement of opportunities

4. Gas bulletin board

- (1) The *gas bulletin board* is a website the primary purpose of which is to include information relating to short and near term natural gas supply and demand and natural gas transmission and storage capacity in the State.
- (2) The gas bulletin board may include —
 - (a) information relating to fuels other than natural gas, to the extent relevant to the primary purpose of the GBB;
 - (b) information that is required to be included on the GBB under another written law;
 - (c) information relating to offers to buy and sell natural gas and natural gas transmission capacity.

5. Gas statement of opportunities

- (1) The *gas statement of opportunities* is a periodic statement the primary purpose of which is to include information and assessments relating to medium and long term natural gas supply and demand and natural gas transmission and storage capacity in the State.
- (2) The gas statement of opportunities may include information and assessments relating to fuels other than natural gas, to the extent relevant to the primary purpose of the GSOO.

6. Objectives of the GBB and GSOO

The objectives of the GBB and GSOO are to promote the long term interests of consumers of natural gas in relation to —

- (a) the security, reliability and availability of the supply of natural gas in the State;
- (b) the efficient operation and use of natural gas services in the State;

- (c) the efficient investment in natural gas services in the State;
- (d) the facilitation of competition in the use of natural gas services in the State.

7. Regulations for the GBB and GSOO

- (1) The regulations are to provide for —
 - (a) the establishment and operation of a GBB; and
 - (b) the preparation and publication of a GSOO.
- (2) The regulations may —
 - (a) confer on a person functions relating to establishing and operating the GBB and preparing and publishing the GSOO;
 - (b) confer, or authorise the rules to confer, on the Minister or another person functions relating to the functions referred to in paragraph (a);
 - (c) make amendments to subsidiary legislation made under any other Act consequential on, and relating to, a function having been conferred on a person under paragraph (a) or (b);
 - (d) impose obligations on gas market participants to provide to the operator information specified in the regulations or the rules;
 - (e) authorise the operator to impose obligations on gas market participants (generally or individually) to provide to the operator information requested by the operator;
 - (f) provide for compliance with obligations under paragraphs (d) and (e);
 - (g) provide for the relationship between the Minister, or another Minister, and a person referred to in paragraph (a) or (b) in respect of the performance of the person's functions generally;

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- (h) provide, or authorise the rules to provide, for the resolution of disputes arising under this Act;
 - (i) control the use and disclosure of protected information.
- (3) The functions conferred under subsection (2)(a) must include the following functions —
 - (a) to collect, collate and manage information for the GBB and the GSOO;
 - (b) to derive from the information referred to in paragraph (a) information for inclusion on the GBB or in the GSOO;
 - (c) to include information on the GBB of the kinds that may or must be included on the GBB under this Act;
 - (d) to prepare and publish the GSOO periodically.
- (4) If conferring a function under subsection (2)(a) or (b), or the making of subsidiary legislation under subsection (2)(c), would otherwise be inconsistent with a written law —
 - (a) the function may be conferred despite the written law; and
 - (b) the subsidiary legislation may be amended despite the written law.
- (5) The persons on whom functions may be conferred under subsection (2)(a) or (b) include —
 - (a) the person from time to time holding, acting in or lawfully performing the functions of, an office under a written law;
 - (b) a body established under a written law.

8. Rules for the GBB and GSOO

- (1) The regulations are to provide for there to be rules, relating to the form, content and operation of the GBB and to the form and content of the GSOO, that set out or deal with, but are not

limited to, the matters prescribed by the regulations for the purposes of this subsection.

- (2) The regulations may —
- (a) provide that a provision of the rules specified in the regulations, or of a class specified in the regulations, is a civil penalty provision;
 - (b) prescribe, for a contravention of a civil penalty provision —
 - (i) an amount not exceeding \$100 000; and
 - (ii) in addition, if the contravention is of a continuing nature, a daily amount not exceeding \$20 000 for each day or part of a day during which the contravention continues,that may, in accordance with the regulations, be demanded from or imposed upon a person who contravenes the provision;
 - (c) provide for demands for the payment of amounts referred to in paragraph (b) not exceeding \$20 000 and the enforcement of demands for their payment;
 - (d) provide for and regulate the taking of proceedings in respect of alleged contraventions of provisions of the rules, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions;
 - (e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied;
 - (f) provide for the establishment of the initial rules;
 - (g) provide for the amendment, or repeal and replacement, of the rules by rules made in accordance with the regulations and the rules;

- (h) provide for the publication, commencement, and laying before each House of Parliament, of the initial rules and rules amending, or repealing and replacing, the rules.
- (3) For the purposes of subsection (2), the following also constitute contravening a provision of the rules —
 - (a) attempting to contravene the provision;
 - (b) aiding, abetting, counselling or procuring a person to contravene the provision;
 - (c) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene the provision;
 - (d) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the provision;
 - (e) conspiring with others to contravene the provision.
- (4) The *Interpretation Act 1984* sections 42 and 43(6) do not apply to the rules.

9. Regulations as to fees and charges for performance of functions

- (1) The regulations may make provision for and in relation to the imposition and payment of fees and charges in connection with the recovery of costs incurred in the performance of functions under this Act, including by authorising the rules to provide for fees and charges in relation to functions specified in the regulations.
- (2) In subsection (1), the reference to the performance of functions under this Act includes a reference to the performance of functions under another Act relating to the performance of functions under this Act.
- (3) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function the regulations or rules may provide for the method of calculating

the fee or charge, including calculation according to the cost of performing that function.

- (4) The regulations may —
 - (a) authorise the Board to fix, and determine the incidence of liability for, the cost and expenses of the hearing and determination of proceedings before the Board; and
 - (b) make any incidental or supplementary provision that is expedient for the purposes of paragraph (a).
- (5) The application of subsection (4) extends to the cost and expenses of proceedings that are commenced but discontinued or otherwise not brought to finality.

10. No reliance on duty of confidence to avoid obligation to provide information

A person cannot rely on any duty of confidence as a ground on which to refuse to comply with an obligation to provide information under this Act.

11. Delegation of functions

- (1) A person on whom a function is conferred under section 7(2)(a) may, in writing, delegate that function to another person.
- (2) A person performing a function that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

12. Review by the Board

- (1) Application may be made to the Board for the review of a decision of a person on whom a function is conferred under section 7(2)(a) or (b) in connection with the performance of that function, other than a decision of a class specified in the regulations.
- (2) The regulations may provide for the powers of the Board in relation to such reviews.

13. Protection of information

- (1) The operator must take all reasonable measures to protect protected information from unauthorised use or disclosure.
- (2) The operator makes unauthorised use, or an unauthorised disclosure, of protected information if the use or disclosure is not authorised under this Act.

Note: The provisions applied by subsection (4) authorise the disclosure of protected information in certain specific circumstances.

- (3) The operator may use protected information for the purposes of its functions under this Act, subject to any requirements or limitations under this Act.
- (4) The National Gas Law Chapter 2 Part 6 Division 7 Subdivision 2 set out in the Schedule to the *National Gas (South Australia) Act 2008* (South Australia) (as in force at the commencement of this Act) applies to protected information —
 - (a) as if the Subdivision were part of this Act; and
 - (b) as if the references to AEMO were references to the operator; and
 - (c) with the modifications set out in the regulations (if any); and
 - (d) with any other necessary modifications.
- (5) Subsections (1) to (4) have effect while there are no regulations under this Act controlling the use and disclosure of protected information.
- (6) The Governor cannot make regulations under this Act controlling the use and disclosure of protected information unless the Minister is satisfied that gas market participants have been adequately consulted on the making of the regulations.
- (7) Subsections (5) and (6) do not apply to regulations made for the purposes of subsection (3).

14. Immunity from liability

- (1) Neither the operator nor an officer or employee of the operator incurs any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Act unless the act or omission is done or made in bad faith or through negligence.
- (2) A person who gives information that the person is obliged to give to the operator under this Act or another written law does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (1) or (2) done or made through negligence cannot exceed the maximum amount prescribed in the regulations.
- (4) Without limiting subsection (3), the regulations may —
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the regulations;
 - (b) prescribe a different maximum amount according to the persons to whom, or the events, circumstances, losses or periods in respect of which, it applies;
 - (c) prescribe the manner in which a civil monetary liability is to be divided amongst claimants.
- (5) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.

15. Regulations

- (1) The Governor may make 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.

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- (2) The regulations may —
 - (a) provide that contravention of a provision of the regulations is an offence;
 - (b) provide for an offence to be punishable on conviction by the imposition of a penalty not exceeding \$100 000 and, in addition, if the contravention is of a continuing nature, a daily penalty not exceeding \$20 000 for each day or part of a day during which the contravention continues.
- (3) The regulations may adopt the text of any published document specified in the regulations —
 - (a) as that text exists at a particular date; or
 - (b) as that text may from time to time be amended.
- (4) The text may be adopted —
 - (a) wholly or in part; and
 - (b) as modified by the regulations.
- (5) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in any text that is itself directly or indirectly adopted).
- (6) The adoption of text is of no effect unless a copy of —
 - (a) the adopted text; and
 - (b) the amendments to the text or the text as amended (if relevant),can at all reasonable times be inspected or purchased by the public.

Part 3 — Consequential amendments

16. *Energy Arbitration and Review Act 1998* amended

- (1) This section amends the *Energy Arbitration and Review Act 1998*.
- (2) In section 50(2A) delete “2004.” and insert:

2004 and under the *Gas Services Information Act 2012*.



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.....	3(1)
civil monetary liability.....	3(1)
gas bulletin board.....	4(1)
gas market participant.....	3(1)
gas statement of opportunities.....	5(1)
GBB.....	3(1)
GSOO.....	3(1)
operator.....	3(1)
protected information.....	3(1)
rules.....	3(1)
user.....	3(1)