Western Australia

Gas Supply (Gas Quality Specifications) Act 2009

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Defined terms

Western Australia

Gas Supply (Gas Quality Specifications) Act 2009

An Act to provide for —

- **the supply of gas that does not meet certain gas quality specifications; and**
- **the control of the quality of such gas and its impact on gas transmission pipelines; and**
- **the payment of compensation to certain gas consumers, operators of gas transmission pipelines and operators of gas storage facilities who are adversely affected by receiving such gas; and**
- **a programme to modify or replace certain gas appliances and installations that might be rendered unsafe by the supply of such gas, in preparation for its supply; and**
- **the operation of an account for contributions by gas producers to the costs of the programme,**

and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Gas Supply (Gas Quality Specifications) Act 2009*.

2. Commencement

This Act comes into operation as follows —

(a) Part 1 — 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, unless the contrary intention appears —

access determination means a decision or determination, made under a Gas Access Law, on access to a pipeline service provided by means of a pipeline, that has not been reflected in or replaced by a contract for the pipeline service;

Coordinator means the Coordinator of Energy referred to in the *Energy Coordination Act 1994* section 4;

exempt contract —

(a) means a contract in respect of which a declaration under the *Gas Corporation Act 1994* Schedule 5 clause 6 was in force immediately before the coming into operation of the *Dampier to Bunbury Pipeline Act 1997* Schedule 4 clause 17(4); and

(b) includes a contract entered into —

(i) in substitution for a contract referred to in paragraph (a) or any provision of such a contract; or

(ii) by way of amendment of a contract referred to in paragraph (a) or subparagraph (i);

Gas Access Law means —

(a) the National Gas Access (Western Australia) Law, the Rules made under that Law and the regulations made under the *National Gas Access (WA) Act 2009*; or

(b) the Gas Pipelines Access (Western Australia) Law, and the regulations, in force under the *Gas Pipelines Access (Western Australia) Act 1998* before the commencement of the *National Gas Access (WA) Act 2009* section 30;

gas consumer means a person who —

(a) receives gas that has been transported through a gas transmission pipeline; and

(b) in the previous 12 months, consumed, at any one site, at least one terajoule of gas that had been transported through a gas transmission pipeline;

gas distribution system means a distribution system as defined in the *Energy Coordination Act 1994* section 3(1);

gas producer means a person who supplies, or proposes to supply, gas that will flow into a gas transmission pipeline and who is —

(a) the registered holder of a petroleum production licence under the *Petroleum and Geothermal Energy Resources Act 1967*; or

(b) the registered holder of a production licence for petroleum under the *Petroleum (Submerged Lands) Act 1982* Part III; or

(c) the registered holder of a petroleum production licence under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth); or

(d) prescribed for the purposes of this definition,

but does not include —

(e) a person in the person's capacity as an operator of a gas storage facility; or

(f) a person declared not to be a gas producer by regulations made for the purposes of this definition;

gas storage facility means a gas storage facility, with a storage capacity of more than 50 terajoules, prescribed for the purposes of this definition;

gas transmission pipeline means a pipeline as defined in the *Petroleum Pipelines Act 1969* section 4 and includes a pipeline (as defined for the purposes of this definition) declared to be a gas transmission pipeline by regulations made for the purposes of this definition but does not include a pipeline (as defined for the purposes of this definition) declared not to be a gas transmission pipeline by regulations made for the purposes of this definition;

inlet point, on a gas transmission pipeline, means —

(a) a point on the pipeline at which gas flows into the pipeline; or

(b) a number of such points that are adjacent to each other and that are declared to be a single point by regulations made for the purposes of this definition;

operator, of a gas transmission pipeline, means a person who is the registered holder of a licence in respect of the pipeline, under the *Petroleum Pipelines Act 1969* and includes a person (who owns or operates the pipeline) prescribed for the purposes of this definition;

PIA pipeline has the meaning given in section 5;

pipeline, for the purposes of the definition of ***gas transmission pipeline***, means a pipeline as defined in the *Petroleum Pipelines Act 1969* section 4 as if all of the definition from and including "but does not include" were deleted;

pipeline impact agreement has the meaning given in section 6(1)(a);

pipeline service has the meaning given in the National Gas Access (Western Australia) Law section 2;

pipeline services agreement, in relation to a gas transmission pipeline, means —

(a) a contract for a pipeline service provided by means of the pipeline; or

(b) an access determination in relation to the pipeline;

reference specification, for a gas transmission pipeline, means the gas quality specification prescribed for the pipeline for the purposes of this definition;

relevant effects, on the capacity, operations and maintenance of a PIA pipeline, has the meaning given in section 7(2);

site, in the definition of ***gas consumer***, means a place, other than a place that is or is part of a gas transmission pipeline or a gas storage facility, where a person consumes gas delivered to the person through an outlet point on a gas transmission pipeline or gas distribution system;

specified, in relation to an instrument made under this Act, means specified in that instrument;

standard specification, for a gas transmission pipeline, means the gas quality specification specified for the pipeline under section 13;

user, of a gas transmission pipeline, means a person provided a pipeline service by means of the pipeline under a pipeline services agreement to which the person is a party.

(2) Before a reference specification or a standard specification for a gas transmission pipeline is amended, the Minister must consult with —

(a) the operator of the pipeline; and

(b) any other person to the extent to which the Minister considers necessary in relation to the proposed amendment.

(3) A regulation to amend a reference specification or a standard specification for a gas transmission pipeline cannot be expressed to come into effect until after the period during which it is subject to disallowance under the *Interpretation Act 1984* section 42.

Part 2 — Gas quality and capacity of PIA pipelines

4. Purposes of this Part

The primary purposes of this Part are to ensure that —

(a) a gas producer can supply gas, that will flow into a PIA pipeline, of a quality that does not comply with the reference specification for the pipeline; and

(b) the gas producer cannot do so until the relevant effects of such supply on the capacity, operations and maintenance of the PIA pipelines have been dealt with in a way that neither materially advantages nor materially disadvantages the operators of the pipelines; and

(c) users of PIA pipelines are not materially disadvantaged by the way in which those effects are determined and dealt with.

5. PIA pipelines

(1) A ***PIA pipeline*** is a gas transmission pipeline or a part of a gas transmission pipeline declared by the Minister to be a PIA pipeline.

(2) The Minister must not make, amend or revoke a declaration other than in accordance with the criteria and procedure provided for by the regulations.

(3) In this Act, a reference to a gas transmission pipeline includes a reference to a part of a gas transmission pipeline when the context requires.

6. Controlling the quality of gas flowing into PIA pipelines

(1) A gas producer must not supply gas that will flow into a PIA pipeline if the gas is of a quality that does not comply with the reference specification for the pipeline unless —

(a) the gas producer and the operator of the pipeline are parties to an agreement (a ***pipeline impact agreement***) in respect of the supply, that complies with the minimum requirements set out in section 7 in relation to the supply; and

(b) the gas complies with the gas quality specification set out in the pipeline impact agreement in relation to the supply; and

(c) the quantity of gas supplied does not exceed the maximum quantity set out in the pipeline impact agreement in relation to the supply; and

(d) regulations, under section 14(2)(a), modifying contracts that relate to gas transported through the pipeline have come into effect.

(2) A pipeline impact agreement that is entered into, or an amendment of a pipeline impact agreement, does not have effect for the purposes of subsection (1)(b) and (c) for the 18 months immediately following the entering into of the agreement or the amendment.

(3) If a gas producer supplies gas that will flow into a PIA pipeline at an inlet point and the gas producer fails to comply with subsection (1), the operator of the pipeline may —

(a) reduce the flow (including to zero) in accordance with the regulations; and

(b) whether or not the flow of gas is reduced under paragraph (a) — reduce the allocation (including to zero) of gas flowing into the pipeline at the inlet point to users of the pipeline, in accordance with the regulations.

(4) The operator of a PIA pipeline may, under section 12, apply to the Supreme Court for an injunction against a gas producer who has engaged, is engaging or is proposing to engage in conduct that constitutes a failure to comply with subsection (1).

(5) The operator of a PIA pipeline may take an action under subsection (3) or (4), or both, despite any relevant pipeline services agreement.

(6) Subsections (3) and (4) are in addition to any other rights a person may have in relation to a failure to comply with subsection (1).

(7) The Minister may, in a particular case, allow a shorter period for the purposes of subsection (2) if satisfied that allowing a shorter period will not adversely affect, in a material way, operators of PIA pipelines, operators of other gas transmission pipelines, operators of gas storage facilities, operators of gas distribution systems or gas consumers.

(8) *The Criminal Code* section 177 does not apply to the obligation in subsection (1).

7. Content of pipeline impact agreements

(1) For the purposes of section 6(1)(a), the minimum requirements in relation to a supply of gas are that the pipeline impact agreement —

(a) identifies the inlet point on the PIA pipeline into which the gas will flow; and

(b) sets out the gas quality specification with which the gas must comply; and

(c) sets out the maximum quantity of gas to be supplied; and

(d) sets out the day on which it is proposed to commence supplying the gas or change the quality or quantity of gas to be supplied; and

(e) sets out the relevant effects on the capacity, operations and maintenance of the PIA pipeline of the gas flowing into the pipeline, and the way that those effects are to be dealt with; and

(f) sets out the duration of the agreement; and

(g) sets out any other prescribed matters; and

(h) complies with any prescribed requirements as to the form in which the matters to be set out in the agreement are to be expressed or otherwise presented.

(2) For the purposes of this Act, the ***relevant effects*** on the capacity, operations and maintenance of a PIA pipeline, of gas (that does not comply with the reference specification for the pipeline) flowing into the pipeline, are —

(a) the reduction in the pipeline's capacity; and

(b) the effects on the pipeline's operations and maintenance,

attributable to the gas not being of a quality that complies with the reference specification for the pipeline.

(3) The regulations may provide for the method by which, and the assumptions upon which —

(a) a change in the capacity of a PIA pipeline is to be worked out; and

(b) the effects on the pipeline's operations and maintenance are to be worked out, including by limiting which effects are to be considered as effects for the purposes of subsection (2).

(4) An agreement of the nature of a pipeline impact agreement, that was entered into after 1 January 2009 and before the commencement of this Part, in respect of a supply of gas that will flow into a PIA pipeline, is to be taken to comply with the minimum requirements set out in this section if it substantially complies with the requirements of subsection (1)(a), (b), (c), (d), (e) and (f) in relation to the supply.

8. Formation of pipeline impact agreements

(1) This section applies to the formation of a pipeline impact agreement in respect of the supply of gas that flows or that will flow into a PIA pipeline at an inlet point except to the extent to which the gas producer and the operator of the pipeline (the ***parties***) agree otherwise.

(2) The default procedure provided for in the regulations applies to the formation of a pipeline impact agreement.

(3) If —

(a) the relevant effects on the capacity, operations and maintenance of the pipeline are not in dispute between the parties (which includes that those effects have been determined by an expert under section 9(2)(b)); and

(b) the gas producer proposes that those effects be dealt with by a method prescribed for the purposes of this paragraph,

the default pipeline impact agreement provided for by the regulations in relation to that method becomes the proposed pipeline impact agreement in relation to the supply of the gas.

(4) The proposed pipeline impact agreement referred to in subsection (3) becomes the pipeline impact agreement in respect of the supply of the gas, as if the parties had entered into the agreement, when all matters in the proposed pipeline impact agreement to be resolved by the parties are not in dispute as an access dispute under a Gas Access Law or under section 9.

(5) A dispute between the parties about a matter in the proposed pipeline impact agreement that is provided for by the default pipeline impact agreement cannot be dealt with as an access dispute under a Gas Access Law or under section 9.

(6) For the purposes of subsection (5), a matter is provided for by a default pipeline impact agreement if the matter is set out in the

default agreement and the matter is not identified in the agreement as a matter that the parties may resolve.

(7) The regulations may adopt standard form agreements published by the Minister, in accordance with the regulations, for the purposes of this section.

(8) Subsection (7) does not limit section 34(4).

9. Pipeline impact agreements — dispute resolution

(1) The regulations may provide for and in relation to the resolution of —

(a) disputes between gas producers and operators of PIA pipelines relating to pipeline impact agreements and proposed pipeline impact agreements; and

(b) disputes relating to the reduction of the flow of gas, or the allocation of gas, under section 6(3).

(2) The regulations may do the following —

(a) provide for the resolution of those disputes by an arbitrator;

(b) provide for disputes about the relevant effects on the capacity, operations and maintenance of a PIA pipeline to be resolved by the determination of an expert chosen in accordance with the regulations and for such determinations to be final and binding on the parties to the dispute;

(c) provide for the interests of users of gas transmission pipelines to be taken into account.

(3) If, in the resolution of a dispute, an expert or an arbitrator determines terms of a pipeline impact agreement or proposed pipeline impact agreement, those terms become part of the agreement or proposed agreement the subject of the dispute.

10. Short-term situations

(1) The regulations may provide for and in relation to short-term situations.

(2) A ***short-term situation*** is a situation during which there is a disruption to the flow or quality of gas (whether planned or not) that means that —

(a) a gas producer cannot —

(i) continue to supply gas that will flow into a PIA pipeline; and

(ii) comply with section 6(1) in respect of that supply;

or

(b) a pipeline services agreement or gas supply agreement cannot be complied with.

(3) The regulations may do the following —

(a) set out modifications of the provisions of this Part that are to apply during short-term situations;

(b) enable the Minister to issue directions in relation to a particular short-term situation, modifying the application of the provisions of this Part, or regulations made for the purposes of section 14, during the short-term situation.

(4) Regulations or directions making modifications for the purposes of this section must specify the period during which the modifications are to have effect, which cannot be for more than 7 days, or any longer period (not exceeding 3 months) allowed by the Minister.

(5) A direction issued by the Minister may specify a period, during which the modifications are to have effect, that begins at the beginning of the short-term situation, whether or not that is earlier than the day on which the direction is issued.

(6) If the Minister allows a longer period under subsection (4), the Minister must cause reasons for allowing the longer period to be

laid before each House of Parliament within 6 sitting days of the House.

11. Compensation for adverse effects on certain pipeline users

(1) The regulations may provide for and in relation to a scheme of compensation under which users of a PIA pipeline are entitled to compensation from parties to pipeline impact agreements in respect of the pipeline, for adverse effects on the users' rights (under pipeline services agreements) resulting from the way in which the relevant effects on the capacity of the pipeline were or were not dealt with in the pipeline impact agreement.

(2) The regulations may do the following —

(a) provide for the resolution of disputes arising out of the compensation scheme, including by an arbitrator;

(b) provide for disputes about —

(i) the relevant effects on the capacity of a PIA pipeline; or

(ii) the effects on users' rights (under pipeline services agreements) resulting from the way in which the relevant effects on the capacity of the pipeline were or were not dealt with in the pipeline impact agreement,

to be resolved by the determination of an expert chosen in accordance with the regulations and for such determinations to be final and binding on the parties to the dispute;

(c) provide for the enforcement of entitlements under the scheme, including as determined by an arbitrator.

12. Injunctions

(1) If, on the application of the operator of a PIA pipeline, the Supreme Court is satisfied that a gas producer has engaged, is engaging or is proposing to engage in conduct that constitutes a

failure to comply with section 6(1), the Court may grant an injunction, on such terms as the Court thinks appropriate —

(a) restraining the gas producer from engaging in the conduct; or

(b) if the conduct involves refusing or failing to do something — requiring the gas producer to do the thing.

(2) The Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied as to the matters in subsection (1).

(3) The Court may grant an interim injunction pending determination of an application under subsection (1).

(4) The power of the Court to grant an injunction restraining a gas producer from engaging in conduct may be exercised whether or not —

(a) it appears to the Court that the gas producer intends to engage again, or to continue to engage, in conduct of that kind; or

(b) the gas producer has previously engaged in conduct of that kind; or

(c) there is an imminent danger of substantial damage to any person if the gas producer engages in conduct of that kind.

(5) The power of the Court to grant an injunction requiring a gas producer to do a thing may be exercised whether or not —

(a) it appears to the Court that the gas producer intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) the gas producer has previously refused or failed to do that thing; or

(c) there is an imminent danger of substantial damage to any person if the gas producer refuses or fails to do that thing.

(6) The Court may discharge or vary an injunction granted under this section.

Part 3 — Modifying gas contracts

13. Standard gas quality specifications for pipelines

The regulations may specify a gas quality specification for one or more gas transmission pipelines that is to be the standard specification for the pipeline or pipelines.

14. Modifying gas contracts

(1) In this section —

gas contract means a contract that relates to the sale, supply, storage, delivery, receipt or transportation of gas transported or to be transported through a gas transmission pipeline.

(2) The regulations may modify existing and future gas contracts for the purposes of this Act, including by doing the following —

(a) providing that the contracts have effect so that the gas to be sold, supplied, stored, transported, delivered or received under the contracts need only comply with a gas quality specification provided for in the regulations;

(b) providing that specified references to gas quality specifications in the contracts have effect as if they were references to a gas quality specification provided for in the regulations;

(c) dealing with the effects on gas contracts —

(i) of having been modified under paragraph (a) or (b); or

(ii) of the enactment and coming into operation of this Act or of any particular provision of this Act; or

(iii) of gas flowing into a gas transmission pipeline, being gas that does not comply with the reference specification for the pipeline.

(3) For the purposes of subsection (2)(a) and (b), the ways in which the regulations may provide for a gas quality specification include the adoption of a gas quality specification in, or worked out in accordance with, a pipeline impact agreement or gas contract.

(4) Regulations made for the purposes of subsection (2)(a) or (b) cannot, in relation to gas flowing, or that has flowed, out of a PIA pipeline, provide for a gas quality specification that is less stringent than the standard specification for the gas transmission pipeline.

(5) In dealing with the effects on a gas contract of a matter referred to in subsection (2)(c), the regulations may provide that the contract does or does not have a certain effect, including that the occurrence of the matter —

(a) is not to be considered as a breach of the contract; or

(b) does or does not modify existing rights, duties or liabilities, or give rise to additional rights, duties or liabilities, under the contract.

Part 4 — Compensation for certain gas consumers and operators of gas transmission pipelines and gas storage facilities

15. Terms used

In this Part —

downstream agreement means a contract under which gas, which has been transported through a gas transmission pipeline, is delivered to a gas consumer;

Part 4 pipeline means a gas transmission pipeline that is not a PIA pipeline;

plant and equipment costs, of a person, means the costs of rectifying or replacing plant and equipment to the extent necessary for the person to receive gas and continue the person's operations as carried on before the gas was delivered;

relevant gas quality specification, for a gas consumer has the meaning given in section 17(2), for an operator of a Part 4 pipeline has the meaning given in section 18(2) and for an operator of a gas storage facility has the meaning given in section 18(3).

16. Regulations may provide for compensation scheme

(1) The regulations may provide for and in relation to a scheme of compensation under which a gas consumer, an operator of a Part 4 pipeline or an operator of a gas storage facility is entitled to compensation from gas producers for —

(a) the costs incurred by the consumer or operator as a result of being delivered gas that does not comply with the relevant gas quality specification for the consumer or operator; and

(b) the loss of capacity (in terajoules) of a gas storage facility resulting from the operator of the facility being

delivered gas that does not comply with the relevant gas quality specification for the operator.

(2) The regulations may do the following —

(a) provide for the resolution of disputes arising out of the compensation scheme, including by an arbitrator;

(b) provide for specified disputes to be resolved by the determination of an expert chosen in accordance with the regulations and for such determinations to be final and binding on the parties to the dispute;

(c) provide for the enforcement of entitlements under the scheme, including as determined by an arbitrator.

(3) The costs referred to in subsection (1)(a) are, under the regulations, to be limited to the direct costs incurred by the consumer or operator and may, under the regulations, be offset by the value of any benefit derived from being delivered the gas.

(4) The regulations may modify the application of this Part in relation to the exempt contract.

(5) A provision of this section, section 17 or section 18 that sets a limit on the compensation payable under the scheme does not mean that the regulations cannot further limit the compensation payable.

(6) A gas producer is not to be liable, under regulations made for the purposes of this Part, to provide compensation except in relation to supplying gas that does not comply with the reference specification for a gas transmission pipeline into which the gas flows.

17. Compensation scheme for certain gas consumers

(1) This section applies in respect of the compensation scheme as the scheme applies to gas consumers.

(2) The relevant gas quality specification for a gas consumer in relation to the delivery of gas to the consumer under a particular downstream agreement is the gas quality specification with

which the gas to be delivered under the agreement must have complied, immediately before 1 January 2009.

(3) The costs referred to in section 16(1)(a), of a gas consumer, are, under the regulations, to be limited to —

(a) the costs necessary to restore any reduction in the capacity of the consumer's operations resulting from being delivered the gas, to the extent to which the reduction in capacity is attributable to the gas not complying with the relevant gas quality specification for the consumer; and

(b) the plant and equipment costs of the gas consumer, to the extent to which those costs are attributable to the gas not complying with the relevant gas quality specification for the consumer; and

(c) increases in operating and maintenance costs of the gas consumer resulting from being delivered the gas, to the extent to which those increases are attributable to the gas not complying with the relevant gas quality specification for the consumer.

(4) A gas consumer is not to be entitled to compensation under the regulations in relation to the delivery of gas unless the consumer is entitled to the delivery of the gas under a downstream agreement that —

(a) was in force immediately before 1 January 2009; and

(b) is not an extension (by renegotiation, or exercise of an option to extend, on or after 1 January 2009) of such an agreement.

(5) A gas consumer is not to be entitled to compensation under the regulations in relation to gas delivered to the consumer after 1 January 2029.

18. Compensation scheme for operators of Part 4 pipelines and operators of gas storage facilities

(1) This section applies in respect of the compensation scheme as the scheme applies to operators of Part 4 pipelines and operators of gas storage facilities.

(2) The relevant gas quality specification for an operator of a Part 4 pipeline in relation to the pipeline is the reference specification for the pipeline.

(3) The relevant gas quality specification for an operator of a gas storage facility in relation to the facility is the gas quality specification prescribed for the facility for the purposes of this subsection.

(4) The costs referred to in section 16(1)(a), of an operator of a Part 4 pipeline or a gas storage facility, are, under the regulations, to be limited to —

(a) the costs necessary to restore any reduction in the capacity of the pipeline or gas storage facility resulting from being delivered the gas, to the extent to which the reduction in capacity is attributable to the gas not complying with the relevant gas quality specification for the operator; and

(b) the plant and equipment costs of the operator, to the extent to which those costs are attributable to the gas not complying with the relevant gas quality specification for the operator; and

(c) increases in operating and maintenance costs of the operator resulting from being delivered the gas, to the extent to which those increases are attributable to the gas not complying with the relevant gas quality specification for the operator.

19. Double compensation

(1) A contract or access determination (including a contract or access determination in force at the time that this section comes into operation) does not have effect to the extent to which it would otherwise provide compensation (whether or not expressly and whether in whole or in part) for —

(a) a relevant effect on a PIA pipeline's capacity, operations or maintenance; or

(b) a cost incurred by a gas consumer, an operator of a Part 4 pipeline or an operator of a gas storage facility as a result of being delivered gas that does not comply with the relevant gas quality specification for the consumer or operator; or

(c) a loss of capacity of a gas storage facility resulting from the operator of the facility being delivered gas that does not comply with the relevant gas quality specification for the operator,

that is provided for under a pipeline impact agreement or this Part, or that, although there is a pipeline impact agreement in relation to the relevant effect referred to in paragraph (a), is not provided for under the agreement, but would ordinarily be provided for under such an agreement.

(2) Subsection (1) does not apply to a pipeline impact agreement or a contract entered into under or for the purposes of a pipeline impact agreement or this Part.

(3) Without limiting the ways in which a contract or an access determination could otherwise provide compensation it could do so by increasing a liability (including costs and tariffs) or reducing a benefit otherwise provided for by the contract.

(4) In this section, a reference to providing compensation for an effect, cost or loss referred to in subsection (1) includes a reference to effecting recovery for, and to dealing with, the effect, cost or loss.

20. Part 4 pipeline becoming PIA pipeline

The regulations may provide for and in relation to any matter arising as a consequence of a gas transmission pipeline ceasing to be a Part 4 pipeline and becoming a PIA pipeline, including by —

(a) providing for any necessary overlap between the application of this Part and Part 2; and

(b) modifying or extinguishing rights, duties or liabilities under this Part; and

(c) modifying the application of a provision of this Act; and

(d) providing for the extension of the scheme of compensation under section 16 to the operator and users of the pipeline to cover any losses resulting from the loss of capacity (in terajoules) of the pipeline resulting from the operator of the pipeline being delivered gas that does not comply with the reference specification for the pipeline, prior to the loss of capacity being dealt with in accordance with a pipeline impact agreement.

Part 5 — Rectifying consumer installations

Division 1 — Preliminary

21. Purposes of this Part

The primary purposes of this Part are to provide for —

(a) a programme for the modification or replacement of certain consumer installations in preparation for the supply of lower heating value gas to consumers through gas distribution systems; and

(b) the operation of an account for the receipt of contributions from gas producers for the purposes of funding the programme; and

(c) a scheme of reimbursement under which the cost of the programme is apportioned between gas producers who supply lower heating value gas that flows into certain gas transmission pipelines during the reimbursement period.

22. Terms used

(1) In this Part —

Account means the account called the Gas Producers Contribution Account established as an agency special purpose account under the *Financial Management Act 2006* section 16(1)(d);

Authority means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003* section 4;

consumer means a person who —

(a) is a consumer under the *Gas Standards Act 1972* section 4; and

(b) in the previous 12 months, did not consume, at any one site, more than 0.18 terajoules of gas;

consumer installation means a gas installation or gas appliance at a site owned or occupied by a consumer;

contribution, in relation to a gas producer, means an amount made available by the gas producer for the purposes of funding the rectification programme;

Department means the department of the Public Service principally assisting in the administration of the *Energy Coordination Act 1994* Part 2;

Director means the Director of *Energy Safety referred to in the Energy Coordination Act 1994* section 5;

gas appliance has the meaning given in the *Gas Standards Act 1972* section 4;

gas installation has the meaning given in the *Gas Standards Act 1972* section 4;

lower heating value gas means gas with a heating value that does not meet the heating value standards set out in the *Gas Standards (Gas Supply and System Safety) Regulations 2000* regulation 5(2)(a) and (d), as in force immediately before 1 January 2009;

rectification programme has the meaning given in section 23(2);

reimbursement period means the period —

(a) beginning on the day determined under section 29; and

(b) ending on the day before the tenth anniversary of the day referred to in paragraph (a);

site, in relation to a consumer, means a place to which gas is supplied to the consumer through a connection point to a gas distribution system.

(2) For the purposes of this Part, any amount made available by a gas producer and credited to the Account before the commencement of this Part is to be taken to be a contribution from a gas producer.

(3) A reference in this Part to the cost of the rectification programme is a reference to the total of all amounts charged to the Account, whether before or after the commencement of the this Part, other than amounts charged for the purposes of section 25(1)(a).

Division 2 — Rectification programme

23. Director to establish and implement the rectification programme

(1) In this section —

relevant consumer installation means a consumer installation that is likely to become unsafe or dangerous in use if lower heating value gas were to be supplied to consumers through gas distribution systems.

(2) It is a function of the Director to establish and implement a programme (the ***rectification programme***) for the modification or replacement of relevant consumer installations, so that, to the extent practicable, owners of those installations (whether consumers or not) are given the opportunity to have them modified or replaced in anticipation of their use being controlled or prohibited by an order under the *Gas Standards Act 1972* section 13H.

(3) The Director need not perform the function under subsection (2) if, in the opinion of the Director, there is not sufficient money standing to the credit of the Account to fund the rectification programme.

(4) The regulations may provide for and in relation to matters relating to the rectification programme, including —

(a) the rights, duties and liabilities of owners of relevant consumer installations, and any other persons, in respect of the modification or replacement of those installations under the programme; and

(b) the ownership of gas installations, gas appliances and any other things supplied under the programme.

24. Payments into and out of the Account

(1) The following funds must be credited to the Account —

(a) all contributions from gas producers;

(b) income derived from the investment of money standing to the credit of the Account.

(2) The money standing to the credit of the Account may be applied by the Director for the following purposes —

(a) payment of costs and expenses incurred in, or in connection with, establishing and implementing the rectification programme;

(b) payment of costs and expenses associated with administering the Account;

(c) payment of money under section 25(1)(a);

(d) payment of any other costs and expenses incurred for the purposes of this Part.

25. Surplus funds to be repaid to gas producers upon completion of the rectification programme

(1) When the Director is satisfied that the money standing to the credit of the Account will not be applied (other than for the purposes referred to in section 24(2)(b) or (c)), the Director must ensure that within 4 months —

(a) the balance of the Account is paid to the gas producer or producers who made contributions; and

(b) notice is published in the *Gazette* that the rectification programme has been completed.

(2) The amount to be paid to a gas producer under subsection (1)(a) is an amount that bears to the total amount to be paid to gas producers under that subsection the same proportion as the total

of the gas producer's contributions bears to the total of all the contributions from gas producers.

26. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

(1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of agencies apply to and in relation to the Account.

(2) The administration of the Account is, for the purposes of the *Financial Management Act 2006* section 52, to be regarded as a service of the Department.

(3) The *Financial Management Act 2006* section 20 does not apply to the Account.

27. Annual report of Department to include information about the rectification programme

Without limiting the *Financial Management Act 2006* section 61, the Department's first annual report after publication of the notice under section 25(1)(b) must contain the following information —

(a) the name of each gas producer who made one or more contributions and the amount of each contribution;

(b) the total amount of income derived from the investment of moneys forming part of the Account;

(c) the cost of the rectification programme;

(d) the amount (if any) paid to each gas producer under section 25(1)(a).

Division 3 — Reimbursement scheme

28. Regulations may provide for reimbursement scheme

(1) In this section —

contributor means a gas producer who made a contribution (whether or not the gas producer supplies lower heating value gas during the reimbursement period);

relevant gas transmission pipeline means a gas transmission pipeline from which gas flows into a gas distribution system in the Coastal Supply Area constituted under the *Energy Coordination Act 1994* section 11A(1) by the *Energy Coordination (Coastal Supply Area) Order 2000*;

supply, in relation to lower heating value gas, means the supply of lower heating value gas that will flow into a relevant gas transmission pipeline.

(2) A reference in this section to a gas producer who supplies lower heating value gas does not include a reference to a gas producer whose supply of lower heating value gas is less than 10 terajoules per day.

(3) The regulations may provide for and in relation to a scheme (the ***reimbursement scheme***) under which the cost of the rectification programme is apportioned between gas producers who supply lower heating value gas during the reimbursement period.

(4) The regulations may do the following —

(a) provide for gas producers who supply lower heating value gas during the reimbursement period to be required, periodically and at the end of the reimbursement period —

(i) to reimburse one or more contributors; or

(ii) to reimburse one or more gas producers who supply lower heating value gas during the

reimbursement period but who are not contributors; or

(iii) to do both of those things;

(b) confer functions on the Authority in relation to the reimbursement scheme, including the function of determining the amounts required to be reimbursed (the ***reimbursement amounts***);

(c) specify the methods and principles to be applied by the Authority in determining reimbursement amounts or in performing any other function in relation to the reimbursement scheme;

(d) provide for the costs incurred by the Authority in performing its functions in relation to the reimbursement scheme to be recovered from gas producers who supply lower heating value gas during the reimbursement period;

(e) provide for interest to be payable on amounts that remain unpaid after becoming due and payable under paragraph (a) or (d) (the ***unpaid amounts***);

(f) provide for the recovery of unpaid amounts, and interest on those amounts, by persons entitled under the regulations to be paid those amounts.

(5) A gas producer who supplies lower heating value gas after the reimbursement period cannot be required under the regulations to pay reimbursement amounts in relation to that supply.

29. Minister may determine beginning of the reimbursement period

For purposes of the definition of ***reimbursement period*** paragraph (a), the Minister may, by notice published in the *Gazette*, determine the day on which the reimbursement period begins.

Part 6 — General provisions

30. Relationship to Gas Access Laws

The regulations may provide for and in relation to the relationship between this Act and a Gas Access Law, including by providing for how the Gas Access Law is to have effect in relation to matters and things affected by this Act.

31. Coordinator to monitor and inquire into

It is a function of the Coordinator —

(a) to monitor the operation of this Act generally; and

(b) to inquire into or investigate particular matters that arise in relation to this Act or contracts that relate to the purposes of this Act or that are, or can be, modified under this Act.

32. Exemptions may be granted by Minister

(1) The Minister may, by order published in the *Gazette*, exempt from the application of this Act or specified provisions of this Act, wholly or to a specified extent —

(a) a specified person or persons of a specified class; or

(b) a specified thing or things of a specified class; or

(c) a specified contract or contracts of a specified class; or

(d) a specified activity relating to the sale, supply, storage or transportation of gas transported or to be transported through a gas transmission pipeline.

(2) Before making an order under subsection (1), the Minister must make the proposed order available for comment to the extent to which the Minister considers necessary in relation to the proposed exemption.

(3) An exemption may be —

(a) subject to specified conditions; and

(b) indefinite or for a specified period.

(4) The Minister may, by order published in the *Gazette*, amend or revoke an order under subsection (1).

(5) The *Interpretation Act 1984* section 42 applies to an order under subsection (1) or (4) as if the order were regulations.

33. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 10 years from its commencement.

(2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any case not more than 12 months after the expiration of the 10 year period referred to in subsection (1)), cause it to be laid before each House of Parliament.

34. 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.

(2) The regulations may do the following —

(a) provide for and in relation to the giving, publishing and verification of information relating to the purposes of this Act, including information relating to the following —

(i) the entering into, amendment or content of a pipeline impact agreement or other contract;

(ii) the supply of gas that will flow into a gas transmission pipeline;

(iii) the actual, calculated or hypothetical quantity and quality of gas flowing into or out of a gas

transmission pipeline or past specified points on a gas transmission pipeline;

(b) limit the liability a person has in relation to information given or published under paragraph (a);

(c) provide for and in relation to the imposition of standards in relation to measuring gas quantity and quality;

(d) provide that equipment for measuring gas quantity and quality is to be treated as accurate in specified circumstances;

(e) modify the application of the provisions of Part 2 to particular persons, circumstances or things in respect of which the provisions would not otherwise apply so as to give effect to the purposes of that Part;

(f) provide for the exclusivity of the jurisdiction of an arbitrator or expert under section 9, 11 or 16, including in relation to other dispute resolution procedures under other written laws;

(g) provide for the extent to which the rules of evidence apply during the resolution of disputes under section 9, 11 or 16;

(h) provide for and in relation to the imposition and payment of fees and charges in connection with the performance of the functions of an arbitrator or expert under section 9, 11 or 16;

(i) provide that contravention of a provision of the regulations is an offence;

(j) provide, in relation to bodies corporate, for an offence to be punishable on conviction by the imposition of a fine not exceeding $50 000 and, if the contravention is of a continuing nature, a further fine not exceeding $20 000 in respect of each day or part of a day during which the contravention continued after the offender was notified by a specified person that the person is of the opinion that the offender is contravening the provision;

(k) provide, in relation to individuals, for an offence to be punishable on conviction by the imposition of a fine not exceeding $5 000;

(l) provide for the imposition of a minimum fine for an offence;

(m) relate the level of a fine to —

(i) the circumstances or extent of the offence;

(ii) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.

(3) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a function of an arbitrator or an expert the regulations 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 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.

(5) The text may be adopted —

(a) wholly or in part; and

(b) as modified by the regulations.

(6) 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).

(7) The adoption of text is of no effect unless —

(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 7 — Acts amended

Division 1 — *Energy Coordination Act 1994* amended

35. Act amended

This Division amends the *Energy Coordination Act 1994*.

36. Section 26 amended

Delete section 26(3), (4) and (5).

Division 2 — *Gas Pipelines Access (Western Australia) Act 1998* amended

37. Act amended

This Division amends —

(a) if this section comes into operation before the day on which the *National Gas Access (WA) Act 2009* section 26 comes into operation — the *Gas Pipelines Access (Western Australia) Act 1998*; or

(b) otherwise — the *Gas Pipelines Access (Western Australia) Act 1998* (as amended by the *National Gas Access (WA) Act 2009* and cited as the *Energy Arbitration and Review Act 1998*).

38. Section 73 amended

Before section 73(1)(d) insert:

(da) under the *Gas Supply (Gas Quality Specifications) Act 2009*; or

Notes

This is a compilation of the *Gas Supply (Gas Quality Specifications) Act 2009* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Gas Supply (Gas Quality Specifications) Act 2009	35 of 2009	3 Dec 2009	Pt. 1: 3 Dec 2009 (see s. 2(a)); Act other than Pt. 1: 27 Mar 2010 (see s. 2(b) and *Gazette* 26 Mar 2010 p. 1133)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Petroleum Legislation Amendment Act 2024 Pt. 5 Div. 6 and s. 433(2), 434(2), 435(2) and 436(2)	17 of 2024	14 May 2024	To be proclaimed (see s. 2(b))

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)
access determination	3(1)
Account	22(1)
Authority	22(1)
consumer	22(1)
consumer installation	22(1)
contribution	22(1)
contributor	28(1)
Coordinator	3(1)
Department	22(1)
Director	22(1)
downstream agreement	15
exempt contract	3(1)
Gas Access Law	3(1)
gas appliance	22(1)
gas consumer	3(1)
gas contract	14(1)
gas distribution system	3(1)
gas installation	22(1)
gas producer	3(1)
gas storage facility	3(1)
gas transmission pipeline	3(1)
inlet point	3(1)
lower heating value gas	22(1)
operator	3(1)
Part 4 pipeline	15
parties	8(1)
PIA pipeline	3(1), 5(1)
pipeline	3(1)
pipeline impact agreement	3(1), 6(1)
pipeline service	3(1)
pipeline services agreement	3(1)
plant and equipment costs	15
rectification programme	22(1), 23(2)
reference specification	3(1)
reimbursement amounts	28(4)
reimbursement period	22(1)
reimbursement scheme	28(3)
relevant consumer installation	23(1)
relevant effects	3(1), 7(2)

relevant gas quality specification 15
relevant gas transmission pipeline ..... 28(1)
short-term situation ..... 10(2)
site ..... 3(1), 22(1)
specified ..... 3(1)
standard specification ..... 3(1)
supply ..... 28(1)
unpaid amounts ..... 28(4)
user ..... 3(1)

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