Western Australia

National Gas Access (WA) Act 2009

Under the *National Gas Access (WA) Act 2009* section 7(1), the *National Gas Access (Western Australia) Law* applies as a law of Western Australia.

The *National Gas Access (Western Australia) Law* is consolidated and published on the Western Australian legislation website.

Western Australia

National Gas Access (WA) Act 2009

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Western Australia

National Gas Access (WA) Act 2009

An Act to establish a framework to enable third parties to gain access to certain gas pipeline services, to amend the *Gas Pipelines Access (Western Australia) Act 1998* and various other Acts, and for other purposes.

Part 1 — Preliminary

1. Short title

This is the *National Gas Access (WA) Act 2009*.

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 in this Act

(1) In this Act —

National Gas Access (Western Australia) Law means the provisions applying because of section 7;

National Gas Access (Western Australia) Regulations means the provisions applying because of section 8;

South Australian Act means the *National Gas (South Australia) Act 2008* of South Australia as amended from time to time.

(2) Words and expressions used in the National Gas Access (Western Australia) Law (whether or not defined in section 9(1)) and in this Act have the same respective meanings in this Act as they have in that Law.

(3) This section does not apply to the extent that the context or subject matter otherwise indicates or requires.

4. Crown bound

This Act, the National Gas Access (Western Australia) Law and the National Gas Access (Western Australia) Regulations bind the Crown in right of the State and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5. Application to coastal waters

(1) This Act, the National Gas Access (Western Australia) Law and the National Gas Access (Western Australia) Regulations apply in the coastal waters of this State as if the coastal waters were within the limits of the State.

(2) In this section —

adjacent area in respect of the State means the adjacent area of this jurisdiction under the National Gas Access (Western Australia) Law (as defined in section 9(1) of this Act);

coastal waters, in relation to this State, means any sea that is on the landward side of the adjacent area in respect of the State but is not within the limits of the State.

6. Extra-territorial operation

It is the intention of the Parliament that this Act, the National Gas Access (Western Australia) Law and the National Gas Access (Western Australia) Regulations should, so far as possible, operate to the full extent of the extra-territorial legislative power of the State.

6A. Extension to certain pipelines for hauling gas other than natural gas

(1) The National Gas Access (Western Australia) Law and the National Gas Access (Western Australia) Regulations apply to a pipeline for hauling gas other than natural gas if the pipeline constitutes or is part of a system for which a licence is in force under Part 2A of the *Energy Coordination Act 1994*.

(2) Subsection (1) has effect —

(a) despite the provisions of the National Gas Access (Western Australia) Law and the National Gas Access (Western Australia) Regulations; and

(b) as if, for the purposes of that subsection, a reference in that Law and those Regulations to natural gas were

amended to include a reference to gas other than natural gas.

(3) In this section —

gas other than natural gas means substances which —

(a) are in a gaseous state at standard temperature and pressure; and

(b) consist of —

(i) naturally occurring hydrocarbons; or

(ii) a naturally occurring or manufactured mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is propane, propene, butanes, butenes or a mixture of all or any of those substances or kinds of substances.

6B. *Interpretation Act 1984* does not apply

(1) The *Interpretation Act 1984* does not apply to the National Gas Access (Western Australia) Law, to regulations under Part 3, or to Rules under the National Gas Access (Western Australia) Law.

(2) Despite subsection (1), section 25 of the *Interpretation Act 1984* applies to the making of regulations under Part 3.

Part 2 — National Gas Access (Western Australia) Law and its regulations

7. National Gas Access (Western Australia) Law

(1) The Western Australian National Gas Access Law text —

(a) applies as a law of Western Australia; and

(b) as so applying may be referred to as the National Gas Access (Western Australia) Law.

(2) In subsection (1) —

Western Australian National Gas Access Law text means the text that results from modifying the National Gas Law, as set out in the South Australian Act Schedule for the time being in force, to give effect to section 7A(3) and (4) and Schedule 1.

7A. Amendments to Schedule to South Australian Act

(1) This section applies if, after the day on which the South Australian Act receives the Royal Assent, the Parliament of South Australia enacts a provision to make an amendment to the Schedule to the South Australian Act as in force from time to time (an ***SA Schedule amendment***).

(2) The Minister may by order declare that an SA Schedule amendment is relevant to the Western Australian National Gas Access Law text.

(3) If the Minister has not declared that an SA Schedule amendment is relevant, the Western Australian National Gas Access Law text remains as if the amendment had not been made.

(4) If the Minister has declared that an SA Schedule amendment is relevant, the Western Australian National Gas Access Law text remains, until the beginning of the day fixed by subsection (5), as if the amendment had not been made.

(5) The day fixed is the day on which the order is published in the *Government Gazette* unless a later day is specified in the order, in which case it is the day specified.

(6) Subsection (4) does not give an SA Schedule amendment any earlier effect in this State than it has in South Australia.

7B. Regulations amending Schedule 1 consequentially

The Governor may make regulations under this section amending Schedule 1 as is necessary or expedient to deal with consequences of —

(a) an SA Schedule amendment; or

(b) giving effect to section 7A(3) or (4).

8. National Gas Access (Western Australia) Regulations

The regulations in force for the time being under Part 3 —

(a) apply as regulations in force for the purposes of the National Gas Access (Western Australia) Law; and

(b) as so applying may be referred to as the National Gas Access (Western Australia) Regulations.

9. Terms used in National Gas Access (Western Australia) Law and its regulations

(1) In the National Gas Access (Western Australia) Law and the National Gas Access (Western Australia) Regulations —

adjacent area of another participating jurisdiction means the offshore area of a State other than this State or of the Northern Territory within the meaning given in section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth;

adjacent area of this jurisdiction means the offshore area of the State within the meaning given in section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth;

Court means the Supreme Court of Western Australia;

designated Minister means the Minister to whom the administration of this Act has been committed;

dispute resolution body means —

(a) in relation to an ERA pipeline, the WA arbitrator;

(b) in relation to any other pipeline, the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth;

ERA pipeline means a pipeline other than —

(a) an international pipeline; or

(b) any other pipeline for which section 2 of the National Gas Access (Western Australia) Law defines the "relevant Minister" to mean a person other than the Minister responsible for the administration of this Act;

Legislature of this jurisdiction means the Parliament of Western Australia;

National Gas Law or ***this Law*** means the National Gas Access (Western Australia) Law;

regulator means —

(a) in relation to an ERA pipeline, the ERA;

(b) in relation to any other pipeline, the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth;

this jurisdiction means the State of Western Australia;

WA arbitrator means the Western Australian Energy Disputes Arbitrator under Part 6 Division 3 of the *Energy Arbitration and Review Act 1998*.

(2) A pipeline that is an offshore Western Australian pipeline as defined in section 3(1) of the *Australian Energy Market Act 2004* of the Commonwealth is to be regarded as being situated wholly within Western Australia for the purpose of

determining who is the relevant Minister under the National Gas Access (Western Australia) Law.

(3) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to the National Gas Law as set out in the Schedule to the South Australian Act in its application, with modifications, as a law of Western Australia.

[Section 9 amended: No. 42 of 2010 s. 184.]

Part 3 — Regulations for the National Gas Access (Western Australia) Law

10. Making regulations

(1) The Governor, acting with the advice and consent of the Executive Council, may make regulations contemplated by, or necessary or expedient for giving effect to, the National Gas Access (Western Australia) Law.

(2) Without limiting subsection (1), the regulations may prescribe fees in respect of any matter under the National Gas Access (Western Australia) Law, and provide for the waiver or refund of such fees.

(3) Regulations under this Part may —

(a) be of general or limited application;

(b) vary according to the persons, times, places or circumstances to which they are expressed to apply;

(c) in relation to fees, prescribe differential fees or provide for fees to be determined according to prescribed factors.

(4) Once the Governor has made a regulation prescribing 1 or more pipelines to be designated pipelines for the purposes of the definition of ***designated pipeline*** in section 2 of the National Gas Access (Western Australia) Law, the Governor cannot make another regulation that prescribes any other pipeline to be a designated pipeline.

(5) Regulations under this Part may be made only on the unanimous recommendation of the Ministers of the participating jurisdictions.

(6) Regulations under this Part have to be published in the *Government Gazette*.

11. Regulations may deal with transitional matters

(1) Without limiting the generality of section 10, the regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the Gas Pipelines Access Law to the application of provisions of the National Gas Access (Western Australia) Law.

(2) Any provision of the regulations that deals with a matter of a transitional nature under subsection (1) may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, not being a time earlier than the commencement of this section.

(3) If a provision of the regulations is expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are published in the *Government Gazette*, the provision must also provide that the provision does not operate so as —

(a) to prejudicially affect the rights of a person (other than the rights of a Minister of a participating jurisdiction or an entity involved in the administration of the Gas Pipelines Access Law or the National Gas Access (Western Australia) Law) existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than liabilities imposed on a Minister of a participating jurisdiction or an entity involved in the administration of the Gas Pipelines Access Law or the National Gas Access (Western Australia) Law) in respect of anything done or omitted to be done before the day of publication of those regulations.

(4) In this section —

Gas Pipelines Access Law has the meaning that the term had under section 3(1) of the *Gas Pipelines Access (Western Australia) Act 1998* before the commencement of this section;

matters of a transitional nature includes matters of an application or savings nature;

National Gas Access (Western Australia) Law means the provisions applying from time to time because of section 7, and it includes Rules made and in force under those provisions from time to time.

Part 4 — Cross vesting of functions and powers

12. Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State

(1) The Commonwealth Minister and the Commonwealth bodies have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the national gas legislation of another participating jurisdiction.

(2) In subsection (1) —

Commonwealth bodies means any of the following:

(a) the AER;

(b) the NCC;

(c) the Tribunal.

13. Conferral of powers on Ministers of other participating States and Territories to act in this State

The Minister of another participating jurisdiction has power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on the Minister by the national gas legislation of another participating jurisdiction.

14. Conferral of functions or powers on State bodies

If the national gas legislation of another participating jurisdiction confers a function or power on the Minister or another agency or instrumentality of this State constituted by a law of this State, the Minister or the other agency or instrumentality —

(a) may perform that function or exercise that power; and

(b) may do all things necessary or expedient to be done in connection with the performance or exercise of that function or power.

Part 5 — General

15. Exemption from taxes

(1) Any duty or other tax imposed by or under a law of this State is not payable in relation to —

(a) an exempt matter; or

(b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, an exempt matter.

(2) In this section —

exempt matter means a transfer of assets or liabilities —

(a) that is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of any national gas legislation or for the purpose of the separation of certain businesses or business activities from other businesses or business activities of a person as required by an AER ring fencing determination; and

(b) that the Minister and the Treasurer declare from time to time, by order notice of which is published in the *Government Gazette*, to be an exempt matter for the purposes of this section.

16. Actions in relation to cross boundary pipelines

(1) If a pipeline is a cross boundary pipeline, any action taken under the national gas legislation of a participating jurisdiction in whose jurisdictional area a part of the pipeline is situated —

(a) by, or in relation to, a relevant Minister; or

(b) by the Court within the meaning that term has in that legislation in relation to action taken by, or in relation to, a relevant Minister,

is taken also to be taken under the national gas legislation of each participating jurisdiction in whose jurisdictional area a part of the pipeline is situated (***that other legislation***) —

(c) by, or in relation to, a relevant Minister within the meaning that term has in that other legislation; or

(d) by the Court within the meaning that term has in that other legislation,

as the case requires.

(2) Despite subsection (1), no proceeding for judicial review or for a declaration, injunction, writ, order or remedy may be brought before the Court to challenge or question any action, or purported action, of a relevant Minister taken, or purportedly taken, in relation to a cross boundary distribution pipeline unless this jurisdiction has been determined to be the participating jurisdiction with which the cross boundary distribution pipeline is most closely connected.

(3) A reference in this section —

(a) to an action that is taken includes a reference to —

(i) a decision or determination that is made; or

(ii) an omission that is made;

(b) to a purported action that is purportedly taken includes a reference to a purported decision or determination that is purportedly made.

(4) In this section —

cross boundary pipeline means —

(a) a cross boundary transmission pipeline; or

(b) a cross boundary distribution pipeline.

17. Conferral of functions and powers on Commonwealth bodies

(1) Clause 2 of Schedule 2 to the National Gas Access (Western Australia) Law has effect in relation to the operation of any provision of this Act, or any regulation forming part of the National Gas Access (Western Australia) Regulations, as if the provision or regulation formed part of the National Gas Access (Western Australia) Law.

(2) Subsection (1) does not limit the effect that a provision or regulation would validly have apart from the subsection.

Part 6 — Other local provisions

Division 1 — Economic Regulation Authority

18. Expertise of Director of Energy Safety to be used

In performing its functions under this Act the ERA is to make appropriate use of the expertise of the Director of Energy Safety under the *Energy Coordination Act 1994* in relation to safety or technical standards in the gas supply industry.

Division 2 — Miscellaneous

19. Preservation of certain contracts relating to privatised DBNGP system

(1) The national provisions do not affect the continuance or operation of an exempt contract.

(2) Despite the repeal of the *Gas Pipelines Access (Western Australia) Act 1998* section 96, that section continues to apply to a contract other than an exempt contract as if the references in section 96(1) and (2)(b) to "the Code" were references to the relevant national provisions.

(3) In this section —

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);

national provisions means the National Gas Access (Western Australia) Law, the Rules made under that Law, and the National Gas Access (Western Australia) Regulations;

relevant national provisions means any of the national provisions having the same purpose as a provision of the Gas Code, as defined in the National Gas Access (Western Australia) Law section 2.

20. Transitional provisions for Kalgoorlie to Kambalda pipeline

(1) This section applies to the pipeline to which licence PL27, granted under the *Petroleum Pipelines Act 1969*, applies.

(2) A service provider has a period of 6 months after the day on which section 30 comes into operation (the ***transitional period***) within which to —

(a) submit to the ERA an access arrangement; or

(b) apply for a determination that the pipeline be no longer a covered pipeline; or

(c) apply under section 112 of the National Gas Access (Western Australia) Law for a light regulation determination.

(3) Despite section 111(b) of the National Gas Access (Western Australia) Law, an application may be made in accordance with subsection (2)(c), even though there is no applicable access arrangement for the pipeline, and Chapter 3 Part 2 Division 1 Subdivision 1 of that Law applies to the application.

21. Regulations

(1) Without limiting the power to make regulations under Part 3, the Governor acting with the advice and consent of the Executive Council may make other regulations contemplated by, or necessary or expedient for giving effect to, this Act.

(2) Regulations under subsection (1) may make provision for and in relation to the imposition and payment of fees and charges in connection with the performance of functions the arbitrator has under this Act, to the extent that the costs connected with performing those functions are not covered by fees under the National Gas Access (Western Australia) Regulations.

(3) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

(4) Despite the National Gas Access (Western Australia) Law or Rules made under that Law, regulations under subsection (1) may make provision for further matters to affect the setting of a reference tariff for a reference service provided by means of a distribution pipeline to the extent that the service is used for the supply of natural gas to an end user prescribed by the regulations to be a small use customer for the purposes of this subsection.

(5) Regulations under subsection (1) may prescribe a period ending not later than 31 December 2031 as a period during which the fixed principle referred to in clause 7.13(a)(ii) of the Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline dated 21 November 2006 applies despite anything in the National Gas Access (Western Australia) Law or Rules made under that Law, and during a period prescribed the fixed principle applies accordingly.

22. Review of Act

(1) The Minister is to cause a person, other than an officer of a department or body for which the Minister is responsible, to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the review day described in

subsection (2) and, in the course of that review, consideration is to be given, and regard is to be had, to —

(a) the effectiveness of the operations of the ERA and the WA arbitrator; and

(b) the need for the continuation of section 21(4) and (5); and

(c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The review day is 1 July 2013 unless, before that day a licence is granted under the *Petroleum Pipelines Act 1969* for a pipeline that is to be partly in the jurisdictional area of this State and partly in the jurisdictional area of the Northern Territory or South Australia, in which case the review day is the day on which the licence is granted.

(3) The person carrying out the review is to prepare and give to the Minister a report based on the review within sufficient time to enable the Minister to comply with subsection (4).

(4) The Minister is to prepare a response to the report and, as soon as is practicable after the response is prepared, and in any event not more than 12 months after the review day described in subsection (2), cause the report and the response to be laid before each House of Parliament.

Part 7 — Various Acts amended

Division 1 — *Gas Pipelines Access (Western Australia) Act 1998*

23. Act amended

This Division amends the *Gas Pipelines Access (Western Australia) Act 1998*.

24. Long title replaced

Delete the long title and insert:

An Act to provide for a review board and for an official who may arbitrate certain disputes, and for related purposes.

25. Preamble deleted

Delete the preamble.

26. Section 1 amended

In section 1 delete "*Gas Pipelines Access (Western Australia) Act 1998*." and insert:

Energy Arbitration and Review Act 1998.

27. Sections 2 to 4 deleted

Delete sections 2 to 4.

28. Section 5 amended

In section 5 delete "bind" and all of the section before it and insert:

This Act binds

29. Sections 6 to 8 deleted

Delete sections 6 to 8.

30. Parts 2 to 5 deleted

Delete Parts 2 to 5.

31. Part 6 heading replaced

Delete the heading to Part 6 and insert:

Part 6 — Review board and arbitrator

32. Part 6 Division 1 deleted

Delete Part 6 Division 1.

33. Part 6 Division 2 heading replaced

Delete the heading to Part 6 Division 2 and insert:

Division 2 — Review board

34. Section 49 amended

In section 49 in the definition of ***Board*** delete "Western Australian Gas Review Board" and insert:

Western Australian Electricity Review Board

35. Part 6 Division 2 Subdivision 2 heading replaced

Delete the heading to Part 6 Division 2 Subdivision 2 and insert:

Subdivision 2 — Western Australian Electricity Review Board established

36. Section 50 amended

(1) In section 50(1) delete "Western Australian Gas Review Board" and insert:

Western Australian Electricity Review Board

(2) After section 50(1) insert:

(2A) The Board has functions under the *Electricity Industry Act 2004*.

37. Section 57 amended

In section 57(1) delete "the Gas Pipelines Access (Western Australia) Law and".

38. Section 59 amended

In section 59(4) delete "Subject to the Gas Pipelines Access (Western Australia) Law, a party" and insert:

A party

39. Section 61 amended

In section 61 in the definition of ***arbitrator*** delete "Gas" and insert:

Energy

40. Part 6 Division 3 Subdivision 2 heading amended

In the heading to Part 6 Division 3 Subdivision 2 delete "**Gas**" and insert:

Energy

41. Section 62 amended

In section 62(1) delete "Gas" and insert:

Energy

42. Section 73 amended

In section 73(1):

(a) delete paragraphs (a) and (c) and insert:

(a) by or under the *National Gas Access (WA) Act 2009*; or

(b) by or under the *Electricity Industry Act 2004*; or

(b) after paragraph (d) delete "and" and insert:

or

43. Section 74 amended

After section 74(2) insert:

(3) Regulations referred to in subsection (1) may make provision for and in relation to the imposition and payment of fees and charges in connection with the

performance of functions the arbitrator has under those regulations.

(4) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

44. Section 76 amended

In section 76:

(a) delete "under the Code" and insert:

in performing functions referred to in section 73(1)

(b) delete "local Regulator as defined in section 11." and insert:

Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*.

45. Section 77 amended

In section 77 delete "provided for by the Gas Pipelines Access (Western Australia) Law and the regulations" and insert:

involved in performing the arbitrator's functions

46. Section 81 amended

In section 81 delete "under this Act".

47. Section 82 amended

(1) In section 82(2) after "called" insert:

> the "Western Australian Energy Disputes Arbitrator Account", and it is to be a continuation of the account formerly called

(2) Delete section 82(3)(a)(ii) and insert:

> (ii) fees and charges payable to the arbitrator or the Board in connection with the performance of the functions of the arbitrator or the Board;

48. Section 87 deleted

Delete section 87.

49. Section 88 deleted

Delete section 88.

50. Parts 7 and 8 deleted

Delete Parts 7 and 8.

51. Schedules deleted

Delete Schedule 1 and its Appendix and Schedules 2 and 3.

Division 2 — *Economic Regulation Authority Act 2003*

52. Act amended

This Division amends the *Economic Regulation Authority Act 2003*.

53. Section 25 amended

In section 25:

(a) delete paragraph (c) and insert:

> (c) the functions it is given by or under the *National Gas Access (WA) Act 2009*; and

(b) after each of paragraphs (a), (b) and (d) insert:

> and

54. Section 28 amended

(1) In section 28(3)(b) delete "referred to in section 36(1) of the *Gas Pipelines Access (Western Australia) Act 1998* or" and insert:

> given by or under the *National Gas Access (WA) Act 2009* or referred to in

(2) In section 28(5)(b) delete "*Gas Pipelines Access (Western Australia) Act 1998*, must send a copy of the direction to the Code Registrar within the meaning of that Act." and insert:

> *National Gas Access (WA) Act 2009*, must send a copy of the direction to the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

55. Section 32 amended

In section 32(1) delete "Gas Pipelines Access (Western Australia) Law" and insert:

National Gas Access (Western Australia) Law

Division 3 — *Electricity Industry Act 2004*

56. Act amended

This Division amends the *Electricity Industry Act 2004*.

57. Section 3 amended

In section 3:

(a) in the definition of ***arbitrator*** delete "*Gas Pipelines Access (Western Australia) Act 1998*" and insert:

Energy Arbitration and Review Act 1998

(b) in the definition of ***Board*** delete "*Gas Pipelines Access (Western Australia) Act 1998*" and insert:

Energy Arbitration and Review Act 1998

58. Section 113 deleted

Delete section 113.

59. Section 125 amended

(1) Delete section 125(2)(b) and insert:

(b) make other provisions that it is necessary or convenient to make,

(2) After section 125(2) insert:

(3A) Regulations that, immediately before the day on which the *National Gas Access (WA) Act 2009* section 59(1) comes into operation, apply provisions of the *Gas Pipelines Access (Western Australia) Act 1998* continue to have the effect they had immediately before that day until the contrary intention appears from a regulation made after that day.

60. Section 130 amended

(1) In section 130(1) in the definition of ***gas pipelines access provisions*** delete "Schedule 1." and insert:

Schedule 1 as in force immediately before the day on which the *National Gas Access (WA) Act 2009* section 51 deleted it.

(2) In section 130(8) delete "*Gas Pipelines Access (Western Australia)*" and insert:

Energy Arbitration and Review

(3) Delete section 130(9) and insert:

(9) For proceedings to which subsection (8) extends the provisions described in that subsection, sections 57(1) and 59(4) of those provisions apply only to the extent that it is consistent with the Code for them to apply.

61. Section 133 amended

In section 133(1) before "in connection with" insert:

> in relation to the imposition and payment of fees and charges in connection with any matter under this Act, including

Division 4 — *Energy Coordination Act 1994*

62. Act amended

This Division amends the *Energy Coordination Act 1994*.

63. Section 11J deleted

Delete section 11J.

64. Section 11M amended

In section 11M(5) delete paragraph (a) and "or" after it and insert:

> (a) the National Gas Access (Western Australia) Law; or

65. Section 11V amended

Delete section 11V(2) and insert:

> (2) A licence does not have effect to the extent that it would be inconsistent with the National Gas Access (Western Australia) Law.

66. Section 11ZAC amended

Delete section 11ZAC(4)(b) and insert:

(b) an access arrangement under the National Gas Access (Western Australia) Law.

67. Schedule 1A amended

In Schedule 1A in paragraph (a) delete "Gas Pipelines Access (Western Australia) Law;" and insert:

National Gas Access (Western Australia) Law;

Division 5 — Other Acts amended

68. *Constitution Acts Amendment Act 1899 amended*

(1) This section amends the *Constitution Acts Amendment Act 1899*.

(2) In Schedule V Part 1 Division 1 in the item for the Western Australian Gas Disputes Arbitrator:

(a) delete "Gas Disputes" and insert:

Energy Disputes

(b) delete "*Gas Pipelines Access (Western Australia)*" and insert:

Energy Arbitration and Review

69. *Financial Management Act 2006 amended*

(1) This section amends the *Financial Management Act 2006*.

(2) In Schedule 1 in the item "Western Australian Gas Disputes Arbitrator" delete "Gas" and insert:

Energy

70. *Freedom of Information Act 1992 amended*

(1) This section amends the *Freedom of Information Act 1992*.

(2) Delete the Glossary clause 7A(1) and insert:

(1) In this clause —

access regulation functions means the functions given by or under the *National Gas Access (WA) Act 2009*;

arbitrator has the meaning given in section 61 of the *Energy Arbitration and Review Act 1998*;

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

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

71. *Parliamentary Commissioner Act 1971 amended*

(1) This section amends the *Parliamentary Commissioner Act 1971*.

(2) In Schedule 1 in the item for the Economic Regulation Authority delete "referred to in section 36(1) of the *Gas Pipelines Access (Western Australia) Act 1998* and" and insert:

given by or under the *National Gas Access (WA) Act 2009* or referred to in

72. *Petroleum Pipelines Act 1969 amended*

(1) This section amends the *Petroleum Pipelines Act 1969*.

(2) Delete section 5A.

Schedule 1 — Some modifications to National Gas Law as in Schedule to South Australian Act

[s. 7(2)]

1. Purpose of this Schedule

(1) This Schedule makes the modifications to the underlying National Gas Law that, together with modifications giving effect to section 7A(3) and (4), result in the text that section 7(1) applies as the National Gas Access (Western Australia) Law.

(2) In subclause (1) —

underlying National Gas Law means the National Gas Law, as set out in the South Australian Act Schedule for the time being in force.

2. Section 1 modified

In section 1 after "National Gas" insert —

Access

3. Section 2 modified

(1) In section 2 delete the definitions of ***dispute resolution body***, ***initial National Gas Rules***, ***old access law*** and ***Regulations***.

(2) In section 2 insert in alphabetical order:

dispute resolution body has the meaning given to that term in section 9(1) of the *National Gas Access (WA) Act 2009*;

initial National Gas Rules means —

(a) the National Gas Rules that, when the *National Gas Access (WA) Act 2009* section 30 came into operation, applied under section 294; and

(b) the *National Gas Access (Pipelines-Arbitration Amendment) Rules 2017* made by the Minister for Mineral Resources and Energy of South Australia under the National Gas (South Australia) Law section 294F (notice of which was published in the *Government Gazette* of South Australia on 1 August 2017 at p. 2994); and

(c) the *National Gas (Binding Rate of Return Instrument) Amendment Rule 2019* made by the Minister for Energy and Mining of South Australia under the National Gas (South Australia) Law section 294CA (notice of which was published in the *Government Gazette* of South Australia on 7 February 2019 at p. 404);

old access law means Schedule 1 to the *Gas Pipelines Access (Western Australia) Act 1998* as in force from time to time before the commencement of section 30 of the *National Gas Access (WA) Act 2009*;

Regulations means the regulations made under Part 3 of the *National Gas Access (WA) Act 2009* that apply as a law of this jurisdiction;

regulator has the meaning given to that term in section 9(1) of the *National Gas Access (WA) Act 2009*;

WA arbitrator has the meaning given to that term in section 9(1) of the *National Gas Access (WA) Act 2009*.

(3) In section 2 in the definition of ***AER*** after "Commonwealth" insert:

except if section 2A requires the term to be given a different meaning

(4) In section 2 in the definition of ***Gas Code*** delete "in force from time to time before the commencement of section 20 of the *National Gas (South Australia) Act 2008* of South Australia;" and insert:

amended and applying from time to time before the commencement of section 30 of the *National Gas Access (WA) Act 2009* as a law of Western Australia;

[(5) deleted]

[Clause 3 amended: Gazette 22 Dec 2017 p. 5985; 5 Apr 2019 p. 1009.]

4. Sections 2A and 2B inserted

After section 2 insert:

2A. Meaning of AER modified

(1) In this Law, other than in the definition of ***AER*** in section 2, a reference to the AER is to be read as a reference to the regulator (whether the ERA or the AER) except to the extent that subsection (2) gives a different meaning.

(2) To the extent to which a reference to the AER is capable of being read as a reference to the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth acting as the disputes resolution body, the term is to be read as having or including that meaning.

2B. References to WA application Act

In this Law, a reference to the *National Gas Access (Western Australia) Act 2008*, if any, is to be read as a reference to the *National Gas Access (WA) Act 2009*.

5. Chapter 1 Part 1A inserted

After Chapter 1 Part 1 insert:

Part 1A — Postponement of Natural Gas Services Bulletin Board provisions

20A. Minister may fix day on which provisions apply

To the extent that a provision of this Law relates to the Natural Gas Services Bulletin Board, the provision does not apply before a day is fixed by the Minister, by an order notice of which is published in the *Government Gazette*, as the day on and after which provisions of this Law relating to the Natural Gas Services Bulletin Board apply.

5A. Section 23A modified

In section 23A delete "Without limiting Part 3 of the *National Gas (South Australia) Act 2008* of South Australia," and insert:

Without limiting the *National Gas Access (WA) Act 2009* Part 3,

[Clause 5A inserted: SL 2024/5 r. 4.]

6. Section 29 modified

In section 29 after "Commonwealth" insert:

or by the ERA under section 29 of the *Economic Regulation Authority Act 2003*

7. Section 30 modified

(1) In section 30 delete "Section 44AAF" and insert:

(1) Section 44AAF

(2) At the end of section 30 insert:

(2) Without limiting section 2A, that section also applies to section 44AAF as adopted by subsection (1) and, when the adopted section is read as if a reference in it to the AER were a reference to the ERA, it is further modified as follows:

(a) delete subsection (3)(c) of the adopted section and insert:

(c) the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth;

(b) delete subsection (6)(a)(i) of the adopted section and insert:

(i) an ERA member, a person assisting the ERA in the performance of its functions or a delegate of the ERA;

7A. Section 30R deleted

Delete section 30R.

[Clause 7A inserted: Gazette 5 Apr 2019 p. 1010.]

7B. Section 42 modified

(1) After section 42(2) insert:

(2A) When subsection (2)(c) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "a member of the staff assisting the AER who is

an SES employee or an acting SES employee and" had been deleted and the following had been inserted instead:

a staff member as defined in the *Economic Regulation Authority Act 2003* section 3

(2) After section 42(11) insert:

(11A) When subsection (11) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "on behalf of the Commonwealth" had been deleted.

[Clause 7B inserted: SL 2024/186 r. 4.]

8. Chapter 2 Part 1A inserted

After Chapter 2 Part 1 insert:

Part 1A — Functions and powers of WA arbitrator

68A. Manner in which WA arbitrator must perform or exercise certain functions or powers

(1) The WA arbitrator must, in performing or exercising a function or power that relates to an access determination, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective.

(2) In addition, the WA arbitrator —

(a) must take into account the revenue and pricing principles when making an access determination relating to a rate or charge for a pipeline service; and

(b) may take into account the revenue and pricing principles when performing or exercising any other function or power that relates to an access determination, if the WA arbitrator considers it appropriate to do so.

(3) For the purposes of subsection (2)(a), a reference to a reference service in the revenue and pricing principles must be read as a reference to a pipeline service.

9. Section 181A inserted

After section 181 insert:

181A. Providing information for certain disputes

(1) If the dispute resolution body for a dispute notified under section 181(1) is the WA arbitrator —

(a) the WA arbitrator is to inform the ERA that notification of the dispute has been received; and

(b) the WA arbitrator may request the ERA to give the WA arbitrator any information in the ERA's possession that is relevant to the dispute.

(2) The ERA is to give the WA arbitrator the information requested, whether or not it is confidential and whether or not it came into the ERA's possession for the purposes of resolving the dispute.

(3) If the ERA gives the WA arbitrator information that is confidential, the ERA is to identify the nature and extent of the confidentiality and the WA arbitrator is to treat the information accordingly.

10. Section 231 modified

(1) After section 231(1) insert:

(1A) When subsection (1) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "on behalf of the Commonwealth" had been deleted.

(2) After section 231(3) insert:

(3A) When subsection (3) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "on behalf of the Commonwealth" had been deleted.

11. Section 240 modified

In section 240 delete "Commonwealth." and insert:

State of Western Australia except if the order is made on an application by the AER on behalf of the Commonwealth, in which case it is payable to the Commonwealth.

12. Section 290 modified

In section 290 in the definition of ***publish*** paragraph (a) delete "section 294 or 315" and insert:

section 315

13. Section 294 replaced

Delete section 294 and insert:

294. Initial National Gas Rules for WA

(1) The National Gas Rules that apply upon section 30 of the *National Gas Access (WA) Act 2009* coming into operation are as set out in the document called the *National Gas Rules 2008*, signed on 1 July 2008 by the Minister for Energy of South Australia, as affected, if applicable, by any amendments made by the AEMC under national gas legislation before the coming into operation of that section.

(2) Subsection (1) does not prevent the AEMC from making Rules under this Chapter that amend or revoke the rules referred to in it.

[Clause 13 amended: Gazette 22 Dec 2017 p. 5986.]

13A. Section 294FC modified

(1) In section 294FC(1):

(a) delete "this section—" and insert:

the *National Gas (South Australia) Law* (South Australia) section 294FC —

(b) in paragraph (c) delete "of the enactment of the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023* of South Australia." and insert:

of —

(i) the enactment of the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023* (South Australia); or

(ii) the amendment of this Law by virtue of the *National Gas Access (WA) Adoption of Amendments Order (No. 2) 2024* clause 3 (the ***adopting clause***).

(2) In section 294FC(8) insert in alphabetical order:

South Australian Minister means the Minister in right of the Crown of South Australia administering the *National Gas (South Australia) Act 2008* (South Australia) Part 2.

(3) In section 294FC(8) in the definition of ***amended objective*** delete "commencement of this section." and insert:

coming into operation of the adopting clause;

[Clause 13A inserted: SL 2024/5 r. 5.]

14. Schedule 1 modified

In Schedule 1 item 82 delete "section 20 of the *National Gas (South Australia) Act 2008* of South Australia." and insert:

section 30 of the *National Gas Access (WA) Act 2009* of Western Australia.

15. Schedule 2 clause 27A inserted

After Schedule 2 clause 27 insert:

27A. WA modifications of clause 27

Clause 27 applies to a conferral of power by this Law to the extent that the power derives from an amendment to

the Schedule to the *National Gas (South Australia) Act 2008* of South Australia —

(a) as if references in clause 27(2), (5) and (6) to the commencement of the empowering provision referred to the time when the Western Australian National Gas Access Law text, as defined in section 7(2) of the *National Gas Access (WA) Act 2009*, is affected by the amendment; and

(b) as if the reference in clause 27(3) to additional power that would be conferred had an Act of South Australia commenced referred to additional power that would be conferred had the Western Australian National Gas Access Law text been already affected by the amendment; and

(c) as if clause 27(7) had been omitted.

16. Schedule 2 clause 34 modified

(1) In Schedule 2 clause 34 delete "In any proceedings" and insert:

(1) In any proceedings

(2) At the end of Schedule 2 clause 34 insert:

(2) When subclause (1) is read as if a reference in it to the AER were a reference to the ERA, the subclause is to be read as if "an AER member, or an SES employee or acting SES employee assisting the AER as mentioned in section 44AAC of the *Trade Practices Act 1974* of the Commonwealth" had been deleted and the following had been inserted instead:

a member of the ERA

16A. Schedule 2 clause 47A modified

In Schedule 2 clause 47A(2) delete "1 July 2023." and insert:

the day on which the *National Gas Access (WA) Adoption of Amendments Order 2024* clause 3 comes into operation.

[Clause 16A inserted: SL 2024/186 r. 5.]

16B. Schedule 2 clause 47B modified

In Schedule 2 clause 47B(2) delete "1 July 2023." and insert:

the day on which the *National Gas Access (WA) Adoption of Amendments Order 2024* clause 3 comes into operation.

[Clause 16B inserted: SL 2024/186 r. 5.]

17. Schedule 2 clause 50 replaced

Delete Schedule 2 clause 50 and insert:

50. Attempts and incitement

Section 555A(1) and (2) of *The Criminal Code* apply in relation to a simple offence under this Law as if it were a simple offence under *The Criminal Code*.

17A. Schedule 2 clause 51 modified

In Schedule 2 clause 51(3) delete the definition of ***statutory instrument*** and insert:

statutory instrument includes the Regulations, the rate of return instrument or the Rules.

[Clause 17A inserted: Gazette 5 Apr 2019 p. 1010.]

18. Schedule 3 modified

(1) In Schedule 3 clause 1 in the definition of ***commencement day*** delete "section 20 of the new application Act" and insert:

section 30 of the *National Gas Access (WA) Act 2009*

(2) In Schedule 3 clause 45(3)(b) delete "*Gas Pipelines Access (South Australia) Regulations 1999* were not revoked." and insert:

Gas Pipelines Access (Western Australia) Regulations 2000 were not repealed.

(2A) In Schedule 3 clause 90:

(a) delete "section 26 of the *Statutes Amendment (National Energy Laws) (Rules) Act 2018*" and insert:

virtue of the *National Gas Access (WA) Adoption of Amendments Order 2020* clause 3 (the ***adopting clause***)

(b) in paragraph (a) delete "commencement of this clause; or" and insert:

coming into operation of the adopting clause; or

(c) in paragraph (b) delete "commencement of this clause," and insert:

coming into operation of the adopting clause,

(3) In Schedule 3 clause 95 insert in alphabetical order:

commencement means the coming into operation of the National Gas Access (WA) Adoption of Amendments Order 2019 clause 3;

(4) In Schedule 3 clause 96(1)(a) delete "commencement of this clause;" and insert:

commencement;

(5) In Schedule 3 clause 97(1) delete "commencement of this clause—" and insert:

commencement—

(6) In Schedule 3 clause 98(3) delete the definitions of ***amended Law*** and ***commencement*** and insert:

> ***amended Law*** means this Law as amended and modified by virtue of the *National Gas Access (WA) Adoption of Amendments Order 2019* and the *National Gas Access (WA) (Act Amendment) Regulations 2019*.

(6A) In Schedule 3 clause 99 delete the definition of ***Amendment Act***.

(6B) In Schedule 3 clause 99 insert in alphabetical order:

> ***adopting clause*** means the *National Gas Access (WA) Adoption of Amendments Order 2025* clause 3;

(6C) In Schedule 3 clause 99 in the definition of ***commencement day*** delete "section 33 of the Amendment Act" and insert:

the adopting clause

(6D) In Schedule 3 clause 100(1) delete "section 33 of the Amendment Act)." and insert:

virtue of the adopting clause).

(6E) In Schedule 3 clause 101(1) delete "section 33 of the Amendment Act" and insert:

virtue of the adopting clause

(6F) In Schedule 3 clause 102:

(a) in subclause (1) delete "section 33 of the Amendment Act" and insert:

virtue of the adopting clause

(b) in subclause (2) delete "section 33 of the Amendment Act)." and insert:

virtue of the adopting clause).

(6G) In Schedule 3 clause 103 delete "section 33 of the Amendment Act" and insert:

virtue of the adopting clause

(7) In Schedule 3 clause 133 delete the definition of ***amending Act***.

(8) In Schedule 3 clause 133 insert in alphabetical order:

adopting clause means the *National Gas Access (WA) Adoption of Amendments Order (No. 2) 2024* clause 3;

(9) In Schedule 3 clause 133 in the definition of ***amended objective*** delete "commencement of this clause;" and insert:

coming into operation of the adopting clause;

(10) In Schedule 3 clause 134:

(a) in subclause (2) delete "Despite section 14 of the amending Act—" and insert:

Despite the coming into operation of the adopting clause —

(b) in subclause (2)(a) delete "that section" and insert:

the adopting clause

(c) in subclause (2)(a) delete "commencement of this clause; and" and insert:

coming into operation of the adopting clause; and

(d) in subclause (3)(a) delete "commencement of this clause" and insert:

coming into operation of the adopting clause

(11) In Schedule 3 clause 135(2) delete "commencement of this clause," and insert:

coming into operation of the adopting clause,

(12) In Schedule 3 clause 136(1) and (2) delete "commencement of this clause," and insert:

coming into operation of the adopting clause,

(13) In Schedule 3 clause 138(1) and (2) delete "commencement of this clause—" and insert:

coming into operation of the adopting clause —

[Clause 18 amended: Gazette 5 Apr 2019 p. 1010; SL 2020/194 r. 4; SL 2024/5 r. 6; SL 2025/19 r. 4.]

Notes

This is a compilation of the *National Gas Access (WA) Act 2009* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
National Gas Access (WA) Act 2009	16 of 2009	1 Sep 2009	s. 1 and 2: 1 Sep 2009 (see s. 2(a)); Act other than s. 1 and 2: 1 Jan 2010 (see s. 2(b) and *Gazette* 31 Dec 2009 p. 5327)
Petroleum and Energy Legislation Amendment Act 2010 s. 184	42 of 2010	28 Oct 2010	25 May 2011 (see s. 2(b) *Gazette* 24 May 2011 p. 1892)
National Gas Access (WA) (Act Amendment) Regulations 2017 published in *Gazette* 22 Dec 2017 p. 5985-6			r. 1 and 2: 22 Dec 2017 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Dec 2017 (see r. 2(b) and *Gazette* 22 Dec 2017 p. 5984)
National Gas Access (WA) (Act Amendment) Regulations 2019 published in *Gazette* 5 Apr 2019 p. 1009-10			r. 1 and 2: 5 Apr 2019 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Apr 2019 (see r. 2(b) and *Gazette* 5 Apr 2019 p. 1007)
National Gas Access (WA) (Act Amendment) Regulations 2020 (SL 2020/194)			r. 1 and 2: 9 Oct 2020 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Oct 2020 (see r. 2(b) and SL 2020/195 cl. 2(b))
*National Gas Access (WA) (Act Amendment) Regulations (No. 2) 2024 (*SL 2024/5)			r. 1 and 2: 24 Jan 2024 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Jan 2024 (see r. 2(b) and *Gazette* 24 Jan 2024 p. 91-2)

Short title	Number and year	Assent	Commencement
National Gas Access (WA) (Act Amendment) Regulations 2024 (SL 2024/186)			r. 1 and 2: 4 Sep 2024 (see r. 2(a)); Regulations other than r. 1 and 2: 5 Sep 2024 (see r. 2(b) and *Gazette* 4 Sep 2024 p. 2215)
National Gas Access (WA) (Act Amendment) Regulations 2025 (SL 2025/19)			r. 1 and 2: 22 Jan 2025 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Jan 2025 (see r. 2(b) and *Gazette* 22 Jan 2025 p. 63-4)

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)
adjacent area in respect of the State	5(2)
adjacent area of another participating jurisdiction	9(1)
adjacent area of this jurisdiction	9(1)
adopting clause	Sch. 1 cl. 18(2A)
coastal waters	5(2)
Commonwealth bodies	12(2)
Court	9(1)
cross boundary pipeline	16(4)
designated Minister	9(1)
dispute resolution body	9(1)
ERA pipeline	9(1)
exempt contract	19(3)
exempt matter	15(2)
gas other than natural gas	6A(3)
Gas Pipelines Access Law	11(4)
initial National Gas Rules	Sch. 1 cl. 3(1)
Legislature of this jurisdiction	9(1)
matters of a transitional nature	11(4)
National Gas Access (Western Australia) Law	3(1), 11(4)
National Gas Access (Western Australia) Regulations	3(1)
National Gas Law	9(1)
national provisions	19(3)
regulator	9(1)
relevant national provisions	19(3)
SA Schedule amendment	7A(1)
South Australian Act	3(1)
statutory instrument	Sch. 1 cl. 17A
that other legislation	16(1)
this jurisdiction	9(1)
this Law	9(1)
transitional period	20(2)
underlying National Gas Law	Sch. 1 cl. 1(2)
WA arbitrator	9(1)
Western Australian National Gas Access Law text	7(2)

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