

Western Australia

## **Energy Legislation Amendment Act 2003**

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No. 53 of 2003

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# Energy Legislation Amendment Act 2003

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Western Australia

## Energy Legislation Amendment Act 2003

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No. 53 of 2003

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**An Act to amend —**

- **the *Energy Coordination Act 1994*;**
- **the *Parliamentary Commissioner Act 1971*;**
- **the *Gas Standards Act 1972*;**
- **the *Minerals and Energy Research Act 1987*;**
- **the *Electricity Corporation Act 1994*;**
- **the *Energy Operators (Powers) Act 1979*; and**
- **some other Acts,**

**and to validate certain agreements made with Western Power Corporation, and for related purposes.**

[Assented to 8 October 2003]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Energy Legislation Amendment Act 2003*.

### **2. Commencement**

- (1) Except as stated in subsections (2) and (4), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) The following provisions come into operation on a day fixed by proclamation —
  - (a) Part 2;
  - (b) Part 3, other than Divisions 3, 10 and 11;
  - (c) Part 6, other than sections 97 and 98; and
  - (d) sections 109(4), 109(5), 110(4) and 111.
- (3) Different days may be fixed under subsection (2) for different provisions.
- (4) Part 3 Division 3 comes into operation on the first anniversary of the day on which Part 3 Division 2 comes into operation.
- (5) A proclamation is not to be published for the purposes of subsection (2)(c) until section 98(1) has been complied with.

## **Part 2 — Amendments relating to gas supply licensing**

### **3. The Act amended**

The amendments in this Part are to the *Energy Coordination Act 1994*\*.

[\* *Reprinted as at 5 May 2000.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 119, see also Economic Regulation Authority Bill 2002 currently before Parliament.]*

### **4. Section 11H amended**

Section 11H(1) is repealed and the following subsections are inserted instead —

“

- (1) The Governor may by order published in the *Gazette* exempt any person or class of persons from all or any of the provisions of section 11G.
- (1a) An exemption may be expressed to apply —
  - (a) generally; or
  - (b) only in respect of a specified supply area or a specified part of a supply area.
- (1b) An order under subsection (1) may provide for circumstances in which, and conditions subject to which, an exemption is to apply.
- (1c) An exemption is of no effect at any time when a condition to which it is subject is not being observed.

”.

**5. Section 11M amended**

Section 11M(4) is repealed and the following subsection is inserted instead —

“

- (4) The terms and conditions of licences that —
- (a) have the same classification under section 11D(1); and
  - (b) apply in the same supply area or part of a supply area,

must be substantially similar, except to the extent that the Authority considers that —

- (c) it is not practicable to make them substantially similar; or
- (d) a difference is necessary to reflect particular supply circumstances.

”.

**6. Section 11P amended**

- (1) Section 11P is amended by inserting before “An” the subsection designation “(1)”.
- (2) At the end of section 11P the following subsection is inserted —

“

- (2) An applicant must also provide such other information as the Authority may request for the proper consideration of the application.

”.

**7. Section 11R amended**

After section 11R(3) the following subsection is inserted —

“

- (4) An applicant must also provide such other information as the Authority may request for the proper consideration of the application.



”.

**8. Section 11S amended**

After section 11S(2) the following subsection is inserted —

“

- (3) The duties imposed on the Authority by subsections (1) and (2) apply only if —
  - (a) an application has been made in accordance with section 11L, 11P or 11R, as the case may be;
  - (b) section 11WE or 11ZQG does not prohibit the grant or renewal of the licence or the approval of the transfer; and
  - (c) where a requirement has been made under section 11L(3), 11P(2) or 11R(4), the relevant information has been provided to the Authority.

”.

**9. Section 11VA inserted**

After section 11V the following section is inserted —

“

**11VA. Amendment of licence on application of licensee**

- (1) A licensee may apply to the Authority at any time for amendment of the licence.
- (2) An application —
  - (a) is to be made in a form approved by the Authority; and
  - (b) is to be accompanied by the prescribed application fee.
- (3) The applicant must also provide such other information as the Authority may require for the proper consideration of the application.

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- (4) The Authority may grant the application if —
  - (a) it has been made in accordance with subsection (2); and
  - (b) where a requirement has been made under subsection (3), the relevant information has been provided to the Authority.
- (5) Regulations made under section 26 may require the Authority, before it makes a decision on an application under this section, to undertake public consultation in accordance with the procedure specified in the regulations.

”.

**10. Section 11W amended**

Section 11W(1) is amended by inserting after “may” the following —

“ , on its own initiative, ”.

**11. Section 11ZH amended**

- (1) After section 11ZH(2)(b) the following paragraph is inserted —

“

- (ba) to refuse to amend a licence under section 11VA;

”.

- (2) Section 11ZH(13) is repealed and the following subsection is inserted instead —

“

- (13) When Part 6 Division 2 and section 87 of the *Gas Pipelines Access (Western Australia) Act 1998* refer to the functions of, and proceedings before, the Board those functions and proceedings include functions and proceedings under this section.

”.

## **Part 3 — Amendments to facilitate a contestable retail gas market, and related transitional provisions**

### **Division 1 — Preliminary**

#### **12. The Act amended**

The amendments in this Part are to the *Energy Coordination Act 1994*\* unless otherwise indicated.

[\* *Reprinted as at 5 May 2000.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 119, see also Economic Regulation Authority Bill 2002 currently before Parliament.]*

#### **13. Long title amended**

The long title is amended by inserting after “licensing scheme;” the following items —

“

- **the facilitation of competition in the retail gas market by provision for appropriate arrangements between businesses operating in that market, a marketing code of conduct and a scheme for the resolution of certain customer disputes;**
- **other regulation of the gas supply industry;**

”.

#### **14. Section 3 amended**

Section 3 is amended in paragraph (b) of the definition of “supply” by deleting “to small use customers”.

## **Division 2 — Retail Market Schemes**

### **15. Part 2B inserted**

After Part 2A the following Part is inserted —

“

## **Part 2B — Gas supply: retail market schemes**

### **Division 1 — Preliminary**

#### **11ZOA. Definitions**

In this Part, unless the contrary intention appears —

“**approved**” means approved by the Minister under Division 3;

“**contravene**” includes fail to comply with;

“**formal entity**” means a formal entity referred to in section 11ZOF(1)(b);

“**gas business operator**” means —

- (a) a gas market participant;
- (b) a gas transmission operator; and
- (c) a prescribed person within the meaning in section 11ZOD(1)(b);

“**gas distribution operator**” has the meaning given by section 11ZOC(1)(a);

“**gas market participant**” has the meaning given by section 11ZOC(1);

“**gas transmission operator**” has the meaning given by section 11ZOD(1)(a);

“**member**”, in relation to a retail market scheme, means a gas market participant who is bound by agreement to comply with the relevant provisions of the scheme as required by section 11ZOC(1);

“**relevant provisions**”, in relation to a person, means the provisions of a retail market scheme or retail market rules, as the case may be, that are applicable to the person;

“**retail gas operator**” has the meaning given by section 11ZOC(1)(b);

“**retail market rules**” means rules of the kind described in section 11ZOG, as from time to time amended, that have effect as part of a retail market scheme;

“**retail market scheme**” means a scheme of the kind described in section 11ZOF.

## **Division 2 — Purpose and content of a retail market scheme**

### **11ZOB. Purpose of retail market scheme**

The purpose of a retail market scheme for a distribution system is to ensure that the retail gas market that is supplied through that system is regulated and operates in a manner that is —

- (a) open and competitive;
- (b) efficient; and
- (c) fair to gas market participants and their customers.

### **11ZOC. Persons required to comply with a retail market scheme**

- (1) Each of the following persons (a “**gas market participant**”) must be bound by agreement, as provided by section 11ZOF(1)(a), to comply with the relevant provisions of an approved retail market scheme for a distribution system —
  - (a) a person (a “**gas distribution operator**”) who is required to hold a distribution licence for that system; and

- (b) a person (a “**retail gas operator**”) who sells gas that is transported through that system.
- (2) This section has effect subject to —
  - (a) section 11ZOE; and
  - (b) any exemption granted under section 11ZOS.

**11ZOD. Persons required to comply with retail market rules**

- (1) The following persons must comply with the relevant provisions of the retail market rules made as part of any approved retail market scheme for a distribution system —
  - (a) a person (a “**gas transmission operator**”) who operates a pipeline that is used to transport gas into that distribution system for supply to customers of retail gas operators;
  - (b) any other person (a “**prescribed person**”) who —
    - (i) is prescribed; or
    - (ii) belongs to a class of persons that is prescribed,for the purposes of this paragraph.
- (2) Without limiting section 43(7) of the *Interpretation Act 1984*, regulations made for the purposes of subsection (1)(b) may —
  - (a) prescribe a person in terms that retail market rules apply to the person; or
  - (b) prescribe a class of persons in terms that retail market rules apply to persons belonging to the class,subject to any specified exception or limitation.
- (3) This section has effect subject to any exemption granted under section 11ZOS.

**11ZOE. Exception to requirement for a scheme**

A retail market scheme is not required to be in force for a distribution system if —

- (a) there is no more than one person who is required to hold a distribution licence for that system; and
- (b) there is no more than one person who sells gas that is transported through that system.

**11ZOF. Elements of retail market scheme**

- (1) A retail market scheme for a distribution system is to consist of —
  - (a) one or more agreements made between persons who are gas market participants in relation to that system;
  - (b) a formal entity (whether a company, partnership, trust or otherwise) to provide the structure through which the scheme is administered; and
  - (c) a set of retail market rules.
- (2) An agreement for the purposes of subsection (1)(a) may take the form of a provision by which a person, on becoming a member of a formal entity, is taken to agree to specified matters.
- (3) The documentation for the matters mentioned in subsection (1)(a) and (b) is to set out —
  - (a) the arrangements and understandings between the gas market participants concerned;
  - (b) their mutual rights and obligations; and
  - (c) all necessary incidental and supplementary provisions,

to achieve the purposes set out in section 11ZOB.

- (4) Without limiting subsection (3), provision is to be made in the documentation for a retail market scheme for —
- (a) the administration of the scheme;
  - (b) the cost of administration to be met by the gas market participants who are members of the scheme;
  - (c) how those costs are to be borne as between the gas market participants concerned;
  - (d) reporting to the Minister on the operation of the scheme;
  - (e) the resolution of disputes and questions that may arise between the gas market participants concerned;
  - (f) the scheme to be accessible to any gas market participant in relation to the relevant distribution system; and
  - (g) any other matter that is prescribed.

**11ZOG. Requirements for retail market rules**

- (1) Retail market rules for a distribution system are to set out in relation to the operations of the relevant gas business operators —
- (a) the systems, practices, procedures and processes; and
  - (b) rights and obligations of the gas business operators and their customers,
- that are to be in place to achieve the purposes set out in section 11ZOB.
- (2) Without limiting subsection (1) provision is to be made for and in relation to —
- (a) the roles and functions of each kind of gas business operator;



- (b) the transfer of customers between retail gas operators, including —
  - (i) the procedures to be followed;
  - (ii) the information to be provided; and
  - (iii) requirements for the consent of a customer to be obtained to the taking of any specified step in respect of the customer;
- (c) the collection, management and use of data arising from the metering of gas flow;
- (d) the provision of access to, and copies of, the data referred to in paragraph (c);
- (e) the rights, powers and obligations of gas business operators, and the procedures that are to apply, in respect of an imbalance during a particular period between —
  - (i) the amount of gas of an operator that is entered on behalf of the operator into a distribution system or part of a distribution system; and
  - (ii) the amount of gas that is withdrawn by the operator from,  
that system or that part of a system;
- (f) the keeping, retention and auditing of records;
- (g) the resolution of disputes and questions that may arise;
- (h) subject to Division 3, the requirements to be observed in making an amendment to, or replacing, the retail market rules;
- (i) monitoring compliance with the retail market rules;
- (j) the enforcement of the retail market rules, including by the imposition of penalties; and

- (k) any other matter that is prescribed.
- (3) Retail market rules are of no effect to the extent that they are inconsistent with this Act or another written law.
- (4) Retail market rules are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**11ZOH. Regulations for retail market scheme or rules**

Regulations may be made —

- (a) authorising the inclusion in a retail market scheme or in retail market rules of a provision —
  - (i) of a particular kind;
  - (ii) having a particular effect or operation;  
or
  - (iii) relating to a particular matter or particular circumstances;or
- (b) making any provision that —
  - (i) facilitates the operation of a retail market scheme or retail market rules;  
and
  - (ii) cannot be included in the scheme or rules under the provisions of section 11ZOF or 11ZOG.

**Division 3 — Preparation, approval, review and  
amendment of retail market schemes**

**11ZOI. Submission of retail market scheme for approval**

- (1) A proposed retail market scheme for a distribution system may be submitted to the Minister for approval by —
  - (a) the members of; or
  - (b) the formal entity for,the proposed scheme.
- (2) A retail market scheme is not to be submitted under subsection (1) unless the gas market participants concerned have agreed to be bound by the scheme.
- (3) A retail market scheme for a distribution system is not to be submitted under subsection (1) unless the gas market participants concerned have consulted with —
  - (a) any gas transmission operator whose pipeline is used to transport gas into that system; and
  - (b) a prescribed person within the meaning in section 11ZOD(1)(b) in relation to that system.
- (4) Consultation under subsection (3) is only required —
  - (a) in relation to the provisions of the retail market rules that will apply to —
    - (i) the gas transmission operator; or
    - (ii) the prescribed person within the meaning in section 11ZOD(1)(b),as part of the scheme; and
  - (b) in the case of a person referred to in paragraph (a)(ii) to the extent that the person —
    - (i) is required by the regulations to be consulted under subsection (3); or

- (ii) meets any criteria in relation to the requirement for consultation that are prescribed for the purposes of this subparagraph.

**11ZOJ. Approval of retail market schemes**

- (1) Where a proposed retail market scheme is submitted under section 11ZOI, the Minister may —
  - (a) in accordance with sections 11ZON and 11ZOP, approve the proposed scheme; or
  - (b) request that it be amended.
- (2) If, following a request under subsection (1)(b), the scheme is submitted with amendments, the Minister may —
  - (a) in accordance with sections 11ZON and 11ZOP, approve the amended scheme; or
  - (b) request that it be further amended.
- (3) If, following a request under subsection (2)(b), the scheme is submitted with further amendments, the Minister is to —
  - (a) approve the amended scheme; or
  - (b) refuse to approve it,in accordance with sections 11ZON and 11ZOP.
- (4) The Minister is to cause notice of the approval of a retail market scheme to be published in the *Gazette*.

**11ZOK. Commencement of retail market schemes**

- (1) A retail market scheme comes into force on a day determined by the Minister by instrument in writing.
- (2) The Minister may from time to time, by further instrument in writing, amend an instrument made under subsection (1).

- (3) An instrument made under subsection (1) or (2) is to be published in the *Gazette*.

**11ZOL. Submission of amendment for approval**

- (1) The members for the time being of an approved retail market scheme may —
- (a) prepare an amendment to the scheme; and
  - (b) submit the amendment to the Minister for approval.
- (2) An amendment to a retail market scheme is not to be submitted under subsection (1) unless the provisions of the scheme relating to proposals for amendment of the scheme have been complied with.
- (3) An amendment to the retail market rules made as part of a scheme for a distribution system is not to be submitted under subsection (1) unless the members of the scheme have consulted in relation to the amendment with any of the following who would be affected by the amendment if it is approved —
- (a) a gas transmission operator whose pipeline is used to transport gas into that system; and
  - (b) a prescribed person within the meaning in section 11ZOD(1)(b).
- (4) Consultation is required under subsection (3) with a person referred to in subsection (3)(b) only to the extent that the person —
- (a) is required by the regulations to be consulted under that subsection; or
  - (b) meets any criteria in relation to the requirement for consultation that are prescribed for the purposes of this paragraph.

- (5) In this section and in section 11ZOM —  
“**amendment**” includes a replacement for the whole or part of the retail market scheme.

**11ZOM. Approval of amendment**

Where an amendment is submitted under section 11ZOL, the Minister is to, in accordance with sections 11ZOO and 11ZOP —

- (a) approve it;
- (b) request that it be changed and approve it in a changed form; or
- (c) refuse to approve it.

**11ZON. Prerequisites to approval of scheme**

The Minister may approve a retail market scheme under section 11ZOJ only if the Minister is satisfied —

- (a) that the provisions of the scheme —
  - (i) comply with this Act; and
  - (ii) are suitable for the purposes of section 11ZOB;
- (b) any other principle, criterion or requirement that is prescribed for the purposes of this paragraph has been met; and
- (c) the consultation required by section 11ZOI(3) has taken place and —
  - (i) each person required to be consulted has agreed, if the scheme is approved, to comply with the relevant provisions of the retail market rules made as part of the scheme; or

- (ii) if any person required to be consulted has not so agreed, that person has been given a reasonable opportunity in the course of the consultation to provide reasons for not agreeing and any reasons so provided have been considered.

**11ZOO. Prerequisites to approval of amendment**

- (1) The Minister may approve an amendment to a retail market scheme under section 11ZOM only if the Minister is satisfied that —
  - (a) if the amendment is made the provisions of the scheme —
    - (i) will comply with this Act; and
    - (ii) be suitable for the purposes of section 11ZOB;
  - (b) any other principle, criterion or requirement that is prescribed for the purposes of this paragraph has been met.
- (2) The Minister may approve an amendment to any retail market rules under section 11ZOM only if the Minister is satisfied that the consultation required by section 11ZOL(3) has taken place and —
  - (a) each person required to be consulted has agreed to the amendment; or
  - (b) if any person required to be consulted has not so agreed, that person has been given a reasonable opportunity in the course of the consultation to provide reasons for not agreeing and any reasons so provided have been considered.

**11ZOP. Matters to which Minister is to have regard**

The Minister is also to have regard to —

- (a) any principles, criteria or requirements that are prescribed for the purposes of this paragraph; and
- (b) such other matters as the Minister considers relevant,

when determining whether or not to give an approval under section 11ZOJ or 11ZOM.

**11ZOQ. Review of scheme**

- (1) The Minister must carry out a review of a retail market scheme as soon as is practicable after the third anniversary of its commencement.
- (2) The purpose of a review is to re-assess the suitability of the provisions of a scheme to achieve the purposes set out in section 11ZOB.

**Division 4 — Enforcement**

**Subdivision 1 — Enforcement of requirements for membership of scheme**

**11ZOR. Membership required**

- (1) A gas distribution operator contravenes this section if the operator —
  - (a) transports gas through a distribution system; and
  - (b) is not a member of an approved retail market scheme in force for that system.



- (2) A retail gas operator contravenes this section if the operator —
  - (a) sells gas that is transported through a distribution system; and
  - (b) is not a member of an approved retail market scheme in force for that system.
- (3) Subsections (1) and (2) have effect subject to —
  - (a) section 11ZOE; and
  - (b) any exemption granted under section 11ZOS.
- (4) A person who contravenes this section is liable to a penalty under section 11ZOT.

**11ZOS. Power to exempt**

- (1) The Minister may by order published in the *Gazette* exempt —
  - (a) a gas business operator; or
  - (b) a class of gas business operators,from any of the provisions of sections 11ZOC, 11ZOD and 11ZOR.
- (2) An order under subsection (1) may provide for circumstances in which, and conditions subject to which, an exemption is to apply.
- (3) The Minister may only make an order under subsection (1) if satisfied that the grant of an exemption —
  - (a) would be consistent with the objects of section 11ZOB; and
  - (b) would not be contrary to the public interest.
- (4) In determining the question mentioned in subsection (3)(b) the Minister may take into account one or more of the matters referred to in section 11H(3).

- (5) An exemption is of no effect at any time when a condition to which it is subject is not being observed.
- (6) An order under subsection (1) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (7) An order by which an order under subsection (1) is revoked may contain provisions of a transitional or supplementary nature in relation to the application of a provision of this Part to any gas business operator, or class of gas business operators, affected by the revocation.

**11ZOT. Enforcement of section 11ZOR**

- (1) If, in the opinion of the Minister, a person who is a gas distribution operator or a retail gas operator has contravened section 11ZOR, the Minister may cause a notice to be served on the person requiring that the contravention be rectified within a specified period.
- (2) If, in the opinion of the Minister, the person fails to comply with a notice under subsection (1), the Minister may in writing order the person to pay a daily monetary penalty fixed by the Minister, but not exceeding \$10 000.
- (3) For the purposes of subsection (2), the daily penalty is a penalty for each day on which the person acts in contravention of section 11ZOR.
- (4) The Minister is not to make an order under subsection (2) unless the person has been —
  - (a) notified in writing of the proposed order; and
  - (b) given a reasonable opportunity to show why the order should not be made.
- (5) The Minister may recover a penalty imposed under subsection (2) in a court of competent jurisdiction as a debt due by the person to the Crown.

**Subdivision 2 — Enforcement of retail market  
scheme and rules**

**11ZOU. Minister may impose penalty for breach**

- (1) This section applies if, in the opinion of the Minister —
  - (a) a person who is a gas market participant contravenes a relevant provision of a retail market scheme; or
  - (b) a person who is —
    - (i) a gas transmission operator; or
    - (ii) a prescribed person within the meaning in section 11ZOD(1)(b),contravenes a relevant provision of retail market rules.
- (2) The Minister may cause a notice to be served on the person requiring that the contravention be rectified within a specified period.
- (3) If, in the opinion of the Minister, the person fails to comply with a notice served under subsection (2), the Minister may —
  - (a) serve a letter of reprimand on the person; or
  - (b) in writing order the person to pay a monetary penalty fixed by the Minister, but not exceeding \$100 000.
- (4) The Minister is not to serve a letter or make an order under subsection (3) unless the person has been —
  - (a) notified in writing that the Minister proposes to take action under subsection (3); and
  - (b) given a reasonable opportunity to show why such action should not be taken.

- (5) The Minister may recover a penalty imposed under subsection (3)(b) in a court of competent jurisdiction as a debt due to the Crown by the person concerned.

**Subdivision 3 — Prohibition of certain conduct in relation to a retail market scheme**

**11ZOV. Conduct preventing or hindering operation**

- (1) A person to whom this section applies must not engage in conduct (the “**prohibited conduct**”) for the purpose of —
- (a) preventing or hindering;
  - (b) attempting to prevent or hinder; or
  - (c) conspiring with others to prevent or hinder,
- the operation of a retail market scheme in accordance with section 11ZOB.
- (2) A person to whom this section applies must not —
- (a) aid, abet, counsel or procure a person to engage in the prohibited conduct;
  - (b) induce, or attempt to induce, a person, whether by threats or promises or otherwise, to engage in the prohibited conduct; or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, the engagement of a person in the prohibited conduct.
- (3) This section applies to —
- (a) a gas business operator in relation to the retail market scheme concerned;
  - (b) a person who is party to an agreement with such a gas business operator relating to the supply or distribution of gas; or

- (c) an associate of —
  - (i) a gas business operator referred to in paragraph (a); or
  - (ii) a person referred to in paragraph (b).

**11ZOV. Interpretation of section 11ZOV**

- (1) In section 11ZOV —
  - (a) a reference to engaging in conduct is a reference to —
    - (i) doing or refusing to do any act, including —
      - (I) refusing to supply a service; or
      - (II) without reasonable grounds, limiting or disrupting a service;
    - (ii) making, or giving effect to a provision of, a contract or arrangement;
    - (iii) arriving at, or giving effect to a provision of, an understanding; or
    - (iv) requiring the giving of, or giving, a covenant;
  - (b) a reference to refusing to do an act includes a reference to —
    - (i) refraining (otherwise than inadvertently) from doing that act;
    - (ii) making it known that that act will not be done.
- (2) In section 11ZOV(3)(c) —

**“associate”** has the meaning it would have under Part 1.2 Division 2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 14, 16(2) and 17 of that Act were repealed.

**11ZOX. Establishing purpose of conduct**

- (1) For the purposes of section 11ZOV, a person is taken to engage in conduct for a particular purpose if —
  - (a) the conduct is or was engaged in for that purpose or for a purpose that includes, or included, that purpose; and
  - (b) that purpose is or was a substantial purpose.
- (2) A person may be taken to have engaged in conduct for the purpose referred to in section 11ZOV even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from —
  - (a) the conduct of the person or of any other person; or
  - (b) other relevant circumstances.
- (3) Subsection (2) does not limit the manner in which the purpose of a person may be established for the purpose of section 11ZOV.

**11ZOY. Remedies for breach of section 11ZOV**

- (1) Criminal proceedings (including proceedings under section 177 of *The Criminal Code*) do not lie against a person by reason only that the person has contravened section 11ZOV(1) or (2).
- (2) The remedies set out in Schedule 2A are available where a person has contravened section 11ZOV(1) or (2).
- (3) Nothing in this section or Schedule 2A affects the right of a person —
  - (a) to bring civil proceedings in respect of any matter or thing; or

- (b) to seek any relief or remedy,  
if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on section 11ZOV.

### **Division 5 — Directions**

#### **Subdivision 1 — Directions to amend retail market scheme**

##### **11ZOZ. Minister may direct amendment**

- (1) The Minister may in writing direct the members of a retail market scheme to make a specified amendment to the scheme, and to do so within a specified time.
- (2) The Minister must consult with the members concerned before giving a direction under subsection (1).
- (3) The members must comply with a direction given to them under subsection (1).

##### **11ZP. Non-compliance with direction for amendment**

- (1) If, in the opinion of the Minister, the persons who are required to comply with a direction under section 11ZOZ fail to do so, the Minister may in writing order each of them to pay a daily monetary penalty fixed by the Minister, but not exceeding \$2 000.
- (2) For the purposes of subsection (1) the daily penalty in respect of a person is a penalty for each day on which —
  - (a) the person carries on business; and
  - (b) the direction given under section 11ZOZ is not complied with.
- (3) The Minister is not to make an order against a person under subsection (1) unless the person has been —
  - (a) notified in writing of the proposed order; and

- (b) given a reasonable opportunity to show why the order should not be made.
- (4) The Minister may recover a penalty imposed under subsection (1) in a court of competent jurisdiction as a debt due by the person to the Crown.
- (5) In subsection (2)(a) —  
“**business**” means —
  - (a) in the case of a gas distribution operator, the transport of gas through the relevant distribution system; and
  - (b) in the case of a retail gas operator, the sale of gas that is transported through the relevant distribution system.

**Subdivision 2 — Directions as to operation of retail market scheme**

**11ZPA. Directions to governing body of a scheme**

- (1) The Minister may, by notice in writing to the governing body of a scheme, give directions as to —
  - (a) the provision of information or reports, or the making of periodical returns, to the Minister by the governing body;
  - (b) the attendance of a nominee of the Minister as an observer at meetings of the governing body;
  - (c) the provision of meeting papers and related material to the Minister in advance of meetings; or
  - (d) any other prescribed matter.
- (2) A direction may only be given under this section so far as the Minister considers it is necessary or expedient —
  - (a) to achieve any of the purposes set out in section 11ZOB;



- (b) for monitoring the operation of a retail market scheme; or
  - (c) for keeping the Minister informed as to —
    - (i) the affairs of a formal entity, including its financial affairs; or
    - (ii) proposals that will affect the conduct of its affairs.
- (3) The Minister must consult with the governing body concerned before giving a direction under subsection (1).
- (4) The Minister is to cause —
- (a) notice of the giving of a direction under this section; and
  - (b) a description of the nature of the direction,
- to be published in the *Gazette* within 14 days after the direction is given.
- (5) A governing body must comply with a direction given to it under this section.
- (6) The Minister may, in writing, revoke or amend a direction given under this section.
- (7) In this section —
- “governing body of a scheme”** means the governing body of the formal entity mentioned in section 11ZOF(1)(b) for a retail market scheme.

**11ZPB. Enforcement of directions**

- (1) If, in the opinion of the Minister, a governing body of a formal entity fails to comply with a direction given to it under section 11ZPA the Minister may in writing order the formal entity to pay a monetary penalty fixed by the Minister, but not exceeding \$100 000.

- (2) The Minister is not to make an order under subsection (1) unless the formal entity has been —
  - (a) notified in writing of the proposed order; and
  - (b) given a reasonable opportunity to show why the order should not be made.
- (3) The Minister may recover a penalty imposed under subsection (1) in a court of competent jurisdiction as a debt due to the Crown by the formal entity.
- (4) References in this section to a formal entity include, in the case of an entity that is not a body corporate, the members of the entity.

### **Division 6 — Review of certain decisions**

#### **11ZPC. Definition**

In this Division —

“**Board**” means the Western Australian Gas Review Board established by the *Gas Pipelines Access (Western Australia) Act 1998*.

#### **11ZPD. Review of decision to refuse approval**

- (1) If the Minister refuses to approve a retail market scheme under section 11ZOJ the gas market participants concerned, or the formal entity for the proposed scheme, may apply to the Board for a review of the decision.
- (2) If the Minister refuses to approve an amendment to a retail market scheme under section 11ZOM the members of the scheme, or the formal entity for the scheme, may apply to the Board for a review of the decision.

**11ZPE. Review of direction to amend scheme**

If the Minister gives a direction under section 11ZOZ for the amendment of a retail market scheme, the members of the scheme, or the formal entity for the scheme, may apply to the Board for a review of the direction.

**11ZPF. Review of penalty**

- (1) If the Minister makes an order imposing a penalty on a person under section 11ZOT(2), 11ZOU(3)(b) or 11ZP(1), the person may apply to the Board for a review of the decision.
- (2) If the Minister makes an order imposing a penalty on a formal entity under section 11ZPB(1), the governing body of the formal entity may apply to the Board for a review of the decision.

**11ZPG. Time for making application**

An application under this Division must be made within 14 days after the applicant received notice in writing of the decision or direction of the Minister.

**11ZPH. Conduct of review**

- (1) The provisions of section 11ZH(3), (4), (5), (6), (7), (8), (10), (11) and (13) apply for the purposes of a review under this Division in the same way as they apply to a review and proceedings under subsection (2) of that section.
- (2) Subsection (1) also applies to the provisions of section 11ZH(9) and (12) except that the references in those subsections to the Authority are to be read as references to the Minister.

**Division 7 — Regulations for operation of  
retail gas market**

**11ZPI. Regulations for retail gas market**

- (1) On the recommendation of the Minister, regulations may be made in relation to a distribution system that are necessary or convenient to ensure that the retail gas market that is supplied through that system is regulated and operates in a manner that is —
  - (a) open and competitive;
  - (b) efficient; and
  - (c) fair to gas market participants and their customers.
- (2) Without limiting subsection (1), regulations made in relation to a distribution system may —
  - (a) provide for and in relation to matters that are required to be provided for by a retail market scheme, including those described in section 11ZOG;
  - (b) prohibit the continued operation of an approved retail market scheme for that system except as may be provided for in the regulations; and
  - (c) provide for the punishment of a contravention of the regulations, including by the imposition of monetary penalties as provided in section 11ZOU.

**11ZPJ. Grounds for Minister's recommendation**

- (1) The Minister may under section 11ZPI recommend the making of regulations for a distribution system only if the Minister considers that —
  - (a) any approved retail market scheme for that system —
    - (i) has ceased to be suitable for the purposes of section 11ZOB; or

- (ii) is not being implemented in a manner that is suitable for those purposes;
  - or
  - (b) the formal entity for an approved retail market scheme for that system —
    - (i) is not functioning effectively; or
    - (ii) is subject to external administration under the *Corporations Act 2001* of the Commonwealth.
- (2) A recommendation made by the Minister under section 11ZPI is not liable to be challenged, reviewed or called in question in any court.

**11ZPK. Regulations override scheme etc.**

Regulations made under section 11ZPI for a distribution system have effect despite, and to the exclusion of —

- (a) the provisions of any approved retail market scheme that would otherwise apply to that system; and
- (b) any provision of this Part, other than Division 1 and this Division.

”.

**16. Schedule 2A inserted**

After Schedule 2 the following Schedule is inserted —

“

**Schedule 2A — Remedies for contravention of section 11ZOV**

**1. Definition**

[s. 11ZOY]

In this Schedule —

“**Court**” means the Supreme Court.

**2. Actions for damages for contravention of section 11ZOV**

- (1) A person who suffers loss or damage by reason of a contravention of section 11ZOV(1) or (2) may recover the amount of the loss or damage by action in a court of competent jurisdiction against the person who engaged in the conduct that constituted the contravention.
- (2) An action under subclause (1) must be commenced within 3 years after the day on which the cause of action accrued.

**3. Injunction**

- (1) If, on an application being made, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of section 11ZOV(1) or (2), the Court may grant an injunction in such terms as it determines to be appropriate.
- (2) An application under subclause (1) may be made by any person, whether or not the person has suffered loss or damage by reason of the conduct concerned.
- (3) If an application has been made for an injunction under subclause (1), the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subclause (1).
- (4) If, in the opinion of the Court, it is desirable to do so, it may grant an interim injunction pending determination of an application under subclause (1).
- (5) The Court may rescind or vary an injunction granted under subclause (1), (3) or (4).
- (6) The power of the Court to grant an injunction under subclause (1) may be exercised —
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct referred to in subclause (1);

- (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a person to do any act or thing may be exercised —
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (8) The Court is not to require an applicant under this section or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.
- (9) Nothing in this clause affects any other power the Court may have to grant injunctive relief.

**4. Declaratory relief**

- (1) The Court, on application being made, may make an order declaring whether or not a particular person has engaged in conduct that constitutes a contravention of section 11ZOV(1) or (2).
- (2) An application under subclause (1) may be made by any person, whether or not the person has suffered loss or damage by reason of the conduct concerned.
- (3) An order under subclause (1) in respect of a person may include one or more of the following —
  - (a) a requirement that the person cease, within a specified period, the act, activity or practice constituting the contravention;

- (b) a requirement that the person take such action, or adopt such practice, as the Court requires for remedying the contravention or preventing a recurrence of the contravention;
- (c) a declaration that the person has contravened a relevant provision of the retail market rules concerned.

”.

### **Division 3 — Transfer of Minister's functions under Part 2B of principal Act**

#### **17. Definitions**

In this Division —

“**Authority**” and “**Minister**” have the same meanings as they have for the purposes of the principal Act;

“**commencement day**” means the day on which this Division comes into operation as provided by section 2(4);

“**Part 2B function**” means a function under Part 2B of the principal Act that by operation of section 19(1) is vested in the Authority in place of the Minister;

“**principal Act**” means the *Energy Coordination Act 1994*.

#### **18. Purpose of this Division**

The purpose of this Division is to vest all of the functions of the Minister under Part 2B of the principal Act in the Authority on and after the first anniversary of the day on which Division 2 comes into operation.

#### **19. Functions transferred from Minister to Authority**

- (1) Each of the provisions referred to in the Table to this subsection is amended by deleting “Minister” wherever it occurs and inserting instead —

“ Authority ”.



**Table**

s. 11ZOF(4)(d)	s. 11ZOS(1), (3) and (4)
s. 11ZOI(1)	s. 11ZOT(1), (2), (4) and (5)
s. 11ZOJ(1), (2), (3) and (4)	s. 11ZOU(1), (2), (3), (4) and (5)
s. 11ZOK(1) and (2)	s. 11ZOZ(1) and (2)
s. 11ZOL(1)(b)	s. 11ZP(1), (3) and (4)
s. 11ZOM	s. 11ZPA(1) and (1)(a), (b) and (c)
s. 11ZON	s. 11ZPA (2), (2)(c), (3), (4) and (6)
s. 11ZOO(1) and (2)	s. 11ZPB(1), (2) and (3)
s. 11ZOP	s. 11ZPI(1)
s. 11ZOQ(1)	s. 11ZPJ(1) and (2)

- (2) Each of the provisions referred to in the Table to this subsection is amended by deleting “Minister” and inserting instead —

“ Authority ”.

**Table**

s. 11ZPD(1) and (2)
s. 11ZPE
s. 11ZPF(1) and (2)
s. 11ZPG

- (3) Section 11ZOA is amended, in the definition of “approved” by deleting “Minister” and inserting instead —

“ Authority ”.

- (4) Section 11ZPH is repealed and the following section is inserted instead —

“

**11ZPH. Conduct of review**

The provisions of section 11ZH, other than subsections (1), (2) and (2a), apply for the purposes of a review under this Division in the same way as they apply to a review and proceedings under subsection (2) of that section.

”.

**20. Effect of things done**

On and after the commencement day any act, matter or thing done or omitted to be done before that day by, to, or in respect of, the Minister in the performance of a Part 2B function (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to, or in respect of, the Authority.

**21. Completion of things begun**

On and after the commencement day, anything lawfully commenced by the Minister in the performance of a Part 2B function may be carried on and completed by the Authority.

**22. Proceedings etc.**

Any proceedings or remedy that immediately before the commencement day might have been brought or continued by or available against or to the Minister in relation to the performance of a Part 2B function may, on and after that day, be brought or continued and is available, by or against or to the Authority.

**23. Records**

The Authority is to take delivery of all papers, documents, minutes and other records (however compiled, recorded or stored) relating to the Part 2B functions that, immediately before the commencement day, are in the possession or under the control of the Minister.

**24. Instruments**

Any instrument relating to the performance of a Part 2B function that is in existence immediately before the commencement day and that —

- (a) was made by the Minister; or

- (b) contains a reference to the Minister,  
has effect after the commencement day as if —
- (c) the Authority were substituted for the Minister as the maker of the instrument; and
- (d) any reference in the instrument to the Minister were (unless the context otherwise requires) amended to be or include a reference to the Authority.

**25. Reviews in progress etc.**

- (1) The conduct of a review under Part 2B Division 6 of the principal Act of a decision or direction of the Minister that was begun but not disposed of before the commencement day is not affected by an amendment made by section 19(2).
- (2) Any such review may be continued and disposed of as if it were a review of a decision or direction of the Authority.

**26. Regulations for transitional matters**

- (1) If there is insufficient provision in this Division to achieve the purpose mentioned in section 18, the Governor may make the necessary provision by regulations.
- (2) If in the opinion of the Minister an anomaly arises in the operation of any provision of this Division, the Governor may by regulations make such provision as is necessary —
  - (a) to remove the anomaly; and
  - (b) to achieve the purpose mentioned in section 18.

**Division 4 — Supply contracts for small use customers**

**27. Section 11L amended**

Section 11L(2)(b)(ii) is deleted.

**28. Part 2A Division 4A inserted**

After Part 2A Division 4 the following Division is inserted —

“

**Division 4A — Supply contracts for small use customers**

**Subdivision 1 — Preliminary**

**11WB. Definitions**

In this Division, unless the contrary intention appears —

“**customer**” means a small use customer;

“**non-standard contract**” means a contract entered into between a licensee and a customer, or a class of customers, that is not a standard form contract;

“**standard form contract**” means a contract that is approved under section 11WF.

**Subdivision 2 — Requirements for supply contracts**

**11WC. Regulations as to supply contracts**

- (1) The regulations may provide for and in relation to —
  - (a) the terms, conditions and provisions of —
    - (i) a standard form contract; and
    - (ii) a non-standard contract,  
under which the holder of a trading licence supplies gas to customers;
  - (b) the right of a customer at his or her discretion to rescind a contract during a specified period after it is entered into (a “**cooling-off period**”);
  - (c) the supply of gas, and payment for gas supplied, during a cooling-off period;

- (d) the format of, and manner of expression to be used in, a contract referred to in paragraph (a); and
  - (e) the provision of information about contracts by the holder of a trading licence to customers.
- (2) The regulations may provide —
- (a) for and in relation to the standards of service that the holder of a trading licence is to provide to customers in connection with the supply of gas; and
  - (b) for the inclusion in contracts referred to in subsection (1)(a) of requirements that the licensee comply with any such standard.
- (3) The regulations may apply, adopt or incorporate any provision of a code or a standard that is contained in another document, and may do so —
- (a) with or without modification; or
  - (b) as the provision is in force —
    - (i) at the time when the regulations are made; or
    - (ii) from time to time.

**11WD. Form of contract to be submitted with application for grant, renewal or transfer**

- (1) An applicant for the grant or renewal of a trading licence must submit with the application a draft of the standard form contract under which the applicant will supply gas to customers pursuant to the licence.
- (2) Where an application is made under section 11R for the transfer of a trading licence to be approved, the proposed transferee must submit with the application a draft of the standard form contract under which the proposed transferee will supply gas to customers pursuant to the licence if the transfer is approved.

**11WE. Licence application not to be granted unless standard form contract approved**

Despite section 11S, the Authority is not to grant or renew, or approve a transfer of, a trading licence unless —

- (a) the applicant or the proposed transferee has submitted a draft form of contract as required by section 11WD; and
- (b) the Authority has approved the standard form contract under which the applicant or proposed transferee will supply gas to customers pursuant to the licence.

**11WF. Approval of standard form contract**

- (1) Subject to subsection (2), the Authority may at its discretion approve or refuse to approve a standard form contract submitted under section 11WD.
- (2) The Authority is not to give an approval if it considers that the standard form contract —
  - (a) will not meet the requirements of the regulations in respect of such contracts; or
  - (b) will be inconsistent with —
    - (i) this Act or any other written law; or
    - (ii) any term, condition or provision of the licence concerned.

**11WG. Licence conditions**

- (1) It is a condition of every trading licence that, subject to any exception provided for in the regulations, the licensee must not supply gas to a customer otherwise than under —
  - (a) a standard form contract in a form that has been approved under this Division; or

- (b) a non-standard contract that complies with this Act.
- (2) It is also a condition of every trading licence that the licensee must comply with a direction given to the licensee under section 11WI.
- (3) For the purposes of subsection (1)(b), a non-standard contract complies with this Act if it —
  - (a) meets the requirements of the regulations in respect of such contracts; and
  - (b) is not inconsistent with —
    - (i) this Act or any other written law; or
    - (ii) any term, condition or provision of the licence concerned.

**11WH. Amendment or replacement of standard form contract**

- (1) The holder of a trading licence may submit to the Authority for approval —
  - (a) any amendment to the standard form contract approved under this Subdivision; or
  - (b) a replacement for the standard form contract so approved.
- (2) Section 11WF applies to an amendment or a replacement submitted under subsection (1) in the same way as it applied to the standard form contract or the original standard form contract.

**11WI. Authority may direct that amendment be made**

- (1) This section applies if, in the opinion of the Authority, a standard form contract approved under this Subdivision —
  - (a) no longer meets the requirements of the regulations in respect of such contracts; or

- (b) is no longer consistent with —
  - (i) this Act or any other written law; or
  - (ii) any term, condition or provision of the licence concerned.
- (2) The Authority may direct the holder of the trading licence concerned —
  - (a) to submit an appropriate amendment to the form of contract to the Authority for approval under section 11WH(1); and
  - (b) to do so within a specified period.
- (3) In subsection (2)(a) —

**“appropriate amendment”** means an amendment —

  - (a) specified by the Authority; or
  - (b) otherwise determined by the Authority to be suitable for approval.

**Subdivision 3 — Default supplier**

**11WJ. Definitions**

In this Subdivision —

**“delivery point”** means a point on a pipeline in a distribution system at which gas is withdrawn from that system and delivered to the holder of a trading licence;

**“retail market rules”** and **“retail market scheme”** have the same meanings as they have in section 11ZOA.

**11WK. Deemed contract where customer takes gas without making arrangements**

- (1) This section applies if a customer commences to take a supply of gas at premises without entering into a contract for that supply with the holder of a trading licence.



- (2) The gas is deemed to be supplied under the standard form contract of the default supplier for the delivery point in respect of those premises, as determined under the provisions mentioned in section 11WL.
- (3) The contract referred to in subsection (2) continues in force until —
  - (a) it is terminated; or
  - (b) the supply of gas to the customer at the premises by the default supplier becomes subject to a non-standard contract with that supplier.
- (4) The regulations may provide that, where this section applies, any term, condition, or provision of a standard form contract —
  - (a) does not have effect; or
  - (b) has effect as if it had been modified as provided for in the regulations.

**11WL. Determination of default supplier**

Retail market rules are to require —

- (a) that a default supplier be determined in accordance with the rules for each relevant delivery point;
- (b) that the default supplier so determined is to be the holder of a trading licence that supplies gas at that delivery point; and
- (c) that a register be established and maintained, in accordance with the rules, showing the name of the default supplier for the time being determined for each delivery point.

”.

**29. Section 11ZH amended**

(1) After section 11ZH(2)(a) the following paragraph is inserted —

“

(aa) to refuse to approve —

(i) a standard form contract under section 11WF; or

(ii) an amendment to or replacement for a standard form contract under section 11WH;

”.

(2) After section 11ZH(2) the following subsection is inserted —

“

(2a) A licensee may apply to the Board for a review of a direction given to the licensee by the Authority under section 11WI.

”.

(3) Section 11ZH(9) is amended by inserting after “decision” in both places where it appears the following —

“ or direction ”.

(4) Section 11ZH(11) is amended by inserting after “decision” the following —

“ or direction ”.

(5) Section 11ZH(12) is amended by inserting after “decision” the following —

“ or direction ”.

**30. Schedule 1 amended**

Schedule 1 is amended by deleting paragraph (k)(i).

**Division 5 — Gas marketing code of conduct**

**31. Part 2C inserted**

After Part 2B the following Part is inserted —

“

**Part 2C — Code of conduct for marketing of gas  
to small use customers**

**11ZPL. Definitions**

In this Part —

“**code of conduct**” means the code of conduct approved under section 11ZPM;

“**committee**” means the committee established under section 11ZPO;

“**customer**” means a small use customer;

“**gas marketing agent**” means —

- (a) a person who acts on behalf of the holder of a trading licence (“**licensee**”) —
  - (i) for the purpose of obtaining new customers for the licensee; or
  - (ii) in dealings with existing customers in relation to contracts for the supply of gas by the licensee;
- (b) a person who acts —
  - (i) on behalf of one or more customers; or
  - (ii) as an intermediary between one or more customers and a licensee,  
in respect of the supply of gas to the customer or customers;
- (c) a person who engages in any other activity relating to the marketing of gas that is

prescribed for the purposes of this definition;  
and

- (d) a representative, agent or employee of a person referred to in paragraph (a), (b) or (c);

**“marketing”** includes engaging or attempting to engage in any of the following activities by any means, including door to door or by telephone or other electronic means —

- (a) negotiations for, or dealings in respect of, a contract for the supply of gas to a customer;
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to customers.

**11ZPM. Code of conduct**

- (1) The Authority may, in consultation with the committee, approve a code of conduct under this section.
- (2) The code of conduct is to regulate and control the conduct of —
- (a) the holders of trading licenses; and
- (b) gas marketing agents,
- with the object of —
- (c) protecting customers from undesirable marketing conduct; and
- (d) defining standards of conduct in the marketing of gas to customers.
- (3) The code of conduct may contain such ancillary and incidental provisions as are necessary or expedient for the purposes of subsection (2).
- (4) Subsection (1) has effect subject to section 53 of the *Energy Legislation Amendment Act 2003*.

**11ZPN. Code is subsidiary legislation**

The code of conduct is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**11ZPO. Consultative committee**

- (1) The Authority is to establish a committee to advise it on matters relating to the code of conduct.
- (2) The Authority —
  - (a) is to prescribe the membership, constitution and procedures of; and
  - (b) may discharge, alter, or reconstitute,  
the committee.
- (3) The Authority may determine that a member of the committee is to receive remuneration or an allowance, and if the Authority so determines it is to fix the remuneration or allowance on the recommendation of the Minister for Public Sector Management.
- (4) Subject to this section, the committee may determine its own procedure.
- (5) The Authority is to provide the committee with such support services as it may reasonably require.
- (6) This section has effect subject to section 54 of the *Energy Legislation Amendment Act 2003*.

**11ZPP. Licence condition**

It is a condition of every trading licence that the licensee is to comply with the provisions of the code of conduct that apply to the licensee.

**11ZPQ. Enforcement of code of conduct against marketing agents**

The code of conduct may provide —

- (a) that the contravention of a provision of the code of conduct by a gas marketing agent constitutes an offence; and
- (b) that an offence is punishable by a penalty not exceeding —
  - (i) \$5 000 for an individual; and
  - (ii) \$20 000 for a body corporate.

**11ZPR. Code may provide for vicarious liability**

The code of conduct may provide for and in relation to the liability of the holder of a trading licence, in the absence of excusatory circumstances, for an act or omission of the licensee's gas marketing agents that contravene the code of conduct.

**11ZPS. Code may include presumption of authority**

The code of conduct may provide for a presumption that a person who carries out any marketing activity in the name of or for the benefit of —

- (a) the holder of a trading licence; or
- (b) a gas marketing agent,

is to be taken, unless the contrary is proved, to have been employed or authorised by that licensee or gas marketing agent to carry out that activity.

**11ZPT. Authority to monitor compliance**

It is a function of the Authority to monitor and enforce compliance with the code of conduct.

**11ZPU. Comment to be sought on amendment or replacement of code**

- (1) Whenever the Authority proposes to exercise the power —
  - (a) to amend the code of conduct; or
  - (b) to repeal and replace it,the Authority must —
  - (c) refer the proposed amendment or replacement to the committee for its advice; and
  - (d) have regard to any advice given by the committee.
- (2) Before the committee gives its advice to the Authority, it must, in accordance with section 11ZPW, give any interested person an opportunity to offer comments on the amendment or replacement.
- (3) The committee must take into account any comments received under subsection (2) in formulating its advice.

**11ZPV. Review of code**

- (1) The committee must carry out a review of the code of conduct as soon as is practicable after —
  - (a) the first anniversary of its commencement; and
  - (b) the expiry of each 2 yearly interval after that anniversary.
- (2) The object of a review is to re-assess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2).
- (3) The committee must, in accordance with section 11ZPW, give any interested person an opportunity to offer comments relevant to the review.

- (4) The committee must take into account any comments received under subsection (3) in carrying out the review.
- (5) The committee must prepare a report based on the review and give it to the Authority.

**11ZPW. Further provisions about opportunity to comment**

For the purposes of sections 11ZPU(2) and 11ZPV(3) —

- (a) an interested person is a person —
  - (i) who the committee considers has a particular interest in the amendment, replacement or review; or
  - (ii) who is determined by the Authority, by notice in writing to the committee, to have such an interest;
- (b) an opportunity to offer comments is an opportunity to furnish written comments to the committee within —
  - (i) a period specified by the Authority by notice in writing to the committee; or
  - (ii) in the absence of such a notice, a period determined by the committee.

”.



**Division 6 — Gas industry ombudsman scheme**

**32. Part 2D inserted**

After Part 2C the following Part is inserted —

“

**Part 2D — Gas industry ombudsman scheme**

**Division 1 — Preliminary**

**11ZPX. Definitions**

In this Part and in Schedule 2B, unless the contrary intention appears —

“**approved scheme**” means a scheme approved under section 11ZPZ;

“**customer**” means —

- (a) a small use customer; and
- (b) if a dispute or complaint is prescribed for the purposes of section 11ZPZ(1)(d) a person who is involved in that dispute or complaint as a customer;

“**customer contract**” means —

- (a) a standard form contract; or
- (b) a non-standard contract,  
within the meaning in section 11WB;

“**gas industry ombudsman**” has the meaning given by section 11ZPZ(1);

“**gas marketing agent**” has the meaning given by the definition of that term in section 11ZPL.

**11ZPY. Regulations as to gas industry ombudsman scheme**

The regulations may provide for and in relation to —

- (a) the establishment and operation of a scheme of the kind referred to in section 11ZPZ; and
- (b) the functions of the gas industry ombudsman under such a scheme.

**Division 2 — Approval of gas industry ombudsman scheme**

**11ZPZ. Authority may approve scheme**

- (1) The Authority may, by instrument in writing, approve a scheme that provides for a person (the “**gas industry ombudsman**”) to investigate and deal with —
  - (a) disputes and complaints under customer contracts;
  - (b) disputes between —
    - (i) customers and licensees; or
    - (ii) customers and gas marketing agents;
  - (c) complaints by customers about —
    - (i) licensees; or
    - (ii) gas marketing agents;and
  - (d) any other kind of dispute or complaint (whether or not under a customer contract) that is prescribed by the regulations.
- (2) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (3) A scheme may be made applicable to a dispute or complaint that arose before the commencement of the scheme, but not earlier than 12 months before that commencement.

- (4) The Authority may, by instrument in writing, approve an amendment to an approved scheme.
- (5) Notice of an approval under subsection (1) is to be published in the *Gazette*.
- (6) This section has effect subject to section 57 of the *Energy Legislation Amendment Act 2003*.

**11ZQ. Requirements for scheme to be approved etc.**

The Authority may approve a scheme, or an amendment to an approved scheme, only if it is satisfied that the scheme, or the scheme as amended, meets —

- (a) the objectives set out in Schedule 2B; and
- (b) any other prescribed objective.

**11ZQA. Revocation of approval**

- (1) Subject to subsection (2), the Authority may, by instrument in writing, revoke the status of a scheme as an approved scheme if it is satisfied that the scheme no longer meets the objectives referred to in section 11ZQ.
- (2) In exercising the power of revocation the Authority must —
  - (a) follow any prescribed procedure; and
  - (b) comply with any other prescribed requirements.
- (3) A copy of an instrument under subsection (1) is to be laid before each House of Parliament within 14 sitting days of that House after the day on which the revocation took effect.

### **Division 3 — Scheme operation**

#### **11ZQB. Customer may have decision or complaint reviewed**

- (1) A customer may apply to the gas industry ombudsman under an approved scheme for a review of a decision or complaint to which the scheme relates.
- (2) Where an application is so made the gas industry ombudsman may, in respect of the decision or complaint —
  - (a) make any order or determination;
  - (b) give any direction; or
  - (c) decline to deal with a matter on any ground,that is provided for by the scheme.

#### **11ZQC. Jurisdiction of courts**

- (1) Nothing in this Part or in an approved scheme affects the jurisdiction of a court.
- (2) The gas industry ombudsman must decline to deal with a matter if —
  - (a) it has been or is being dealt with by a court; or
  - (b) in his or her opinion the matter should be dealt with by a court.
- (3) In this section —

**“court”** includes a Small Claims Tribunal established under the *Small Claims Tribunals Act 1974*.

#### **11ZQD. Enforcement against marketing agents and others**

- (1) The regulations may make it an offence for a gas marketing agent to fail to comply with a decision or direction of the gas industry ombudsman under an approved scheme.

- (2) If a dispute or complaint involving a person other than a licensee or a gas marketing agent is prescribed for the purposes of section 11ZPZ(1)(d), the regulations may make it an offence for the person to fail to comply with a decision or direction of the gas industry ombudsman under an approved scheme.
- (3) Regulations made for the purposes of this section may provide for penalties for an offence against the regulations not exceeding —
  - (a) \$2 000 for an individual; and
  - (b) \$8 000 for a body corporate.

**11ZQE. Authority to monitor compliance with decisions**

It is a function of the Authority to monitor and enforce compliance with decisions and directions of the gas industry ombudsman under an approved scheme.

**Division 4 — Membership of approved scheme by licensee**

**11ZQF. Proof of membership in applications relating to licence**

- (1) An applicant for the grant of a licence must produce with the application evidence showing that the applicant will, if a licence is granted, be a member of an approved scheme.
- (2) An applicant for the renewal of a licence must produce with the application evidence showing that the applicant will, if the licence is renewed, continue to be a member of an approved scheme.
- (3) Where an application is made under section 11R for the transfer of a licence to be approved, the proposed transferee must produce with the application evidence showing that the proposed transferee will, if the

transfer is approved, be a member of an approved scheme.

**11ZQG. Prerequisite to grant etc. of licence**

Despite section 11S, the Authority is not to grant or renew, or approve a transfer of, a licence unless it is satisfied that the licensee, or the proposed transferee —

- (a) is a member of an approved scheme; or
- (b) will, if the licence is granted or the transfer is approved, be a member of an approved scheme.

**11ZQH. Licence condition**

It is a condition of a licence that the licensee —

- (a) is a member of an approved scheme; and
- (b) is bound by, and will comply with any decision or direction of the gas industry ombudsman under, the scheme.

”.

**33. Schedule 2B inserted**

After Schedule 2A the following Schedule is inserted —

“

**Schedule 2B — Objectives to be met by gas industry ombudsman scheme**

[s. 11ZQ]

**Objectives stated**

The objectives referred to in section 11ZQ are that —

- (a) all licensees who are required to be members of the scheme —
  - (i) are members of the scheme;

- (ii) have agreed to be bound by decisions and directions of the gas industry ombudsman under the scheme; and
  - (iii) as members, are so bound;
- (b) the scheme will be appropriately funded by the licensees who are required to be members;
- (c) the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in section 11ZPZ(1);
- (d) the gas industry ombudsman will be able to operate independently of all licensees in performing his or her functions under the scheme;
- (e) the scheme will be accessible to customers;
- (f) membership of the scheme will —
  - (i) be accessible to all potential members; and
  - (ii) provide appropriate representation for all members on the governing body of the scheme;
- (g) without limiting any other application of the scheme, the scheme will apply to all disputes and complaints referred to in section 11ZPZ(1);
- (h) the scheme will operate expeditiously and without cost to customers;
- (i) the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations;
- (j) the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Authority;
- (k) the scheme will maintain the capacity of the gas industry ombudsman, where appropriate, to refer disputes or complaints to other forums; and

- (l) the scheme will require the gas industry ombudsman to inform the Authority of substantial breaches of —
  - (i) any licence condition; or
  - (ii) the code of conduct under Part 2C, of which the ombudsman becomes aware.

”.

**34. *Parliamentary Commissioner Act 1971* amended**

- (1) The amendment in this section is to the *Parliamentary Commissioner Act 1971*\*.

[\* *Reprinted as at 16 March 2001.*]

- (2) After section 33 the following section is inserted —

“

**34. Gas industry ombudsman scheme**

- (1) The Parliamentary Commissioner may enter into an agreement with the governing body of the gas industry ombudsman scheme under which —
  - (a) the person for the time being holding or acting in the office of Parliamentary Commissioner is to serve as the gas industry ombudsman under the scheme; and
  - (b) officers referred to in section 9 are to assist him or her in doing so.
- (2) The persons referred to in subsection (1)(a) and (b) may provide services in accordance with the agreement.
- (3) Section 5(9) does not apply to the rendering of services under the agreement.
- (4) The services are to be paid for by the governing body of the gas industry ombudsman scheme at a rate to be provided for in the agreement.



- (5) For the purposes of this Act, the rendering of services under the agreement is not to be regarded —
  - (a) as the exercise or performance of powers, functions or duties under this Act; or
  - (b) as attracting the operation of section 27 or 32.
- (6) Despite subsection (5), section 30(1), (2) and (3) apply for the purpose of this section in the same way as they apply in respect of the other functions of the Commissioner.
- (7) In this section —

**“governing body of the gas industry ombudsman scheme”** means the entity responsible for the operation of a scheme approved under section 11ZPZ of the *Energy Coordination Act 1994*.

”.

### **Division 7 — Recovery of costs**

#### **35. Section 11Q amended**

- (1) After section 11Q(2) the following subsections are inserted —

“

  - (2a) Without limiting section 45A of the *Interpretation Act 1984*, the fee prescribed under subsection (1) may be determined so as to allow the recovery by the State of retail competition implementation costs.
  - (2b) The operation of subsection (2a) extends to retail competition implementation costs that were incurred before the commencement of section 35 of the *Energy Legislation Amendment Act 2003*.

”.

(2) After section 11Q(3) the following subsection is inserted —

“

(4) In this section —

“**retail competition implementation costs**” means —

- (a) costs incurred for the purpose of developing and implementing policies intended to bring about a competitive retail gas market; and
- (b) costs incurred for any other prescribed purpose, being a purpose ancillary to the purpose mentioned in paragraph (a).

”.

**36. Part 2A Division 4C inserted**

Before Part 2A Division 5 the following Division is inserted —

“

**Division 4C — Recovery of costs**

**11WR. Regulations may authorise recovery of costs**

- (1) The regulations may make provision —
  - (a) for and in relation to the fixing of prices, fees and charges by the holder of a distribution licence to reflect costs to which this section applies; and
  - (b) authorising the holder of a distribution licence to recover those prices, fees and charges from the holders of trading licences or any class of such holders.
- (2) Regulations made under subsection (1) may apply to costs to which this section applies that were incurred before the commencement of section 36 of the *Energy Legislation Amendment Act 2003*.
- (3) This section applies to costs prescribed by the regulations, being costs of and incidental to the

development, acquisition and implementation by the holder of a distribution licence of the information technology systems, including computer software, required for the facilitation of competition in the retail gas market.

”.

### **Division 8 — Last resort supply**

**37. Part 2A Division 6A inserted**

After section 11ZA the following Division is inserted —

“

#### **Division 6A — Last resort supply arrangements**

##### **11ZAA. Definition**

In this Division, unless the contrary intention appears —

“**last resort supply plan**” means a plan that meets the requirements of section 11ZAC;

“**supplier of last resort**” has the meaning given by section 11ZAC(1);

“**supply area**” includes a part of a supply area.

##### **11ZAB. Authority to ensure supply plan in place**

The Authority is to ensure that, for each supply area in which there are small use customers, there is at all times a last resort supply plan that has been approved or determined by the Authority under section 11ZAG.

##### **11ZAC. Requirements for last resort supply plan**

- (1) A last resort supply plan for a supply area is one that deals with the supply of gas to small use customers in the area by the holder of a trading licence (a “**supplier**”

**of last resort”)** if the plan comes into operation under section 11ZAD.

- (2) A last resort supply plan must set out the arrangements, and make the provisions, that are necessary for the supply of gas as mentioned in subsection (1).
- (3) A last resort supply plan must —
  - (a) make provision for any matter or circumstance that is prescribed; and
  - (b) otherwise comply with the regulations.
- (4) A last resort supply plan is of no effect to the extent that it is inconsistent with —
  - (a) this Act or another written law; or
  - (b) an access arrangement under the Gas Pipelines Access (Western Australia) Law.

**11ZAD. How plan brought into operation**

- (1) The Authority may, by order published in the *Gazette*, determine that a last resort supply plan for a supply area comes into operation on a day specified in the order.
- (2) An order may be made under subsection (1) only if the licence of the supplier to whose small use customers the plan applies —
  - (a) has been cancelled under section 11ZE;
  - (b) has expired and has not been renewed; or
  - (c) has been surrendered.
- (3) An order under subsection (1) in respect of a last resort supply plan is to specify the name of the supplier to whose small use customers the plan applies.

**11ZAE. Designation of licensee as supplier of last resort**

- (1) The Authority may, by notice in writing to the holder of a trading licence for a supply area —
  - (a) designate the holder as the supplier of last resort for that area; or
  - (b) cancel a designation so made.
- (2) The Authority is to consult with the licensee before a notice is given under subsection (1).
- (3) A designation of a licensee cannot be expressed to have effect for more than 2 years, but on the expiry of a designation the licensee may be re-designated, whether once or more than once.

**11ZAF. Functions of supplier of last resort**

The functions of a supplier of last resort for a supply area are —

- (a) to prepare a draft last resort supply plan for that area and submit it to the Authority within 3 months after the supplier is designated or within such longer period as the Authority may allow;
- (b) to consult with the Authority with a view to obtaining approval of the draft plan; and
- (c) to carry out the arrangements and other provisions in the last resort supply plan approved or determined by the Authority under section 11ZAG, if the plan comes into operation under section 11ZAD.

**11ZAG. Approval or determination of plan**

- (1) The Authority may —
  - (a) approve a draft last resort supply plan submitted under section 11ZAF; or

- (b) request that it be amended and approve it in an amended form.
- (2) If a plan has not been approved by the Authority within a period that it considers reasonable and notifies to the supplier concerned, the Authority may determine the contents of the last resort supply plan.

**11ZAH. Amendment of plan by supplier**

- (1) With the approval of the Authority, the supplier of last resort for a supply area may amend the last resort supply plan for that area.
- (2) The supplier of last resort must submit any proposed amendment to the Authority for approval.
- (3) If an amendment is so submitted the Authority may —
  - (a) approve it;
  - (b) request that it be changed and approve it in a changed form; or
  - (c) refuse to approve it.

**11ZAI. Authority may make amendment**

The Authority may at any time, after consultation with the supplier of last resort for a supply area, amend the last resort supply plan for that area.

**11ZAJ. Licence condition**

It is a condition of every trading licence that applies in a supply area that —

- (a) if the licensee is designated under section 11ZAE; and
- (b) so long as the designation remains in force,

the licensee will perform the functions of the supplier of last resort for that area, and in particular will carry

out the arrangements and provisions in the last resort supply plan if it comes into operation under section 11ZAD.

**11ZAK. Provision may be made by regulation**

The regulations may make provision for and in relation to —

- (a) the preparation and approval process for a last resort supply plan under sections 11ZAF and 11ZAG, and the amendment of a plan;
- (b) last resort supply arrangements under a plan, including for and in relation to —
  - (i) the commencement of arrangements;
  - (ii) notification to small use customers and other affected persons of matters relating to the arrangements, including —
    - (I) the commencement of arrangements;
    - (II) the effect of the arrangements and steps that will or may be taken; and
    - (III) rights, powers, duties and procedures that apply under the arrangements;
  - (iii) the identification of the small use customers affected by the commencement of arrangements and the provision of identifying information to the supplier of last resort;
  - (iv) the transfer of small use customers to the supplier of last resort and the nature of the relationship between them;

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- (v) the terms and conditions of supply of gas under the arrangements, including those relating to pricing and the imposition of charges;
- (vi) the recovery of costs by the supplier of last resort;
- (vii) the duration and cessation of any obligation to supply gas under the arrangements; and
- (viii) other rights, powers and duties of —
  - (I) the Authority;
  - (II) the supplier of last resort;
  - (III) small use customers; and
  - (IV) other persons,in connection with the carrying out of the arrangements or the operation of a last resort supply plan.

”.

**38. Section 11ZE amended**

Section 11ZE(4)(a) is amended by inserting after “cancellation” —

“

, except where a last resort supply plan under Part 2A Division 6A applies

”.



**Division 9 — Regulation of use of heating value of gas for charging purposes**

**39. Section 26 amended**

After section 26(5) the following subsection is inserted —

“

- (6) Without limiting subsection (1), regulations may require a person —
- (a) who transports gas through a distribution system; or
  - (b) who sells gas that is transported through a distribution system,

when the person uses the heating value of the gas for the purpose of determining charges, to use the heating value of the gas as determined under the *Gas Standards Act 1972*.

”.

**Division 10 — Regulation of supply where gas from different sources enters a distribution system**

**40. The Act amended**

The amendment in this Division is to the *Gas Standards Act 1972*\*.

[\* *Reprinted as at 7 July 2000.*]

**41. Section 16 inserted**

After section 15 the following section is inserted —

“

**16. Regulations for the commingling of gas in distribution systems**

Regulations may be made under section 15 —

- (a) providing for and in relation to the entry and commingling of gas of different qualities in a distribution system (as defined in section 3 of the *Energy Coordination Act 1994*), including —
  - (i) control of the entry;
  - (ii) the standard of the heating value of the gas;
  - (iii) the maintenance of the required standard;
  - (iv) the monitoring of compliance with the required standard, including requirements for reporting matters to the Director; and
  - (v) the determination of the heating value of the gas;

and

- (b) without limiting paragraph (a), requiring an undertaker or a pipeline operator —
  - (i) to set up, install and operate any plan, system or equipment; or
  - (ii) to take any other steps,for any purpose referred to in that paragraph.

”.

## **Division 11 — Transitional provisions for this Part**

### **Subdivision 1 — Preliminary**

#### **42. Definitions for this Division**

In this Division —

“**Minister**” means the Minister responsible for the administration of the principal Act;

“**principal Act**” means the *Energy Coordination Act 1994*.

### **Subdivision 2 — Retail market schemes**

#### **43. Definitions**

Expressions used in section 44 have the same meanings as they have in Part 2B (“**Part 2B**”) to be inserted in the principal Act by section 15.

#### **44. Approval of retail market schemes before commencement of section 15**

- (1) The purpose of this section is to enable a retail market scheme for a distribution system to come into force when section 15 commences, so that section 11ZOR of the principal Act, to be inserted by section 15, may be complied with as from that commencement.
- (2) At any time after the commencement of this section, a proposed retail market scheme for a distribution system may be submitted to the Minister for approval.
- (3) A proposed scheme for a distribution system is to be submitted on behalf of persons who expect to be gas market participants in relation to the system on and after the commencement of section 15.

- (4) If a proposed scheme is so submitted, the following provisions of Part 2B apply for the purposes of this section, with all necessary changes, as if they had come into operation —
  - (a) section 11ZOI(2), (3) and (4); and
  - (b) sections 11ZOJ, 11ZON and 11ZOP.
- (5) A request by the Minister for an amendment to a proposed scheme under section 11ZOJ(1)(b) or (2)(b), as applied by subsection (4), may be in terms that the set of retail market rules submitted for approval be replaced by a set of retail market rules specified by the Minister.
- (6) If a retail market scheme submitted under this section is approved by the Minister it comes into force on the commencement of section 15.
- (7) Nothing in this section is to be read as making section 11ZPD in Part 2B applicable to a refusal by the Minister to approve a proposed retail market scheme submitted under subsection (2).

**45. Regulations for retail gas market**

- (1) The Governor may, on the recommendation of the Minister, make regulations for the purposes of section 11ZPI in Part 2B that are to have effect on the commencement of section 15.
- (2) The Minister may under subsection (1) recommend the making of regulations for a distribution system only if the Minister considers that —
  - (a) there has been a failure to submit a retail market scheme, or an amended retail market scheme, for that distribution system that the Minister could approve in accordance with sections 11ZOJ, 11ZON and 11ZOP as applied by section 44(4); and
  - (b) the failure has continued for a period that has caused an unacceptable delay to the commencement of section 15.

- (3) A recommendation made by the Minister under subsection (1) is not liable to be challenged, reviewed or called in question in any court.

**46. Regulations for transitional matters**

- (1) For the purpose described in section 44(1) the Governor may make regulations of the kind contemplated by sections 11ZOD(1)(b), 11ZOH, 11ZOI(4)(b), 11ZON(b) and 11ZOP in Part 2B to have effect pending the commencement of section 15.
- (2) If there is insufficient provision in this Subdivision —
- (a) to achieve the purpose described in section 44(1); or
  - (b) in respect of any matter incidental to that purpose,
- the Governor may make the necessary provision by regulations.
- (3) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of —
- (a) this Subdivision; or
  - (b) Part 2B as applied by section 44,
- the Governor may by regulations make such provision for the purposes of this Division as is necessary —
- (c) to remove the anomaly; and
  - (d) to achieve the purpose described in section 44(1).

**Subdivision 3 — Gas supply contracts**

**47. Definition**

Expressions used in this Subdivision have the same meanings as they have in Part 2A Division 4A (“**Division 4A**”) to be inserted in the principal Act by section 28.

**48. Approval of standard form contract**

- (1) As soon as is practicable after the commencement of section 28, the holder of a trading licence is to submit to the Authority for its approval a draft of the standard form contract under which the licensee wishes to supply gas to small use customers.
- (2) Section 11WF of the principal Act inserted by section 28 applies for the purpose of subsection (1) as if the draft were submitted under section 11WD so inserted.
- (3) To allow time for subsections (1) and (2) to be complied with, the condition provided for by section 11WG(1)(a) of the principal Act inserted by section 28 does not apply to the licence of a licensee until the expiry of —
  - (a) 2 months after the commencement of section 28; or
  - (b) such longer period as the Authority may, on application made by the licensee, from time to time allow by instrument in writing.

**49. Existing contracts**

On and after the expiry of the period allowed under section 48(3) —

- (a) a provision of a trading licence by which a form of contract for the supply of gas is determined or approved ceases to have effect; and
- (b) the arrangements for the supply of gas to small use customers that immediately before that expiry were governed by a contract in the form mentioned in paragraph (a) become, by virtue of this section, arrangements for the supply of gas that are governed by the standard form of contract approved pursuant to section 48.

**50. Non-standard contracts**

- (1) Despite section 11WG(1) of the principal Act inserted by section 28, a licensee may supply gas to a small use customer after the commencement of section 28 under a non-standard contract that is —
  - (a) in force immediately before that commencement; and
  - (b) does not comply with the principal Act,until the contract is terminated.
- (2) In this section —

**“non-standard contract”** means a contract for the supply of gas that is not a contract in the form mentioned in section 49(a).

**51. Regulations for transitional matters**

- (1) If there is insufficient provision in this Subdivision in respect of the transition to the gas supply arrangements provided for by Division 4A the Governor may make the necessary provision by regulations.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of this Division, the Governor may by regulations make such provision for the purposes of this Division as is necessary —
  - (a) to remove the anomaly; and
  - (b) make appropriate provision in respect of the transition mentioned in subsection (1).

**Subdivision 4 — Initial marketing code of conduct**

**52. Definition**

Expressions used in section 53 have the same meanings as they have in Part 2C (**“Part 2C”**) to be inserted in the principal Act by section 31.

**53. Approval of initial marketing code of conduct**

- (1) The initial code of conduct under section 11ZPM of the principal Act inserted by section 31 is to be approved by the Minister instead of by the Authority.
- (2) The Minister is to act under subsection (1) in consultation with the committee.
- (3) The provisions of —
  - (a) Part 2C; and
  - (b) section 25 of the *Interpretation Act 1984* in its application to that Part,

are modified so far as is necessary to enable effect to be given to subsections (1) and (2).

- (4) The code of conduct approved in accordance with this section is to be taken, for the purposes of Part 2C, to be a code of conduct approved by the Authority under that Part.

**54. Appointment of initial committee**

- (1) The Minister instead of the Authority is to —
  - (a) prescribe the initial membership, constitution and procedures; and
  - (b) appoint the initial members,

of the committee, and may make the initial determinations under section 11ZPO(3) of the principal Act.

- (2) The provisions of —
  - (a) section 11ZPO of the principal Act; and
  - (b) section 25 of the *Interpretation Act 1984* in its application to that section,

are modified so far as is necessary to enable effect to be given to subsection (1).



- (3) The committee established in accordance with this section is to be taken, for the purposes of section 11ZPO of the principal Act to be the committee established by the Authority under that section.

**55. Regulations for transitional matters**

If in the opinion of the Minister an anomaly arises in —

- (a) the carrying out of section 53 or 54; or
- (b) the operation of Part 2C in accordance with section 25 of the *Interpretation Act 1984*,

the Governor may by regulations make such provision as is necessary —

- (c) to remove the anomaly; and
- (d) to achieve the purpose of section 53(1) or 54(1).

**Subdivision 5 — Initial gas industry ombudsman scheme**

**56. Definition**

In section 57 —

“**Authority**” has the same meaning as it has in Part 2D (“**Part 2D**”) to be inserted in the principal Act by section 32.

**57. Approval of initial gas industry ombudsman scheme**

- (1) The Minister instead of the Authority is to —
- (a) approve the initial gas industry ombudsman scheme under sections 11ZPZ and 11ZQ of the principal Act inserted by section 32; and
  - (b) give the initial approval required for the purposes of Schedule 2B paragraph (j) of the principal Act inserted by section 33.
- (2) The provisions of —
- (a) Part 2D Division 2;

- (b) Schedule 2B inserted by section 33; and
- (c) section 25 of the *Interpretation Act 1984* in its application to the provisions mentioned in paragraphs (a) and (b),

are modified so far as is necessary to enable effect to be given to subsection (1).

- (3) A scheme approved in accordance with this section is to be taken, for the purposes of Part 2D, to be a scheme approved by the Authority under Division 2 of that Part.

**58. Regulations for transitional matters**

If in the opinion of the Minister an anomaly arises in —

- (a) the carrying out of section 57; or
- (b) the operation of Part 2D Division 2 in accordance with section 25 of the *Interpretation Act 1984*,

the Governor may by regulations make such provision as is necessary —

- (c) to remove the anomaly; and
- (d) to achieve the purpose of section 57.

**Subdivision 6 — Initial last resort supply plan**

**59. Definition**

Expressions used in this Subdivision have the same meanings as they have in Part 2A Division 6A (“**Division 6A**”) inserted in the principal Act by section 37.

**60. Initial last resort supply plan**

- (1) The Division 6A provisions do not apply to —
  - (a) the designation of the initial supplier of last resort; and
  - (b) the preparation and approval of the initial last resort supply plan,

for the purposes of that Division.

- (2) The supplier of last resort and the last resort supply plan referred to in subsection (1) are to be determined by the Authority in such manner as the Authority thinks fit, and the supplier and the plan so determined are to be taken to have been respectively designated and approved under Division 6A.
- (3) The initial last resort supply plan is to be determined under subsection (2) after consultation with the initial supplier of last resort.
- (4) To allow time for the completion of the initial last resort supply plan under Division 6A, the obligation imposed on the Authority by section 11ZAB inserted in the principal Act by section 37 —
  - (a) does not arise on the commencement of section 37; but
  - (b) arises instead on a later day fixed by the Minister by order published in the *Gazette*, and has effect on and after that day.
- (5) In subsection (1) —

**“Division 6A provisions”** means —

  - (a) sections 11ZAE(1)(a), 11ZAF(a) and (b) and 11ZAG inserted in the principal Act by section 37; and
  - (b) regulations of the kind mentioned in section 11ZAK(a) as so inserted.

**61. Regulations for transitional matters**

If in the opinion of the Minister an anomaly arises in connection with the determination of the supplier of last resort or the last resort supply plan referred to in section 60, the Governor may by regulations make such provision as is necessary to remove the anomaly.

**Part 4 — Amendments to enable grant of exclusive licences for gas supply**

**62. The Act amended**

The amendments in this Part are to the *Energy Coordination Act 1994*\*.

[\* *Reprinted as at 5 May 2000.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 119, see also Economic Regulation Authority Bill 2002 currently before Parliament.]*

**63. Section 11N amended**

Section 11N(1) is amended by deleting “The” and inserting instead —

“ Subject to regulations made under section 11WM, the ”.

**64. Part 2A Division 4B inserted**

After Part 2A Division 4 the following Division is inserted —

“

**Division 4B — Exclusive licences**

**11WM. Regulations may authorise an exclusive licence**

(1) The Governor may, on the recommendation of the Minister, make regulations designating —

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

as an area in respect of which an exclusive licence may be granted for a specified period.

(2) The specified period (the “**period of exclusivity**”) is not to exceed 10 years.

**11WN. Requirements for regulations**

- (1) The Minister may, under section 11WM, recommend the making of regulations in respect of a distribution licence or a trading licence only if he or she considers that —
  - (a) without the grant of an exclusive licence of that kind in respect of the area during the period of exclusivity there will be no supply of gas through a distribution system, or a limited supply, in the area during that period;
  - (b) it is not contrary to the public interest that an exclusive licence of that kind have effect in respect of the area during the period of exclusivity; and
  - (c) the regulations will provide for an open and competitive tender process to be carried out to determine the person to whom the licence is to be granted.
- (2) Regulations made under section 11WM —
  - (a) are to set out the requirements to be observed, in addition to the other provisions of this Part, before an exclusive licence may be granted; and
  - (b) may provide for the terms and conditions of an exclusive licence in addition to those otherwise provided for by this Part.

**11WO. Application for and grant of licence**

- (1) An application for an exclusive licence may only be made if the Minister has determined that he or she is satisfied that all of the requirements of the regulations to be observed before such an application may be made have been complied with.
- (2) Despite section 11S, an exclusive licence may only be granted by the Authority under that section if the

Minister has determined that he or she is satisfied that all of the requirements of the regulations relevant to the grant of the licence have been observed.

- (3) A determination under subsection (1) or (2) is to be made by instrument published in the *Gazette*.

**11WP. Prohibition of further licences**

If —

- (a) an exclusive licence is granted in respect of an area in accordance with regulations made under section 11WM; and
- (b) the licence is not cancelled under section 11ZE or surrendered,

no other person is to be granted a licence of the same kind to have effect in respect of that area during the period of exclusivity.

**11WQ. Trade practices exemption**

For the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code —

- (a) the grant of an exclusive licence as provided by regulations made under section 11WM; and
- (b) conduct authorised or required by or under any such licence,

are specifically authorised to the extent that the grant or conduct would otherwise contravene that Act and that Code.

”.

## Part 5 — Amendments relating to the provision of information to the Coordinator of Energy

### 65. The Act amended

The amendments in this Part are to the *Energy Coordination Act 1994*\*.

[\* Reprinted as at 5 May 2000.

*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 119, see also Economic Regulation Authority Bill 2002 currently before Parliament.]*

### 66. Section 3 amended

Section 3 is amended by inserting after the definition of “supply area” the following definition —

“

“**trade secret**” means any knowledge or information —

- (a) relating to technology, marketing, energy, or energy resources or reserves; or
- (b) as to the business of the person concerned, the disclosure of which by a person performing functions under this Act might reasonably be expected to adversely affect the business or interests of the person concerned;

”.

**67. Section 20A inserted**

Before section 21 the following section is inserted in Part 4 —

“

**20A. Definition**

In this Part, unless the contrary intention appears —

“**energy**” means any form of energy, including —

- (a) electricity; and
- (b) solid, liquid and gaseous fuel.

”.

**68. Section 21 amended**

Section 21(4) is repealed.

**69. Section 22 replaced**

Section 22 is repealed and the following section is inserted instead —

“

**22. Trade secrets**

- (1) A person may, when giving information in compliance with a request under section 21, notify the Coordinator that any particular item of information is a trade secret.
- (2) The giving of such a notice does not exempt the person from complying with the request, but it has the effect that the information may only be disclosed in accordance with section 24AA(1)(c) or (d).

”.



**70. Section 23 amended**

- (1) Section 23(1) is repealed and the following subsection is inserted instead —

“

- (1) A person must not, without reasonable excuse, fail to comply with a request under section 21.

Penalty for an individual: \$20 000.

Penalty for a body corporate: \$100 000.

”.

- (2) Section 23(2) is amended by deleting the penalty provisions and inserting the following penalty provisions instead —

“

Penalty for an individual: \$20 000.

Penalty for a body corporate: \$100 000.

”.

**71. Section 24 amended**

- (1) Section 24(1) is amended by inserting after “this Act” (where it first appears) —

“ (a “**relevant official**”) ”.

- (2) Section 24(2) is amended by deleting “Subsection (1) does” and inserting instead —

“ Subsection (1) and section 24AA(1) do ”.

**72. Sections 24AA, 24AB and 24AC inserted**

- (1) After section 24 the following sections are inserted —

“

**24AA. Protection of trade secrets**

- (1) In addition to section 24, a relevant official must not, directly or indirectly, disclose information to which a notice under section 22(1) applies —

- (a) publicly; or
- (b) to a person who is not a relevant official,

unless —

- (c) the requirement in subsection (2) is complied with; or
- (d) the disclosure is authorised by section 24AB.

Penalty: \$10 000 and imprisonment for 12 months.

- (2) The requirement referred to in subsection (1)(c) is that the information when disclosed must be combined or aggregated with other information in such a way that the information could not reasonably be ascertained in isolation from the other information.

**24AB. Disclosure of information in the public interest**

- (1) A relevant official may disclose information to which a notice under section 22 applies if —

- (a) the Coordinator has —
  - (i) determined that disclosure of the information is in the public interest; and
  - (ii) given written notice of that determination to the person who gave the notice under section 22;

and

- (b) the time for making an application under section 24AC for a review of that determination has expired without an application being made, or such an application has been made but has been unsuccessful.
- (2) For the purposes of subsection (1)(b) an application for a review is unsuccessful if it —
  - (a) results in the Coordinator's determination under subsection (1)(a)(i) being affirmed; or
  - (b) is withdrawn, discontinued or dismissed for want of prosecution.

**24AC. Review of determination**

- (1) If —
  - (a) a person has given a notice under section 22 in respect of information; and
  - (b) the Coordinator has determined under section 24AB(1)(a)(i) that disclosure of the information is in the public interest,

the person may apply to the Gas Review Board for a review of the determination.
- (2) An application under subsection (1) must be made within 14 days after the person received written notice of the determination.
- (3) The provisions of section 11ZH(3), (4), (5), (6), (7), (10), (11) and (13) apply for the purposes of a review under this section in the same way as they apply to a review and proceedings under section 11ZH(2).
- (4) Subsection (3) also applies to the provisions of section 11ZH(8), (9) and (12) except that the references in those subsections to the Authority are to be read as references to the Coordinator.

(5) In subsection (1) —

**“Gas Review Board”** means the Western Australian  
Gas Review Board established by the *Gas  
Pipelines Access (Western Australia) Act 1998*.

”.

**Part 6 — Amendments relating to the transfer  
of certain energy research functions to the  
Coordinator of Energy**

**Division 1 — *Minerals and Energy Research Act 1987***

**73. The Act amended**

The amendments in this Division are to the *Minerals and Energy Research Act 1987*\*.

[\* *Reprinted as at 4 May 2001.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2002, Table 1, p. 251.]*

**74. Section 3 amended**

Section 3 is amended as follows:

- (a) in the definition of “advisory committee” —
  - (i) by deleting “or Energy Research Advisory Committee,”; and
  - (ii) by deleting “18(2)” and inserting instead —  
“ 19 ”;
- (b) by deleting the definitions of “Coordinator of Energy”, “energy”, “Energy Research Advisory Committee”, “research advisory committee”, “the Mining Institute”, “the 1981 Act”, “the 1977 Act” and “the Solar Institute”;
- (c) by deleting the definition of “energy research” and inserting instead —

“

**“energy research”** means research as to the location, extraction, processing, transportation or marketing of petroleum, coal, a naturally occurring gas or mixture of gases or a prescribed substance and

includes the development of any associated process, technique, method, design or apparatus;

”;

- (d) in the definition of “minerals” by inserting after “Earth” —

“

, but excluding any substance (other than coal, petroleum, a naturally occurring gas or mixture of gases or a prescribed substance) that is a source of energy

”;

- (e) in the definition of “the Department of Mines” by deleting “of Mines”;

- (f) in the definition of “the Institute” by deleting the semicolon and inserting a full stop instead.

**75. Section 4 amended**

Section 4(3) is repealed.

**76. Section 5 amended**

Section 5 is amended as follows:

- (a) by deleting “within the State” and inserting instead —  
“ for the benefit of the State ”;
- (b) by deleting “(especially solar energy research)”;
- (c) by deleting paragraph (h) and inserting instead —

“

- (h) maintaining a collection of —

(i) the reports produced by the Institute;  
and

(ii) the reports produced by the Mining Institute formerly established by the *Mining and Petroleum Research Act 1981*;

”;

- (d) in paragraph (i) by deleting “, the Coordinator of Energy”.

**77. Section 10 replaced**

Section 10 is repealed and the following section is inserted instead —

“

**10. Advice of Minerals Research Advisory Committee**

The Board shall have due regard to any advice given to it by the Minerals Research Advisory Committee but is not bound to —

- (a) act on or give effect to such advice; or
- (b) defer taking action on a matter until such advice is received.

”.

**78. Section 12 amended**

Section 12(2) is amended by deleting “and of the Coordinator of Energy”.

**79. Section 16 amended**

Section 16 is amended by deleting “Public Service Board.” and inserting instead —

“ Minister for Public Sector Management. ”.

**80. Sections 18 and 19 replaced and saving provision**

- (1) Sections 18 and 19 are repealed and the following sections are inserted instead —

“

**18. Minerals Research Advisory Committee**

- (1) A Minerals Research Advisory Committee is to be established.

- (2) The functions of that committee are —
- (a) to consider and advise the Board on —
    - (i) research goals relevant to the minerals and energy industries; and
    - (ii) any proposal, matter or question that may be referred to it by the Board;and
  - (b) to make recommendations to the Board concerning —
    - (i) the funding policy of the Institute;
    - (ii) whether or not a particular research project should be, or continue to be, supported by the Institute; or
    - (iii) any other aspect of the activities of the Institute,with a view to ensuring that the best use is made of the funds and resources at the disposal of the Institute.

**19. Other advisory committees**

The Board may establish any other advisory committee that it considers to be necessary for the purposes of this Act and, subject to this Act, may appoint the members, and determine the functions, of any such committee.

”.

- (2) The membership of the Minerals Research Advisory Committee, as existing immediately before the commencement of subsection (1), continues on the same basis after that commencement despite the repeal and replacement of section 18 of the *Minerals and Energy Research Act 1987* by that subsection (1).



**81. Section 20 amended**

Section 20(1) is amended as follows:

- (a) in paragraph (a) by deleting “The Confederation of Western Australian Industry (Incorporated)” and inserting instead —

“

the Chamber of Commerce and Industry of  
Western Australia

”;

- (b) in paragraph (b) by deleting “The Chamber of Mines of Western Australian (Incorporated)” and inserting instead —

“

the Chamber of Minerals and Energy of  
Western Australia Inc.

”;

- (c) in paragraph (c) by inserting after “Petroleum” —  
“ Production and ”;

- (d) in paragraph (h) by deleting “of Resources Development”.

**82. Section 21 repealed**

Section 21 is repealed.

**83. Section 25 amended**

Section 25 is amended by deleting “Public Service Board” and inserting instead —

“ Minister for Public Sector Management ”.

**84. Section 26 amended**

Section 26(2)(d) is deleted.

**85. Section 31 amended**

Section 31(3) is amended by deleting “Public Service Board.” and inserting instead —

“ Minister for Public Sector Management. ”.

**86. Section 34 amended**

Section 34(2) is amended in the penalty by deleting “\$2 000” and inserting instead —

“ \$20 000 ”.

**87. Section 35 amended**

Section 35(6) is amended in the penalty by deleting “\$20 000” and inserting instead —

“ \$100 000 ”.

**88. Part VIII replaced**

Part VIII is repealed and the following Part is inserted instead —

“

**Part VIII — Savings**

**41. Savings for secrecy provisions**

- (1) Section 32 of the *Solar Energy Research Act 1977* is to be taken to continue in effect in respect of every person referred to in subsection (1) of that section.
- (2) Subsection (1) applies despite the repeal effected by the proclamation under section 43 of the *Solar Energy Research Act 1977* published in the *Gazette* on 30 June 1988 at page 2135.
- (3) Repealed section 32 of the *Mining and Petroleum Research Act 1981* is to be taken to continue in effect

in respect of every person referred to in subsection (1) of that section.

- (4) Subsection (3) applies despite the repeal effected by section 45(1) of this Act as in force immediately before the commencement of section 88 of the *Energy Legislation Amendment Act 2003*.

”.

**89. Schedules 1 and 2 repealed**

Schedules 1 and 2 are repealed.

**90. Various references to Department of Mines amended**

Each of the provisions referred to in the Table to this section is amended by deleting “of Mines”.

**Table**

s. 5(h) and (i)	s. 12(2)
s. 6(3)	s. 14(1)

**Division 2 — Energy Coordination Act 1994**

**91. The Act amended**

The amendments in this Division are to the *Energy Coordination Act 1994*\*.

[\* *Reprinted as at 5 May 2000.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 119, see also Economic Regulation Authority Bill 2002 currently before Parliament.]*

**92. Long title amended**

The long title is amended by inserting after “energy supply” —  
“ **and in relation to the promotion of energy research** ”.

**93. Section 6 amended**

- (1) Section 6(e) is deleted and the following paragraph is inserted instead —

“

- (e) to promote energy research and development as provided by Schedule 1;

”.

- (2) After section 6(g) the following paragraph is inserted —

“

- (ga) to maintain a collection of the information and reports referred to in paragraph (g) and the information and reports produced by the Solar Institute formerly established by the *Solar Energy Research Act 1977*;

”.

**94. Section 11M amended**

Section 11M(2) is amended by deleting “Schedule 1” and inserting instead —

“ Schedule 1A ”.

**95. Schedule 1 inserted**

After section 27 the following Schedule is inserted —

“

**Schedule 1 — Coordinator’s functions in respect of sustainable energy research**

[s. 6(e)]

**1. Definitions**

In this Schedule —

“**energy research**” means research as to energy derived from a source that can be utilised sustainably and

includes the development of any process, technique, method, design or apparatus —

- (a) to collect, store, apply or utilise any form of energy;
- (b) to convert one form of energy into another form of energy;
- (c) to substitute one form of energy for any other form of energy; or
- (d) to conserve any form of energy;

**“researcher”** means —

- (a) a person to whom the Coordinator has allocated financial assistance to enable the person to undertake or continue a particular research project; and
- (b) a person who is directing, assisting or working with such a person on that project.

## **2. Research functions**

- (1) It is a function of the Coordinator to encourage the development of the energy industry in the State by fostering and promoting energy research.
- (2) For the purposes of subclause (1) the Coordinator may —
  - (a) undertake energy research projects, including joint projects;
  - (b) receive applications from persons seeking financial assistance to undertake or continue energy research projects;
  - (c) allocate from moneys available for the purpose financial assistance to enable or assist persons to undertake or continue energy research projects;
  - (d) coordinate energy research projects undertaken by persons —
    - (i) who are receiving financial assistance or any other form of support from the Coordinator; or

- (ii) who seek or agree to have their research projects coordinated by the Coordinator;
- (e) enter into agreements with persons to whom the Coordinator has allocated financial assistance with respect to the terms and conditions of that allocation;
- (f) accept moneys from a person for application to energy research, either unconditionally or subject to any trust, condition or stipulation as to the application of the moneys;
- (g) monitor and evaluate —
  - (i) energy research projects in respect of which the Coordinator has allocated financial assistance; and
  - (ii) other energy research work within the State or elsewhere.

**3. Power to direct researcher**

The terms and conditions referred to in clause 2(2)(e) may include a condition that a person to whom the Coordinator has allocated financial assistance must comply with any directions or guidelines issued by the Coordinator in relation to the conduct of the research project concerned.

**4. Trusts and conditions**

The Coordinator must give effect to any trust, condition or stipulation that has been agreed to in exercise of the power in clause 2(2)(f).

**5. Provision of information to the Coordinator**

- (1) This clause applies where the Coordinator has given financial assistance to a person under clause 2.
- (2) The Coordinator may, by notice in writing, require the person to provide within a specified period reports and other information relating to —
  - (a) the research concerned; and

- (b) the way in which moneys have been spent.
- (3) A person to whom such a notice has been given —
  - (a) must comply with the notice; and
  - (b) must not give information that he or she knows to be false or misleading.

Penalty: \$10 000.

**6. Termination of assistance by the Coordinator**

- (1) This clause applies where the Coordinator is satisfied that a person to whom financial assistance has been allocated or given under clause 2 —
  - (a) has failed to undertake or continue the research concerned; or
  - (b) is unable to complete the research,in accordance with the terms and conditions agreed with the Coordinator.
- (2) The Coordinator may, by notice in writing to the person, terminate the financial assistance and the Coordinator's obligations under any agreement made under clause 2(2)(e).
- (3) Any moneys —
  - (a) paid to the person by the Coordinator; and
  - (b) remaining unspent at the time when a notice is given under this clause,

may be recovered in a court of competent jurisdiction as a debt due to the Coordinator.

**7. Researchers to maintain confidentiality**

A researcher must not directly or indirectly —

- (a) disclose to any person; or
- (b) make use of,

information concerning the affairs of another person acquired by him or her by reason of any research for which

financial assistance has been allocated under this Act, except in good faith for the purposes of that research.

Penalty: \$100 000.

**8. Protection of trade secrets**

- (1) This clause applies if —
  - (a) a person discloses information to the Coordinator concerning his or her affairs for the purposes of energy research; and
  - (b) the person requests the Coordinator in writing that the information be treated as a trade secret.
- (2) Subject to subclause (4), the Coordinator, a person performing functions under this Act, or a researcher must not make any public disclosure of information contrary to a request referred to in subclause (1)(b), except with the consent of the person concerned.

Penalty: \$100 000.

- (3) Subject to subclause (4), the Coordinator and a person performing functions under this Act must take all reasonable steps to ensure that, except with the consent of the person concerned, information about the nature, conduct, progress or results of the research is not included in any report or statement prepared under the *Financial Administration and Audit Act 1985* by or for the Coordinator.

Penalty: \$100 000.

- (4) Subclauses (2) and (3) do not apply to any information that the Coordinator has, or might have, required to be provided under clause 5.

**9. Other requests for confidentiality**

- (1) This clause applies if —
  - (a) the Coordinator has accepted moneys from a person for application to energy research subject to any trust, condition or stipulation as to the application of the moneys; and



- (b) the person requests the Coordinator in writing —
  - (i) not make any public disclosure of any information concerning the nature, conduct, progress or results of the research; or
  - (ii) that information about the nature, conduct, progress or results of the research be not included in any report or statement prepared under the *Financial Administration and Audit Act 1985* by or for the Coordinator.
- (2) The Coordinator, a person performing functions under this Act, or a researcher must not make any public disclosure of information contrary to a request referred to in subclause (1)(b).  
Penalty: \$100 000.
- (3) The Coordinator and a person performing functions under this Act must take all reasonable steps to ensure that subclause (1)(b)(ii) is not contravened.  
Penalty: \$100 000.

**10. Records to be maintained**

The Coordinator is to cause detailed records to be kept in relation to research projects —

- (a) undertaken by the Coordinator, or by the Coordinator in conjunction with any other person; or
- (b) for which the Coordinator has allocated financial assistance,

including records relating to moneys allocated or paid, work undertaken, progress achieved and results obtained.

”.

**96. Schedule 1 amended**

The heading to Schedule 1 is amended by deleting “1” and inserting instead —

“ **1A** ”.

**Division 3 — Transitional provisions**

**97. Definitions**

In this Division, unless the contrary intention appears —

“**commencement day**” means the day on which this Part, other than this section and section 98, comes into operation;

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

“**Institute**” means the Minerals and Energy Research Institute of Western Australia established by section 4(1) of the *Minerals and Energy Research Act 1987*;

“**liabilities**” includes future and contingent liabilities;

“**Minister**” means the Minister responsible for the administration of the *Energy Coordination Act 1994*;

“**sustainable energy research**” means research as to energy derived from a source that can be utilised sustainably and includes the development of any process, technique, method, design or apparatus —

- (a) to collect, store, apply or utilise any form of energy;
- (b) to convert one form of energy into another form of energy;
- (c) to substitute one form of energy for any other form of energy; or
- (d) to conserve any form of energy.

**98. Ministerial instrument**

- (1) The Minister, by instrument, is to determine —
  - (a) the assets that in the Minister’s opinion relate to the energy research functions of the Institute (the “**relevant assets**”); and
  - (b) the liabilities that in the Minister’s opinion relate to the energy research functions of the Institute (the “**relevant liabilities**”).
- (2) In subsection (1) —

“**energy research**” has the meaning given to that term in section 3 of the *Minerals and Energy Research Act 1987* immediately before the commencement day.
- (3) An instrument under subsection (1) may provide for moneys in the Account referred to in section 26(3) of the *Minerals and Energy Research Act 1987* to be credited —
  - (a) to an account —
    - (i) established under section 15B of the *Financial Administration and Audit Act 1985*; and
    - (ii) administered by the Department of the Public Service principally assisting the Minister in the administration of the *Energy Coordination Act 1994*;

or

  - (b) to the Consolidated Fund.
- (4) A determination may be amended by the Minister by further instrument, but no amendment may be made after the commencement day.
- (5) A determination and any amendment to it may only be made by the Minister with the concurrence of the Minister responsible for the administration of the *Minerals and Energy Research Act 1987*.

- (6) A determination does not have effect to transfer any asset or liability except by operation of section 99.

**99. Transfer of assets and liabilities**

- (1) On the commencement day —
- (a) the relevant assets vest in the State;
  - (b) the State becomes responsible for the relevant liabilities; and
  - (c) the Coordinator becomes entitled to possession of all documents and records that are held by the Institute in respect of those assets and liabilities.
- (2) Anything commenced before the commencement day in respect of an asset or liability referred to in subsection (1) may be continued by the State.

**100. Responsibility for sustainable energy research matters**

On and after the commencement day, responsibility for any existing sustainable energy research matter, including an application in progress, is vested in the Coordinator as if the matter had arisen under Schedule 1 to the *Energy Coordination Act 1994*.

**101. Agreements and instruments**

An agreement or instrument relating to a sustainable energy research matter that subsists immediately before the commencement day and —

- (a) to which the Institute was a party; or
- (b) which contains a reference to the Institute,

has effect as if —

- (c) the Coordinator were substituted for the Institute as a party; and
- (d) any reference to the Institute were, unless the context otherwise requires, a reference to the Coordinator.

**Part 7 — Amendments and validation provision  
relating to Western Power Corporation**

**Division 1 — *Electricity Corporation Act 1994***

**102. The Act amended**

The amendments in this Division are to the *Electricity Corporation Act 1994*\*.

[\* *Reprint 2 as at 3 January 2003.*

*For subsequent amendments see Act No. 21 of 2003.]*

**103. Section 7 amended**

Section 7(1)(b) is amended by deleting “6” and inserting instead —

“ 8 ”.

**104. Section 70 amended**

After section 70(2) the following subsection is inserted —

“

(2a) A request under subsection (2)(a) may specify a time before which the information is to be furnished.

”.

**105. Section 70A inserted**

After section 70 the following section is inserted —

“

**70A. Provision of information in compiled form**

(1) Subsection (2) applies if the Minister wishes to obtain from the corporation information that —

(a) is not itself in the possession of the corporation or a subsidiary; but

- (b) is capable of being assembled or compiled from information in the possession of the corporation or a subsidiary.
- (2) The Minister may request the chief executive officer or the board to furnish to the Minister a document containing information that —
  - (a) is of a specified description;
  - (b) is presented in a specified way;
  - (c) relates to a specified period; or
  - (d) has some other specified characteristic,or that comes within 2 or more of the preceding paragraphs.
- (3) A request under subsection (2) may specify a time before which the document is to be furnished.
- (4) The chief executive officer or the board is to comply with a request under subsection (2) and is to take, or cause to be taken, whatever steps are necessary in order to do so.
- (5) Section 70(1) applies to a document prepared or compiled for the purposes of this section in the same way as it applies to other information in the possession of the corporation or a subsidiary.
- (6) Section 70(4) applies where a document is furnished under this section in the same way as it applies where information is furnished under that section.

”.

**106. Section 73 amended**

Section 73(1)(a) is amended by inserting after “70,” —

“ 70A, ”.

**107. Section 89 amended**

- (1) Section 89(1) is amended by deleting the definition of “electricity distribution system” and inserting the following definition instead —

“

**“electricity distribution system”** means —

- (a) the part or parts of the system operated by the corporation for the transportation of electricity that is or are prescribed by the regulations for the purposes of this paragraph; and
- (b) plant and equipment that is —
  - (i) used by the corporation —
    - (I) in connection with the transfer of electricity to or from any part referred to in paragraph (a); or
    - (II) for a purpose related to such transfer;
  - and
  - (ii) prescribed, or of a kind that is prescribed, by the regulations for the purposes of this subparagraph;

”.

- (2) Section 89(1) is amended by deleting the definition of “electricity transmission system” and inserting the following definition instead —

“

**“electricity transmission system”** means —

- (a) the part or parts of the system operated by the corporation for the transportation of electricity that is or are prescribed by the regulations for the purposes of this paragraph; and

- (b) plant and equipment that is —
  - (i) used by the corporation —
    - (I) in connection with the transfer of electricity to or from any part referred to in paragraph (a); or
    - (II) for a purpose related to such transfer;
  - and
  - (ii) prescribed, or of a kind that is prescribed, by the regulations for the purposes of this subparagraph;

”.

- (3) Section 89(1) is amended by inserting after the definition of “new generation” the following definition —

“

**“prescribed pricing policy”** means a policy or practice of charging different prices to different users or classes of users in different circumstances that is —

- (a) specified in the regulations; and
- (b) prescribed for the purposes of Schedule 5 clause 2(1a) or Schedule 6 clause 2(1a);

”.

**108. Section 95 amended**

Section 95(3) is amended as follows:

- (a) after paragraph (b) by inserting —

“

- (ba) the protection and immunities of the referee;

”;



(b) by deleting paragraph (h)(ii) and inserting instead —

“

(ii) in relation to witnesses —

(I) the compulsion to attend or to both attend and produce documents; and

(II) their examination and cross-examination on oath or affirmation;

”;

(c) after paragraph (h) by inserting —

“

(ha) the protection, immunities and liabilities of witnesses;

”.

**109. Schedule 5 amended**

(1) The amendments in this section are to Schedule 5.

(2) After clause 2(1) the following subclause is inserted —

“

(1a) It is not discriminatory for the corporation to make access available under subclause (1) on the basis of a prescribed pricing policy.

”.

(3) After clause 2 the following clause is inserted —

“

**2A. Costs of corporation in connection with application**

(1) The regulations may require a person who makes an application to the corporation seeking access as mentioned in clause 2(1) to pay to the corporation —

(a) at the time of making the application; or

(b) at the time or times otherwise provided by the regulations,

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the reasonable costs of the corporation —

- (c) in dealing with the application under the regulations; and
- (d) if applicable, in negotiating the terms and conditions on which access is made available.

(2) The regulations may provide for the applicant to pay an estimated amount pending a final determination of the costs of the corporation.

”.

(4) Clause 4(1) is amended by deleting “prepare annually” and inserting instead —

“ , not later than the prescribed day in each year, prepare ”.

(5) Clause 4(2) is repealed and the following subclauses are inserted instead —

“

- (2) Any existing or prospective user may request the corporation to provide a report and forecast of firm capacity, non-firm capacity, and spare capacity as applicable to that user’s particular requirements.
- (3) The corporation may make a reasonable charge in respect of the cost of complying with the request.
- (4) Subject to payment of the charge referred to in subclause (3), the corporation must comply with a request under subclause (2) within the prescribed number of days after the request is made.

”.

**110. Schedule 6 amended**

(1) The amendments in this section are to Schedule 6.

(2) After clause 2(1) the following subclause is inserted —

“

- (1a) It is not discriminatory for the corporation to make access available under subclause (1) on the basis of a prescribed pricing policy.

”.

(3) After clause 2 the following clause is inserted —

“

**2A. Costs of corporation in connection with application**

(1) The regulations may require a person who makes an application to the corporation seeking access as mentioned in clause 2(1) to pay to the corporation —

- (a) at the time of making the application; or
- (b) at the time or times otherwise provided by the regulations,

the reasonable costs of the corporation —

(c) in dealing with the application under the regulations; and

(d) if applicable, in negotiating the terms and conditions on which access is made available.

(2) The regulations may provide for the applicant to pay an estimated amount pending a final determination of the costs of the corporation.

”.

(4) Clause 4 is repealed and the following clause is inserted instead —

“

**4. Obligation to provide information**

(1) Any existing or prospective user may request the corporation to provide a report and forecast of electricity distribution capacity as applicable to that user's particular requirements.

(2) The corporation may make a reasonable charge in respect of the cost of complying with the request.

(3) Subject to payment of the charge referred to in subclause (2), the corporation must comply with a request under subclause (1) within the prescribed number of days after the request is made.

”.

**111. Schedule 7 amended**

Schedule 7 clause 2(1) is amended by deleting “prepare annually” and inserting instead —

“ , not later than the prescribed day in each year, prepare ”.

**Division 2 — *Energy Operators (Powers) Act 1979***

**112. The Act amended**

The amendments in this Division are to the *Energy Operators (Powers) Act 1979*\* (the “**principal Act**”).

[\* *Reprinted as at 15 September 2000.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 121.]*

**113. Section 58 amended**

- (1) Section 58(2)(a) is amended by deleting “so supplied contributes thereto, in total or as to an agreed proportion, in such sum and manner as the energy operator requires” and inserting instead —

“

seeking to effect, maintain or continue such supply enters into an agreement with the energy operator under subsection (3) relating to the supply

”.

- (2) Section 58(3) is amended by deleting “on such terms and conditions as the energy operator thinks fit.” and inserting instead —

“

if the person, body or authority seeking to effect, maintain or continue the supply enters into an agreement with the energy operator relating to the supply on such terms and conditions as the energy

operator thinks fit, including without limitation a condition that the person, body or authority is to pay to the energy operator the cost, as determined by the energy operator, of appropriate network development.

”.

(3) After section 58(3) the following subsection is inserted —

“

(3a) In subsection (3) —

**“appropriate network development”** means extending, or increasing the capacity of, the supply system to enable supply to be effected, maintained, or continued in accordance with the agreement, and it includes making those extensions or increases in capacity in a way that accommodates future demands on the supply system that the energy operator might anticipate, whether or not the demands of the person, body, or authority entering into the agreement.

”.

#### **114. Section 61 amended**

(1) Section 61(1)(b) is amended by deleting “considers will be required in order to enable the energy operator to extend the supply system beyond the normal point of supply in order to effect the supply requested;” and inserting instead —

“

anticipates will be the cost of appropriate network development;

”.

(2) After section 61(1) the following subsection is inserted —

“

(1a) In subsection (1)(b) —

**“appropriate network development”** means extending, or increasing the capacity of, the supply

system to enable the requested supply to be effected, and it includes making those extensions or increases in capacity in a way that accommodates future demands on the supply system that the energy operator might anticipate, whether or not the demands of the applicant.

”.

**115. Section 65 amended and transitional provision**

- (1) Section 65(2) is repealed and the following subsections are inserted instead —

“

- (2) If in the opinion of an energy operator, or an officer or servant of an energy operator authorised for the purposes of this section, a meter referred to in subsection (1) was not correctly registering the extent and value of the energy supplied —
- (a) when it was read; or
  - (b) during any part of the accounting period ending when it was read,

the reading shall be disregarded.

- (2a) Where subsection (2) applies, the extent and value of the energy supplied during the accounting period ending with the reading —
- (a) shall be computed by reference to the results obtained from a test of the meter; or
  - (b) if that is not practicable, may be assessed under subsection (3).

”.

- (2) Section 65(4) and (5) are repealed and the following subsections are inserted instead —

“

- (4) Where as the result of —
- (a) a computation made under subsection (2a)(a);
- or

(b) an assessment made under subsection (3),

it is shown that the charges made were not what they should have been, the charges may be adjusted in respect of the period during which the meter was not correctly registering the extent and value of the energy supplied, and —

(c) shall be credited; or

(d) may be recovered,

accordingly, as the case requires.

(5) If —

(a) subsection (2) does not apply; but

(b) it is shown that, for some other reason, the charges made for a period were not what they should have been,

the charges shall be adjusted so as to present, as near as may be, a proper accounting for that period, and —

(c) shall be credited; or

(d) may be recovered,

accordingly, as the case requires.

(5a) The energy operator is to determine —

(a) the period during which the meter was not correctly registering the extent and value of the energy supplied, as mentioned in subsection (4); or

(b) the period for which the charges made were not what they should have been, as mentioned in subsection (5),

but, unless subsection (5b) applies, the period so determined is not to exceed 12 months.

- (5b) The period so determined for the adjustment and recovery of charges may exceed 12 months if the energy operator considers on reasonable grounds that the person concerned obtained energy at any relevant time by a dishonest or illegal act, including an act to which section 67(1) applies.

”.

- (3) Section 65 of the principal Act as in force immediately before the commencement of this section is to continue to have effect for the purpose of adjusting, under section 65, charges in respect of which, according to the records of the energy operator —
- (a) a metering or billing error was discovered by;
  - (b) a complaint was made to; or
  - (c) a question was raised with,
- the energy operator before that commencement.
- (4) A statement in writing signed on behalf of an energy operator showing the day on which, according to the records of the energy operator —
- (a) a metering or billing error was discovered by;
  - (b) a complaint was made to; or
  - (c) a question was raised with,

the energy operator, as mentioned in subsection (3), is to be presumed to be correct in the absence of evidence to the contrary.

**116. Validation of certain agreements**

- (1) This section applies where before the commencement of this section —
- (a) an agreement was made between a person and Western Power Corporation for the purposes of section 58(3) or 61(1) of the principal Act; and



- (b) the amount which the person agreed to pay to Western Power Corporation under the agreement was determined in such a way as to include an amount for the cost of appropriate network development.
- (2) The provisions of such an agreement, and all acts, matters and things relating to it, are and always were as valid and effective as they would have been if the principal Act had been amended in accordance with sections 113 and 114 of this Act at the time when the agreement was entered into.
- (3) In this section —
- “appropriate network development”** means “appropriate network development” as defined in section 58(3a) or section 61(1a) of the principal Act, as the case may require;
- “Western Power Corporation”** has the meaning given to that term in section 4(1) of the principal Act.

## **Part 8 — Miscellaneous Amendments**

### **117. *Gas Pipelines Access (Western Australia) Act 1998* amended**

- (1) The amendment in this section is to the *Gas Pipelines Access (Western Australia) Act 1998*\*.

[\* *Reprinted as at 11 August 2000.*  
*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 154.*]

- (2) Section 73(1)(b) is deleted.

### **118. *Energy Coordination Act 1994* amended**

- (1) The amendment in this section is to the *Energy Coordination Act 1994*\*.

[\* *Reprinted as at 5 May 2000.*  
*For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 119, see also Economic Regulation Authority Bill 2002 currently before Parliament.*]

- (2) Section 3 is amended in the definition of “distribution system”, in paragraph (b), by inserting after “1994” —

“

repealed by section 93 of the *Gas Corporation (Business Disposal) Act 1999*

”.

