

Western Australia

Energy Safety Act 2006

As at 21 Jun 2006

No. 24 of 2006

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Energy Safety Act 2006

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Western Australia

Energy Safety Act 2006

No. 24 of 2006

An Act to —

- **make provision for the collection of a levy from certain energy industry participants; and**
- **establish an account relating to energy safety, regulation and management.**

[Assented to 21 June 2006]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Energy Safety Act 2006*.

2. Commencement

This Act comes into operation on a day to be fixed by proclamation.

3. Terms used in this Act

(1) In this Act, unless the contrary intention appears —

“business plan” means a business plan referred to in section 11(1);

“chief executive officer” means the chief executive officer under the *Public Sector Management Act 1994* of the department;

“department” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“DES office” means —

- (a) the Director of Energy Safety carrying out functions as mentioned in subsection (2);
- (b) staff appointed or made available under the *Energy Coordination Act 1994* to enable the Director of Energy Safety to perform his or her functions; and
- (c) persons engaged to assist in the performance of the functions of the Director of Energy Safety;

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

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“energy industry participant” means —

- (a) a holder of a generation licence as defined in the *Electricity Industry Act 2004* section 3;
- (b) a holder of an integrated regional licence as defined in the *Electricity Industry Act 2004* section 3 that authorises the holder to operate generating works;
- (c) a holder of a distribution licence as defined in the *Electricity Industry Act 2004* section 3;
- (d) a holder of a transmission licence as defined in the *Electricity Industry Act 2004* section 3;
- (e) a holder of a distribution licence as defined in the *Energy Coordination Act 1994* section 3;
- (f) a person exempted under the *Electricity Industry Act 2004* or the *Energy Coordination Act 1994* from the requirement to hold a licence referred to in paragraph (a), (b), (c), (d) or (e);
- (g) a supply authority as defined in the *Electricity Act 1945* section 5;
- (h) a distributor of liquefied petroleum gas; or
- (i) any other person or class of person prescribed by the regulations as an energy industry participant for the purposes of this definition;

“energy safety activities” means —

- (a) technical and safety regulation including energy efficiency regulation; and
- (b) safety and energy efficiency promotion and emergency management activities,
related to the energy industry;

“Energy Safety Account” means the account established under section 26;

“investigator” means a person designated as an investigator under section 29(1);

“levy” means a levy determined under section 14(1) and imposed under the *Energy Safety Levy Act 2006*;

“levy notice” means a notice published under section 14(1);

“remuneration” includes salary, allowances, fees, emoluments and benefits (whether in money or not);

- (2) In this Act a reference to functions of the Director of Energy Safety includes any or all of his or her functions —
- (a) when acting in his or her capacity as Director of Energy Safety; or
 - (b) when acting in relation to energy safety activities in any other capacity as an officer of the department.

Part 2 — Business plans

4. Draft business plan to be submitted to Minister

- (1) The chief executive officer and the Director of Energy Safety, must in each year prepare, and submit to the Minister for his or her approval, a draft business plan in relation to energy safety activities.
- (2) The first draft business plan must be submitted to the Minister before the start of the next financial year and each subsequent draft business plan must be submitted to the Minister not later than 6 months before the start of the next financial year.

5. Transitional provision

The first business plan is to be in respect of the next full financial year after which there has been compliance with section 4(2).

6. Matters to be included in business plan

- (1) A business plan must include —
 - (a) a statement of intent in accordance with section 7;
 - (b) a financial plan in accordance with section 8;
 - (c) a statement setting out the total amount proposed to be raised by way of levy in the relevant financial year;
 - (d) a statement as to what proportion of the total amount proposed to be raised by levy is to be payable by participants in the electricity industry and what proportion is to be payable by participants in the gas industry;
 - (e) a description of the proposed formula or method for assessment in relation to the levy; and
 - (f) such other information as the Minister may require.

- (2) The proportions referred to in subsection (1)(d) —
 - (a) in the first business plan are to be 67% for participants in the electricity industry and 33% for participants in the gas industry;
 - (b) may be varied in the 6th business plan and each business plan on the expiry of a 5 year interval after the making of that business plan and not otherwise.

7. Contents of statement of intent

- (1) A statement of intent must set out, in relation to energy safety activities —
 - (a) the objectives of the DES office;
 - (b) the nature and scope of activities to be undertaken by the DES office;
 - (c) the performance targets and other measures by which the performance of the DES office may be judged and related to the stated objectives; and
 - (d) the type of information and advice to be given to the Minister by the Director of Energy Safety.
- (2) A statement of intent must cover a forecast period of 5 years.

8. Contents of financial plan

A financial plan must set out, in relation to energy safety activities —

- (a) an outline of any proposed agreement for services and facilities to be provided in the relevant financial year to the Director of Energy Safety by the department or any other public sector body;
- (b) an outline of any other services and facilities to be provided by the department to the Director of Energy Safety in the relevant financial year; and

- (c) a forecast of —
 - (i) the total estimated expenditure for remuneration and labour costs of the DES office;
 - (ii) the total estimated expenditure for fixed and variable operating costs and expenses of the DES office, other than expenditure referred to in subparagraph (i);
 - (iii) the total estimated capital expenditure in relation to the DES office; and
 - (iv) the total estimated retained revenue of the DES office, including any amounts to be paid into the Energy Safety Account under section 26(3)(b), (c), (d) and (e),in the relevant financial year.

9. Minister's powers in relation to draft business plan

- (1) The Minister may return the draft business plan to the chief executive officer and the Director of Energy Safety and request them to —
 - (a) consider or further consider any matter and deal with the matter in the draft plan; and
 - (b) revise the draft plan in the light of that consideration or further consideration.
- (2) The chief executive officer and the Director of Energy Safety must comply with the request as soon as is practicable.
- (3) If the chief executive officer, the Director of Energy Safety and the Minister have not reached agreement on a draft business plan by 4 months before the start of the next financial year, the Minister may, by written notice, direct the chief executive officer —
 - (a) to take specified steps in relation to the draft plan; or
 - (b) to make specified modifications to the draft plan.

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- (4) The chief executive officer must comply with the direction as soon as is practicable and in any event within such reasonable period as the Minister may specify.

10. Draft business plan must not be published without Minister's approval

A draft business plan, or any part of a draft business plan, must not be published or made available except for the purposes of this Part, without the prior approval of the Minister.

11. Minister's approval of draft business plan

- (1) When the Minister approves a draft business plan, it becomes, with any modifications made under section 12, the business plan for the relevant financial year.
- (2) The Minister must, within 14 days of approving the draft business plan, cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 36.

12. Modifications of business plan

- (1) A business plan may be modified by the chief executive officer and the Director of Energy Safety, with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the chief executive officer to modify the business plan.
- (3) Before giving the direction the Minister must consult with the chief executive officer and the Director of Energy Safety and take their views into account.
- (4) The chief executive officer must comply with the direction as soon as is practicable.

13. Director of Energy Safety must act in accordance with statement of intent

The Director of Energy Safety must perform his or her functions under the *Energy Coordination Act 1994* section 7 in accordance with the statement of intent included in the business plan as existing from time to time, unless otherwise authorised in writing by the Minister.

Part 3 — Energy safety levy

14. Minister may determine levy

- (1) The Minister may, by notice published in the *Gazette*, specify —
 - (a) the total amount that is to be raised by way of levy for a financial year;
 - (b) the method by which it is to be determined which energy industry participants are to be liable to pay a levy;
 - (c) the formula or method for assessing the amount to be paid by way of levy by each energy industry participant who is liable to pay a levy; and
 - (d) the day or days on which the levy is payable.
- (2) The notice must be published —
 - (a) in the case of the first notice published under this section, on or before the start of the next financial year; and
 - (b) in the case of each subsequent notice, on or before 15 May in each year.
- (3) The notice must be made by reference to the business plan that covers the relevant financial year.

15. Disallowance of levy notice

- (1) A levy notice must be laid before each House of Parliament within 6 sitting days of that House next following the publication of the levy notice in the *Gazette*.
- (2) Notice of motion to disallow the levy notice may be given in either House of Parliament within 10 sitting days of that House after the levy notice has been laid before it under subsection (1).

- (3) Within 10 sitting days of a House of Parliament after notice of motion has been given under subsection (2), that House may pass a resolution disallowing the levy notice.
- (4) Subsection (2) does not apply to the first levy notice published under section 14.
- (5) If either House of Parliament passes a resolution disallowing the levy notice (the “**disallowed notice**”) —
- (a) the disallowed notice, and any notice of assessment issued under section 16 in respect of the disallowed notice, has no effect;
 - (b) the levy notice that last had effect (the “**previous notice**”) is to be taken to be the levy notice for the relevant financial year except that the amount of levy payable by an energy industry participant is to be determined by varying the amount of levy last payable by the energy industry participant by the percentage by which the March CPI for the relevant year varies from the previous March CPI;
 - (c) the chief executive officer is to act under section 16 as if the previous notice, as modified by paragraph (b), had just been published; and
 - (d) any moneys paid by a person pursuant to the disallowed notice that are in excess of the amount required to be paid by that person in accordance with the previous notice, as modified by paragraph (b), are to be repaid to that person.
- (6) If either House of Parliament passes a resolution disallowing the levy notice, notice of the disallowance must be published in the *Gazette* within 21 days of the passing of the resolution.
- (7) It does not matter whether or not a period of days referred to in subsection (1), (2) or (3) or some of those days occur during the same session of Parliament, or the same Parliament, as that in

which the levy notice is laid before the House of Parliament concerned.

(8) In subsection (5)(b) —

“March CPI”, for a relevant financial year, means the index number for the quarter ending on the last 31 March before the financial year commences, as shown in the Consumer Price Index Numbers (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth.

16. Notice of assessment

As soon as is practicable after a levy notice is published the chief executive officer must, in accordance with the levy notice and the regulations, if any —

- (a) determine the energy industry participants liable to pay a levy;
- (b) assess the amount to be paid by way of levy by each of those participants; and
- (c) give a notice of assessment to each of those participants specifying —
 - (i) the amount of levy payable;
 - (ii) the day on which the notice of assessment was issued; and
 - (iii) the day or days on which the levy is payable.

17. Payment of levy

- (1) An energy industry participant is liable to pay the levy assessed in respect of that energy industry participant pursuant to a levy notice.
- (2) The levy becomes due and payable on the date or dates stated in the assessment notice given to the energy industry participant under section 16.

- (3) If —
- (a) the assessment notice given under section 16 provides for the payment of the levy to be made in instalments; and
 - (b) an instalment is not paid at or before the time due for payment of the instalment,

the whole of the levy unpaid becomes due and payable at that time.

- (4) The levy is payable to the chief executive officer.

18. Penalty for non-payment

- (1) If an amount of a levy remains unpaid after the day on which it becomes due for payment, there is payable to the chief executive officer by way of penalty, in addition to the amount of the levy, an amount calculated at the rate prescribed by the regulations upon the amount of the levy from time to time remaining unpaid.
- (2) The amount by way of penalty referred to in subsection (1) is to be calculated from the time when the amount of the levy became payable.

19. Recovery of levy and interest

A levy that is due and payable, and an amount payable under section 18, may be recovered by the chief executive officer in a court of competent jurisdiction.

Part 4 — Objections and review

20. Grounds of objection

- (1) An energy industry participant may, in accordance with this section, object to a notice of assessment issued to that energy industry participant under section 16 on either or both of the grounds that there is an error in the chief executive officer's —
 - (a) determination that it is an energy industry participant liable to pay a levy; or
 - (b) assessment of the amount to be paid by it by way of levy.
- (2) An objection under subsection (1) is to —
 - (a) be made to the chief executive officer in writing within 42 days of the service of a notice of assessment under section 16; and
 - (b) identify the relevant energy industry participant and assessment notice; and
 - (c) set out fully and in detail the grounds of objection.
- (3) An objection under subsection (1) may be made by the energy industry participant named in the notice of assessment or by the legal representative of that person.
- (4) The chief executive officer may, on written application by a person proposing to make an objection, extend in writing the time for making the objection for such period as the chief executive officer thinks fit.
- (5) The chief executive officer is to promptly consider any objection and may either disallow it or allow it, wholly or in part.
- (6) After making a decision on the objection the chief executive officer is to promptly serve upon the person by whom the objection was made written notice of the chief executive

officer's decision on the objection and a statement of the reasons for that decision.

21. Review of decision of chief executive officer on objection

Any person who is dissatisfied with the decision of the chief executive officer on an objection by that person under section 20 may, within 42 days (or such further period as the State Administrative Tribunal, for reasonable cause shown by the person, allows) after service of notice of the decision, apply to the State Administrative Tribunal for a review of the decision.

22. Review of decision to refuse to extend time for objection

A person who is dissatisfied with a decision of the chief executive officer to refuse to extend the time for making an objection against the notice of assessment may apply to the State Administrative Tribunal for a review of the decision.

23. New matters raised on review

- (1) Upon a review by the State Administrative Tribunal under section 21 or 22, the State Administrative Tribunal may consider —
 - (a) grounds in addition to those stated in the notice of objection; and
 - (b) reasons in addition to any reasons previously given for the chief executive officer's decision that is under review.
- (2) That State Administrative Tribunal is to ensure, by adjournment or otherwise, that each party and any other person entitled to be heard has a reasonable opportunity of properly considering and responding to any new ground or reason that the State Administrative Tribunal proposes to consider in accordance with subsection (1).

24. Objection not to affect liability to pay levy

The making of an objection under this Part does not affect the liability to pay any levy imposed under this Act pending determination of the objection.

25. Repayment of levy

Any moneys paid by a person pursuant to a notice of assessment that is later disallowed in whole or in part on objection or review that are in excess of the amount that is required to be paid by that person in accordance with the decision of the objection or review are to be repaid to that person.

Part 5 — Energy Safety Account

26. Energy Safety Account

- (1) In this section —
 “operating account” means an operating account of the department under the *Financial Administration and Audit Act 1985* section 15B.
- (2) An account called the “Energy Safety Account” is to be established —
- (a) as an operating account; or
 - (b) as part of an operating account nominated by the chief executive officer.
- (3) The Energy Safety Account is to be credited with —
- (a) any levy paid;
 - (b) any amount paid by way of penalty under section 18;
 - (c) fees paid for licences under the *Electricity Act 1945* and the *Gas Standards Act 1972*;
 - (d) any revenue received by the department from energy safety activities; and
 - (e) any other moneys lawfully payable to the Energy Safety Account.

27. Use of funds in Energy Safety Account

Money may be paid out of the Energy Safety Account for any or all of the following purposes —

- (a) payment of the costs and expenses related to energy safety activities of the DES office, including payment of related fixed and variable operating costs and capital costs;

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- (b) payment of the costs of administering the Energy Safety Account (including the costs of collecting levies and penalties);
- (c) payment of moneys under section 15(5)(d);
- (d) any other purpose related to energy safety activities and authorised in writing by the Minister.

Part 6 — Obtaining information and investigation

28. Power to require information or material

- (1) The Director of Energy Safety may, for the purpose of facilitating the preparation of a business plan and the determination of a levy, require an energy industry participant —
 - (a) to provide oral or written answers to specified questions on a relevant matter; or
 - (b) to produce to the Director of Energy Safety specified relevant material or relevant material of a specified class, in the person's possession or control.
- (2) The Director of Energy Safety may make the requirement —
 - (a) if an oral response is required — orally; or
 - (b) in any other case — by notice given to the person to whom the requirement is addressed.
- (3) A matter, or information or material required under subsection (1), is relevant if it relates to —
 - (a) the generating capacity of the energy industry participant;
 - (b) sites to which electricity or gas is supplied by the energy industry participant; or
 - (c) a matter that is prescribed by the regulations.
- (4) The Director of Energy Safety must —
 - (a) allow an energy industry participant a reasonable time within which to comply with the requirement; and
 - (b) if the requirement is made by notice given to the person, specify the time allowed in the notice.
- (5) The Director of Energy Safety may require a person to verify answers to questions by statutory declaration.

- (6) An energy industry participant who does not comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the Director of Energy Safety commits an offence.

Penalty: a fine of \$20 000.

29. Designation and identification of investigators

- (1) The Director of Energy Safety may designate persons to be investigators for the purposes of this Act.
- (2) The Director of Energy Safety must issue an identification card to each investigator.
- (3) An investigator should —
- (a) carry his or her identification card while performing functions under this Act; and
 - (b) if it is practicable to do so, produce it before exercising a power of an investigator under this Act.
- (4) A person who has been issued with an identification card and who ceases to be an investigator must return the card to the Director of Energy Safety as soon as practicable.
- (5) A person who contravenes subsection (4) without reasonable excuse, the onus of proving which is on the person, commits an offence.

Penalty: a fine of \$1 000.

30. Powers of investigators

- (1) An investigator may carry out an investigation for the following purposes —
- (a) to audit records relating to the payment of a levy;
 - (b) to gather evidence of a suspected contravention of this Act;

- (c) for any other purpose relevant to the administration of this Act.
- (2) For the purpose of carrying out an investigation, an investigator may at any time enter land or non-residential premises.
- (3) When an investigator exercises a power of entry under subsection (2), the investigator may do any or all of the following —
 - (a) search the premises and examine anything on the premises;
 - (b) take possession of, and remove from the premises, documents, or anything else relevant to the investigation;
 - (c) take extracts from or make copies of, or download or print out, any documents found in the course of carrying out his or her functions under this Act;
 - (d) photograph or film anything on the premises;
 - (e) require any person who is on the premises —
 - (i) to state his or her full name and address;
 - (ii) to answer (orally or in writing) questions put by the investigator that are relevant to the investigation;
 - (iii) to give the investigator any information in the person's possession or control that is relevant to the investigation;
 - (iv) to operate or allow the investigator to operate equipment or facilities on the premises for investigation purposes;
 - (v) to give the investigator any translation, code, password or other information necessary to gain access to or to interpret and understand any document or information located or obtained by

the investigator in the course of exercising his or her functions under this Act;

(vi) to give other assistance that the investigator reasonably requires to carry out the investigation.

- (4) A person who does not comply with a requirement under subsection (3)(e) commits an offence.
Penalty: a fine of \$20 000.
- (5) If an investigator removes a document or other thing from premises, the investigator must give the person who was in possession of the document or thing a receipt for it.
- (6) An investigator must ensure that a person from whom a document or anything else is taken under this section and who would otherwise be entitled to possession of it is given a copy of it, or reasonable access to it, as appropriate.
- (7) If an investigator takes a photograph or makes a film under subsection (3)(d), a copy of that photograph or film must be provided to relevant persons.
- (8) If an investigator takes possession of anything under this section, the Director of Energy Safety must ensure that it is returned to the person entitled to possession of it as follows —
- (a) if it was taken in connection with the prosecution or possible prosecution of a suspected contravention of this Act—as soon as practicable after the relevant prosecution is completed or discontinued or, if no prosecution is commenced, as soon as practicable after the decision is made not to prosecute the suspected contravention;
 - (b) in any other case—within 28 days after it was taken.

31. False or misleading information

A person must not provide information to the Director of Energy Safety or an investigator under this Part knowing it to be false or misleading in a material particular.

Penalty: a fine of \$20 000.

32. Obstructing or misleading an investigator

A person who hinders or obstructs an investigator in carrying out functions under this Part commits an offence.

Penalty: a fine of \$20 000.

33. Confidentiality

The chief executive officer or former chief executive officer, the Director of Energy Safety or former Director of Energy Safety, or any person performing functions or formerly performing functions, under this Act or any other person to whom information or material is disclosed under this Act or who properly or improperly gains access to the information or material in some other way must not, directly or indirectly, record, disclose or make use of any information obtained for the purposes of this Act except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under a written law; or
- (c) with the written consent of the person to whom the information relates.

Penalty: a fine of \$20 000.

Part 7 — Miscellaneous

34. Delegation by chief executive officer

- (1) The chief executive officer may delegate to another officer of the department any power or duty of the chief executive officer under another provision of this Act.
- (2) The delegation must be in writing signed by the chief executive officer.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

35. Offence by body corporate

- (1) If a body corporate commits an offence against this Act each director of the body corporate commits the offence and is liable to the penalty prescribed for an individual who commits the offence.
- (2) It is a defence to a charge of an offence by a director under this section to prove that the accused —
 - (a) did not aid, abet, counsel or procure the act or omission of the body corporate concerned; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the body corporate.

36. Supplementary provision for laying document before Parliament

- (1) If —
- (a) at the commencement of the period referred to in section 11(2) a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

37. Regulations

- (1) The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may be made —
- (a) as to the provision of information by a person to the Director of Energy Safety for the purpose of ascertaining whether the person is an energy industry participant, or is an energy industry participant who is liable to pay a levy;
 - (b) as to the procedure for assessing and collecting a levy; and
 - (c) prescribing a penalty not exceeding \$10 000 for an offence against the regulations.

