

**WESTERN AUSTRALIA**

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**ENERGY COORDINATION ACT 1994**

**(No. 71 of 1994)**

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# *Energy Coordination Act 1994*

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**ENERGY COORDINATION  
ACT 1994**

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**No. 71 of 1994**

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**AN ACT to provide for —**

- **a public officer to coordinate and advise on energy policy and with functions under certain written laws relating to energy supply; and**
- **a public officer with functions under certain written laws relating to energy safety,**

**and to confer powers, and make related provisions.**

*[Assented to 9 December 1994.]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Energy Coordination Act 1994*.

**Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears —

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

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

“**electricity**” includes electrical energy of any kind however produced, stored, transported or consumed;

“**energy**” means electricity, gas and thermal energy however derived;

“**gas**” means any gas or mixture of gases, whether naturally occurring or manufactured, intended for use —

(a) as a fuel; or

(b) in any chemical process;

“**inspector**” means a person designated as an inspector under section 12.

**PART 2 — COORDINATOR OF ENERGY, AND DIRECTOR  
OF ENERGY SAFETY**

**Coordinator of Energy**

4. A Coordinator of Energy is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

**Director of Energy Safety**

5. A Director of Energy Safety is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

**Coordinator's functions**

6. The functions of the Coordinator are —

- (a) to assist the Minister in planning and coordinating the provision of energy in the State;
- (b) to perform the functions vested in the Coordinator by or under the *Electricity Act 1945* and the *Gas Undertakings Act 1947* or any other written law;
- (c) to advise the Minister on all aspects of energy policy, including —
  - (i) the energy needs of the State;
  - (ii) ways of using energy and sources of energy, including renewable energy;
  - (iii) the introduction and encouragement of competition in the energy industry;
  - (iv) ways of promoting and achieving open access to transmission and distribution systems;

- (v) ways of achieving greater efficiency in the use of energy;
  - (vi) the use of energy policy to assist in achieving other policy objectives of government;
  - (vii) matters relating to the operation of relevant legislation;
- (d) for the purposes of paragraphs (a), (b) and (c) —
- (i) to monitor the operation of the State's energy industry and its participants; and
  - (ii) to consult with interested groups and persons;
- (e) to undertake, sponsor and coordinate research, development and demonstration relating to energy;
- (f) to promote the development of commercial applications of renewable energy;
- (g) to produce and publish information and reports on energy-related matters; and
- (h) to provide support in the resolution of disputes about energy-related matters.

### **Director's functions**

7. The functions of the Director are those vested in the Director by or under the *Electricity Act 1945*, the *Gas Standards Act 1972*, the *Liquid Petroleum Gas Act 1956* or any other written law.

## **Staff**

8. Officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Coordinator and the Director to perform their functions.

## **Delegation**

9. (1) Each of the Coordinator and the Director may by instrument in writing delegate to an officer referred to in section 8 the performance of any of his or her functions including functions under a written law, but not including the power to delegate under this section.

(2) The Coordinator's powers under subsection (1) also extend to delegation of functions to the Director.

(3) A delegation may be general or as otherwise provided by the instrument of delegation.

(4) A delegate remains subject to the direction and control of the delegator.

(5) Performance of a function by a delegate is to be treated as performance by the delegator.

## **Minister may give directions**

10. (1) The Minister may give directions in writing to the Coordinator or the Director with respect to the performance of his or her functions, either generally or in relation to a particular matter, and he or she is to give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be —

- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and

- (b) included in the annual report submitted by the relevant accountable officer under section 62 of the *Financial Administration and Audit Act 1985*.

### **Minister to have access to information**

11. (1) The Minister is entitled —
- (a) to have information in the possession of the Coordinator or the Director; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Coordinator or the Director to furnish information to the Minister;
  - (b) request the Coordinator or the Director to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of the staff referred to in section 8 to obtain the information and furnish it to the Minister.
- (3) The Coordinator or the Director is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;



**“information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Coordinator or the Director.

**PART 3 — INSPECTORS**

**Designation of inspectors**

12. (1) The Coordinator may designate persons to be inspectors for the purposes of the *Electricity Act 1945*.

(2) The Director may designate persons to be inspectors for the purposes of —

(a) the *Electricity Act 1945*; or

(b) the *Gas Standards Act 1972*,

or both of those Acts.

(3) An instrument of designation of an inspector is to specify —

(a) the classification of that inspector by reference to the form of energy to which his or her powers relate;

(b) the powers of inspection that the inspector may exercise; and

(c) any limitations or restrictions that apply to that exercise.

(4) A person is not to be designated as an inspector unless he or she has the qualifications or experience, or both, prescribed for the classification that applies to him or her.

(5) Nothing in this section precludes the designation of the Director as an inspector under this section.

### **Certificates of designation**

**13.** (1) The Coordinator or the Director, as the case may require, is to issue to an inspector a certificate specifying the matters referred to in section 12 (3) that apply to that inspector.

(2) An inspector must produce the certificate whenever requested to do so by any person apparently having charge of any land, premises, or thing in respect of which the inspector has exercised or is about to exercise any power.

(3) Production of the certificate is evidence in any court of the designation, classification and powers of the inspector to whom that certificate relates.

### **Powers of inspection etc.**

**14.** An inspector may, subject to this Part and the terms of his or her designation as an inspector —

- (a) enter without notice on or into any land, premises or thing where he or she has reason to believe that the generation, transmission, distribution, supply, or use of the form of energy to which his or her powers relate is or may be taking place irrespective of the source or origin of the energy, or where he or she has reason to believe any plant, works, apparatus or installation used for any of those purposes is or may be situated;
- (b) require any person having the control or custody of any land, premises or thing which the inspector is authorized to inspect to furnish reasonable access to it and other reasonable assistance;
- (c) inspect any plant, works, apparatus or installation used or intended to be used for or in connection with the generation, transmission, distribution, supply or use of the form of energy to which his or her powers relate;

- (d) make any inspection, examination, sampling, inquiry or test, and request any information (including by way of answers to questions) and production of any records or other documents, that he or she considers necessary or desirable to ascertain —
- (i) whether any Act to which his or her powers extend, or any requirement made under that Act, is being or has been complied with;
  - (ii) whether any order, condition, restriction, or limitation is being or has been observed;
  - (iii) the cause, results and other aspects of any failure of any system, plant, works, apparatus or installation, including damage and other matters arising from or suspected of being related to the failure;
  - (iv) the cause of any death, personal injury or damage to property which is or may be attributable to the form of energy to which his or her powers relate.

### **Incriminating statements**

**15.** Where a person, before making a statement or answering a question for the purposes of section 14 (d), objects to having to make it on the ground that the statement might tend to incriminate him, any statement made after that objection —

- (a) is not admissible in evidence in any prosecution against that person for any offence other than an offence against section 20;
- (b) if recorded, in writing or otherwise, must set out the fact of the objection having been made.

**Inspector may be accompanied**

16. An inspector may be accompanied by any person that the inspector thinks necessary to assist the inspector in the performance of his or her functions.

**Inspector to comply with reasonable requests**

17. In the performance of his or her functions an inspector is to comply so far as is practicable with any reasonable requirement of a person owning or using the land, premises, or thing inspected.

**Inspector may issue order**

18. (1) If an inspector is of the opinion that any thing that the inspector is authorized to inspect —

- (a) does not conform with any Act to which his or her powers extend; or
- (b) is unsafe,

the inspector may exercise either or both of the powers conferred by subsection (2).

(2) An inspector may —

- (a) by order in writing prohibit the use of that thing absolutely or except in accordance with any condition or restriction; and
- (b) disconnect the supply of energy to that thing, or to the premises on which it is situated, until the inspector is satisfied that the thing conforms with the Act or is safe.

**Appeal**

**19.** (1) Any person aggrieved by any order made by an inspector under section 18 may appeal in the prescribed manner to —

- (a) the Coordinator, if the inspector was designated under section 12 by the Coordinator; or
- (b) the Director, if the inspector was designated under section 12 by the Director.

(2) The Coordinator or the Director, as the case may be, may confirm, reverse or vary the order and his or her decision is final.

(3) An order has effect pending the determination of the appeal.

**Offences etc.**

**20.** (1) A person must not without reasonable excuse —

- (a) obstruct an inspector, or a person to whom section 16 applies, in the performance of his or her functions; or
- (b) fail to comply with a requirement under section 14 (b).

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

(2) A person must not without reasonable excuse, and subject to section 15, fail to comply with a request under section 14 (d).

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

(3) A person must not give false or misleading information in response to a request under section 14 (d).

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

(4) A person must not contravene or fail to comply with an order under section 18.

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

**PART 4 — OBTAINING OF INFORMATION  
BY COORDINATOR**

**Coordinator may require information to be given**

**21.** (1) The Coordinator may request a person, or the occupier of any premises, to give prescribed information to the Coordinator, including information by way of periodical returns at specified times, if —

- (a) the information is required to enable the Coordinator to perform his or her functions; and
- (b) the Coordinator has reasonable grounds for believing that the person is able to give the information.

(2) The request must —

- (a) be made by written notice given to the person or the occupier; and
- (b) specify the time before which the information is to be given.

(3) The information must be given —

- (a) in writing; and
- (b) before the time specified in the request.

(4) In this section “**prescribed information**”, in relation to a person or occupier, means information as to —

- (a) the quantity, quality, service or supply of any energy held or required by the person or occupier in the State, or imported into the State by the person or occupier;



- (b) facilities available to or held by the person or occupier for storing or distributing energy;
- (c) any works, plant, equipment, apparatus or process that consumes energy and that is used by or available to the person or occupier.

### **Trade secrets**

**22.** (1) Where a request is made under section 21 a person may object to complying with it on the ground that it will result in the disclosure of a trade secret.

(2) An objection must be made in writing served on the Minister within 7 days after the request is received.

(3) The Minister may by notice in writing exempt the objector from the obligation to comply with the request either in whole or in part.

(4) If the Minister refuses to exempt the objector or grants a partial objection the objector may, within 21 days of receiving notice of the Minister's decision, appeal to a Judge of the District Court sitting in chambers.

(5) The Judge may make such order on the appeal, including an order as to costs, as he or she thinks fit and that decision is final.

(6) For the purposes of this section "**trade secret**" means any knowledge or information relating to technology, marketing, energy, or energy resources or reserves, or as to the business of the person objecting, that might reasonably be expected adversely to affect the business or interests of that person if disclosed to any other person.

**Obligation to comply with request**

**23.** (1) Subject to section 22, a person must not, without reasonable excuse, fail to comply with a request under section 21.

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

(2) A person must not give false or misleading information in response to a request under section 21.

Penalty for an individual: \$5 000.

Penalty for a body corporate: \$20 000.

**Confidentiality**

**24.** (1) The Coordinator, the Director or any person performing functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act; or
- (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) in the case of information to which section 21 applies, \$10 000 and imprisonment for 12 months;

(b) in any other case \$5 000.

(2) Subsection (1) does not apply to the disclosure of any summary or statistical information that could not reasonably be expected to enable particulars relating to any person or business to be ascertained.

**PART 5 — GENERAL**

**Establishment of committees**

**25.** (1) The Minister may establish committees for the purpose of considering and advising on a particular matter specified by the Minister.

(2) Subject to subsection (3), the Minister may —

(a) prescribe the membership, constitution and procedures of; and

(b) discharge, alter, or reconstitute,

any such committee.

(3) The Coordinator or his nominee is to be the chairperson of every committee established under this section.

(4) The Minister may determine that a member of a committee is to receive remuneration or an allowance, and if the Minister so determines he or she is to fix the remuneration or allowance on the recommendation of the Minister for Public Sector Management.

(5) Subject to this section, a committee may determine its own procedure.

(6) The Coordinator is to provide a committee with such support services as it may reasonably require.

**Regulations**

**26.** The Governor may make any regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**Review**

**27.** (1) The Minister is to carry out a review of the operations and effectiveness of the Coordinator and the Director as soon as is practicable after the expiry of 5 years from the commencement of this Act and in the course of that review the Minister is to consider and have regard to —

- (a) the desirability of the continuation of the functions of the Coordinator and the Director; and
- (b) such other matters as appear to the Minister to be relevant to the operations and effectiveness of the Coordinator and the Director.

(2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause that report to be laid before each House of Parliament as soon as practicable.