

## GAS UNDERTAKINGS.

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No. 75 of 1982.

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### AN ACT to amend the Gas Undertakings Act 1947-1973.

[Assented to 29 October 1982.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Gas Undertakings Amendment Act 1982*.

Short title  
and citation.

(2) In this Act the Gas Undertakings Act 1947-1973 is referred to as the principal Act.

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approved for  
reprint 28  
February  
1975.

(3) The principal Act as amended by this Act may be cited as the Gas Undertakings Act 1947-1982.

Commence-  
ment.

2. This Act shall be deemed to have come into operation on 16 September 1982.

Section 2  
amended.

3. Section 2 of the principal Act is amended—

(a) by inserting after the section designation the subsection designation “(1)” ;

(b) by deleting the definition of “Commission” and substituting the following definition—

“ “Commission” means the body corporate known as The State Energy Commission of Western Australia preserved and continued pursuant to section 7 of the State Energy Commission Act 1979; ” ;

(c) by inserting after the definition of “co-partner” the following definition—

“ “franchised area” means the locality within the limits of which a gas undertaker is authorized to supply, or supplies, gas, pursuant to an Act; ” ;

(d) by deleting the definition of “local authority” and substituting the following definition—

“ “local authority” means the council of a municipality within the meaning of the Local Government Act 1960; ” ;

(e) in the definition of “to sell”, by deleting “meanings.” and substituting the following—

“ meanings; ” ;

- (f) by inserting after the definition of "to sell" the following definition—

“ “vesting order” means an order made under subsection (2) of section 18A of this Act. ” ; and

- (g) by inserting the following subsection—

“ (2) In relation to a gas undertaker to which subsection (3) of section 18 of this Act applies, any reference to a company shall be taken to include a reference to a subsidiary, a holding corporation or a related corporation of that company within the meaning described by section 7 of the *Companies (Western Australia) Code.* ” .

4. Section 7 of the principal Act is amended— Section 7  
amended.

- (a) in subsection (1), by deleting paragraph (a) and paragraph (b) and substituting the following—

“ (a) on the ordinary share capital of the undertaking—in respect of every \$100 paid up or issued as paid up of that capital, a rate being \$3 above—

- (i) where, during the period of 4 months preceding 1 March in the year commencing 1 January in which the dividend is declared, Commonwealth Treasury Bonds were, or Commonwealth Inscribed Stock was, first issued for public subscription—the initial rate of yield on that issue or, where there was more than one such first issue during that 4 month

period, the initial rate of yield on the issue that had the longer or longest period to maturity at the date of first issue; or

- (ii) where, during the period of 4 months preceding 1 March in the year commencing 1 January in which the dividend is declared, there was no first issue of Commonwealth Treasury Bonds or Commonwealth Inscribed Stock for public subscription—the initial rate of yield on the first issue most recently made before that 4 month period; and

- (b) on the preference capital of the undertaking—in respect of every \$100 paid up or issued as paid up of that capital, a rate of \$5.50. ” ;

(b) by repealing subsection (2); and

(c) in subsection (3)—

- (i) by deleting “the thirtieth day of June, one thousand nine hundred and fifty-six” and substituting the following—

“ 30 June 1982 ” ;

- (ii) by deleting the passage following “ordinary capital,” to the end of the subsection and substituting the following—

“ but nothing in this subsection authorizes the company to declare in any year a rate of

dividend on its paid up ordinary share capital such that the aggregate of the total amount of dividends paid since 30 June 1982 and the total amount payable pursuant to that declaration would exceed the aggregate of—

- (a) the total amount that would have been paid since 30 June 1982 had those previous dividends all been paid at the appropriate standard rate; and
- (b) the total amount of dividends that would be payable pursuant to that declaration if the declaration were made at the standard rate payable in that year. ” ; and

(d) by adding the following subsection—

“ (4) Notwithstanding the provisions of any Act, or the *Companies (Western Australia) Code*, or any memorandum or articles of association, or any resolution passed at a meeting of the company, the directors shall not be competent to increase the capital of the company by the creation of new shares otherwise than in a manner, and upon terms and conditions, approved by the Minister. ” .

5. After section 13 of the principal Act, the following section is inserted—

Section  
13A inserted.

“ 13A. (1) The Minister may, at the request of a gas undertaker, by notice published in the *Government Gazette*—

Variation of  
financial  
arrange-  
ments.

- (a) vary or dispense with, in relation to that gas undertaker, any requirement or other provision of

section 8, 9, 10 or 13 of this Act in respect of such circumstances, if any, and subject to such conditions, if any, as are specified in the notice; and

- (b) approve the transfer, expenditure or setting apart of money from the revenue of the gas undertaking to any reserve, fund or account and specify the objects for which, the circumstances in which and the conditions subject to which that money may be transferred, expended, set apart or otherwise dealt with.

(2) The Minister may, after giving not less than one month's notice in writing to that gas undertaker, by notice published in the *Government Gazette*, revoke, in relation to the gas undertaker, any notice in force under subsection (1) of this section.

(3) A notice under subsection (1) or (2) of this section which is published in the *Government Gazette* has effect on and from—

- (a) the date of such publication; or
- (b) such later date as is specified in the notice.

(4) A gas undertaker in relation to which a notice under subsection (1) of this section is in force shall not contravene the notice. ” .

Section 14  
amended.

6. Section 14 of the principal Act is amended—

- (a) in subsection (1), by deleting “and such statistics and returns as the Commission may require.” and substituting the following—

“ and shall furnish to the Commission, on the written request of the Commission, such other statistics,

returns, records or other information as the Commission may require to enable the Commission—

- (a) to ascertain a true and fair view of the assets and liabilities of the gas undertaker and the extent to which those assets were derived or liabilities were incurred in the course of a business to which this Act applies and in what manner the requirements of this Act have been observed;

and

- (b) to take immediate measures to carry on the undertaking and to continue the supply of gas to consumers, should that become necessary,

and for those purposes shall permit the Commission or persons authorized by the Commission—

- (c) to enter upon the land or premises of the gas undertaker whether within or outside a franchised area;
- (d) to inspect, examine and test all works, plant and equipment used by the gas undertaker in or in connection with its business of producing or supplying gas or gas appliances; and
- (e) to observe and investigate the conduct of the business and affairs of the gas undertaker, including the examination and audit of books, accounts and records and the taking of

copies or extracts and inquiry as to the source, cost, storage and supply of gas, contractual relationships and matters relating to employees, and the use to which the assets of the gas undertaker are being or may be put,

to the extent that the Commission may consider to be required. ” ;

- (b) in subsection (2), by deleting “such annual account as aforesaid” and substituting the following—

“ the annual account furnished to the Commission ” ;

- (c) in subsection (3), by deleting “statistics and returns as aforesaid”, “statistics and returns”, and “statistics or returns” and substituting in each case the following—

“ information ” ; and

- (d) by deleting subsection (4) and substituting the following subsections—

“ (4) The Commission or a person authorized by the Commission may require any director, servant or agent of a gas undertaker to furnish information on matters which the Commission, or that authorized person, considers to be material to an examination or investigation conducted pursuant to this section.

(5) A gas undertaker or other person who—

- (a) fails to comply with a requisition directed to that gas undertaker or person pursuant to this section; or

- (b) obstructs or hinders the Commission or a person authorized by the Commission, or any other person assisting the Commission or that authorized person, in the making of an examination or investigation under this section,

commits an offence.

Penalty: \$1 000, and if the offence is a continuing one a further fine not exceeding \$20 for every day or part of a day during which the offence has continued. ” .

7. Section 18 of the principal Act is amended— Section 18  
amended.

- (a) by inserting after the section designation the subsection designation “(1)”;

- (b) by deleting “Thereupon” and substituting the following—

“ (2) On receipt of a request made under subsection (1) of this section ” ; and

- (c) by inserting the following subsections—

“ (3) Where a gas undertaker is a company on which a power is or has been conferred by an Act to carry on in a franchised area determined by that Act the business of the supply of gas—

- (a) the company shall be taken to carry on, and always to have carried on, that business in pursuance of a statutory duty to give effect to the power conferred and to provide and

maintain a supply of gas suitable and sufficient for the use of all persons within the franchised area who are for the time being consumers or entitled to be supplied;

- (b) subject to the Gas Standards Act 1972, any question as to the quantity or quality of the gas supplied, or the manner in which the gas is or has been supplied, may be determined by the Commission; and
- (c) the property of the company shall be taken to have accrued by reason of the conferring of the right to supply gas to the franchised area, and to be held and always to have been held subject to a continuing obligation to give effect to the statutory duty to supply gas and, in default, to be available to the Crown pursuant to this Act for the purpose of ensuring that a supply of gas within the franchised area, for the time being, of a quantity and quality and in a manner satisfactory to the Commission is maintained, whether by the company, the Commission or some other person, on behalf of the Crown.

(4) A gas undertaker, being a company to which subsection (3) of this section applies, shall not (otherwise than in the normal and ordinary course of, and for the purposes of, the

business of that company related to the supply of gas) without the prior written consent of the Minister dispose of or charge—

- (a) any land, or any interest in land, held by or on behalf of the company; or
- (b) any other property of the company, being property in relation to which the Minister has by notice published in the *Government Gazette* directed that this subsection applies,

and any purported transaction in contravention of this subsection, other than a transaction affecting the title to land registered under the Transfer of Land Act 1893, is void.

(5) The Commissioner of Titles, under the Transfer of Land Act 1893 may, and if so required by the Minister shall, direct the Registrar of Titles to lodge a caveat on behalf of Her Majesty to prohibit the transfer or improper dealing with any land or interest in land to which subsection (3) of this section applies in contravention of that subsection. ” .

8. After section 18 of the principal Act, the following sections are inserted—

Sections 18A to 18G inserted.

“ 18A. (1) Where the Minister has reasonable cause to apprehend that a gas undertaker, being a company to which subsection (3) of section 18 of this Act applies, proposes to cease the supply of gas in a franchised area, or to supply gas of a

Powers related to a default in the duty to supply gas.

quantity or quality or in a manner not satisfactory to the Commission, the Minister may by notice in writing served on the company—

- (a) require the company to show cause, within the period specified in that notice, why a vesting order should not be made; or
- (b) require the company to furnish to the Treasurer such security for the proper discharge of the duty to supply gas in the franchised area, the compliance with the requirements of this Act, and the proper conduct of the business of a gas undertaker as the Minister may direct; or
- (c) require the company so to show cause and to furnish such security,

and, where the company fails so to show cause or to furnish the security required, the Minister may recommend to the Governor that a vesting order should be made.

(2) Where a gas undertaker, being a company to which subsection (3) of section 18 of this Act applies—

- (a) in breach of its statutory duty—
  - (i) ceases to supply gas; or
  - (ii) supplies gas of a quantity or quality, or in a manner, not satisfactory to the Commission; or
- (b) fails to show cause or to furnish the required security pursuant to a notice served under subsection (1) of this section,

the Governor in Executive Council may by order, notice of which shall be served on the company, direct that the Public Trustee or some other person named in that order enter in conjunction with the Commission upon the land and premises of the company and take possession thereof and of all other property whatsoever of the company, or of such of the land, premises or other property as is specified in the order, with authority to utilize the land, premises and other property for the purpose of effecting and maintaining a supply of gas to the franchised area, the land, premises and that other property being by force of, and during the currency of, that order vested in the Public Trustee on behalf of Her Majesty in right of the State as though he were a receiver and manager appointed pursuant to a charge on that property.

(3) An order under subsection (2) of this section—

(a) shall, as soon as is practicable after the making of the order, be—

(i) published in the *Government Gazette*; and

(ii) laid, or caused to be laid, by the Minister before each House of Parliament; and

(b) shall have, and be given effect from, the making thereof, or, where the Minister has, within the preceding seven days, directed the Commission to take urgent measures to safeguard and prevent damage to the gas reticulation system in the franchised area and that direction by the Minister is ratified by the order, from the giving of that direction by the Minister,

and shall, subject to subsection (7) of this section, continue in force until revoked or an order is made under section 18E of this Act.

(4) An order made under subsection (2) of this section—

- (a) may be amended or revoked by a subsequent order;
- (b) may be expressed to have effect differently according to different factors of a specified kind;
- (c) may be made subject to specified conditions;
- (d) may authorize any matter or thing to be from time to time determined, applied or regulated by any specified person or body;
- (e) may make provision for an inquiry into the affairs of the company;
- (f) may make provision for any matter or thing in relation to which provision may be made in an order pursuant to section 18E of this Act;

or

- (g) may make provision for any combination of the matters or things specified in this subsection,

and, where it is amended, shall continue in force, subject to subsection (7) of this section, and have and be given effect as so amended.

(5) If Parliament is adjourned or prorogued and that adjournment or prorogation will not expire within 14 days of the day of the making of the order under this section, Parliament shall be called together

on a day to be fixed by proclamation being a day that falls within that period of 14 days, and, notwithstanding any Act, law or standing order of either House of Parliament to the contrary, Parliament shall meet on the day so fixed and for all purposes shall continue to sit and act in the same manner as if it had been adjourned or prorogued to that day.

(6) Where at the time an order is made under this section the Legislative Assembly is dissolved for the purposes of an election Parliament shall be called together so soon as may be thereafter.

(7) Unless, within the period of 30 days from the date on which an order made under this section was laid before that House or reasonably could have been so laid, each of the Houses of Parliament by resolution ratifies that order, the order shall be deemed for all purposes to have been revoked.

18B. The Minister, on being satisfied that the public interest requires that urgent measures be taken to safeguard and prevent danger or damage to the gas reticulation system in a franchised area, by reason of a reduction in gas pressures or otherwise, may direct the Commission to take such measures as he may specify or as the Commission thinks requisite for that purpose, and the Commission by its officers or employees may thereupon, without warrant, lawfully enter upon any land or premises from, through or to which gas is supplied and utilize any such land, premises or other property of the company for the purposes of carrying out such work to implement those measures as may be, or is considered by the Commission to be, necessary.

Minister's  
directions as  
to urgent  
measures.

18C. (1) On the making of a vesting order, the Public Trustee shall—

- (a) forthwith assume control and, in conjunction with the Commission, enter into possession of the land, premises and other property of the company, or such of the same as is specified in the order;
- (b) open and maintain a bank account in the name of the company and the name of the Public Trustee as Manager, operate that account in such manner as he may from time to time determine, and pay into that account money of the company coming under his control; and
- (c) keep such accounting records as correctly record and explain all transactions entered into by him pursuant to this Act.

(2) Subject to this section, on the making of a vesting order the Public Trustee—

- (a) may, on terms acceptable to the Minister, engage the Commission—
  - (i) to safeguard, maintain and continue a supply of gas to the franchised area in accordance with the statutory duty of the company, and for that purpose to manage the affairs of the company;
  - (ii) to inquire into the affairs of the company, and the requirement for the supply of gas in the franchised area; and
  - (iii) to do such other things as may be necessary to give effect to the objects of this Act; and

(b) has power to do, or cause to be done, in the State and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which he was appointed under this Act.

(3) The Public Trustee may apply to the Supreme Court for directions, and the Court may give directions, in relation to any matter arising in connection with the performance of his functions, and the Court may at any time require the Public Trustee or the Commission to answer any inquiry in relation to the operation of a vesting order and may examine the Public Trustee or any other person on oath or affirmation concerning the operation of a vesting order and may direct an investigation to be made.

(4) Without limiting the generality of subsection (2) of this section, but subject to any provision of a vesting order that limits his powers in any way, the Public Trustee has, for the purpose of attaining the objectives for which he was appointed under this Act, power—

- (a) to enter into possession and take control of property of the company;
- (b) to lease, let on hire or dispose of property of the company;
- (c) to grant options over property of the company on such conditions as he thinks fit;
- (d) to borrow money on the security of property of the company;
- (e) to insure property of the company;
- (f) to repair, renew or enlarge property of the company;

- (g) to convert property of the company into money;
- (h) to carry on any business of the company, whether in conjunction with the Commission or any other person or otherwise, and to expend money of the company for that purpose or the general purposes of this Act;
- (j) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the company;
- (k) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company;
- (m) to draw, accept, make and indorse any bill of exchange or promissory note;
- (n) to use a seal of the company;
- (o) to engage or discharge employees on behalf of the company;
- (p) to appoint a solicitor, accountant or other professionally qualified person to assist him;
- (q) to appoint an agent to do any business that he is unable to do himself or that can more conveniently be done by an agent;
- (r) where a debt or liability is owed to the company to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;

- (s) to refer to arbitration any question affecting the company; and
- (t) to make or defend an application for the winding up of the company.

(5) The conferring by this section on the Public Trustee of powers in relation to the property of a company does not affect any rights in relation to that property of any other person other than the company.

18D. (1) The power of the Public Trustee to dispose of property of the company to which a vesting order relates extends to the transfer of property, without other consideration, to the Commission or any other person in consideration of the discharge or future discharge by the Commission or that other person of the statutory duty imposed on the company to supply gas in the franchised area.

Power of Disposal.

(2) In determining to what extent the property of the company may be required to be utilized in relation to the supply of gas, regard may be had to existing liabilities, future developments, the anticipated or potential requirements for gas in the franchised area, and the need for funds to meet those liabilities, developments and requirements.

18E. (1) On the recommendation of the Minister, on being satisfied that adequate provision has been or will be made for the future discharge of the statutory duty which was imposed on the company in relation to which a vesting order applies, the Governor in Executive Council may by order, notice of which is published in the *Government Gazette*, make provision—

Discharge or revocation of a vesting order.

- (a) as to the liabilities of the company;

- (b) as to the disposal or vesting of property of the company;
- (c) as to the interests of persons affected by the operation of a vesting order;
- and
- (d) generally, where no provision or no sufficient provision is otherwise made, for the attainment of the objectives for which the vesting order was made,

and may discharge the vesting order from the date specified therein, and effect shall be given to the order.

(2) The revocation or discharge of any order made under this Act shall not be deemed to have affected the previous operation of that order or the validity of any action taken thereunder or affect any investigation, legal proceeding or remedy in respect thereto, and section 16 of the Interpretation Act 1918 shall apply to any such order as if such order had been an enactment which has expired.

Indemnity  
etc.

18F. No liability arises, and no compensation or damages shall be payable, in relation to or by reason of—

- (a) any act or thing done or omitted—
  - (i) by the Minister, the Commission or the Public Trustee; or
  - (ii) any person acting lawfully on behalf of the Minister, the Commission or the Public Trustee,  
pursuant to or for the purposes of a vesting order or the discharge of a vesting order; or
- (b) the operation or discharge of a vesting order.

18G. A reference in section 18A to section 18F of this Act, inclusive, to the Public Trustee shall be construed, where in an order made pursuant to subsection (2) of section 18A some person other than the Public Trustee is named, as a reference to the person named in that order. ” .

Construction  
of reference  
to the  
Public  
Trustee.

9. Section 20 of the principal Act is repealed.

Section 20  
repealed.

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