

Western Australia

Gas Corporation (Business Disposal) Act 1999

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Gas Corporation (Business Disposal) Act 1999

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Western Australia

Gas Corporation (Business Disposal) Act 1999

An Act to provide for —

- **the disposal of the Gas Corporation's business, and of associated things, and of other things belonging to the Gas Corporation;**
 - **the assignment of things to give effect to the disposal;**
 - **the winding up of the Gas Corporation,**
- and for related matters.**

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Gas Corporation (Business Disposal) Act 1999*¹.

2. Commencement

- (1) Unless this section specifies otherwise, the provisions of this Act come into operation on the day on which it receives the Royal Assent¹.
- (2) Part 6 Division 2 is deemed to have come into operation immediately before a distribution licence is granted to the corporation or a subsidiary of the corporation under Part 2A of the *Energy Coordination Act 1994*¹.
- (3) The notice of the grant of a distribution licence to the corporation or a subsidiary of the corporation that is published in the *Gazette* under section 11T of the *Energy Coordination Act 1994* is to contain a statement as to the effect of subsection (2).
- (4) Section 21 of the *Interpretation Act 1984* does not apply to the coming into operation of Part 6 Division 2.
- (5) Part 6 Division 3 comes into operation on a day fixed by proclamation¹.
- (6) The day fixed under subsection (5) is to be the day on which the disposal referred to in section 5(1) is in the Minister's opinion substantially complete.
- (7) Part 6 Division 4 comes into operation on 1 January 2000.

[Section 2 amended by No. 74 of 2003 s. 58(2).]

3. Definitions

In this Act, unless the contrary intention appears —

acquire, dispose of and *entitled*, in relation to shares or other securities in the corporate vehicle, have the same meanings as they had in Chapter 6 of the Corporations Law as in force immediately before 13 March 2000;

cornerstone investor has the meaning given by section 5(5)(a);

corporate vehicle has the meaning given by section 5(2);

corporation means the Gas Corporation established by the *Gas Corporation Act 1994*²;

section 6 disposal means a disposal for which an order has been made under section 6;

securities, in relation to the corporate vehicle, has the meaning given by section 92 of the Corporations Law;

specified percentage has the meaning given by section 5(5)(a);

subsidiary means a body that would be a subsidiary of the corporation within the meaning of the Corporations Law if the corporation were a body corporate to which the Corporations Law applied.

[Section 3 amended by No. 10 of 2001 s. 90.]

4. Crown bound

This Act binds the Crown.

Part 2 — The disposal

5. Disposal of business and property authorised

- (1) A business carried on by the corporation, anything associated with such a business, and anything else belonging to the corporation may be disposed of by the corporation or the State in accordance with an order under section 6.
- (2) The disposal is to be through an intermediary being a body incorporated under the Corporations Law (the *corporate vehicle*).
- (3) The Under Treasurer is to cause the necessary steps to be taken on behalf of the State for the creation of the corporate vehicle.
- (4) For the purposes of the disposal the Minister and the corporation may each, on behalf of the State —
 - (a) receive an allotment and issue of, or otherwise acquire, securities in the corporate vehicle; and
 - (b) hold and dispose of any securities so acquired.
- (5) The Minister must provide, by order under section 6 —
 - (a) for a person (the *cornerstone investor*) to become entitled to a percentage specified by the order (the *specified percentage*) of the shares in the corporate vehicle through a tender process described in the order; and
 - (b) for the shares in the corporate vehicle, other than those to which the cornerstone investor becomes entitled, to be offered to the public through an application or subscription, and allocation, process described in the order.
- (6) The specified percentage must not be less than 40% or more than 49%.

- (7) An order under section 6 cannot have the effect of allowing any person to become entitled to more than 49% of the shares in the corporate vehicle.
- (8) Section 12(3) does not apply to an acquisition of shares under subsection (4).

6. Minister may order disposal

- (1) The Minister may make an order for the disposal referred to in section 5(1).
- (2) An order under this section may include provisions as to details of the disposal, and may deal with incidental and supplementary matters.
- (3) The Minister may make an order to vary or revoke a previous order under this section at any time before effect has been given to it.
- (4) The Minister is to cause an order under this section to be published in the *Gazette*.
- (5) The Minister must obtain the Treasurer's approval before making an order under this section.

7. Minister may give directions to corporation

- (1) The Minister may give directions in writing to the corporation for the purpose of bringing about a section 6 disposal.
- (2) Without limiting subsection (1), a direction under that subsection may require the corporation —
 - (a) to form or acquire a subsidiary;
 - (b) to assign to a subsidiary specified assets, liabilities or undertakings;
 - (c) to dispose of its shares in a subsidiary either generally or to a specified person;
 - (d) to assign to the corporate vehicle specified assets, liabilities or undertakings;

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- (e) to dispose of its securities in the corporate vehicle either generally or to a specified person;
 - (f) to dispose of other specified assets, liabilities or undertakings either generally or to a specified person;
 - (g) to reorganize its affairs in anticipation of anything that is to be done under this Act.
- (3) Without limiting subsection (1), a direction under that subsection may require the corporation —
- (a) to allow the whole or part of its functions under this Act to be performed on its behalf by; and
 - (b) to act in accordance with the instructions of,
- a committee of persons appointed by the Minister and given responsibility for the conduct of the disposal and related matters.
- (4) The Minister is to cause the text of any direction under subsection (1) to be laid before each House of Parliament within 14 days after the direction is given, and section 96 of the *Gas Corporation Act 1994*² applies as if subsection (1)(a) of it included a reference to this subsection.
- (5) The annual report in respect of the corporation must include particulars of any direction under subsection (1) as if section 64(1)(c) of the *Gas Corporation Act 1994*² included a reference to a direction of that kind.

8. Corporation to comply with directions

- (1) The corporation has a duty to comply with a direction given to it under section 7(1).
- (2) The duty imposed by subsection (1) is to be regarded as a function of the corporation under the *Gas Corporation Act 1994*², and if there is a conflict or inconsistency between that duty and —
- (a) any duty imposed by that Act; or

(b) any provision of that Act,
the duty imposed by subsection (1) prevails.

(3) Section 7 applies despite section 6(a) of the *Statutory Corporations (Liability of Directors) Act 1996*.

9. General powers

(1) The Minister —

- (a) may do, in the State or elsewhere, anything necessary or convenient for the purposes of this Act;
- (b) may enter into an agreement on behalf of the State for, or in relation to, the disposal by the corporation or a subsidiary of anything referred to in section 5(1).

(2) Without limiting the powers of the corporation under the *Gas Corporation Act 1994*² as read with section 8, the corporation or a subsidiary —

- (a) may do, in the State or elsewhere, anything necessary or convenient for the purposes of this Act;
- (b) may enter into an agreement for, or in relation to, the disposal of anything referred to in section 5(1).

10. Corporate vehicle's constitution to contain certain provisions

(1) The constitution of the corporate vehicle must —

- (a) require the corporate vehicle to be taken to be registered in Western Australia;
- (b) require that the head office of the corporate vehicle, that is the place where central management and control of the corporate vehicle are exercised, be located in Western Australia;
- (c) require that —
 - (i) at least a majority of the board of directors of the corporate vehicle; and

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- (ii) the chief executive officer,
while holding office be ordinarily resident in Western Australia; and
 - (d) prohibit the alteration of anything in its constitution that is required by this subsection.
- (2) If the constitution of the corporate vehicle does not comply with subsection (1), it is to be regarded as having been amended to include the provisions required by that subsection and the constitution of the corporate vehicle lodged with the Australian Securities and Investments Commission is to be regarded as being the constitution as so amended.
- (3) A purported alteration of the constitution of the corporate vehicle that would have the effect that the constitution would not comply with subsection (1) has no effect.
- (4) A resolution of the corporate vehicle that —
 - (a) would, if acted on, result in a contravention of subsection (1) or a provision of its constitution that is required by that subsection; or
 - (b) purports to ratify an act or omission that contravenes subsection (1) or a provision of its constitution that is required by that subsection,has no effect.
- (5) This section applies at all times, whether before, on or after the day fixed under section 2(5).

[Section 10 amended by No. 10 of 2001 s. 91.]

11. Cornerstone investor's share entitlement to be frozen for 2 years

- (1) A person must not acquire or dispose of shares, or an interest in shares, in the corporate vehicle within 2 years after that person or another person becomes the cornerstone investor if the acquisition or disposal would have the result that the

cornerstone investor's entitlement to shares in the corporate vehicle would become more than, or less than, the specified percentage.

- (2) The acquisition or disposal of shares, or an interest in shares, in the corporate vehicle within the period mentioned in subsection (1) does not contravene that subsection if it is permitted by the Minister by notice published in the *Gazette*.
- (3) Permission given by a notice under subsection (2) may be expressed to apply generally or to only apply to such circumstances as are set out in the notice.
- (4) A person who contravenes subsection (1) commits an offence.
Penalty: \$200 000 or imprisonment for 12 months.
- (5) A contract, dealing or other transaction is not unenforceable, voidable, or void merely because it was contrary to this section.

12. Restrictions on share dealings

- (1) A person must not (whether as principal or agent) apply for shares in the corporate vehicle in a public float if the acquisition of those shares would have the result —
 - (a) that the cornerstone investor's entitlement to shares in the corporate vehicle would become more than the specified percentage; or
 - (b) that any person would be entitled to more than 5% of the shares in the corporate vehicle.

Penalty: \$200 000 or imprisonment for 12 months.
- (2) Subsection (1) does not apply to the issue or purchase of shares under an underwriting agreement entered into to facilitate the sale of shares in the corporate vehicle by a public float.
- (3) A person must not acquire shares in the corporate vehicle in any other way than on an application described in subsection (1) if any person (other than the cornerstone investor) who —
 - (a) is not entitled to any shares in the corporate vehicle; or

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- (b) is entitled to less than 5% of the shares in the corporate vehicle,

would, immediately after the acquisition, be entitled to more than 5% of the shares in the corporate vehicle.

Penalty: \$200 000 or imprisonment for 12 months.

- (4) Subsection (3) does not apply to an acquisition occurring at least 2 years after the day on which a person becomes the cornerstone investor.
- (5) A contract, dealing or other transaction is not unenforceable, voidable, or void merely because it was contrary to this section.

12A. Exclusion of Corporations legislation

The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies —

- (a) the constitution of the corporate vehicle to the extent that it is governed by section 10;
- (b) alterations to the constitution of the corporate vehicle to the extent that they are governed by section 10;
- (c) resolutions of the corporate vehicle to the extent that they are governed by section 10;
- (d) the acquisition or disposal of shares, or an interest in shares, in the corporate vehicle to the extent that the acquisition or disposal is governed by section 11 or 12.

[Section 12A inserted by No. 10 of 2001 s. 92.]

13. Liability of management for offence by body corporate

- (1) If a body corporate commits an offence under section 11 or 12, each of the body's officers also commits the offence unless it is proved that —

- (a) the offence was committed without the officer's consent or connivance; and
 - (b) the officer exercised all due diligence to prevent the commission of the offence that ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.
- (2) In subsection (1) —
- officer*, in relation to a body corporate, means —
- (a) a director or secretary of the body;
 - (b) a person regarded under the Corporations Law as a person in accordance with whose directions or instructions a director or the directors of the body are accustomed to act; or
 - (c) a person who is concerned in the management of the body, whether as an employee or in any other capacity.

Part 3 — Implementing disposal and ancillary matters

Division 1 — Transfer orders

14. Definitions

In this Division, unless the contrary intention appears —

asset means property of any kind whether tangible, intangible, real, or personal and, without limiting that meaning, includes —

- (a) any chose in action or goodwill; or
- (b) any right, interest, or claim of any kind,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

assignee means the person specified in a transfer order as —

- (a) the person to whom anything is assigned; or
- (b) the person a reference to whom has to be treated as being substituted for a reference to the corporation in an agreement or instrument in order to give effect to section 16(1)(b);

liability means any liability, duty or obligation —

- (a) whether actual, contingent or prospective, liquidated or unliquidated; or
- (b) whether owed alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, contingent or prospective, but does not include any privilege or immunity enjoyed as an agent of the Crown except in so far as it relates to anything done or omitted to be done before the transfer time;

transfer order means an order under section 15, as amended under that section or corrected under section 21 if applicable;

transfer time means the transfer time specified in a transfer order.

15. Minister may make transfer orders

- (1) For the purpose of doing anything in preparation for, or giving effect to, a section 6 disposal, the Minister may make and publish in the *Gazette* an order that —
 - (a) specifies a time, being not before the day the order is published, to be the transfer time for that order;
 - (b) specifies any asset or liability of the corporation that, by operation of section 16, is to be assigned to the person specified in the order;
 - (c) specifies proceedings in which the person specified in the order is to be substituted for the corporation as a party; and
 - (d) specifies any agreement or instrument relating to anything assigned that, by operation of section 16, is to have effect as if, unless otherwise expressly specified in the order, references to the assignee were substituted for references in it to the corporation.
- (2) If the transfer time is specified by reference to when a thing is done, the Minister is to cause notice to be published in the *Gazette* of the time when that thing was done and that thing is to be regarded as having been done at that time unless the contrary is proved.
- (3) An order under subsection (1) may allocate a value to an asset, a liability, a class of assets or a class of liabilities.
- (4) The transfer order may specify things by reference to schedules which —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection,and anyone or anything specified in a schedule is to be taken to be specified in the order.
- (5) Anyone or anything may be specified in a transfer order by describing the person or thing as a member of a class.

- (6) Before a transfer order is made specifying anything by reference to a schedule, a copy of which will be required to be delivered to a relevant official under section 20, the Minister is to consult as to the form and content of the schedule with the relevant official (or each relevant official if there is more than one).
- (7) The transfer order, or a schedule to which it refers, may, with the consent of the assignee, be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.
- (8) An order under this section and any schedule to which it refers is to be signed by the Minister.

16. Consequences of transfer order

- (1) If a transfer order is made then, except as may be otherwise agreed between the Minister and the assignee —
 - (a) at the transfer time —
 - (i) an asset that is specified is, by operation of this section, assigned to the assignee;
 - (ii) a liability that is specified is, by operation of this section, assigned to and becomes a liability of the assignee; and
 - (iii) the assignee is, by operation of this section, substituted for the corporation as a party to any specified proceedings;
 - (b) an agreement or instrument that is specified has effect, by operation of this section, as if, unless otherwise expressly specified, a reference to the assignee were, at the transfer time, substituted for a reference to the corporation in the agreement or instrument.
- (2) If a transfer order assigns an interest held by the corporation as a joint tenant with the Electricity Corporation, the assignment does not sever the joint tenancy and the assignee holds the interest as a joint tenant with the Electricity Corporation.

- (3) In this section —

Electricity Corporation means the Electricity Corporation established by the *Electricity Corporation Act 1994*;

specified means specified in the transfer order.

17. Completion of necessary transactions

If section 16 cannot, to any extent, have effect as described in this Division (whether because a matter is governed otherwise than by the law of the State, or for any other reason), the Minister and the corporation are each to take all practicable steps for the purpose of securing that the effect sought to be achieved by the transfer order and this Division is achieved as soon as possible after the transfer time.

18. Contracts arising from certain internal arrangements of corporation

- (1) An instrument that provides for arrangements between different parts of the corporation's business and operations may be specified in a transfer order as if it created contractual rights and liabilities.
- (2) An instrument specified as described in subsection (1) is to be regarded as if its provisions were contractual provisions between different legal entities.
- (3) The definitions of "liability" and "right" in section 14 include contractual liabilities and rights that are to be regarded as arising because of subsection (2), and those liabilities and rights are accordingly assignable under this Division.

19. Arrangements for custody and use of records

The corporation and an assignee may make arrangements for the delivery or sharing of, and access to, registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded, or stored) relating to any

asset, liability, proceedings, agreement, or instrument specified under section 15(1) in a transfer order.

20. Registration of documents

- (1) The Minister is to cause a copy of each transfer order, any schedule to which it refers, and any notice under section 15(2) relating to the transfer time, to be delivered to each relevant official and the corporation.
- (2) The relevant officials are to take notice of this Part, any transfer order, including a schedule to which the order refers, and any notice under section 15(2), and are to record and register in the appropriate manner the documents necessary to show the effect of the transfer order and this Part.
- (3) In this section —

relevant official means the Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Administration Act 1997* and the *Mining Act 1978* or any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting relevant property;

relevant property means property of a kind affected by the transfer order, whether it is an estate or interest in land or any other property.

21. Rectifying error in transfer order

- (1) The Minister may by order published in the *Gazette* make any provision that is necessary to correct any error in a transfer order or a schedule to which a transfer order refers.
- (2) An order under this section may be made so as to have effect from the transfer time under the transfer order.

- (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 16 does not, as a result of that provision, operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State, the corporation, the assignee, or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State, the corporation, the assignee, or a Minister, officer or agency of the State), in respect of anything done or omitted to be done before the day of publication.

Division 2 — Other matters

22. Assignable nature of the assets

- (1) The assignment of an asset by the corporation is not prevented by any written law that, before the assignment, states that the asset vests in the corporation.
- (2) An asset that has been assigned under this Act belongs to the assignee, or any person to whom it may be subsequently assigned by or through the assignee, regardless of whether it is a fixture or an asset in the nature of a fixture, and is capable of being removed from the land and, whether or not it has been removed, is capable of being assigned separately from the land.

23. Benefits of easements assignable

- (1) The benefit of an easement in favour of the corporation to which any land is subject by virtue of section 167(1)(b)(iv) of the *Planning and Development Act 2005* or otherwise (even though the easement may not have been created as being assignable) is capable of being assigned from the corporation or any person to whom it may be subsequently assigned.
- (2) Upon being satisfied that an easement has been assigned in accordance with subsection (1), the Registrar of Titles or Registrar of Deeds as the case requires —

- (a) upon application in writing by the assignee; and
- (b) after notice in writing has been given to each person having a registered interest in the land,

is to make all such entries or endorsements, or register any such memorial, as may be necessary or proper to show the person having the benefit of the easement.

[Section 23 amended by No. 38 of 2005 s. 15.]

24. Use of corporation's staff and facilities

- (1) This section applies only until the day fixed under section 2(5).
- (2) The corporation may, on such terms as are agreed between the corporation and the corporate vehicle, make available to the corporate vehicle —
 - (a) any member of staff of the corporation engaged under the *Gas Corporation Act 1994*²;
 - (b) any facilities or services of the corporation.

25. Consumer contracts

- (1) Any person who was a tariff consumer immediately before the relevant day is to be regarded on and from that day as having entered into a contract with the assignee of the supply business in a form approved by the Coordinator of Energy and set out in a notice published in the *Gazette*.
- (2) A notice under subsection (1) can specify different forms of contract in respect of different classes of tariff consumers.
- (3) In this section —

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

relevant day means the day fixed under section 2(5) or such earlier day as the Minister may fix for the purposes of this section by notice published in the *Gazette*;

supply business means that part of the operations of the corporation or a subsidiary that consisted of or included the supply of gas to tariff consumers;

tariff consumer means a person who was supplied with gas by the corporation or a subsidiary (otherwise than under a written contract) in relation to which the person was liable to pay fees and charges prescribed under section 124 of the *Energy Corporations (Powers) Act 1979*³.

26. Proceeds of disposal

- (1) A direction under section 7(1) may, if the Treasurer concurs, require the corporation to pay or use any of the proceeds of a section 6 disposal as specified in the direction.
- (2) Subject to subsection (1), the proceeds of a section 6 disposal are to be applied as follows —
 - (a) firstly in meeting the expenses of disposal as determined by the Treasurer;
 - (b) secondly in payment to the corporate vehicle of any amount determined by the Treasurer;
 - (c) thirdly in payment of the liabilities of the corporation and subsidiaries; and
 - (d) fourthly by the payment of the balance into the Consolidated Account.

[Section 26 amended by No. 77 of 2006 s. 4.]

27. Disclosure of information

- (1) A disclosure of information made in accordance with this section for the purposes of facilitating a section 6 disposal is not to be regarded —
 - (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a contravention of section 24 of the *Energy Coordination Act 1994*;

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- (c) as a contravention of Schedule 2 to the *Gas Corporation Act 1994*²;
 - (d) as a contravention of section 5 of the *Statutory Corporations (Liability of Directors) Act 1996*; or
 - (e) as a contravention of section 232 or Part 7.11 Division 2A of the Corporations Law.
- (2) Subsection (1) applies to a disclosure of information made by the Government, the corporation or a subsidiary, or by a person acting with the authority of the Government, the corporation or a subsidiary, but does not apply to any other person to whom the information is given.
- (3) Subsection (1) applies to a disclosure of information made by the corporate vehicle, or by a person acting with the authority of the corporate vehicle, before the day fixed under section 2(5), but does not apply to any other person to whom the information is given.
- (4) Subsection (1) applies to confidential information or information not publicly known concerning the affairs of —
- (a) the corporation or a subsidiary;
 - (b) the corporate vehicle, or a subsidiary of it within the meaning of the Corporations Law; or
 - (c) a customer, or former customer, of a body referred to in paragraph (a) or (b).

28. Auditor General may disclose information

- (1) The Auditor General may disclose to any person, or provide any person with access to, information relating to the corporation that is in the possession or under the control of the Auditor General, if the information is disclosed or the access is provided —
- (a) for the purpose of facilitating a section 6 disposal; and
 - (b) at the request of the corporation or a committee referred to in section 7(3).

- (2) Subsection (1) applies despite section 46(2) of the *Auditor General Act 2006*.

[Section 28 amended by No. 77 of 2006 s. 17.]

29. Offence of disclosing information

- (1) A person who —
- (a) under section 28 or otherwise, obtains information connected with a section 6 disposal; and
 - (b) has agreed or is otherwise under a duty not to disclose the information to others,

(in this section called *the bound recipient*) commits an offence if the person breaches the agreement or the duty without lawful excuse.

- (2) A person who obtains information referred to in subsection (1) from or through the bound recipient commits an offence if, without lawful excuse, the person discloses the information in a way that would have resulted in a breach of an agreement or duty if the disclosure had been by the bound recipient.

Penalty: \$100 000.

30. Saving

The operation of a provision of this Act is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or

- (e) as releasing or allowing the release of any surety.

31. State indemnities and guarantees

- (1) The Treasurer may, in the name and on behalf of the State, give an indemnity or guarantee in respect of a matter related to —
 - (a) a section 6 disposal; or
 - (b) the assignment of anything in connection with a section 6 disposal.
- (2) The Treasurer may, in the name and on behalf of the State, give to any person who is or has been —
 - (a) a director or officer of the corporation or of a subsidiary;
 - (b) a director or officer of the corporate vehicle or of a subsidiary of it within the meaning of the Corporations Law; or
 - (c) a member or alternate member of a committee referred to in section 7(3),

an indemnity against any liability determined by the Treasurer whether or not the liability relates to a matter referred to in subsection (1).

- (3) In subsection (2) —
liability includes civil liability under the Corporations Law.
- (4) The payment of any money under an indemnity or guarantee given under this section is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

[Section 31 amended by No. 77 of 2006 s. 4.]

32. State takeover of certain obligations

- (1) This section applies to an obligation (whether contingent or otherwise) of the corporation or a subsidiary.

- (2) The Treasurer, in the name and on behalf of the State, may, in connection with a section 6 disposal, agree to take over an obligation.
- (3) If the performance of the obligation was guaranteed by the State, the agreement may also provide for —
 - (a) the release by the State of any security held by the State in connection with the guarantee; or
 - (b) the release of a person from an undertaking that the person gave to the State in relation to any security described in paragraph (a).
- (4) The Treasurer may authorise the payment of money to discharge an obligation that the State has taken over under subsection (2), whether by terminating the obligation or otherwise.
- (5) A payment authorised under subsection (4) is to be made out of the Consolidated Account, which this section appropriates to the necessary extent.

[Section 32 amended by No. 77 of 2006 s. 4.]

33. Regulations

Regulations may provide for —

- (a) anything for which it is necessary or convenient to make provision in order to give effect to a section 6 disposal;
- (b) anything that it is necessary or convenient to deal with as a consequence of anything in, or anything done under, Part 2 or this Part.

Part 4 — Transitional provisions

34. Purpose of this Part

The purpose of this Part is to enable and facilitate a convenient transition from the carrying on by the corporation of any of its business under the *Gas Corporation Act 1994*² to the carrying on of that business by the person to whom it is disposed of under this Act.

35. Subsidiary to have corporation's powers and duties

One aspect of the purpose set out in section 34 is to enable any subsidiary to which the corporation has transferred anything to be given substantially the same powers, duties, rights, and obligations, in respect of that thing as the corporation would have had if there had not been a transfer.

36. Modification of other written laws

- (1) Regulations may modify the effect of any written law, in so far as it relates to a subsidiary, as may be necessary or convenient for the purposes of this Part.
- (2) Without limiting subsection (1), regulations may provide —
 - (a) that a reference to the corporation in a written law, other than this Act, that related to anything before it was transferred to a subsidiary includes a reference to the subsidiary; and
 - (b) that to the extent that a written law applies because of a regulation made in accordance with paragraph (a), it is modified as specified in the regulations.

Part 5 — Miscellaneous

37. Auditor General to report on certain matters

- (1) The Auditor General must examine and report to each House of Parliament within 60 days of the day fixed under section 2(5) on the following matters —
 - (a) any obligations, duties or liabilities taken over by or imposed on the State under this Act;
 - (b) any indemnities or guarantees given by or on behalf of the State under this Act; and
 - (c) any other matter that arises out of or is connected with the matters mentioned in paragraphs (a) and (b).
- (2) If a House of Parliament is not sitting when the Auditor General is ready to report to it under subsection (1) the Auditor General is to transmit the report to the Clerk of that House and the report is to be regarded as having been received by that House.
- (3) The receipt of a report that is to be regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day after the Clerk receives the report.
- (4) If in any year any indemnity or guarantee given under section 31(1) or (2) remains outstanding, the Auditor General may include in his or her report under section 24 of the *Auditor General Act 2006* a report on the extent of the liability of the State under those indemnities and guarantees.

[Section 37 amended by No. 77 of 2006 s. 17.]

38. Regulations

- (1) The Governor may make 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.

s. 38

- (2) Without limiting the generality of subsection (1), the regulations may apply the provisions of regulations made under section 26(2) of the *Energy Coordination Act 1994*, with such modifications (if any) as are prescribed, to the sale or supply of gas within a distribution area to persons who —
- (a) are tariff consumers within the meaning of section 25; or
 - (b) are not contestable customers within the meaning of section 91(1) of the *Gas Pipelines Access (Western Australia) Act 1998*.
- (3) Regulations made for the purposes of subsection (2) may require a person selling or supplying the gas to offer persons described in paragraph (a) or (b) of that subsection a form of contract that has been approved by the Coordinator.
- (4) In subsection (2) —
- distribution area*** means the area to which a distribution licence granted under Part 2A of the *Energy Coordination Act 1994* to —
- (a) the corporation or a subsidiary; or
 - (b) the corporate vehicle or a subsidiary of it within the meaning of the Corporations Law,
- applies.

Part 6 — Effect on other Acts

Division 1 — Provisions commencing on Royal Assent

[Subdivisions 1-8 omitted under the Reprints Act 1984 s. 7(4)(e).]

Subdivision 9 — Local Government Act 1995

67. Presence of pipeline does not constitute occupation of land

Despite anything to the contrary in the *Local Government Act 1995*, land is not to be regarded as being occupied for the purposes of that Act merely because —

- (a) there is on or under that land any pipe or system of pipes for or incidental to the transport of gas in respect of which a distribution licence has been issued under Part 2A of the *Energy Coordination Act 1994*; or
- (b) a person is the holder of a distribution licence under Part 2A of the *Energy Coordination Act 1994* in respect of a distribution system that is on or under that land.

[Subdivision 10 omitted under the Reprints Act 1984 s. 7(4)(e).]

[Divisions 2-4 omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]

Notes

- ¹ This is a compilation of the *Gas Corporation (Business Disposal) Act 1999* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Gas Corporation (Business Disposal) Act 1999</i> ⁴	58 of 1999	24 Dec 1999	Act other than Pt. 6 Div. 2-5: 24 Dec 1999 (see s. 2(1)); Pt. 6 Div. 4: 1 Jan 2000 (see s. 2(7)); Pt. 6 Div. 2: 1 Jul 2000 (see s. 2(2) and <i>Gazette</i> 4 Jul 2000 p. 3545); Pt. 6 Div. 3: 16 Dec 2000 (see s. 2(5) and <i>Gazette</i> 15 Dec 2000 p. 7201)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 28	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 51(4) and 58	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 1: The <i>Gas Corporation (Business Disposal) Act 1999</i> as at 18 Nov 2005 (includes amendments listed above)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

- ² Repealed by s. 93 of this Act (omitted under the *Reprints Act 1984* s. 7(4)(f)).

- ³ Now known as the *Energy Operators (Powers) Act 1979*.

- ⁴ The *Gas Corporation (Business Disposal) Act 1999* Pt. 6 Div. 5 did not come into operation and was repealed by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 58(3).

