

FUEL, ENERGY AND POWER RESOURCES.

No. 22 of 1974.

AN ACT to amend the Fuel, Energy and Power Resources Act, 1972, and to make provision for the securing of present and future sources of fuel, energy and power and of services relating thereto, for the protection of the community in cases of emergency, and for purposes connected therewith.

[Assented to 17th October, 1974.]

BE 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 *Fuel, Energy and Power Resources Act Amendment Act, 1974.* Short Title and citation.

(2) In this Act the Fuel, Energy and Power Resources Act, 1972, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Fuel, Energy and Power Resources Act, 1972-1974.

Commence-
ment.

2. This Act, or any provision of this Act, shall come into operation on the date fixed by proclamation in relation thereto.

Division of
the principal
Act.

3. The principal Act is amended—

(a) by inserting immediately before section 1 a heading as follows—

“PART I.—PRELIMINARY.”;

(b) by inserting immediately after section 4 a new section as follows—

4A. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-4A;

PART II.—ADMINISTRATION BY THE COMMISSION, ss. 5-40;

PART III.—EMERGENCY PROVISIONS, ss. 41-62. ;

(c) by inserting immediately before section 5 a heading as follows—

“PART II.—ADMINISTRATION BY THE COMMISSION.”;

and

(d) by inserting immediately after section 40 a heading as follows—

“PART III.—EMERGENCY PROVISIONS.”.

Division of
Act.

4. The principal Act is amended by inserting after section 40 a new section, to stand as section 41, as follows—

Section 41
added.

41. (1) Where the provisions of this Part of this Act are inconsistent with any of the provisions of any other Act, or of any regulation, rule or by-law made under any other Act, the provisions of this part shall prevail.

This Part to
prevail over
other Acts,
etc.

(2) Emergency regulations made under this Part of this Act shall have effect notwithstanding anything, whether express or implied, in any other Act or in any law, proclamation or regulation or in any judgment, award or order of any court or tribunal or in any contract or agreement whether oral or written or in any deed, document, security or writing whatsoever.

(3) All powers given by or under this Part of this Act or by or under the emergency regulations shall be in aid of and not in derogation from any other powers exercisable apart from this Act. .

5. The principal Act is amended by inserting after section 40 a new section to stand as section 42, as follows—

Section 42
added.

42. Notwithstanding the provisions of section 5, where a state of emergency is declared under this Part the administration of this Act shall be vested in a responsible Minister of the Crown and, subject to the Minister, shall be carried out by the Commission or such other authorities, departments, instrumentalities, persons or bodies as the Minister in writing directs. .

Adminis-
tration in
emergency.

6. The principal Act is amended by inserting after section 40 a new section, to stand as section 43, as follows—

Section 43
added.

43. (1) At any time, if the Governor is satisfied that by reason of embargoes by oil producing countries, disruption of shipping

Declaration
of state of
emergency.

services, disruption of other transport whether outside or within the State, natural disasters, or other events, circumstances or causes affecting or likely to affect the provision, supply, or distribution of the resources of fuel, energy or power in or to the State, the community, or any substantial portion of the community, is or may be deprived of essential supplies or services or a shortage may result, the Governor may, by order in writing, declare that a state of emergency shall exist, either in the whole State, or in any part of the State specified in the declaration.

(2) An order under this section shall take effect from the making thereof or from a later date specified therein and shall, unless sooner revoked, continue in force for such period not exceeding six months as is specified therein, but more than one order may be made under this section in respect of an emergency.

(3) An order under this section shall—

(a) be publicised as soon as practicable after the making thereof in such manner as will ensure, so far as practicable, that persons in the area of the State to which the order extends will be informed of the making of the order; and

(b) be published in the *Gazette*.

(4) Where an order under this section is made declaring a state of emergency the occasion thereof shall forthwith be communicated to Parliament.

(5) If Parliament is adjourned or prorogued and that adjournment or prorogation will not expire within fourteen days of the day of the making of the declaration of the state of emergency, Parliament shall be called together on a day to be fixed by proclamation being a day that falls within that period of fourteen 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 declaring a state of emergency the Legislative Assembly is dissolved for the purposes of an election Parliament shall be called together so soon as may be thereafter.

7. The principal Act is amended by inserting after section 40 a new section, to stand as section 44 as follows—

Section 44 added.

44. (1) An order declaring a state of emergency under section 43 shall be laid before both Houses of Parliament as soon as may be after it is made.

Order to be subject to ratification.

(2) Where, within the period of thirty days from the date on which the order was laid before that House or reasonably could have been so laid, either House of Parliament does not by resolution ratify that order, the order shall be deemed for all purposes to have been revoked. .

8. The principal Act is amended by inserting after section 40 a new section, to stand as section 45 as follows—

Section 45 added.

45. The powers and authorities conferred by this Part of this Act shall not be exercisable—

Limitation on operation of this Part.

(a) except in a part of the State in relation to which a state of emergency has been declared; and

(b) except in respect of an emergency in relation to which a state of emergency has been declared. .

Section 46
added.

9. The principal Act is amended by inserting after section 40 a new section, to stand as section 46 as follows—

Validation
of acts done
in antici-
pation of
emergency
regulations.

46. Where any acts are done before the commencement of any emergency regulations made under this Part of this Act, and by virtue of those regulations those acts would have been valid and lawful if those regulations had been in force when the acts were done, the acts shall be deemed to have been validly done under the authority of this Part of this Act.

Section 47
added.

10. The principal Act is amended by inserting after section 40 a new section, to stand as section 47 as follows—

Emergency
regulations.

47. (1) Where a state of emergency is declared under this Part of this Act and continues to subsist, the Governor, for the purposes of—

- (a) providing or securing supplies and services required by the community, or any substantial portion of the community; or
- (b) preventing supplies or services being disposed of in a manner prejudicial to the attainment of the objects of this Part of this Act,

may make emergency regulations not inconsistent with this Part of this Act.

(2) Emergency regulations made under this Part of this Act may make provision for or with respect to—

- (a) the co-ordination of emergency action with national bodies;
- (b) ascertaining the holdings of all fuel, energy and power resources and the administration of those resources by the State;

- (c) maintaining, controlling and regulating supplies and services so as to secure a sufficiency of those essential to the well being of the community or their equitable distribution, including a permit or rationing system;
- (d) the adjustment of industry and commerce to the requirements of the community in time of emergency including the determination of user priority, the prohibition of specified uses, the taking of specified measures, and the allocation of supplies to prescribed consumers;
- (e) requiring producers, holders, suppliers, transporters and users to submit returns or information, which may be required to be given or verified by statutory declaration or in any other manner specified therein;
- (f) the delegation of powers and duties to a State Government Department or State instrumentality or any other person, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the community, or any substantial portion of the community, supplies or services;
- (g) the imposition of penalties not inconsistent with the provisions of section 49;
- (h) the imposition and recovery of charges in connection with any scheme of control;
- (i) the making, negotiation and settlement and arbitration of claims for compensation under this Part of this Act;

- (j) the procedure to be followed in relation to any application, proceedings or appeal under this Part of this Act;
- (k) engaging persons, whether for reward or otherwise, to perform functions and to carry out acts in order to assist the maintaining, controlling and regulating of supplies and services; and
- (l) generally, for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. .

Section 48
added.

11. The principal Act is amended by inserting after section 40 a new section, to stand as section 48 as follows—

Intimida-
tion, etc.

48. A person who does, or omits to do, any thing, at any time whether during or after the state of emergency, or in any manner, by way of retaliation, discrimination or intimidation against any other person by reason of, or as a result of, the participation by that other person in emergency supply or distribution operations shall be guilty of an offence against this Part of this Act.

Section 49
added.

12. The principal Act is amended by inserting after section 40 a new section, to stand as section 49 as follows—

Offences and
penalties.

49. (1) A person who contravenes or fails to comply with any provision of this Part of this Act, or any emergency regulations made thereunder, shall be guilty of an offence against this Part of this Act.

(2) A person who is guilty of an offence against any provision of this Act other than in this Part of this Act, which offence occurred whilst a state of emergency existed, shall be liable to the penalty provided for an offence against this Part of this Act.

(3) A person who is guilty of an offence against this Part of this Act is liable, where no other penalty is expressly provided, to—

- (a) imprisonment for six months or a fine of five hundred dollars, or both such imprisonment and fine; or
- (b) in the case of a body corporate, a fine of such amount as the court thinks just having regard to all the circumstances and in particular any financial or other advantage which that body corporate gained or might have gained from the contravention or non-compliance.

(4) Where an offence is committed by a person by reason of his failure to comply with a provision of this Part of this Act or the emergency regulations made thereunder the offence shall be deemed to continue so long as that failure continues, notwithstanding that any period within which the act was required to be done has elapsed.

(5) Where an offence is committed by a person by reason of his failure to comply, within the period specified in any order given to him under this Part of this Act, or the emergency regulations made thereunder, with the requirements specified in the order that offence shall be deemed to continue so long as any requirement specified in the order remains undone, notwithstanding that the period has elapsed.

(6) Where, under the provisions of this section, an offence is deemed to continue, the person who committed the offence commits an additional offence against this Act on each day during which the offence is deemed to continue and is liable, upon conviction for such an additional offence, to the penalty provided for an offence against this Part of this Act. .

Section 50
added.

13. The principal Act is amended by inserting after section 40 a new section, to stand as section 50 as follows—

Orders and
directions.

50. (1) Emergency regulations made under this Part of this Act may confer upon any Minister of the Crown the power to make any order or give any direction for the purposes of the regulations.

(2) The power conferred by this Part of this Act to make any order or give any direction shall be construed as including a power, exercisable in the like manner and subject to the like conditions, if any, to revoke or vary the order or direction.

(3) Any power of making orders under this Part of this Act shall include power to provide for any incidental and supplementary provisions for which the Minister making the order thinks it expedient for the purposes of the order to provide, and may make such provisions (including provision for requiring any person to furnish any information) as the Minister making the order thinks necessary or expedient for facilitating the introduction or operation of a scheme of rationing or control for which provision has been made, or for which, in the opinion of the Minister, it will or may be found necessary or expedient that provision should be made, under this Part of this Act.

(4) An order under this Part of this Act may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order, and may be made so as to apply either to persons generally or to any particular person or class of persons, and so as to have effect either generally or in any circumstance specified therein.

(5) Where under this Part of this Act two or more Ministers have power to make orders, the power may be exercised by them jointly or separately.

(6) The Interpretation Act, 1918, shall apply to the interpretation of any order made under this Part of this Act as it applies to the interpretation of a regulation, and for the purposes of section 36 of that Act any such order shall be deemed to be a regulation.

(7) Where any order is given under this Part of this Act to any person or body, a person who contravenes or fails to comply with that order shall be guilty of an offence against this Part of this Act.

(8) Where any direction is given under this Part of this Act to any person or body, a person or body who fails to comply with the direction commits an offence against this Part of this Act, but it shall be a sufficient defence to a prosecution for an offence under this subsection in respect of a failure to comply with a direction if the defendant satisfies the court that he so failed with reasonable excuse.

14. The principal Act is amended by inserting after section 40 a new section, to stand as section 51 as follows—

Section 51
added.

51. The powers of the Minister under this Part of this Act may be exercised on his behalf by any person for the time being so authorized by the Minister, and where the exercise of those powers is expressed to depend on a discretion or state of mind of the Minister that reference shall be read as if it referred to a discretion or state of mind of the person authorized to exercise those powers.

Delegation.

Section 52
added.

15. The principal Act is amended by inserting after section 40 a new section, to stand as section 52, as follows—

Expenses.

52. Any expenses incurred by the Commission, any Minister of the Crown, government department, instrumentality, or statutory body in implementing the provisions of this Part of this Act in consequence of the declaration of a state of emergency, shall, except in so far as they fall to be otherwise defrayed under any other Act, be defrayed out of moneys provided by Parliament, and any increase attributable to the implementation of those provisions in any sums falling to be paid under any other Act out of moneys provided by Parliament shall be so paid. .

Section 53
added.

16. The principal Act is amended by inserting after section 40 a new section, to stand as section 53 as follows—

Grants to
meet
expenditure.

53. (1) The Treasurer may from moneys provided by Parliament for the purpose or from moneys made available to the State by the Parliament of the Commonwealth upon terms which are not inconsistent with the application of those moneys for the purpose, make grants or advances to a local authority or any statutory body, person or body of persons for or towards meeting the expenditure incurred by that authority, person or body in the exercise of any powers, authorities, duties or functions conferred or imposed on that authority, person or body by regulations made under this Part of this Act.

(2) No such grant or advance shall be made by the Treasurer except upon the recommendation of the Minister and every such grant or advance shall be made upon such terms and subject to such conditions as the Minister may determine. .

17. The principal Act is amended by inserting after section 40 a new section, to stand as section 54 as follows—

Section 54
added.

54. Subject to section 55, no action shall lie, and no proceedings of any kind shall be instituted or heard in any court in respect of any act or decision of the Minister or any person or body authorized by him in the exercise or purported exercise of his powers under this Part of this Act.

Acts etc.
not to be
actionable.

18. The principal Act is amended by inserting after section 40 a new section, to stand as section 55 as follows—

Section 55
added.

55. Nothing in this Part of this Act or the emergency regulations made thereunder shall operate to prejudice or affect any right which, if this Part of this Act had not been enacted, a person would have had to recover damages, take any suit or proceeding, or receive any payment or compensation in respect of any personal injury sustained by him.

Saving for
personal
injury
claims.

19. The principal Act is amended by inserting after section 40 a new section, to stand as section 56 as follows—

Section 56
added.

56. (1) A person who, as the result of compliance with any emergency regulation or while complying with or being engaged in the carrying into effect of any such regulation, suffers loss, damage or injury, other than—

Compensa-
tion.

(a) personal injury; or

(b) any such loss, damage or injury resulting or arising from and by reason of any prohibition, limitation or restriction on the sale or supply of any goods or services,

shall be entitled to compensation under this Part of this Act from the Minister.

(2) Every claim for compensation under this Part of this Act shall be made in the prescribed manner, or if no manner is prescribed in relation thereto in a form and within a time approved by the Governor.

(3) In default of agreement as to the amount of compensation between the Minister and the claimant, the Minister shall direct that the claim shall be referred to arbitration before a single arbitrator who shall be appointed by the Minister from amongst the Judges of the Supreme Court and of the District Court of Western Australia.

(4) The procedure to be followed at the arbitration shall be as determined by the arbitrator, but, subject to any such determination, the procedure shall be as nearly as possible the same as the procedure in the trial of a civil action in the Supreme Court.

(5) No account shall be taken, in assessing the extent of any loss, damage or injury in respect of which compensation is sought, of any such loss, damage or injury which was sustained in like manner by the community at large or by any substantial portion of the community.

Section 57
added.

20. The principal Act is amended by inserting after section 40 a new section, to stand as section 57 as follows—

Expiry or
revocation
of
regulations.

57. (1) The expiration or revocation of any emergency regulation shall not be deemed to have affected the previous operation thereof or the validity of any action taken thereunder or to affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that regulation or affect any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or

punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that regulation had not expired or had not been revoked.

(2) Every emergency regulation shall, unless it is expressed to expire sooner or is revoked, continue in operation for so long as a state of emergency declared by an order made by the Governor pursuant to this Part of this Act, or renewed by any such order, subsists.

21. The principal Act is amended by inserting after section 40 a new section, to stand as section 58 as follows—

Section 58
added.

58. A person aggrieved by any act done or omitted, or any decision or order made, or any direction given, pursuant to the implementation or purported implementation of the provisions of this Part of this Act may appeal in writing to the Minister in the prescribed manner, if any, and the Minister may thereupon, in his absolute discretion, take such action as he thinks fit and effect shall be given to the determination of the Minister.

Appeals.

22. The principal Act is amended by inserting after section 40 a new section, to stand as section 59 as follows—

Section 59
added.

59. (1) If, with intent to deceive, any person—

False
documents
and false
statements.

(a) uses any document issued for the purposes of this Part of this Act or of any regulation or order made under this Part of this Act; or

- (b) has in his possession any document so closely resembling a document so issued as to be calculated to deceive; or
- (c) produces, furnishes, sends or otherwise makes use of, for purposes connected with this Part of this Act or any regulation, order, or direction made or given under this Part of this Act, any book, account, estimate, return, declaration or other document which is false in a material particular,

he shall be guilty of an offence against this Part of this Act.

(2) If, in furnishing any information for the purposes of this Part of this Act or of any regulation or order made under this Part of this Act, any person makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence against this Part of this Act.

Section 60
added.

23. The principal Act is amended by inserting after section 40 a new section, to stand as section 60 as follows—

Consent to
prosecutions.

60. (1) A prosecution for a contravention of this Part of this Act, or of any regulation made thereunder, shall not be commenced without the consent of the Attorney General.

(2) In any prosecution for a contravention of this Part of this Act, or of any regulation made thereunder, a writing purporting to show the consent of the Attorney General for the purposes of subsection (1) of this section shall, in the absence of proof to the contrary, be deemed to be such a consent.

24. The principal Act is amended by inserting after section 40 a new section, to stand as section 61 as follows—

Section 61
added.

61. (1) Proceedings for offences against this Part of this Act or the regulations made thereunder shall be heard before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Proceedings
to be taken
summarily.

(2) Subject to subsection (1) of this section, the provisions of the Justices Act, 1902, shall apply to proceedings for offences against this Part of this Act.

25. The principal Act is amended by inserting after section 40 a new section, to stand as section 62 as follows—

Section 62
added.

62. (1) In any legal proceedings, a certificate purporting to be signed by the Minister and to certify that—

Evidence
etc.

- (a) a state of emergency was in existence, either in the whole State or a part of the State as specified therein, on a day or during a period specified therein, in respect of an emergency specified therein;
- (b) a delegation by the Minister to a person specified therein of the exercise or performance of any power, authority, duty or function specified therein was in force on a day or during a period specified therein;
- (c) a delegation by the Minister to a person specified therein was subject to the conditions or limitations specified therein or was not subject to any conditions or limitations other than those specified therein or was not subject to any conditions or limitations at all; or

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(d) a person specified therein was, on a day or during a period specified therein, performing any specified power, duty or function under this Act,

shall be admissible in evidence and shall be *prima facie* evidence of the facts so certified.

(2) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a declaration under section 43 of this Act have been complied with and performed. .
