



Western Australia

## **Economic Regulation Authority Act 2003**

Compare between:

[01 Oct 2010, 01-e0-02] and [05 Nov 2010, 01-f0-02]



Western Australia

## **Economic Regulation Authority Act 2003**

**An Act to establish the Economic Regulation Authority with inquiry, reporting, access regulation, licensing and other functions in respect of certain industries, to make consequential and other amendments to various Acts<sup>2</sup>, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Economic Regulation Authority Act 2003*<sup>1</sup>.

### **2. Commencement**

- (1) Except as stated in subsection (3), this Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.
- (3) Sections 25(b) and 63(2) and Schedule 4 come into operation on the day on which Schedule 2 Division 4<sup>3</sup> comes into operation<sup>1</sup>.

### **3. Terms used**

In this Act, unless the contrary intention appears —

**Authority** means the Economic Regulation Authority established by section 4(1);

**chairman** means the person appointed under section 6(1)(a) and includes an alternate chairman appointed under section 10;

**chief employee** means the chief employee of the Authority under section 14;

**functions**, in relation to the Authority, means its functions under this Act or any other written law;

**governing body** means the governing body of the Authority referred to in section 6;

**member** means a member of the governing body and includes an alternate member appointed under section 11;

**price** means any charge, fee, rate, tariff, or other valuable consideration (however described), but does not include —

- (a) any local government rate or charge; or

- (b) any land tax, pay-roll tax, or other duty or tax payable under a written law;

**public sector employee** means an employee as defined in section 3(1) of the *Public Sector Management Act 1994*;

**regulated industry** means —

- (a) the electricity industry;
- (b) the gas industry;
- (c) the rail industry;
- (d) the water industry; or
- (e) any other industry prescribed for the purposes of this definition;

**staff member** means —

- (a) the chief employee;
- (b) a public service officer referred to in section 19;
- (c) an officer or employee referred to in section 20(1); or
- (d) a person engaged or appointed under section 100 of the *Public Sector Management Act 1994* for the purposes of the Authority.

*[Section 3 amended by No. 12 of 2008 s. 52.]*

## **Part 2 — Economic Regulation Authority**

### **4. Economic Regulation Authority established**

- (1) A body called the Economic Regulation Authority is established.
- (2) The Authority is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Authority in its corporate name.

### **5. Status**

The Authority is an agent of the State and has the status, immunities and privileges of the State.

### **6. Management of Authority**

- (1) The Authority is to have a governing body consisting of —
  - (a) one member appointed as the chairman of the governing body; and
  - (b) such other members, if any, as the Governor considers necessary for the proper performance of the Authority's functions.
- (2) The governing body, in the name of the Authority, is to determine the policies of, control the affairs of, and otherwise perform the functions of, the Authority.

### **7. Members**

- (1) The members are to be appointed by the Governor on the nomination of the Minister and are to be persons who, in the opinion of the Minister, have knowledge or experience relevant to the functions of the Authority in industry, commerce, economics, law, public administration or consumer advocacy.
- (2) A person cannot be appointed or hold office as a member if the person is a public sector employee.

- (3) The chairman must be appointed on a full-time basis.
- (4) A member other than the chairman need not be appointed on a full-time basis.

**8. Term of office**

- (1) The term for which a person is appointed to be a member must be fixed in the instrument of appointment and must be not more than 5 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.
- (3) A person whose term of office expires may continue to perform the functions of the office for not more than 3 months after the term of office expires until another appointment to the office comes into effect unless the Minister, by notice in writing given to the person, otherwise directs.

**9. Casual vacancy**

- (1) A member may resign from office by notice in writing given to the Minister.
- (2) The Governor may remove a person who is a member from office on the grounds of —
  - (a) mental or physical incapacity to carry out the person's duties in a satisfactory manner;
  - (b) the person being an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth;
  - (c) neglect of duty;
  - (d) misconduct;
  - (e) incompetence; or

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- (f) the person's absence, without leave or reasonable excuse, from 3 consecutive meetings of the governing body of which the person had notice.
- (3) If, before the term of office for which a person was appointed as a member expires, the person dies, resigns, becomes a public sector employee, or is removed from office, the office becomes vacant.

**10. Alternate chairman**

- (1) If the chairman is unable to act because of sickness, absence, disqualification under section 30(2) or other cause, or if there is no chairman, the Governor may appoint a person nominated by the Minister as the alternate chairman to act in the chairman's place.
- (2) A person can only be nominated for the purposes of subsection (1) if, in the opinion of the Minister, the person has knowledge or experience of the kind described in section 7(1).
- (3) A person who is a public sector employee can be appointed as the alternate chairman.
- (4) The alternate chairman need not be appointed on a full-time basis.
- (5) If the chairman is disqualified under section 30(2) in relation to a matter, the alternate chairman may perform functions of the chairman in relation to that matter even though the chairman is at the same time performing functions in relation to another matter.
- (6) While acting in accordance with the appointment the alternate chairman is to be taken to be the chairman.
- (7) An act or omission of the alternate chairman cannot be questioned on the ground that the occasion for the alternate chairman's appointment or acting had not arisen or had ceased.



- (8) The appointment of a person as the alternate chairman may be terminated at any time by the Governor.

**11. Alternate members**

- (1) If a member, other than the chairman, is unable to act because of sickness, absence, disqualification under section 30(2) or other cause, the Governor may appoint a person nominated by the Minister as an alternate member to act in the member's place.
- (2) A person can only be nominated for the purposes of subsection (1) if, in the opinion of the Minister, the person has knowledge or experience of the kind described in section 7(1).
- (3) A person who is a public sector employee can be appointed as an alternate member.
- (4) If a member is disqualified under section 30(2) in relation to a matter, an alternate member may perform functions of the member in relation to that matter even though the member is at the same time performing functions in relation to another matter.
- (5) While acting in accordance with the appointment the alternate member is to be taken to be a member.
- (6) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the alternate member's appointment or acting had not arisen or had ceased.
- (7) The appointment of a person as an alternate member may be terminated at any time by the Governor.

**12. Remuneration and conditions of members**

- (1) The remuneration and allowances and other conditions of office of a member are to be determined by the Governor on the recommendation of the Minister for Public Sector Management.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the member.

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- (3) The remuneration and allowances and conditions of office of a member must not be varied while the member is in office so as to become less favourable to the member.

**13. Meetings of governing body**

Schedule 1 has effect with respect to meetings of the governing body.

## **Part 3 — Administration**

### **Division 1 — Chief employee**

#### **14. Chief employee**

- (1) Despite section 44(1) of the *Public Sector Management Act 1994*, the Authority is to have a chief employee.
- (2) The chief employee is to be appointed by the Authority.
- (3) The chief employee is not, and is not to become, a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994*.
- (4) For the purposes of paragraph (b) of the definition of “employing authority” in section 5(1) of the *Public Sector Management Act 1994*, the governing body is the employer of the chief employee.
- (5) The chief employee is responsible for, and has the powers needed to administer, the day to day operations of the Authority, but is to comply with any directions given by the governing body.

#### **15. Term of office**

- (1) The term for which a person is appointed to be the chief employee is to be fixed in the instrument of appointment and is to be not longer than 5 years.
- (2) A person’s eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

#### **16. Casual vacancy**

- (1) The chief employee may resign from office by notice in writing given to the chairman.

- (2) The governing body may remove a person who is the chief employee from office on the grounds of —
  - (a) mental or physical incapacity to carry out the person's duties in a satisfactory manner;
  - (b) the person being an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth;
  - (c) neglect of duty;
  - (d) misconduct; or
  - (e) incompetence.
- (3) If, before the term of office for which a person was appointed as chief employee expires, the person dies, resigns, or is removed from office, the office becomes vacant.

**17. Remuneration and conditions of chief employee**

- (1) The remuneration and allowances and other conditions of office of the chief employee are to be determined by the Authority.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the chief employee.

**18. Appointment of public service officer**

- (1) In this section —  
*public service officer* has the same meaning as it has in the *Public Sector Management Act 1994*.
- (2) If, immediately before appointment as the chief employee, a person was a public service officer, the person —
  - (a) retains existing and accruing rights as if service as the chief employee were a continuation of service as a public service officer; and
  - (b) is entitled, if the term of office for which the person was appointed as chief employee expires and the person is not reappointed, to be appointed to an office in the

Public Service not lower in status than the office occupied by the person before being appointed as chief employee.

- (3) If a person ceases to be the chief employee and becomes a public service officer, the person's service as the chief employee is to be regarded as service in the Public Service for the purposes of determining the person's rights as a public service officer.

## **Division 2 — Other staff and facilities**

### **19. Other staff**

Public service officers are to be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Authority to perform its functions.

### **20. Use of government staff and facilities**

- (1) The Authority may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State,
- other than an officer or employee of a party to an access agreement or of a relevant entity.
- (2) The Authority may by arrangement with —
- (a) a department of the Public Service that is not a party to an access agreement; or
  - (b) a State agency or instrumentality that is not a party to an access agreement or a relevant entity,

make use of any facilities of the department, agency or instrumentality.

- (3) An arrangement under subsection (1) is to provide, without limiting its other provisions, that while the Authority is making use of the services of an officer or employee —
- (a) the Authority has authority to control and supervise the officer to the exclusion of any person who would normally have any such authority; and
  - (b) the salary and allowances of the officer are to be paid out of money available to the Authority for that purpose.
- (4) Subject to subsection (3), an arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

- (5) In this section —

***access agreement*** has the same meaning as it has in the *Railways (Access) Act 1998*;

***relevant entity*** means —

- (a) a water board constituted under the *Water Boards Act 1904*;
- (b) the Water Corporation established by the *Water Corporation Act 1995*; or
- (c) a body established by section 4(1) of the *Electricity Corporations Act 2005*, namely —
  - (i) the Electricity Generation Corporation;
  - (ii) the Electricity Networks Corporation;
  - (iii) the Electricity Retail Corporation; and
  - (iv) the Regional Power Corporation.

*[Section 20 amended by No. 18 of 2005 s. 139.]*

**Division 3 — Financial provisions**

**21. Bank account**

- (1) The Authority is to have an account at a bank approved by the Treasurer.
- (2) The account is to be called the “Economic Regulation Authority Account”.
- (3) The account is to be —
  - (a) credited with all funds received by, made available to, or payable to, the Authority including —
    - (i) money appropriated by Parliament; and
    - (ii) fees referred to in section 61(2);and
  - (b) charged with all expenditure incurred under this Act or any other written law to enable the functions of the Authority to be performed, including the remuneration and allowances referred to in section 12 and the salary and allowances referred to in section 20(3)(b).

**22. Borrowing from Treasurer**

The Authority may borrow from the Treasurer any amounts approved by the Treasurer on terms and conditions relating to repayment and payment of interest imposed by the Treasurer.

**23. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and the Authority’s operations.

- (2) Despite subsection (1), any requirement under the Treasurer's instructions (issued under section 78 of the *Financial Management Act 2006*) that the Authority prepare performance indicators is to be limited to the Authority's management functions (including financial management), is not to apply to the performance of any other function of the Authority and need only be complied with to the extent practicable.
- (3) Despite subsection (1), section 40 of the *Financial Management Act 2006* does not apply in respect of the Authority, but the expenditure that may be incurred to enable the functions of the Authority under a particular written law to be performed in any one financial year is limited to the amount specified by the Minister under this subsection in respect of that written law for that year.

*[Section 23 amended by No. 28 of 2006 s. 411; No. 77 of 2006 s. 17.]*

#### **24. Separate financial records**

The Authority must cause separate records to be kept of expenditure incurred in respect of each written law under which it has functions.

*[Section 24 amended by No. 77 of 2006 s. 17.]*



## **Part 4 — Functions of Authority**

### **25. Functions**

The functions of the Authority are —

- (a) the inquiry, reporting and other functions it is given by this Act; and
- (b) the functions referred to in section 11AA of the *Energy Coordination Act 1994*; and
- (c) the functions it is given by or under the *National Gas Access (WA) Act 2009*; and
- (d) the functions referred to in section 20(1) of the *Railways (Access) Act 1998*; and
- (e) the functions referred to in section 4 of the *Water Services Licensing Act 1995*; and
- (f) the functions it is given by or under any other enactment.

*[Section 25 amended by No. 16 of 2009 s. 53.]*

### **26. Authority to have regard to certain matters**

- (1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to —
  - (a) the need to promote regulatory outcomes that are in the public interest;
  - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
  - (c) the need to encourage investment in relevant markets;
  - (d) the legitimate business interests of investors and service providers in relevant markets;
  - (e) the need to promote competitive and fair market conduct;
  - (f) the need to prevent abuse of monopoly or market power;

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- (g) the need to promote transparent decision-making processes that involve public consultation.
- (2) The Authority has a discretion as to the weight it gives to each of the matters referred to in subsection (1) in the performance of a particular function.
- (3) Nothing in subsection (1) limits a provision of another written law that requires the Authority, in performing a particular function, to have regard to, or take into account, particular objectives, considerations or other matters.
- (4) If there is any conflict or inconsistency between subsection (1) and a provision described in subsection (3), the latter provision prevails to the extent of the conflict or inconsistency.

**27. Powers**

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Authority may produce and publish information on matters relating to its functions.

**28. Independence of Authority**

- (1) Except as provided in subsection (2), the Authority is independent of direction or control by the State or any Minister or officer of the State in the performance of the Authority's functions.
- (2) The Minister may give directions in writing to the Authority to the extent allowed by subsection (3), and the Authority must give effect to any such direction.
- (3) Directions under subsection (2) —
  - (a) can only relate to general policies to be followed by the Authority in matters of administration, including financial administration; and

- (b) cannot constrain the Authority with respect to the performance of any function given by or under the *National Gas Access (WA) Act 2009* or referred to in section 20(1) of the *Railways (Access) Act 1998*.
- (4) Nothing in this section affects the operation of section 8(2) of the *Public Sector Management Act 1994*.
- (5) Within 14 days after a direction is given under subsection (2), the Authority —
  - (a) must cause the text of the direction to be published in the *Gazette*; and
  - (b) if the direction relates to a matter of administration under the *National Gas Access (WA) Act 2009*, must send a copy of the direction to the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.
- (6) The Minister must cause the text of any direction under subsection (2) to be laid before each House of Parliament, or dealt with under section 60, within 14 days after the direction is given.
- (7) The text of a direction under subsection (2) must be included in the annual report submitted by the accountable authority of the Authority under Part 5 of the *Financial Management Act 2006*.  
[Section 28 amended by No. 77 of 2006 s. 17; No. 16 of 2009 s. 54.]

## **29. Delegation**

- (1) Subject to subsection (2), the Authority may delegate to a member or a staff member any power or duty of the Authority under another provision of this Act or under any other written law.

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- (2) The Authority cannot delegate a power or duty of the Authority under section 35, 36, 41 or 42.
- (3) A delegation must be in writing executed by the Authority.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section limits the ability of the Authority to perform a function through a staff member or an agent.

**30. Conflict of interest**

- (1) A member must inform the Minister in writing of —
  - (a) any direct or indirect interest that the member has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
  - (b) any other direct or indirect interest that the member has or acquires that conflicts or may conflict with the member's duties.

Penalty: \$10 000.

- (2) The Minister may —
  - (a) direct the member to resolve a conflict between a direct or indirect interest and a duty of the member in relation to a particular matter; and
  - (b) if the conflict is not resolved to the Minister's satisfaction, disqualify the member from acting in relation to the matter.

## **Part 5 — References**

### **Division 1 — References on regulated industries**

**31. Term used: reference**

In this Division —

**reference** means a notice under section 32(1).

**32. References**

- (1) The Minister may, by written notice, refer to the Authority for an inquiry any matter relating to a regulated industry other than a matter governed by the operation of the National Gas Access (Western Australia) Law or the Code in force under section 4 of the *Railways (Access) Act 1998*.
- (2) Without limiting subsection (1), the matters that can be referred to the Authority include —
  - (a) prices and pricing policy in respect of goods and services provided in the industry concerned;
  - (b) quality and reliability of goods and services provided in the industry concerned;
  - (c) investment and business practices in the industry concerned; and
  - (d) costs of compliance with written laws that apply to the industry concerned.
- (3) Before referring a matter to the Authority under subsection (1) the Minister must consult with the Authority.
- (4) A reference —
  - (a) must specify the terms of reference for the inquiry;
  - (b) may require the inquiry to be conducted on an annual or other periodic basis;
  - (c) may specify the nature and degree of public consultation that is to be undertaken for the purposes of the inquiry;

- (d) may specify a period within which the Authority must submit a report to the Minister under section 36(1); and
- (e) may require the Authority to make a draft report publicly available or available to specified persons or bodies.

*[Section 32 amended by No. 16 of 2009 s. 55.]*

**33. Amendment or withdrawal of reference**

The Minister may, by written notice given to the Authority, amend or withdraw a reference at any time before the Minister has received from the Authority a report under section 36(1) in respect of the reference.

**34. Notice of reference, amendment or withdrawal**

- (1) The Authority must publish notice of any reference, or the amendment or withdrawal of any reference —
  - (a) in the *Gazette*;
  - (b) in a daily newspaper circulating generally in the State; and
  - (c) on the Internet.
- (2) Notice of a reference must specify —
  - (a) the terms of reference for the inquiry;
  - (b) the period during which the inquiry is to be held;
  - (c) the period within which, and the form in which, members of the public may make submissions, including details of any public hearings; and
  - (d) the matters that the Authority would like submissions to deal with.
- (3) Notice of an amendment of a reference must give particulars of the amendment.

**35. Authority to conduct inquiry**

The Authority must conduct an inquiry into any matter referred to the Authority under section 32(1).

**36. Reports**

- (1) The Authority must submit a report to the Minister on the outcome of the inquiry.
- (2) The Authority must identify in the report any information contained in the report that the Authority considers is of a confidential or commercially sensitive nature.
- (3) The Minister must cause a copy of the report (excluding any information identified under subsection (2)) to be laid before each House of Parliament, or dealt with under section 60, within 28 days after the Minister receives the report.
- (4) If information is excluded from a copy of the report because of its confidential or commercially sensitive nature, the copy of the report must contain a statement to that effect at the place in the report where the information excluded would have otherwise appeared.

**Division 2 — References on other industries**

**37. Term used: reference**

In this Division —

***reference*** means a notice under section 38(1).

**38. References**

- (1) The Minister may, by written notice, refer to the Authority for —
  - (a) an inquiry; or
  - (b) a report,any matter relating to an industry that is not a regulated industry.

- (2) Without limiting subsection (1), the matters that can be referred to the Authority include the matters described in section 32(2).
- (3) Before referring a matter to the Authority under subsection (1) the Minister must consult with the Authority.
- (4) A reference —
  - (a) must specify the terms of reference for the inquiry or report;
  - (b) may specify the nature and degree of public consultation that is to be undertaken for the purposes of the inquiry or report;
  - (c) may specify a period within which the Authority must submit a report to the Minister under section 42(1) or (2); and
  - (d) may require the Authority to make a draft report publicly available or available to specified persons or bodies.

**39. Amendment or withdrawal of reference**

The Minister may, by written notice given to the Authority, amend or withdraw a reference at any time before the Minister has received from the Authority a report under section 42(1) or (2) in respect of the reference.

**40. Notice of reference, amendment or withdrawal**

The Minister may, but is not required to, cause notice of any reference, or the amendment or withdrawal of any reference, to be published in the *Gazette* or in some other manner.

**41. Authority to conduct inquiry**

The Authority must conduct an inquiry into any matter referred to the Authority under section 38(1)(a).

**42. Reports**



- (1) If a matter is referred to the Authority under section 38(1)(a) the Authority must submit a report to the Minister on the outcome of the inquiry.
- (2) If a matter is referred to the Authority under section 38(1)(b) the Authority must submit a report to the Minister on the matter.
- (3) The Authority must identify in a report under subsection (1) or (2) any information contained in the report that the Authority considers is of a confidential or commercially sensitive nature.
- (4) The Minister must cause a copy of the report, excluding any information identified under subsection (3), to be laid before each House of Parliament within 28 days after the Minister receives the report.
- (5) If information is excluded from a copy of the report made available under subsection (4) because of its confidential or commercially sensitive nature, the copy of the report must contain a statement to that effect at the place in the report where the information excluded would have otherwise appeared.

**43. Preparation of reports for purposes of section 42(2)**

In preparing a report for the purposes of section 42(2), the Authority may inform itself on any matter in any manner it considers appropriate.

**Division 3 — General**

**44. Term used: inquiry**

In this Division —

***inquiry*** means an inquiry under Division 1 or 2.

**45. Authority to act through a member or members when conducting inquiry**

- (1) In conducting an inquiry the Authority is to act through a member or members specified by the chairman.

- (2) Any 2 or more members through whom the Authority conducts an inquiry do not act as the governing body, and Schedule 1 does not apply to their proceedings and deliberations.
- (3) The Authority may conduct an inquiry through a member or members even though it is at the same time conducting another inquiry through any other member or members.

**46. Conduct of inquiry**

- (1) In conducting an inquiry the Authority —
  - (a) is to act with as little formality as possible;
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any manner it considers appropriate;
  - (c) may receive written or oral submissions; and
  - (d) may establish working groups and task forces.
- (2) The Authority —
  - (a) has a discretion as to whether any person may appear before the Authority in person or be represented by another person; and
  - (b) may determine that proceedings, or any part of proceedings, before the Authority are to be held in private if the Authority is satisfied that —
    - (i) it is in the public interest to do so; or
    - (ii) the evidence is of a confidential or commercially sensitive nature.
- (3) Except as otherwise stated in this Division, the Authority may conduct an inquiry in any manner it considers appropriate.

**47. Powers relating to inquiry**

For the purposes of an inquiry, the Authority may —

- (a) by summons signed on behalf of the Authority by a member or the chief employee, require any person —

- (i) to attend before the Authority; or
  - (ii) to produce any document specified in the summons to the Authority;
- (b) inspect any document produced, and retain it for any reasonable period that the Authority thinks appropriate, and make copies of the document or any of its contents;
- (c) require any person to swear to truly answer any relevant question put to that person by the Authority or any person appearing before the Authority (and for that purpose a member may administer an oath or affirmation); or
- (d) require any person attending before the Authority to answer any relevant question put to that person by the Authority or any person appearing before the Authority.

**48. Offences in relation to inquiry**

A person must not —

- (a) having been served with a summons under section 47 to attend before the Authority, fail without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons;
- (b) having been served with a summons under section 47 to produce any document, fail without reasonable excuse (proof of which lies upon the person) to comply with the summons;
- (c) fail without reasonable excuse (proof of which lies upon the person) —
  - (i) to swear; or
  - (ii) to answer any question,when required under section 47 to do so;
- (d) give to the Authority any answer or other information that the person knows to be false or misleading in a material particular; or

- (e) wilfully insult the Authority or a member, or interrupt or obstruct the conduct of an inquiry.

Penalty: \$10 000.

**49.      Incriminating answers or documents**

An individual is not excused from complying with a requirement under section 47 on the ground that the answer to a question or the production of a document might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document produced by the individual to comply with the requirement was produced,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 48(d).

**50.      Protection for person assisting Authority**

A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of information, or the production in good faith of a document, to the Authority for the purposes of an inquiry or report, whether or not the information is given, or the document is produced, in connection with a written submission or a public hearing.

## **Part 6 — Collection and use of information**

### **51. Power to obtain information and documents**

- (1) If the Authority has reason to believe that a person has information or a document that may assist the Authority in the performance of its functions, the Authority may require the person to give the Authority the information or a copy of a document.
- (2) The reference in subsection (1) to functions does not include —
  - (a) the functions described in section 25(c) and (d); or
  - (b) the function of preparing a report for the purposes of section 42(2).
- (3) A requirement under this section must be made in a written notice that —
  - (a) identifies the information or document concerned;
  - (b) states that the requirement is made under this section;
  - (c) specifies the period within which the requirement must be complied with; and
  - (d) specifies the form in which the information or copy of the document must be given to the Authority.
- (4) The notice must be accompanied by a copy of this section.

### **52. Offences**

- (1) A person must not fail without reasonable excuse (proof of which lies on the person) to comply with a requirement under section 51.  
Penalty: \$10 000 or imprisonment for 12 months.
- (2) A person must not, in purported compliance with a requirement under section 51, give to the Authority information that the person knows to be false or misleading in a material particular.  
Penalty: \$10 000 or imprisonment for 12 months.

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**53. Incriminating information or documents**

An individual is not excused from complying with a requirement under section 51 on the ground that the giving of information or a document might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) information given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document given by the individual to comply with the requirement was given,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 52(2).

**54. Protection for person giving information or document**

A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of information or a document to the Authority under section 51.

**55. Restriction on disclosure of confidential information**

- (1) This section applies if information or a document is given to the Authority under section 47 or 51 and, at the time it is given, the person giving it states that it is of a confidential or commercially sensitive nature.
- (2) The Authority must not disclose the information or the contents of the document to any person unless the Authority is of the opinion —
  - (a) that the disclosure of the information or document would not cause detriment to the person giving it or another person; or
  - (b) that, although the disclosure of the information or document would cause detriment to the person giving it or another person, the public benefit in disclosing it outweighs that detriment.

- (3) Subsection (2) does not prevent the Authority —
  - (a) from disclosing information or the contents of a document to a staff member; or
  - (b) from using information or a document for the purposes of civil or criminal proceedings.
- (4) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Authority wishes to disclose it cannot cause detriment to a person.
- (5) In this section —  
***given***, in relation to a document, includes produced.

## **Part 7 — Miscellaneous**

### **56. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a member or a staff member for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or any other written law.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act or any other written law had been enacted.
- (3) Despite subsection (1), neither the Authority nor the State is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

### **57. Confidentiality**

- (1) This section applies to a person who is or has been a member or a staff member.
- (2) A person to whom this section applies 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 another written law;
  - (b) as required or allowed by this Act or under another written law;
  - (c) with the written consent of the person to whom the information relates; or
  - (d) in other prescribed circumstances.

Penalty: \$10 000 or imprisonment for 12 months.



- (3) Subsection (2) 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 to be ascertained.

**58. Intimidation**

A person must not —

- (a) threaten, intimidate or coerce another person; or
- (b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage,

because the person referred to in paragraph (a) or (b) or any other person —

- (c) has assisted, is assisting or may assist an inquiry under Part 5 Division 1 or 2; or
- (d) has complied, is complying or may comply with a requirement under section 51.

Penalty: \$10 000 or imprisonment for 12 months.

**59. Execution of documents**

- (1) The Authority is to have a common seal.
- (2) A document is duly executed by the Authority, if —
  - (a) the common seal of the Authority is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Authority by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Authority is not to be affixed to any document except as authorised by the Authority.
- (4) The common seal of the Authority is to be affixed to a document in the presence of —
  - (a) the chairman, if the governing body consists of the chairman;

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- (b) 2 members, if the governing body consists of more than one member,

and the chairman or each member, as the case requires, is to sign the document to attest that the common seal was so affixed.

- (5) The Authority may, by writing under its common seal, authorise a member or members or a staff member or staff members to sign documents on behalf of the Authority, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Authority, it is to be presumed that the seal is the common seal of the Authority until the contrary is shown.

**60. Supplementary provision about laying documents before Parliament**

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or dealt with under this section, within a period and —
  - (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that the House will not sit during that period,

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

- (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) is to be recorded in the Minutes,

or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

*[Section 60 amended by No. 8 of 2009 s. 48.]*

**61. 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.
- (2) Without limiting subsection (1), regulations may make provision for and in relation to the imposition and payment of fees and charges in connection with the performance of the Authority's functions.
- (3) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function, the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing the function.
- (4) A fee or charge imposed under subsection (2), or a method of calculation provided for under subsection (3), in connection with the performance of a function under a particular written law is not to allow the recovery of expenditure attributable, or to the extent that it is attributable, to the performance of a function under another written law.

*[62. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

**63. Transitional and saving provisions**

- (1) Schedule 3 has effect to make transitional and saving provisions in respect of the amendments made in Schedule 2 Divisions 8, 12 and 18<sup>3</sup>.
- (2) Schedule 4 has effect to make transitional and saving provisions in respect of the amendments made in Schedule 2 Division 4<sup>3</sup>.

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- (3) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations made under section 61(1) may include any provision that is required, or is necessary or convenient, for dealing with the transitional matter.
- (4) In subsection (3) —  
***transitional matter*** means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the Acts amended by this Act as in effect before this Act comes into operation to the provisions of those Acts as in force after this Act comes into operation.
- (5) A regulation including a provision described in subsection (3) may be expressed to have effect before the day on which it is published in the *Gazette*.
- (6) To the extent that a regulation including a provision described in subsection (3) may have effect before the day of its publication in the *Gazette*, it does not —
  - (a) affect in a manner prejudicial to any person (other than the Authority or the State), the rights of that person existing before the day of its publication; or
  - (b) impose liabilities on any person (other than the Authority or the State) in respect of anything done or omitted to be done before the day of its publication.

**64. Review of Act**

- (1) A Joint Standing Committee of both Houses of Parliament appointed for the purposes of this section must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 2 years from the commencement of this section and thereafter at 5 yearly intervals.
- (2) In the course of that review the Joint Standing Committee must consider and have regard to —
  - (a) the effectiveness of the operations of the Authority;

- (b) the need for the continuation of the functions of the Authority; and
  - (c) any other matters that appear to the Joint Standing Committee to be relevant to the operation and effectiveness of this Act.
- (3) The Joint Standing Committee must prepare a report based on the review and, as soon as is practicable after the report is prepared, must cause it to be laid before each House of Parliament.

## **Schedule 1 — Meetings of governing body**

[s. 13]

**1. Term used: meeting**

In this Schedule —

*meeting* means a meeting of the governing body.

**2. Application**

This Schedule applies if the governing body consists of more than one member.

**3. General procedure**

The procedure for the calling of meetings and for the conduct of business at meetings is, except as otherwise stated in this Schedule, to be determined by the governing body.

**4. Presiding member**

- (1) The chairman must preside at all meetings at which the chairman is present.
- (2) If the chairman is absent from a meeting the members present must appoint one of the members present to preside.

**5. Quorum**

A quorum for a meeting is —

- (a) 2 members if the governing body consists of 2 members; or
- (b) otherwise, at least one half of the number of members in office.

**6. Voting**

- (1) At a meeting each member present has a deliberative vote.
- (2) Subject to subclause (3), if there is an equality of votes on a question, the question remains unresolved until a subsequent meeting.

- (3) If, at a subsequent meeting, there is an equality of votes on a question referred to in subclause (2), the question is resolved in the negative.

**7. Minutes**

The governing body must cause accurate minutes to be kept of the proceedings at each meeting.

**8. Resolution without meeting**

- (1) A resolution in writing signed by each member, or assented to by each member by letter, telegram, telex, facsimile transmission or email, has the same effect as if it had been passed at a meeting.
- (2) The governing body must cause a record to be kept of each resolution under subclause (1).

**9. Holding meetings remotely**

The presence of a member at a meeting need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

**10. Leave of absence from meetings**

The governing body may, on any terms and conditions it thinks fit, grant a member leave to be absent from a meeting.

*[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]*

**Schedule 3 — Transitional and saving provisions for  
amendments in Schedule 2 Divisions 8, 12 and 18<sup>3</sup>**

[s. 63(1)]

**1. Terms used**

In this Schedule —

**commencement day** means the day on which this Schedule comes into operation;

**former official** means —

- (a) the Coordinator of Water Services referred to in section 4 of the *Water Services Coordination Act 1995* as in effect immediately before the commencement day;
- (b) the Gas Pipelines Access Regulator; or
- (c) the Rail Access Regulator;

**Gas Pipelines Access Regulator** means the Western Australian Independent Gas Pipelines Access Regulator referred to in section 27 of the *Gas Pipelines Access (Western Australia) Act 1998* as in effect immediately before the commencement day;

**Rail Access Regulator** means the Western Australian Independent Rail Access Regulator referred to in section 13 of the *Railways (Access) Act 1998* as in effect immediately before the commencement day.

**2. Interpretation Act 1984 to apply**

This Schedule does not limit the operation of the *Interpretation Act 1984*.

**3. Decisions of Gas Pipelines Access Regulator**

Without limiting the operation of clause 6, a decision made by the Gas Pipelines Access Regulator as the local Regulator for the purposes of the Gas Pipelines Access (Western Australia) Law that was in effect immediately before the commencement day continues, on and after that day, as if made by the Authority as the local Regulator for the purposes of that Law.



**4. Decisions of Rail Access Regulator**

Without limiting the operation of clause 6, a decision made by the Rail Access Regulator as the Regulator for the purposes of the Code (as defined in the *Railways (Access) Act 1998*) that was in effect immediately before the commencement day continues, on and after that day, as if made by the Authority as the Regulator for the purposes of that Code.

**5. Licences under Part 3 of the *Water Services Coordination Act 1995***

Without limiting the operation of clause 6, an operating licence that was in effect under Part 3 of the *Water Services Coordination Act 1995* immediately before the commencement day continues, on and after that day, as an operating licence in effect under that Part as amended by Schedule 2 Division 18<sup>3</sup>.

**6. Continuing effect of things done**

On and after the commencement day any act, matter or thing done or omitted to be done before that day by, to, or in respect of, a former official (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to, or in respect of, the Authority.

**7. Completion of things begun**

On and after the commencement day anything lawfully commenced by a former official may, so far as it is not contrary to this Act or any other written law that gives functions to the Authority, be carried on and completed by the Authority.

**8. Proceedings etc.**

Any proceedings or remedy that immediately before the commencement day might have been brought or continued by or available against or to a former official, may, on and after that day, be brought or continued and are available, by or against or to the Authority.

**cl. 9**

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**9. Records**

On and after the commencement day the Authority is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of each former official.

**10. Bank accounts**

- (1) The moneys standing to the credit of the account referred to in section 45 of the *Gas Pipelines Access (Western Australia) Act 1998* immediately before the commencement day are to be transferred to the account referred to in section 21 as soon as is practicable after that day.
- (2) The moneys standing to the credit of the account referred to in section 23D of the *Railways (Access) Act 1998* immediately before the commencement day are to be transferred to the account referred to in section 21 as soon as is practicable after that day.

**11. References to former official in agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which a former official is a party; or
- (b) which contains a reference to a former official,

has effect after the commencement day as if —

- (c) the Authority were substituted for the former official as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former official were (unless the context otherwise requires) amended to be or include a reference to the Authority.

**12. References to former official in written law**

A reference to a former official in an enactment in force immediately before the commencement day may, where the context so requires, be read as if it had been amended to be a reference to the Authority.

**13. Immunity to continue**

Despite the amendments made in Schedule 2 Divisions 8, 12 and 18<sup>3</sup>, where a former official had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the Authority.

**14. Saving**

The operation of any provision of this Schedule 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, rights or liabilities of 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, right 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.

**Schedule 4 — Transitional and saving provisions for  
amendments in Schedule 2 Division 4<sup>3</sup>**

[s. 63(2)]

**1. Terms used**

In this Schedule —

*commencement day* means the day on which this Schedule comes into operation;

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

*licensing functions* means the functions of the Coordinator under Part 2A;

*Part 2A* means Part 2A of the *Energy Coordination Act 1994* as in effect before the commencement day.

**2. Interpretation Act 1984 to apply**

This Schedule does not limit the operation of the *Interpretation Act 1984*.

**3. Licences under Part 2A**

Without limiting the operation of clause 4, a licence that was in effect under Part 2A immediately before the commencement day continues, on and after that day, as a licence in effect under that Part as amended by Schedule 2 Division 4<sup>3</sup>.

**4. Continuing effect of things done**

On and after the commencement day any act, matter or thing done or omitted to be done before that day by, to, or in respect of, the Coordinator in the performance of licensing functions (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to, or in respect of, the Authority.

**5. Completion of things begun**

On and after the commencement day, anything lawfully commenced by the Coordinator in the performance of licensing functions may, so far as it is not contrary to this Act or any other written law that gives functions to the Authority, be carried on and completed by the Authority.

**6. Proceedings etc.**

Any proceedings or remedy that immediately before the commencement day might have been brought or continued by or available against or to the Coordinator in relation to the performance of licensing functions, may, on and after that day, be brought or continued and are available, by or against or to the Authority.

**7. Records**

On and after the commencement day the Authority is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) that were, immediately before that day, in the possession or under the control of the Coordinator and related to the operations of the Coordinator under Part 2A.

**8. References to Coordinator in agreements and instruments**

- (1) Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the Coordinator is a party; or
- (b) which contains a reference to the Coordinator,

has effect after the commencement day as if —

- (c) the Authority were substituted for the Coordinator as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former official were (unless the context otherwise requires) amended to be or include a reference to the Coordinator.

- (2) In this clause —

***agreement or instrument*** means an agreement or instrument relating to licensing functions.

**cl. 9**

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**9. References to Coordinator in written law**

A reference to the Coordinator in an enactment in force immediately before the commencement day that relates to licensing functions may, where the context so requires, be read as if it had been amended to be a reference to the Authority.

**10. Immunity to continue**

Despite the amendments made in Schedule 2 Division 4<sup>3</sup>, where the Coordinator had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day in the performance of licensing functions, that immunity continues in that respect for the benefit of the Authority.

**11. Saving**

The operation of any provision of this Schedule 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, rights or liabilities of 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, right 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.

## Notes

- <sup>1</sup> This is a compilation of the *Economic Regulation Authority Act 2003* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Economic Regulation Authority Act 2003</i>	67 of 2003	5 Dec 2003	s. 1 and 2: 5 Dec 2003; Act other than s. 1, 2, 25(b), 63(2), Sch. 2 Div. 4 and Sch. 4: 1 Jan 2004 (see s. 2(1) and <i>Gazette</i> 30 Dec 2003 p. 5723); s. 25(b), 63(2), Sch. 2 Div. 4 and Sch. 4: 19 Mar 2004 (see s. 2(3) and <i>Gazette</i> 19 Mar 2004 p. 914)
<i>Electricity Corporations Act 2005</i> s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and <i>Gazette</i> 31 Mar 2006 p. 1153)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 17 Div. 2	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Duties Legislation Amendment Act 2008</i> s. 52	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<b>Reprint 1: The Economic Regulation Authority Act 2003 as at 21 Nov 2008</b> (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 48	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>National Gas Access (WA) Act 2009</i> Pt. 7 Div. 2	16 of 2009	1 Sep 2009	1 Jan 2010 (see s. 2(b) and <i>Gazette</i> 31 Dec 2009 p. 5327)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

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**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 89 <sup>4</sup>	39 of 2010	1 Oct 2010	<del>To be proclaimed</del> <a href="#">1 Dec 2010</a> (see s. <del>2(b))</del> and <i>Gazette</i> <a href="#">5 Nov 2010 p. 5563</a> )

<sup>2</sup> The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>3</sup> Schedule 2 was omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>4</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Economic Regulation Authority Act 2003</i>	s. 12(1)
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