

Reprinted under the *Reprints Act 1984* as at 15 January 1991.

WESTERN AUSTRALIA

---

---

# GAS UNDERTAKINGS ACT 1947

---

ARRANGEMENT

---

1. Short title
2. Interpretation
- 2A. Application
3. Administration
4. Price of gas
5. Basic price
6. Provisions relating to basic price
7. Limitation of dividends
8. Special purposes fund
9. Reserve fund
10. Transfers from revenue
12. Co-partnership and employee directors
13. Division of surplus profits
- 13A. Variation of financial arrangements
14. Accounts and returns
15. Depreciation
16. Gas undertaker to pay interest on deposits
17. Publication of charges for gas
18. Gas undertaker may be ordered to supply gas
- 18A. Powers related to a default in the duty to supply gas
- 18B. Minister's directions as to urgent measures
- 18C. Duties and powers of the Public Trustee
- 18D. Power of disposal
- 18E. Discharge or revocation of a vesting order
- 18F. Indemnity etc.
- 18G. Construction of reference to the Public Trustee

- Sec.
19. Power to grant pensions, etc.
  21. Prepayment meters
  22. Inquiry as to superannuation schemes, etc.
  23. Price on compulsory purchase
  24. Regulations
  25. Minister may declare that this Act not to apply to certain undertakers
  26. Act to supersede provisions in other Acts as to matters provided for in this Act
  27. Penalties
  28. Recovery by Commission of expenses

WESTERN AUSTRALIA

---

---

## GAS UNDERTAKINGS ACT 1947

**AN ACT to amend the law with respect to gas undertakings.**

### Short title and commencement

1. This Act may be cited as the *Gas Undertakings Act 1947*<sup>1</sup>, and shall come into operation on a date to be fixed by proclamation.

### Interpretation

2. (1) In this Act, unless the context otherwise requires—

“authorized rates” means the standard rates of dividend prescribed by this Act on the capital of gas undertakers reduced or increased in accordance with the provisions of this Act;

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

“co-partner” means a person in the employ of a gas undertaker with whom such undertaker has entered into an agreement regarding the division of surplus profits;

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

“gas undertaker” or “undertaker” means, subject to section 2A, any company, corporation, firm or person supplying or distributing gas for lighting, heating, motive power, or other purpose, and disposing of the same with a view to profit, but does not include a local authority;

“liquid petroleum gas” means a liquid which is a mixture of hydro-carbons basically consisting of butanes or butenes or propane or propene, or any mixture of all or any of them, and which it is intended to sell;

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

“prepayment meter” means any meter or appliance by which the quantity of gas supplied is regulated according to the amount of money prepaid therefor;

“gas unit” means 3.6 megajoules gross;

“renewal” means renewal of any plant of a gas undertaker that is used in its operations;

“renewal fund” means a fund established to provide for renewal or to discharge a loan raised to provide for renewal;

“to sell” means to sell by wholesale or retail or both, and includes to barter, to supply for sale, to receive for sale, to have in possession for sale, to send forward or to deliver for sale, to cause or to suffer or to allow to be sold; and inflections and derivatives of the verb “to sell” have correlative meanings;

“vesting order” means an order made under section 18A (2).

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

[Section 2 amended by No. 58 of 1956 s. 3; No. 60 of 1961 s. 2; No. 94 of 1972 (as amended) s. 4 (1); No. 75 of 1982 s. 3.]

### **Application**

2A. (1) Where a company, firm, person, or corporation other than a local authority, supplies or distributes and disposes of both liquid petroleum gas and other gas for any purpose mentioned or referred to in the interpretation “gas undertaker” in section 2, with a view to profit, this Act applies to the company, firm, person, or corporation, as the supplier or distributor and disposer of the other gas, but not as the supplier or distributor and disposer of the liquid petroleum gas.

(2) Where liquid petroleum gas is the only gas so supplied or distributed and disposed of for any of those purposes, by a company, firm, person, or corporation, whether a local authority or not, this Act does not apply to the company, firm, person, or corporation, as the supplier, distributor, or disposer of liquid petroleum gas.

[Section 2A inserted by No. 58 of 1956 s. 3.]

**Administration**

3. Subject to the Minister, this Act shall be administered by the Commission.

**Price of gas**

4. (1) The basic price for gas supplied by a gas undertaker shall be such sum per gas unit as is from time to time determined by the Commission in accordance with the provisions contained in section 5.

(2) Within 3 months after the coming into operation of this Act, every gas undertaker shall charge for gas according to the number of megajoules supplied.

*[Section 4 amended by No. 94 of 1972 (as amended) s. 4 (1).]*

**Basic price**

5. The Commission shall, at the request in writing of a gas undertaker, and may, at any time of its own motion, enquire and determine what price or prices of gas would, if charged by a gas undertaker and having regard to all the other revenue of such undertaker, enable such undertaker to pay the standard rates of dividend after making provision for—

- (a) interest payable on loans;
- (b) expenses under the prescribed headings properly chargeable to revenue, including—
  - (i) the maximum amount which may be transferred to the special purposes fund in accordance with section 8;
  - (ii) a reasonable amount for depreciation and renewals; and
  - (iii) a reasonable sum for contingencies, which shall not exceed the amount necessary to pay one half-year's dividend at authorized rates; and
- (c) the redemption of loans, if the Minister in writing agrees that such a redemption is a proper charge against the renewal fund.

*[Section 5 amended by No. 60 of 1961 s. 3.]*

**Provisions relating to basic price**

6. (1) Every gas undertaker shall from time to time file for public inspection with the Commission statements of the conditions under which such undertaker is prepared to grant discounts on prices charged by such undertaker, and any such discounts granted by such undertaker shall be alike under the like circumstances.

(2) No sum shall be—

- (a) divided in excess of the standard rate or carried to the reserve fund; and
- (b) paid to the co-partners,

in respect of any period in which the price charged to the ordinary consumer is equal to or more than 7 six-hundredths of a cent per gas unit in excess of the basic price.

(3) Every gas undertaker shall in each year send to the Commission with the accounts required under section 14 a statement showing the number of gas units sold at each of the several net prices during the year to which the accounts relate, and, if thereafter requested by the Commission, shall also furnish to the Commission all such other information relevant to the said matters as the Commission may require.

(4) The accounts of every gas undertaker for each year shall contain such particulars as will enable the Commission to calculate the amount which may be for such year—

- (a) paid as dividend or transferred to the reserve fund; and
- (b) paid to the co-partners.

*[Section 6 amended by No. 113 of 1965 s. 8 (1).]*

#### **Limitation of dividends**

7. (1) A gas undertaker may, subject to and in accordance with the provisions of this Act, increase or reduce the price charged by such undertaker above or below the basic price, but, except as by this Act otherwise provided, the profits of such undertaker available for distribution among the holders of the share capital of such undertaker in any year shall not exceed the following rates (in this Act referred to as "the standard rates of dividend"), that is to say—

- (a) on the ordinary share capital of the undertaking—in respect of every \$100 paid up or issued as paid up of that capital, a rate being \$3 above—
  - (i) where, during the period of 4 months preceding 1 March in the year commencing 1 January in which the dividend is declared, Commonwealth Treasury Bonds were, or Commonwealth Inscribed Stock was, first issued for public subscription—the initial rate of yield on that issue or, where there was more than one such first issue during that 4 month period, the initial rate of yield on the issue that had the longer or longest period to maturity at the date of first issue; or
  - (ii) where, during the period of 4 months preceding 1 March in the year commencing 1 January in which the dividend is declared, there was no first issue of Commonwealth Treasury Bonds or Commonwealth

Inscribed Stock for public subscription—the initial rate of yield on the first issue most recently made before that 4 month period;

and

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

[(2) repealed]

(3) Where a gas undertaker fails in any year commencing after 30 June 1982 to pay the standard rate of dividend on the ordinary share capital of such undertaker, then notwithstanding the foregoing, the profits of the undertaker available for distribution among the holders of that capital in any subsequent year may exceed the standard rate by not more than \$2 in respect of every \$200 of paid up ordinary capital, but nothing in this subsection authorizes the company to declare in any year a rate of dividend on its paid up ordinary share capital such that the aggregate of the total amount of dividends paid since 30 June 1982 and the total amount payable pursuant to that declaration would exceed the aggregate of—

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

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

[Section 7 amended by No. 12 of 1956 s. 2; No. 113 of 1965 s. 8 (1); No. 75 of 1982 s. 4.]

### Special purposes fund

8. (1) The directors of a gas undertaker may if they think fit, in any year, transfer out of the revenue of such undertaker as part of the expenditure on revenue account, any sum not exceeding an amount equal to one-half of one per centum of the aggregate of the share capital (inclusive of premiums) and the loan capital to an account to be called “the special purposes fund.”

(2) The special purposes fund shall be applicable only to meet such charges as the Commission shall approve as being—

- (a) expenses incurred by reason of accidents, industrial disputes and other circumstances, which due care and management could not have prevented; or
- (b) expenses incurred in the replacement or removal of plant or works, other than expenses requisite for maintenance and renewal of the same.

(3) The maximum amount standing to the credit of the special purposes fund shall not at any time exceed an amount equal to one-twentieth part of the aggregate of the share and loan capital of the undertaker as prescribed in subsection (1).

(4) So long as there is any balance remaining in the special purposes fund, any expenses of the nature referred to in subsection (2) shall be charged against such fund.

### **Reserve fund**

9. (1) Any moneys which a gas undertaker is by this Act authorized to carry to the reserve fund may be invested in Government or other securities not connected with the business of such undertaker, and the dividends and interest arising from such securities may be invested in the same or like securities in order that the same may accumulate at compound interest and the fund so formed shall be called "the reserve fund" and may be applied in or towards the payment of dividends in any year in which the profits of the undertaker are insufficient to enable such undertaker to pay the standard rates of dividend on the ordinary share capital of such undertaker or to such other purpose or purposes as the directors may determine.

(2) The undertaker may carry to the reserve fund any moneys which under section 13 may be applicable to increase of dividends on the ordinary share capital of the undertaker.

(3) The money and securities standing to the credit of the reserve fund of a gas undertaker existing at the coming into operation of this Act shall be credited to the reserve fund provided for by this Act, and save as is by this Act provided, no sum shall in any year or half-year be carried by such undertaker to the reserve fund.

### **Transfers from revenue**

10. (1) Save as authorized in this Act, no sum shall in any year be transferred from revenue by a gas undertaker to any reserve or fund.

(2) Subject to this section the profits of a gas undertaker shall not be utilised otherwise than to pay dividends and to provide the special purposes fund, the renewal fund, the reserve fund, any loan redemption fund or funds and a suspense or reserve fund to inaugurate a superannuation fund in accordance with this Act but the amount of



profits that may be utilised to provide a renewal fund and all charges to a renewal fund, including the repayments of a loan, shall be subject to the written approval of the Minister.

(3) If the clear profits of a gas undertaker in any year, after providing for all expenses properly chargeable to revenue, interest payable on loans, and any transfers to any reserve or fund authorized by this Act, amount to a larger sum than is sufficient to pay the authorized rates of dividend, the excess may be carried forward in the profit and loss account; but the balance remaining in the profit and loss account after allowing for payment of accrued dividends shall not at any time exceed the amount required to pay one year's dividend at the standard rates.

(4) A gas undertaker which contravenes any provision of this section shall be liable on summary conviction to a penalty not exceeding \$200, and a further penalty not exceeding \$100 for every day on which, after such conviction, the contravention continues.

*[Section 10 amended by No. 60 of 1961 s. 4; No. 113 of 1965 s. 8 (1).]*

*[11. Section 11 repealed by No. 60 of 1961 s. 5.]*

### **Co-partnership and employee directors**

12. (1) The directors of a gas company may, with the sanction of a majority of the shareholders of the company present in person or by proxy and voting at a general meeting of the company, prepare, put in force and from time to time modify, alter or rescind a scheme or schemes for participation by the employees of the company in the profits thereof and for enabling one or more, but not exceeding 3, of the employee co-partners of the company to become a director or directors of the company.

(2) The qualification of an employee director shall be fixed by the scheme for the time being in force, but each such director shall at the date when he becomes a director have been not less than 7 years in the constant employ of the company and shall for not less than one year prior to such date have held in his own right not less than \$100 nominal value of the ordinary shares of the company and if any person being an employee director shall while he is a director cease to hold as aforesaid at least such amount of ordinary shares, he shall cease to be a director.

(3) The fees to be paid to an employee director for his attendance at meetings of the directors shall be fixed by the scheme and shall bear some proportion (to be so fixed) to the amount of the qualification, not being less for each attendance than his ordinary day's pay.

(4) If and whenever any scheme made under the provisions of this section shall have ceased to have effect, the directors may, but subject to such provisions and with such sanction of the shareholders as aforesaid, put in force and from time to time modify, alter or rescind a new scheme or schemes.

(5) A gas company may pay out of its revenue any bonus addition to the salaries and wages of employee co-partners, which bonus addition may be payable in accordance with any scheme as aforesaid.

*[Section 12 amended by No. 113 of 1965 s. 8 (1).]*

### **Division of surplus profits**

13. The surplus profits of a gas undertaker shall be divided into the following proportions, namely, three-fourths to the consumers, and one-fourth equally between the holders of the ordinary share capital of the undertaker and the employee co-partners of the undertaker, and with reference thereto the following provisions shall apply:—

- (a) At the end of each year or half-year, a sum shall be calculated representing the amount by which the total amount payable by consumers during such year or half-year has been less than the amount which would have been payable if the gas had been charged for at the basic price, and such sum so calculated shall be called “the consumers’ share,” and for the purposes of this section “the surplus profits” shall mean a sum of which the consumers’ share is three-quarters.
- (b) If and so far as the balance standing to the credit of the profit and loss account after providing for dividends at the standard rates of dividend on both the ordinary and the preference share capital of the undertaker, in the opinion of the directors permits, a sum not exceeding one-quarter of the surplus profits shall be applied in 2 equal parts for the benefit of the holders of ordinary share capital and for the benefit of the employee co-partners of the undertaker in manner hereinafter mentioned.
- (c) Any sum so to be applied for the holders of ordinary share capital may be applied in the increase of the dividends above the standard rates of dividend, and, if and so far as not so applied, shall be carried to the reserve fund.
- (d) The sum so to be applied for the benefit of the employee co-partners of the undertaker shall be carried to the co-partnership fund, and the moneys so carried to such fund shall be allocated by way of a uniform percentage of bonus on the salaries and wages of such employee co-partners.
- (e) Any balance of the profits of the undertaker, not applied as aforesaid, shall be carried forward in the profit and loss account of the undertaker for the next following year or half-year. Provided that the sum standing to the credit of such

profit and loss account shall not at any time exceed the amount required to pay one year's dividends at the standard rates of dividend on the ordinary and preference share capital of the undertaker.

[Section 13 amended by No. 60 of 1961 s. 6.]

#### Variation of financial arrangements

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

- (a) vary or dispense with, in relation to that gas undertaker, any requirement or other provision of section 8, 9, 10 or 13 in respect of such circumstances, if any, and subject to such conditions, if any, as are specified in the notice; and
- (b) approve the transfer, expenditure or setting apart of money from the revenue of the gas undertaking to any reserve, fund or account and specify the objects for which, the circumstances in which and the conditions subject to which that money may be transferred, expended, set apart or otherwise dealt with.

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

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

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

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

[Section 13A inserted by No. 75 of 1982 s. 5.]

#### Accounts and returns

14. (1) Every gas undertaker shall furnish to the Commission at such times and in such form and manner as the Commission may direct an annual account and shall furnish to the Commission, on the written request of the Commission, such other statistics, returns, records or other information as the Commission may require to enable the Commission—

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

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

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

- (c) to enter upon the land or premises of the gas undertaker whether within or outside a franchised area;
- (d) to inspect, examine and test all works, plant and equipment used by the gas undertaker in or in connection with its business of producing or supplying gas or gas appliances; and
- (e) to observe and investigate the conduct of the business and affairs of the gas undertaker, including the examination and audit of books, accounts and records and the taking of copies or extracts and inquiry as to the source, cost, storage and supply of gas, contractual relationships and matters relating to employees, and the use to which the assets of the gas undertaker are being or may be put,

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

(2) Every gas undertaker shall embody in the annual account furnished to the Commission a certificate by the auditors of such undertaker setting out the amounts which may be—

- (a) applied as dividend or transferred to reserve; and
- (b) applied for the benefit of co-partners.

(3) The power of the Commission under this section to require information shall include power to require different information from different gas undertakers, and to require any particular information to be certified by the auditors of the undertaker.

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

(5) A gas undertaker or other person who—

- (a) fails to comply with a requisition directed to that gas undertaker or person pursuant to this section; or
- (b) obstructs or hinders the Commission or a person authorized by the Commission, or any other person assisting the Commission or that authorized person, in the making of an examination or investigation under this section,

commits an offence.

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

[Section 14 amended by No. 113 of 1965 s. 8 (1); No. 75 of 1982 s. 6.]

**Depreciation**

15. (1) Subject to the provisions of subsection (3), the directors of a company that is a gas undertaker may in any year charge against the revenue of that company, as part of the expenditure on revenue account, such sum representing a percentage, being not less than 3 per centum, as is determined in writing for that year by the Minister, of the book values of the plant of the gas undertaker, calculated on the average monthly balances of those book values throughout the year.

(2) Where any plant referred to in subsection (1) is scrapped at any time during a year, an amount not exceeding the book value at the time (after deducting depreciation or allowing for any amount in the depreciation reserve, as the case may require) of the plant so scrapped may be charged by the directors against the revenue of the company as provided in that subsection less the proceeds of sale, if any, of the materials resulting from the scrapping of the plant.

(3) Any sum so charged against the revenue of the company under this section shall be applied in writing down such book values or be carried to a depreciation reserve and no depreciation shall be charged in respect of any plant that has been purchased from the proceeds of any loan to the company, the repayment of which loan is being charged to a renewal fund.

(4) In this section "plant" means the manufacturing and distributing plant, buildings and equipment of a gas undertaker.

*[Section 15 inserted by No. 60 of 1961 s. 7.]*

**Gas undertaker to pay interest on deposits**

16. Where a person is required by a gas undertaker to give security for a supply of gas or for the payment of the rental of a meter or any apparatus whatsoever, and such security is in the form of a deposit of cash or the equivalent of cash, such undertaker shall, in accordance with the regulations, pay interest thereon to such person at the rate payable for the time being by the Commonwealth Savings Bank of Australia upon a savings bank deposit of a like amount.

**Publication of charges for gas**

17. (1) A gas undertaker shall from time to time publish (by exhibiting notices in its show rooms and offices which are open to the public and sending copies thereof to the Commission) and shall include as part of any general statement of the charges of such undertaker, the price per gas unit at which the undertaker is prepared to sell gas to persons who require a supply and are not willing to enter into any special contract as to price.

(2) Such price shall be known as the undertaker's "ordinary" price and shall be a price exclusive of any discount which the undertaker may be required or may be prepared to grant.

(3) Any provision in this or any other Act or in any regulation or by-law made thereunder—

- (a) which prescribes a maximum price which may be charged in respect of gas;
- (b) which prescribes a basic price in respect of gas with variations in the rate of dividend payable according to the price actually charged in respect of gas;
- (c) which prevents an undertaker from paying a dividend in excess of the basic rate when the price charged to any consumer has equalled or exceeded the basic price,

shall not apply to gas sold at a price other than the "ordinary" price.

### **Gas undertaker may be ordered to supply gas**

18. (1) Any 20 occupiers or owners of premises situated in a defined locality within the limits wherein which a gas undertaker is authorized to supply gas may address a request to the Commission setting forth that the said premises are not supplied with gas, and could conveniently be so supplied and ought reasonably to be so supplied by such undertaker, and undertaking to become consumers of gas for a period of at least 12 months thereafter upon its being so supplied.

(2) On receipt of a request made under subsection (1) the Commission shall hear and determine the matter accordingly and provided that the return by gross sales of gas from such extension or supply of gas shall not be less than 20 per centum per annum on the outlay incurred by the undertaker in making such extension or giving such supply, the Commission may determine that the request should be given effect to, whether in whole or in part, and may then order the undertaker within a time to be fixed by the Commission, to lay such mains and pipes and to do all such other works and things as are required for the purpose of supplying gas to the premises within a locality to be defined by the Commission, and the undertaker shall obey such order.

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

- (a) the company shall be taken to carry on, and always to have carried on, that business in pursuance of a statutory duty to give effect to the power conferred and to provide and maintain a supply of gas suitable and sufficient for the use of all persons within the franchised area who are for the time being consumers or entitled to be supplied;

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

(4) A gas undertaker, being a company to which subsection (3) applies, shall not (otherwise than in the normal and ordinary course of, and for the purposes of, the business of that company related to the supply of gas) without the prior written consent of the Minister dispose of or charge—

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

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

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

[Section 18 amended by No. 113 of 1965 s. 8 (1); No. 75 of 1982 s. 7.]

#### **Powers related to a default in the duty to supply gas**

18A. (1) Where the Minister has reasonable cause to apprehend that a gas undertaker, being a company to which section 18 (3) applies, proposes to cease the supply of gas in a franchised area, or to supply gas of a quantity or quality or in a manner not satisfactory to the Commission, the Minister may by notice in writing served on the company—

- (a) require the company to show cause, within the period specified in that notice, why a vesting order should not be made; or

- (b) require the company to furnish to the Treasurer such security for the proper discharge of the duty to supply gas in the franchised area, the compliance with the requirements of this Act, and the proper conduct of the business of a gas undertaker as the Minister may direct; or
- (c) require the company so to show cause and to furnish such security,

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

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

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

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

(3) An order under subsection (2)—

- (a) shall, as soon as is practicable after the making of the order, be—
  - (i) published in the *Government Gazette*; and
  - (ii) laid, or caused to be laid, by the Minister before each House of Parliament; and
- (b) shall have, and be given effect from, the making thereof, or, where the Minister has, within the preceding 7 days, directed the Commission to take urgent measures to safeguard and prevent damage to the gas reticulation system in the franchised area and that direction by the Minister is ratified by the order, from the giving of that direction by the Minister,

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



(4) An order made under subsection (2)—

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

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

(5) If Parliament is adjourned or prorogued and that adjournment or prorogation will not expire within 14 days of the day of the making of the order under this section, Parliament shall be called together on a day to be fixed by proclamation being a day that falls within that period of 14 days, and, notwithstanding any Act, law or standing order of either House of Parliament to the contrary, Parliament shall meet on the day so fixed and for all purposes shall continue to sit and act in the same manner as if it had been adjourned or prorogued to that day.

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

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

[Section 18A inserted by No. 75 of 1982 s. 8.]

#### **Minister's directions as to urgent measures**

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

supplied and utilize any such land, premises or other property of the company for the purposes of carrying out such work to implement those measures as may be, or is considered by the Commission to be, necessary.

[Section 18B inserted by No. 75 of 1982 s. 8.]

### **Duties and powers of the Public Trustee**

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

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

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

- (a) may, on terms acceptable to the Minister, engage the Commission—
  - (i) to safeguard, maintain and continue a supply of gas to the franchised area in accordance with the statutory duty of the company, and for that purpose to manage the affairs of the company;
  - (ii) to inquire into the affairs of the company, and the requirement for the supply of gas in the franchised area; and
  - (iii) to do such other things as may be necessary to give effect to the objects of this Act; and
- (b) has power to do, or cause to be done, in the State and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which he was appointed under this Act.

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

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

- (a) to enter into possession and take control of property of the company;
- (b) to lease, let on hire or dispose of property of the company;
- (c) to grant options over property of the company on such conditions as he thinks fit;
- (d) to borrow money on the security of property of the company;
- (e) to insure property of the company;
- (f) to repair, renew or enlarge property of the company;
- (g) to convert property of the company into money;
- (h) to carry on any business of the company, whether in conjunction with the Commission or any other person or otherwise, and to expend money of the company for that purpose or the general purposes of this Act;
- (j) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the company;
- (k) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company;
- (m) to draw, accept, make and indorse any bill of exchange or promissory note;
- (n) to use a seal of the company;
- (o) to engage or discharge employees on behalf of the company;
- (p) to appoint a solicitor, accountant or other professionally qualified person to assist him;
- (q) to appoint an agent to do any business that he is unable to do himself or that can more conveniently be done by an agent;
- (r) where a debt or liability is owed to the company to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;
- (s) to refer to arbitration any question affecting the company; and
- (t) to make or defend an application for the winding up of the company.

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

[Section 18C inserted by No. 75 of 1982 s. 8.]

**Power of disposal**

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

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

[Section 18D inserted by No. 75 of 1982 s. 8.]

**Discharge or revocation of a vesting order**

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

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

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

(2) The revocation or discharge of any order made under this Act shall not be deemed to have affected the previous operation of that order or the validity of any action taken thereunder or affect any investigation, legal proceeding or remedy in respect thereto, and sections 37 and 39 of the *Interpretation Act 1984*<sup>2</sup> shall apply to any such order as if such order had been an enactment which has expired.

[Section 18E inserted by No. 75 of 1982 s. 8.]

**Indemnity etc.**

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

- (a) any act or thing done or omitted—
  - (i) by the Minister, the Commission or the Public Trustee;
  - or

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

*[Section 18F inserted by No. 75 of 1982 s. 8.]*

#### **Construction of reference to the Public Trustee**

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

*[Section 18G inserted by No. 75 of 1982 s. 8.]*

#### **Power to grant pensions, etc.**

**19.** The directors of any gas undertaker may grant retiring or superannuation allowances to officers and employees of the undertaker, or pensions to such officers and employees or their widows and dependants, by directly granting such pensions and allowances and by contribution to existing superannuation funds, and for that purpose may apply the funds and revenues of the undertaker.

*[20. Section 20 repealed by No. 75 of 1982 s. 9.]*

#### **Prepayment meters**

**21.** (1) A gas undertaker shall not charge for any gas supplied through a prepayment meter any greater charge, rate or rent than the undertaker is entitled to charge for gas supplied to consumers through any other kind of meter, or by any other method of supply.

(2) Any consumer whose gas is supplied through a prepayment meter may, upon payment of any charges involved, require the undertaker to supply and fix an ordinary meter, and upon such request the undertaker shall so supply and fix an ordinary meter.

(3) No meter shall be issued for the use of a consumer by an undertaker until it has been first tested and stamped by a gas examiner in accordance with the regulations. Within 12 months, or such further time as the Minister deems necessary, after the commencement of this Act, every meter in use on the premises of any consumer at the commencement of this Act shall be so tested and, if found accurate, stamped.

All meters issued by an undertaker and in use shall be again tested and, if found accurate, restamped at intervals of not more than 7 years.

(4) Except as provided in this section, a gas undertaker shall not make any charge, whether directly or indirectly, and by whatever name such charge is designated, for the hire of any meter.

Where more than one meter is installed on any premises, a gas undertaker may charge for the hire of all meters in excess of one.

#### **Inquiry as to superannuation schemes, etc.**

22. The Governor may, after the Commission has inquired and reported that such action would be desirable, by proclamation published in the *Government Gazette*, authorise—

- (a) any scheme for the superannuation of the employees of a gas undertaker, including the provision to set aside sufficient funds from suspense accounts or reserves to inaugurate such a scheme, and the provision of funds for the support of the same as an expense properly chargeable to revenue;
- (b) the amendment of any superannuation scheme in operation at the commencement of this Act, or authorized under this section after such commencement, and of any deed executed to give effect to any such scheme.

#### **Price on compulsory purchase**

23. Where by any Act a local authority is empowered to compulsorily purchase a gas undertaking, then the amount of purchase money to be paid by such local authority for such undertaking shall be a sum not exceeding the amount which would reasonably be required to purchase and establish a plant of equivalent capacity, counting at its fair market value the land to be purchased.

This section shall be read in conjunction with section 50 of the Fremantle Gas and Coke Company's Act.

#### **Regulations**

24. (1) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which it may be necessary or convenient to prescribe for giving effect to this Act.

(2) All courts and magistrates shall take judicial notice of all regulations and proclamations under this Act.

**Minister may declare that this Act not to apply to certain undertakers**

25. (1) The Minister may, by notice published in the *Government Gazette*, and upon and subject to such terms and conditions as the Minister may stipulate in the notice, declare that the provisions of this Act shall not apply to any gas undertaker which, in any period of 12 months expiring on 30 June in any one year, shall have sold less than a quantity of gas, not being more than 708 000 cubic metres of gas, which the Minister shall specify in such notice; and the Minister may, by any subsequent notice published as aforesaid, at any time and from time to time, revoke or vary any previous notice under this section.

(2) The Minister may, by notice published in the *Government Gazette*, declare that the provisions of this Act do not apply to a gas undertaker who is the holder of a pipeline licence granted under the *Petroleum Pipelines Act 1969*, in respect of gas which is supplied or distributed through a pipeline the subject of that pipeline licence.

(3) Any notice published under subsection (2) may—

- (a) be subject to such terms and conditions as are therein specified by the Minister; and
- (b) be varied or revoked by subsequent notice so published.

[Section 25 amended by No. 16 of 1972 s. 2; No. 94 of 1972 (as amended) s. 4 (1).]

**Act to supersede provisions in other Acts as to matters provided for in this Act**

26. Any provisions of this Act with respect to any matter for which provision is made in this Act shall have effect in lieu of any provisions whether to the same effect or inconsistent therewith in any other Act relating to any gas undertaker, and any such other Act shall, so far as applicable and with all necessary adaptations, be read and construed accordingly.

**Penalties**

27. (1) A gas undertaker who contravenes any provision of this Act, or of any regulation made under this Act, shall, if no penalty is specifically provided for such contravention, be liable upon summary conviction to a penalty not exceeding \$20.

(2) A prescribed penalty may be imposed by and recovered before a magistrate or any 2 justices in petty sessions.

[Section 27 amended by No. 113 of 1965 s. 8 (1).]

**Recovery by Commission of expenses**

28. Any expenses of the Commission which, in the opinion of the Treasurer, are directly or indirectly attributable to the exercise by it of any of its powers and duties under this Act, or any of the provisions thereof, shall be a charge upon the gas undertaker concerned and be recoverable by the Commission from such undertaker accordingly.

**NOTES**

<sup>1</sup> This reprint is a compilation as at 15 January 1991 of the *Gas Undertakings Act 1947* and includes all amendments effected by the other Acts referred to in the following Table<sup>3</sup>.

**Table of Acts**

Act	No. and Year	Assent	Commencement	Miscellaneous
<i>Gas Undertakings Act 1947</i>	68 of 1947	10 January 1948	4 June 1948 (see <i>Gazette</i> 4 June 1948 p. 1265)	
<i>Gas Undertakings Act Amendment Act 1950</i>	28 of 1950	13 December 1950	13 December 1950	
<i>Gas Undertakings Act Amendment Act 1951</i>	16 of 1951	26 November 1951	26 November 1951	
<i>Gas Undertakings Act Amendment Act 1956</i>	12 of 1956	11 October 1956	11 October 1956	
<i>Liquid Petroleum Gas Act 1956, Section 3 and Schedule</i>	58 of 1956	27 December 1956	1 November 1957 (see <i>Gazette</i> 25 October 1957 p. 2968)	
<i>Gas Undertakings Act Amendment Act 1961</i>	60 of 1961	28 November 1961	28 November 1961	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see Section 2 (2), balance: 21 December 1965)	
<i>Gas Undertakings Act Amendment Act 1972</i>	16 of 1972	26 May 1972	26 May 1972	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments, as set out in the second schedule took effect on 11 January 1974 (see Section 4 (2) and <i>Gazette</i> 11 January 1974 p. 52)	The second schedule was inserted by the <i>Metric Conversion Act 1973</i> (No. 19 of 1973)
<i>Gas Undertakings Amendment Act 1982</i>	75 of 1982	29 October 1972	16 September 1982 (see Section 2)	

<sup>2</sup> Formerly referred to Section 16 of the *Interpretation Act 1918*. Reference substituted under section 7 (3) (g) of the *Reprints Act 1984*.

<sup>3</sup> Marginal notes in the *Gas Undertakings Act 1947* referring to legislation of other jurisdictions have been omitted from this reprint.