

WESTERN AUSTRALIA

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# ENERGY COORDINATION AMENDMENT ACT 1999

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No. 20 of 1999

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**AN ACT to amend the *Energy Coordination Act 1994* to make provision for a scheme for licensing the supply of gas in certain areas of the State, to make consequential amendments to other Acts, and for related purposes.**

[Assented to 24 June 1999]

The Parliament of Western Australia enacts as follows:

## **Short title**

**1.** This Act may be cited as the *Energy Coordination Amendment Act 1999*.

**Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

**Principal Act**

3. In this Act the *Energy Coordination Act 1994\** is referred to as the principal Act.

[\* Act No. 71 of 1994.]

**Long title amended**

4. The long title to the principal Act is amended —

(a) by inserting after “**to provide for —**” the following —

“

- **a scheme for licensing the supply of gas in certain areas of the State;**

”;

and

(b) by inserting after “**energy policy**” the following —

“ **, to administer the licensing scheme** ”.

**Section 3 amended**

5. Section 3 of the principal Act is amended —

(a) by inserting in the appropriate alphabetical positions the following definitions —

“

**“distribution licence”** means a licence having the classification referred to in section 11D (1) (a);

**“distribution system”** means —

- (a) a system of pipelines, mains and gas service pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of gas to customers; and
- (b) any associated apparatus, facilities, structures, plant or equipment;

**“Gas Corporation”** means the body established by section 4 of the *Gas Corporation Act 1994*;

**“licence”** means a distribution licence or trading licence;

**“licensee”** means the holder of a licence and any transferee of the licence under section 11R;

**“small use customer”** means a customer whose consumption of gas is less than 1 terajoule per year;

**“supply”**, in relation to gas, means —

- (a) the transportation of gas through a distribution system; or
- (b) the sale to small use customers of gas transported through a distribution system;

**“supply area”** means an area for the time being constituted as such under section 11A;

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“**trading licence**” means a licence having the classification referred to in section 11D (1) (b).

”;

and

- (b) by deleting the full stop at the end of the definition of “inspector” and substituting a semicolon.

**Section 6 amended**

**6.** Section 6 of the principal Act is amended by inserting after paragraph (a) the following paragraph —

“

- (aa) to administer the licensing scheme provided for by Part 2A;

”.

**Section 10 amended**

**7.** Section 10 of the principal Act is amended by inserting after subsection (1) the following subsection —

“

- (1a) The Minister must not under subsection (1) direct the Coordinator with respect to the performance of the Coordinator’s functions under Part 2A in respect of a particular person or a particular application.

”.

**Part 2A inserted**

**8.** After Part 2 of the principal Act the following Part is inserted —

“

**PART 2A — LICENSING OF GAS SUPPLY**

***Division 1 — Supply areas***

**Constitution of supply areas**

**11A.** (1) The Governor may by order published in the *Gazette* —

- (a) constitute an area as a supply area;
- (b) add an area to, or excise an area from, a supply area; or
- (c) cancel the status of an area as a supply area.

(2) An order is not to be made under subsection (1) excising an area from a supply area or cancelling the status of an area as a supply area unless the Governor is satisfied that the supply of gas provided in the area in question will, after the excision or cancellation, continue to be of an acceptable standard.

(3) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (1) as if the order were a regulation.

**Areas need not be continuous**

**11B.** A supply area may be one continuous area or be made up of 2 or more separate areas.

**Consultation**

**11C.** Where it is proposed that an order be made under section 11A, the Minister must, before the order is made, consult with any licensee who will be materially affected by the proposed order.

***Division 2 — Licence classification and area of operation***

**Classification of licences**

**11D.** (1) Licences are classified as follows —

- (a) distribution, which authorizes the licensee —
  - (i) to construct a distribution system and to transport gas through the system; or
  - (ii) to transport gas through an existing distribution system, and if required for that purpose to make alterations to the system,  
and to operate and maintain the system; or
- (b) trading, which authorizes the licensee to sell to small use customers gas transported through a distribution system.

(2) A licence is to be designated by reference to one of the classifications referred to in subsection (1).

**Area to which licence applies**

**11E.** A licence is to be designated to apply to —

- (a) one or more supply areas; or

- (b) one or more parts of a supply area,  
specified in the licence.

***Division 3 — Licensing requirements***

**Licensing extends to statutory providers**

**11F.** The requirements of this Division apply to a person despite the fact that the person, in supplying gas, is performing a function that —

- (a) is authorized or provided for by or under a written law; or
- (b) has been approved under a written law.

**Requirement for licence**

**11G.** (1) A person must not in a supply area or part of a supply area —

- (a) construct, alter or operate a distribution system;  
or
- (b) transport gas through a distribution system,

except under the authority of a distribution licence granted by the Coordinator that applies to that area or that part of that area.

Penalty: \$100 000 and a daily penalty of \$5 000.

(2) A person must not in a supply area or part of a supply area sell to small use customers gas transported through a distribution system except under the authority of

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a trading licence granted by the Coordinator that applies to that area or that part of that area.

Penalty: \$100 000 and a daily penalty of \$5 000.

**Power to exempt**

**11H.** (1) The Governor may by order published in the *Gazette* provide for exemptions from section 11G.

(2) The Governor must not make an order under subsection (1) unless he or she is satisfied that it would not be contrary to the public interest to do so.

(3) The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters —

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of gas customers generally or of a class of gas customers;
- (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
- (f) the importance of competition in gas industry markets;



- (g) any other matter that he or she considers relevant.

(4) Section 43 (4) and (7) to (9) of the *Interpretation Act 1984* apply to an order under subsection (1) as if the order were subsidiary legislation.

### **Transitional provision**

**11I.** (1) This section applies to every person (an “**existing operator**”) that immediately before the commencement of an order under section 11A is undertaking any activity that, after that commencement, is required to be licensed under section 11G.

(2) An existing operator that wishes to apply for a licence in respect of an activity referred to in subsection (1) must do so within 4 months after the commencement of the relevant order.

(3) An existing operator is to be treated as if the person were the holder of the relevant licence —

- (a) until the expiry of 12 months after the commencement of the relevant order; or
- (b) until —
  - (i) a licence of that kind is granted to the person or is refused; and
  - (ii) in the case of a refusal, the time for an application for review of the decision under section 11ZH expires without an application being made or an application is made but is unsuccessful,

whichever happens first.

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(4) For the purposes of paragraph (b) (ii) of subsection (3) an application is unsuccessful if it —

- (a) results in the refusal referred to in paragraph (b) (i) of that subsection being confirmed; or
- (b) is withdrawn, discontinued or dismissed.

***Division 4 — Licence application, grant, etc.***

**Restriction on operation of this Division and Division 8**

**11J.** This Division and Division 8 have effect subject to sections 90 and 92 of the *Gas Pipelines Access (Western Australia) Act 1998*.

**Coordinator to consider public interest**

**11K.** (1) The Coordinator must not exercise a power conferred by this Division unless he or she is satisfied that it would not be contrary to the public interest to do so.

(2) The Coordinator, in determining whether the exercise of the power would not be contrary to the public interest, may take into account one or more of the matters referred to in section 11H (3).

**Application for licence**

**11L.** (1) An application for a licence is to be —

- (a) made in a form approved by the Coordinator; and
- (b) accompanied by the prescribed application fee.

(2) Without limiting subsection (1) (a), an applicant for a licence is to inform the Coordinator of —

- (a) the nature of the business activities undertaken or to be undertaken by the applicant in the gas industry in the State;
- (b) in the case of an application for a trading licence —
  - (i) the methods or principles that the applicant proposes to apply in determining its prices or charges; and
  - (ii) the terms and conditions of any proposed standard customer contract between the applicant and any purchaser of gas from the applicant;
- (c) the methods or standards that the applicant proposes to apply in supplying gas; and
- (d) in the case of an application for a distribution licence, the nature and extent of the construction, alteration, operation or maintenance of a distribution system undertaken or to be undertaken for the transportation of gas.

(3) The applicant must also provide such other information (including information as to surveys carried out) as the Coordinator may require for the proper consideration of the application.

#### **Terms and conditions of licence**

**11M.** (1) A licence is subject to such terms and conditions as are determined by the Coordinator.

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(2) Without limiting subsection (1), the terms and conditions may include provisions relating to any matter provided for by Schedule 1.

(3) Despite subsections (1) and (2), conditions relating to any matter referred to in paragraph (d), (e), (j) (i) or (iii) or (n) of Schedule 1 cannot be included in a licence granted to the Gas Corporation.

(4) Subject to subsection (3), the terms and conditions of a licence must be substantially similar to the terms and conditions of any other licence with the same classification under section 11D (1) that applies in the same supply area or part of a supply area.

(5) The terms and conditions of a licence must not be inconsistent with —

- (a) the Gas Pipelines Access (Western Australia) Law; or
- (b) regulations made under section 15 of the *Gas Standards Act 1972*.

(6) In this section a reference to the Gas Corporation includes any subsidiary of that corporation within the meaning of the *Gas Corporation Act 1994*.

**Coordinator may grant more than one licence for supply area**

**11N.** (1) The Coordinator may grant in respect of a supply area or part of a supply area more than one licence of a particular classification.

(2) In subsection (1) —

“**classification**” means a classification referred to in section 11D (1).

**Duration of licence**

**11O.** A licence may be granted or renewed for such period as the Coordinator thinks fit, but the period cannot exceed —

- (a) in the case of a distribution licence, 21 years from the date of its grant or renewal; or
- (b) in the case of a trading licence, 10 years from the date of its grant or renewal.

**Renewal of licence**

**11P.** An application for the renewal of a licence is to be —

- (a) made in a form approved by the Coordinator; and
- (b) accompanied by the prescribed application fee.

**Licence fee**

**11Q.** (1) A licensee must pay to the Coordinator the prescribed licence fee —

- (a) within one month from the day of grant or renewal of the licence; and
- (b) within one month from each anniversary of that day during the term of the licence.

(2) Regulations made under section 26 may prescribe different licence fees for each of the classifications referred to in section 11D (1).

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(3) The Coordinator may recover any outstanding licence fee in a court of competent jurisdiction as a debt due by the licensee to the Crown.

**Transfer of licence**

**11R.** (1) A licence cannot be transferred except with the approval of the Coordinator.

(2) Approval for the purposes of subsection (1) may be given on such terms and conditions as are determined by the Coordinator.

(3) An application for approval to transfer a licence is to be —

- (a) made in a form approved by the Coordinator; and
- (b) accompanied by the prescribed application fee.

**Decisions as to grant, renewal or transfer**

**11S.** (1) Subject to section 11K, the Coordinator must grant, renew or approve the transfer of a licence if he or she is satisfied that the applicant —

- (a) has, and is likely to retain; or
- (b) will acquire within a reasonable time after the grant, renewal or transfer, and is then likely to retain,

the financial and technical resources to undertake the activities authorized, or to be authorized, by the licence.

(2) The Coordinator must take all reasonable steps to make a decision in respect of an application for —

- (a) the grant or renewal of a licence; or
- (b) approval to transfer a licence,

within 90 days after the application is made.

### **Notice of decisions**

**11T.** (1) The Coordinator must ensure that notice of the grant, renewal or transfer of a licence is published in the *Gazette* as soon as is practicable after the grant, renewal or transfer.

(2) The notice is to include —

- (a) the date of the grant, renewal or transfer;
- (b) the name and business address of the licensee;
- (c) the term of the licence;
- (d) the supply area or areas, or the part or parts of a supply area, to which the licence applies; and
- (e) the place where a copy of the licence and any plan may be inspected under section 11U.

(3) The Coordinator must ensure that written notice of a decision to refuse to grant, renew, or approve the transfer of, a licence, together with a statement of the reasons for the decision, is given to the applicant within 14 days after the decision is made.

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**Licences to be available for inspection**

**11U.** The Coordinator is to make available at the Coordinator's office for inspection by members of the public during normal office hours —

- (a) a copy of every licence, as in force from time to time; and
- (b) if any supply area or part of a supply area to which a licence applies is specified by reference to a plan, a copy of the plan.

**Other laws not affected**

**11V.** (1) The grant, renewal or transfer of a licence does not affect the licensee's obligations to comply with any other written law in relation to the matters covered by the licence.

(2) Without limiting subsection (1) or sections 90 and 92 of the *Gas Pipelines Access (Western Australia) Act 1998*, a licence has effect subject to the Gas Pipelines Access (Western Australia) Law.

**Amendment of licence**

**11W.** (1) The Coordinator may determine that a licence is to be amended.

(2) A licence must specify the procedure to be followed in making such a determination, including the manner in which an amendment is to be notified to the licensee, and the determination may only be made in accordance with that procedure.

(3) An amendment cannot take effect until it is notified to the licensee under the procedure referred to in subsection (2).



(4) If a licence is amended under this section the Coordinator must ensure that notice is published in the *Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 11U.

(5) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

### ***Division 5 — Interruption etc. of supply***

#### **Interruption etc. of supply**

**11X.** (1) A licensee may interrupt, suspend or restrict the supply of gas provided by the licensee if in the licensee's opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.

(2) A licensee is not liable for any loss or damage that arises from any such interruption, suspension or restriction except to the extent that an agreement to which the licensee is a party provides otherwise.

(3) A licensee must take reasonable steps to minimize the extent or duration of any such interruption, suspension or restriction.

(4) This section is in addition to —

- (a) the provisions of section 48 of the *Energy Corporations (Powers) Act 1979* that apply to a licensee by operation of section 11ZO; and
- (b) any contractual rights that the licensee may have to interrupt, suspend or restrict the supply of gas,

and does not limit those provisions or rights.

***Division 6 — Duties included in licences***

**Asset management system**

**11Y.** (1) It is a condition of every distribution licence that the licensee is to —

- (a) provide for an asset management system in respect of the licensee's assets;
- (b) notify details of the system and any substantial changes to it to the Coordinator; and
- (c) not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the grant of the licence, provide the Coordinator with a report by an independent expert acceptable to the Coordinator as to the effectiveness of the system.

(2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the supply of gas and in the operation and maintenance of, and, where relevant, the construction or alteration of, the distribution system.

**Compliance with technical standards**

**11Z.** It is a condition of every licence that the licensee is to comply with the standards prescribed under the *Gas Standards Act 1972* and the *Liquid Petroleum Gas Act 1956* to the extent that those standards apply to the supply of gas by the licensee.

**Performance audit**

**11ZA.** (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the grant of the licence, provide the Coordinator with a performance audit conducted by an independent expert acceptable to the Coordinator.

(2) A performance audit is an audit of the effectiveness of measures taken by the licensee to meet —

- (a) the standards referred to in section 11Z; and
- (b) performance criteria specified in the licence.

(3) The Coordinator is to present to the Minister a report on each performance audit within 2 months after his or her receipt of the audit.

***Division 7 — Enforcement***

**Failure to comply with licence**

**11ZB.** (1) If, in the opinion of the Minister, a licensee contravenes a licence, the Minister may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.

(2) If, in the opinion of the Minister, a licensee fails to comply with a notice under subsection (1), the Minister may, subject to section 11ZC, do one or more of the following —

- (a) serve a letter of reprimand on the licensee;

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- (b) order the licensee to pay a monetary penalty fixed by the Minister but not exceeding \$100 000;
- (c) cause the contravention to be rectified to the satisfaction of the Minister.

(3) Persons authorized by the Minister may enter any premises and do all things that are necessary for the purposes of subsection (2) (c).

(4) The Minister may recover —

- (a) a penalty imposed under subsection (2) (b); or
- (b) the costs and expenses of any action taken under subsection (2) (c),

in a court of competent jurisdiction as a debt due by the licensee to the Crown.

**Right of licensee to make submissions**

**11ZC.** The Minister is not to take any action under section 11ZB (2) (b) or (c) unless he or she has notified the licensee of the proposed action and given the licensee a reasonable opportunity to make submissions on the matter.

**Exception where public health endangered**

**11ZD.** If, in the opinion of the Minister, the health or safety of members of the public is or may be at risk as a result of the contravention of a licence, the Minister may cause the contravention to be rectified under section 11ZB (2) (c) without —

- (a) serving notice on the licensee under section 11ZB (1); or
- (b) complying with section 11ZC.

**Cancellation of licence**

**11ZE.** (1) The Governor may cancel a licence if he or she is satisfied that the licensee —

- (a) is in default as defined in subsection (2);
- (b) has failed to pay a licence fee as required under section 11Q;
- (c) in the case of a company, is an externally administered corporation within the meaning of the Corporations Law; or
- (d) has within a period of 24 months been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10 000 or more or imprisonment for 12 months or more.

(2) For the purposes of subsection (1) (a) a licensee is in default if the Governor is satisfied that —

- (a) the licensee has failed to comply with a term or condition of the licence;
- (b) the failure is material in terms of the operation of the licence as a whole;
- (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister's opinion paragraph (b) applies to it; and
- (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.

(3) If a licence is cancelled under this section the Coordinator must ensure that notice of the cancellation is published in the *Gazette*.

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(4) Regulations may be made under section 26 providing, in the event of a licence being cancelled, for —

- (a) the vesting of assets, rights and interests of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling gas to be supplied after the cancellation;
- (b) the conferral of powers and duties for that purpose;
- (c) the discharge or assignment of liabilities;
- (d) the disposal of property; and
- (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).

(5) If —

- (a) a distribution licence is cancelled under this section; and
- (b) regulations of the kind referred to in subsection (4) (a) are made,

Division 9 applies, with all necessary changes, for the purpose of enabling gas to be supplied after the cancellation, as if references in that Division to a licensee were references to the person in whom the assets, rights and interests of the former licensee are vested under the regulations.

**Duty to leave system in safe condition**

**11ZF.** (1) Following the cancellation of a distribution licence under section 11ZE, the former licensee —

- (a) is to ensure that any distribution system constructed or operated by the former licensee under the licence is left in a safe condition; and
- (b) is not to remove any part of such a system except with the approval of the Minister.

(2) If, in the opinion of the Minister, a former licensee contravenes subsection (1), the Minister may cause the contravention to be rectified to the satisfaction of the Minister.

(3) Persons authorized by the Minister may enter any land or premises and do all things that are necessary for the purposes of subsection (2).

(4) The Minister may recover the costs and expenses of any action taken under subsection (2) in a court of competent jurisdiction as a debt due by the former licensee to the Crown.

**Minister to be informed**

**11ZG.** The Coordinator is to —

- (a) monitor and report to the Minister on compliance by licensees with their licences;
- (b) inform the Minister about any failure by a licensee to meet performance criteria or other requirements of the licence; and
- (c) provide advice to the Minister for the purposes of sections 11ZB, 11ZD and 11ZF.

***Division 8 — Review***

**Review of Coordinator's decision**

**11ZH.** (1) In this section —

**“Board”** means the Western Australian Gas Review Board established by the *Gas Pipelines Access (Western Australia) Act 1998*.

(2) A person adversely affected by a decision of the Coordinator —

- (a) to refuse to grant or renew a licence;
- (b) to refuse to approve the transfer of a licence;
- (c) as to the length of the period for which a licence is granted or renewed;
- (d) as to any term or condition of a licence; or
- (e) to amend a licence under section 11W,

may apply to the Board for a review of the decision within 14 days after receiving notice in writing of the decision from the Coordinator.

(3) The Board must make its determination on the review within 90 days after receiving the application for review.

(4) The Board may extend, or further extend, the period referred to in subsection (3) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension either because of its complexity or because of other special circumstances.



(5) If the Board extends the period, it must, before the end of the period, notify the applicant of the extension and the reasons for it.

(6) An application under this section does not operate to stay the decision unless the Board otherwise determines.

(7) On the application of a party to proceedings under this section, the Board may conduct the proceedings in the absence of the public.

(8) The Board may require the Coordinator to give information and other assistance, and to make reports, as specified by the Board.

(9) In proceedings under this section, the Board may make an order affirming, or setting aside or varying immediately or as from a specified future date, the decision under review and, for the purposes of the review, may exercise the same powers with respect to the subject matter of the decision as may be exercised with respect to that subject matter by the Coordinator.

(10) The Board may make such orders (if any) as to costs in respect of a proceeding as it thinks fit.

(11) The Board may refuse to review a decision if it considers that the application for review is trivial or vexatious.

(12) A determination by the Board on the review of a decision has the same effect as if it were made by the Coordinator.

(13) A reference in Part 6, Division 2 of the *Gas Pipelines Access (Western Australia) Act 1998* to proceedings before the Board includes a reference to proceedings under this section.

***Division 9 — Powers in relation to land***

**When this Division applies**

**11ZI.** The powers conferred by this Division may, subject to section 11ZE (5), only be exercised in relation to a distribution licence.

**Power of public authority to grant easements etc.**

**11ZJ.** (1) A public authority may grant to a licensee, on such terms and conditions as are agreed between the authority and the licensee, a relevant interest in respect of land held by the public authority in fee simple.

(2) In this section —

**“public authority”** means —

- (a) a Minister of the Crown;
- (b) an agency, authority or instrumentality of the Crown in right of the State or a local government; or
- (c) a body, whether corporate or unincorporate, that is established or continued for a public purpose by or under a written law and prescribed for the purposes of this definition;

**“relevant interest”** means a lease, easement, licence or other authority necessary or expedient to enable the licensee to construct, alter, operate or maintain a distribution system.

**Taking of interest or easement for purposes of licence**

**11ZK.** (1) For the purpose of enabling a licensee to supply gas as authorized by a licence, an interest in land or easement over land may be taken under Part 9 of the *Land Administration Act 1997* as if for a public work within the meaning of that Act.

(2) The power conferred by subsection (1) may only be exercised on the recommendation of the Minister responsible for the administration of this Act.

(3) Any costs and expenses incurred in the taking of an interest or easement under subsection (1) —

- (a) are to be paid by the licensee; and
- (b) may be recovered in a court of competent jurisdiction as a debt due by the licensee to the Crown.

(4) For the purposes of subsection (1) a reference to an interest in land in Part 9 of the *Land Administration Act 1997* includes an easement over land.

**Vesting of interest or easement**

**11ZL.** (1) Despite anything in Part 9 of the *Land Administration Act 1997*, on the taking of an interest in land or easement over land under section 11ZK, the interest or easement vests in the licensee.

(2) Part 9 of the *Land Administration Act 1997* applies, with all necessary changes, in relation to the recording or registering of the interest or easement taken under section 11ZK.

**Proceedings and liability**

**11ZM.** (1) Proceedings in respect of compensation, or otherwise for the purpose of complying with Parts 9 and 10 of the *Land Administration Act 1997*, are to be taken against the licensee.

(2) The licensee is liable in respect of the taking of an interest in land or easement over land under section 11ZK to the same extent as the Minister responsible for the administration of the *Land Administration Act 1997* would have been liable if the taking had been for the purpose of a public work.

**Easements in gross**

**11ZN.** An easement may be taken under section 11ZK without there being a dominant tenement and there may be made appurtenant or annexed to any such easement another easement or the benefit of a restriction as to the user of the land.

***Division 10 — Extension of Energy Corporations (Powers) Act 1979 to licensees***

**Extension of certain provisions of *Energy Corporations (Powers) Act 1979***

**11ZO.** (1) A reference to a corporation in a provision of the *Energy Corporations (Powers) Act 1979* referred to in Part 1 of Schedule 2 includes —

- (a) the holder of a distribution licence;
- (b) any transferee of a distribution licence under section 11R; and

- (c) any person in whom the assets, rights and interests of a former holder of a distribution licence are vested under regulations referred to in section 11ZE (4).

(2) A reference to a corporation in a provision of the *Energy Corporations (Powers) Act 1979* referred to in Part 2 of Schedule 2 includes —

- (a) the holder of a trading licence;
- (b) any transferee of a trading licence under section 11R; and
- (c) any person in whom the assets, rights and interests of a former holder of a trading licence are vested under regulations referred to in section 11ZE (4).

(3) Regulations may be made under section 26 in terms that —

- (a) restrict the operation of, or add a further requirement to, a prescribed provision in relation to a licensee or class of licensees;
- (b) impose conditions or restrictions on the doing of any thing authorized by a prescribed provision by a licensee or a member of a class of licensees;
- (c) prohibit a licensee or a member of a class of licensees from doing any thing authorized by a prescribed provision; or
- (d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing authorized by a prescribed provision.

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(4) In subsection (3) —

“**licensee**” includes a person referred to in subsection (1) (c) or (2) (c);

“**prescribed provision**” means a provision of the *Energy Corporations (Powers) Act 1979* referred to in Part 1 or 2 of Schedule 2.

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**Schedules 1 and 2 added**

**9.** After section 27 of the principal Act the following Schedules are added —

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**SCHEDULE 1 — LICENCE TERMS AND  
CONDITIONS**

[Section 11M]

A licence may include provisions —

- (a) requiring the licensee to enter into agreements on specified terms or on terms of a specified type, other than agreements relating to the provision of access to gas distribution capacity that are covered by the Gas Pipelines Access (Western Australia) Law;
- (b) requiring the licensee to observe specified industry codes with such modifications or exemptions as may be determined by the Coordinator;
- (c) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
- (d) preventing the licensee from engaging in or undertaking specified business activities or any other business in the gas industry in the State;

- (e) if the licence is a trading licence, specifying methods or principles to be applied by the licensee in determining its fees or charges;
- (f) specifying methods or standards to be applied in supplying gas under the authority of the licence;
- (g) specifying procedures for surrender of the licence;
- (h) requiring the licensee to provide specified information relating to the activities of the licensee under the licence to the Coordinator in the manner and form determined by the Coordinator;
- (i) regulating the construction, alteration, operation or maintenance of a distribution system;
- (j) relating to the performance of functions by the licensee including —
  - (i) the range of functions that may be performed by the licensee;
  - (ii) performance criteria to be met by the licensee; and
  - (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;
- (k) if the licence is a trading licence, specifying —
  - (i) the terms and conditions of any customer contract which an owner or occupier of land is required to enter into with the licensee in the absence of any express agreement between the customer and the licensee to the contrary; and
  - (ii) any limitation on the capacity of the parties by express agreement to exclude, modify or restrict the terms and conditions of the customer contract;

- (l) if the licence is a trading licence, specifying standards of customer service to be applied in supplying gas under the authority of the licence;
- (m) relating to obligations of the licensee with respect to public authorities and other licensees; and
- (n) relating to the disposal or transfer of property, rights or liabilities of a specified kind either during the term of the licence or on or after its expiration by effluxion of time including provisions —
  - (i) prohibiting any disposal or transfer of property except with the approval of a specified person;
  - (ii) prohibiting the giving of any encumbrance over specified property except with the approval of the Coordinator;
  - (iii) requiring the transfer of property, rights or liabilities of a specified kind to a specified person on or within a specified time after the expiration of the licence;
  - (iv) with respect to the consideration to be provided in respect of any disposal or transfer;
  - (v) with respect to the arbitration of disputes that arise in connection with any disposal or transfer; and
  - (vi) of a supplementary, consequential or transitional nature in relation to any disposal or transfer.



**SCHEDULE 2 — PROVISIONS OF *ENERGY CORPORATIONS (POWERS) ACT 1979* THAT APPLY TO LICENSEES**

[Section 11ZO]

Part 1 — Provisions applicable in relation to distribution licences

s. 4 (1)	s. 48	s. 75
(definition of	s. 49	s. 76
“service	s. 50	s. 77
apparatus”)	s. 51	s. 79
s. 4 (2)	s. 52	s. 84 (2) & (3)
s. 40	s. 53	s. 120
s. 43	s. 66	s. 121
s. 46 (7), (8),	s. 67	
(11), (12),	s. 67A	
(14) & (16)	s. 74	

Part 2 — Provisions applicable in relation to trading licences

s. 4 (1)	s. 43	s. 67
(definition of	s. 46 (7), (8),	s. 67A
“service	(11) & (16)	s. 74
apparatus”)	s. 48	s. 79
s. 4 (2)	s. 66	s. 84 (2) & (3)

**Consequential amendments**

**10.** (1) The *Energy Corporations (Powers) Act 1979\** is amended —

(a) in section 55 (1) (b) by inserting after “other than” the following —

“  
the holder of a licence under the *Energy Coordination Act 1994* acting under the authority of that licence or  
”;

and

- (b) in section 56 (2) by inserting after “other than” the following —

“  
the holder of a licence under the *Energy Coordination Act 1994* acting under the authority of that licence or  
”.

[\* Reprinted as at 25 May 1995.  
For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 70-71 and Acts Nos. 78 of 1995 and 14 of 1996.]

- (2) The *Gas Corporation Act 1994*\* is amended in section 28 by inserting after subsection (2) the following subsection —

“  
(2a) Where the performance of any of the corporation’s functions referred to in subsection (1) (a) requires that the corporation hold a licence under the *Energy Coordination Act 1994*, the corporation may only perform that function in accordance with the terms and conditions of such a licence.  
”.

[\* Act No. 87 of 1994.]

- (3) The *Gas Pipelines Access (Western Australia) Act 1998*\* is amended in section 8 (1) —

- (a) by deleting “or” after paragraph (a);  
(b) by deleting the full stop at the end of paragraph (b) and substituting the following —

“ ; or ”; and

- (c) by inserting after paragraph (b) the following paragraph —

“

- (c) a system for which a licence is in force under Part 2A of the *Energy Coordination Act 1994*.

”.

[\* *Act No. 65 of 1998.*]

- (4) The *Gas Undertakings Act 1947\** is amended in section 2 (1) in the definition of “gas undertaker” or “undertaker” by inserting after “local government” the following —

“

, the holder of a licence under the *Energy Coordination Act 1994*

”.

[\* *Reprinted as at 15 January 1991.*

*For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 89-90 and Act No. 14 of 1996.*]

- (5) The *Petroleum Pipelines Act 1969\** is amended in section 4 (1) in the definition of “pipeline” by inserting after paragraph (d) the following paragraph —

“

(da) a pipeline that is part of a distribution system as defined in the *Energy Coordination Act 1994*;

”.

[\* *Reprinted as at 19 February 1992.*

*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 177.*]