

Gas Corporation (Business Disposal) Bill 1999

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Gas Corporation (Business Disposal)
Bill 1999**

A Bill for

An Act to provide for —

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

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

5 **2. Commencement**

(1) Unless this section specifies otherwise, the provisions of this Act come into operation on the day on which it receives the Royal Assent.

10 (2) Part 6 Division 2 is deemed to have come into operation immediately before a distribution licence is granted to the corporation or a subsidiary of the corporation under Part 2A of the *Energy Coordination Act 1994*.

15 (3) The notice of the grant of a distribution licence to the corporation or a subsidiary of the corporation that is published in the *Gazette* under section 11T of the *Energy Coordination Act 1994* is to contain a statement as to the effect of subsection (2).

(4) Section 21 of the *Interpretation Act 1984* does not apply to the coming into operation of Part 6 Division 2.

20 (5) Part 6 Division 3 comes into operation on a day fixed by proclamation.

(6) The day fixed under subsection (5) is to be the day on which the disposal referred to in section 5(1) is in the Minister's opinion substantially complete.

25 (7) Part 6 Division 4 comes into operation on 1 January 2000.

- (8) Part 6 Division 5 does not come into operation unless the day fixed under subsection (5) is later than 1 July 2002 in which case Part 6 Division 5 comes into operation on 1 July 2002.

3. Definitions

- 5 In this Act, unless the contrary intention appears —
- “**acquire**”, “**dispose of**” and “**entitled**”, in relation to shares or other securities in the corporate vehicle, have the same meanings as they have in Chapter 6 of the Corporations Law;
- 10 “**cornerstone investor**” has the meaning given by section 5(5)(a);
- “**corporate vehicle**” has the meaning given by section 5(2);
- “**corporation**” means the Gas Corporation established by the *Gas Corporation Act 1994*;
- 15 “**section 6 disposal**” means a disposal for which an order has been made under section 6;
- “**securities**”, in relation to the corporate vehicle, has the meaning given by section 92 of the Corporations Law;
- 20 “**specified percentage**” has the meaning given by section 5(5)(a);
- “**subsidiary**” means a body that would be a subsidiary of the corporation within the meaning of the Corporations Law if the corporation were a body corporate to which the Corporations Law applied.

25 **4. Crown bound**

This Act binds the Crown.

Part 2 — The disposal

5. Disposal of business and property authorized

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

(7) An order under section 6 cannot have the effect of allowing any person to become entitled to more than 49% of the shares in the corporate vehicle.

5 (8) Section 12(3) does not apply to an acquisition of shares under subsection (4).

6. Minister may order disposal

(1) The Minister may make an order for the disposal referred to in section 5(1).

10 (2) An order under this section may include provisions as to details of the disposal, and may deal with incidental and supplementary matters.

(3) The Minister may make an order to vary or revoke a previous order under this section at any time before effect has been given to it.

15 (4) The Minister is to cause an order under this section to be published in the *Gazette*.

(5) The Minister must obtain the Treasurer's approval before making an order under this section.

7. Minister may give directions to corporation

20 (1) The Minister may give directions in writing to the corporation for the purpose of bringing about a section 6 disposal.

(2) Without limiting subsection (1), a direction under that subsection may require the corporation —

25 (a) to form or acquire a subsidiary;

(b) to assign to a subsidiary specified assets, liabilities or undertakings;

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- (c) to dispose of its shares in a subsidiary either generally or to a specified person;
 - (d) to assign to the corporate vehicle specified assets, liabilities or undertakings;
 - 5 (e) to dispose of its securities in the corporate vehicle either generally or to a specified person;
 - (f) to dispose of other specified assets, liabilities or undertakings either generally or to a specified person;
 - 10 (g) to reorganize its affairs in anticipation of anything that is to be done under this Act.
- (3) Without limiting subsection (1), a direction under that subsection may require the corporation —
- (a) to allow the whole or part of its functions under this Act to be performed on its behalf by; and
 - 15 (b) to act in accordance with the instructions of,

a committee of persons appointed by the Minister and given responsibility for the conduct of the disposal and related matters.
- (4) The Minister is to cause the text of any direction under subsection (1) to be laid before each House of Parliament within 20 14 days after the direction is given, and section 96 of the *Gas Corporation Act 1994* applies as if subsection (1)(a) of it included a reference to this subsection.
- (5) The annual report in respect of the corporation must include 25 particulars of any direction under subsection (1) as if section 64(1)(c) of the *Gas Corporation Act 1994* included a reference to a direction of that kind.

8. Corporation to comply with directions

- (1) The corporation has a duty to comply with a direction given to it under section 7(1).
- (2) The duty imposed by subsection (1) is to be regarded as a function of the corporation under the *Gas Corporation Act 1994*, and if there is a conflict or inconsistency between that duty and —
- (a) any duty imposed by that Act; or
 - (b) any provision of that Act,
- the duty imposed by subsection (1) prevails.
- (3) Section 7 applies despite section 6(a) of the *Statutory Corporations (Liability of Directors) Act 1996*.

9. General powers

- (1) The Minister —
- (a) may do, in the State or elsewhere, anything necessary or convenient for the purposes of this Act;
 - (b) may enter into an agreement on behalf of the State for, or in relation to, the disposal by the corporation or a subsidiary of anything referred to in section 5(1).
- (2) Without limiting the powers of the corporation under the *Gas Corporation Act 1994* as read with section 8, the corporation or a subsidiary —
- (a) may do, in the State or elsewhere, anything necessary or convenient for the purposes of this Act;
 - (b) may enter into an agreement for, or in relation to, the disposal of anything referred to in section 5(1).

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10. Corporate vehicle's constitution to contain certain provisions

- (1) The constitution of the corporate vehicle must —
- 5 (a) require the corporate vehicle to be incorporated in Western Australia;
- (b) require that the head office of the corporate vehicle, that is the place where central management and control of the corporate vehicle are exercised, be located in Western Australia;
- 10 (c) require that —
- (i) at least a majority of the board of directors of the corporate vehicle; and
- (ii) the chief executive officer, while holding office be ordinarily resident in Western Australia; and
- 15 (d) prohibit the alteration of anything in its constitution that is required by this subsection.
- (2) If the constitution of the corporate vehicle does not comply with subsection (1), it is to be regarded as having been amended to include the provisions required by that subsection and the constitution of the corporate vehicle lodged under the Corporations Law is to be regarded as being the constitution as so amended.
- 20 (3) A purported alteration of the constitution of the corporate vehicle that would have the effect that the constitution would not comply with subsection (1) has no effect.
- 25 (4) A resolution of the corporate vehicle that —
- (a) would, if acted on, result in a contravention of subsection (1) or a provision of its constitution that is required by that subsection; or
- 30

(b) purports to ratify an act or omission that contravenes subsection (1) or a provision of its constitution that is required by that subsection,

has no effect.

5 (5) This section applies at all times, whether before, on or after the day fixed under section 2(5).

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

10 (1) A person must not acquire or dispose of shares, or an interest in shares, in the corporate vehicle within 2 years after that person or another person becomes the cornerstone investor if the acquisition or disposal would have the result that the cornerstone investor's entitlement to shares in the corporate vehicle would become more than, or less than, the specified percentage.

(2) The acquisition or disposal of shares, or an interest in shares, in the corporate vehicle within the period mentioned in subsection (1) does not contravene that subsection if it is permitted by the Minister by notice published in the *Gazette*.

20 (3) Permission given by a notice under subsection (2) may be expressed to apply generally or to only apply to such circumstances as are set out in the notice.

(4) A person who contravenes subsection (1) commits an offence.
Penalty: \$200 000 or imprisonment for 12 months.

25 (5) A contract, dealing or other transaction is not unenforceable, voidable, or void merely because it was contrary to this section.

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12. Restrictions on share dealings for 2 years

- (1) A person must not (whether as principal or agent) apply for shares in the corporate vehicle in a public float if the acquisition of those shares would have the result —
- 5 (a) that the cornerstone investor's entitlement to shares in the corporate vehicle would become more than the specified percentage; or
- (b) that any person would be entitled to more than 5% of the shares in the corporate vehicle.
- 10 Penalty: \$200 000 or imprisonment for 12 months.
- (2) Subsection (1) does not apply to the issue or purchase of shares under an underwriting agreement entered into to facilitate the sale of shares in the corporate vehicle by a public float.
- (3) A person must not acquire shares in the corporate vehicle in any other way than on an application described in subsection (1) if
- 15 any person (other than the cornerstone investor) who —
- (a) is not entitled to any shares in the corporate vehicle; or
- (b) is entitled to less than 5% of the shares in the corporate vehicle,
- 20 would, immediately after the acquisition, be entitled to more than 5% of the shares in the corporate vehicle.
- Penalty: \$200 000 or imprisonment for 12 months.
- (4) Subsection (3) does not apply to an acquisition occurring at least 2 years after the day on which a person becomes the
- 25 cornerstone investor.
- (5) A contract, dealing or other transaction is not unenforceable, voidable, or void merely because it was contrary to this section.

13. Liability of management for offence by body corporate

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

- 5 (a) the offence was committed without the officer's consent or connivance; and
- (b) the officer exercised all due diligence to prevent the commission of the offence that ought to have been exercised having regard to the nature of the officer's
- 10 functions and to all the circumstances.

(2) In subsection (1) —

“officer”, in relation to a body corporate, means —

- (a) a director or secretary of the body;
- 15 (b) a person regarded under the Corporations Law as a person in accordance with whose directions or instructions a director or the directors of the body are accustomed to act; or
- (c) a person who is concerned in the management of the body, whether as an employee or in any other
- 20 capacity.

Part 3 — Implementing disposal and ancillary matters

Division 1 — Transfer orders

14. Definitions

In this Division, unless the contrary intention appears —

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

(a) any chose in action or goodwill; or

(b) any right, interest, or claim of any kind,
10 whether arising from, accruing under, created or evidenced
 by or the subject of, an instrument or otherwise and
 whether liquidated or unliquidated, actual, contingent or
 prospective;

“assignee” means the person specified in a transfer order as —

15 (a) the person to whom anything is assigned; or

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

20 **“liability”** means any liability, duty or obligation —

(a) whether actual, contingent or prospective, liquidated
 or unliquidated; or

(b) whether owed alone or jointly or jointly and severally
 with any other person;

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

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

5 “**transfer time**” means the transfer time specified in a transfer order.

15. Minister may make transfer orders

- (1) For the purpose of doing anything in preparation for, or giving effect to, a section 6 disposal, the Minister may make and publish in the *Gazette* an order that —
- 10 (a) specifies a time, being not before the day the order is published, to be the transfer time for that order;
- (b) specifies any asset or liability of the corporation that, by operation of section 16, is to be assigned to the person specified in the order;
- 15 (c) specifies proceedings in which the person specified in the order is to be substituted for the corporation as a party; and
- (d) specifies any agreement or instrument relating to anything assigned that, by operation of section 16, is to have effect as if, unless otherwise expressly specified in the order, references to the assignee were substituted for references in it to the corporation.
- 20
- (2) If the transfer time is specified by reference to when a thing is done, the Minister is to cause notice to be published in the *Gazette* of the time when that thing was done and that thing is to be regarded as having been done at that time unless the contrary is proved.
- 25
- (3) An order under subsection (1) may allocate a value to an asset, a liability, a class of assets or a class of liabilities.

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Part 3 Implementing disposal and ancillary matters

Division 1 Transfer orders

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- (4) The transfer order may specify things by reference to schedules which —
- (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection,
- 5 and anyone or anything specified in a schedule is to be taken to be specified in the order.
- (5) Anyone or anything may be specified in a transfer order by describing the person or thing as a member of a class.
- (6) Before a transfer order is made specifying anything by reference to a schedule, a copy of which will be required to be delivered to a relevant official under section 20, the Minister is to consult as to the form and content of the schedule with the relevant official (or each relevant official if there is more than one).
- 10
- (7) The transfer order, or a schedule to which it refers, may, with the consent of the assignee, be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.
- 15
- (8) An order under this section and any schedule to which it refers is to be signed by the Minister.

20 **16. Consequences of transfer order**

- (1) If a transfer order is made then, except as may be otherwise agreed between the Minister and the assignee —
- (a) at the transfer time —
 - (i) an asset that is specified is, by operation of this section, assigned to the assignee;
 - (ii) a liability that is specified is, by operation of this section, assigned to and becomes a liability of the assignee; and
- 25

- (iii) the assignee is, by operation of this section, substituted for the corporation as a party to any specified proceedings;
- (b) an agreement or instrument that is specified has effect, by operation of this section, as if, unless otherwise expressly specified, a reference to the assignee were, at the transfer time, substituted for a reference to the corporation in the agreement or instrument.
- (2) If a transfer order assigns an interest held by the corporation as a joint tenant with the Electricity Corporation, the assignment does not sever the joint tenancy and the assignee holds the interest as a joint tenant with the Electricity Corporation.
- (3) In this section —
- “Electricity Corporation”** means the Electricity Corporation established by the *Electricity Corporation Act 1994*;
- “specified”** means specified in the transfer order.

17. Completion of necessary transactions

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

18. Contracts arising from certain internal arrangements of corporation

- (1) An instrument that provides for arrangements between different parts of the corporation’s business and operations may be specified in a transfer order as if it created contractual rights and liabilities.

(2) An instrument specified as described in subsection (1) is to be regarded as if its provisions were contractual provisions between different legal entities.

5 (3) The definitions of “liability” and “right” in section 14 include contractual liabilities and rights that are to be regarded as arising because of subsection (2), and those liabilities and rights are accordingly assignable under this Division.

19. Arrangements for custody and use of records

10 The corporation and an assignee may make arrangements for the delivery or sharing of, and access to, registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded, or stored) relating to any asset, liability, proceedings, agreement, or instrument specified under section 15(1) in a transfer order.

15 **20. Registration of documents**

(1) The Minister is to cause a copy of each transfer order, any schedule to which it refers, and any notice under section 15(2) relating to the transfer time, to be delivered to each relevant official and the corporation.

20 (2) The relevant officials are to take notice of this Part, any transfer order, including a schedule to which the order refers, and any notice under section 15(2), and are to record and register in the appropriate manner the documents necessary to show the effect of the transfer order and this Part.

25 (3) In this section —

“**relevant official**” means the Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Administration Act 1997* and the *Mining Act 1978* or any other person authorized by a written law to record and give

effect to the registration of documents relating to transactions affecting relevant property;

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

5

21. Rectifying error in transfer order

- (1) The Minister may by order published in the *Gazette* make any provision that is necessary to correct any error in a transfer order or a schedule to which a transfer order refers.
- 10 (2) An order under this section may be made so as to have effect from the transfer time under the transfer order.
- (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 16 does not, as a result of that provision, operate so as —
 - 15 (a) to affect, in a manner prejudicial to any person (other than the State, the corporation, the assignee, or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State, 20 the corporation, the assignee, or a Minister, officer or agency of the State), in respect of anything done or omitted to be done before the day of publication.

Division 2 — Other matters

22. Assignable nature of the assets

- 25 (1) The assignment of an asset by the corporation is not prevented by any written law that, before the assignment, states that the asset vests in the corporation.

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

23. Benefits of easements assignable

- 10 (1) The benefit of an easement in favour of the corporation to which any land is subject by virtue of section 27A(1)(b)(v) of the *Town Planning and Development Act 1928* or otherwise (even though the easement may not have been created as being assignable) is capable of being assigned from the corporation or any person to whom it may be subsequently assigned.

- 15 (2) Upon being satisfied that an easement has been assigned in accordance with subsection (1), the Registrar of Titles or Registrar of Deeds as the case requires —

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

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

24. Use of corporation's staff and facilities

- (1) This section applies only until the day fixed under section 2(5).

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

25. Consumer contracts

- 10 (1) Any person who was a tariff consumer immediately before the relevant day is to be regarded on and from that day as having entered into a contract with the assignee of the supply business in a form approved by the Coordinator of Energy and set out in a notice published in the *Gazette*.
- (2) A notice under subsection (1) can specify different forms of contract in respect of different classes of tariff consumers.
- 15 (3) In this section —
- “Coordinator of Energy”** means the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*;
- 20 **“relevant day”** means the day fixed under section 2(5) or such earlier day as the Minister may fix for the purposes of this section by notice published in the *Gazette*;
- “supply business”** means that part of the operations of the corporation or a subsidiary that consisted of or included the supply of gas to tariff consumers;
- 25 **“tariff consumer”** means a person who was supplied with gas by the corporation or a subsidiary (otherwise than under a written contract) in relation to which the person was liable to pay fees and charges prescribed under section 124 of the *Energy Corporations (Powers) Act 1979*.

26. Proceeds of disposal

(1) A direction under section 7(1) may, if the Treasurer concurs, require the corporation to pay or use any of the proceeds of a section 6 disposal as specified in the direction.

5 (2) Subject to subsection (1), the proceeds of a section 6 disposal are to be applied as follows —

(a) firstly in meeting the expenses of disposal as determined by the Treasurer;

10 (b) secondly in payment to the corporate vehicle of any amount determined by the Treasurer;

(c) thirdly in payment of the liabilities of the corporation and subsidiaries; and

(d) fourthly by the payment of the balance into the Consolidated Fund.

15 **27. Disclosure of information**

(1) A disclosure of information made in accordance with this section for the purposes of facilitating a section 6 disposal is not to be regarded —

20 (a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a contravention of section 24 of the *Energy Coordination Act 1994*;

(c) as a contravention of Schedule 2 to the *Gas Corporation Act 1994*;

25 (d) as a contravention of section 5 of the *Statutory Corporations (Liability of Directors) Act 1996*; or

(e) as a contravention of section 232 or Part 7.11 Division 2A of the Corporations Law.

- 5 (2) Subsection (1) applies to a disclosure of information made by the Government, the corporation or a subsidiary, or by a person acting with the authority of the Government, the corporation or a subsidiary, but does not apply to any other person to whom the information is given.
- 10 (3) Subsection (1) applies to a disclosure of information made by the corporate vehicle, or by a person acting with the authority of the corporate vehicle, before the day fixed under section 2(5), but does not apply to any other person to whom the information is given.
- 15 (4) Subsection (1) applies to confidential information or information not publicly known concerning the affairs of —
- (a) the corporation or a subsidiary;
 - (b) the corporate vehicle, or a subsidiary of it within the meaning of the Corporations Law; or
 - (c) a customer, or former customer, of a body referred to in paragraph (a) or (b).

28. Auditor General may disclose information

- 20 (1) The Auditor General may disclose to any person, or provide any person with access to, information relating to the corporation that is in the possession or under the control of the Auditor General, if the information is disclosed or the access is provided —
- 25 (a) for the purpose of facilitating a section 6 disposal; and
 - (b) at the request of the corporation or a committee referred to in section 7(3).
- (2) Subsection (1) applies despite section 91 of the *Financial Administration and Audit Act 1985*.

29. Offence of disclosing information

(1) A person who —

(a) under section 28 or otherwise, obtains information connected with a section 6 disposal; and

5 (b) has agreed or is otherwise under a duty not to disclose the information to others,

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

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

15 Penalty: \$100 000.

30. Saving

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

(a) as a breach of contract or confidence or otherwise as a civil wrong;

20 (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of information;

(c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or liability;

25 (d) as causing any contract or instrument to be void or otherwise unenforceable; or

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

31. State indemnities and guarantees

- (1) The Treasurer may, in the name and on behalf of the State, give an indemnity or guarantee in respect of a matter related to —
- (a) a section 6 disposal; or
 - 5 (b) the assignment of anything in connection with a section 6 disposal.
- (2) The Treasurer may, in the name and on behalf of the State, give to any person who is or has been —
- (a) a director or officer of the corporation or of a subsidiary;
 - 10 (b) a director or officer of the corporate vehicle or of a subsidiary of it within the meaning of the Corporations Law; or
 - (c) a member or alternate member of a committee referred to in section 7(3),
- 15 an indemnity against any liability determined by the Treasurer whether or not the liability relates to a matter referred to in subsection (1).
- (3) In subsection (2) —
- “**liability**” includes civil liability under the Corporations Law.
- 20 (4) The payment of any money under an indemnity or guarantee given under this section is to be made by the Treasurer and charged to the Consolidated Fund, which this section appropriates to the necessary extent.

32. State takeover of certain obligations

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

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Part 3 Implementing disposal and ancillary matters

Division 2 Other matters

s. 33

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

33. Regulations

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

Part 4 — Transitional provisions

34. Purpose of this Part

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

35. Subsidiary to have corporation's powers and duties

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

36. Modification of other written laws

15 (1) Regulations may modify the effect of any written law, in so far as it relates to a subsidiary, as may be necessary or convenient for the purposes of this Part.

(2) Without limiting subsection (1), regulations may provide —

20 (a) that a reference to the corporation in a written law, other than this Act, that related to anything before it was transferred to a subsidiary includes a reference to the subsidiary; and

25 (b) that to the extent that a written law applies because of a regulation made in accordance with paragraph (a), it is modified as specified in the regulations.

s. 37

Part 5 — Miscellaneous

37. Auditor General to report on certain matters

- 5 (1) The Auditor General must examine and report to each House of Parliament within 60 days of the day fixed under section 2(5) on the following matters —
- (a) any obligations, duties or liabilities taken over by or imposed on the State under this Act;
- (b) any indemnities or guarantees given by or on behalf of the State under this Act; and
- 10 (c) any other matter that arises out of or is connected with the matters mentioned in paragraphs (a) and (b).
- (2) If a House of Parliament is not sitting when the Auditor General is ready to report to it under subsection (1) the Auditor General is to transmit the report to the Clerk of that House and the report is to be regarded as having been received by that House.
- 15 (3) The receipt of a report that is to be regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day after the Clerk receives the report.
- 20 (4) If in any year any indemnity or guarantee given under section 31(1) or (2) remains outstanding, the Auditor General may include in his or her report under section 95 of the *Financial Administration and Audit Act 1985* a report on the extent of the liability of the State under those indemnities and
- 25 guarantees.

38. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the
- 30 purposes of this Act.

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

Part 6 — Effect on other Acts

Division 1 — Provisions commencing on Royal Assent

Subdivision 1 — *Aboriginal Heritage Act 1972*

39. Section 18 amended

5 After section 18(1) of the *Aboriginal Heritage Act 1972** the following subsection is inserted —

“

(1a) A person is also included as an owner of land for the purposes of this section if —

10

(a) the person —

(i) is the holder of rights conferred under section 34 of the *Dampier to Bunbury Pipeline Act 1997* in respect of the land or is the holder’s nominee approved under section 34(3) of that Act; or

15

(ii) has authority under section 7 of the *Petroleum Pipelines Act 1969* to enter upon the land;

or

20

(b) the person is the holder of a distribution licence under Part 2A of the *Energy Coordination Act 1994* as a result of which the person has rights or powers in respect of the land.

”.

25

[*Reprinted as at 4 October 1995.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, pp.2-3.]

Subdivision 2 — *Dampier to Bunbury Pipeline Act 1997*

40. The Act amended

The amendments in this Subdivision are to the *Dampier to Bunbury Pipeline Act 1997**.

5 [* *Act No. 53 of 1997.*
 For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.67.]

41. Section 34 amended

After section 34(5) the following subsections are inserted —

- 10 “
- (5a) Rights are to be regarded as having been conferred under this section on the corporation, for the purposes of a pipeline for transporting gas that is not part of the corporation's DBNGP system, to the full extent that
- 15 they are capable of being conferred under this section.
- (5b) Subsection (5a) —
- (a) is to be regarded as having had effect since immediately after the commencement of Schedule 4 clause 9; and
- 20 (b) ceases to have effect immediately before rights are actually conferred on the corporation for the purposes referred to in subsection (5a).
- ”.

42. Section 43 repealed

25 Section 43 is repealed.

43. Schedule 3 repealed

Schedule 3 is repealed.

44. Schedule 4 amended

- (1) Schedule 4 Division 2 is repealed.
- (2) Schedule 4 Division 9 is repealed.

Subdivision 3 — *Electricity Corporation Act 1994*

5 **45. Section 38A inserted**

After section 38 of the *Electricity Corporation Act 1994** the following section is inserted —

“

38A. Directions by Governor

- 10 (1) The Governor may from time to time by instrument in writing served on the corporation direct the corporation not to sell or supply gas —
 - 15 (a) within, or for delivery or consumption within, a specified area or specified areas of the State;
 - (b) in specified quantities; or
 - (c) to specified customers or a specified class of customers.
- (2) In subsection (1) —
“**specified**” means specified in the instrument.
- 20 (3) Sections 41, 42 and 43 (4) of the *Interpretation Act 1984* apply to an instrument under this section as if it were a regulation.

- (4) A direction under this section has effect and is to be complied with by the corporation despite any other written law.

”.

5 [* Act No. 86 of 1994.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.81.]

Subdivision 4 — *Energy Coordination Act 1994*

46. The Act amended

10 The amendments in this Subdivision are to the *Energy Coordination Act 1994*.*.

[* Act No. 71 of 1994.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.82, and Act No. 20 of 1999.]

15 **47. Section 3 amended**

Section 3 is amended as follows:

- (a) by deleting the definition of “distribution system” and inserting instead the following definition —

“

20 **“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; or

5 (b) any other part of the gas distribution system (as defined in section 90 of the *Gas Corporation Act 1994*) at the time when a distribution licence is first issued for all or any part of that system (regardless of the pressure at which it is designed to operate),
and any associated apparatus, facilities, structures, plant, or equipment;

”;

10 (b) by deleting the definition of “Gas Corporation”.

48. Section 11M amended

Section 11M(3) and (6) are repealed.

49. Section 24A inserted

In Part 5, before section 25, the following section is inserted —

15 “

24A. Gas supply system emergencies

- (1) Schedule 3 applies with respect to gas supply system emergencies.
- 20 (2) To the extent that Schedule 3 or anything in an order under that Schedule is inconsistent with any safety provision of the *Petroleum Pipelines Act 1969* or of a licence under that Act or under Part 2A of the *Energy Coordination Act 1994*, the safety provision prevails and the inconsistent provision of Schedule 3 or the
- 25 order has no effect.

51. Schedule 1 amended

Schedule 1 is amended by inserting after paragraph (i) the following paragraphs —

“

- 5 (ia) if the licence is a distribution licence, requiring the licensee to undertake an extension of, or an expansion to, the distribution system located within an area specified in the licence;
- 10 (ib) if the licence is a trading licence, requiring the licensee to ensure the supply of gas to existing or new customers who require it, in such circumstances as may be specified in the licence whether by reference to a class of gas customer, the amount of gas to be supplied to the customer or customers of a class, where the gas is to be
- 15 consumed, or any other factor;
- (ic) if the licence is a trading licence, regulating the extent to which the licensee’s gas customers may be of a particular class;
- 20 (id) requiring the licensee to lodge with the Coordinator securities in an amount and of a nature acceptable to the Coordinator securing the performance by the licensee of the requirements, responsibilities and obligations under the licence.

”.

52. Schedule 3 inserted

At the end of the Act, the following Schedule is inserted —

“

Schedule 3 — Gas supply system emergencies

5

[s. 24A]

1. Definitions

(1) In this Schedule —

“**emergency**” means —

10 (a) any event or circumstance in relation to a supply system by reason of which the supply of gas from it is, or in the opinion of the Coordinator may reasonably be expected to be, seriously affected; or

15 (b) any event or circumstance in relation to any act, matter or thing by reason of which the supply of gas from a supply system is, or in the opinion of the Coordinator may reasonably be expected to be, seriously affected,

20 that, in the opinion of the operator of the supply system, requires the immediate exercise of powers given by clause 2 or, in the opinion of the Coordinator, requires the exercise of powers given by clause 3(1) or 4;

“**emergency order**” means an order under clause 3(1);

25 “**seriously affected**” means affected to the extent that —

30 (a) any life or property is or may be endangered; or
 (b) the supply of gas to a significant proportion of the users of gas delivered either directly or indirectly by the supply system is, may be, or should be, reduced or terminated;

“supply system” means the privatized DBNGP system within the meaning of the *Dampier to Bunbury Pipeline Act 1997* or any distribution system operated within the State.

- 5 (2) For the purposes of the definition of “emergency” the supply of gas from a supply system is to be regarded as being affected if the obtaining or manner of delivery of gas from it is affected.

2. Action by operator

- 10 (1) If a state of emergency exists in relation to a supply system, the operator of the supply system is to notify the Coordinator of the state of emergency as soon as practicable after becoming aware of it.

- 15 (2) If a state of emergency exists which, by reason of the nature of the emergency, does not reasonably allow sufficient time for the emergency to be avoided or mitigated or the continued transport and supply of gas to be ensured through the exercise by the Coordinator of powers given by clause 3, the operator of the supply system concerned may take any
20 immediate measures that seem appropriate to avoid or mitigate the emergency, or to ensure the continued transport and supply of gas, in a manner that seems appropriate.

3. Emergency order

- 25 (1) If a state of emergency exists, the Coordinator may make any order that the Coordinator considers necessary and the circumstances reasonably allow, to —

- (a) provide for —
30 (i) gas to be transported to or by any person or class of persons, or upon any premises or class of premises, within the whole or any portion of the State, or for any particular purpose or purposes; and

- (b) confirmed thereafter by notice in the *Gazette* setting out —
- (i) the time and date on which it was made; and
 - 5 (ii) the time, date and manner of its original publication;
- and
- (c) if the manner of publication under paragraph (a) was not by means of a notice in a newspaper, made known in that manner as soon as circumstances permit.
- 10
- (4) An emergency order may be renewed, cancelled or varied by the Coordinator by a subsequent order.

4. Emergency action by Coordinator

15 If a state of emergency exists, the Coordinator may take any measures considered appropriate in relation to the emergency, or in relation to the consequences of that emergency, to diminish the effect of, or to terminate, that emergency, including measures to discontinue supply to any person considered by the Coordinator to be contravening an emergency order.

20

5. Liability to punishment continues

The cancellation or variation of an emergency order does not affect —

- 25 (a) any penalty or punishment incurred, imposed, or liable to be incurred or imposed, before the cancellation or variation; or
- (b) any investigation or legal proceedings in respect of such a penalty or punishment,

30 despite any other enactment.

6. Protection

5 Despite any obligation or duty that a person has to effect or continue any supply of gas, neither that person, the Coordinator, the State, any Minister of the Crown, nor an officer or servant of any of them, is liable for —

- (a) any interruption, diminution, or termination of any supply that arises by reason of any act done in good faith in the exercise or in purported exercise of powers given by this Schedule; or
- 10 (b) any loss or damage consequential upon an interruption, diminution, or termination of supply referred to in paragraph (a).

7. Powers of entry

15 (1) While a state of emergency exists and for so long afterwards as the circumstances reasonably require, a person given powers by this Schedule may, without notice and without any warrant other than this subclause, immediately enter onto or into any land, premises or thing if it is necessary to do so to exercise any of those powers.

20 (2) Any question as to what is a necessary entry may be determined by the person exercising the power of entry, and in any proceedings the question is to be presumed, in the absence of evidence to the contrary, to have been determined in good faith.

25 (3) A person exercising the power of entry given by this clause is required, as soon as practicable, to —

- 30 (a) remove or cause to be removed any machinery, equipment or other thing that the person brought or caused to be brought onto or into the land, premises, or thing for the purpose for which entry was made; and

(b) make good any physical damage caused in the course of exercising the powers for the purposes of which entry was made, or pay compensation or effect restoration, rehabilitation or restitution.

5 (4) If entry is effected under this clause for the purpose of exercising powers under clause 3 or 4, the Coordinator may recover as a debt from the operator of the supply system concerned the costs of any expenses incurred in dealing with that emergency, including any expenses incurred in
10 complying with obligations under subclause (3).

(5) While an emergency order is in force, any person authorized by the Coordinator in writing to do so may, without prior notice, enter premises supplied with gas and there make any search or examination necessary to determine whether the
15 order is, in respect of those premises, being contravened in any respect.

8. Offences

(1) A person —
20 (a) obstructing a person in the exercise of a function under this Schedule; or
(b) contravening an emergency order,
commits an offence.

(2) The penalty for an offence under subclause (1) is —
25 (a) in the case of an individual, \$5 000;
(b) in the case of a body corporate, \$50 000.

”.

56. Section 66 amended

Section 66(2) is amended by inserting after “prescribed” —

“

under the *Electricity Act 1945* or the *Gas Standards Act 1972*, as the case may be

”.

Subdivision 6 — *Gas Corporation Act 1994*

57. The Act amended

The amendments in this Subdivision are to the *Gas Corporation Act 1994**.

[* *Act No. 87 of 1994.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.102-3, and Act No. 26 of 1999.]

58. Section 3 amended

Section 3 is amended in the definition of “subsidiary” as follows —

(a) in paragraph (b)(iii) by deleting “partnership;” and inserting instead —

“ partnership, ”;

(b) after paragraph (b) by inserting —

“

but, except in sections 71, 72 and 74, does not include the corporate vehicle as defined in section 5(2) of the *Gas Corporation (Business Disposal) Act 1999* or a subsidiary of the corporate vehicle within the meaning of the Corporations Law;

”.

59. Section 7 amended

Section 7(1)(b) is amended by deleting “4” and inserting instead —

“ 3 ”.

5 **60. Section 89A inserted**

After section 89 the following section is inserted —

“

89A. Additional financial reporting relating to the disposal of the business

10 (1) Nothing in Division 3, this Division or Schedule 3 prevents the corporation from preparing financial statements for a half-yearly or lesser period, and having those financial statements audited by a registered company auditor, if the board considers that it is
15 desirable to do so for the purposes of the implementation of Parts 2 and 3 of the *Gas Corporation (Business Disposal) Act 1999*.

(2) In subsection (1) —

20 “**registered company auditor**” means a person who is for the time being registered as an auditor or taken to be registered as an auditor under Part 9.2 of the Corporations Law.

”.

61. Section 96A inserted

After section 96 the following section is inserted —

“

96A. Minister may waive certain requirements

5

(1) In this section —

“**specified obligation**” means —

10

- (a) an obligation under Part 4 Division 1, Part 4 Division 2, section 62 or section 63;
- (b) an obligation under Schedule 3 (including an obligation under the *Financial Administration and Audit Act 1985* as applied by clause 45(4));
- (c) an obligation under Schedule 6 clause 5(1)(c) or (d);
- (d) an obligation under Schedule 6 clause 5(3)(b) or any related obligation under the regulations; or
- (e) an obligation under the regulations to provide a summary of audited books and records relating to the gas distribution system as defined in section 90.

15

20

25

(2) The Minister may, by notice published in the *Gazette*, relieve the board or the corporation from compliance with a specified obligation either generally or in such circumstances or cases as are set out in the notice.

(3) A notice under this section —

- (a) has effect according to its terms; and
- (b) may be amended or revoked by another notice under this section.

(4) This section does not authorize the Minister to relieve the board or the corporation from compliance with a specified obligation unless the Minister considers that —

- 5 (a) compliance with the obligation would impede, or be inconsistent with, the implementation of Parts 2 and 3 of the *Gas Corporation (Business Disposal) Act 1999* or could adversely affect the outcome of that implementation; or
- 10 (b) having regard to the implementation of Parts 2 and 3 of the *Gas Corporation (Business Disposal) Act 1999* —
- (i) there is no significant need for the obligation to be complied with; or
- 15 (ii) compliance with the obligation would involve an unjustifiable use of resources.

”.

Subdivision 7 — *Gas Pipelines Access (Western Australia) Act 1998*

20 **62. The Act amended**

The amendments in this Subdivision are to the *Gas Pipelines Access (Western Australia) Act 1998*.

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

63. Section 90 amended

- 25 (1) Section 90(1) and (2) are amended by inserting after “Act” —
“ (other than subsection (3a)) ”.

(2) After section 90(3) the following subsection is inserted —

“

(3a) The exceptions described in subsections (1) and (2) —

(a) do not apply if the person is the Gas Corporation; and

(b) from the relevant time, do not apply if the person is the corporate vehicle.

(3b) In subsection (3a) and this subsection —

“**corporate vehicle**” has the meaning given by section 5(2) of the *Gas Corporation (Business Disposal) Act 1999* or a subsidiary of it within the meaning of that Act;

“**Gas Corporation**” means the Gas Corporation under the *Gas Corporation Act 1994* or a subsidiary of it within the meaning of the *Gas Corporation (Business Disposal) Act 1999*;

“**relevant time**” means the time when the gas distribution system (as defined in section 90 of the *Gas Corporation Act 1994*) has been transferred to the corporate vehicle under Part 3 of the *Gas Corporation (Business Disposal) Act 1999*.

”.

64. Section 94 amended

(1) Section 94 is amended by inserting before “Section” the subsection designation “(1)”.

(2) Section 94 is amended by deleting “1 July 2002” and inserting instead —

“ the prescribed day ”.

(3) At the end of section 94 the following subsection is inserted —

“

(2) In subsection (1) —

“**prescribed day**” means 1 July 2002 unless the day
fixed under section 2(5) of the *Gas Corporation
(Business Disposal) Act 1999* is earlier than
1 July 2002 in which case it means the day so
fixed.

”.

Subdivision 8 — *Gas Standards Act 1972*

65. The Act amended

The amendments in this Subdivision are to the *Gas Standards Act 1972**.

[* *Reprinted as at 15 February 1989.*

*For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p.103.]*

66. Section 15 amended

Section 15(2)(d) is amended by inserting before “supply” —

“ conveyance, control, or ”.

Subdivision 9 — *Local Government Act 1995*

67. Presence of pipeline does not constitute occupation of land

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

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

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s. 68

- (b) a person is the holder of a distribution licence under Part 2A of the *Energy Coordination Act 1994* in respect of a distribution system that is on or under that land.

Subdivision 10 — *Town Planning and Development Act 1928*

5 **68. Section 20 amended**

After section 20(1)(c) of the *Town Planning and Development Act 1928** the following paragraph is inserted —

“

(ca) This subsection does not apply to —

- 10 (i) the conferral of rights under section 34 of the *Dampier to Bunbury Pipeline Act 1997*; or
- 15 (ii) the issue of a distribution licence under Part 2A of the *Energy Coordination Act 1994*.

”.

[*Reprinted as at 19 March 1999.]

20 **Division 2 — Provisions commencing immediately before corporation or a subsidiary is licensed under the *Energy Coordination Act 1994***

Subdivision 1 — *Dampier to Bunbury Pipeline Act 1997*

69. The Act amended

The amendments in this Subdivision are to the *Dampier to Bunbury Pipeline Act 1997**.

25 [* Act No. 53 of 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.67, and Part 6 Division 1 Subdivision 2 of this Act.]

70. Section 33 amended

- (1) Section 33(5) is amended by deleting “had in respect of the additional land immediately before it became land in the DBNGP corridor” and inserting instead —

5

“

would have had immediately before the effective date if the effective date had been before the commencement of Part 6 Division 2 of the *Gas Corporation (Business Disposal) Act 1999*

10

”.

- (2) After section 33(5) the following subsection is inserted —

“

- (5a) In subsection (5) —

15

“**effective date**” means the day on which the additional land becomes land in the DBNGP corridor.

”.

71. Section 34 amended

- (1) Section 34(5) is amended by deleting “the corporation would have” and inserting instead —

20

“

, before the commencement of Part 6 Division 2 of the *Gas Corporation (Business Disposal) Act 1999*, the corporation would have had

”.

25

- (2) Section 34(5a) and (5b) are repealed.

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s. 72

72. Schedule 4 amended

- (1) Schedule 4 Division 3 is repealed.
- (2) Schedule 4 clause 19 is repealed.

Subdivision 2 — *Energy Coordination Act 1994*

5 **73. The Act amended**

The amendments in this Subdivision are to the *Energy Coordination Act 1994**.

[* *Act No. 71 of 1994.*

10 *For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.82, and Act No. 20 of 1999.]*

74. Section 6 amended

Section 6(b) is amended by deleting “the *Electricity Act 1945* and the *Gas Undertakings Act 1947*” and inserting instead —

“ this Act, the *Electricity Act 1945* ”.

15 **75. Section 11ZO amended**

Section 11ZO(1) and (2) are each amended by deleting “a corporation” and inserting instead —

“ an energy operator ”.

Subdivision 3 — *Energy Corporations (Powers) Act 1979*

76. The Act amended

The amendments in this Subdivision are to the *Energy Corporations (Powers) Act 1979**.

5 [* Reprinted as at 25 May 1995.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.83, and Act No. 20 of 1999.]

77. Long title amended

The long title is amended as follows:

10 (a) by deleting “the Gas Corporation” and inserting instead —

“ **certain other operators** ”;

(b) by deleting “corporations” and inserting instead —

“ **operators** ”.

15 **78. Section 1 amended**

Section 1 is amended by deleting “*Corporations*” and inserting instead —

“ *Operators* ”.

79. Section 4 amended

20 Section 4(1) is amended by inserting after the definition of “energy” the following definition —

“

25 “**energy operator**” means the Electricity Corporation or, in a provision of this Act referred to in Schedule 2 Part 1 or 2 of the *Energy Coordination Act 1994*, a person section 11ZO of that Act

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includes in a reference in that provision to an energy operator;

”.

80. Section 45 amended

5 Section 45(4)(c) is amended by deleting “in the case of the Gas Corporation,”.

81. Section 55 amended

Section 55(1)(b) is amended by deleting “or the Gas Corporation”.

10 **82. Section 120 amended**

Section 120 is amended by deleting “the corporation’s” and inserting instead —

“ the energy operator’s ”.

83. Various references to “corporation” amended

15 (1) In each place listed in the Table to this subsection “a corporation” is deleted and the following is inserted instead —

“ an energy operator ”.

Table

20

- s. 4(1) (in the definition of “charges”), and (2)
- s. 5(2), and (3)
- s. 6(2), and (3)
- s. 37(1), and (2)
- s. 38(1) (in both places where it occurs), (4), and (5)
- s. 39(1), (2), (2a), and (3)
- s. 40(1)
- s. 41

- s. 42(1), and (2)
- s. 43(1)(a), and (b), and (1a)
- s. 45(1), (2), (3), (4), (5), (6), (7), (9), (10), (11), (12), (13), and (14)
- s. 46(1), (2), (3), (5), (7), (8), (9), (10), (11), (14), and (16)
- s. 48(1), (2), and (4)
- ss. 49, 50, and 51
- s. 52(1), and (2)
- s. 53(1)
- s. 54(2)
- s. 58(1)(a), and (b), (2), (3), and (4)
- s. 59
- s. 60(2)(a), (4), and (5)
- s. 61(1), (4), and (7)
- s. 62 (in each place where it occurs)
- s. 64(1), and (2)
- s. 65(1), (2) (in both places where it occurs), and (7)
- s. 66(1)
- s. 67(1), (3), and (4)(b)
- s. 67A(1), and (2)
- s. 74(1)(a), and (2)
- s. 75(1)(a), (b), (c), (d), and (e), (2), and (4)
- ss. 76, and 77
- s. 79(1), and (2)
- s. 84(2), and (3)
- s. 87(1), (2)(b), and (3)
- s. 88(1)
- s. 120
- s. 121(2)
- s. 125(1)(c)

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- (2) In each place listed in the Table to this subsection
“A corporation” is deleted and the following is inserted
instead —

“ An energy operator ”.

5

Table

- s. 28(3)
- s. 43(2)
- s. 46(12)
- s. 48(3)
- s. 53(2)
- s. 61(2), (3), and (5)
- s. 62(16)
- s. 64(3), and (4)
- s. 66(6)
- s. 68(1)
- s. 84(1)
- s. 121(1)

- (3) In each place listed in the Table to this subsection
“the corporation” is deleted and the following is inserted
instead —

10

“ the energy operator ”.

Table

- s. 4(1) (in the definition of “service apparatus”)
- s. 4(2) (in each place where it occurs)
- s. 5(2) (in both places where it occurs), and (3)
- s. 6(2) (in both places where it occurs)
- s. 28(3)(c), and (e)
- s. 37(1), and (2) (in each place where it occurs)
- s. 38(5)

- s. 39(1)
- s. 39(2) (in each place where it occurs)
- s. 39(3) (in both places where it occurs)
- s. 40(1) (in both places where it occurs), and (2)
- s. 41 (in both places where it occurs)
- s. 42 (1) (in both places where it occurs), and (2)
- s. 43(1) (in each place where it occurs), (1a), and (2)
- s. 45 (in each place where it occurs)
- s. 46 (in each place where it occurs)
- s. 48 (in each place where it occurs)
- s. 49 (in each place where it occurs)
- s. 51 (in each place where it occurs)
- s. 52 (in each place where it occurs)
- s. 53(1), and (2)
- s. 54(2)
- s. 54(3) (in both places where it occurs)
- s. 58 (in each place where it occurs)
- s. 60(2), and (4)
- s. 60(5) (in both places where it occurs)
- s. 61 (in each place where it occurs)
- s. 62 (in each place where it occurs)
- s. 63
- s. 64 (in each place where it occurs)
- s. 65 (in each place where it occurs)
- s. 66 (in each place where it occurs)
- s. 67(1)(e), and (2) (in both places where it occurs)
- s. 67A(1), and (2) (in both places where it occurs)
- s. 68(1), and (8)(a), and (b)
- s. 75(1)(d), and (e), (3), and (4)
- s. 76
- s. 79(2)
- s. 84(3) (in both places where it occurs)
- s. 87(1)(a), (b), (c), (d), (e), and (f)
- s. 88(1) (in both places where it occurs), and (2)

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s. 84

- s. 120 (in each place where it occurs)
- s. 121(1), and (2) (in each place where it occurs)
- s. 125(1)(c) (in both places where it occurs)

Subdivision 4 — *Gas Standards Act 1972*

84. Section 4 amended

Section 4 of the *Gas Standards Act 1972** is amended in the definition of “undertaker” by deleting “the Gas Corporation” and inserting instead —

“

any licensee within the meaning of the *Energy Coordination Act 1994*

”.

[*Reprinted as at 15 February 1989.
For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.103.]

Subdivision 5 — *Gas Undertakings Act 1947*

85. Repeal

The *Gas Undertakings Act 1947* is repealed.

Subdivision 6 — *Town Planning and Development Act 1928*

86. Section 27A amended

Section 27A(1)(b)(v) of the *Town Planning and Development Act 1928** is deleted and the following subparagraph is inserted instead —

“

- (v) the holder of a distribution licence under the *Energy Coordination Act 1994* for the purpose of the supply of gas, or

access to gas supply works, under the authority of that licence.

”.

[* Reprinted as at 19 March 1999.]

5

Subdivision 7 — Various Acts amended

87. Miscellaneous amendments

The enactments set out in the Table to this section are amended by deleting “Corporations” and inserting instead (in the appropriate printing font) —

10

“ *Operators* ”.

Table

<i>Act</i>	<i>Provision</i>
<i>Dampier to Bunbury Pipeline Act 1997</i>	section 31(5)(c) section 33(5) section 34(5)
<i>Electricity Corporation Act 1994</i>	section 30(4) section 32(3)
<i>Gas Corporation Act 1994</i>	section 30(4) section 32(3)
<i>Gas Pipelines Access (Western Australia) Act 1998</i>	section 8(1)(a)
<i>Water Services Coordination Act 1995</i>	Schedule 2 Part 2
<i>Western Australian Planning Commission Act 1985</i>	section 19(1g)(a)(iii)

Division 3 — Provisions commencing on completion of disposal

Subdivision 1 — *Dampier to Bunbury Pipeline Act 1997*

88. Section 5 replaced

5 Section 5 of the *Dampier to Bunbury Pipeline Act 1997** is repealed and the following section is inserted instead —

“

5. Modified reading of references to the corporation

10 A reference in this Part to the corporation is to be read in accordance with section 94(3) of the *Gas Corporation (Business Disposal) Act 1999*.

”.

[*Act No. 53 of 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.67.]

15 Subdivision 2 — *Energy Corporations (Powers) Act 1979*

89. The Act amended

The amendments in this Subdivision are to the *Energy Corporations (Powers) Act 1979**.

[* Reprinted as at 25 May 1995.

20 For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.83.]

90. Section 4 amended

Section 4(1) is amended by deleting the definitions of “corporation” and “Gas Corporation”.

91. Section 123 amended

(1) Section 123(1) is amended by deleting “a corporation” and inserting instead —

“ the Electricity Corporation ”.

5 (2) Section 123(3)(a) is amended by deleting “a corporation” and inserting instead —

“ the Electricity Corporation ”.

92. Section 124 amended

Section 124 is amended as follows:

10 (a) in subsection (1), by deleting “a corporation” and inserting instead —

“

the Electricity Corporation (in this section called “**the corporation**”)

15

”;

(b) in subsections (1a), (2), and (4), by deleting “a corporation” and inserting instead —

“ the corporation ”;

(c) in subsection (4)(k) —

20

(i) by deleting “in the case of by-laws made by the Electricity Corporation,”; and

(ii) by deleting “that corporation” and inserting instead —

“ the corporation ”;

25

(d) in subsection (5), by deleting “the Electricity Corporation” in both places where it occurs and inserting instead —

“ the corporation ”.

Subdivision 3 — *Gas Corporation Act 1994*

93. Repeal

The *Gas Corporation Act 1994* is repealed.

94. Winding up of affairs of Gas Corporation

- 5 (1) When the *Gas Corporation Act 1994* is repealed the Minister responsible for the administration of the *Energy Coordination Act 1994* (in this section called “**the Minister**”) is required to wind up the affairs of the former Gas Corporation as soon as is practicable, and for the purpose of winding up those affairs —
- 10 (a) all real and personal property and every right or interest in it that immediately before the repeal were vested in the Gas Corporation pass to and become vested in the Minister without any transfer or assignment;
- 15 (b) all records and data of the Gas Corporation pass to the Minister;
- (c) all rights, liabilities and obligations of the Gas Corporation that existed immediately before the repeal devolve on the Minister;
- 20 (d) all contracts, agreements and undertakings made by and with the Gas Corporation and having effect immediately before the repeal have effect as contracts, agreements and undertakings made by and with the Minister and may be enforced by or against the Minister accordingly; and
- 25 (e) any legal or other proceedings or any remedies that might, but for the repeal, have been commenced or continued by or against or have been available to the Gas Corporation may be commenced or continued by or against or are available to the Minister, as the case
- 30 requires.

(2) A reference in subsection (1)(a), (c), (d) or (e) to the Minister is a reference to the Minister in the name and on behalf of the State.

5 (3) For the purposes described in subsection (1) a reference to the Gas Corporation in —

(a) a law of the State in force; or

(b) a document in existence,

10 immediately before the repeal is to be construed as a reference to the Minister unless in the context it would be inappropriate to do so.

(4) This section does not apply to anything for which this Act has made other provision.

Subdivision 4 — *Gas Pipelines Access (Western Australia) Act 1998*

95. The Act amended

15 The amendment in this Subdivision is to the *Gas Pipelines Access (Western Australia) Act 1998**.

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

96. Section 74 amended

Section 74(2)(a) is amended by inserting after “1994” —

20 “ (as enacted immediately before the repeal of that Act) ”.

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Subdivision 5 — *Gas Standards Act 1972*

97. The Act amended

The amendments in this Subdivision are to the *Gas Standards Act 1972**.

5 [* Reprinted as at 15 February 1989.
For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p.103.]

98. Section 4 amended

10 Section 4 is amended by deleting the definition of “Gas Corporation”.

99. Section 15 amended

Section 15(4) and (5) are repealed.

Subdivision 6 — Various Acts amended

100. Constitution Acts Amendment Act 1899

15 The *Constitution Acts Amendment Act 1899** Schedule V Part 3 is amended by deleting the item commencing “The Gas Corporation”.

[*Reprinted as at 15 April 1999.]

101. *Equal Opportunity Act 1984*

The *Equal Opportunity Act 1984** is amended by deleting section 139(1)(ca).

[*Reprinted as at 7 May 1999

5 For subsequent amendments see Act No. 2 of 1999.]

102. *Explosives and Dangerous Goods Act 1961*

The *Explosives and Dangerous Goods Act 1961** is amended in section 63(eb) by deleting “or the Gas Corporation under the *Gas Corporation Act 1994*”.

10 [*Reprinted as at 21 November 1996.

 For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.87.]

103. *Government Employees Superannuation Act 1987*

The *Government Employees Superannuation Act 1987** Schedule 1 Part B is amended by deleting “Gas Corporation”.

15 [*Reprinted as at 22 January 1999.]

104. *Land Administration Act 1997*

The *Land Administration Act 1997** is amended as follows:

(a) by deleting section 159(d);

20 (b) by deleting section 160(1)(d).

[*Act No. 30 of 1997.

 For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.136.]

105. Metropolitan Region Town Planning Scheme Act 1959

The *Metropolitan Region Town Planning Scheme Act 1959**
Second Schedule is amended by deleting item 13A.

[*Reprinted as at 7 March 1996.

5 For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p.161.]

106. Public Sector Management Act 1994

The *Public Sector Management Act 1994** Schedule 1 is
amended by deleting item 16.

10 [*Reprinted as at 26 March 1999.]

107. Public Works Act 1902

The *Public Works Act 1902** is amended as follows:

(a) by deleting section 5A(da);

(b) by deleting section 5B(1)(ca).

15 [* Reprinted as at 3 June 1997.

For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p.206.]

108. Superannuation and Family Benefits Act 1938

20 The *Superannuation and Family Benefits Act 1938** is amended
in section 6(1), in the definition of “department”, by deleting
“the Gas Corporation and”.

[*Reprinted as at 9 August 1989.

For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, pp.241-5, and Act No. 5 of 1999.]

Division 4 — Provision commencing on 1 January 2000

109. Section 26 amended

After section 26(2) of the *Energy Coordination Act 1994** the following subsections are inserted —

- 5 “
- (3) Without limiting subsection (1), regulations may provide —
- 10 (a) for the determination or approval by the Coordinator of gas quality specifications for the purposes of a contract in relation to the sale, supply or transportation of gas transported (or to be transported) through the privatized DBNGP system; and
- 15 (b) for the giving of effect to the determination or approval.
- (4) Regulations referred to in subsection (3)(b) may provide that they apply despite being inconsistent with any provisions in the contract.
- (5) In subsection (3) —
- 20 **“privatized DBNGP system”** has the same meaning as it has in the *Dampier to Bunbury Pipeline Act 1997*.
- ”.

25 [* Act No. 71 of 1994.
For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p.82, and Part 6 Division 1 Subdivision 5 of this Act.]

Division 5 — Provisions commencing when ringfencing obligations apply

Subdivision 1 — *Gas Corporation Act 1994*

110. Part 6 repealed

5 Part 6 of the *Gas Corporation Act 1994** is repealed.

[* *Act No. 87 of 1994.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, pp.102-3.]

Subdivision 2 — *Gas Pipelines Access (Western Australia) Act 1998*

10 **111. Section 39 affected**

Section 39 of the *Gas Pipelines Access (Western Australia) Act 1998* has no effect in relation to the gas distribution system as defined in section 90 of the *Gas Corporation Act 1994*.



Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
acquire	3
asset	14
assignee	14
Coordinator of Energy	25(3)
cornerstone investor	3
corporate vehicle	3
corporation	3
dispose of	3
Electricity Corporation	16(3)
entitled	3
liability	14, 31(3)
officer	13(2)
relevant day	25(3)
relevant official	20(3)
relevant property	20(3)
right	14
section 6 disposal	3
securities	3
specified	16(3)
specified percentage	3
subsidiary	3
supply business	25(3)
tariff consumer	25(3)
the bound recipient	29(1)(b)
the Minister	94
transfer order	14
transfer time	14