

Gas Supply (Gas Quality Specifications) Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Gas Supply (Gas Quality Specifications)
Bill 2009**

A Bill for

An Act to provide for —

- **the supply of gas that does not meet certain gas quality specifications; and**
 - **the control of the quality of such gas and its impact on gas transmission pipelines; and**
 - **the payment of compensation to certain gas consumers, operators of gas transmission pipelines and operators of gas storage facilities who are adversely affected by receiving such gas; and**
 - **a programme to modify or replace certain gas appliances and installations that might be rendered unsafe by the supply of such gas, in preparation for its supply; and**
 - **the operation of an account for contributions by gas producers to the costs of the programme,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Gas Supply (Gas Quality Specifications) Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act, unless the contrary intention appears —

access determination means a decision or determination, made under a Gas Access Law, on access to a pipeline service provided by means of a pipeline, that has not been reflected in or replaced by a contract for the pipeline service;

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

exempt contract —

- (a) means a contract in respect of which a declaration under the *Gas Corporation Act 1994* Schedule 5 clause 6 was in force immediately before the coming into operation of the *Dampier to Bunbury Pipeline Act 1997* Schedule 4 clause 17(4); and
- (b) includes a contract entered into —
 - (i) in substitution for a contract referred to in paragraph (a) or any provision of such a contract; or
 - (ii) by way of amendment of a contract referred to in paragraph (a) or subparagraph (i);

1 **Gas Access Law** means —

- 2 (a) the National Gas Access (Western Australia) Law, the
3 Rules made under that Law and the regulations made
4 under the *National Gas Access (WA) Act 2009*; or
5 (b) the Gas Pipelines Access (Western Australia) Law, and
6 the regulations, in force under the *Gas Pipelines Access*
7 *(Western Australia) Act 1998* before the commencement
8 of the *National Gas Access (WA) Act 2009* section 30;

9 **gas consumer** means a person who —

- 10 (a) receives gas that has been transported through a gas
11 transmission pipeline; and
12 (b) in the previous 12 months, consumed, at any one site, at
13 least one terajoule of gas that had been transported
14 through a gas transmission pipeline;

15 **gas distribution system** means a distribution system as defined
16 in the *Energy Coordination Act 1994* section 3(1);

17 **gas producer** means a person who supplies, or proposes to
18 supply, gas that will flow into a gas transmission pipeline and
19 who is —

- 20 (a) the registered holder of a petroleum production licence
21 under the *Petroleum and Geothermal Energy Resources*
22 *Act 1967*; or
23 (b) the registered holder of a production licence for
24 petroleum under the *Petroleum (Submerged Lands)*
25 *Act 1982* Part III; or
26 (c) the registered holder of a petroleum production licence
27 under the *Offshore Petroleum and Greenhouse Gas*
28 *Storage Act 2006* (Commonwealth); or
29 (d) prescribed for the purposes of this definition,

30 but does not include —

- 31 (e) a person in the person's capacity as an operator of a gas
32 storage facility; or
33 (f) a person declared not to be a gas producer by regulations
34 made for the purposes of this definition;

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1 **gas storage facility** means a gas storage facility, with a storage
2 capacity of more than 50 terajoules, prescribed for the purposes
3 of this definition;

4 **gas transmission pipeline** means a pipeline as defined in the
5 *Petroleum Pipelines Act 1969* section 4 and includes a pipeline
6 (as defined for the purposes of this definition) declared to be a
7 gas transmission pipeline by regulations made for the purposes
8 of this definition but does not include a pipeline (as defined for
9 the purposes of this definition) declared not to be a gas
10 transmission pipeline by regulations made for the purposes of
11 this definition;

12 **inlet point**, on a gas transmission pipeline, means —

- 13 (a) a point on the pipeline at which gas flows into the
14 pipeline; or
15 (b) a number of such points that are adjacent to each other
16 and that are declared to be a single point by regulations
17 made for the purposes of this definition;

18 **operator**, of a gas transmission pipeline, means a person who is
19 the registered holder of a licence in respect of the pipeline,
20 under the *Petroleum Pipelines Act 1969* and includes a person
21 (who owns or operates the pipeline) prescribed for the purposes
22 of this definition;

23 **PIA pipeline** has the meaning given in section 5;

24 **pipeline**, for the purposes of the definition of **gas transmission**
25 **pipeline**, means a pipeline as defined in the *Petroleum Pipelines*
26 *Act 1969* section 4 as if all of the definition from and including
27 “but does not include” were deleted;

28 **pipeline impact agreement** has the meaning given in
29 section 6(1)(a);

30 **pipeline service** has the meaning given in the National Gas
31 Access (Western Australia) Law section 2;

32 **pipeline services agreement**, in relation to a gas transmission
33 pipeline, means —

- 34 (a) a contract for a pipeline service provided by means of
35 the pipeline; or

-
- 1 (b) an access determination in relation to the pipeline;
- 2 *reference specification*, for a gas transmission pipeline, means
- 3 the gas quality specification prescribed for the pipeline for the
- 4 purposes of this definition;
- 5 *relevant effects*, on the capacity, operations and maintenance of
- 6 a PIA pipeline, has the meaning given in section 7(2);
- 7 *site*, in the definition of *gas consumer*, means a place, other
- 8 than a place that is or is part of a gas transmission pipeline or a
- 9 gas storage facility, where a person consumes gas delivered to
- 10 the person through an outlet point on a gas transmission pipeline
- 11 or gas distribution system;
- 12 *specified*, in relation to an instrument made under this Act,
- 13 means specified in that instrument;
- 14 *standard specification*, for a gas transmission pipeline, means
- 15 the gas quality specification specified for the pipeline under
- 16 section 13;
- 17 *user*, of a gas transmission pipeline, means a person provided a
- 18 pipeline service by means of the pipeline under a pipeline
- 19 services agreement to which the person is a party.
- 20 (2) Before a reference specification or a standard specification for a
- 21 gas transmission pipeline is amended, the Minister must consult
- 22 with —
- 23 (a) the operator of the pipeline; and
- 24 (b) any other person to the extent to which the Minister
- 25 considers necessary in relation to the proposed
- 26 amendment.
- 27 (3) A regulation to amend a reference specification or a standard
- 28 specification for a gas transmission pipeline cannot be
- 29 expressed to come into effect until after the period during which
- 30 it is subject to disallowance under the *Interpretation Act 1984*
- 31 section 42.

1 **Part 2 — Gas quality and capacity of PIA pipelines**

2 **4. Purposes of this Part**

3 The primary purposes of this Part are to ensure that —

- 4 (a) a gas producer can supply gas, that will flow into a PIA
5 pipeline, of a quality that does not comply with the
6 reference specification for the pipeline; and
- 7 (b) the gas producer cannot do so until the relevant effects
8 of such supply on the capacity, operations and
9 maintenance of the PIA pipelines have been dealt with
10 in a way that neither materially advantages nor
11 materially disadvantages the operators of the pipelines;
12 and
- 13 (c) users of PIA pipelines are not materially disadvantaged
14 by the way in which those effects are determined and
15 dealt with.

16 **5. PIA pipelines**

- 17 (1) A *PIA pipeline* is a gas transmission pipeline or a part of a gas
18 transmission pipeline declared by the Minister to be a PIA
19 pipeline.
- 20 (2) The Minister must not make, amend or revoke a declaration
21 other than in accordance with the criteria and procedure
22 provided for by the regulations.
- 23 (3) In this Act, a reference to a gas transmission pipeline includes a
24 reference to a part of a gas transmission pipeline when the
25 context requires.

26 **6. Controlling the quality of gas flowing into PIA pipelines**

- 27 (1) A gas producer must not supply gas that will flow into a PIA
28 pipeline if the gas is of a quality that does not comply with the
29 reference specification for the pipeline unless —
- 30 (a) the gas producer and the operator of the pipeline are
31 parties to an agreement (a *pipeline impact agreement*)

- 1 in respect of the supply, that complies with the
2 minimum requirements set out in section 7 in relation to
3 the supply; and
- 4 (b) the gas complies with the gas quality specification set
5 out in the pipeline impact agreement in relation to the
6 supply; and
- 7 (c) the quantity of gas supplied does not exceed the
8 maximum quantity set out in the pipeline impact
9 agreement in relation to the supply; and
- 10 (d) regulations, under section 14(2)(a), modifying contracts
11 that relate to gas transported through the pipeline have
12 come into effect.
- 13 (2) A pipeline impact agreement that is entered into, or an
14 amendment of a pipeline impact agreement, does not have effect
15 for the purposes of subsection (1)(b) and (c) for the 18 months
16 immediately following the entering into of the agreement or the
17 amendment.
- 18 (3) If a gas producer supplies gas that will flow into a PIA pipeline
19 at an inlet point and the gas producer fails to comply with
20 subsection (1), the operator of the pipeline may —
- 21 (a) reduce the flow (including to zero) in accordance with
22 the regulations; and
- 23 (b) whether or not the flow of gas is reduced under
24 paragraph (a) — reduce the allocation (including to
25 zero) of gas flowing into the pipeline at the inlet point to
26 users of the pipeline, in accordance with the regulations.
- 27 (4) The operator of a PIA pipeline may, under section 12, apply to
28 the Supreme Court for an injunction against a gas producer who
29 has engaged, is engaging or is proposing to engage in conduct
30 that constitutes a failure to comply with subsection (1).
- 31 (5) The operator of a PIA pipeline may take an action under
32 subsection (3) or (4), or both, despite any relevant pipeline
33 services agreement.

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- 1 (6) Subsections (3) and (4) are in addition to any other rights a
2 person may have in relation to a failure to comply with
3 subsection (1).
- 4 (7) The Minister may, in a particular case, allow a shorter period for
5 the purposes of subsection (2) if satisfied that allowing a shorter
6 period will not adversely affect, in a material way, operators of
7 PIA pipelines, operators of other gas transmission pipelines,
8 operators of gas storage facilities, operators of gas distribution
9 systems or gas consumers.
- 10 (8) *The Criminal Code* section 177 does not apply to the obligation
11 in subsection (1).

12 **7. Content of pipeline impact agreements**

- 13 (1) For the purposes of section 6(1)(a), the minimum requirements
14 in relation to a supply of gas are that the pipeline impact
15 agreement —
- 16 (a) identifies the inlet point on the PIA pipeline into which
17 the gas will flow; and
- 18 (b) sets out the gas quality specification with which the gas
19 must comply; and
- 20 (c) sets out the maximum quantity of gas to be supplied;
21 and
- 22 (d) sets out the day on which it is proposed to commence
23 supplying the gas or change the quality or quantity of
24 gas to be supplied; and
- 25 (e) sets out the relevant effects on the capacity, operations
26 and maintenance of the PIA pipeline of the gas flowing
27 into the pipeline, and the way that those effects are to be
28 dealt with; and
- 29 (f) sets out the duration of the agreement; and
- 30 (g) sets out any other prescribed matters; and

- 1 (h) complies with any prescribed requirements as to the
2 form in which the matters to be set out in the agreement
3 are to be expressed or otherwise presented.
- 4 (2) For the purposes of this Act, the *relevant effects* on the
5 capacity, operations and maintenance of a PIA pipeline, of gas
6 (that does not comply with the reference specification for the
7 pipeline) flowing into the pipeline, are —
- 8 (a) the reduction in the pipeline’s capacity; and
9 (b) the effects on the pipeline’s operations and maintenance,
10 attributable to the gas not being of a quality that complies with
11 the reference specification for the pipeline.
- 12 (3) The regulations may provide for the method by which, and the
13 assumptions upon which —
- 14 (a) a change in the capacity of a PIA pipeline is to be
15 worked out; and
- 16 (b) the effects on the pipeline’s operations and maintenance
17 are to be worked out, including by limiting which effects
18 are to be considered as effects for the purposes of
19 subsection (2).
- 20 (4) An agreement of the nature of a pipeline impact agreement, that
21 was entered into after 1 January 2009 and before the
22 commencement of this Part, in respect of a supply of gas that
23 will flow into a PIA pipeline, is to be taken to comply with the
24 minimum requirements set out in this section if it substantially
25 complies with the requirements of subsection (1)(a), (b), (c),
26 (d), (e) and (f) in relation to the supply.

27 **8. Formation of pipeline impact agreements**

- 28 (1) This section applies to the formation of a pipeline impact
29 agreement in respect of the supply of gas that flows or that will
30 flow into a PIA pipeline at an inlet point except to the extent to
31 which the gas producer and the operator of the pipeline (the
32 *parties*) agree otherwise.

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- 1 (2) The default procedure provided for in the regulations applies to
2 the formation of a pipeline impact agreement.
- 3 (3) If —
- 4 (a) the relevant effects on the capacity, operations and
5 maintenance of the pipeline are not in dispute between
6 the parties (which includes that those effects have been
7 determined by an expert under section 9(2)(b)); and
- 8 (b) the gas producer proposes that those effects be dealt
9 with by a method prescribed for the purposes of this
10 paragraph,
- 11 the default pipeline impact agreement provided for by the
12 regulations in relation to that method becomes the proposed
13 pipeline impact agreement in relation to the supply of the gas.
- 14 (4) The proposed pipeline impact agreement referred to in
15 subsection (3) becomes the pipeline impact agreement in respect
16 of the supply of the gas, as if the parties had entered into the
17 agreement, when all matters in the proposed pipeline impact
18 agreement to be resolved by the parties are not in dispute as an
19 access dispute under a Gas Access Law or under section 9.
- 20 (5) A dispute between the parties about a matter in the proposed
21 pipeline impact agreement that is provided for by the default
22 pipeline impact agreement cannot be dealt with as an access
23 dispute under a Gas Access Law or under section 9.
- 24 (6) For the purposes of subsection (5), a matter is provided for by a
25 default pipeline impact agreement if the matter is set out in the
26 default agreement and the matter is not identified in the
27 agreement as a matter that the parties may resolve.
- 28 (7) The regulations may adopt standard form agreements published
29 by the Minister, in accordance with the regulations, for the
30 purposes of this section.
- 31 (8) Subsection (7) does not limit section 34(4).

- 1 **9. Pipeline impact agreements — dispute resolution**
- 2 (1) The regulations may provide for and in relation to the resolution
- 3 of —
- 4 (a) disputes between gas producers and operators of PIA
- 5 pipelines relating to pipeline impact agreements and
- 6 proposed pipeline impact agreements; and
- 7 (b) disputes relating to the reduction of the flow of gas, or
- 8 the allocation of gas, under section 6(3).
- 9 (2) The regulations may do the following —
- 10 (a) provide for the resolution of those disputes by an
- 11 arbitrator;
- 12 (b) provide for disputes about the relevant effects on the
- 13 capacity, operations and maintenance of a PIA pipeline
- 14 to be resolved by the determination of an expert chosen
- 15 in accordance with the regulations and for such
- 16 determinations to be final and binding on the parties to
- 17 the dispute;
- 18 (c) provide for the interests of users of gas transmission
- 19 pipelines to be taken into account.
- 20 (3) If, in the resolution of a dispute, an expert or an arbitrator
- 21 determines terms of a pipeline impact agreement or proposed
- 22 pipeline impact agreement, those terms become part of the
- 23 agreement or proposed agreement the subject of the dispute.
- 24 **10. Short-term situations**
- 25 (1) The regulations may provide for and in relation to short-term
- 26 situations.
- 27 (2) A *short-term situation* is a situation during which there is a
- 28 disruption to the flow or quality of gas (whether planned or not)
- 29 that means that —
- 30 (a) a gas producer cannot —
- 31 (i) continue to supply gas that will flow into a PIA
- 32 pipeline; and

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- 1 (ii) comply with section 6(1) in respect of that
2 supply;
- 3 or
- 4 (b) a pipeline services agreement or gas supply agreement
5 cannot be complied with.
- 6 (3) The regulations may do the following —
- 7 (a) set out modifications of the provisions of this Part that
8 are to apply during short-term situations;
- 9 (b) enable the Minister to issue directions in relation to a
10 particular short-term situation, modifying the application
11 of the provisions of this Part, or regulations made for the
12 purposes of section 14, during the short-term situation.
- 13 (4) Regulations or directions making modifications for the purposes
14 of this section must specify the period during which the
15 modifications are to have effect, which cannot be for more than
16 7 days, or any longer period (not exceeding 3 months) allowed
17 by the Minister.
- 18 (5) A direction issued by the Minister may specify a period, during
19 which the modifications are to have effect, that begins at the
20 beginning of the short-term situation, whether or not that is
21 earlier than the day on which the direction is issued.
- 22 (6) If the Minister allows a longer period under subsection (4), the
23 Minister must cause reasons for allowing the longer period to be
24 laid before each House of Parliament within 6 sitting days of the
25 House.
- 26 **11. Compensation for adverse effects on certain pipeline users**
- 27 (1) The regulations may provide for and in relation to a scheme of
28 compensation under which users of a PIA pipeline are entitled
29 to compensation from parties to pipeline impact agreements in
30 respect of the pipeline, for adverse effects on the users' rights
31 (under pipeline services agreements) resulting from the way in
32 which the relevant effects on the capacity of the pipeline were
33 or were not dealt with in the pipeline impact agreement.

- 1 (2) The regulations may do the following —
- 2 (a) provide for the resolution of disputes arising out of the
- 3 compensation scheme, including by an arbitrator;
- 4 (b) provide for disputes about —
- 5 (i) the relevant effects on the capacity of a PIA
- 6 pipeline; or
- 7 (ii) the effects on users' rights (under pipeline
- 8 services agreements) resulting from the way in
- 9 which the relevant effects on the capacity of the
- 10 pipeline were or were not dealt with in the
- 11 pipeline impact agreement,
- 12 to be resolved by the determination of an expert chosen
- 13 in accordance with the regulations and for such
- 14 determinations to be final and binding on the parties to
- 15 the dispute;
- 16 (c) provide for the enforcement of entitlements under the
- 17 scheme, including as determined by an arbitrator.

18 **12. Injunctions**

- 19 (1) If, on the application of the operator of a PIA pipeline, the
- 20 Supreme Court is satisfied that a gas producer has engaged, is
- 21 engaging or is proposing to engage in conduct that constitutes a
- 22 failure to comply with section 6(1), the Court may grant an
- 23 injunction, on such terms as the Court thinks appropriate —
- 24 (a) restraining the gas producer from engaging in the
- 25 conduct; or
- 26 (b) if the conduct involves refusing or failing to do
- 27 something — requiring the gas producer to do the thing.
- 28 (2) The Court may grant an injunction by consent of all of the
- 29 parties to the proceedings, whether or not the Court is satisfied
- 30 as to the matters in subsection (1).
- 31 (3) The Court may grant an interim injunction pending
- 32 determination of an application under subsection (1).

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- 1 (4) The power of the Court to grant an injunction restraining a gas
2 producer from engaging in conduct may be exercised whether or
3 not —
- 4 (a) it appears to the Court that the gas producer intends to
5 engage again, or to continue to engage, in conduct of
6 that kind; or
- 7 (b) the gas producer has previously engaged in conduct of
8 that kind; or
- 9 (c) there is an imminent danger of substantial damage to
10 any person if the gas producer engages in conduct of
11 that kind.
- 12 (5) The power of the Court to grant an injunction requiring a gas
13 producer to do a thing may be exercised whether or not —
- 14 (a) it appears to the Court that the gas producer intends to
15 refuse or fail again, or to continue to refuse or fail, to do
16 that thing; or
- 17 (b) the gas producer has previously refused or failed to do
18 that thing; or
- 19 (c) there is an imminent danger of substantial damage to
20 any person if the gas producer refuses or fails to do that
21 thing.
- 22 (6) The Court may discharge or vary an injunction granted under
23 this section.

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Part 3 — Modifying gas contracts

13. Standard gas quality specifications for pipelines

The regulations may specify a gas quality specification for one or more gas transmission pipelines that is to be the standard specification for the pipeline or pipelines.

14. Modifying gas contracts

(1) In this section —

gas contract means a contract that relates to the sale, supply, storage, delivery, receipt or transportation of gas transported or to be transported through a gas transmission pipeline.

(2) The regulations may modify existing and future gas contracts for the purposes of this Act, including by doing the following —

- (a) providing that the contracts have effect so that the gas to be sold, supplied, stored, transported, delivered or received under the contracts need only comply with a gas quality specification provided for in the regulations;
- (b) providing that specified references to gas quality specifications in the contracts have effect as if they were references to a gas quality specification provided for in the regulations;
- (c) dealing with the effects on gas contracts —
 - (i) of having been modified under paragraph (a) or (b); or
 - (ii) of the enactment and coming into operation of this Act or of any particular provision of this Act; or
 - (iii) of gas flowing into a gas transmission pipeline, being gas that does not comply with the reference specification for the pipeline.

(3) For the purposes of subsection (2)(a) and (b), the ways in which the regulations may provide for a gas quality specification

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- 1 include the adoption of a gas quality specification in, or worked
2 out in accordance with, a pipeline impact agreement or gas
3 contract.
- 4 (4) Regulations made for the purposes of subsection (2)(a) or (b)
5 cannot, in relation to gas flowing, or that has flowed, out of a
6 PIA pipeline, provide for a gas quality specification that is less
7 stringent than the standard specification for the gas transmission
8 pipeline.
- 9 (5) In dealing with the effects on a gas contract of a matter referred
10 to in subsection (2)(c), the regulations may provide that the
11 contract does or does not have a certain effect, including that the
12 occurrence of the matter —
- 13 (a) is not to be considered as a breach of the contract; or
14 (b) does or does not modify existing rights, duties or
15 liabilities, or give rise to additional rights, duties or
16 liabilities, under the contract.

1 **Part 4 — Compensation for certain gas consumers**
2 **and operators of gas transmission pipelines and**
3 **gas storage facilities**

4 **15. Terms used**

5 In this Part —

6 *downstream agreement* means a contract under which gas,
7 which has been transported through a gas transmission pipeline,
8 is delivered to a gas consumer;

9 *Part 4 pipeline* means a gas transmission pipeline that is not a
10 PIA pipeline;

11 *plant and equipment costs*, of a person, means the costs of
12 rectifying or replacing plant and equipment to the extent
13 necessary for the person to receive gas and continue the
14 person's operations as carried on before the gas was delivered;

15 *relevant gas quality specification*, for a gas consumer has the
16 meaning given in section 17(2), for an operator of a Part 4
17 pipeline has the meaning given in section 18(2) and for an
18 operator of a gas storage facility has the meaning given in
19 section 18(3).

20 **16. Regulations may provide for compensation scheme**

21 (1) The regulations may provide for and in relation to a scheme of
22 compensation under which a gas consumer, an operator of a
23 Part 4 pipeline or an operator of a gas storage facility is entitled
24 to compensation from gas producers for —

25 (a) the costs incurred by the consumer or operator as a
26 result of being delivered gas that does not comply with
27 the relevant gas quality specification for the consumer or
28 operator; and

29 (b) the loss of capacity (in terajoules) of a gas storage
30 facility resulting from the operator of the facility being
31 delivered gas that does not comply with the relevant gas
32 quality specification for the operator.

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- 1 (2) The regulations may do the following —
- 2 (a) provide for the resolution of disputes arising out of the
- 3 compensation scheme, including by an arbitrator;
- 4 (b) provide for specified disputes to be resolved by the
- 5 determination of an expert chosen in accordance with
- 6 the regulations and for such determinations to be final
- 7 and binding on the parties to the dispute;
- 8 (c) provide for the enforcement of entitlements under the
- 9 scheme, including as determined by an arbitrator.
- 10 (3) The costs referred to in subsection (1)(a) are, under the
- 11 regulations, to be limited to the direct costs incurred by the
- 12 consumer or operator and may, under the regulations, be offset
- 13 by the value of any benefit derived from being delivered the
- 14 gas.
- 15 (4) The regulations may modify the application of this Part in
- 16 relation to the exempt contract.
- 17 (5) A provision of this section, section 17 or section 18 that sets a
- 18 limit on the compensation payable under the scheme does not
- 19 mean that the regulations cannot further limit the compensation
- 20 payable.
- 21 (6) A gas producer is not to be liable, under regulations made for
- 22 the purposes of this Part, to provide compensation except in
- 23 relation to supplying gas that does not comply with the
- 24 reference specification for a gas transmission pipeline into
- 25 which the gas flows.

26 **17. Compensation scheme for certain gas consumers**

- 27 (1) This section applies in respect of the compensation scheme as
- 28 the scheme applies to gas consumers.
- 29 (2) The relevant gas quality specification for a gas consumer in
- 30 relation to the delivery of gas to the consumer under a particular
- 31 downstream agreement is the gas quality specification with
- 32 which the gas to be delivered under the agreement must have
- 33 complied, immediately before 1 January 2009.

- 1 (3) The costs referred to in section 16(1)(a), of a gas consumer, are,
2 under the regulations, to be limited to —
- 3 (a) the costs necessary to restore any reduction in the
4 capacity of the consumer's operations resulting from
5 being delivered the gas, to the extent to which the
6 reduction in capacity is attributable to the gas not
7 complying with the relevant gas quality specification for
8 the consumer; and
- 9 (b) the plant and equipment costs of the gas consumer, to
10 the extent to which those costs are attributable to the gas
11 not complying with the relevant gas quality specification
12 for the consumer; and
- 13 (c) increases in operating and maintenance costs of the gas
14 consumer resulting from being delivered the gas, to the
15 extent to which those increases are attributable to the
16 gas not complying with the relevant gas quality
17 specification for the consumer.
- 18 (4) A gas consumer is not to be entitled to compensation under the
19 regulations in relation to the delivery of gas unless the consumer
20 is entitled to the delivery of the gas under a downstream
21 agreement that —
- 22 (a) was in force immediately before 1 January 2009; and
23 (b) is not an extension (by renegotiation, or exercise of an
24 option to extend, on or after 1 January 2009) of such an
25 agreement.
- 26 (5) A gas consumer is not to be entitled to compensation under the
27 regulations in relation to gas delivered to the consumer after
28 1 January 2029.

29 **18. Compensation scheme for operators of Part 4 pipelines and**
30 **operators of gas storage facilities**

- 31 (1) This section applies in respect of the compensation scheme as
32 the scheme applies to operators of Part 4 pipelines and operators
33 of gas storage facilities.

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- 1 (2) The relevant gas quality specification for an operator of a Part 4
2 pipeline in relation to the pipeline is the reference specification
3 for the pipeline.
- 4 (3) The relevant gas quality specification for an operator of a gas
5 storage facility in relation to the facility is the gas quality
6 specification prescribed for the facility for the purposes of this
7 subsection.
- 8 (4) The costs referred to in section 16(1)(a), of an operator of a
9 Part 4 pipeline or a gas storage facility, are, under the
10 regulations, to be limited to —
- 11 (a) the costs necessary to restore any reduction in the
12 capacity of the pipeline or gas storage facility resulting
13 from being delivered the gas, to the extent to which the
14 reduction in capacity is attributable to the gas not
15 complying with the relevant gas quality specification for
16 the operator; and
- 17 (b) the plant and equipment costs of the operator, to the
18 extent to which those costs are attributable to the gas not
19 complying with the relevant gas quality specification for
20 the operator; and
- 21 (c) increases in operating and maintenance costs of the
22 operator resulting from being delivered the gas, to the
23 extent to which those increases are attributable to the
24 gas not complying with the relevant gas quality
25 specification for the operator.

26 **19. Double compensation**

- 27 (1) A contract or access determination (including a contract or
28 access determination in force at the time that this section comes
29 into operation) does not have effect to the extent to which it
30 would otherwise provide compensation (whether or not
31 expressly and whether in whole or in part) for —
- 32 (a) a relevant effect on a PIA pipeline's capacity, operations
33 or maintenance; or

- 1 (b) a cost incurred by a gas consumer, an operator of a
2 Part 4 pipeline or an operator of a gas storage facility as
3 a result of being delivered gas that does not comply with
4 the relevant gas quality specification for the consumer or
5 operator; or
- 6 (c) a loss of capacity of a gas storage facility resulting from
7 the operator of the facility being delivered gas that does
8 not comply with the relevant gas quality specification
9 for the operator,
- 10 that is provided for under a pipeline impact agreement or this
11 Part, or that, although there is a pipeline impact agreement in
12 relation to the relevant effect referred to in paragraph (a), is not
13 provided for under the agreement, but would ordinarily be
14 provided for under such an agreement.
- 15 (2) Subsection (1) does not apply to a pipeline impact agreement or
16 a contract entered into under or for the purposes of a pipeline
17 impact agreement or this Part.
- 18 (3) Without limiting the ways in which a contract or an access
19 determination could otherwise provide compensation it could do
20 so by increasing a liability (including costs and tariffs) or
21 reducing a benefit otherwise provided for by the contract.
- 22 (4) In this section, a reference to providing compensation for an
23 effect, cost or loss referred to in subsection (1) includes a
24 reference to effecting recovery for, and to dealing with, the
25 effect, cost or loss.

26 **20. Part 4 pipeline becoming PIA pipeline**

27 The regulations may provide for and in relation to any matter
28 arising as a consequence of a gas transmission pipeline ceasing
29 to be a Part 4 pipeline and becoming a PIA pipeline, including
30 by —

- 31 (a) providing for any necessary overlap between the
32 application of this Part and Part 2; and

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- 1 (b) modifying or extinguishing rights, duties or liabilities
- 2 under this Part; and
- 3 (c) modifying the application of a provision of this Act; and
- 4 (d) providing for the extension of the scheme of
- 5 compensation under section 16 to the operator and users
- 6 of the pipeline to cover any losses resulting from the
- 7 loss of capacity (in terajoules) of the pipeline resulting
- 8 from the operator of the pipeline being delivered gas
- 9 that does not comply with the reference specification for
- 10 the pipeline, prior to the loss of capacity being dealt
- 11 with in accordance with a pipeline impact agreement.

1 **Part 5 — Rectifying consumer installations**

2 **Division 1 — Preliminary**

3 **21. Purposes of this Part**

4 The primary purposes of this Part are to provide for —

- 5 (a) a programme for the modification or replacement of
6 certain consumer installations in preparation for the
7 supply of lower heating value gas to consumers through
8 gas distribution systems; and
- 9 (b) the operation of an account for the receipt of
10 contributions from gas producers for the purposes of
11 funding the programme; and
- 12 (c) a scheme of reimbursement under which the cost of the
13 programme is apportioned between gas producers who
14 supply lower heating value gas that flows into certain
15 gas transmission pipelines during the reimbursement
16 period.

17 **22. Terms used**

18 (1) In this Part —

19 **Account** means the account called the Gas Producers
20 Contribution Account established as an agency special purpose
21 account under the *Financial Management Act 2006*
22 section 16(1)(d);

23 **Authority** means the Economic Regulation Authority
24 established by the *Economic Regulation Authority Act 2003*
25 section 4;

26 **consumer** means a person who —

- 27 (a) is a consumer under the *Gas Standards Act 1972*
28 section 4; and
- 29 (b) in the previous 12 months, did not consume, at any one
30 site, more than 0.18 terajoules of gas;

1 **consumer installation** means a gas installation or gas appliance
2 at a site owned or occupied by a consumer;

3 **contribution**, in relation to a gas producer, means an amount
4 made available by the gas producer for the purposes of funding
5 the rectification programme;

6 **Department** means the department of the Public Service
7 principally assisting in the administration of the *Energy*
8 *Coordination Act 1994* Part 2;

9 **Director** means the Director of Energy Safety referred to in the
10 *Energy Coordination Act 1994* section 5;

11 **gas appliance** has the meaning given in the *Gas Standards*
12 *Act 1972* section 4;

13 **gas installation** has the meaning given in the *Gas Standards*
14 *Act 1972* section 4;

15 **lower heating value gas** means gas with a heating value that
16 does not meet the heating value standards set out in the *Gas*
17 *Standards (Gas Supply and System Safety) Regulations 2000*
18 regulation 5(2)(a) and (d), as in force immediately before
19 1 January 2009;

20 **rectification programme** has the meaning given in
21 section 23(2);

22 **reimbursement period** means the period —

- 23 (a) beginning on the day determined under section 29; and
24 (b) ending on the day before the tenth anniversary of the
25 day referred to in paragraph (a);

26 **site**, in relation to a consumer, means a place to which gas is
27 supplied to the consumer through a connection point to a gas
28 distribution system.

- 29 (2) For the purposes of this Part, any amount made available by a
30 gas producer and credited to the Account before the
31 commencement of this Part is to be taken to be a contribution
32 from a gas producer.

- 1 (3) A reference in this Part to the cost of the rectification
2 programme is a reference to the total of all amounts charged to
3 the Account, whether before or after the commencement of the
4 this Part, other than amounts charged for the purposes of
5 section 25(1)(a).

6 **Division 2 — Rectification programme**

7 **23. Director to establish and implement the rectification**
8 **programme**

- 9 (1) In this section —
10 *relevant consumer installation* means a consumer installation
11 that is likely to become unsafe or dangerous in use if lower
12 heating value gas were to be supplied to consumers through gas
13 distribution systems.
- 14 (2) It is a function of the Director to establish and implement a
15 programme (the *rectification programme*) for the modification
16 or replacement of relevant consumer installations, so that, to the
17 extent practicable, owners of those installations (whether
18 consumers or not) are given the opportunity to have them
19 modified or replaced in anticipation of their use being controlled
20 or prohibited by an order under the *Gas Standards Act 1972*
21 section 13H.
- 22 (3) The Director need not perform the function under subsection (2)
23 if, in the opinion of the Director, there is not sufficient money
24 standing to the credit of the Account to fund the rectification
25 programme.
- 26 (4) The regulations may provide for and in relation to matters
27 relating to the rectification programme, including —
- 28 (a) the rights, duties and liabilities of owners of relevant
29 consumer installations, and any other persons, in respect
30 of the modification or replacement of those installations
31 under the programme; and
- 32 (b) the ownership of gas installations, gas appliances and
33 any other things supplied under the programme.

1 **24. Payments into and out of the Account**

- 2 (1) The following funds must be credited to the Account —
- 3 (a) all contributions from gas producers;
- 4 (b) income derived from the investment of money standing
- 5 to the credit of the Account.
- 6 (2) The money standing to the credit of the Account may be applied
- 7 by the Director for the following purposes —
- 8 (a) payment of costs and expenses incurred in, or in
- 9 connection with, establishing and implementing the
- 10 rectification programme;
- 11 (b) payment of costs and expenses associated with
- 12 administering the Account;
- 13 (c) payment of money under section 25(1)(a);
- 14 (d) payment of any other costs and expenses incurred for
- 15 the purposes of this Part.

16 **25. Surplus funds to be repaid to gas producers upon**

17 **completion of the rectification programme**

- 18 (1) When the Director is satisfied that the money standing to the
- 19 credit of the Account will not be applied (other than for the
- 20 purposes referred to in section 24(2)(b) or (c)), the Director
- 21 must ensure that within 4 months —
- 22 (a) the balance of the Account is paid to the gas producer or
- 23 producers who made contributions; and
- 24 (b) notice is published in the *Gazette* that the rectification
- 25 programme has been completed.
- 26 (2) The amount to be paid to a gas producer under subsection (1)(a)
- 27 is an amount that bears to the total amount to be paid to gas
- 28 producers under that subsection the same proportion as the total
- 29 of the gas producer's contributions bears to the total of all the
- 30 contributions from gas producers.

1 **26. Application of *Financial Management Act 2006* and *Auditor***
2 ***General Act 2006***

3 (1) The provisions of the *Financial Management Act 2006* and the
4 *Auditor General Act 2006* regulating the financial
5 administration, audit and reporting of agencies apply to and in
6 relation to the Account.

7 (2) The administration of the Account is, for the purposes of the
8 *Financial Management Act 2006* section 52, to be regarded as a
9 service of the Department.

10 (3) The *Financial Management Act 2006* section 20 does not apply
11 to the Account.

12 **27. Annual report of Department to include information about**
13 **the rectification programme**

14 Without limiting the *Financial Management Act 2006*
15 section 61, the Department's first annual report after publication
16 of the notice under section 25(1)(b) must contain the following
17 information —

- 18 (a) the name of each gas producer who made one or more
19 contributions and the amount of each contribution;
20 (b) the total amount of income derived from the investment
21 of moneys forming part of the Account;
22 (c) the cost of the rectification programme;
23 (d) the amount (if any) paid to each gas producer under
24 section 25(1)(a).

25 **Division 3 — Reimbursement scheme**

26 **28. Regulations may provide for reimbursement scheme**

27 (1) In this section —
28 *contributor* means a gas producer who made a contribution
29 (whether or not the gas producer supplies lower heating value
30 gas during the reimbursement period);

- 1 **relevant gas transmission pipeline** means a gas transmission
2 pipeline from which gas flows into a gas distribution system in
3 the Coastal Supply Area constituted under the *Energy*
4 *Coordination Act 1994* section 11A(1) by the *Energy*
5 *Coordination (Coastal Supply Area) Order 2000*;
- 6 **supply**, in relation to lower heating value gas, means the supply
7 of lower heating value gas that will flow into a relevant gas
8 transmission pipeline.
- 9 (2) A reference in this section to a gas producer who supplies lower
10 heating value gas does not include a reference to a gas producer
11 whose supply of lower heating value gas is less than
12 10 terajoules per day.
- 13 (3) The regulations may provide for and in relation to a scheme (the
14 **reimbursement scheme**) under which the cost of the
15 rectification programme is apportioned between gas producers
16 who supply lower heating value gas during the reimbursement
17 period.
- 18 (4) The regulations may do the following —
- 19 (a) provide for gas producers who supply lower heating
20 value gas during the reimbursement period to be
21 required, periodically and at the end of the
22 reimbursement period —
- 23 (i) to reimburse one or more contributors; or
24 (ii) to reimburse one or more gas producers who
25 supply lower heating value gas during the
26 reimbursement period but who are not
27 contributors; or
28 (iii) to do both of those things;
- 29 (b) confer functions on the Authority in relation to the
30 reimbursement scheme, including the function of
31 determining the amounts required to be reimbursed (the
32 **reimbursement amounts**);

- 1 (c) specify the methods and principles to be applied by the
2 Authority in determining reimbursement amounts or in
3 performing any other function in relation to the
4 reimbursement scheme;
- 5 (d) provide for the costs incurred by the Authority in
6 performing its functions in relation to the reimbursement
7 scheme to be recovered from gas producers who supply
8 lower heating value gas during the reimbursement
9 period;
- 10 (e) provide for interest to be payable on amounts that
11 remain unpaid after becoming due and payable under
12 paragraph (a) or (d) (the *unpaid amounts*);
- 13 (f) provide for the recovery of unpaid amounts, and interest
14 on those amounts, by persons entitled under the
15 regulations to be paid those amounts.
- 16 (5) A gas producer who supplies lower heating value gas after the
17 reimbursement period cannot be required under the regulations
18 to pay reimbursement amounts in relation to that supply.

19 **29. Minister may determine beginning of the reimbursement**
20 **period**

21 For purposes of the definition of *reimbursement period*
22 paragraph (a), the Minister may, by notice published in the
23 *Gazette*, determine the day on which the reimbursement period
24 begins.

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Part 6 — General provisions

30. Relationship to Gas Access Laws

The regulations may provide for and in relation to the relationship between this Act and a Gas Access Law, including by providing for how the Gas Access Law is to have effect in relation to matters and things affected by this Act.

31. Coordinator to monitor and inquire into

It is a function of the Coordinator —

- (a) to monitor the operation of this Act generally; and
- (b) to inquire into or investigate particular matters that arise in relation to this Act or contracts that relate to the purposes of this Act or that are, or can be, modified under this Act.

32. Exemptions may be granted by Minister

- (1) The Minister may, by order published in the *Gazette*, exempt from the application of this Act or specified provisions of this Act, wholly or to a specified extent —
 - (a) a specified person or persons of a specified class; or
 - (b) a specified thing or things of a specified class; or
 - (c) a specified contract or contracts of a specified class; or
 - (d) a specified activity relating to the sale, supply, storage or transportation of gas transported or to be transported through a gas transmission pipeline.
- (2) Before making an order under subsection (1), the Minister must make the proposed order available for comment to the extent to which the Minister considers necessary in relation to the proposed exemption.
- (3) An exemption may be —
 - (a) subject to specified conditions; and

- 1 (b) indefinite or for a specified period.
- 2 (4) The Minister may, by order published in the *Gazette*, amend or
3 revoke an order under subsection (1).
- 4 (5) The *Interpretation Act 1984* section 42 applies to an order under
5 subsection (1) or (4) as if the order were regulations.

6 **33. Review of Act**

- 7 (1) The Minister must carry out a review of the operation and
8 effectiveness of this Act as soon as is practicable after the
9 expiration of 10 years from its commencement.
- 10 (2) The Minister is to prepare a report based on the review and, as
11 soon as is practicable after the report is prepared (and in any
12 case not more than 12 months after the expiration of the 10 year
13 period referred to in subsection (1)), cause it to be laid before
14 each House of Parliament.

15 **34. Regulations**

- 16 (1) The Governor may make regulations prescribing all matters that
17 are required or permitted by this Act to be prescribed, or are
18 necessary or convenient to be prescribed for giving effect to the
19 purposes of this Act.
- 20 (2) The regulations may do the following —
- 21 (a) provide for and in relation to the giving, publishing and
22 verification of information relating to the purposes of
23 this Act, including information relating to the
24 following —
- 25 (i) the entering into, amendment or content of a
26 pipeline impact agreement or other contract;
- 27 (ii) the supply of gas that will flow into a gas
28 transmission pipeline;
- 29 (iii) the actual, calculated or hypothetical quantity
30 and quality of gas flowing into or out of a gas

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- 1 transmission pipeline or past specified points on
2 a gas transmission pipeline;
- 3 (b) limit the liability a person has in relation to information
4 given or published under paragraph (a);
- 5 (c) provide for and in relation to the imposition of standards
6 in relation to measuring gas quantity and quality;
- 7 (d) provide that equipment for measuring gas quantity and
8 quality is to be treated as accurate in specified
9 circumstances;
- 10 (e) modify the application of the provisions of Part 2 to
11 particular persons, circumstances or things in respect of
12 which the provisions would not otherwise apply so as to
13 give effect to the purposes of that Part;
- 14 (f) provide for the exclusivity of the jurisdiction of an
15 arbitrator or expert under section 9, 11 or 16, including
16 in relation to other dispute resolution procedures under
17 other written laws;
- 18 (g) provide for the extent to which the rules of evidence
19 apply during the resolution of disputes under
20 section 9, 11 or 16;
- 21 (h) provide for and in relation to the imposition and
22 payment of fees and charges in connection with the
23 performance of the functions of an arbitrator or expert
24 under section 9, 11 or 16;
- 25 (i) provide that contravention of a provision of the
26 regulations is an offence;
- 27 (j) provide, in relation to bodies corporate, for an offence to
28 be punishable on conviction by the imposition of a fine
29 not exceeding \$50 000 and, if the contravention is of a
30 continuing nature, a further fine not exceeding \$20 000
31 in respect of each day or part of a day during which the
32 contravention continued after the offender was notified
33 by a specified person that the person is of the opinion
34 that the offender is contravening the provision;

- 1 (k) provide, in relation to individuals, for an offence to be
2 punishable on conviction by the imposition of a fine not
3 exceeding \$5 000;
- 4 (l) provide for the imposition of a minimum fine for an
5 offence;
- 6 (m) relate the level of a fine to —
- 7 (i) the circumstances or extent of the offence;
- 8 (ii) whether the offender has committed previous
9 offences and, if so, the number of previous
10 offences that the offender has committed.
- 11 (3) If it is inappropriate to prescribe a set fee or charge in
12 connection with the performance of a function of an arbitrator
13 or an expert the regulations may provide for the method of
14 calculating the fee or charge, including calculation according to
15 the cost of performing that function.
- 16 (4) The regulations may adopt the text of any published document
17 specified in the regulations —
- 18 (a) as that text exists at a particular date; or
19 (b) as that text may from time to time be amended.
- 20 (5) The text may be adopted —
- 21 (a) wholly or in part; and
22 (b) as modified by the regulations.
- 23 (6) The adoption may be direct (by reference made in the
24 regulations), or indirect (by reference made in any text that is
25 itself directly or indirectly adopted).
- 26 (7) The adoption of text is of no effect unless —
- 27 (a) the adopted text; and
28 (b) the amendments to the text or the text as amended (if
29 relevant),
- 30 can at all reasonable times be inspected or purchased by the
31 public.

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Part 7 — Acts amended

Division 1 — *Energy Coordination Act 1994* amended

35. Act amended

This Division amends the *Energy Coordination Act 1994*.

36. Section 26 amended

Delete section 26(3), (4) and (5).

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

37. Act amended

This Division amends —

- (a) if this section comes into operation before the day on which the *National Gas Access (WA) Act 2009* section 26 comes into operation — the *Gas Pipelines Access (Western Australia) Act 1998*; or
- (b) otherwise — the *Gas Pipelines Access (Western Australia) Act 1998* (as amended by the *National Gas Access (WA) Act 2009* and cited as the *Energy Arbitration and Review Act 1998*).

38. Section 73 amended

Before section 73(1)(d) insert:

- (da) under the *Gas Supply (Gas Quality Specifications) Act 2009*; or



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)
access determination	3(1)
Account	22(1)
Authority	22(1)
consumer	22(1)
consumer installation	22(1)
contribution	22(1)
contributor	28(1)
Coordinator	3(1)
Department	22(1)
downstream agreement	15
exempt contract	3(1)
Gas Access Law	3(1)
gas appliance	22(1)
gas consumer	3(1)
gas contract	14(1)
gas distribution system	3(1)
gas installation	22(1)
gas producer	3(1)
gas storage facility	3(1)
gas transmission pipeline	3(1)
inlet point	3(1)
lower heating value gas	22(1)
operator	3(1)
Part 4 pipeline	15
parties	8(1)
PIA pipeline	3(1), 5(1)
pipeline	3(1)
pipeline impact agreement	3(1), 6(1)
pipeline service	3(1)
pipeline services agreement	3(1)
plant and equipment costs	15
rectification programme	22(1), 23(2)
reference specification	3(1)
reimbursement amounts	28(4)
reimbursement period	22(1)
reimbursement scheme	28(3)
relevant consumer installation	23(1)
relevant effects	3(1), 7(2)
relevant gas quality specification	15

Defined Terms

relevant gas transmission pipeline	28(1)
short-term situation	10(2)
site.....	3(1), 22(1)
specified.....	3(1)
standard specification.....	3(1)
supply.....	28(1)
Third Party Access Code	3(1)
unpaid amounts	28(4)
user.....	3(1)