

ENERGY SAFETY BILL 2005

Explanatory Memorandum

Introduction and Overview

This Bill seeks to establish adequate long-term funding by the energy industry for technical and safety regulation of the electricity and gas industries and other related activities, which are carried out by the Director of Energy Safety and his staff of the *EnergySafety* Division of the Department of Consumer and Employment Protection.

The technical and safety regulatory regime is established under the *Energy Coordination Act 1994*, the *Gas Standards Act 1972* and the *Electricity Act 1945* and the various regulations under these Acts. The regime is administered by the Director of Energy Safety, a public officer established by s.5 of the *Energy Coordination Act 1994* on 1 January 1995.

The regulatory functions of the Director of Energy Safety and the supporting *EnergySafety* Division can be summarised as covering the technical and safety regulation of:

- electricity production;
- electricity transmission and distribution;
- electricity utilisation (consumers' installations and appliances);
- gas distribution (and gas production plants connected to gas distribution systems);
and
- gas utilisation (consumers' installations and appliances),

for the purpose of ensuring, in Western Australia –

- the safety of people (the public, energy workers and consumers) in respect of electricity and gas utility infrastructure;
- that residential and business consumers receive electricity and gas supplies that are metered accurately and meet minimum standards of reliability and quality so that appliances function correctly;
- that residential and business consumers have safe electrical and gas installations at their premises;
- that electrical and gas equipment is safe to use; and

- that common household appliances and certain types of equipment perform and are labelled to satisfy energy efficiency standards.

PART 1 PRELIMINARY

Clause 1 Short Title

States the short title of the proposed Act.

Clause 2 Commencement

The Act will commence on a day to be fixed by proclamation. It is envisaged that this would be shortly after the Bill is passed by the Legislative Assembly and the Legislative Council.

Clause 3 Terms Used In The Act

This clause defines a number of terms used throughout the Act.

PART 2 BUSINESS PLANS

Clause 4 Draft Business Plan To Be Submitted To Minister

This clause places an obligation on the Chief Executive Officer and the Director of Energy Safety to prepare and submit to the Minister for approval by a specified date a draft business plan covering the "energy safety activities" that will be carried out in the next financial year. This required submission date is designed to provide the Minister with adequate time to consult with any relevant parties (eg Department of Treasury and Finance) on the content of the business plan before seeking to have the plan modified or approved as appropriate.

Clause 5 Transitional Provision

This clause ensures that the first business plan covers the energy safety activities to be carried out during the next full financial year.

Clause 6 Matters To Be Included In Business Plan

This clause details the matters that need to be included in the business plan: a statement of intent, a financial plan and a statement setting out the total amount proposed to be raised by way of the levy.

The quantum of the levy is expected to cover all the costs of the Director of Energy Safety and his staff minus the revenue received from licensing electrical and gas operatives and any other minor income from certification activities.

A description of the financial model to be used to apportion the amount of the levy between the electricity industry and gas industry and the individual participants in each of

those industries (i.e. each participant's share of the levy) is also to be included, together with the proposed formula or method for assessment in relation to the levy.

The present plan for the application of the levy is as follows, although that plan may change over time, possibly on the basis of industry feedback, as this is permitted by the proposed legislation, to allow for changes in the energy industry over time:

- the plan for the electrical industry, is to make all producers of electricity who each have a collective installed capacity of 5 megawatts or more, pay a levy proportional to their total installed capacity as compared to the combined installed capacity of all producers with 5 megawatts or more capacity. This then includes all the large electricity producers including those on mine sites, other than those whose generation capacity is limited to use only in case of external network failure.
- In the case of the gas industry, the plan is slightly different due to the different nature of the industry, and it is intended to make all natural gas and LPG distributors pay a levy proportional to the total number of consumer installations they each supply with gas as compared to the combined number of consumer sites served by all distributors.

The electricity industry is expected to meet approximately two-thirds of the total levy, and the gas industry the balance, as this is in line with the current workload split at *EnergySafety*.

Clause 7 Contents of Statement of Intent

This clause covers the information that is to be included in the Statement of Intent such as the objective of *EnergySafety*, the nature and scope of activities, the performance targets and the type of information and advice to be provided to the Minister by the Director of Energy Safety. The Statement of Intent is considered an important part of the business plan as it broadly sets out what is to be achieved by the Director and *EnergySafety* during the forecast period.

The Statement of Intent is a forecast for the next five financial years, and will be revised each year as part of the development of the business plan.

Clause 8 Contents of Financial Plan

All the financial matters that need to be covered by the financial plan including estimates of expenditure for fixed and variable operating costs and expenses, capital expenditure and an estimate of the retained revenue from licensing fees and other minor income are specified in this clause. The financial plan will provide an overall picture of the costs for the operation of *EnergySafety*.

Clause 9 Minister's Powers In Relation To Draft Business Plan

This clause details the powers that the Minister has in relation to requesting changes to the draft business plan and how the request is to be dealt with by the relevant parties. It provides mechanism for the Minister to ensure that an acceptable plan is submitted.

Clause 10 Draft Business Plan Must Not Be Published Without Minister's Approval

This clause provides that the draft business plan or any part of the plan may not be published or made available without the prior approval of the Minister.

Clause 11 Minister's Approval Of Draft Business Plan

This clause stipulates that the draft business plan including any modifications once approved by the Minister is the business plan for the relevant financial year.

Once approved the Minister must within 14 days cause a copy to be laid before each House of Parliament. If Parliament is not sitting, the Minister is to transmit a copy of the plan to the Clerk of the House as provided for under Clause 30.

This provides Parliament and industry with clarity about how the levy has been determined and how it is to be allocated across industry participants, since such details are required to be in the Plan.

Clause 12 Modification of Business Plan

This clause provides for the business plan to be modified with the agreement of or at the direction of the Minister, and also requires the Minister to consult with the chief executive officer and the Director of Energy Safety before issuing direction to change the plan.

Clause 13 Director Of Energy Safety Must Act In Accordance With Statement Of Intent

This clause places an obligation on the Director of Energy Safety to perform his/her functions in accordance with the Statement of Intent included in the business plan unless otherwise authorised in writing by the Minister.

PART 3 ENERGY SAFETY LEVY

Clause 14 Minister May Determine Levy

This clause covers the content of the notice that the Minister may publish in the Gazette (together with the deadline for publication) specifying the quantum of the levy, the method used to determine which energy participants are to pay the levy, the formula or method used to determine each participant's share of this levy and how the levy is to be paid.

The notice is the legal instrument that promulgates the levy for the forthcoming year.

Clause 15 Notice Of Assessment

This clause details, following publication of the levy notice by the Minister, the procedure to be followed by the chief executive officer in determining the industry participants liable to pay the levy, the quantum to be paid by each and the content of the notice of assessment to be issued to each participant.

Clause 16 Payment Of The Levy

This clause places an obligation on the energy industry participants that are liable to pay the levy, in accordance with the notice of assessment. It allows for the levy to be paid in instalments if provided for in the notice of assessment.

It is anticipated that industry participants will want flexibility in the way that they pay the levy and this clause will provide for such flexibility to be considered on a yearly basis.

Clause 17 Penalty For Non-Payment

This clause is intended to provide an incentive to pay the levy on the date it becomes due otherwise a penalty in the form of interest is applied to any outstanding levy payments.

Clause 18 Recovery Of Levy And Interest

This clause provides for an outstanding levy amount and interest to be recovered through the Courts.

PART 4 ENERGYSAFETY ACCOUNT

Clause 19 EnergySafety Account

This clause provides for the establishment of an “Energy Safety Account” and for this statutory account to be credited with the levy proceeds and all other fees and revenue paid to the Director of Energy Safety and the EnergySafety Office.

The account is expected to hold all the income and revenue collected by EnergySafety and provide sufficient funds for the overall operation of EnergySafety.

Clause 20 Use Of Funds In Energysafety Account

This clause specifies the purposes for which money can be paid out of the EnergySafety Account and will ensure that the funds can only be used for "energy safety activities", as defined.

PART 5 Obtaining Information And Investigation

Clause 21 Power To Require Information Or Material

To be able to prepare a business plan and determine the levy the Director of Energy Safety must be able to obtain relevant information or material from energy industry participants. This clause provides for the Director of Energy Safety to obtain such information and material from energy industry participants and failure to provide the information is an offence against the Act and can attract a fine of up to \$20,000.

Clause 22 Designation And Identification Of Investigators

To enable investigations to be undertaken to ensure that energy industry participants are complying with the provisions of the Act including the provision of valid information

about their facilities or services which may affect their liability under the levy, it is proposed to designate a number of investigators. This clause provides for the Director of Energy Safety to designate persons to be investigators for the purposes of the Act.

It is anticipated that this function will be mainly undertaken by existing staff of EnergySafety although it is not limited to that.

It also provides for investigators to be issued with an identification card and specifies how the card is to be used.

Clause 23 Power of Investigators

This clause sets out the role and powers of an investigator and includes the powers of right of entry and the ability to take possession or copy documents as part of an investigation to assess compliance or to gather information to check or assess liability under an existing or proposed levy.

Clause 24 Complying With Information Requirements

This clause prevents a person from being excused from complying with the requirement to provide information or relevant material on the grounds that they could be incriminated or liable to penalty. As a safeguard it does prevent the information or material being used as evidence in proceedings against the person unless it is for specific purposes under the provisions of this Act.

Clause 25 Fake And Misleading Information

This clause makes it an offence and imposes a penalty on individuals that provide fake or misleading information to the Director of Energy Safety or an investigator.

Clause 26 Obstructing Or Misleading An Investigator

This clause imposes a penalty on a person who hinders or obstructs an investigator whilst carrying out his/her functions under the Act.

Clause 27 Confidentiality

This clause makes it an offence for persons performing their functions under the Act to disclose or make use of the information they have obtained except for the purpose of performing functions under this Act, or as required or allowed by this Act or under a written law or with the written consent of the person to whom the information relates.

PART 6 Miscellaneous

Clause 28 Delegation by Chief Executive Officer

This clause provides for the chief executive officer to delegate to another officer of the department any power or duty of the chief executive officer under another provision of this Act. This is designed to ensure all administrative requirements can be efficiently met.

Clause 29 Offence By Body Corporate

This clause makes the director of a body corporate responsible and liable for any offences against the Act committed by the body corporate. A director is also liable to the penalty prescribed for an individual who commits the offence.

The clause also details a number of circumstances that are considered a defence to a charge for an alleged offence by a director.

Clause 30 Supplementary Provisions For Laying Document Before Parliament

This clause provides for an alternative method of laying the business plan before each House of Parliament if Parliament is not sitting. This is achieved by transmitting the plan to the Clerk of the House and this is taken to have been laid in the House.

Clause 31 Regulations

This clause provides for the making of regulations and in particular regulations relating to the procedure for assessing and collecting the levy, should this be considered necessary.