

WESTERN AUSTRALIA

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LEGISLATIVE ASSEMBLY

# **ENERGY COORDINATION AMENDMENT BILL 1997**

**A BILL FOR**

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

The Parliament of Western Australia enacts as follows:

## **Short title**

**1.** This Act may be cited as the *Energy Coordination Amendment Act 1997*.

cl. 2

**Commencement**

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

**Principal Act**

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

[\* Act No. 71 of 1994.]

**Long title amended**

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

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

“

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

15

and

”;

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

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

**Section 3 amended**

20 5. Section 3 of the principal Act is amended —

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

“

25

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

**“distribution system”** means —

- 5 (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 from the flange, joint or other point at which the system connects to a transmission system; and
- 10 (b) any associated apparatus, facilities, structures, plant or equipment;

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

15 **“gas distribution capacity”** means the capacity of a licensee’s distribution system to transport gas;

20 **“gas transmission capacity”** means the capacity of a licensee’s transmission system to transport gas;

25 **“Land Acquisition Act”** means the provisions of the *Land Acquisition and Public Works Act 1902* relating to compulsory taking of land or the provisions of any other Act that replace those provisions;

**“licence”** means a licence granted for the purposes of section 11I;

**cl. 6**

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

5

“**supply**”, in relation to gas, means transportation or sale;

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

10

“**transmission system**” means a system of pipelines, designed to operate at a pressure of 1.9 megapascals or more, for the transportation of gas to a distribution system, or to customers, from generating works (as defined in the *Energy Corporations (Powers) Act 1979*) within the limits of the State.

15

”;

and

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

20 **Section 6 amended**

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

“

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

”.

**Part 2A inserted**

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

5                   **PART 2A — LICENSING OF GAS SUPPLY**

***Division 1 — Supply areas***

**Constitution of supply areas**

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

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

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

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

**Areas need not be continuous**

25                   **11B.** A supply area may be one continuous area or be made up of 2 or more separate areas.

cl. 7

**Consultation**

5 **11C.** Where it is proposed that an order be made under section 11A, the Minister must, before the order is made, consult with any licensee who will be materially affected by the proposed order.

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

**Classification of licences**

- 10 **11D.** (1) Licences are classified as follows —
- (a) transmission, which authorizes the licensee to transport gas through the licensee's transmission system;
  - (b) distribution, which authorizes the licensee —
    - 15 (i) to construct a distribution system and to transport gas through the system; or
    - (ii) to transport gas through an existing distribution system, and if required for that purpose to make alterations to the system, and to operate and maintain the system; or
  - 20 (c) trading, which authorizes the licensee to sell gas transported through a transmission or distribution system.
- (2) A licence is to be designated by reference to one of the classifications referred to in subsection (1).

**Area to which licence applies**

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

- (a) one or more supply areas; or
- (b) one or more parts of a supply area,

5 specified in the licence.

***Division 3 — Licensing requirements***

**Licensing extends to statutory providers**

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

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

**15 Application of Division to supply of liquid petroleum gas**

**11G.** (1) The requirements of this Division apply in relation to the supply of liquid petroleum gas only to the extent that such gas is supplied through a transmission or distribution system in a supply area.

20 (2) In subsection (1) —

**“liquid petroleum gas”** has the same meaning as in the *Liquid Petroleum Gas Act 1956*.

cl. 7

**Relationship with *Petroleum Pipelines Act 1969***

**11H.** Despite anything in the *Petroleum Pipelines Act 1969*, that Act does not apply in relation to —

- 5
- (a) the transportation of gas through a transmission system in a supply area; or
  - (b) the construction and operation of, or the transportation of gas through, a distribution system in a supply area.

**Requirement for licence**

10 **11I.** A person must not supply gas in a supply area or part of a supply area except under the authority of a licence granted by the Coordinator that applies to that area or that part of the area.

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

15 **Power to exempt**

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

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

**Transitional provision**

25 **11K.** (1) This section applies to every person (an “**existing operator**”) that immediately before the commencement of section 7 of the *Energy Coordination Amendment Act 1997* (“**the commencement**”) is

undertaking any activity that, after the commencement, is required to be licensed under section 11I.

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

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

(a) until the expiry of 12 months after the commencement; or

10 (b) until —

(i) a licence of that kind is granted to the person or is refused; and

15 (ii) in the case of a refusal, the time for appeal against the refusal under section 11ZI expires without an appeal being brought or an appeal is brought but is unsuccessful,

whichever happens first.

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

20 (a) results in the refusal referred to in paragraph (b) (i) of that subsection being confirmed; or

(b) is withdrawn, discontinued or dismissed.

25 (5) If a licence is granted to an existing operator, the Coordinator may waive payment of the licence fee under section 11R on such terms and conditions as are determined by the Coordinator.

**cl. 7**

(6) Without limiting subsection (5), the terms and conditions may provide that the waiver is to apply for the term of the licence or for a lesser period.

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

**5 Application for licence**

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

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

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

- (a) the nature of the business activities undertaken or to be undertaken by the applicant;
- 15 (b) where, if a licence is granted, the applicant will have power to determine its prices or charges, the methods or principles that the applicant proposes to apply in doing so;
- (c) the methods or standards that the applicant proposes to apply in supplying gas;
- 20 (d) where, if a licence is granted, the applicant will be required to provide access to gas distribution capacity or gas transmission capacity to other persons, the methods or principles that the applicant proposes to apply in determining the
- 25 terms and conditions on which such access will be provided;

- 5
- (e) in the case of an application for a distribution licence, the nature and extent of the construction, alteration, operation or maintenance of a distribution system undertaken or to be undertaken to supply gas; and
  - (f) the terms and conditions of any proposed standard customer contract between the applicant and any purchaser of gas from the applicant.

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

**Matters to be considered by Coordinator**

15 **11M.** The Coordinator is not to grant or renew a licence unless he or she is satisfied that —

- (a) the applicant for the licence or its renewal has, and is likely to continue to have, the financial and technical ability —
  - 20 (i) to supply gas in the supply area or areas to which the licence is to apply; and
  - (ii) in the case of an application for a distribution licence, to operate and maintain a distribution system and, where  
25 relevant, to construct or make alterations to a distribution system;

and

- (b) it is in the interest of the public within the supply area or areas to which the licence is to  
30 apply to grant or renew the licence.

cl. 7

**Terms and conditions of licence**

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

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

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

(4) A requirement made under paragraph (d) of Schedule 1 in a licence granted to the Gas Corporation must not be inconsistent with any enactment that regulates the financial administration of that corporation.

15 (5) The terms and conditions of a licence must not be inconsistent with regulations made under section 15 of the *Gas Standards Act 1972*.

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

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

25 **11O.** (1) The Coordinator may grant in respect of a supply area or part of a supply area more than one licence of a particular classification.

(2) In subsection (1) —

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

**Duration of licence**

**11P.** A licence may be granted or renewed for such period as the Coordinator thinks fit, but the period cannot exceed 10 years from the day of grant or renewal of the licence.

**5      **Renewal of licence****

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

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

**Licence fee**

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

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

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

20

(3) If the Coordinator is satisfied that payment of the prescribed licence fee would make it uneconomic for a licensee to supply gas as authorized by a licence, the Coordinator may reduce the amount of the fee payable by the licensee on such terms and conditions as are determined by the Coordinator.

25

**cl. 7**

(4) Without limiting subsection (3), the terms and conditions may provide that the reduction is to apply for the term of the licence or for a lesser period.

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

**Transfer of licence**

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

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

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

15 (a) made in a form approved by the Coordinator; and

(b) accompanied by the prescribed application fee.

**Gazettal**

20 **11T.** (1) The Coordinator must ensure that notice of the grant, renewal or transfer of a licence is published in the *Gazette* as soon as is practicable after the grant, renewal or transfer.

(2) The notice is to include —

(a) the name and business address of the licensee;

25 (b) the term of the licence;

- (c) the supply area or areas, or the part or parts of a supply area, to which the licence applies; and
- (d) the place where a copy of the licence and any plan may be inspected under section 11U.

**5 Licences to be available for inspection**

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

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

**Other laws not affected**

15 **11V.** The grant, renewal or transfer of a licence does not affect the licensee's obligations to comply with any other written law in relation to the matters covered by the licence.

**Amendment of licence**

20 **11W.** (1) The Coordinator may determine that a licence is to be amended.

(2) If the licence specifies a procedure to be followed in making such a determination, the determination may only be made in accordance with that procedure.

cl. 7

(3) An amendment cannot take effect until it is notified to the licensee under subsection (4) or under the procedure referred to in subsection (2).

5 (4) If a licence is amended under this section the Coordinator must —

(a) if subsection (2) does not apply, notify the licensee of the amendment; and

10 (b) ensure that notice is published in the *Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 11U.

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

15

***Division 5 — Duty to supply***

**General duty to supply**

**11X.** (1) It is a condition of every licence that, subject to section 11Y, the licensee is to —

(a) supply gas as provided for; and

20 (b) in the case of a distribution licence, operate and maintain, and, where relevant, construct or make alterations to, the distribution system as specified,

in the licence.

25 (2) In respect of any licence granted to the Gas Corporation, subsection (1) does not affect the protection

given to that corporation by section 28 (4) of the *Gas Corporation Act 1994*.

(3) The Governor may by order published in the *Gazette* provide for exemptions from subsection (1).

5 (4) Section 43 (4) and (7) to (9) of the *Interpretation Act 1984* apply to an order under subsection (3) as if the order were subsidiary legislation.

**Interruption etc. of supply**

10 **11Y.** (1) A licensee may interrupt, suspend or restrict the supply of gas provided by the licensee if in the licensee's opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.

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

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

20 (4) This section is in addition to the provisions of section 48 of the *Energy Corporations (Powers) Act 1979* if those provisions apply to a licensee by operation of regulations made for the purposes of section 11ZQ and does not limit those provisions.

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***Division 6 — Other duties included in licences***

**Asset management system**

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

- 5           (a) provide for an asset management system in respect of the licensee's assets;
- (b) notify details of the system and any substantial changes to it to the Coordinator; and
- 10           (c) not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the grant of the licence, provide the Coordinator with a report by an independent expert acceptable to the Coordinator as to the effectiveness of the system.
- 15           (2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the supply of gas and in the operation and maintenance of, and, where relevant, the construction or alteration of, the distribution system.

20           **Compliance with technical standards**

**11ZA.** It is a condition of every licence that the licensee is to comply with the standards prescribed under the *Gas Standards Act 1972* and, where applicable, the *Liquid Petroleum Gas Act 1956* in relation to the supply of

25           gas.

**Performance audit**

5 **11ZB.** (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the grant of the licence, provide the Coordinator with a performance audit conducted by an independent expert acceptable to the Coordinator.

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

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

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

15 ***Division 7 — Enforcement***

**Failure to comply with licence**

20 **11ZC.** (1) If, in the opinion of the Minister, a licensee contravenes a licence, the Minister may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.

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

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

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(b) order the licensee to pay a monetary penalty fixed by the Minister but not exceeding \$100 000;

5 (c) cause the contravention to be rectified to the satisfaction of the Minister.

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

(4) The Minister may recover —

10 (a) a penalty imposed under subsection (2) (b); or

(b) the costs and expenses of any action taken under subsection (2) (c),

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

15 **Right of licensee to make submissions**

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

20 **Exception where public health endangered**

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

25

(a) serving notice on the licensee under section 11ZC (1); or

(b) complying with section 11ZD.

**Cancellation of licence**

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

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

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

- 20 (a) the licensee has failed to comply with a term or condition of the licence, other than that imposed by section 11X;
- (b) the failure is material in terms of the operation of the licence as a whole;
- 25 (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister's opinion paragraph (b) applies to it; and
- (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.

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

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

10 (a) the vesting of assets, rights and interests of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling gas to be supplied after the cancellation;

(b) the conferral of powers and duties for that purpose;

(c) the discharge or assignment of liabilities;

(d) the disposal of property; and

15 (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).

**Duty to leave system in safe condition**

20 **11ZG.** (1) On the cancellation of a licence under section 11ZF, the former licensee is to ensure that any distribution system constructed or operated by the former licensee under the licence is left in a safe condition.

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

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

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

**5 Minister to be informed**

**11ZH.** The Coordinator is to —

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

***Division 8 — Appeal***

**15 Appeal against Coordinator's decision**

**11ZI.** (1) A person who is aggrieved by a decision of the Coordinator —

- (a) to refuse to grant or renew a licence;
- (b) to refuse to approve the transfer of a licence;
- 20 (c) as to the length of the period for which a licence is granted or renewed;
- (d) as to any term or condition of a licence; or

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(e) to amend a licence under section 11W,

may appeal to the Minister against the decision within 30 days after receiving notice in writing of the decision from the Coordinator.

5 (2) Within 60 days of an appeal being brought, the Minister is to refer the appeal to one or more suitably qualified persons appointed by him or her to examine, and advise the Minister on, the matter.

(3) The person or persons so appointed must —

10 (a) give the appellant an opportunity to be heard on the matter; and

(b) advise the Minister on the matter within 60 days after the referral of the appeal under subsection (2).

15 (4) The Minister, after considering the advice given under subsection (3), must confirm, vary or reverse the decision within 30 days after receiving that advice.

20 (5) If an appeal against a decision is brought under this section the decision is to continue to have effect pending the appeal, unless the Minister otherwise directs.

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

**When this Division applies**

**11ZJ.** The powers conferred by this Division may only be exercised in relation to a distribution licence.

**Grant of easements over Crown land**

5 **11ZK.** The Minister responsible for the administration of the *Land Act 1933* may exercise the power conferred by section 134B of that Act to grant an easement to a licensee as if the construction, alteration, operation or maintenance of a distribution system under the licence were a purpose to which subsection (1) (b) of that section referred.

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

10 **11ZL.** (1) A public authority may grant to a licensee, on such terms and conditions as are agreed between the authority and the licensee, a relevant interest in respect of land held by the public authority in fee simple.

(2) This section has effect despite any other written law.

15 (3) In this section —

**“public authority”** means —

- (a) a Minister of the Crown;
  - 20 (b) an agency, authority or instrumentality of the Crown in right of the State or a local government; or
  - (c) a body, whether corporate or unincorporate, that is established or continued for a public purpose by or under a written law and prescribed for the purposes of this definition;
- 25

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

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

5 **11ZM.** (1) For the purpose of enabling a licensee to supply gas as authorized by a licence, an interest in land or easement over land may be taken under the Land Acquisition Act as if for a public work within the meaning of that Act.

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

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

(a) are to be paid by the licensee; and

15 (b) may be recovered in a court of competent jurisdiction as a debt due by the licensee to the Crown.

(4) For the purposes of subsection (1) a reference to land in the Land Acquisition Act includes an interest in land or easement over land.

**Vesting of interest or easement**

20 **11ZN.** (1) Despite anything in the Land Acquisition Act, on the taking of an interest in land or easement over land under section 11ZM, the interest or easement vests in the licensee.

25 (2) The Land Acquisition Act applies, with all necessary changes, in relation to the recording or registering of the interest or easement taken under section 11ZM.

**Proceedings and liability**

**11ZO.** (1) Proceedings in respect of compensation, or otherwise for the purpose of complying with the Land Acquisition Act, are to be taken against the licensee.

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

**Easements in gross**

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

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

**Regulations extending certain provisions of *Energy  
Corporations (Powers) Act 1979***

20           **11ZQ.** (1) A reference to a corporation in a provision of  
the *Energy Corporations (Powers) Act 1979* referred to in  
Schedule 2 includes a licensee if that licensee —

- 25           (a) is prescribed by regulations made under  
section 26 for the purposes of that Schedule; or
- (b) belongs to a class of licensees that is so  
prescribed.

**cl. 7**

(2) The prescription of a licensee under subsection (1) (a) includes any transferee of the relevant licence under section 11S.

5 (3) Regulations referred to in subsection (1) may be made in terms that —

- (a) modify the operation of, add a further requirement to, or make inapplicable an enactment or part of an enactment in relation to a licensee or class of licensees;
- 10 (b) impose conditions or restrictions on the doing of any thing by a licensee or a member of a class of licensees;
- (c) prohibit a licensee or a member of a class of licensees from doing any thing; or
- 15 (d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing.

**Parliamentary disallowance**

**11ZR.** (1) Regulations referred to in section 11ZQ do not come into operation until they have been —

- 20 (a) published in the *Gazette*; and
- (b) laid before each House of Parliament and either —
  - 25 (i) 15 sitting days of each House have passed after the regulations were so laid and notice of a motion to disallow the regulations has not been given; or

- (ii) if notice of a motion to disallow the regulations has been given, the motion has lapsed or has been withdrawn or defeated.

5 (2) The Minister is to cause a notice to be published in the *Gazette* showing the day on which any such regulations came into operation.

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**Schedules 1 and 2 added**

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

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**SCHEDULE 1 — LICENCE TERMS AND  
CONDITIONS**

[Section 11N]

15 A licence may include provisions —

- (a) requiring the licensee to enter into agreements on specified terms or on terms of a specified type;
- 20 (b) requiring the licensee to observe specified industry codes with such modifications or exemptions as may be determined by the Coordinator;
- (c) requiring the licensee to provide access to gas distribution capacity or gas transmission capacity to other persons on such terms and conditions as may be determined by the Coordinator;
- 25 (d) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
- 30 (e) preventing the licensee from engaging in or undertaking specified business activities or any other business;

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- (f) specifying methods or principles to be applied by the licensee in determining its fees or charges;
- (g) specifying methods or standards to be applied in supplying gas under the authority of the licence;
- 5 (h) specifying procedures for amendment or surrender of the licence;
- (i) requiring the licensee to provide specified information relating to the activities of the licensee under the licence to the Coordinator in the manner and form  
10 determined by the Coordinator;
- (j) regulating the construction, alteration, operation or maintenance of a distribution system;
- (k) relating to the performance of functions by the licensee including —  
15
  - (i) the range of functions that may be performed by the licensee;
  - (ii) performance criteria to be met by the licensee; and
  - 20 (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;
- (l) specifying —  
25
  - (i) the terms and conditions of any customer contract which an owner or occupier of land is required to enter into with the licensee in the absence of any express agreement between the customer and the licensee to the contrary; and
  - 30 (ii) any limitation on the capacity of the parties by express agreement to exclude, modify or restrict the terms and conditions of the customer contract;

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

cl. 9

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

[Section 11ZQ]

5	s. 4 (1) (definition of “service apparatus”)	s. 48 s. 49 s. 50 s. 51	s. 75 s. 76 s. 77 s. 79
	s. 4 (2)	s. 52	s. 84 (2) & (3)
10	s. 40	s. 53	s. 120
	s. 43	s. 66	s. 121
	s. 46 (7), (8), (11), (12), (14) & (16)	s. 67 s. 67A s. 74	
15			”.

**Consequential amendments**

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

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

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

25 and  
”;

