

# **EXPLANATORY MEMORANDUM**

## ***ENERGY LEGISLATION AMENDMENT BILL 2003***

**June 2003**

This Bill consolidates a number of legislative initiatives which support the Government's energy policy, including: miscellaneous amendments to the gas licensing scheme in Part 2A of the *Energy Coordination Act 1994*; facilitating gas full retail contestability ("FRC"); promoting reticulation of natural gas to greenfield areas, particularly regional communities; allowing the Coordinator of Energy to collect and disseminate information to facilitate planning in the energy sector; consolidating Government's sustainable energy research functions, including the monitoring of greenhouse gases; and validating Western Power's practice of charging for extending and upgrading electricity networks.

As competition is being introduced into what was once a monopoly market, Government must facilitate the development of industry arrangements to support and promote gas retail competition, to provide for the safe and efficient supply and use of gas and protect small use customers. To achieve these objectives the Bill provides for implementation of gas retail market arrangements enabling the approval of retail market schemes. The Scheme or Schemes will contain retail market rules which govern customer transfer processes and will ensure compliance with those rules by market participants to facilitate competition.

In a competitive gas market, a number of consumer protection mechanisms will be required, and this Bill introduces protections such as:

- minimum standards for supply contracts for small use customers;
- a Gas Marketing Code of Conduct to regulate marketing behaviour;
- a Gas Industry Ombudsman Scheme enabling small use customers to obtain an independent dispute resolution service;
- a supplier of last resort scheme to ensure continued gas supply to small use customers in the event of an unplanned market exit by a gas retailer; and
- regulation of the quality of commingled gas supplied and billed to customers in the distribution system.

The Bill also provides for recovery of funds expended by the network operator and where appropriate by Government, in implementing gas FRC and in subsequently operating the market mechanisms used to support and maintain gas FRC.

The Bill also provides for other energy policy measures including:

the grant of exclusive gas trading and distribution licences on the basis of a competitive and transparent tender process, to facilitate greenfield gas reticulation;

the clarification of the Coordinator of Energy's powers to obtain technical information, including information on greenhouse gases, and how that information may be published;

the transfer and consolidation of sustainable energy research functions from the Minerals and Energy Research Institute of Western Australia (MERIWA) to the Coordinator of Energy;

the validation of the existing and long standing practice of Western Power requiring new customers to contribute towards the cost of extending and upgrading the electricity networks, including the efficient development of that network; and

enabling Western Power to adjust electricity accounts for a period of up to 12 months when the electricity meter has not correctly recorded the amount of electricity consumed.

## **PART 1 - PRELIMINARY**

### *Clause 1 Short Title*

Title is the *Energy Legislation Amendment Bill 2003*.

### *Clause 2 Commencement*

The Act comes into operation on the day on which it receives Royal Assent except for the following parts:

#### Part 2

It is intended that the relevant provisions of Schedule 2 of Division 4 of the *Economic Regulation Authority Bill 2002* will commence before or at the same time as this Part. Under those provisions the administration of the licensing scheme in Part 2A of the *Energy Coordination Act 1994* which deals with the licensing of gas supply will be vested in the Economic Regulation Authority. It is therefore necessary to await passage of the *Economic Regulation Authority Bill 2002* prior to proclaiming Part 2 of the *Energy Legislation Amendment Act 2003*.

#### Part 3 other than Divisions 3, 9, and 10

##### *Part 3, Division 2*

Part 3 Division 2 will come into effect on a day to be proclaimed, which is intended to be a day after which a proposed retail market scheme has been approved by the Minister for Energy under clause 42. The delayed effect of this Division ensures that current participants in the gas market are not in contravention of the requirement to be a member of a retail market scheme prior to such a scheme being approved.

*Part 3, Division 4*

Part 3 Division 4 (clause 27) comes into effect on a day to be proclaimed which is intended to be after the Economic Regulation Authority comes into existence.

*Part 3, Division 5*

Part 3, Division 5 commences on a day to be proclaimed. It is intended that the relevant provisions of Schedule 2 Division 4 of the *Economic Regulation Authority Bill 2002* will commence before or at the same time as Part 3 Division 5, and that the Economic Regulation Authority will be in place to perform the functions in Part 2C to be inserted by clause 30.

*Part 3, Division 6*

Part 3, Division 6 commences on a day to be proclaimed, which is intended to be after the initial Gas Industry Ombudsman Scheme has been approved by the Minister for Energy under clause 55.

*Part 3, Division 7*

Part 3, Division 7 commences on a day to be proclaimed.

*Part 3, Division 8*

Part 3, Division 8 commences on a day to be proclaimed. It is intended that the provisions of Schedule 2 Division 4 of the *Economic Regulation Authority Bill 2002* will commence before or at the same time as Part 3 Division 4, so that the Economic Regulation Authority will be in place to perform the functions inserted by clause 36.

Part 6, other than sections 95 and 96

This Part, other than sections 95 and 96 are to commence on a date to be proclaimed. This is to enable time for the identification of which assets and liabilities are to be transferred to the Coordinator of Energy and issue the instrument of transfer in accordance with clause 96.

Sections 107(4), 107(5), 108(4) and 109

These sections commence on a date to be proclaimed.

4) Part 3, Division 3

Comes into operation on the first anniversary of Part 3, Division 2 coming into operation.

## **PART 2 – AMENDMENTS RELATING TO GAS SUPPLY LICENSING**

It is intended that the relevant provisions of the *Economic Regulation Authority Bill 2002* which provide for the administration of the gas licensing scheme in Part 2A of the *Energy Coordination Act 1994* be vested in the Economic Regulation Authority, therefore these provisions refer to the Economic Regulation Authority rather than the Coordinator of Energy.

*Clause 3 The Act amended*

Provides that the Act amended is the *Energy Coordination Act 1994*.

*Clause 4 Section 11H amended*

Section 11H of the Act deals with exemptions from the requirement to have a trading or distribution licence. These amendments replace former section 11H(1) with more detailed provisions making it clear that exemptions can apply to persons or classes of persons, can apply generally or in all or part only of a supply area or only in certain circumstances, and may be subject to conditions.

*Clause 5 Section 11M amended*

Adds a degree of flexibility to the requirement in existing section 11M(4), which requires that the terms and conditions of a licence must be substantially similar to the terms and conditions of any other licence with the same classification (i.e. either trading or distribution) that applies in the same supply area or part of a supply area.

*Clause 6 Section 11P amended*

Existing section 11P deals with the requirements for an application for a renewal of a licence. The amendment enables the Economic Regulation Authority to request such other information that it deems necessary for consideration of an application.

*Clause 7 Section 11R amended*

Makes a corresponding amendment to section 11R, which deals with the requirements for the transfer of a licence.

*Clause 8 Section 11S amended*

Clarifies the circumstances in which the Economic Regulation Authority's obligations arise under existing section 11S, which governs the grant, renewal or transfer of a licence.

*Clause 9 Section 11VA inserted*

Inserts a new clause permitting the licensee to request amendments to the licence.

*Clause 10 Section 11W amended*

Clarifies that this section applies when the Economic Regulation Authority proposes licence amendments on its own initiative.

*Clause 11 Section 11ZH amended*

As a result of inserting section 11VA, makes a consequential amendment to the review mechanism in section 11ZH, by adding the ability for a person adversely affected by a decision of the Economic Regulation Authority to refuse to amend a licence under section 11VA to apply to the Western Australian Gas Review Board.

Also makes a clarifying amendment to a mechanical provision in section 11ZH(13).

### **PART 3 – AMENDMENTS TO FACILITATE A CONTESTABLE RETAIL GAS MARKET, AND RELATED TRANSITIONAL PROVISIONS**

The following provisions are intended to achieve Government’s objective of a smooth transition from a regulated gas retail market to a fully open, efficient and competitive gas retail market. The amendments are predominantly to the *Energy Coordination Act 1994*, however subsequent amendments are also required to the *Parliamentary Commissioner Act 1971* and the *Gas Standards Act 1972*.

#### *Division 1 – Preliminary*

##### *Clause 12 The Act amended*

Provides that the Act amended is the *Energy Coordination Act 1994*.

##### *Clause 13 Long title amended*

Amends the long title of the Act to reflect the extension of the Act to cover Retail Market Schemes, the marketing code of conduct and the Gas Industry Ombudsman’s Scheme, and other regulations of the gas supply industry.

#### *Division 2 - Retail Market Schemes*

##### *Clause 14 Part 2B inserted*

Section 14 inserts new Part 2B into the Act to regulate what are termed “retail market schemes”. A retail market scheme comprises a set of retail market rules, an agreement between market participants, and an entity through which the scheme is administered.

##### *Part 2B – Gas supply : retail market schemes*

#### *Division 1 – Preliminary*

##### 11ZOA. Definitions

The key definitions inserted by this section include “**gas business operator**” and “**gas market participant**”. A Gas Market Participant is defined in section 11ZOC(1) and is either a network operator or a gas retailer. Gas Market Participants are required by section 11ZOC(1) to be bound by agreement to comply with an approved retail market scheme.

“**gas business operator**” is a broader term, incorporating gas market participants, but also an additional class of persons being gas transmission pipeline operators and others prescribed under section 11ZOD(1)(b). Persons in this broader class are required to comply with certain relevant parts of the retail market rules.

Another distinction made by the definitions in section 11ZOA is between the “**retail market rules**”, and the “**retail market scheme**” of which the rules are part. The latter term includes, in addition to the rules, an agreement between gas market participants and the administering entity.

#### *Division 2 – purpose and content of a retail market scheme*

##### 11ZOB. Purpose of retail market scheme

This states the purpose for a retail market scheme, which is to ensure that the relevant retail gas market is regulated and operates in a manner that is open, competitive, efficient, and fair to gas market participants and their customers.

#### 11ZOC. Persons required to comply with a retail market scheme

This section requires gas market participants to be bound by an agreement to comply with an approved retail market scheme, subject to the exemptions listed in section 11ZOC(2).

#### 11ZOD. Persons required to comply with retail market rules

This section extends the obligation to comply with a set of retail market rules to gas transmission pipeline operators and persons prescribed under section 11ZOD(2) subject to any exemption granted under section 11ZOS. The intention is that regulations be made from time to time to prescribe additional persons or classes of persons whose compliance with the retail market rules is necessary or convenient to ensure the effective operation of an approved retail market scheme or the achievement of the purpose set out in section 11ZOB. The class of persons who could be prescribed under section 11ZOD(2) include, for example, users of a gas transmission pipeline (commonly known as “shippers”), or a user of a gas distribution system who is not a “retail gas operator” for the purposes of the Act (sometimes referred to as a “self-contracting user”).

#### 11ZOE. Exception to requirement for a scheme

This section exempts network operators and gas retailers from complying with a retail market scheme, for those distribution systems where there is only a single network operator and a single gas retailer. In these circumstances, there is no point imposing a retail market scheme, because there are only two parties involved in the market, whose relationships will be adequately regulated by their existing bilateral contract.

#### 11ZOF. Elements of retail market scheme

A retail market scheme comprises a set of retail market rules, one or more agreement between market participants, and a formal entity to administer the scheme.

Section 11ZOF(3) requires the agreement between gas market participants and the administering entity to set out a range of matters to achieve the purposes stated in section 11ZOB. Section 11ZOF(4) sets out in more detail the minimum requirements for retail market scheme documentation.

#### 11ZOG. Requirements for retail market rules

In the same way that sections 11OF(3) and (4) specify the requirements for some of the documentation for a retail market scheme, sections 11ZOG(1) and (2) specify the requirements for the retail market rules component of a retail market scheme. Under section 11ZOG(1), the rules are required to set out the systems, practices, procedures, processes, rights and obligations necessary to achieve the purposes set out in section 11ZOB. Section 11ZOG(2) specifies in more detail the minimum requirements for a set of retail market rules.

The retail market rules will be the key document governing the operation of a retail gas market. Accordingly, among the matters which the rules must provide for are:

transfer of customers between gas retailers (also known as customer churn or switching);

the management and distribution of gas metering data, which is important for customer billing;

managing imbalances in gas flows which arise due to a gas distribution system being interconnected with more than one gas transmission pipeline;

resolution of disputes between gas business operators; and

monitoring and ensuring compliance with the rules.

Section 11ZOG(2)(k) provides for regulations to prescribe other matters which must be dealt with by a set of retail market rules. This could include matters which the Governor considers it necessary or convenient to be dealt with by the retail market rules in order to ensure the effective operation of a retail gas market or to achieve the purposes set out in section 11ZOB.

11ZOH. Regulations for retail market scheme or rules

This section provides for regulation making powers in relation to retail market schemes and retail market rules.

*Division 3 – Preparation, approval, review and amendment of retail market schemes*

11ZOI. Submission of retail market scheme for approval

This section governs the submission for approval of a retail market scheme. A scheme must not be submitted for approval until:

the relevant gas market participants have agreed to be bound by it; and

gas transmission operators and other prescribed persons have been consulted regarding those provisions of the retail market rules which will apply to them.

Regulations may be made prescribing requirements for consultations.

11ZOJ. Approval of retail market schemes

The Minister may approve a proposed retail market scheme, or request that it be amended. If the Minister has requested amendments on two occasions, the Minister may either approve the amended scheme or refuse to approve it.

11ZOK. Commencement of retail market schemes

The Minister may specify when a retail market scheme comes into force.

11ZOL. Submission of amendment for approval

This section provides for the approval of amendments to an approved retail market scheme. It requires in section 11ZOL(2) that the scheme's own amendment mechanisms be complied with, before an amendment is submitted. The consultation requirements for an amendment to an approved retail scheme are similar to those for the original submission process as set out in section 11ZOI.

11ZOM. Approval of amendment

The Minister may either approve, request amendment to, or refuse to approve a proposed amendment to a retail market scheme.

#### 11ZON. Prerequisites to approval of scheme

This section specifies the requirements for the Minister's approval of a proposed retail market scheme. The scheme must comply with the Act and be suitable for the purposes set out in section 11ZOB. The regulations may prescribe other principles, criteria or requirements of which the Minister must be satisfied for approving a retail market scheme.

The Minister must also be satisfied before approving a proposed retail market scheme that the necessary consultation has taken place, and either each relevant person has agreed to comply with the relevant retail market rules, or if they have not so agreed has been given a reasonable opportunity to give their reasons for not agreeing and those reasons have been considered.

#### 11ZOO. Prerequisites to approval of amendment

This section complements section 11ZON, by prescribing the prerequisites for approval of an amendment to a retail market scheme.

#### 11ZOP. Matters to which Minister is to have regard

In approving a proposed retail market scheme, or proposed amendment to a retail market scheme, the Minister must have regard to any principles, criteria or requirements set out in the regulations, and any other matters the Minister considers relevant.

#### 11ZOQ. Review of scheme

This section provides for a review of an approved retail market scheme after three years, to reassess its suitability in achieving the purposes set out in section 11ZOB.

### *Division 4 - Enforcement*

#### *Subdivision 1 – Enforcement of requirements for membership of scheme*

#### 11ZOR. Membership required

This is a key provision of Part 2B. It creates the obligation for network operators and gas retailers to be members of an approved retail market scheme, subject to any exemptions listed in section 11ZOR(3).

#### 11ZOS. Power to exempt

This section empowers the Minister to grant exemption from the Act's requirements regarding membership of, and compliance with, a retail market scheme, if satisfied that granting the exemption is consistent with the objects set out in section 11ZOB and is not contrary to the public interest.

Section 11ZOS(4) permits the Minister to take into account the same matters that the Governor may take into account under (existing) section 11H of the Act in determining whether to exempt a person from their requirements of having a distribution or trading licence.

An exemption under section 11ZOS may be granted on conditions, and may be revoked by further order.

## 11ZOT. Enforcement of section 11ZOR

This section sets out the enforcement mechanism for the requirement in section 11ZOR that a network operator or gas retailer be a member of an approved retail market scheme.

Like existing section 11ZB of the Act, which deals with failure to comply with the distribution or trading licence, section 11ZOT(1) provides that the Minister may give a notice requiring a person to rectify a contravention within a specified period. If the notice is not complied with, a daily penalty not exceeding \$10 000 applies. However, a daily penalty may not be imposed unless the person has been notified of the proposed penalty and given a reasonable opportunity to show why it should not be imposed.

### *Subdivision 2 – Enforcement of retail market scheme and rules*

## 11ZOU. Minister may impose penalty for breach

Whereas section 11ZOT provides the enforcement mechanism for a breach of the requirement in section 11ZOR that a network operator or gas retailer be a member of an approved retail market scheme, section 11ZOU provides the enforcement mechanism for breaches of an approved scheme. Once again, the Minister may give a contravention notice if a network operator or gas retailer contravenes a provision of a retail market scheme, or a gas transmission operator or other prescribed person contravenes a provision of the retail market rules that applies to them.

If the recipient of a contravention notice fails to comply with the notice, the Minister may either serve a letter of reprimand on the person or impose a monetary penalty of up to \$100,000, provided the person has been notified that such action is proposed and given a reasonable opportunity to show why the action should not be taken.

### *Subdivision 3 – Prohibition of certain conduct in relation to a retail market scheme*

## 11ZOV. Conduct preventing or hindering operation

This section prohibits gas business operators and certain persons related to them from preventing or hindering the operation of a retail market scheme in accordance with section 11ZOB.

The prohibition extends to attempts and conspiracy to prevent or hinder the operation of a retail market scheme, and also to aiding, abetting, counselling or procuring such conduct, inducing or attempting to induce such conduct, or being in any way directly or indirectly knowingly concerned in or party to such conduct.

Examples of conduct which may be prohibited if the requisite purpose is established includes:

refusing to provide, or limiting or disrupting the provision of, metering data or other information to a gas business operator without reasonable grounds; and

refusing to enter into an agreement for the provision of a good or a service necessary for the operation of a retail market scheme, on reasonable terms and conditions.

## 11ZOW. Interpretation of section 11ZOV

This section provides guidance on interpreting section 11ZOV and in particular sets what the phrases “engaging in conduct” and refusing to do an act are to include.

#### 11ZOX. Establishing purpose of conduct

This section provides that a person is taken to engage in conduct for a particular purpose under section 11ZOV if the conduct was for the purpose of preventing or hindering the operation of retail market scheme and that purpose is or was the person's substantial purpose for engaging in that conduct.

#### 11ZOY. Remedies for breach of section 11ZOV

This section provides that criminal proceedings do not lie against a person by reason only that that person has contravened sections 11ZOV(1) or (2). Rather, the remedies set out in Schedule 2A (discussed below at section 15 of the Bill) are available for a breach of section 11ZOV.

### *Division 5 - Directions*

#### *Subdivision 1 – Directions to amend retail market scheme*

#### 11ZOZ. Minister may direct amendment

This section provides that the Minister may direct the members of a retail market scheme to make a specified amendment to the scheme but before doing so the Minister must consult with the members concerned.

#### 11ZP. Non-compliance with direction for amendment

This section sets out the enforcement mechanism for failure to comply with a direction under section 11ZOZ.

Like section 11ZOT, this provision provides for a notice requiring a person to rectify a contravention within a specified period. If the notice is not complied with, a daily penalty not exceeding \$2,000 applies, but the daily penalty may not be imposed unless the person has been notified of the proposed penalty and given a reasonable opportunity to show why it should not be imposed.

#### *Subdivision 2 – Directions as to operation of retail market scheme*

#### 11ZPA. Directions to governing body of a scheme

This section provides the Minister with a power to give directions to the governing body of a retail market scheme. Before giving such directions, the Minister must consult with the governing body under section 11ZPA(3). A direction may only be given under this section if the Minister considers it necessary or expedient to achieve the purposes set out in section 11ZOB, or for monitoring the operation of a retail market scheme, or for keeping the Minister informed as to the affairs of the governing entity including its financial affairs.

Section 11ZPA(1) provides the type of directions the Minister may give including requesting the provision of information or reports or directing the attendance of a nominee of the Minister as an observer at meetings of the governing entity or any other prescribed matter. Section 11ZPA(6) provides that the Minister may revoke or amend a direction given under this section.

#### 11ZPB. Enforcement of directions

Like section 11ZP, this section provides for enforcement of directions given under section 11ZPA. The penalty for failure to comply with a contravention notice (after notice and a chance to show why the penalty should not apply) is not to exceed \$100,000.

#### *Division 6 – Review of certain decisions*

#### 11ZPC. Definition

This section refers to the West Australian Gas Review Board established under the *Gas Pipelines Access (Western Australia) Act 1998*.

#### 11ZPD. Review of decision to refuse approval

This section provides that if the Minister either refuses to approve a retail market scheme under section 11ZOJ or refuses an amendment to a retail market scheme under section 11ZOM the members of the scheme or the governing body may apply to the Board for a review of the Minister's decision.

#### 11ZPE. Review of direction to amend scheme

Under this section the members of a retail market scheme or the governing body of that scheme may apply to the Board for a review of the Minister's direction given under section 11ZOZ to amend a retail market scheme.

#### 11ZPF. Review of penalty

This section provides that a person may apply to the Board for a review of the Minister's decision to impose a penalty under section 11ZOT(2) in relation a person operating in the retail gas market without being a member of a retail market scheme; under section 11ZOU(3)(b) for not complying with the provisions of the retail market rules or the scheme generally; or under section 11ZP(1) in relation to not complying with the direction given by the Minister.

The governing entity of a retail market scheme may also apply to the Board for a review of a decision given by the Minister under section 11ZPB(1) imposing a penalty for non-compliance with the direction given by the Minister.

#### 11ZPG. Time for making application

An application with the Board to review a decision or direction by the Minister must be lodged within 14 days after the applicant has received notice in writing of the decision or direction.

#### 11ZPH. Conduct of review

This section applies the relevant provisions of existing section 11ZH, which deals with the Board's conduct of proceedings, to a review by the Board under this Division.

#### *Division 7 – Regulations for operation of retail gas market*

#### 11ZPI. Regulations for retail gas market

Regulations may be made on recommendation of the Minister (as to which see section 11ZPJ) that are necessary or convenient to ensure that the retail gas market is regulated and operates in a manner that is open, competitive, efficient, and fair to gas market participants and their customers. (These are the same purposes as are set out in section 11ZOB.)

11ZPJ. Grounds for Minister's recommendation

The Minister may recommend under section 11ZPI the making of regulations for a distribution system only if the Minister considers:

that an approved retail market scheme has ceased to be suitable for the purposes set out under section 11ZOB or has not been implemented in a manner that is suitable for those purposes;

or

that the governing entity of an approved retail market scheme is not functioning effectively or is subject to external administration under the *Corporations Act 2001 (Cwth)*.

Section 11ZPJ(2) limits challenges to a Minister's determination under section 11ZPI.

11ZPK. Regulations override scheme etc

This section enables regulations made under section 11ZPI to override an approved retail market scheme and most other provisions of new Part 2B.

*Clause 15 Schedule 2A inserted*

Schedule 2A – Remedies for contravention of section 11ZOV

Schedule 2A is applied by section 11ZOY (see above under clause 14 of the Bill)). It sets out three remedies for a contravention of section 11ZOV:

damages if the aggrieved person suffers loss or damage by reason of a contravention of section 11ZOV;

an injunction against a person who has engaged or is likely to engage in conduct that may prevent or hinder the operation of a retail market scheme; or

an order declaring whether or not a person has engaged in conduct that is likely to hinder or prevent the operation of a retail market scheme.

*DIVISION 3 - TRANSFER OF MINISTER'S FUNCTIONS UNDER PART 2B OF PRINCIPAL ACT*

The functions set out in Part 2B will be transferred from the Minister to the ERA on the first anniversary of the day on which Part 3, Division 2 comes into effect ("Commencement Date").

*Clause 16 Definitions*

This section provides definitions to facilitate the transfer of the Minister's functions.

*Clause 17 Purpose of this Division*

The purpose of this Division is to transfer the Minister's functions under Part 2B to the Economic Regulation Authority on the Commencement Date.

*Clause 18 Functions transferred from Minister to Authority*

This clause sets out all the functions of the Minister in relation to Part 2B which are to be transferred to the Economic Regulation Authority (“Part 2B functions”).

*Clause 19 Effect of things done*

This clause provides that any act, matter or thing done or omitted to be done by the Minister is to be taken to have been done or omitted by the Economic Regulation Authority.

*Clause 20 Completion of things begun*

This clause provides that the Economic Regulation Authority may carry on any function commenced by the Minister prior to the transfer of functions.

*Clause 21 Proceedings etc.*

Any proceedings or remedy commenced against the Minister in relation to the performance of any Part 2B function, may be continued against the Economic Regulation Authority.

*Clause 22 Records*

The Economic Regulation Authority is to receive all records relating to the performance of the Part 2B functions that are in the Minister’s possession .

*Clause 23 Instruments*

the Minister immediately before the transfer has effect after the Commencement Date as if made by the Economic Regulation Authority.

References in Part 2B instruments to the Minister, are to be replaced by a reference to the Economic Regulation Authority.

*Clause 24 Reviews in progress etc.*

The Governor may make regulations that are necessary for the transfer of the Part 2B functions.

*Clause 25 Regulations for transitional matters*

This clause enables the Governor to make regulations that are necessary for the transfer of functions of the Minister under Part 2B to the Economic Regulation Authority.

**DIVISION 4 - SUPPLY CONTRACTS FOR SMALL USE CUSTOMERS**

*Clause 26 Section 11L amended*

This clause provides for the deletion of section 11L(2)(b)(ii) which refers to the requirement for the terms and conditions of any proposed standard customer contract between a retailer and a customer. A new provision amending the terms and conditions of a customer contract are set out in the following new clause.

*Clause 27 Part 2A Division 4A inserted*

*Division 4A – Supply contracts for small use customers*

*Subdivision 1 - Preliminary*

11WB. Definitions

This section provides for definitions to be used in Division 4 – Supply Contracts for Small Use Customers. Of particular note are the terms:

**“customer”** which means an end use consumer of gas who consumes less than one terajoule of gas per annum; and

**“standard form contract”** means a contract which is approved by the Economic Regulation Authority upon a trading licence being issued; and

**“non-standard contract”** means a contract which is between a small use customer and a gas retailer and contains terms and conditions which are not included under a standard form contract. This contract is not required to be approved by the Economic Regulation Authority .

*Subdivision 2 – Requirements for supply contracts*

*11WC. Regulations as to supply contracts*

This section provides for the ability of the Governor to make regulations setting out the terms, conditions and provisions to be provided for in a standard form contract and non standard contract.

*11WD. Form of contract to be submitted with application for grant, renewal or transfer*

This section provides for all gas retailers who contract with small use customers to develop and submit a standard form contract for approval upon applying for a grant, renewal or transfer of a trading licence.

*11WE. Licence application not to be granted unless standard form contract approved*

This section provides for the requirement that a standard form contract is to meet the minimum terms, conditions and provisions set out in the regulations and is to be approved by the Economic Regulation Authority, before a trading license will be granted, renewed or transferred to a gas retailer.

*11WF. Approval of standard form contract*

Under this section, the Economic Regulation Authority may at its discretion approve or refuse to approve a standard form contract submitted under section 11WD.

Refusal to approve a standard form contract, is to occur if the Economic Regulation Authority considers that the standard form contract does not:

meet the requirements of the regulations; or

is inconsistent with the *Energy Coordination Act 1994*, other written law or matters set out under a trading licence.

*11WG. Licence conditions*

This section sets out the requirement that a gas trading licence holder or a gas retailer is required to only supply gas to a customer under either a standard form contract or non-standard contract. The section further states that a non-standard contract must meet:

the requirements of the regulations in respect to such contracts; and

is not to be inconsistent with the *Energy Coordination Act 1994*, other written law or any matters set out under a trading licence.

*11WH. Amendment or replacement of standard form contract*

This section enables a gas retailer to submit an amendment to a standard form contract or a replacement standard form contract for approval to be granted by the Economic Regulation Authority. As under section 11WF, the Economic Regulation Authority may approve or refuse to approve an amendment to a standard form contract or a replacement standard form contract. Approval will not be granted if the Economic Regulation Authority considers that the standard form contract does not:

meet the requirements of the regulation; or

is inconsistent with the *Energy Coordination Act 1994*, other written law or matters set out under a trading licence.

*11WI. Authority may direct that amendment be made*

This section enables the Economic Regulation Authority to request a gas retailer to submit an amendment to an approved standard form contract. This may occur if it is of the opinion of the Economic Regulation Authority that the standard form contract no longer meets the requirements of the regulations in respect to such a contract or is inconsistent with the *Energy Coordination Act 1994*, other written laws or matters set out under a trading licence.

*11WJ. Definitions*

The key definition under this subdivision refers to “**delivery point**”. A delivery point refers to the end point in a distribution system in which a customer consumes gas.

*11WK. Deemed contract where customer takes gas without making arrangements*

This section provides for arrangements attending to the situation whereby a customer uses gas without a contract with a gas retailer. This situation is known as a default supplier arrangement.

This section requires that a standard form contract is deemed to apply. Regulations will set out those terms, conditions and provisions that will not apply or apply in a modified form in a default supplier arrangement. The contract will continue to be in effect until it is terminated or the customer chooses to enter into a non-standard contract.

*11WL. Determination of default supplier*

In accordance with this section, the retail market rules are required to identify a default supplier for every delivery point and maintain a register of the arrangement.

*Clause 28 Section 11ZH amended*

Minor amendments related to the approval and amendment process for standard form contracts.

*Clause 29 Schedule 1 amended*

This section provides for the removal of paragraph (k)(i) from Schedule 1 relating to the terms and conditions of a customer contract in the event there is no expressed agreement between the customer and the gas retailer.

## **DIVISION 5 - GAS MARKETING CODE OF CONDUCT**

*Clause 30 Part 2C inserted*

Section 30 provides for the regulation of gas retailers and their marketing agents to define standards of conduct when marketing gas to small use customers. The marketing code of conduct is subsidiary legislation and enforcement mechanisms are set out in the Act. The marketing code of conduct is proposed for implementation as a safeguard mechanism for small use customers.

*11ZPL. Definitions*

This section provides for definitions to note under Part 2C.

*11ZPM. Code of Conduct*

The Economic Regulation Authority is afforded the ability to approve a marketing code of conduct, in consultation with the marketing code consultative committee. A marketing code of conduct is to regulate and control the behaviour of a gas retailer or gas marketer. It aims to protect the interests of small use customers and to define a standard of behaviour for persons who market gas.

*11ZPN. Code is subsidiary legislation*

This section provides for the marketing code of conduct to be subsidiary legislation.

*11ZPO. Consultative committee*

This section provides for the ability of the Economic Regulation Authority to establish a marketing code consultative committee and prescribe the composition and other necessary matters related to the operation or membership of the committee.

*11ZPP. Licence condition*

It is a condition of a trading licence that a gas retailer is to comply with the provisions set out under the marketing code of conduct.

*11ZPQ. Enforcement of code of conduct against marketing agents*

In the event a gas marketer breaches the provisions under the marketing code of conduct, this provision provides for penalties which may be enforced. An offence by a gas marketer may be punishable by a financial penalty for individuals of up to \$5 000 or for a body corporate, an amount not exceeding \$20 000.

Offences by gas retailers may attract a penalty of up to \$100 000 as to do so is to breach a licence condition.

*11ZPR. Code may provide for vicarious liability*

The marketing code of code may provide that a licensee is (absent excusatory circumstances) to be held liable for the actions or omissions of its gas marketing agents.

*11ZPS. Code may include presumption of authority*

The marketing code of conduct may deem a person who carries out marketing activity on behalf of a licensee or its gas marketing agent, to have due authority to carry out that activity.

*11ZPT. Authority to monitor compliance*

This section provides for the ability of the Economic Regulation Authority to monitor and enforce compliance with the marketing code of conduct.

*11ZPU. Comment to be sought on amendment or replacement of code*

Under this section, the Economic Regulation Authority is provided the ability to amend, repeal or replace the marketing code of conduct. Before such an action is carried out, the Economic Regulation Authority is required to consult with the marketing code consultative committee. This committee is required to consult with interested persons who are identified under section 11ZPW and take into consideration their comments before providing advice to the Economic Regulation Authority.

*11ZPV. Review of code*

Section 11ZPV requires the marketing code consultative committee to carry out a review of the marketing code of conduct as soon as practicable after the first anniversary of its commencement. The committee is also required to conduct a review at two yearly intervals after the first anniversary.

In reviewing the marketing code of conduct, the marketing code consultative committee is required to re-assess the suitability of the marketing code of conduct in light of the purposes set out under 11ZPM(2). As set out under section 11ZPU, in conducting a review of the marketing code of conduct, the committee must also consult with interested persons and take into consideration their comments before a report is provided to the Economic Regulation Authority outlining the advice of the committee.

*11ZPW. Further provisions about opportunity to comment*

As set out under sections 11ZPU(2) and 11ZPV(3), the marketing code consultative committee is required to consult with interested persons. This section provides for the definition of an interested persons and sets out the process for submitting comment.

**DIVISION 6 - GAS INDUSTRY OMBUDSMAN SCHEME**

*Clause 31 Part 2D inserted*

*Division 1 - Preliminary*

*11ZPX. Definitions*

This section refers to terms which are applicable under this division.

*11ZPY. Regulations as to gas industry ombudsman scheme*

This section provides for regulation making powers providing for and in relation to the functions of the Gas Industry Ombudsman and the operation of a scheme.

*Division 2 – Approval of gas industry ombudsman scheme*

*11ZPZ. Authority may approve scheme*

This section provides for a person to act as the Gas Industry Ombudsman to investigate and deal with disputes and complaints between customers and licensees or gas marketing agents. Complaints or disputes which may be considered by the Gas Industry Ombudsman are to have occurred not earlier than 12 months before that commencement of the scheme.

*11ZQ. Requirements for scheme to be approved etc*

This section sets out the approval process for a Gas Industry Ombudsman scheme. Approval may be granted by the Economic Regulation Authority only if the scheme meets the objectives as set out in Schedule 2B and any other prescribed objectives.

*11ZQA. Revocation of approval*

This section provides for the ability of the Economic Regulation Authority to revoke the approved status of a Gas Industry Ombudsman scheme. In exercising the power of revocation, the Economic Regulation Authority must follow the procedures and requirements prescribed in regulations. In revoking approval of a Gas Industry Ombudsman scheme, a copy of the notice is to be laid before each house of Parliament within 14 sitting days before the revocation takes effect.

*Division 3 – Scheme operation*

*11ZQB. Customer may have decision or complaint reviewed*

This section provides for the ability of the Gas Industry Ombudsman to review a complaint submitted by a customer, prescribe a binding determination or refuse to deal with the complaint.

*11ZQC. Jurisdiction of courts*

This section provides that nothing in this Part affects the jurisdiction of a court to attend to disputes. The section also sets out the obligation of the Gas Industry Ombudsman to decline to deal with matters that have, or are being dealt with, or should be dealt with by a court.

*11ZQD. Enforcement against marketing agents and others*

This provides for regulations to set out penalties, which may be imposed upon a gas marketer for non-compliance with a determination by a Gas Industry Ombudsman. The penalty for failure to comply with a direction or determination by a Gas Industry Ombudsman is not to exceed \$2 000 for an individual and \$8 000 for a body corporate. This is comparable to similar penalties in other jurisdictions.

*11ZQE. Authority to monitor compliance with decisions*

This provides that the Economic Regulation Authority has a function to monitor and enforce compliance with the decisions of the Gas Industry Ombudsman.

*Division 4 – Membership of approved scheme by licensee*

*11ZQF. Proof of membership in applications relating to licence*

This refers to the requirement of a gas retailer or network operator to provide evidence of membership to an approved Gas Industry Ombudsman Scheme.

*11ZQG. Prerequisite to grant etc of licence*

This provides that the Economic Regulation Authority not to grant, renew or transfer a licence unless it is satisfied that the licensee (gas retailer or network operator) is a member of an approved Gas Industry Ombudsman scheme or will become a member upon the licence being granted.

*11ZQH. Licence condition*

This sets out the requirement that membership of an approved Gas Industry Ombudsman scheme and agreement to be bound by the determination and directions of the scheme are licence conditions requiring compliance.

*Schedule 2B – Objectives to be met by gas industry ombudsman scheme*

*Clause 32 Schedule 2B inserted*

This clause sets out the objectives of a Gas Industry Ombudsman scheme. The objectives of a scheme include:

accessibility by customers and potential members;

the ability to operate expeditiously and without cost to customers; and

the ability of the Gas Industry Ombudsman to operate independently of all members in performing their functions under the scheme.

These objectives will be the basis for determining approval or revocation of approval.

*Clause 33 Parliamentary Commissioner Act 1971 amended*

*Clause 34 Gas Industry Ombudsman Scheme*

This clause provides an amendment to the *Parliamentary Commissioner Act 1971* to enable the Parliamentary Commissioner to perform the functions of Gas Industry Ombudsman.

The clause enables the Parliamentary Commissioner to enter into a service level agreement with the governing body of the Gas Industry Ombudsman scheme to act as the Gas Industry Ombudsman and to be paid for this function.

## **DIVISION 7 - RECOVERY OF COSTS**

### *Clause 34 Section 11Q amended*

Provides the ability for the State, through the fees for trading and distribution licences, to recover costs associated with the implementation of retail competition.

### *Clause 35 Part 2A Division 4C inserted*

### *Division 4C – Recovery of Costs*

Inserts a regulation-making power (new section 11WR) into the existing licensing regime in Part 2A of the Act, empowering regulations which provide for a distribution licensee to recover prescribed costs associated with the implementation of retail competition from trading licensees.

## **DIVISION 8 - LAST RESORT SUPPLY**

### *Clause 36 Part 2A Division 6A inserted*

Clause 36 inserts a new Division 6A into existing Part 2A of the Act to establish a last resort supply plan, to cater for the cancellation, expiry or surrender of a retailer's trading licence. One situation in which the plan may be required is financial failure of a gas retailer.

### *11ZAA. Definitions*

Defines relevant terms.

### *11ZAB. Authority to ensure supply plan in place*

The Economic Regulation Authority must ensure that each supply area (defined under existing section 11A) in which there are small use customers, has an approved (or determined) last resort supply plan.

### *11ZAC. Requirements for last resort supply plan*

Specifies the requirements for a last resort supply plan, namely it must deal with:

the supply of gas to small use customers if the plan is brought into operation under section 11ZAD; and

any other prescribed matter.

### *11ZAD. How plan brought into operation*

The Economic Regulation Authority may bring a last resort supply plan into operation by order, if the licence of a gas retailer which supplies small use customers has:

been cancelled;

expired; or

been surrendered.

*11ZAE. Designation of licensee as supplier of last resort*

After consulting with the gas retailer concerned, the Economic Regulation Authority designates which gas retailer is the supplier of last resort for a supply area. A designation must not last more than 2 years, but can be renewed.

*11ZAF. Functions of supplier of last resort*

A supplier of last resort must:

prepare and submit a draft last resort supply plan;

consult with the Economic Regulation Authority regarding approval for the draft plan; and

implement the plan if it comes into operation under section 11ZAD (see also new section 11ZA D below).

*11ZAG. Approval or determination of plan*

The Economic Regulation Authority may approve a draft last resort supply plan or request that it be amended. If a plan has not been approved within a time the Economic Regulation Authority considers reasonable, it may prepare its own plan.

*11ZAH. Amendment of plan by supplier*

The supplier of last resort may propose amendments to an approved last resort supply plan. The Economic Regulation Authority may approve, request changes to, or reject the proposed amendment.

*11ZAI. Authority may make amendment*

The Economic Regulation Authority may amend an approved last resort supply plan, after consultation with the supplier of last resort.

*11ZAJ. Licence condition*

It is a condition of the supplier of last resort's trading licence for the relevant supply area, that it implement the plan if it comes into operation under section 11ZAD.

*11ZAK. Provision may be made by regulation*

Regulations may provide for matters including:

preparation, approval and amendment processes for a last resort supply plan; and

arrangements to be included in a last resort supply plan including:

commencement;

notification to affected small use customers and other persons;

transfer of affected small use customers to the supplier of last resort (most probably from the retailer whose licence was cancelled, expired or surrendered under section 11ZAD);  
recovery of the supplier of last resort's costs;

duration of the supplier of last resort's obligation to supply gas; and

other matters.

*Clause 36 Section 11ZE amended*

A consequential amendment to the existing provision in section 11ZE(4)(a), which empowers regulations providing for the continuation of gas supply after a retailer's trading licence has been cancelled, to exclude such regulations where there is a last resort supply plan in place.

*Clause 37 Section 11ZE amended*

Provides for an amendment to 11ZE attending to the cancellation of a trading licence.

**DIVISION 9 - REGULATION OF SUPPLY WHERE GAS FROM DIFFERENT SOURCES ENTERS A DISTRIBUTION SYSTEM**

*Clause 38 The Act amended*

Provides for amendment to the *Gas Standards Act 1972*.

*Clause 39 Section 16 (inserted) Regulations for the commingling of gas in distribution systems*

Provides for regulations that control, monitor and measure the commingling of gas of different heating values within gas distribution systems due to the entry of a gas of a different value. By enabling the introduction of an alternative source of gas from another area into the distribution system, variations in the heating values of gas may result. Regulation making powers will enable Government to require market participants to develop a management plan ensuring that the heating value of gas delivered to customers remains within a threshold set out under the Act. These provisions will ensure that the impact of the mixing of gas in the distribution system is managed by industry and that the heating value of gas remains within the specified thresholds.

**DIVISION 10 - TRANSITIONAL PROVISIONS FOR THIS PART**

*Subdivision 1 - Preliminary*

*Clause 40 Definitions*

This clause provides definitions for the transitional arrangements.

*Subdivision 2 – Retail market schemes*

*Clause 41 Definitions*

This clause provides that terms used in this Division have the same meaning as given to them in Part 2B (Gas supply: retail market schemes).

*Clause 42 Approval of retail market schemes before commencement of section 14*

(1)

Under section 42(1) a retail market scheme may be submitted to the Minister for approval before the commencement of Part 2B, and if submitted and approved under this section, the retail market scheme comes into force on the commencement of Part 2B.

(2) & (3)

Sections 42(2) and 42(3) provide that at any time before the commencement of Part 2B a proposed retail market scheme may be submitted to the Minister on behalf of persons who expect to be gas market participants on or after the commencement of Part 2B.

(4)

Sections 11ZOI (2), (3) and (4), (ie the submission procedures in relation a proposed retail market scheme), section 11ZOJ (the approval process of retail market scheme), section 11ZON (the prerequisites for approval) and section 11ZOP (any other matter that the Minister may have regard to when approving a purposed retail market scheme) apply for the purposes of clause 42.

(5)

Under section 42(5). the Minister, in requesting an amendment to a proposed retail market scheme, may request that the proposed set of rules be replaced a set of retail market rules specified by the Minister.

(7)

Under section 42(7), the Minister's refusal to approve a proposed retail market scheme under this section is not reviewable under section 11ZPD.

*Clause 43 Regulations for retail gas market*

The Governor may, on recommendation of the Minister, make regulations under section 11ZPI that are to have effect on the commencement of Part 2B.

The Minister may only recommend regulations be made under clause 43 for a distribution system if the Minister considers that there has been a failure to submit a retail market scheme which is capable of being approved, and the failure to do so causes an unacceptable delay in the implementation of Part 2B.

Section 43(3) limits challenges to a Minister's determination under clause 43.

*Clause 44 Regulations for transitional matters*

This clause provides that the Governor may make regulations for transitional matters.

*Subdivision 3 – Gas supply contracts*

*Clause 45 Definition*

Terms in this subdivision are given the same meanings as new Division 4A of Part 2A (see clause 27 above).

*Clause 46 Approval of standard form contract*

This clause provides that gas retailers are to submit standard form contracts for approval as soon as practical, but in any event within 2 months after commencement of the relevant provisions or such longer period as is allowed by the Economic Regulation Authority.

This timeframe is to enable licensees to make the requisite amendments to their standard and non-standard customer contracts.

*Clause 47 Existing contracts*

This clause provides that on or after the time period referred to in clause 46(3) expires, existing approvals for standard form supply contracts will cease to have effect and be replaced by the approval under clause 46.

*Clause 48 Non-standard contracts*

This provides a transitional provision for supply to a small use customer under a non-standard contract, until the contract is terminated.

*Clause 49 Regulations for transitional matters*

Regulations may be made for transitional matters.

*Subdivision 4 Initial marketing code of conduct*

*Clause 50 Definition*

The terms in this subdivision have the same meaning as given in new Part 2C (see clause 30 above).

*Clause 51 Approval of initial marketing code of conduct*

The Minister, instead of the Economic Regulation Authority, may approve the initial Marketing Code of Conduct, in consultation with the section 11ZPO consultative committee appointed under clause 52. .

*Clause 52 Appointment of initial committee*

Provides for appointment of the initial consultative committee for the purposes of section 11ZPO.

*Clause 53 Regulations for transitional matters*

Regulations may be made for transitional matters.

*Subdivision 5 Initial gas industry ombudsman scheme*

*Clause 54 Definition*

The term “Authority” has the meaning given to it in new Part 2D (see clause 31 above).

*Clause 55 Approval of initial gas industry ombudsman scheme*

The Minister is to approve the initial Gas Industry Ombudsman scheme.

*Clause 56 Regulations for transitional matters*

Regulations may be made for transitional matters.

*Subdivision 6 Initial last resort supply plan*

*Clause 57 Definition*

Terms used in this subdivision have the same meaning as given to them in new Division 6A of Part 2A (see clause 36 above).

*Clause 58 Initial last resort supply plan*

Transitional provisions, in place of new Division 6A, governing the appointment of the initial supplier of last resort and determination, in consultation with the supplier of last resort, of the initial last resort supply plan.

*Clause 59 Regulations for transitional matters*

Regulations may be made for transitional matters.

## **PART 4 – AMENDMENTS TO ENABLE GRANT OF EXCLUSIVE LICENCES FOR GAS SUPPLY**

Currently, section 11N of the *Energy Coordination Act 1994* allows the Coordinator of Energy to grant in respect of a supply area or part of a supply area, more than one licence of a particular classification. It is considered that finite exclusive franchise licences for distribution and trading would be a useful tool in facilitating and encouraging the development of new gas reticulation in regional areas of Western Australia.

The initial exclusive licence term is required to encourage industry to undertake transmission/distribution projects in new supply areas. Exclusive licences introduce a defined period of stable cash flows, without which companies may be reluctant to invest in such infrastructure, as the risk of recouping their investment would be too great.

The award of limited franchises for greenfield sites is permissible under the National Gas Pipelines Access Agreement, provided any exclusive licence is only granted following the completion of an open and competitive tender process involving explicit objectives and criteria, and where it is demonstrated that it is in the public interest to do so.

The proposed amendments allow for the grant of an exclusive gas distribution or trading licence, provided listed and specific criteria are adhered to.

*Clause 60 The Act amended*

Provides that the amendments in this part relating to the grant of exclusive licences for gas supply are to the *Energy Coordination Act 1994*.

*Clause 61 Section 11N amended*

Provides for an amendment to section 11N, which provides that more than one licence may be granted in respect of a supply area or part of a supply area. The amendment requires that regulations must be made which will govern such grant.

*Clause 62 Part 2A Division 4B inserted*

Provides for a new Division 4B Exclusive licences and new sections 11WM – 11WQ to be inserted into the Act.

*Division 4B – Exclusive licences*

*11WM. Regulations may authorise an exclusive licence*

Subsection (1) provides that the Governor may (on recommendation of the Minister) make regulations designating one or more supply areas or any part of a supply area as an area of which an exclusive licence may be granted for a specified period.

Subsection (2) provides that the period of any exclusivity granted is not to exceed 10 years.

*11WN. Requirements for regulations*

Subsection (1) provides that the Minister may recommend the making of regulations in respect of an exclusive licence only if it is considered that without the grant of an exclusive licence, gas supply would be nil or limited, that it would not be contrary to the public interest and that an open and competitive tender process would be carried out to determine the grantee of the licence.

Subsection (2) provides that any such regulations made must set out the requirements to be observed before an exclusive licence is granted, and also confirm that the regulations may set out the terms and conditions of an exclusive licence.

*11WO. Application for and grant of licence*

Subsection (1) provides that no application for an exclusive licence may be brought unless the Minister has determined that all of the requirements of the relevant regulations to be observed have been complied with.

Subsection (2) confirms that the Economic Regulation Authority may not grant an exclusive licence unless the Minister has confirmed his/her satisfaction with the matters in subsection (1).

Subsection (3) provides that any determination made under subsection (1) or (2) must be made by instrument published in the *Gazette*.

*11WP. Prohibition of further licences*

Provides for a prohibition upon further licence grant if an exclusive licence is granted in respect of an area in accordance with regulations made under 11WM and if the licence is not cancelled or surrendered.

*11WQ. Trade practices exemption*

Provides that the grant of an exclusive licence as provided by regulations made under 11WM and conduct authorised or required by any such licence is authorised to the extent that the grant or conduct would otherwise contravene the *Trade Practices Act 1974*.

**PART 5 - AMENDMENTS RELATING TO THE PROVISION OF INFORMATION TO THE COORDINATOR OF ENERGY**

It is necessary for the Government to publish statistics on energy reserves, energy infrastructure, and actual and forecast energy production and consumption, and collate information on greenhouse emissions to enable industry and Government to plan the use of the State's energy resources, ensure there are adequate resources and infrastructure to meet demand and address the greenhouse issue. This information can only be prepared if industry participants provide data and forecasts on their operations.

The proposed amendments repeal the current section 22 of the *Energy Coordination Act 1994* that enables a person not to comply with a section 21 request by the Coordinator of Energy for information on the grounds that it will result in the disclosure of a trade secret. This is replaced with provisions requiring that any information provided under section 21 that is a trade secret can only be made public in aggregate form so that the information could not reasonably be ascertained in isolation from the other information.

This will enable the Coordinator of Energy to publish reports for the benefit of the entire industry and will enable effective planning of the State's energy resources.

*Clause 63 The Act amended*

*Clauses 63 to 70 amend the Energy Coordination Act 1994.*

*Clause 64 Section 3 amended*

Inserts the definition of "trade secret" amongst the definitions of the Act with essentially the same current meaning.

*Clause 65 Section 20A inserted*

Provides a definition for energy to be used in sections 21 to 24. The definition includes all types of energy including electricity, natural gas, LPG, coal, oil, biomass, and wind energy.

*Clause 66 Section 21 amended*

Deletes the definition of prescribed information contained in section 21(4). What prescribed information that the Coordinator of Energy can request will be specified by regulations made by the Governor under section 26 of the Act that provides regulation making powers for the purposes of the Act. This provides flexibility in defining what information the Coordinator can request. It may include greenhouse gas information and enables the greenhouse gases to be defined and adjusted as the definition of greenhouse gases changes.

*Clause 67 Section 22 replaced*

The existing section 22 is repealed. It enables a person when requested to provide information user section 21 to object to complying on the grounds that it will result in the disclosure of trade secrets. The objection is made to the Minister. If the Minister confirms the request the existing section 22 enables the person to appeal to the District Court.

The new section 22 requires that a person may notify the Coordinator that any particular information is a trade secret but such notice does not exempt the person from complying with the request for information. New section 24AA requires that information notified as a trade secret can only be publicly disclosed in aggregate form such that the information could not reasonably be ascertained in isolation from the other information.

*Clause 68 Section 23 amended*

The penalties for not complying with the Coordinator's request to provide information is increased for an individual from \$5,000 to \$20,000 and for a body corporate from \$20,000 to \$100,000.

*Clause 69 Section 24 amended*

Defines a relevant official as the Coordinator of Energy, Director of Energy Safety, or any person performing functions under the Act. This definition is used in the new Section 24AA, and 24AB.

*Clause 70 Section 24AA, 24AB and 24AC inserted - protection of trade secrets*

*24AA – Protection of trade secrets*

The new section 24AA requires that the Coordinator, the Director of Energy Safety or any person performing functions under the Act to only disclose trade secrets in an aggregate form in such a way that the information could not reasonably be ascertained in isolation from the other information. The new section 24AA also provides penalties of fines for up to \$10,000 or imprisonment for 12 months if this is not complied with.

*24AB - Disclosure of information in the public interest*

This new section enables the disclosure of information considered as trade secrets if the Coordinator determines that the disclosure of the information is in the public interest. The Coordinator must notify the person who gave the information of the intention to disclose it publicly. Also the information can only be disclosed if there has been no application for review of the determination or the application was unsuccessful.

*24AC - Review of determination*

This provides for a person to appeal the Coordinator's determination to disclose a trade secret to the Gas Review Board.

**PART 6 - AMENDMENTS RELATING TO THE TRANSFER OF CERTAIN ENERGY RESEARCH FUNCTIONS TO THE COORDINATOR OF ENERGY.**

The Alternative Energy Development Board (AEDB) was created by a Cabinet Decision on 29 August 1994. One of the recommendations of this Cabinet decision was legislation to transfer the energy functions of the Minerals and Energy Research Institute of Western Australia (MERIWA) to the AEDB. A subsequent review of MERIWA, conducted as part of the Machinery of Government, also recommended transferring MERIWA's energy functions to the AEDB.

In August 2002 a Cabinet Decision confirmed some changes to the AEDB, including a name change to the Sustainable Energy Development Office (SEDO) Grants Committee.

Since 1995 the AEDB has provided advice to the MERIWA Board regarding the allocation of funds from the MERIWA Energy Account. These funds are used for research projects that are related to renewable energy and more efficient energy use.

The SEDO Grants Committee manages these energy projects on behalf of MERIWA, however payments to grantees are processed by MERIWA, on advice from the SEDO Grants Committee.

This Part will transfer sustainable energy research functions and assets and liabilities relating to the MERIWA Energy Account from MERIWA to the Coordinator of Energy.

#### *Division 1 – Minerals and Energy Research Act 1987*

##### *Clause 71 The Act amended*

Provides that the amendments in this Division are to the *Minerals and Energy Research Act 1987*.

##### *Clause 72 Section 3 amended*

- a) Removes the requirement for the Energy Research Advisory Committee which will no longer have a role.
- b) Deletes various definitions within the Act which are consequent to the transfer of functions.
- c) Updates definition of “energy research”.

This is a critical feature of the legislation because it will determine the demarcation between the role and responsibilities of MERIWA (which relates to minerals) and the Coordinator of Energy.

- d) Updates definition of “minerals”. This follows from c) above and also seeks to clarify the demarcation between the role and responsibilities of MERIWA and the Coordinator of Energy.
- e) Updates the agency name.
- f) Clarifies the agency name.

##### *Clause 73 Section 4 amended*

Repeals this section which is no longer required, as it was a transitional measure from an old version of the Act.

*Clause 74 Section 5 amended*

- a) Enables the scope of research to be expanded to areas outside the State's jurisdiction, but which are of benefit to Western Australia. This includes research into oil and gas extraction in Commonwealth waters off the coast of Western Australia.
- b) This reference to highlighting solar energy will be deleted as a range of other renewable energy sources are now showing more market potential than solar energy.
- c) Updates the responsibility to maintain a collection of reports available to the public.
- d) Reference to the Coordinator of Energy is no longer required under this legislation.

*Clause 75 Section 10 replaced*

This will remove references to the Energy Research Advisory Committee which will no longer have a role when MERIWA's energy functions are transferred to the Coordinator of Energy.

*Clause 76 Section 12 amended*

The reference to the Coordinator of Energy will no longer be relevant.

*Clause 77 Section 16 amended*

Update of relevant authority – Minister for Public Sector Management replaces reference to the Public Sector Board.

*Clause 78 Section 18 and 19 replaced and saving provision*

Removes references to the Energy Research Advisory Committee, which will no longer have a role under this legislation. The Energy Research Advisory Committee originally ran in parallel with the Minerals Research Advisory Committee, which has been retained.

*Clause 79 Section 20 amended*

Updates the names of peak industry bodies.

*Clause 80 Section 21 repealed*

Removes reference to the Energy Research Advisory Committee.

*Clause 81 Section 25 amended*

Update of relevant authority as per the amendment to Section 16.

*Clause 82 Section 26 amended*

*Section 26(2)(d) is to be deleted because it relates to Schedule 2 of the MERIWA Act, which in turn relates to the now defunct WA Mining and Petroleum Research Institute. This section is to be deleted later in this current Bill. (See under clause 87 Schedules 1 and 2, below.)*

*Clause 83 Section 31 amended*

Update of relevant authority as per the amendment to Section 16.

*Clause 84 Section 34 amended*

This amendment increases the penalty for not supplying correct information in a timely manner from \$2 000 to \$20 000.

*Clause 85 Section 35 amended*

This amendment increases the penalty for transgressing secrecy provisions from \$20 000 to \$100 000.

*Clause 86 Part VIII replaced*

### **PART VIII - SAVINGS**

*Clause 41 Savings for secrecy provisions*

Section 32 of the (now repealed) *Solar Energy Research Act 1977* required officials and others to maintain the confidentiality of information that they acquired in the course of duty.

A new Part VIII – Savings, maintains the duty of persons to maintain that confidentiality. The reason for keeping that duty is that the information is still known to the persons who were the officials and may well still be sensitive.

*Clause 87 Schedules 1 and 2 repealed*

Schedule 1 relates to the Solar Energy Research Institute of Western Australia (*Solar Energy Research Act 1977*) which was wound up in the mid 1980s.

Schedule 2 relates to the WA Mining and Petroleum Research Institute which was replaced by MERIWA in 1987.

*Clause 88 Various references to Department of Mines amended*

Update of agency name.

*Division 2 – Energy Coordination Act 1994*

*Clause 89 The Act amended*

Provides that the amendments in this Division are to the *Energy Coordination Act 1994*.

*Clause 90 Long title amended*

Amends the long title to include the promotion of energy research.

*Clause 91 Section 6 amended*

(1) Defines the Coordinator's role regarding sustainable energy research.

(2) Defines the requirements regarding maintenance of existing information and reports provided by the Solar Institute.

*Clause 92 Section 11M amended*

Links the new provisions to Schedule 1A which relates to sustainable energy research.

*Clause 93 Schedule 1 inserted*

Inserts detail of the MERIWA sustainable energy research functions and responsibilities that will be transferred to the Coordinator.

This is a critical feature of this part of the Bill because it specifies the Coordinator of Energy's role regarding sustainable energy research.

*Schedule 1 – Coordinator's functions in respect of sustainable energy research*

1. *Definitions*

This defines “**energy research**” and “**researcher**”.

2. *Research Functions*

This follows on from “1. Definitions” above, and further defines the role of the Coordinator regarding the conduct and financing of sustainable energy research projects – the role currently being undertaken by MERIWA.

3. *Power to direct research*

These powers are to enable the Coordinator to contract for, and then oversee, specifically-targeted sustainable energy research projects, on a fee-for-service basis.

4. *Trusts and conditions*

This relates to the Coordinator's role regarding sustainable energy research projects which are jointly funded by both the Coordinator and some outside entity, such as private industry or a university, but specifically the Coordinator of Energy must give effect to any trust or condition stipulated in the use of such moneys.

5. *Provision of information to the Coordinator*

These requirements are to ensure that the research team provides relevant reports, including financial details, on the contracted research projects. These requirements are part of the terms and conditions, as detailed in grants agreements, which will be drawn up and agreed upon by all parties, before funds are confirmed.

6. *Termination of assistance by the Coordinator*

This provides for the ability of the Coordinator to terminate assistance when the researcher fails to make appropriate progress, or is unable to complete a contracted research projects.

7. *Researchers to maintain confidentiality*

This provides for confidentiality requirements regarding personal details (such as bank records) obtained by a member of the research team, as a result of the research projects.

8. *Protection of trade secrets*

This provides for confidentiality requirements regarding intellectual property obtained by a member of the research team, as a result of the research projects.

9. *Other requests for confidentiality*

This provides for confidentiality requirements applying to the Coordinator (or a person performing the functions of the Coordinator). It relates to information, such as trade secrets, relating to the contracted research projects.

10. *Records to be maintained*

This provides for requirements relating to the storage and maintenance of records relating to the research projects, including financial details.

*Clause 94 Schedule 1 amended*

Updates the Schedule number to avoid confusion with the existing Schedule 1 which does not relate to sustainable energy research.

*Division 3 – Transitional Provisions*

*Clause 95 Definitions*

Provides definitions to be used during transitional arrangements.

*Clause 96 Ministerial instrument*

Enables the Minister for Energy to transfer MERIWA's assets and liabilities relating to the energy research functions to another agency to be nominated by the Minister. It also provides for the Minister responsible for MERIWA to concur with this transfer relating to energy research.

*Clause 97 Transfer of assets and liabilities*

Transfers the relevant assets and liabilities to the State and enables the Coordinator of Energy to take possession of all documents and records relevant to those assets and liabilities.

*Clause 98 Responsibility for sustainable energy research matters*

Transfers responsibility for existing research into sustainable energy to the Coordinator of Energy.

*Clause 99 Agreements and instruments*

Substitutes the Coordinator of Energy in place of MERIWA in any existing agreement or instrument relating to sustainable energy research.



## **PART 7 - AMENDMENTS AND VALIDATION PROVISION RELATING TO WESTERN POWER CORPORATION**

The amendments to the *Electricity Corporation Act 1994* provides for a number of changes to improve accountability of Western Power and to enable it to better perform its functions.

### *Division 1 – Amendments to the Electricity Corporation Act 1994*

#### *Clause 100 The Act amended*

The amendments in this Division are to the *Electricity Corporation Act 1994* .

#### *Clause 101 Section 7 amended*

This enables 8 non-executive directors to be appointed to the Board.

#### *Clause 102 Section 70 amended*

This enables the Minister to specify a time period within which information requested from Western Power under section 70 must be provided.

#### *Clause 103 Section 70A inserted*

This enables the Minister to request information that is not in the possession of Western Power but can be created or compiled from other information in Western Power's possession.

#### *Clause 104 Section 73 amended*

Provides protection to Western Power and its staff when providing information to the Minister under the new section 70A.

#### *Clause 105 Section 89 amended*

#### *(1) and (2) –Electricity distribution system and electricity transmission system*

The existing definition of “electricity distribution system” is deficient in that it is restricted to only that part of the system to which Western Power is required to give access by virtue of subclause 18(3) of Schedule 1 to the *Goldfields Gas Pipeline Agreement Act 1994*. The amendments replace the definition of “electricity distribution system” and “electricity transmission system” with definitions that can be prescribed by regulations. This will enable a more complete definition and it will enable the definition to be amended over time, as the systems may change.

#### *(3) - Prescribed pricing policy*

The current clause 2(1) of Schedules 5 and 6 of the Act requires that Western Power must make access to spare capacity on a non-discriminatory basis. This could be interpreted to prevent Western Power from using different charges for different classes of users or for different circumstances such as geographic location or size of load. This definition enables regulations to specify a pricing policy that clarifies that different prices can be charged for access to Western Power's transmission and distribution systems.

#### *Clause 106 Section 95 amended*

This amends section 95(3) of the Act that provides for regulations to be made to establish an Electricity Referee. The amendment enables regulations to be prescribed that provide protection and immunities for the Electricity Referee, and protection, immunity and liabilities for witnesses. It also clarifies that regulations can be prescribed to compel witnesses to attend hearings and produce documents.

*Clause 107 Schedule 5 amended*

2A. Costs of corporation in connection with application

*(1) – (2) – Non-discriminatory access to electricity transmission system*

Clause 2(1) of Schedule 5 relating to access to the electricity transmission system requires that Western Power must make access to spare capacity on a non-discriminatory basis. This could be interpreted to prevent Western Power from using different charges for different classes of users or for different circumstances such as geographic location or size of load. The new section (1a) clarifies it is not discriminatory to charge different prices for access to Western Power's transmission system on the basis of a prescribed pricing policy.

*(3) Costs of corporation in connection with application*

Enables regulations to be prescribed to enable Western Power to charge the reasonable costs incurred in processing an application for access to the electricity transmission system.

*(4) Clause 4(1) amended*

The existing clause 4 requires that Western Power prepare annually a series of reports and forecasts. This is amended to require these reports to be prepared by a time specified by regulations (prescribed day). This will ensure the information is produced in a timely manner so that it is relevant and current when it is released.

*(5) Clause 4(2) amended*

The clause is reworded to better clarify that Western Power can charge a user or prospective user the costs incurred in providing the information in relation to electricity transmission capacity.

*Clause 108 Schedule 6 amended*

*(1) – (2) Non-discriminatory access to electricity distribution system*

Clause 2(1) of Schedule 6 relating to access to the electricity distribution system requires that Western Power must make access to spare capacity on a non-discriminatory basis. This could be interpreted to prevent Western Power from using different charges for different classes of users or for different circumstances such as geographic location or size of load. The new section (1a) clarifies it is not discriminatory to charge different prices for access to Western Power's distribution system on the basis of a prescribed pricing policy.

*(3) Costs of corporation in connection with application*

Enables regulations to be prescribed to enable Western Power to charge the reasonable costs incurred in processing an application for access to the electricity distribution system.

*(4) Clause 4 amended*

The clause is reworded to better clarify that Western Power can charge a user or prospective user the costs incurred in providing the information in relation to electricity distribution capacity.

#### *4. Obligation to provide information*

##### *Clause 109 Schedule 7 amended*

The existing clause 2(1) of Schedule 7 requires that Western Power prepare annually a series of reports and forecasts to allow interested parties to make proposals in relation to, and to participate in any procurement process by the corporation. This is amended to require these reports to be prepared by a time specified by regulations. This will ensure the information is produced in a timely manner so that the information is relevant and current when it is released.

#### *Division 2 - Amendments to the Energy Operators (Powers) Act 1979 and Validation Provision*

The amendments clarify the long-standing method by which Western Power obtains capital contributions for extending or enhancing the capacity of the network. There are also amendments to enable Western Power to adjust incorrect metering and limit the period for which they can be adjusted to 12 months (unless a dishonest or illegal act was committed).

##### *Clause 110 The Act amended*

The amendments in this Division are to the *Energy Operators (Powers) Act 1979*.

##### *Clause 111 Section 58 amended*

Section 58 provides that Western Power is not obliged to supply electricity unless it reaches agreement with the party on the conditions of that supply. This section has historically been the basis for which Western Power has sought capital contributions when providing new network extensions or enhanced capacity that are not covered by the more specific Section 61.

The amendments to Section 58 clarify that when Western Power charges for extending the network and increasing capacity of the network, it is able to include the costs of accommodating future demands on the network from other electricity consumers.

##### *(1) Section 58(2)(a) amended*

This clarifies that Western Power and a party seeking supply can enter into an agreement and links that agreement to the requirements of Section 58(3).

##### *(2) Section 58(3) amended*

This clarifies that Western Power can charge the costs, as determined by Western Power, of appropriate network development.

##### *(3) Section 58(3) amended*

This defines appropriate network development to include future demands that Western Power anticipates from other consumers. This enables Western Power to develop the electricity network efficiently.

*Clause 112 Section 61 amended*

Section 61 provides for Western Power to charge capital contributions for extending the network beyond the existing point of supply. This section has historically been the basis for which Western Power has sought capital contributions when extending the network or enhancing its capacity.

The amendments to Section 61 clarify that when Western Power charges for extending the network and increasing capacity of the network, it is able to include the costs of accommodating future demands on the network from other electricity consumers.

*Clause 113 Section 65 amended and transitional provision*

The existing provisions relating to meter and charging errors are complex, often requiring legal advice to resolve disputes, and distinguishes between errors in the meter and errors in the reading of the meter or the calculation of amounts due. Meter error corrections can only be applied for one billing period, while other errors can be corrected for a period of up to 12 months. The proposed amendments aim to simplify and clarify the requirements by removing the arbitrary distinction between the treatments of different types of error.

*(1) Section 65(2) amended*

The existing section 65(2) is deleted and replaced with a new section 65(2). This new provision is clearer in that it states the reading on a meter that was not correctly registering the extent and value can be disregarded. This enables the reading to be disregarded when the error is identified and to apply the correction during previous periods. (New section 65(5) limits the backdating to 12 months unless there was dishonest or illegal act.)

*(2) Section 65(4) and (5) amended*

Provides for accounts to be adjusted for incorrect metering and charging and limits the period in which they can be adjusted to 12 months unless a dishonest or illegal act was committed.

*(3) Transitional issues*

Provides for correcting of meter errors in accordance with section 65 provisions in force before the commencement of the new provisions.

*(4) Validation of record*

Validates that the records of the energy operator are presumed to be correct unless there is evidence to the contrary.

*Clause 114 Validation of certain agreements*

Validates that the capital contributions, before the commencement of the proposed clause, for extending the network or enhancing its capacity to accommodate for future growth in demand and paid by a person are deemed to have been valid. This clause validates all the capital contributions paid to SECWA and Western Power over a period of time, and which were charged in good faith.



## **PART 8 – MISCELLANEOUS AMENDMENTS**

There is a requirement to attend to miscellaneous amendments which are set out under this Part of the Bill.

### *Clause 115 Gas Pipelines Access (Western Australia) Act 1998 amended*

*(1) and (2) – Section 73(1)(b) deleted*

This deletes the conferral of functions to the Arbitrator by regulations made under section 100 of the *Gas Corporation Act 1994* for the purposes of section 95 relating to access to the gas distribution system of the then Gas Corporation and related dispute resolution mechanism (use of the Gas Referee). Access and dispute resolution for access to the AlintaGas gas distribution system is now fully governed by the *Gas Pipelines Access (Western Australia) Act 1998* with the approval in July 2000 by the Independent Gas Pipeline Access Regulator of the AlintaGas gas distribution access arrangement. The *Gas Corporation Act 1994* and related regulatory provisions have been repealed and no longer apply.

### *Clause 116 Energy Coordination Act 1994 amended*

Updates the definition of the gas distribution system to clarify that the definition is in accordance with section 90 of the *Gas Corporation Act 1994* as repealed by section 93 of the *Gas Corporation (Business Disposal) Act 1999*.