

## **ECONOMIC REGULATION AUTHORITY BILL 2002**

### **EXPLANATORY MEMORANDUM**

In accordance with the recommendations of the Machinery of Government Task Force report, this Bill establishes the Economic Regulation Authority as an independent body to assume responsibility for economic regulatory functions currently performed by a variety of Ministers, sector-specific regulators and public sector officials. The Bill establishes the Authority, allows for up to three members to be appointed to the governing body, and provides generic functions and powers.

The regulatory functions of the Authority will apply across the electricity, gas, rail and water industries. Existing industry-specific legislation defines the regulatory roles of the Authority for each industry. The Bill provides the necessary consequential amendments to enable these functions to be transferred to the Authority. The consequential amendments are primarily aimed at institutional change and achieving a more appropriate separation of regulation from policy-making. There are no significant changes to current regulatory policy settings.

The transfer of several existing bodies into a single multi-utility economic regulator can be expected to deliver savings through consolidation of administrative duties and reduced duplication. It will also deliver benefits to the broader economy in terms of a more effective and efficient regulatory structure to oversee the operation of the utility industries that provide essential services to businesses and households.

As the Authority will be independent from both government and from the industries it regulates, it will serve to underpin the Government's policy for competitive utility markets and regulation that involves transparent and accountable decision-making. This is an essential feature of strong governance where the State has an operating interest in the industry.

The Bill provides the Authority with the following roles:

- the regulatory functions currently performed independently by the Gas Pipelines Access Regulator and the Rail Access Regulator. There is no change to the existing gas and rail access regimes as a result of the transfer;
- the capacity to independently administer existing industry licensing frameworks. This initially involves water industry licensing. The gas industry licensing regime will be transferred to the Authority at a date to be proclaimed, which is to coincide with the commencement of full retail contestability in the gas industry; and
- an inquiry and reporting function on matters referred by the government.

The Economic Regulation Authority will be a central institution under the Government's future reforms to the Western Australian electricity industry. In this regard, it is envisaged that the Authority will be provided with responsibility for administering an electricity access regime and electricity industry licensing regime.

## **PART 1 – PRELIMINARY**

### ***Clause 1 – Short title***

States the short title of the proposed Act.

### ***Clause 2 – Commencement***

The Act will commence on a day to be fixed by proclamation. It is envisaged that the Economic Regulation Authority would commence operation from 1 July 2003.

Different days may be fixed for different provisions. It is envisaged that the Authority would commence the gas industry licensing functions upon the commencement of full retail contestability in the gas market. This is anticipated to occur in the second half of 2003.

### ***Clause 3 – Definitions***

The definitions give effect to the meaning of certain terms used in the Act. These are self-explanatory.

## **PART 2 – ECONOMIC REGULATION AUTHORITY**

### ***Clause 4 – Economic Regulation Authority established***

This clause establishes the Economic Regulation Authority as a statutory authority with associated legal standing.

### ***Clause 5 – Status***

This clause is self-explanatory.

### ***Clause 6 – Management of Authority***

The governing body of the Authority will comprise at least one, and up to three, members, one of whom will be the chairman. The governing body will be responsible for the performance and conduct of the Authority's duties.

***Clause 7 – Members***

There is an obligation to appoint members who have knowledge of, or experience in, one or more fields of industry, commerce, economics, law or public administration relevant to the functions of the Authority.

Members other than the chairman can be appointed on a part-time basis to reflect the regulatory workload and manage costs.

***Clause 8 – Term of office***

A member of the authority is to be appointed for a term of between three and five years, and is eligible for reappointment.

***Clause 9 – Casual vacancy***

This clause sets out the means by which a position on the Authority may become vacant other than by expiry of the term of appointment of a member. A member may resign or be removed from office on any of the grounds specified in subclause (2).

***Clause 10 – Alternate chairman***

This clause provides for, and defines the circumstances upon which, an alternate chairman is to act in the chairman's position.

***Clause 11 – Alternate members***

This clause provides for, and defines the circumstances upon which, an alternate member is to act in a member's position.

***Clause 12 – Remuneration and conditions of members***

Remuneration and conditions of members are to be determined by the Minister on the recommendation of the Minister for Public Sector Management.

***Clause 13 – Meetings of governing body***

Schedule 1 outlines the procedure and conduct for meetings of the governing body.

## **PART 3 – ADMINISTRATION**

### **Division 1 – Chief employee**

#### ***Clause 14 – Chief employee***

Defines the eligibility and appointment of the chief employee, and the powers vested in the chief employee.

#### ***Clause 15 – Term of office***

The chief employee can be appointed for a period of up to five years.

#### ***Clause 16 – Casual vacancy***

This clause sets out the means by which the position of chief employee may become vacant other than by expiry of the term of appointment to the office. The chief employee may resign or be removed from office on any of the grounds specified in subclause (2).

#### ***Clause 17 – Remuneration and conditions of chief employee***

These are to be determined by the Authority.

#### ***Clause 18 – Appointment of public service officer***

Provides for the capacity to appoint a public service officer to the position of chief employee. This includes provision for portability of entitlements and contributions if the appointed chief employee is a public service officer.

### **Division 2 – Other staff and facilities**

#### ***Clause 19 – Other Staff***

The Authority will be staffed by public service officers, appointed in accordance with the *Public Sector Management Act 1994*.

#### ***Clause 20 – Use of government staff and facilities***

Provides the Authority with the capacity to use the services of other government staff or facilities, whilst maintaining the independence of the Authority's staff. The salary and allowances of other government staff are to be paid for by the Authority.

### **Division 3 — Financial provisions**

#### ***Clause 21 - Bank account***

The Authority is to have an independent bank account, approved by the Treasurer. This account will be credited with all funds received by the Authority, including moneys appropriated by Parliament and fees and charges collected under the cost-recovery Regulations provided under clause 61. The account will also be charged with all expenditure incurred by the Authority in performing regulatory functions.

#### ***Clause 22 - Borrowing from Treasurer***

The Authority has the capacity to borrow from the Treasurer.

#### ***Clause 23 - Application of Financial Administration and Audit Act 1985***

The Authority will be subject to the financial administration, reporting and audit requirements prescribed for statutory authorities under the *Financial Administration and Audit Act 1985*, with the exception of section 42 which requires statutory authorities to submit financial estimates to the Minister for approval. Instead, the Minister will be required to set an annual expenditure limit for the Authority. Furthermore, any requirement made under the Treasurer's Instructions (issued under section 58 of the Act), for the Authority to prepare performance indicators should be limited to the Authority's management functions (including financial management).

#### ***Clause 24 - Separate financial records***

The Authority will account for its various functions across respective industries separately. This reflects the fact that some functions will be subject to cost recovery, which is currently the case for gas access regulation. Separate financial records will ensure that other functions are not cross-subsidised.

### **PART 4 — FUNCTIONS OF AUTHORITY**

#### ***Clause 25 - Functions***

The regulatory functions of the Authority are contained within the range of existing legislative instruments applying to the gas, rail and water industries. These functions are:

- gas and rail access, which are currently administered by separate independent regulators - the Office of the Independent Gas Access Regulator, and the Office of the Independent Rail Access Regulator;
- water industry licensing, which is currently administered by the Coordinator of Water and the Minister for Environment and Heritage; and

- gas industry licensing, which is currently administered by the Coordinator of Energy and the Minister for Energy.

The Authority will also perform inquiry and reporting functions in accordance with Part 5 of the Bill.

In the future, a broad range of regulatory functions in the electricity industry is envisaged. This will be subject to a range of new electricity legislation and regulations being put in place.

***Clause 26 - Authority to have regard to certain matters***

In conducting its functions, other than gas and rail access, the Authority will have regard to a number of matters outlined in this clause. These matters do not apply to the gas and rail access functions as the legislation defining these functions contains objectives that have been agreed nationally.

The clause also provides for the objectives in other relevant legislation to prevail over these matters. As a result, the objectives in the water and gas licensing legislation have primacy over these matters.

***Clause 27 - Powers***

Simply states that the Authority has all powers necessary to perform its functions.

***Clause 28 - Independence of Authority***

This clause provides for the independence of the Authority, and reflects the existing independence that applies to the current gas and rail access regulators, as well as the Coordinator of Energy in issuing gas industry licences. Independence needs to be clearly protected so that no Ministerial direction is possible with respect to the Authority's determinations, recommendations or conduct of duties.

The Authority will only be subject to broad powers of direction with respect to general policies to be followed in matters of financial and other administration. The clause includes standard provisions for any direction issued in this respect being published in the *Gazette*, tabled in both Houses of Parliament and reported in the Authority's annual report.

The consequential amendments to the *Energy Coordination Act 1994* and the *Water Services Coordination Act 1995* provide appropriate accompaniments to the independence of the Authority (see Divisions 4 and 18 respectively). This includes a regulation making power to prescribe public consultation processes, and the inclusion of government policies relating to the supply of gas and water services as a public interest matter to be considered as part of the licensing process.

### ***Clause 29 – Delegation***

Responsibility for performing duties, other than inquiries or reports, can be delegated by the Authority to a member or staff member. Any delegation must be in writing. The clause reflects the existing delegation powers of the various regulators currently performing the functions that are to be provided to the Authority.

### ***Clause 30 - Conflict of interest***

This is a standard clause relating to conflict of interest. A member must inform the Minister of any direct or indirect conflict of interest in performing his or her duties. The Minister may direct a member to resolve any conflict of interest and if it is not resolved the member may be disqualified.

## **PART 5 — REFERENCES**

### **Division 1 — References on regulated industries**

#### ***Clause 31 – Definition***

This clause defines a reference, which is a notice provided under clause 32.

#### ***Clause 32 – References***

This clause enables the Minister to issue a notice to the Authority for an inquiry on a matter related to a regulated industry. The notice can be on any matter except for a matter governed by the Gas Pipelines Access Law or the code in force under the *Railways (Access) Act 1998*.

The matters that are envisaged to form the main subject of inquiry relating to a regulated industry are pricing and pricing policies, quality and reliability of goods and services, investment and business practices, and the costs of compliance with written laws.

An independent report by the Authority on matters such as water and electricity tariffs will improve the quality of information provided to the government to assist in its decision-making processes related to essential utility services. It will also improve transparency, as reports will be tabled in Parliament (clause 36).

The Minister must consult with the Authority before issuing a notice for inquiry. This aims to ensure the Authority has the capacity to conduct the inquiry.

In addition to the terms of reference specifying the matters of inquiry, they should also specify the timeframe, the processes for public consultation, and whether a draft report is to be available and to whom.

***Clause 33 - Amendment or withdrawal of reference***

This clause provides for the Minister to change or withdraw a reference. This can only be done by the Minister writing to the Authority and must be done prior to a report being made by the Authority on the reference.

***Clause 34 - Notice of reference, amendment or withdrawal***

This clause requires that any reference, amendment to a reference, or withdrawal of a reference must be made public. The clause prescribes relevant information to be contained in the public notice.

***Clause 35 - Authority to conduct inquiry***

Once a reference has been issued to the Authority it must conduct an inquiry on the matter.

***Clause 36 - Reports***

This clause requires the Authority to report on the outcome of an inquiry. Confidential or commercially sensitive information can be identified and excluded from the report that is tabled in Parliament. A report on an inquiry must be tabled in Parliament within 28 days of the Minister receiving the report.

**Division 2 — References on other industries**

Division 2 applies to references related to non-regulated industries only.

***Clause 37 - Definition***

This clause is self explanatory. It defines a reference as a notice under clause 38.

***Clause 38 - References***

The Minister may give a written notice to the Authority for an inquiry or report on an industry that is not regulated. An industry that is not regulated is one that is not defined as a regulated industry under clause 3.

Any matter can be referred to the Authority, including those described in clause 32(2), that is price and pricing policies, quality and reliability of goods and services, investment and business practices, and the costs of compliance with written laws. An example of a likely reference would be on public transport fares.

The inquiry/reporting function of the Authority can be viewed as similar to that of the Commonwealth's Productivity Commission.

The Minister must consult with the Authority before issuing a notice for inquiry. This aims to ensure the Authority has the capacity to conduct the inquiry.



In addition to the terms of reference specifying the matters of inquiry or report, they should also specify the timeframe, the processes for public consultation, and whether a draft report is to be available and to whom.

***Clause 39 - Amendment or withdrawal of reference***

A reference may be amended or withdrawn by the Minister's written notice to the Authority before a report is prepared.

***Clause 40 - Notice of reference, amendment or withdrawal***

A notice of a reference, or any amendment or withdrawal of a reference may be made public. However, this is at the Minister's discretion.

***Clause 41 - Authority to conduct inquiry***

The Authority is required to conduct an inquiry into any matter referred as an inquiry.

***Clause 42 - Reports***

The Authority must submit a report to the Minister on the outcome of an inquiry referred to it on a non-regulated industry. However, if the matter is referred to the Authority for report only, then the Authority is required to submit a report without conducting an inquiry.

Confidential or commercially sensitive information can be excluded from a report, but the report must identify that this has occurred. The Minister may, but is not required to, make copies of the report publicly available.

***Clause 43 - Preparation of reports for purposes of section 42(2)***

Where a reference on a non-regulated matter is for report only, then the Authority can inform itself on the matters relevant to the reference. The information gathering powers of the Authority do not apply.

**Division 3 — General**

***Clause 44 - Definition***

Defines an inquiry and the definition is self-explanatory.

***Clause 45 - Authority to act through a member or members when conducting inquiry***

This clause requires the Authority to act through a member or members specified by the Chairman when conducting an inquiry. The inquiry function cannot be delegated. The governing body does not have to consider inquiry matters. This means the conduct of meetings outlined in Schedule 1 does not apply. A member or members can conduct more than one inquiry at a time.

***Clause 46 - Conduct of inquiry***

This clause outlines how the Authority conducts an inquiry. The aim is for minimal formality in processes and, within the scope of the terms of reference, the Authority is provided with a degree of discretion in undertaking the inquiry. It is not bound by rules of evidence and can inform itself in any manner it sees fit. Public consultation processes and working groups can be established. Confidential information may require proceedings to be held in private.

***Clause 47 - Powers relating to inquiry***

This clause enables the Authority to summons a person to attend before the Authority as part of an inquiry and answer any question. It may also request any document and require a person to swear an oath to answer truthfully.

***Clause 48 - Offences in relation to inquiry***

This clause provides for offences in relation to breaches of the Authority's inquiry powers. An offence relates to a person failing to attend when summoned, failing to produce documents or information, providing information that is false or misleading, or insulting the Authority or a member. A penalty of \$10 000 is provided for offences under this clause.

***Clause 49 - Incriminating answers or documents***

This clause provides that self-incrimination is not an excuse for failing to provide documents or information to the Authority when requested as part of an inquiry. Incriminating evidence is exempt from any civil or criminal proceeding, unless it is information to an inquiry that is false or misleading (see clause 48(d)).

***Clause 50 - Protection for person assisting Authority***

This clause removes liability from anyone for any subsequent loss, damage or injury suffered by another person as a result of providing information or documents in good faith to the Authority on an inquiry matter.

## **PART 6 — COLLECTION AND USE OF INFORMATION**

### ***Clause 51 - Power to obtain information and documents***

The Authority may request information or documents from a person that would assist it in performing its functions. Subclause (2) exempts the Authority from using this clause for its functions related to gas and rail access. In conducting the gas and rail access functions, the Authority must rely on the information powers contained in the respective gas and rail access legislation, due to these regulatory frameworks being agreed nationally.

The Authority is also unable to use these powers in relation to a report (without inquiry) on a non-regulated industry matter. In this case, it must inform itself on relevant matters. For example, it may use existing published information or request information, but does not have a legal basis for ensuring compliance with a request.

Any information request must be made in writing and identify the information required, the timeframe for providing it, and the form in which the information must be provided.

### ***Clause 52 - Offences***

A penalty of \$10 000 or 12 months imprisonment is provided for failure to comply with a request from the Authority for information or a document, or for providing false or misleading material.

### ***Clause 53 - Incriminating information or documents***

This clause is similar in intent to clause 49. It is not a valid excuse for a person to fail to comply with a requirement to provide information or documents due to a belief that they be incriminating evidence. Incriminating information cannot be used in a civil or criminal proceeding, unless it is false and misleading information (see clause 52(d)).

### ***Clause 54 - Protection for person giving information or document***

This clause removes liability from anyone for any subsequent loss, damage or injury suffered by another person as a result of providing information or documents in good faith to the Authority when requested as part of its information gathering powers under clause 51.

***Clause 55 - Restriction on disclosure of confidential information***

Clause 55 provides for a person to state that certain information or documents provided to the Authority contain confidential or commercially sensitive information. The Authority is not to disclose this information to another person, unless it is of the opinion that it would not be a detriment or it would be in the net public interest to disclose it.

In all circumstances, the Authority can provide confidential information to a staff member or use it in a civil or criminal proceeding.

**PART 7 — MISCELLANEOUS**

***Clause 56 - Protection from liability for wrongdoing***

This is a standard clause which protects members and staff of the Authority from any liability in relation to actions they undertake in good faith in the performance of the Authority's functions. This also applies to an omission to do anything. However, it does not relieve the Authority or the State from liability.

***Clause 57 - Confidentiality***

The clause provides that a current or former member or staff member of the Authority is not permitted to disclose confidential information that is obtained as part of their duties. Exemptions to this requirement relate to the where disclosure is relevant to the performance of duties and where disclosure of confidential information is permitted under this Act or another written law, or consent has been given. The penalty for a breach is \$10 000 or 12 months imprisonment.

***Clause 58 - Intimidation***

This clause prohibits intimidating behaviour being taken against a person who has assisted the Authority performing its inquiry functions or provided information or documents to the Authority. The penalty for a breach is \$10 000 or 12 months imprisonment.

***Clause 59 - Execution of documents***

The Authority it to have a common seal to be used in its formal correspondence and general execution of documents.

***Clause 60 - Supplementary provision about laying documents before Parliament***

This clause clarifies the obligations for the Minister in relation to tabling documents in Parliament in cases where Parliament is not sitting and the Minister is of the opinion that Parliament may not sit during the period that there is an obligation to table a document. The documents are then to be transmitted to the Clerk of the House.

***Clause 61 - Regulations***

This clause is a standard regulation making power. The Governor may make regulations relating to all matters covered by this Act. Without limitation, regulations may be made relating to the imposition of payment of fees and charges in connection with the performance of the Authority's functions, including those that are provided under another written law. Existing regulations in this respect apply to the gas access function, as well as for gas and water industry licence fees.

***Clause 62 - Amendments to other Acts***

Schedule 2 outlines the consequential amendments to other Acts.

***Clause 63 - Transitional and saving provisions***

The necessary transitional and savings provisions are outlined in Schedule 3 and 4. Schedule 3 outlines the transitional and savings provisions related to the Authority's gas and rail access functions and the water industry licensing function which will apply once the Authority is established. This is expected to be on 1 July 2003.

Schedule 4 outlines the transitional and savings provisions related to the Authority's gas industry licensing function. This function is likely to be proclaimed (or transferred) at a date to coincide with full retail contestability in the gas market, which is expected to be in November 2003.

The clause also provides a regulation making power to provide for the case where a transitional matter has not been sufficiently dealt with in the Act.

***Clause 64 - Review of Act***

This clause provides for the standard review of the Act after 5 years of its operation. The review must be tabled in Parliament.

**SCHEDULE 1 — MEETINGS OF GOVERNING BODY**

***Clause 1 - Definition***

The definition gives effect to the meaning of "meeting".

***Clause 2 - Application***

This clause is self explanatory.

***Clause 3 - General procedure***

Except where otherwise stated in the Act, the Authority is to determine its own meeting procedures.

***Clause 4 - Presiding member***

The chairman is to preside if present, otherwise the members are to appoint one of their number present to preside.

***Clause 5 - Quorum***

A quorum of the Authority is 2 members.

***Clause 6 - Voting***

This clause provides the voting arrangements. Each member has a deliberative vote. If a question remains unresolved due to an equal number of votes for and against, then the issue is unresolved until the next meeting. If this remains unresolved at the next meeting then it is decided in the negative.

***Clause 7 - Minutes***

Accurate minutes must be kept of the Authority's meetings.

***Clause 8 - Resolution without meeting***

A resolution can be met in writing without the formal meeting of members.

***Clause 9 - Holding meetings remotely***

Allows for meetings to be held via telephone conference, or via other instantaneous communication medium.

***Clause 10 - Leave of absence from meetings***

This clause is self-explanatory.

**SCHEDULE 2 — AMENDMENTS TO OTHER ACTS**

**Division 1 — Builders' Registration Act 1939**

***Clause 1 - The Act amended***

This Division prescribes an amendment to the *Builders' Registration Act 1939*.

***Clause 2 - Section 12A amended***

Section 12A of the *Builders' Registration Act 1939* provides for a reference to building work to include plumbing work as defined in section 59I of the *Water Services Coordination Act 1995*. The *Water Services Coordination Act 1995* is to be renamed the *Water Services Licensing Act 1995* as part of the consequential amendments under Division 18. This clause makes the name change in section 12A of the *Builders' Registration Act 1939*.

**Division 2 — Conservation and Land Management Act 1984**

***Clause 3 - The Act amended***

This Division prescribes an amendment to the *Conservation and Land Management Act 1984*.

***Clause 4 - Section 53 amended***

Section 53 of the *Conservation and Land Management Act 1984* defines a “relevant water utility” as one that, inter alia, holds an operating licence under the *Water Services Coordination Act 1995*. The *Water Services Coordination Act 1995* is to be renamed the *Water Services Licensing Act 1995* as part of the consequential amendments under Division 18 of this Schedule. This clause makes the name change in section 53 of the *Conservation and Land Management Act 1984*.

**Division 3 — Constitution Acts Amendment Act 1899**

***Clause 5 - The Act amended***

This Division prescribes amendments to the *Constitution Acts Amendment Act 1899*.

***Clause 6 - Schedule V amended***

The Economic Regulation Authority subsumes the offices of the Western Australian Independent Gas Pipelines Access Regulator and the Western Australian Independent Rail Access Regulator. Schedule V of the *Constitution Acts Amendment Act 1899* is therefore amended by deleting these offices and adding the Economic Regulation Authority.

The name change of the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995* is reflected in the item on Schedule V relating to the Plumbers Licensing Board. This name change is outlined in Division 18 of this Schedule.

**Division 4 — Energy Coordination Act 1994**

This Division provides the consequential amendments to enable the administration of the gas licensing regime contained in the *Energy Coordination Act 1994* to be transferred to the Economic Regulation Authority. The transfer is to be proclaimed at a date to coincide with commencement of full retail contestability in the gas market, rather than upon the establishment of the Authority.

***Clause 7 - The Act amended***

This Division prescribes amendments to the *Energy Coordination Act 1994*.

***Clause 8 - Long title amended***

The long title of the Act is amended to reflect the conferral on the Authority of the gas industry licensing functions outlined in the Act.

***Clause 9 - Section 3 amended***

This clause defines the Economic Regulation Authority.

***Clause 10 - Section 6 amended***

Section 6 of the Act outlines the functions of the Coordinator of Energy, which includes the administration of the licensing scheme provided for in Part 2A of the Act. This clause deletes the reference to this function as it is being transferred to the Economic Regulation Authority.

***Clause 11 - Section 7 amended***

Section 7 of the Act requires the Director of Energy Safety to provide advice on safety and technical standards in the gas supply industry to the Western Australian Independent Gas Pipelines Access Regulator. This clause amends the Act to reflect the Economic Regulation Authority replacing the Independent Gas Pipelines Access Regulator.

***Clause 12 - Section 10 amended***

Section 10(1a) of the Act provides that the Minister cannot direct the Coordinator of Energy with respect to administration of the licensing regime. This section is repealed as there is a general provision in the Economic Regulation Authority that precludes the Minister from directing the Authority. The Authority will take over the administration of the licensing regime from the Coordinator at a date to be proclaimed.



***Clause 13 - Part 2A Division 1A inserted***

This clause inserts a provision outlining the role of the Economic Regulation Authority under the Act. The specific functions are self explanatory and relate to the administration of the gas industry licensing regime and keeping the Minister informed in respect of this function.

***Clause 14 - Section 11H amended***

This clause provides an additional public interest criterion in the Act, which is “the policy objectives of government in relation to the supply of gas”. The Governor and the Economic Regulation Authority must consider public interest criteria when conducting their respective functions under the Act. This additional criterion is appropriate given the independence of the Authority.

***Clause 15 - Section 11K amended***

Section 11K of the Act requires the Coordinator of Energy to consider the public interest when undertaking gas licensing functions. As the Authority is being provided with the gas licensing function, this clause amends the reference to the Coordinator (“he or she”) to “the Authority”.

***Clause 16 - Section 11S amended***

Section 11S of the Act provides for the Coordinator to grant, renew or transfer a gas licence. As the Authority is being provided with the gas licensing function, this clause amends the reference to the Coordinator (“he or she”) to “the Authority”.

***Clause 17 - Section 11U amended***

Section 11U requires the Coordinator to make gas licences available for inspection. As the Authority is being provided with the gas licensing function, this clause amends “the Coordinator’s” to “its” (i.e. the Authority).

***Clause 18 - Section 11WA inserted***

This clause provides for a regulation making power enabling the government to prescribe public consultation processes the Authority must undertake before making a decision to grant, renew or transfer a licence. This is seen as appropriate given the independence of the Authority. In addition, public consultation will assist the Authority consider matters related to the public interest.

***Clause 19 - Section 11ZA amended***

Section 11ZA of the Act requires that it is a licence condition for every licensee to provide the Coordinator with an independently conducted performance audit report. As the Authority is being provided with the gas licensing function, this clause amends the reference to the gender based position of the Coordinator (“his or her”) to the non-gender Authority (“its”).

***Clause 20 - Section 11ZC amended***

This section of the Act requires the Minister to notify a licensee of proposed enforcement action in order that they can provide a submission on the matter. As the Authority is being provided with the responsibility for enforcement under the gas licensing regime, this clause amends the gender based reference to the Minister (“his or her”) to the non-gender Authority (“its”).

***Clause 21 - Section 11ZG repealed***

Section 11ZG requires the Coordinator of Energy to inform the Minister on licensing matters. The section is repealed due to the Authority being provided with responsibility for gas licensing functions. In addition, clause 13 of this Division requires the Authority to inform the Minister on licensing matters.

***Clause 22 - Schedule 1 amended***

Schedule 1 paragraph (h) of the Act provides for gas industry licence terms and conditions to include a requirement for the licensee to provide specified information relating to the activities of the licensee under the licence to the Coordinator in the manner and form determined by the Coordinator.

The amendment to Schedule 1 reflects the Authority taking over responsibility for administering the gas licensing regime and clarifies the matters that can be included in licence terms and conditions. The amendment provides for the Authority to require the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information relevant to the operation of the licence, the operation of the licensing regime, or the performance of the Authority’s functions which are provided under the licensing provisions of the Act.

***Clause 23 - Various references to “Coordinator” changed to “Authority”***

This is self explanatory. Various references to the Coordinator are changed to the Authority in accordance with the Authority being provided with the responsibility for administering the gas industry licensing regime.

***Clause 24 - Various references to “Minister” changed to “Authority”***

This clause provides for various references to the Minister to be changed to the Authority. The Minister is currently responsible for enforcement of licence terms and conditions. These amendments provide the enforcement functions to the Authority.

This avoids the situation where an independent body grants licences and determines terms and conditions, and a Minister enforces them. Enforcement action will generally be effected by the Authority applying to the relevant court.

**Division 5 — *Financial Administration and Audit Act 1985***

***Clause 25 - The Act amended***

This clause provides for amendments to the *Financial Administration and Audit Act 1985*.

***Clause 26 - Schedule 1 amended***

The Economic Regulation Authority subsumes the Offices of the Western Australian Independent Gas Pipelines Access Regulator and the Western Australian Independent Rail Access Regulator. Schedule 1 of the *Financial Administration and Audit Act 1985* is therefore amended by deleting these Offices and adding the Economic Regulation Authority.

**Division 6 — *Fire Brigades Act 1942***

***Clause 27 - The Act amended***

This Division provides for amendments to the *Fire Brigades Act 1942*.

***Clause 28 - Section 54 amended***

Section 54 of the *Fire Brigades Act 1942* provides for the Fire and Emergency Services Authority of Western Australia to request a water authority to install or abolish a fire hydrant at a specified location. Such a request may only be made to a water supply authority in respect of a particular location if that location is within a controlled area for which that authority holds an operating licence under the *Water Services Coordination Act 1995*.

The *Water Services Coordination Act 1995* is to be renamed the *Water Services Licensing Act 1995* as part of the consequential amendments under Division 18. This clause provides for this name change in section 54 of the *Fire Brigades Act 1942*.

**Division 7 — Freedom of Information Act 1992**

***Clause 29 - The Act amended***

This Division provides for amendments to the *Freedom of Information Act 1992*.

***Clause 30 - Glossary amended***

Commercial documents in the possession of the Western Australian Independent Gas Pipelines Access Regulator, the Gas Arbitrator and the Gas Review Board are exempt from the *Freedom of Information Act 1992*. This is achieved through listing these bodies in the glossary to the Act.

This clause amends the glossary of the *Freedom of Information Act 1992* as a result of the Western Australian Independent Gas Pipelines Access Regulator being subsumed by the Economic Regulation Authority (see Division 8).

**Division 8 — Gas Pipelines Access (Western Australia) Act 1998**

This Division provides for the repeal of the current office of the Western Australian Independent Gas Pipelines Access Regulator, and the allocation of the gas access function to the Economic Regulation Authority. There are no changes to the gas access regime.

***Clause 31 - The Act amended***

This Division provides for amendments to the *Gas Pipelines Access (Western Australia) Act 1998*.

***Clause 32 - Long title amended***

The current legislation establishes the office of the Western Australian Gas Pipelines Access Regulator. The long title will be amended to reflect the repeal of the sections that establish the office, given the establishment of the Economic Regulation Authority.

***Clause 33 - Section 11 amended***

This clause changes the definition of local Regulator in the Gas Pipelines Access (Western Australia) Law and Regulations to the Economic Regulation Authority.

***Clause 34 - Section 19 amended***

This clause transfers the functions conferred on the Western Australian Gas Pipelines Access Regulator by other scheme participants to the Economic Regulation Authority.

***Clause 35 - Part 6 Division 1 Subdivision 1 heading deleted***

This amendment deletes the subdivision heading that refers to the establishment of the office of Western Australian Independent Gas Pipelines Access Regulator.

***Clause 36 - Section 26 amended***

This clause changes the definition of “Regulator” to the Economic Regulation Authority.

***Clause 37 - Part 6 Division 1 Subdivision 2 repealed***

Clause 37 repeals sections 27 to 35 of the Act. The sections provide for the establishment of the office of the Western Australian Gas Pipelines Access Regulator and related matters.

***Clause 38 - Part 6 Division 1 Subdivision 3 heading deleted***

This clause deletes the subdivision heading that refers to the functions and powers of the Western Australian Independent Gas Pipelines Access Regulator due to the repeal of this office.

***Clause 39 - Section 36 amended***

This clause provides the Economic Regulation Authority with the functions and powers of the local Regulator under the *Gas Pipelines Access Law* and National Gas Agreement.

***Clause 40 - Section 37 repealed***

Clause 40 repeals section 37 of the Act - Independence of Regulator. The independence of the Economic Regulation Authority is provided under clause 28 of the Economic Regulation Authority Bill 2002.

***Clause 41 - Section 38 amended***

Section 38 - Provision supplementary to the Code allows the Western Australian Gas Pipelines Access Regulator to consider the potential to encourage competition for residential and small business consumers when assessing access arrangements. The amendment replaces the reference to the Western Australian Gas Pipelines Access Regulator with the Economic Regulation Authority.

***Clause 42 - Sections 39, 40 and 41 repealed***

Clause 42 repeals sections 39, 40 and 41 of the Act. Section 39 of the Act provides for treatment of certain internal arrangements of the Gas Corporation under the *Gas Corporation Act 1994*, namely the separation of the Gas Corporation's trading and distribution businesses. However, section 39 is now redundant due to the privatisation of the Gas Corporation (i.e. AlintaGas) in 2000.

Section 40 of the Act provides for the Western Australian Gas Pipelines Access Regulator to be able to delegate the performance of functions to staff. Section 41 of the Act requires the Regulator to declare any conflict of interest to the Minister. Similar provisions for the Economic Regulation Authority are reproduced in the Economic Regulation Authority Bill 2002.

***Clause 43 - Part 6 Division 1 Subdivisions 4, 5 and 6 repealed***

Sections 42 to 48 provide administrative provisions for the Western Australian Gas Pipelines Access Regulator, such as staffing arrangements and financial provisions (e.g. bank account). Similar provisions for the Economic Regulation Authority are reproduced in the Economic Regulation Authority Bill 2002.

***Clause 44 - Section 76 amended***

Section 76 of the Act requires the Gas Disputes Arbitrator to provide copies of decisions to the Western Australian Gas Pipelines Access Regulator. This clause amends the reference to the Gas Pipelines Access Regulator to the Economic Regulation Authority.

***Clause 45 - Section 87 amended***

Section 87 of the Act allows regulations to be made to impose fees and charges for the performance of the functions of the Western Australian Gas Pipelines Access Regulator and Gas Disputes Arbitrator. Section 87 will be amended by deleting reference to the Western Australian Gas Pipelines Access Regulator. A similar provision for the Economic Regulation Authority is contained in Clause 61 of the Economic Regulation Authority Bill 2002.

**Division 9 — Metropolitan Water Authority Act 1982**

***Clause 46 - The Act amended***

This Division provides amendments to the *Metropolitan Water Authority Act 1982*.

***Clause 47 - Section 4 amended***

This clause deletes the definition of the Coordinator of Water Services due to the repeal of the Coordinator's position under Division 18.

***Clause 48 - Section 5 amended***

Section 5 of the *Metropolitan Water Authority Act 1982* provides a transitional provision whereby anything done in a law (or otherwise) by the former Water Authority Board or the former Metropolitan Water Authority, unless the context is such that it would be incorrect or inappropriate so to do, be read and construed as a reference to the Commission, the Coordinator or the Corporation as the case requires.

Clause 48 deletes the reference to the Coordinator due to the repeal of the Coordinator's position under Division 18 upon the commencement of the Economic Regulation Authority.

**Division 10 — *Parliamentary Commissioner Act 1971***

***Clause 49 - The Act amended***

This Division provides for amendments to the *Parliamentary Commissioner Act 1971*.

***Clause 50 - Schedule 1 amended***

Schedule 1 lists the entities, and extent, to which this Act does not apply. The Schedule includes the Western Australian Independent Gas Pipelines Access Regulator and the Western Australian Independent Rail Access Regulator. The Economic Regulation Authority subsumes the functions of both these offices. Clause 50 therefore amends the reference in Schedule 1 of the Act to the Economic Regulation Authority.

**Division 11 — *Public Sector Management Act 1994***

***Clause 51 - The Act amended***

This Division provides for amendments to the *Public Sector Management Act 1994*.

***Clause 52 - Schedule 2 amended***

Schedule 2 of the Act lists entities which are SES organisations. Clause 52 adds the Economic Regulation Authority to the Schedule.

**Division 12 — *Railways (Access) Act 1998***

This Division provides for the repeal of the current Office of the Western Australian Independent Rail Access Regulator, and the allocation of the rail access function to the Economic Regulation Authority. There are no changes to the rail access regime.

***Clause 53 - The Act amended***

This Division provides for amendments to the *Railways (Access) Act 1998*.

***Clause 54 - Long title amended***

This clause amends the long title of the Act to reflect the functions of the Western Australian Independent Rail Access Regulator being subsumed by the Economic Regulation Authority.

***Clause 55 - Section 3 amended***

This clause defines the Economic Regulation Authority as the “Regulator” under the Act.

***Clause 56 - Part 3 Division 1 repealed***

Part 3 Division 1 establishes the office of the Western Australian Independent Rail Access Regulator. This clause repeals the office, as its functions are to be undertaken by the Economic Regulation Authority.

***Clause 57 - Part 3 Division 2 heading deleted***

This heading is no longer required due to the repeal of the previous Division.

***Clause 58 - Section 20 amended***

Section 20(2) of the Act relates to the functions and powers of the Regulator. As the Authority is being provided with the rail access function, clause 58(1)(a) amends the gender based reference to the Regulator (“his or her”) to the non-gender Authority (“its”).

Clause 58(1)(b) deletes the words from section 20(2) “may do all things that are necessary or convenient to be done for or in connection with the performance of those functions” as this power is contained in clause 27 of the Economic Regulation Authority Bill 2002 as a generic power across all regulatory functions.

The clause also amends the word “Division” in section 20(3) of the Act to “Part” due to the deletion of the heading under clause 57.

***Clause 59 - Sections 20A, 20B and 20C repealed***

This clause repeals sections 20A, 20B and 20C of the Act which relate to independence, delegation, and conflict of interest provisions of the Rail Access Regulator. These provisions are contained in clauses 28, 29 and 30 of the Economic Regulation Authority Bill 2002.



***Clause 60 - Section 22 amended***

Section 22 of the Act relates to the powers of the Regulator to inspect documents. This clause amends two references to the gender based position of the Rail Access Regulator (“he or she” and “he or she”) to a non-gender reference to “the Regulator” (i.e. the Authority).

***Clause 61 - Section 22B amended***

This clause amends the word ‘Division’ in section 22B of the Act to ‘Part’ due to the deletion of the heading under clause 57.

***Clause 62 - Section 22C amended***

This clause amends the word ‘Division’ in section 22C of the Act to ‘Part’ due to the deletion of the heading under clause 57.

***Clause 63 - Section 23 amended***

Section 23 of the Act provides confidentiality provisions. The reference to the gender based position of the Rail Access Regulator (“his or her”) is amended to a non-gender reference to the Authority (“its”).

The word ‘Division’ is amended to ‘Part’ due to the deletion of the heading under clause 57. The words “the Regulator’s functions” are amended to “the functions under this Act and the Code” due to the office of the Rail Access Regulator being repealed and the Authority being given the rail access functions that are provided under the *Railways (Access) Act 1998* and Code.

***Clause 64 - Part 3 Divisions 3, 4 and 5 repealed***

This clause repeals Divisions 3, 4 and 5 of the Act which relate to staff, the use government facilities and financial provisions. These generic provisions are contained in the Economic Regulation Authority Bill 2002.

**Division 13 — *Rights in Water and Irrigation Act 1914***

***Clause 65 - The Act amended***

This Division provides for amendments to the *Rights in Water and Irrigation Act 1914*.

***Clause 66 - Section 26GZJ amended***

Section 26GZJ of the Act requires the Water and Rivers Commission to keep a register of instruments which provides, inter alia, details of an operating licence issued under the *Water Services Coordination Act 1995*. The *Water Services Coordination Act 1995* is to be renamed the *Water Services Licensing Act 1995* as part of the consequential amendments under Division 18. This clause makes the name change in section 26GZJ of the *Rights in Water and Irrigation Act 1914*.

***Clause 67 - Section 26GZP amended***

Section 26GZP of the Act requires that the Coordinator of Water Services is notified of certain events. This clause amends the reference to the Coordinator of Water Services to the Authority, and defines the Authority as the Economic Regulation Authority.

***Clause 68 - Section 27 amended***

Section 27 of the Act provides for regulations to be made which can apply, inter alia, to the holder of an operating licence issued under the *Water Services Coordination Act 1995*. The *Water Services Coordination Act 1995* is to be renamed the *Water Services Licensing Act 1995* as part of the consequential amendments under Division 18. This clause makes this name change in section 27 of the *Rights in Water and Irrigation Act 1914*.

***Clause 69 - Schedule 1 amended***

Schedule 1 lists certain provisions related to licences, including licences issued under the *Water Services Coordination Act 1995*. The *Water Services Coordination Act 1995* is to be renamed the *Water Services Licensing Act 1995* as part of the consequential amendments under Division 18. This clause makes this name change in Schedule 1 of the *Rights in Water and Irrigation Act 1914*.

**Division 14 — *Swan River Trust Act 1988***

***Clause 70 - The Act amended***

This Division provides for amendments to the *Swan River Trust Act 1988*.

***Clause 71 - Section 12 amended***

Section 12 provides for the Coordinator of Water Services to be a member of the Swan River Trust. The position of the Coordinator of Water Services is repealed in the amendments under Division 18. This clause therefore provides for the Minister administering the Act to appoint a relevant person to the Trust. This is likely to be the person who takes over the water industry policy functions of the Coordinator of Water Services. It is not appropriate for a member of the Economic Regulation Authority to be appointed to the Trust.

**Division 15 — Water Agencies (Powers) Act 1984**

***Clause 72 - The Act amended***

This Division provides for amendments to the *Water Agencies (Powers) Act 1984*.

***Clause 73 - Long title amended***

This clause removes the reference in the long title of the Act to the Coordinator of Water Services as this position is repealed under Division 18.

***Clause 74 - Section 3 amended***

Section 3 of the Act outlines the definitions that are used under the Act. This clause deletes references to the Coordinator of Water Services as this position is repealed under Division 18.

***Clause 75 - Section 34 amended***

Section 34 of the Act provides for the Minister to make by-laws prescribing all matters that are required or permitted by this Act or any relevant Act. This includes by-laws relating to systems of notification, certification, inspection and authorization of plumbing work, as defined in section 59I of the *Water Services Coordination Act 1995*. This clause amends the reference to the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995*. This reflects the change in the name of the Act under Division 18.

***Clause 76 - Section 38 amended***

Section 38 provides for revocation or amendment of by-laws and of town planning schemes. This clause amends the reference to the Coordinator in section 38 to the Minister. This reflects the repeal of the Coordinator of Water Services position under Division 18.

***Clause 77 - Section 65 amended***

Section 65(c) of the Act provides for the Coordinator of Water Services to determine what constitutes headworks or reticulation. This clause amends the reference to the Coordinator in section 65(c) to the Minister. This reflects the repeal of the Coordinator of Water Services position under Division 18.

***Clause 78 - Section 66 amended***

Section 66 of the Act provides for the Coordinator of Water Services, the Water and Rivers Commission or the Water Corporation to provide planning advice or guidelines on water developments or water works. This clause amends the reference to the Coordinator in section 66 to the Minister. This reflects the repeal of the Coordinator of Water Services position under Division 18.

***Clause 79 - Section 82 amended***

Section 82 provides for the Water Corporation to carry out works related to the provision of water services, subject to the terms and conditions of any operating licence granted to it under the *Water Service Coordination Act 1995*. This clause amends the reference to the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995*. This change in the name of the Act is provided under Division 18.

**Division 16 — Water Boards Act 1904**

***Clause 80 - The Act amended***

This Division provides for amendments to the *Water Boards Act 1904*.

***Clause 81 - Section 3 amended***

This clause deletes the definition of the Coordinator of Water Services in Section 3 of the Act as the position is repealed under Division 18.

***Clause 82 - Section 3A amended***

Section 3A states that where the performance of any function of a Water Board requires that the board hold a licence under the *Water Services Coordination Act 1995*, the Board may only perform that function in accordance with the terms and conditions of such a licence. This clause amends the reference to the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995*. This name change is provided under Division 18.

***Clause 83 - Section 5 amended***

Section 5(1) provides for the Minister to direct the Coordinator to exercise the powers and authorities conferred on a Board in relation to water services works should a Board be dissolved. This clause deletes the reference to the Coordinator due to the repeal of this position under Division 18. Should a Board be dissolved, the Minister would exercise the powers and authorities conferred on a Board and could appoint an appropriate person or body to assist in this regard.

***Clause 84 - Section 110 amended***

Section 110 provides for the Minister to determine the value of works transferred to a Water Board. In making this determination the Minister or the Coordinator can prepare a statement of waterworks constructed out of public money which can be charged against the Water Board.

This clause deletes the reference to the Coordinator in section 110 due to the repeal of this position under Division 18. The Minister would be assisted by another appropriate body (e.g. the Economic Regulation Authority could be required to inquire and report on the matter).

**Division 17 — Water Corporation Act 1995**

***Clause 85 - The Act amended***

This Division provides for amendments to the *Water Corporation Act 1995*.

***Clause 86 - Section 27 amended***

Section 27 states that where the performance of any of the Corporation's functions requires that the Corporation hold a licence under the *Water Services Coordination Act 1995*, the Corporation may only perform that function in accordance with the terms and conditions of such a licence.

This clause amends the reference to the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995*. This name change is provided under Division 18.

***Clause 87 - Section 91 amended***

Section 91 provides for regulations to be made under the Act. It also provides that should the regulations conflict with regulations provided for under the *Water Services Coordination Act 1995*, the latter provision prevails.

This clause amends the reference to the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995*. This name change is provided in Division 18.

**Division 18 — Water Services Coordination Act 1995**

This Division provides the consequential amendments to enable the administration of the water licensing regime contained in the *Water Services Coordination Act 1995* to be transferred to the Economic Regulation Authority.

***Clause 88 - The Act amended***

This Division provides for amendments to the *Water Services Coordination Act 1995*.

***Clause 89 - Long title amended***

The long title of the Act is amended to reflect the repeal of the public officer position of the Coordinator of Water Services, and the responsibility for administering the water industry licensing scheme outlined in the Act being provided to the Economic Regulation Authority.

***Clause 90 - Section 1 amended***

This clause amends the name of the Act from the *Water Services Coordination Act 1995* to the *Water Services Licensing Act 1995*. This reflects the repeal of the Coordinator of Water Services position and all functions other than the administration the licensing scheme in part 3 of the Act. The licensing regime will be administered by the Economic Regulation Authority as part of its core regulatory functions.

***Clause 91 - Section 3 amended***

This clause inserts a definition of the Economic Regulation Authority, deletes the definition of the Coordinator, and defines an inspector to include a member of the Authority.

***Clause 92 - Part 2 replaced***

This clause repeals Part 2 of the Act and inserts a new part 2 which outlines the role of the Economic Regulation Authority under this Act. The clause essentially transfer the Coordinator's existing regulatory functions to the Economic Regulation Authority, that is the administration of the licensing scheme provided for in part 3 of the Act. As part of this function, the Authority will be required to:

- monitor and report to the Minister on the operation of the licensing scheme and on compliance by licensees with their licences;
- inform the Minister about any failure by a licensee to meet operational standards or other requirements of its licence;
- monitor the performance of the water services industry and of those participating in that industry, and the performance of providers of water services; and
- for the purposes of such monitoring, to consult with interested groups and persons.

The other functions of the Coordinator currently in Part 2 of the Act are, by and large, policy functions. Ideally, these should be separated from regulatory functions. Moreover, these policy functions are not defined in the Act in any detail, and it is not generally considered necessary or appropriate to do so. As a result, these policy functions in Part 2 of the Act are repealed. The functions are:

- to assist the Minister in planning and coordinating the provision of water services in the State;
- to advise the Minister on all aspects of policy relating to water services, including:
  - the water services needs of the State;
  - the introduction and encouragement of competition and efficiency in the water services industries;
  - ways of promoting and achieving open access to water services systems;
  - ways of achieving greater efficiency in the use of water;
  - the use of water services policy to assist in achieving other policy objectives of government;
  - matters relating to the operation of relevant legislation; and
  - charges levied for the provision of water services;
- to undertake, sponsor and coordinate research, development and demonstration relating to water services; and
- to promote the development of commercial applications relating to water.

Despite these functions being repealed, they do not need to be lost. The Minister currently determines water services policy and this will continue. However, the Minister will receive support from a policy department, rather than the statutory position of the Coordinator of Water Services. In addition, the Economic Regulation Authority could be asked to inquire and report on some of the more important matters, such as charges levied for the provision of water services. It remains for the Minister to act on the Authority's report recommendations.

***Clause 93 - Section 19 amended***

Section 19 allows for the Governor to provide an exemption from the requirement to have an operating licence to supply water in a controlled area. This clause provides for public interest criteria to assist in guiding the Governor in decision-making. This provides for consistency with the existing provisions in the gas industry licensing regime (section 11H of the *Energy Coordination Act 1994*).

***Clause 94 - Section 23 replaced***

This clause requires the Economic Regulation Authority to consider the public interest when determining whether to grant a licence. This provides for consistency with the gas licensing regime under the *Energy Coordination Act 1994*, and is appropriate given the independence of the Authority.

***Clause 95 - Section 27 amended***

Section 27 of the Act requires the Coordinator of Water Services to keep licences available for inspection by members of the public during normal office hours. This clause amends the reference to the gender based “Coordinator” to the non-gender Authority (“its”).

***Clause 96 - Section 28 amended***

This clause requires the Economic Regulation Authority to consider the public interest when determining whether to renew a licence. This provides for consistency with the gas licensing regime, and is appropriate given the independence of the Authority.

***Clause 97 - Section 30 replaced***

Section 30 of the Act states that a licence is not transferable. This clause provides for the transfer of a licence and requires the Economic Regulation Authority to consider the public interest when determining whether to transfer a licence. This provides for greater consistency with the gas licensing regime.

***Clause 98 - Section 31 amended***

Section 31 of the Act provides for the amendment of a licence. This clause requires the Economic Regulation Authority to consider the public interest when determining whether to amend a licence. This provides for greater consistency with the gas licensing regime, and is appropriate given the independence of the Authority.

***Clause 99 - Sections 31A and 31B inserted***

This clause inserts two provisions. The first requires the Authority to consider the matters listed in clause 93 when it is required to take account of public interest as part of its licensing functions. The consideration of public interest matters achieves greater consistency with the gas licensing regime and is important given the independence of the Authority. In this respect, the public interest criteria (g) includes “the policy objectives of government in relation to water services.”

The second allows a regulation making power about public consultation. This enables the government to prescribe the public consultation process the Authority must undertake before making a decision to grant, renew or transfer a licence. Again, this is seen as important given the Authority’s independence and will assist the Authority consider matters related to the public interest.



***Clause 100 - Section 33 amended***

Section 33 of the Act provides for the Governor to make regulations that prescribe standards of performance to be achieved in the provision of water services. This section also provides for the regulations to prescribe the procedures for the enforcement by the Coordinator. This clause amends the reference to the Coordinator to the Authority. The Coordinator's position is being repealed and the Authority is being provided with responsibility for the licensing regime.

***Clause 101 - Section 37 amended***

Section 37 of the Act requires it to be a condition of every licence that the licensee is to provide the Coordinator with an operational audit conducted by an independent expert. This clause amends the reference to the gender based Coordinator ("his or her") to the non-gender Authority ("its").

***Clause 102 - Section 40 amended***

This clause reflects the allocation of functions from the gender based Coordinator ("he or she") to the non-gender Authority ("its").

***Clause 103 - Section 43 repealed***

Section 43 of the Act requires the Coordinator to monitor and report to the Minister on the operation of the licensing scheme, including compliance by licensees with their licence, and breaches of operational standards. This clause repeals this section, as similar provisions are provided in clause 92.

***Clause 104 - Section 44 amended***

Section 44 of the Act provides for licensees to appeal to the Minister in relation to decisions to grant, amend or renew licences. This clause includes a right to appeal in relation to decisions regarding the transfer of a licence. The ability to transfer a licence is provided under clause 97.

***Clause 105 - Section 47 amended***

Section 47 of the Act provides for the Coordinator to designate persons to be inspectors for the purposes of the Act. This clause amends the reference to the "Coordinator" to "a member of the Authority", due to the Authority being provided with responsibility for the licensing regime.

***Clause 106 - Section 53 amended***

This clause amends the term "water services licence" to "operating licence" to provide for the correct terminology used in section 3 of the Act (which defines an operating licence but not a water services licence).

***Clause 107 - Part 5 repealed***

Part 5 of the Act outlines information gathering powers of the Coordinator of Water Services. This part is repealed as Part 6 of the Economic Regulation Authority Bill provides information gathering powers for the Authority. These will apply to the performance of the water industry licensing function.

***Clause 108 - Section 59B amended***

Section 59B relates to functions of the Plumbers Licensing Board, and requires the Board to inform the Coordinator of relevant matters. This clause repeals the reference to the Coordinator due to the repeal of this position. The Plumbers Licensing Board functions are now allocated to the Consumer and Employment Protection portfolio as part of the Machinery of Government recommendations.

***Clause 109 - Section 60 repealed***

Section 60 of the Act provides for the establishment of Committees for the purpose of advising on matters to the Minister and enables the Coordinator to be the chairperson of such Committees. This clause repeals this section due to the repeal of the Coordinator's position. In addition, it is not necessary for the Minister to have a legislative power to form a Committee.

***Clause 110 - Section 60A amended***

Section 60A of the Act provides for protection from liability. As the Economic Regulation Authority Bill also provides for protection from liability, this clause precludes the provisions in section 60A from applying to a person under the Economic Regulation Authority Act.

***Clause 111 - Section 60B amended***

This section relates to maintaining confidentiality and applies to a person who is or has been the Coordinator of Water Services. This clause effectively removes the words "is" due to the position of the Coordinator being repealed. The clause also removes the penalty provisions resulting from a breach of section 56 as this section is repealed under clause 107. The penalty for a breach of confidentiality under section 60B remains at \$5 000.

***Clause 112 - Section 62 amended***

Section 62 provides for a review of the Act as soon as practicable after 5 years of its operation. Due to the repeal of the Coordinator's position, this clause removes the specific requirement for the review to consider the effectiveness of the operations of the Coordinator and the need for continuation of the functions of the Coordinator. *[A review of the Act commenced in October 2002.]*

***Clause 113 - Schedule 1 amended***

Schedule 1 of the Act outlines the matters that may be placed in licence terms and conditions. This clause amends the words “water services” licence to “an operating” licence to reflect the actual definition in section 3 of the Act.

Paragraph (h) of Schedule 1 provides for water industry licence terms and conditions to include a requirement for the licensee to provide specified information relating to the activities of the licensee, under the licence, to the Coordinator, in the manner and form determined by the Coordinator.

The clause amends Schedule 1 to reflect the Authority taking over administration of the licensing regime and clarifies the matters that can be included in the licence terms and conditions. The amendment provides for the Authority to require the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information relevant to the operation of the licence, the operation of the licensing regime, or the performance of the Authority’s functions which are provided under the licensing provisions of the Act.

***Clause 114 - Various references to “Coordinator” changed to “Authority”***

This clause is self explanatory. The provision of the licensing regime to the Authority requires various references to the Coordinator to be changed to the Authority.

***Clause 115 - Various references to “Minister” changed to “Authority”***

This clause provides for various references to the Minister to be changed to the Authority. The Minister is currently responsible for enforcement of water industry licence terms and conditions. These amendments provide the enforcement functions to the Authority. This avoids the situation where an independent body grants licences and determines terms and conditions, and a Minister enforces them. Enforcement action will generally be effected by the Authority applying to the relevant court.

**Division 19 — Western Australian Planning Commission Act 1985**

***Clause 116 - The Act amended***

This Division provides for amendments to the *Western Australian Planning Commission Act 1985*.

***Clause 117 - Section 19 amended***

Section 19 of the Act provides for the Planning Commission to establish committees and prescribe the constitution of any committee. One such committee is the Infrastructure Coordinating Committee, which is to consist of a number of members including the Coordinator of Water Services. Due to the repeal of this position under Division 18, a new provision is inserted into the Act so that the water industry Minister can appoint to the Committee a relevant person who can represent the interests of the water services industry.

**SCHEDULE 3 — TRANSITIONAL AND SAVING PROVISIONS FOR AMENDMENTS IN SCHEDULE 2 DIVISIONS 8, 12 AND 18**

This Schedule provides for the Economic Regulation Authority to seamlessly continue the work of the officials and bodies that it is replacing, except for the gas licensing functions of the Coordinator of Energy. Schedule 4 deals with this function.

***Clause 1 - Definitions***

Defines various terms used in Schedule 3. These are self-explanatory.

***Clause 2 - Interpretation Act 1984 to apply***

Schedule 3 does not limit the operation of the provisions of the *Interpretation Act 1984*.

***Clause 3 - Decisions of Gas Pipelines Access Regulator***

Provides for the continuation of decisions made by the Gas Pipelines Access Regulator upon the transfer of the gas access function to the Economic Regulation Authority.

***Clause 4 - Decisions of Rail Access Regulator***

Provides for the continuation of decisions made by the Rail Access Regulator upon the transfer of the railways access function to the Economic Regulation Authority.

***Clause 5 - Licences under Water Services Coordination Act 1995 Part 3***

Provides for the continuation of operating licences granted under part 3 of the *Water Services Coordination Act 1995* upon the establishment of the Economic Regulation Authority.

***Clause 6 - Continuing effect of things done***

Provides that upon the commencement of the Economic Regulation Authority, all things done by the former bodies that are transferring functions to the Authority are considered to have been done by the Authority.

***Clause 7 - Completion of things begun***

Provides for the Economic Regulation Authority to complete things that have not been completed by the former bodies that are transferring functions to the Authority.

***Clause 8 - Proceedings etc.***

Provides for any proceedings that are, or may be taken, against the former bodies that are transferring functions to the Economic Regulation Authority to be brought against the Authority.

***Clause 9 - Records***

All records related to the bodies that are transferring functions to the Economic Regulation Authority are to be provided to the Authority upon its commencement.

***Clause 10 - Bank accounts***

All moneys in the bank accounts of the Gas Access Regulator and the Rail Access Regulator are to be transferred to the bank account of the Economic Regulation Authority upon its commencement.

***Clause 11 - References to former official in agreements and instruments***

References in agreements and instruments to the bodies that are to transfer functions to the Economic Regulation Authority, are to apply to the Authority upon its commencement.

***Clause 12 - References to former official in written law***

References in laws to officials that are to transfer functions to the Economic Regulation Authority, are to apply to the Authority upon its commencement.

***Clause 13 - Immunity to continue***

Provides for any immunity enjoyed by the officials who are transferring functions to the Economic Regulation Authority to apply to the Authority upon its commencement.

***Clause 14 - Saving***

The purpose of this clause is to prevent any claims or legal actions arising as a result of the operation of the provisions of the Schedule.

**SCHEDULE 4 — TRANSITIONAL AND SAVING PROVISIONS FOR AMENDMENTS IN SCHEDULE 2 DIVISIONS 4**

This Schedule provides for the Economic Regulation Authority to seamlessly continue the gas industry licensing functions of the Coordinator of Energy. This function is provided to the Authority at a date to be proclaimed. This is to coincide with the commencement of full retail contestability in the gas market (approximately November 2003), which is after the envisaged date for the Authority to commence operations (1 July 2003).

***Clause 1 - Definitions***

Defines various terms used in Schedule 4. These are self-explanatory.

***Clause 2 - Interpretation Act 1984 to apply***

Schedule 4 does not limit the operation of the provisions of the *Interpretation Act 1984*.

***Clause 3 - Licences under Part 2A***

Provides for any existing gas industry licence to continue upon the transfer of the gas licensing function to the Economic Regulation Authority.

***Clause 4 - Continuing effect of things done***

Provides that upon the transfer of the gas licensing function to the Economic Regulation Authority, all things done by the Coordinator of Energy in relation to gas licensing are considered to have been done by the Authority.

***Clause 5 - Completion of things begun***

Provides that upon the transfer of the gas licensing function to the Economic Regulation Authority, all things not completed by the Coordinator of Energy in relation to gas licensing can be completed by the Authority.

***Clause 6 - Proceedings etc.***

Provides for any proceedings that are, or may be taken, against the Coordinator of Energy in relation to the gas licensing function, can be brought against the Economic Regulation Authority upon the transfer of the gas licensing function to the Authority.

***Clause 7 - Records***

Provides for all relevant gas licensing records to be provided to the Economic Regulation Authority upon the transfer of the gas licensing function to the Authority.

***Clause 8 - References to Coordinator in agreements and instruments***

References in agreements and instruments to the Coordinator of Energy's gas licensing function are to apply to the Economic Regulation Authority upon the transfer of the gas licensing function to the Authority.

***Clause 9 - References to Coordinator in written law***

References in laws to the Coordinator of Energy's gas licensing function are to apply to the Economic Regulation Authority upon the transfer of the gas licensing function to the Authority.

***Clause 10 - Immunity to continue***

Provides for any immunity enjoyed by the Coordinator of Energy in relation to gas licensing functions to apply to the Economic Regulation Authority upon the transfer of gas licensing functions to the Authority.

***Clause 11 - Saving***

The purpose of this clause is to prevent any claims or legal actions arising as a result of the operation of the provisions of the Schedule.