





# **Australian Energy Market Amendment (Gas Legislation) Act 2007**

**No. 45, 2007**

**An Act to amend the law relating to gas, and for  
other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Australian Energy Market Amendment (Gas Legislation) Act 2007**

**No. 45, 2007**

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## **An Act to amend the law relating to gas, and for other purposes**

*[Assented to 10 April 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Energy Market  
Amendment (Gas Legislation) Act 2007*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	10 April 2007
2. Schedule 1	A single day to be fixed by Proclamation.	
3. Schedule 2, items 1 to 8	The later of: (a) immediately after the commencement of Schedule 1; and (b) immediately after the commencement of Chapter 2 of the <i>Offshore Petroleum Act 2006</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 2, item 9	Immediately after the commencement of Chapter 2 of the <i>Offshore Petroleum Act 2006</i> .  However, the provision(s) do not commence at all if Chapter 2 of the <i>Offshore Petroleum Act 2006</i> commences before the commencement of Schedule 1 to this Act.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Amendments commencing on Proclamation**

### **Part 1—Amendments**

#### ***Administrative Decisions (Judicial Review) Act 1977***

##### **1 Paragraph 2(d) of Schedule 3**

Repeal the paragraph, substitute:

- (d) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time, as that Law applies as a law of South Australia;
- (daa) if an Act of another State or of the Australian Capital Territory or the Northern Territory applies the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia, as in force from time to time, as a law of that other State or of that Territory—the National Gas Law as so applied;
- (dab) the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time, as that Law applies as a law of Western Australia;

#### ***Australian Energy Market Act 2004***

##### **2 Subsection 3(1)**

Omit “(1)”.

##### **3 Subsection 3(1)**

Insert:

***coastal waters***, in relation to Western Australia, means so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* under the heading for Western Australia as consists of:

- (a) the territorial sea; and
- (b) the sea that is:

- (i) on the landward side of the territorial sea; and
- (ii) not within the limits of Western Australia.

For this purpose, assume that the breadth of the territorial sea of Australia had never been determined or declared to be greater than 3 nautical miles, but had continued to be 3 nautical miles.

#### **4 Subsection 3(1)**

Insert:

*Commonwealth Minister* means the Minister administering this Act.

#### **5 Subsection 3(1)**

Insert:

*Economic Regulation Authority* means the body established by section 4 of the *Economic Regulation Authority Act 2003* of Western Australia.

#### **6 Subsection 3(1)**

Insert:

*federal tax-exempt matter* has the meaning given by subsection 13D(2).

#### **7 Subsection 3(1)**

Insert:

*National Electricity (Commonwealth) Law and Regulations* means:

- (a) the National Electricity (Commonwealth) Law; and
- (b) the National Electricity (Commonwealth) Regulations.

#### **8 Subsection 3(1) (definition of *National Electricity (Commonwealth) Law, Regulations and Rules*)**

Repeal the definition.

#### **9 Subsection 3(1) (definition of *National Electricity (Commonwealth) Rules*)**

Repeal the definition.

**10 Subsection 3(1)**

Insert:

*National Gas (Commonwealth) Law* means the provisions applying under section 11A.

**11 Subsection 3(1)**

Insert:

*National Gas (Commonwealth) Law and Regulations* means:

- (a) the National Gas (Commonwealth) Law; and
- (b) the National Gas (Commonwealth) Regulations.

**12 Subsection 3(1)**

Insert:

*National Gas (Commonwealth) Regulations* means the provisions applying under section 11B.

**13 Subsection 3(1)**

Insert:

*natural gas* has the same meaning as in the National Gas (Commonwealth) Law.

**14 Subsection 3(1)**

Insert:

*offshore Western Australian pipeline* means a pipeline (within the meaning of the National Gas (Commonwealth) Law) for transporting natural gas from one or more points of origination in the adjacent area of Western Australia to one or more points of termination in:

- (a) Western Australia; or
- (b) the coastal waters of Western Australia;

but does not include a pipeline any part of which is situated in another State or in a Territory.

**15 Subsection 3(1)**

Insert:

***Offshore Western Australian Pipelines (Commonwealth) Law***  
means the provisions applying under section 11J.

**16 Subsection 3(1)**

Insert:

***Offshore Western Australian Pipelines (Commonwealth) Law  
and Regulations*** means:

- (a) the Offshore Western Australian Pipelines (Commonwealth) Law; and
- (b) the Offshore Western Australian Pipelines (Commonwealth) Regulations.

**17 Subsection 3(1)**

Insert:

***Offshore Western Australian Pipelines (Commonwealth)  
Regulations*** means the provisions applying under section 11K.

**18 Subsection 3(1)**

Insert:

***prescribed uniform energy law*** means a uniform energy law covered by paragraph (b) of the definition of ***uniform energy law***.

**19 Subsection 3(1) (paragraph (b) of the definition of *South Australian Electricity Legislation*)**

Omit “Act; and”, substitute “Act.”.

**20 Subsection 3(1) (paragraph (c) of the definition of *South Australian Electricity Legislation*)**

Repeal the paragraph.

**21 Subsection 3(1) (at the end of the definition of *South Australian Electricity Legislation*)**

Add:

The reference in paragraph (a) to the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time includes

a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

## 22 Subsection 3(1)

Insert:

*South Australian Gas Legislation* means:

- (a) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time; and
- (b) any regulations, as in force from time to time, made under Part 3 of that Act.

The reference in paragraph (a) to the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

## 23 Subsection 3(1)

Insert:

*State/Territory electricity law* means:

- (a) the South Australian Electricity Legislation as it applies as a law of South Australia; or
- (b) the South Australian Electricity Legislation as it applies as a law of another State; or
- (c) the South Australian Electricity Legislation as it applies as a law of the Australian Capital Territory or the Northern Territory.

## 24 Subsection 3(1)

Insert:

*State/Territory energy law* means:

- (a) a State/Territory electricity law; or
- (b) a State/Territory gas law.

## 25 Subsection 3(1)

Insert:

*State/Territory gas law* means:

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- (a) the South Australian Gas Legislation as it applies as a law of South Australia; or
- (b) the South Australian Gas Legislation as it applies as a law of another State; or
- (c) the South Australian Gas Legislation as it applies as a law of the Australian Capital Territory or the Northern Territory; or
- (d) the Western Australian Gas Legislation as it applies as a law of Western Australia.

**26 Subsection 3(1)**

Insert:

*State/Territory tax-exempt matter* has the meaning given by subsection 13E(2).

**27 Subsection 3(1) (paragraph (a) of the definition of *uniform energy law*)**

Omit “and”, substitute “or”.

**28 Subsection 3(1) (after paragraph (a) of the definition of *uniform energy law*)**

Insert:

- (aa) the South Australian Gas Legislation; or
- (ab) the Western Australian Gas Legislation; or

**29 Subsection 3(1)**

Insert:

***Western Australian Gas Legislation*** means:

- (a) the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time; and
- (b) any regulations, as in force from time to time, made under Part 3 of that Act.

The reference in paragraph (a) to the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

### **30 Subsections 3(2) and (3)**

Repeal the subsections.

### **31 Sections 4 and 5**

Repeal the sections, substitute:

#### **4 Crown to be bound**

Each of the following:

- (a) this Act;
- (b) the National Electricity (Commonwealth) Law and Regulations;
- (c) the National Gas (Commonwealth) Law and Regulations;
- (d) the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations;
- (e) a prescribed uniform energy law applied as a law of the Commonwealth;

binds the Crown in each of its capacities.

#### **5 Extra-territorial operation**

It is the intention of the Parliament that the operation of:

- (a) this Act; and
- (b) the National Electricity (Commonwealth) Law and Regulations; and
- (c) the National Gas (Commonwealth) Law and Regulations; and
- (d) the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations; and
- (e) a prescribed uniform energy law applied as a law of the Commonwealth;

should, as far as possible, include operation in relation to the following:

- (f) things situated in or outside Australia;
- (g) acts, transactions and matters done, entered into or occurring in or outside Australia;
- (h) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a State, a Territory or a foreign country.

**32 Before section 6**

Insert:

**Division 1—Electricity laws**

**33 Section 6**

Before “The National Electricity Law”, insert “(1)”.

**34 At the end of section 6**

Add:

- (2) The reference in subsection (1) to the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

**35 Section 8**

Repeal the section.

**36 Subsections 9(1) and (2)**

Omit “, Regulations and Rules”, substitute “and Regulations”.

Note: The heading to section 9 is altered by omitting “, **Regulations and Rules**” and substituting “**and Regulations**”.

**37 Subsections 10(1) and (2)**

Omit “, Regulations and Rules”, substitute “and Regulations”.

Note: The heading to section 10 is altered by omitting “, **Regulations and Rules**” and substituting “**and Regulations**”.

**38 After section 10**

Insert:

**10A Functions and powers of the Australian Competition Tribunal under the National Electricity (Commonwealth) Law and Regulations**

The Australian Competition Tribunal has the functions and powers conferred on it under the National Electricity (Commonwealth) Law and Regulations.



**10B Functions and powers of the Commonwealth Minister under the National Electricity (Commonwealth) Law and Regulations**

- (1) The Commonwealth Minister has the functions and powers conferred on him or her under the National Electricity (Commonwealth) Law and Regulations.
- (2) Any delegation by the Commonwealth Minister is taken to extend to, and have effect for the purposes of, the National Electricity (Commonwealth) Law and Regulations.

**39 Subsection 11(1)**

Omit “, Regulations and Rules”, substitute “and Regulations”.

Note: The heading to section 11 is altered by omitting “, **Regulations and Rules**” and substituting “**and Regulations**”.

**40 Paragraph 11(2)(b)**

Omit “Law; or”, substitute “Law.”.

**41 Paragraph 11(2)(c)**

Repeal the paragraph.

**42 At the end of section 11**

Add:

- (3) The reference in paragraph (2)(a) to the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia includes a reference to any Rules or other instruments made or having effect under that Law.

**43 After section 11**

Insert:

## Division 2—Gas laws

### Subdivision A—General

#### 11A Application of National Gas Law in adjacent areas, certain Territories etc.

- (1) The National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time:
  - (a) applies as a law of the Commonwealth:
    - (i) in the adjacent area of each State and the Northern Territory; and
    - (ii) in the adjacent area of Norfolk Island; and
    - (iii) in the adjacent area of the Territory of Ashmore and Cartier Islands; and
    - (iv) in the Territory of Christmas Island; and
    - (v) in the adjacent area of the Territory of Christmas Island; and
    - (vi) in the Territory of Cocos (Keeling) Islands; and
    - (vii) in the adjacent area of the Territory of Cocos (Keeling) Islands; and
    - (viii) in the adjacent area of the Territory of Heard Island and McDonald Islands; and
    - (ix) in any other places, to any circumstances, or to any persons, that are prescribed by regulations for the purpose of this subparagraph; and
  - (b) so applying may be referred to as the *National Gas (Commonwealth) Law*.
- (2) The National Gas (Commonwealth) Law does not apply in relation to an offshore Western Australian pipeline.
- (3) The reference in subsection (1) to the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

**11B Application of National Gas Regulations in adjacent areas,  
certain Territories etc.**

- (1) Regulations, as in force from time to time, made under Part 3 of the *National Gas (South Australia) Act 2007* of South Australia:
  - (a) apply as regulations in force for the purposes of the National Gas (Commonwealth) Law; and
  - (b) so applying may be referred to as the *National Gas (Commonwealth) Regulations*.
- (2) The National Gas (Commonwealth) Regulations do not apply in relation to an offshore Western Australian pipeline.

**11C Functions and powers of the Australian Energy Market  
Commission under the National Gas (Commonwealth)  
Law and Regulations**

- (1) The Australian Energy Market Commission has the functions and powers conferred on it under the National Gas (Commonwealth) Law and Regulations.
- (2) Any delegation by the Australian Energy Market Commission is taken to extend to, and have effect for the purposes of, the National Gas (Commonwealth) Law and Regulations.

**11D Functions and powers of the Australian Energy Regulator  
under the National Gas (Commonwealth) Law and  
Regulations**

- (1) The Australian Energy Regulator has the functions and powers conferred on it under the National Gas (Commonwealth) Law and Regulations.
- (2) Any delegation by the Australian Energy Regulator is taken to extend to, and have effect for the purposes of, the National Gas (Commonwealth) Law and Regulations.

**11E Functions and powers of the National Competition Council  
under the National Gas (Commonwealth) Law and  
Regulations**

The National Competition Council has the functions and powers conferred on it under the National Gas (Commonwealth) Law and Regulations.

**11F Functions and powers of the Australian Competition Tribunal  
under the National Gas (Commonwealth) Law and  
Regulations**

The Australian Competition Tribunal has the functions and powers conferred on it under the National Gas (Commonwealth) Law and Regulations.

**11G Functions and powers of the Commonwealth Minister under  
the National Gas (Commonwealth) Law and Regulations**

- (1) The Commonwealth Minister has the functions and powers conferred on him or her under the National Gas (Commonwealth) Law and Regulations.
- (2) Any delegation by the Commonwealth Minister is taken to extend to, and have effect for the purposes of, the National Gas (Commonwealth) Law and Regulations.

**11H Interpretation of some expressions in the National Gas  
(Commonwealth) Law and Regulations etc.**

- (1) In the National Gas (Commonwealth) Law and Regulations:

*Court* means the Federal Court of Australia.

*designated Minister* means the Commonwealth Minister.

*magistrate* means a Federal Magistrate of the Federal Magistrates Court.

- (2) The *Acts Interpretation Act 1915* of South Australia, and other Acts of South Australia, do not apply to:

- (a) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia applied as a law of the Commonwealth; or
  - (b) any regulations made under Part 3 of that Act applied as regulations for the purposes of the National Gas (Commonwealth) Law.
- (3) The reference in paragraph (2)(a) to the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia includes a reference to any Rules or other instruments made or having effect under that Law.

## **Subdivision B—Offshore Western Australian pipelines**

### **11J Application of Offshore Western Australian Pipelines Law in adjacent area of Western Australia**

- (1) The National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time:
  - (a) applies as a law of the Commonwealth in relation to so much of an offshore Western Australian pipeline as is situated in the adjacent area of Western Australia; and
  - (b) so applying may be referred to as the *Offshore Western Australian Pipelines (Commonwealth) Law*.
- (2) The reference in subsection (1) to the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

### **11K Application of Offshore Western Australian Pipelines Regulations in adjacent area of Western Australia**

Regulations, as in force from time to time, made under Part 3 of the *National Gas Access (Western Australia) Act 2007* of Western Australia:

- (a) apply as regulations in force for the purposes of the Offshore Western Australian Pipelines (Commonwealth) Law; and
- (b) so applying may be referred to as the *Offshore Western Australian Pipelines (Commonwealth) Regulations*.

**11L Functions and powers of the Australian Energy Market Commission under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations**

- (1) The Australian Energy Market Commission has the functions and powers conferred on it under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.
- (2) Any delegation by the Australian Energy Market Commission is taken to extend to, and have effect for the purposes of, the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.

**11M Functions and powers of the Economic Regulation Authority under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations**

- (1) The Economic Regulation Authority has the functions and powers conferred on it under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.
- (2) Any delegation by the Economic Regulation Authority is taken to extend to, and have effect for the purposes of, the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.

**11N Functions and powers of the National Competition Council under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations**

The National Competition Council has the functions and powers conferred on it under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.

**11P Functions and powers of the Australian Competition Tribunal under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations**

The Australian Competition Tribunal has the functions and powers conferred on it under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.

**11Q Functions and powers of a Western Australian Minister under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations**

- (1) A Minister of Western Australia has the functions and powers conferred on him or her under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.
- (2) Any delegation by such a Minister of Western Australia is taken to extend to, and have effect for the purposes of, the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.

**11R Interpretation of some expressions in the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations etc.**

- (1) In determining who is the relevant Minister for the purposes of the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations, an offshore Western Australian pipeline is taken to be situated wholly within Western Australia.
- (2) The *Interpretation Act 1984* of Western Australia, and other Acts of Western Australia, do not apply to:
  - (a) the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia applied as a law of the Commonwealth; or
  - (b) any regulations made under Part 3 of that Act applied as regulations for the purposes of the Offshore Western Australian Pipelines (Commonwealth) Law.
- (3) The reference in paragraph (2)(a) to the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia includes a reference to any Rules or other instruments made or having effect under that Law.

**11S Inter-governmental arrangements relating to the administration  
of the Offshore Western Australian Pipelines  
(Commonwealth) Law and Regulations**

- (1) The Commonwealth may enter into arrangements with Western Australia for the effective administration of the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.
- (2) Without limiting subsection (1), such an arrangement may provide for the exercise of powers, or the performance of functions or duties, by an officer or authority of Western Australia in relation to offshore Western Australian pipelines.

**Division 3—Prescribed uniform energy laws**

**44 Section 12**

Omit “Any other uniform energy law”, substitute “A prescribed uniform energy law”.

**45 Subsection 13(1)**

Omit “of the Australian Energy Regulator”.

**46 Paragraph 13(1)(c)**

Repeal the paragraph, substitute:

- (c) the National Gas (Commonwealth) Law; or
- (ca) the National Gas (Commonwealth) Regulations; or
- (cb) the Offshore Western Australian Pipelines (Commonwealth) Law; or
- (cc) the Offshore Western Australian Pipelines (Commonwealth) Regulations; or

**47 Paragraph 13(1)(d)**

Omit “a uniform energy law”, substitute “a prescribed uniform energy law”.

**48 After section 13**

Insert:



### **13A Commonwealth consent to conferral of functions etc. on Commonwealth Minister**

- (1) A State/Territory energy law may confer functions or powers, or impose duties, on the Commonwealth Minister for the purposes of that law.

Note 1: Section 13C sets out when such a law imposes a duty on the Commonwealth Minister.

Note 2: Functions and powers conferred, and duties imposed, on the National Competition Council by a State/Territory energy law are dealt with under section 29BA of the *Trade Practices Act 1974*.

Note 3: Functions and powers conferred, and duties imposed, on the Australian Energy Regulator by a State/Territory energy law are dealt with under section 44AI of the *Trade Practices Act 1974*.

Note 4: Functions and powers conferred, and duties imposed, on the Australian Competition Tribunal by a State/Territory energy law are dealt with under section 44ZZM of the *Trade Practices Act 1974*.

- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a State/Territory energy law to the extent to which:

- (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Commonwealth Minister; or
- (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

- (3) The Commonwealth Minister cannot perform a duty or function, or exercise a power, under a State/Territory energy law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

### **13B How duty is imposed**

#### *Application*

- (1) This section applies if a State/Territory energy law purports to impose a duty on the Commonwealth Minister.

Note: Section 13C sets out when such a law imposes a duty on the Commonwealth Minister.

*State or Territory legislative power sufficient to support duty*

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
  - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commonwealth Minister.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 13A to the imposition of the duty by that law).

*Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not*

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commonwealth Minister.
- (6) Subsections (1) to (5) do not limit section 13A.

**13C When a State/Territory energy law imposes a duty**

For the purposes of sections 13A and 13B, a State/Territory energy law ***imposes a duty*** on the Commonwealth Minister if:

- (a) the law confers a function or power on the Commonwealth Minister; and

- (b) the circumstances in which the function or power is conferred give rise to an obligation on the Commonwealth Minister to perform the function or to exercise the power.

**13D No Commonwealth tax consequences for certain transfers of assets and liabilities etc.**

- (1) No consequences arise, for the purposes of a prescribed law of the Commonwealth relating to taxation, in respect of:
  - (a) a federal tax-exempt matter; or
  - (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, a federal tax-exempt matter.
- (2) In this Act:

***federal tax-exempt matter*** means a transfer of assets or liabilities that the Commonwealth Minister and the Treasurer are satisfied is made:

- (a) for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of:
    - (i) a State/Territory gas law; or
    - (ii) the National Gas (Commonwealth) Law; or
    - (iii) the National Gas (Commonwealth) Regulations; or
    - (iv) the Offshore Western Australian Pipelines (Commonwealth) Law; or
    - (v) the Offshore Western Australian Pipelines (Commonwealth) Regulations; or
  - (b) for the purpose of the separation of certain activities from other activities of a person as required by:
    - (i) a State/Territory gas law; or
    - (ii) the National Gas (Commonwealth) Law; or
    - (iii) the National Gas (Commonwealth) Regulations; or
    - (iv) the Offshore Western Australian Pipelines (Commonwealth) Law; or
    - (v) the Offshore Western Australian Pipelines (Commonwealth) Regulations;
- and for no other purpose.

- (3) In paragraph (a) of the definition of ***federal tax-exempt matter*** in subsection (2), ***natural gas*** has the same meaning as in the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia.

### **13E Exemption from State and Territory taxes**

- (1) Any stamp duty or other tax imposed by or under a law of a State or Territory is not payable in relation to:
- (a) a State/Territory tax-exempt matter; or
  - (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, a State/Territory tax-exempt matter.

- (2) In this Act:

***State/Territory tax-exempt matter*** means a transfer of assets or liabilities that the Commonwealth Minister is satisfied is made:

- (a) for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of:
    - (i) the National Gas (Commonwealth) Law; or
    - (ii) the National Gas (Commonwealth) Regulations; or
    - (iii) the Offshore Western Australian Pipelines (Commonwealth) Law; or
    - (iv) the Offshore Western Australian Pipelines (Commonwealth) Regulations; or
  - (b) for the purpose of the separation of certain activities from other activities of a person as required by:
    - (i) the National Gas (Commonwealth) Law; or
    - (ii) the National Gas (Commonwealth) Regulations; or
    - (iii) the Offshore Western Australian Pipelines (Commonwealth) Law; or
    - (iv) the Offshore Western Australian Pipelines (Commonwealth) Regulations;
- and for no other purpose.
- (3) In paragraph (a) of the definition of ***State/Territory tax-exempt matter*** in subsection (2), ***natural gas*** has the same meaning as in

the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia.

### **13F Legislative instruments**

- (1) To avoid doubt, an instrument made or having effect under:
  - (a) the National Electricity (Commonwealth) Law; or
  - (b) the National Electricity (Commonwealth) Regulations; or
  - (c) a prescribed uniform energy law applied as a law of the Commonwealth;is taken not to be, and never to have been, a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (2) To avoid doubt, an instrument made or having effect under:
  - (a) the National Gas (Commonwealth) Law; or
  - (b) the National Gas (Commonwealth) Regulations; or
  - (c) the Offshore Western Australian Pipelines (Commonwealth) Law; or
  - (d) the Offshore Western Australian Pipelines (Commonwealth) Regulations;is taken not to be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **13G Jurisdiction of the Federal Court**

- (1) The Federal Court is invested with jurisdiction with respect to civil and criminal matters arising under:
  - (a) the National Electricity (Commonwealth) Law and Regulations; or
  - (b) the National Gas (Commonwealth) Law and Regulations.
- (2) If a provision of:
  - (a) the National Electricity (Commonwealth) Law; or
  - (b) the National Gas (Commonwealth) Law;whether expressly or by implication, authorises a civil or criminal proceeding to be instituted in the Federal Court in relation to a matter, that provision is taken to vest the Court with jurisdiction in that matter.

### **13H Jurisdiction of the Supreme Court of Western Australia**

- (1) The Supreme Court of Western Australia is invested with jurisdiction with respect to civil and criminal matters arising under the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations.
- (2) If a provision of the Offshore Western Australian Pipelines (Commonwealth) Law, whether expressly or by implication, authorises a civil or criminal proceeding to be instituted in the Supreme Court of Western Australia in relation to a matter:
  - (a) that provision is taken to vest the Court with jurisdiction in that matter; and
  - (b) the jurisdiction so vested is not limited by any limits to which any other jurisdiction of the Court may be subject.

### **13J Jurisdiction of a State or Territory court under a prescribed uniform energy law**

- (1) The courts of a State or Territory are invested with jurisdiction with respect to civil and criminal matters arising under a prescribed uniform energy law of the State or Territory applied as a law of the Commonwealth.
- (2) If a provision of a prescribed uniform energy law of a State or Territory applied as a law of the Commonwealth, whether expressly or by implication, authorises a civil or criminal proceeding to be instituted in a court of the State or Territory in relation to a matter:
  - (a) that provision is taken to vest the court with jurisdiction in that matter; and
  - (b) the jurisdiction so vested is not limited by any limits to which any other jurisdiction of the court may be subject.

### **49 Paragraph 14(3)(c)**

Repeal the paragraph, substitute:

- (c) the National Gas (Commonwealth) Law; or
- (ca) the National Gas (Commonwealth) Regulations; or
- (cb) the Offshore Western Australian Pipelines (Commonwealth) Law; or

(cc) the Offshore Western Australian Pipelines (Commonwealth) Regulations; or

**50 Paragraph 14(3)(d)**

Omit “a uniform energy law”, substitute “a prescribed uniform energy law”.

***Petroleum (Submerged Lands) Act 1967***

**51 Subsection 5(1) (definition of *Gas Pipelines Access Law*)**

Repeal the definition.

**52 Subsection 5(1) (definition of *gas pipelines access legislation*)**

Repeal the definition.

**53 Subsection 5(1) (definition of *Third Party Access Code*)**

Repeal the definition.

**54 Subsections 9(1A) and (1B)**

Repeal the subsections.

**55 Subsections 11(1A) and (1B)**

Repeal the subsections.

**56 Section 73**

Repeal the section.

**57 Paragraph 103(1)(f)**

Repeal the paragraph.

***Trade Practices Act 1974***

**58 Subsection 4(1)**

Insert:

***designated Commonwealth energy law*** means:

- (a) the National Electricity (Commonwealth) Law and Regulations (as defined by the *Australian Energy Market Act 2004*); or
- (b) the National Gas (Commonwealth) Law and Regulations (as defined by the *Australian Energy Market Act 2004*); or
- (c) the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations (as defined by the *Australian Energy Market Act 2004*).

## **59 Subsection 4(1)**

Insert:

***South Australian Electricity Legislation*** means:

- (a) the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time; and
- (b) any regulations, as in force from time to time, made under Part 4 of that Act.

The reference in paragraph (a) to the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

## **60 Subsection 4(1)**

Insert:

***South Australian Gas Legislation*** means:

- (a) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time; and
- (b) any regulations, as in force from time to time, made under Part 3 of that Act.

The reference in paragraph (a) to the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

## **61 Subsection 4(1)**



Insert:

***State/Territory energy law*** means any of the following laws:

- (a) a uniform energy law that applies as a law of a State or Territory;
- (b) a law of a State or Territory that applies a law mentioned in paragraph (a) as a law of its own jurisdiction;
- (c) any other provisions of a law of a State or Territory that:
  - (i) relate to energy; and
  - (ii) are prescribed by the regulations for the purposes of this paragraph;

being those provisions as in force from time to time.

## **62 Subsection 4(1)**

Insert:

***uniform energy law*** means:

- (a) the South Australian Electricity Legislation; or
- (b) the South Australian Gas Legislation; or
- (c) the Western Australian Gas Legislation; or
- (d) provisions of a law of a State or Territory that:
  - (i) relate to energy; and
  - (ii) are prescribed by the regulations for the purposes of this subparagraph;

being those provisions as in force from time to time.

## **63 Subsection 4(1)**

Insert:

***Western Australian Gas Legislation*** means:

- (a) the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time; and
- (b) any regulations, as in force from time to time, made under Part 3 of that Act.

The reference in paragraph (a) to the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

**64 Section 29AA**

Repeal the section.

**65 Subsection 29B(2B)**

Omit “State/Territory gas law” (wherever occurring), substitute “State/Territory energy law”.

**66 Sections 29BA, 29BB and 29BC**

Omit “State/Territory gas law” (wherever occurring), substitute “State/Territory energy law”.

Note: The heading to section 29BC is altered by omitting “**State/Territory gas law**” and substituting “**State/Territory energy law**”.

**67 Section 44AB (definition of *South Australian Electricity Legislation*)**

Repeal the definition.

**68 Section 44AB (definition of *State/Territory energy law*)**

Repeal the definition.

**69 Section 44AB (definition of *uniform energy law*)**

Repeal the definition.

**70 Section 44AH (note)**

Omit “and the *Gas Pipelines Access (Commonwealth) Act 1998*”.

**71 At the end of Subdivision C of Division 4 of Part IIIAA**

Add:

**44AAEA Arbitration**

- (1) Sections 44AAD and 44AAE do not apply to the AER as constituted for an arbitration under:
- (a) the National Electricity (Commonwealth) Law (as defined by the *Australian Energy Market Act 2004*); or
  - (b) the National Gas (Commonwealth) Law (as defined by the *Australian Energy Market Act 2004*); or
  - (c) a provision of a State/Territory energy law.

- (2) The reference in subsection (1) to an *arbitration* includes a reference to each of the following:
- (a) the making, variation or revocation of an access determination (within the meaning of the law concerned);
  - (b) the performance of a function, or the exercise of a power, in connection with the making, variation or revocation of an access determination (within the meaning of the law concerned).

## 72 Section 44B

Insert:

*National Gas Law* means:

- (a) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as in force from time to time, as that Law applies as a law of South Australia; or
- (b) if an Act of another State or of the Australian Capital Territory or the Northern Territory applies the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia, as in force from time to time, as a law of that other State or of that Territory—the National Gas Law as so applied; or
- (c) the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia as in force from time to time; or
- (d) the National Gas (Commonwealth) Law (within the meaning of the *Australian Energy Market Act 2004*); or
- (e) the Offshore Western Australian Pipelines (Commonwealth) Law (within the meaning of the *Australian Energy Market Act 2004*).

## 73 Section 44B (at the end of the definition of *State or Territory access regime law*)

Add:

; or (c) a State/Territory energy law.

## 74 Subsections 44G(5), (6) and (7)

Repeal the subsections, substitute:

- (5) In deciding whether a regime is an effective access regime, the Council must disregard Chapter 5 of a National Gas Law.
- (6) The Council cannot recommend declaration of a service provided by means of a pipeline (within the meaning of a National Gas Law) if:
  - (a) a 15-year no-coverage determination is in force under the National Gas Law in respect of the pipeline; or
  - (b) a price regulation exemption is in force under the National Gas Law in respect of the pipeline.

**75 Subsections 44H(6A), (6B) and (6C)**

Repeal the subsections, substitute:

- (6A) In deciding whether a regime is an effective access regime, the designated Minister must disregard Chapter 5 of a National Gas Law.
- (6B) The designated Minister cannot declare a service provided by means of a pipeline (within the meaning of a National Gas Law) if:
  - (a) a 15-year no-coverage determination is in force under the National Gas Law in respect of the pipeline; or
  - (b) a price regulation exemption is in force under the National Gas Law in respect of the pipeline.

**76 Subsection 44M(4A)**

Repeal the subsection, substitute:

- (4A) In deciding what recommendation it should make, the Council must disregard Chapter 5 of a National Gas Law.

**77 Subsection 44N(2A)**

Repeal the subsection, substitute:

- (2A) In making a decision, the Commonwealth Minister must disregard Chapter 5 of a National Gas Law.

**78 Section 44ZZP**

Before “The regulations”, insert “(1)”.

**79 At the end of section 44ZZP**

Add:

- (2) Regulations made for the purposes of subsection (1) do not apply in relation to the functions of the Tribunal under a State/Territory energy law or a designated Commonwealth energy law.

Note: See section 44ZZR.

## **80 At the end of Division 8 of Part IIIA**

Add:

### **44ZZR Procedure of the Tribunal when performing functions under a State/Territory energy law or a designated Commonwealth energy law**

- (1) Sections 103, 105, 106, 107, 108 and 110 of this Act apply to the Tribunal when performing functions under a State/Territory energy law or a designated Commonwealth energy law.
- (2) The regulations may make provision about the following matters in relation to the functions of the Tribunal under a State/Territory energy law or a designated Commonwealth energy law:
  - (a) the constitution of the Tribunal;
  - (b) the arrangement of the business of the Tribunal;
  - (c) the disclosure of interests by members of the Tribunal;
  - (d) determining questions before the Tribunal and questions that arise during a review;
  - (e) procedure and evidence, including the appointment of persons to assist the Tribunal by giving evidence (whether personally or by means of a written report);
  - (f) the fees and expenses of witnesses in proceedings before the Tribunal.
- (3) Subsection (1), and regulations made for the purposes of subsection (2), have no effect to the extent (if any) to which they are inconsistent with the State/Territory energy law, or the designated Commonwealth energy law, concerned.

## **81 After subsection 172(1A)**

Insert:

- (1B) Regulations made for the purposes of paragraph (1)(a) or (b) do not apply in relation to the functions of the Tribunal under a State/Territory energy law or a designated Commonwealth energy law.

Note: See section 44ZZR.

## **Part 2—Repeal**

### ***Gas Pipelines Access (Commonwealth) Act 1998***

#### **82 The whole of the Act**

Repeal the Act.

## **Schedule 2—Amendments dependent on the commencement of Chapter 2 of the Offshore Petroleum Act 2006**

### ***Australian Energy Market Act 2004***

#### **1 Subsection 3(1) (definition of *coastal waters*)**

Omit “area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* under the heading”, substitute “scheduled area (within the meaning of the *Offshore Petroleum Act 2006*)”.

#### **2 Subsection 3(1) (definition of *offshore Western Australian pipeline*)**

Omit “adjacent area”, substitute “offshore area”.

#### **3 Paragraph 11A(1)(a)**

Omit “adjacent area” (wherever occurring), substitute “offshore area”.

Note 1: The heading to section 11A is altered by omitting “**adjacent areas**” and substituting “**offshore areas**”.

Note 2: The heading to section 11B is altered by omitting “**adjacent areas**” and substituting “**offshore areas**”.

#### **4 Paragraph 11J(a)**

Omit “adjacent area”, substitute “offshore area”.

Note 1: The heading to section 11J is altered by omitting “**adjacent area**” and substituting “**offshore area**”.

Note 2: The heading to section 11K is altered by omitting “**adjacent area**” and substituting “**offshore area**”.

### ***Offshore Petroleum Act 2006***

#### **5 Section 69**

Repeal the section.

#### **6 Section 178**

Omit:



- 
- |   |
|---|
| <ul style="list-style-type: none"><li>• The Joint Authority may direct a pipeline licensee to be a common carrier of petroleum in relation to the pipeline.</li></ul> |
|---|

**7 Section 192**

Repeal the section.

**8 Section 227 (table item 9)**

Repeal the item.

***Offshore Petroleum (Repeals and Consequential  
Amendments) Act 2006***

**9 Item 4 of Schedule 2 (note 3)**

Repeal the note.

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*[Minister's second reading speech made in—  
House of Representatives on 29 November 2006  
Senate on 22 March 2007]*

(168/06)

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