

Gas Services Information Bill 2011

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2

Part 2 — Gas bulletin board and gas statement of opportunities

4.	Gas bulletin board	4
5.	Gas statement of opportunities	4
6.	Objectives of the GBB and GSOO	4
7.	Regulations for the GBB and GSOO	5
8.	Rules for the GBB and GSOO	6
9.	Regulations as to fees and charges for performance of functions	8
10.	No reliance on duty of confidence to avoid obligation to provide information	9
11.	Delegation of functions	9
12.	Review by the Board	9
13.	Protection of information	10
14.	Immunity from liability	11
15.	Regulations	11

Part 3 — Consequential amendments

16.	<i>Energy Arbitration and Review Act 1998</i> amended	13
-----	---	----

Defined Terms

Western Australia

LEGISLATIVE COUNCIL

Gas Services Information Bill 2011

A Bill for

An Act to provide for the establishment and operation of a gas bulletin board and the preparation and publication of a gas statement of opportunities, and for related purposes.

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Part 1 — Preliminary

1. Short title

This is the *Gas Services Information Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act —

Board has the meaning given in the *Energy Arbitration and Review Act 1998* section 49;

civil monetary liability means a liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include a liability to pay a civil penalty under this Act;

gas market participant means —

- (a) a service provider;
- (b) a user;
- (c) a producer;
- (d) a storage provider;
- (e) a person prescribed by the regulations for the purposes of this definition;

GBB means the gas bulletin board;

GSOO means the gas statement of opportunities;

operator means the person on whom functions are conferred under section 7(2)(a);

1 **protected information** means information given to the operator
2 under an obligation under this Act or another Act —

- 3 (a) that is specified to be confidential by the person who
4 gave it (unless it is not reasonable in the circumstances
5 to so specify the information); or
6 (b) that by its nature is confidential; or
7 (c) that is classified as confidential under the regulations or
8 the rules;

9 **rules** means the rules made under section 8;

10 **user** means a person who —

- 11 (a) is a party to a contract with a service provider under
12 which the service provider provides or intends to
13 provide a pipeline service to that person by means of a
14 pipeline; or
15 (b) has a right under an access determination to be provided
16 with a pipeline service by means of a pipeline; or
17 (c) is an end user of a class prescribed by the regulations for
18 the purposes of this paragraph.

19 (2) Unless the contrary intention appears, a term has the same
20 meaning in this Act as it has in the *National Gas Access*
21 (*Western Australia*) Law except that, for the purposes of this
22 Act, the definition of **pipeline** is to be read as —

- 23 (a) not including a pipeline that is a part of a distribution
24 system (as defined in the *Energy Coordination Act 1994*
25 section 3(1)); and
26 (b) including a meter station or gate station, through which
27 gas may flow into a distribution system (as so defined).

- 1 (c) the efficient investment in natural gas services in the
2 State;
3 (d) the facilitation of competition in the use of natural gas
4 services in the State.

5 **7. Regulations for the GBB and GSOO**

6 (1) The regulations are to provide for —

- 7 (a) the establishment and operation of a GBB; and
8 (b) the preparation and publication of a GSOO.

9 (2) The regulations may —

- 10 (a) confer on a person functions relating to establishing and
11 operating the GBB and preparing and publishing the
12 GSOO;
13 (b) confer, or authorise the rules to confer, on the Minister
14 or another person functions relating to the functions
15 referred to in paragraph (a);
16 (c) make amendments to subsidiary legislation made under
17 any other Act consequential on, and relating to, a
18 function having been conferred on a person under
19 paragraph (a) or (b);
20 (d) impose obligations on gas market participants to provide
21 to the operator information specified in the regulations
22 or the rules;
23 (e) authorise the operator to impose obligations on gas
24 market participants (generally or individually) to
25 provide to the operator information requested by the
26 operator;
27 (f) provide for compliance with obligations under
28 paragraphs (d) and (e);
29 (g) provide for the relationship between the Minister, or
30 another Minister, and a person referred to in
31 paragraph (a) or (b) in respect of the performance of the
32 person's functions generally;

s. 8

- 1 (h) provide, or authorise the rules to provide, for the
2 resolution of disputes arising under this Act;
- 3 (i) control the use and disclosure of protected information.
- 4 (3) The functions conferred under subsection (2)(a) must include
5 the following functions —
- 6 (a) to collect, collate and manage information for the GBB
7 and the GSOO;
- 8 (b) to derive from the information referred to in
9 paragraph (a) information for inclusion on the GBB or
10 in the GSOO;
- 11 (c) to include information on the GBB of the kinds that may
12 or must be included on the GBB under this Act;
- 13 (d) to prepare and publish the GSOO periodically.
- 14 (4) If conferring a function under subsection (2)(a) or (b), or the
15 making of subsidiary legislation under subsection (2)(c), would
16 otherwise be inconsistent with a written law —
- 17 (a) the function may be conferred despite the written law;
18 and
- 19 (b) the subsidiary legislation may be amended despite the
20 written law.
- 21 (5) The persons on whom functions may be conferred under
22 subsection (2)(a) or (b) include —
- 23 (a) the person from time to time holding, acting in or
24 lawfully performing the functions of, an office under a
25 written law;
- 26 (b) a body established under a written law.

27 **8. Rules for the GBB and GSOO**

- 28 (1) The regulations are to provide for there to be rules, relating to
29 the form, content and operation of the GBB and to the form and
30 content of the GSOO, that set out or deal with, but are not

- 1 limited to, the matters prescribed by the regulations for the
2 purposes of this subsection.
- 3 (2) The regulations may —
- 4 (a) provide that a provision of the rules specified in the
5 regulations, or of a class specified in the regulations, is a
6 civil penalty provision;
- 7 (b) prescribe, for a contravention of a civil penalty
8 provision —
- 9 (i) an amount not exceeding \$100 000; and
10 (ii) in addition, if the contravention is of a
11 continuing nature, a daily amount not exceeding
12 \$20 000 for each day or part of a day during
13 which the contravention continues,
- 14 that may, in accordance with the regulations, be
15 demanded from or imposed upon a person who
16 contravenes the provision;
- 17 (c) provide for demands for the payment of amounts
18 referred to in paragraph (b) not exceeding \$20 000 and
19 the enforcement of demands for their payment;
- 20 (d) provide for and regulate the taking of proceedings in
21 respect of alleged contraventions of provisions of the
22 rules, provide for the orders that can be made and other
23 sanctions that can be imposed in those proceedings and
24 provide for the enforcement of those orders and
25 sanctions;
- 26 (e) provide for the manner in which amounts received by
27 way of civil penalties are to be dealt with and applied;
- 28 (f) provide for the establishment of the initial rules;
- 29 (g) provide for the amendment, or repeal and replacement,
30 of the rules by rules made in accordance with the
31 regulations and the rules;

s. 9

- 1 (h) provide for the publication, commencement, and laying
2 before each House of Parliament, of the initial rules and
3 rules amending, or repealing and replacing, the rules.
- 4 (3) For the purposes of subsection (2), the following also constitute
5 contravening a provision of the rules —
- 6 (a) attempting to contravene the provision;
7 (b) aiding, abetting, counselling or procuring a person to
8 contravene the provision;
9 (c) inducing, or attempting to induce, a person, whether by
10 threats or promises or otherwise, to contravene the
11 provision;
12 (d) being in any way, directly or indirectly, knowingly
13 concerned in, or party to, the contravention by a person
14 of the provision;
15 (e) conspiring with others to contravene the provision.
- 16 (4) The *Interpretation Act 1984* sections 42 and 43(6) do not apply
17 to the rules.

18 **9. Regulations as to fees and charges for performance of**
19 **functions**

- 20 (1) The regulations may make provision for and in relation to the
21 imposition and payment of fees and charges in connection with
22 the recovery of costs incurred in the performance of functions
23 under this Act, including by authorising the rules to provide for
24 fees and charges in relation to functions specified in the
25 regulations.
- 26 (2) In subsection (1), the reference to the performance of functions
27 under this Act includes a reference to the performance of
28 functions under another Act relating to the performance of
29 functions under this Act.
- 30 (3) If it is inappropriate to prescribe a set fee or charge in
31 connection with the performance of a particular function the
32 regulations or rules may provide for the method of calculating

1 the fee or charge, including calculation according to the cost of
2 performing that function.

- 3 (4) The regulations may —
- 4 (a) authorise the Board to fix, and determine the incidence
5 of liability for, the cost and expenses of the hearing and
6 determination of proceedings before the Board; and
- 7 (b) make any incidental or supplementary provision that is
8 expedient for the purposes of paragraph (a).
- 9 (5) The application of subsection (4) extends to the cost and
10 expenses of proceedings that are commenced but discontinued
11 or otherwise not brought to finality.

12 **10. No reliance on duty of confidence to avoid obligation to**
13 **provide information**

14 A person cannot rely on any duty of confidence as a ground on
15 which to refuse to comply with an obligation to provide
16 information under this Act.

17 **11. Delegation of functions**

- 18 (1) A person on whom a function is conferred under section 7(2)(a)
19 may, in writing, delegate that function to another person.
- 20 (2) A person performing a function that has been delegated to the
21 person under this section is to be taken to do so in accordance
22 with the terms of the delegation unless the contrary is shown.

23 **12. Review by the Board**

- 24 (1) Application may be made to the Board for the review of a
25 decision of a person on whom a function is conferred under
26 section 7(2)(a) or (b) in connection with the performance of that
27 function, other than a decision of a class specified in the
28 regulations.
- 29 (2) The regulations may provide for the powers of the Board in
30 relation to such reviews.

s. 13

- 1 **13. Protection of information**
- 2 (1) The operator must take all reasonable measures to protect
3 protected information from unauthorised use or disclosure.
- 4 (2) The operator makes unauthorised use, or an unauthorised
5 disclosure, of protected information if the use or disclosure is
6 not authorised under this Act.
- 7 Note: The provisions applied by subsection (4) authorise the disclosure of
8 protected information in certain specific circumstances.
- 9 (3) The operator may use protected information for the purposes of
10 its functions under this Act, subject to any requirements or
11 limitations under this Act.
- 12 (4) The National Gas Law Chapter 2 Part 6 Division 7
13 Subdivision 2 set out in the Schedule to the *National Gas (South*
14 *Australia) Act 2008* (South Australia) (as in force at the
15 commencement of this Act) applies to protected information —
- 16 (a) as if the Subdivision were part of this Act; and
17 (b) as if the references to AEMO were references to the
18 operator; and
19 (c) with the modifications set out in the regulations (if any);
20 and
21 (d) with any other necessary modifications.
- 22 (5) Subsections (1) to (4) have effect while there are no regulations
23 under this Act controlling the use and disclosure of protected
24 information.
- 25 (6) The Governor cannot make regulations under this Act
26 controlling the use and disclosure of protected information
27 unless the Minister is satisfied that gas market participants have
28 been adequately consulted on the making of the regulations.
- 29 (7) Subsections (5) and (6) do not apply to regulations made for the
30 purposes of subsection (3).

1 **14. Immunity from liability**

2 (1) Neither the operator nor an officer or employee of the operator
3 incurs any civil monetary liability for an act or omission in the
4 performance or exercise, or purported performance or exercise,
5 of a function or power under this Act unless the act or omission
6 is done or made in bad faith or through negligence.

7 (2) A person who gives information that the person is obliged to
8 give to the operator under this Act or another written law does
9 not incur any civil monetary liability for an act or omission in
10 giving that information unless the act or omission is done or
11 made in bad faith or through negligence.

12 (3) The civil monetary liability for an act or omission of a kind
13 referred to in subsection (1) or (2) done or made through
14 negligence cannot exceed the maximum amount prescribed in
15 the regulations.

16 (4) Without limiting subsection (3), the regulations may —

- 17 (a) prescribe a maximum amount that is limited in its
18 application to persons, events, circumstances, losses or
19 periods specified in the regulations;
- 20 (b) prescribe a different maximum amount according to the
21 persons to whom, or the events, circumstances, losses or
22 periods in respect of which, it applies;
- 23 (c) prescribe the manner in which a civil monetary liability
24 is to be divided amongst claimants.

25 (5) This section does not apply to any liability of an officer or
26 employee of a body corporate to the body corporate.

27 **15. Regulations**

28 (1) The Governor may make regulations prescribing all matters that
29 are required or permitted by this Act to be prescribed or are
30 necessary or convenient to be prescribed for giving effect to the
31 purposes of this Act.

s. 15

- 1 (2) The regulations may —
- 2 (a) provide that contravention of a provision of the
- 3 regulations is an offence;
- 4 (b) provide for an offence to be punishable on conviction by
- 5 the imposition of a penalty not exceeding \$100 000 and,
- 6 in addition, if the contravention is of a continuing
- 7 nature, a daily penalty not exceeding \$20 000 for each
- 8 day or part of a day during which the contravention
- 9 continues.
- 10 (3) The regulations may adopt the text of any published document
- 11 specified in the regulations —
- 12 (a) as that text exists at a particular date; or
- 13 (b) as that text may from time to time be amended.
- 14 (4) The text may be adopted —
- 15 (a) wholly or in part; and
- 16 (b) as modified by the regulations.
- 17 (5) The adoption may be direct (by reference made in the
- 18 regulations), or indirect (by reference made in any text that is
- 19 itself directly or indirectly adopted).
- 20 (6) The adoption of text is of no effect unless a copy of —
- 21 (a) the adopted text; and
- 22 (b) the amendments to the text or the text as amended (if
- 23 relevant),
- 24 can at all reasonable times be inspected or purchased by the
- 25 public.

1
2
3
4
5
6
7
8

Part 3 — Consequential amendments

16. *Energy Arbitration and Review Act 1998* amended

(1) This section amends the *Energy Arbitration and Review Act 1998*.

(2) In section 50(2A) delete “2004.” and insert:

2004 and under the *Gas Services Information Act 2011*.



Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
Board	3(1)
civil monetary liability.....	3(1)
gas bulletin board.....	4(1)
gas market participant.....	3(1)
gas statement of opportunities	5(1)
GBB.....	3(1)
GSOO	3(1)
operator.....	3(1)
protected information.....	3(1)
rules	3(1)
user	3(1)