



REPORT OF THE

STANDING COMMITTEE ON  
CONSTITUTIONAL AFFAIRS

IN RELATION TO THE

***GAS PIPELINES ACCESS (WESTERN AUSTRALIA)  
BILL 1998***

Presented by the Hon Murray Nixon (Chairman)

## **STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**

### **Date first appointed:**

21 December 1989

### **Terms of Reference:**

1. The functions of the committee are to inquire into and report on:
  - (a) the constitutional law, customs and usages of Western Australia;
  - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,  
  
and any related matter or issue;
  - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
  - (d) any petition.
  
2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

### **Members as at the date of this report:**

Hon Murray Nixon MLC (Chairman)  
Hon Ray Halligan MLC  
Hon Tom Helm MLC

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## Report of the Legislative Council Constitutional Affairs Committee

in relation to the

### *GAS PIPELINES ACCESS (WESTERN AUSTRALIA) BILL 1998*

#### 1. Executive Summary

1.1 The purpose of the Bill is to make provision for the regulation of third party access to gas pipelines and to establish certain offices and a board for that purpose.

1.2 The Bill includes provisions that -

- enact the Gas Pipelines Access Law as a law of Western Australia by means of complementary legislation;
- provide for Regulations to be made for the purpose of that law;
- establish the Western Australian Independent Gas Pipelines Access Regulator, Gas Review Board and Gas Disputes Arbitrator;
- make consequential amendments to certain Acts which would otherwise be inconsistent or alter the effect, scope or operation of the Bill; and
- provide for transitional arrangements in Western Australia.

1.3 The Bill makes the Gas Pipelines Access Law a law of Western Australia. The Gas Pipelines Access Law comprises Schedule 1 to the Bill. The National Third Party Access Code (the "Code") for Natural Gas Pipeline Systems is contained in Schedule 2 to the Bill.

1.4 The primary aims and objectives of the Code are to -

- provide an open and transparent process to facilitate third party access to natural gas transmission and distribution pipelines;
- facilitate the efficient development and operation of a national market for natural gas and to safeguard against abuse of monopoly power in transmission and distribution of natural gas;
- promote a competitive market for gas, in which customers are able to choose the producer, retailer or trader to supply their gas;
- provide a right of access to transmission and distribution networks on fair and reasonable terms and conditions, with a right to a binding dispute-resolution mechanism; and

- encourage the development of an integrated pipeline network.

## **2. Recommendations**

- 2.1 The Report outlines certain selected clauses of the Bill requiring explanation and the Committee has provided comment and recommendations on each of these clauses. It should be noted that the remainder of the clauses not mentioned are recommended by the Committee to be passed.
- 2.2 The Committee has recommended that all clauses should be passed with the exception of clause 35 which should be fully debated in the House.
- 2.3 It should be noted that the Committee has made comment at 5.18 of the Report concerning an Office of Regulation. The comment provides that, consistent with the Committee's views expressed in previous reports on access regimes, the Committee favours the establishment, at an early opportunity, of an Office of Regulation. This Office could undertake the regulation of all access regimes covered by the National Competition Policy. Moreover, the Committee believes that such an Office could be cost effective, provide industry with ready access to a body of expertise and ensure independence from the relevant Minister.

**Report of the Legislative Council  
Constitutional Affairs Committee**

**in relation to the**

**GAS PIPELINES ACCESS (WESTERN AUSTRALIA) BILL 1998**

**3. Reference and Procedure**

3.1 The *Gas Pipeline Access (Western Australia) Bill 1998* (the "Bill") was referred to the Constitutional Affairs Committee ("the Committee") by the Legislative Council under Standing Order 230(d).

**4. Contents and Purpose of the Bill**

4.1 The purpose of the Bill is to make provision for the regulation of third party access to gas pipelines and to establish certain offices and a board for that purpose.

4.2 The Bill includes provisions that -

- enact the Gas Pipelines Access Law as a law of Western Australia by means of complementary legislation;
- provide for Regulations to be made for the purpose of that law;
- establish the Western Australian Independent Gas Pipelines Access Regulator, Gas Review Board and Gas Disputes Arbitrator;
- make consequential amendments to certain Acts which would otherwise be inconsistent or alter the effect, scope or operation of the Bill; and
- provide for transitional arrangements in Western Australia.

4.3 The Bill makes the Gas Pipelines Access Law a law of Western Australia. The Gas Pipelines Access Law comprises Schedule 1 to the Bill. The National Third Party Access Code (the "Code") for Natural Gas Pipeline Systems is contained in Schedule 2 to the Bill.

4.4 The primary aims and objectives of the Code are to -

- provide an open and transparent process to facilitate third party access to natural gas transmission and distribution pipelines;

- facilitate the efficient development and operation of a national market for natural gas and to safeguard against abuse of monopoly power in transmission and distribution of natural gas;
- promote a competitive market for gas, in which customers are able to choose the producer, retailer or trader to supply their gas;
- provide a right of access to transmission and distribution networks on fair and reasonable terms and conditions, with a right to a binding dispute-resolution mechanism; and
- encourage the development of an integrated pipeline network.

4.5 Under an intergovernmental agreement, each participating jurisdiction has received, in principle, approval of derogations and transitional measures appropriate to its circumstances. The derogations and transitional arrangements for Western Australia provided for in the Bill are -

- a Western Australian Independent Gas Pipeline Access Regulator will regulate under the Code all intrastate gas *transmission* and *distribution* pipelines in Western Australia. The relevant Minister in relation to the application of the Code to all intrastate pipelines will be the State Minister. This differs from other States where the Australian Competition and Consumer Commission will regulate transmission pipelines and the various State Regulators will regulate distribution pipelines;
- a Western Australian Appeals body will deal with all administrative appeals under the Code in respect to State bodies, including the Regulator and the State Minister where the Minister is required to make a determination to have a gas pipeline covered under the Code. This differs from other States where the Australian Competition Tribunal will conduct administrative appeals in relation to the Australian Competition and Consumer Commission's dealings with transmission pipelines;
- in Western Australia, the Supreme Court will have exclusive jurisdiction in respect to all matters of law relating to the access regulation by the Independent Gas Pipelines Access Regulator of intrastate gas transmission and distribution pipelines. In other States, the Federal Court will deal with matters of law in relation to the Australian Competition and Consumer Commission's Regulation of transmission pipelines;
- the Dampier to Bunbury natural gas pipeline is deemed to be covered until 1 January 2000 by access arrangements in place under the *Dampier to Bunbury Pipeline Act 1997* and will be covered thereafter by an access arrangement developed under the Code;
- the Goldfields Gas Pipeline is deemed to be covered to 1 January 2000 by the access arrangement in place under the *Goldfields Gas Pipeline*



*Agreement Act 1994* and subject to provisions of that Act will be covered thereafter by an access arrangements developed under the Code;

- the Mid-West and South-West gas distribution systems of AlintaGas are deemed to be covered until 1 January 2000 by arrangements under the *Gas Corporation Act 1994* and will be covered thereafter by an access arrangement developed under the Code;
- ring fencing of the gas distribution and trading activities of AlintaGas are to be made consistent with the provisions of the Code by 1 July 2002;
- existing gas distribution franchises and licensing arrangements are to be retained until 1 July 2002; and
- a gas trading franchise and a 10 year gas distribution franchise will be provided to AlintaGas for the Kalgoorlie/Boulder Distribution system.

4.6 To implement the Code consistent with the agreed derogations, the Bill establishes the -

- Western Australian Independent Gas Pipelines Access Regulator as the Regulator under the Code;
- Western Australian Gas Review Board as the appeals body under the Code;
- Western Australian Gas Disputes Arbitrator as the Arbitrator under the Code;

in the State of Western Australia.

4.7 The Bill contains 94 clauses in eight (8) parts -

- Part 1: Preliminary**
- Part 2: Gas Pipelines Access (Western Australia) Law and Gas Pipelines Access (Western Australia) Regulations**
- Part 3: Regulations of the Gas Pipelines Access Law**
- Part 4: National Administration and Enforcement**
- Part 5: General**
- Part 6: Local Administration and Enforcement**
- Part 7: Consequential Amendments**
- Part 8: Transitional Arrangements**

4.8 Schedule 1 of the Bill contains the Gas Pipelines Access Law.

4.9 Schedule 2 of the Bill contains the National Third Party Access Code for natural gas pipeline systems.

- 4.10 Schedule 3 of the Bill contains consequential amendments to other Western Australian Acts.
- 4.11 Certain selected clauses of the Bill requiring explanation are outlined and the Committee has provided comment and recommendations on each of these clauses. It should be noted that the remainder of the clauses not mentioned are recommended by the Committee to be passed.
- 4.12 The Committee has recommended that all clauses should be passed with the exception of clause 35 which should be fully debated in the House (see comments at 5.18).
- 4.13 As part of the review, the Committee placed an advertisement in *The West Australian* newspaper inviting submissions on the Bill. In response, the Committee received one submission which was considered as part of the inquiry.
- 4.14 As a further part of the review, the Committee called for evidence from a number of witnesses concerning the operation of the Bill. The witnesses who appeared before the Committee were -
- Ms Anne Nolan, Assistant Under Treasurer, Western Australian Treasury;
  - Ms Anne Hill, Assistant Director, Competition Policy Unit, Western Australian Treasury;
  - Dr Leslie Farrant, Coordinator of Energy, Office of Energy;
  - Mr Peter Adams, Manager, Business Analysis Branch, Office of Energy;
  - Mr Klaus Peter Kolf, Senior Manager, Officer of Energy;
  - Mr David Williams, General Counsel, AlintaGas;
  - Mr Darren Grondal, Legal Officer, AlintaGas;
  - Mr Bruce Ride, Manager, Goldfields Gas Transmission;
  - Mr David King, Manager, Operations, CMS Gas Transmission of Australia;  
and
  - Mr Simon Lill, Project Development Officer, Anaconda Nickel Ltd.

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## 5. Selected clauses of the Gas Pipelines Access (Western Australia) Bill 1998

### 5.1 *CLAUSE 7 - Extra-territorial operation*

This clause provides for the extra-territorial effect of the Act, the Gas Pipelines Access (Western Australia) Law and the Gas Pipelines Access (Western Australia) Regulations. The national scheme is intended to regulate the provision of third party access to gas pipelines to the extent that those pipelines are situated within the "jurisdictional area" of each of the scheme participants.

The operation of the scheme in relation to a pipeline situated within the jurisdiction may, however, be affected by "things" (for eg contracts), acts, transactions and matters that occur outside the jurisdiction. Accordingly, clause 7 extends the operation of the Bill, the Gas Pipeline Access (Western Australia) Law and the Gas Pipeline Access (Western Australia) Regulations to regulate such things, acts, transactions or matters, whether they occur in or outside Western Australia, and whether or not they are otherwise affected by the law of another jurisdiction, including a foreign country.

**Recommendation 1: the clause be passed**

### 5.2 *CLAUSE 8 - Extension of the Law and the Regulations to certain pipelines reticulating gas other than natural gas*

This clause provides for the extension of the Gas Pipeline Access (Western Australia) Law's application to pipelines reticulating liquefied petroleum gas and tempered liquefied petroleum gas. This extended application will, for example, allow application of the Code for third party access to the AlintaGas distribution system at Albany. It would provide for supply competition to consumers in that regional market to be available as it is to consumers on the natural gas system.

**Recommendation 2: the clause be passed**

### 5.3 *CLAUSE 9 - Application in Western Australia of the Gas Pipelines Access Law*

This clause applies the Gas Pipelines Access Law (as agreed by all States and Territories) as a law of Western Australia. The clause provides that the law may be referred to as the Gas Pipelines Access (Western Australia) Law. The Gas Pipelines Access Law comprises Schedule 1 of the Bill, as amended from time to time, and the National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2), as amended from time to time in accordance with Schedule 1.

**Recommendation 3: the clause be passed**

**5.4**     ***CLAUSE 10 - Application of regulations under Gas Pipelines Access Law***

This clause provides that the Regulations in force under Part 3 apply as Regulations for the purposes of the Gas Pipelines Access (Western Australia) Law and may be referred to as the Gas Pipelines Access (Western Australia) Regulations.

**Recommendation 4: the clause be passed**

**5.5**     ***CLAUSE 11 - Interpretation of some expressions in the Gas Pipeline Access (Western Australia) Law and Gas Pipelines Access (Western Australia) Regulations***

This clause contains a number of definitions for the purposes of the Gas Pipelines Access (Western Australia) Law and the Gas Pipelines Access (Western Australia) Regulations.

**Recommendation 5: the clause be passed**

**5.6**     ***CLAUSE 12 - General regulation-making power for Gas Pipelines Access Law***

This clause enables the Governor to make Regulations to give effect to the Gas Pipelines Access Law on the unanimous recommendation of the relevant Ministers of the scheme participants.

Due to the uniform nature of the legislation, this clause also provides that the provisions of the *Interpretation Act 1984* do not apply for the purposes of Regulations under this Part but instead those of Appendix 1 to Schedule 1 apply.

**Recommendation 6: the clause be passed**

**5.7**     ***CLAUSE 13 - Civil penalty provisions of the Gas Pipelines Access Law***

This clause states the Regulations may provide that specified regulatory or conduct provisions of the Gas Pipelines Access Law are civil penalty provisions. The Regulations may prescribe, for a breach of a civil penalty provision, an amount not exceeding \$100 000 and an additional daily amount not exceeding \$20 000 that the Supreme Court may determine, is payable by a person who contravenes the provision.

**Recommendation 7: the clause be passed**

**5.8**     ***CLAUSE 14 - Specific regulation-making powers***

This clause specifies as subject matters for the Regulations, the prescribing of gas processing plants, exit flanges and connection points for the purposes of the

definition of "pipelines" in Schedule 1, the procedure and conduct of arbitrations under Part 4 of Schedule 1, the person or persons required to make available copies of the Code and the place or places at which copies of the Code are to be made available.

**Recommendation 8: the clause be passed**

**5.9**      ***CLAUSE 15 - Conferral of functions on NCC***

This clause provides that the NCC has the functions conferred on it under the Gas Pipelines Access (Western Australia) Law and the power to do all things necessary to be done in connection with the performance of those functions.

**Recommendation 9: the clause be passed**

**5.10**      ***CLAUSE 16 - Conferral of power on NCC to do acts in this State***

This clause provides that the NCC has the power to do acts in or in relation to this State in the performance of a function expressed to be conferred on it by the gas pipelines access legislation of another scheme participant. The gas pipelines access legislation of each scheme participant will confer certain functions and powers on the NCC within the meaning of that legislation. In certain circumstances (for example, in future cross-border pipelines that lie partly within Western Australia's jurisdictional area) those functions or powers may be performed or exercised in the jurisdictional area of Western Australia.

**Recommendation 10: the clause be passed**

**5.11**      ***CLAUSE 17 - Conferral of power on Ministers, Regulators and appeals bodies of other scheme participants***

This clause provides that the local Minister, the local Regulator and the local appeals body of another scheme participant have power to do acts in Western Australia in performance of a function conferred on them respectively by the gas pipelines access legislation of that other scheme participant.

**Recommendation 11: the clause be passed**

**5.12**      ***CLAUSE 18 - Code Registrar and conferral of functions***

This clause provides that the Code Registrar established under the *Gas Pipelines Access (South Australia) Act 1997* is the Code Registrar for the purposes of the Gas Pipelines Access (Western Australia) Law. It has the functions conferred on the Code Registrar under the Gas Pipelines Access (Western Australia) Law or under the

National Gas Agreement, or as agreed unanimously by the relevant Ministers of the scheme participants.

**Recommendation 12: the clause be passed**

**5.13** *CLAUSE 19 - Functions conferred on Western Australian Minister, Regulator, arbitrator and appeals body*

This clause enables the Western Australian Minister, the Western Australian Independent Gas Pipelines Access Regulator, the Western Australian Gas Review Board and the Western Australian Gas Disputes Arbitrator to perform a function conferred on them by the gas pipelines access legislation of another scheme participant and to do all things necessary in connection with the performance of that function.

It should be noted that this clause will not function while Western Australia maintains an intrastate gas network. However, the clause may have application in the event that Western Australia's gas transmission network traverses State/Territory borders.

**Recommendation 13: the clause be passed**

**5.14** *CLAUSE 22 - Application of Commonwealth AD(JR) Act in relation to other scheme participants*

This clause applies the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as a law of Western Australia in relation to a decision of a Code body under the gas pipelines access legislation of another scheme participant.

"Code body" is defined as the -

- NCC;
- ACCC;
- Australian Competition Tribunal;
- local appeals body within the meaning of the Gas Pipelines Access (Western Australia) Law;
- local Minister within the meaning of the Gas Pipelines Access (Western Australia) Law;
- local Regulator within the meaning of the Gas Pipelines Access (Western Australia) Law; and
- an arbitrator appointed under Part 4 of the Gas Pipelines Access (Western Australia) Law.

**Recommendation 14: the clause be passed**

**5.15**     ***CLAUSE 25 - Interpretation Act 1984 not applicable to Code***

Due to the uniform nature of the legislation, this clause provides that the provisions of the *Interpretation Act 1984* does not apply to the Code.

**Recommendation 15: the clause be passed**

**5.16**     ***CLAUSE 26 - Definition***

This clause defines the Regulator to mean the Regulator appointed under section 27 and, except in sections 27 (2), 28 and 32, includes a person acting under section 34.

**Recommendation 16: the clause be passed**

**5.17**     ***CLAUSE 27 - Western Australian Independent Gas Pipelines Access Regulator***

This clause establishes the Western Australian Independent Gas Pipelines Access Regulator, and provides for the Regulator's appointment by the Governor, for the office of the Regulator to not be an office in the Public Service and for the Regulator to be the employing authority of its staff.

**Recommendation 17: the clause be passed**

**5.18**     ***CLAUSE 35 - Functions and powers***

**Note - Regulator:** Consistent with the Committee's views expressed in previous reports on access regimes, the Committee favours the establishment, at an early opportunity, of an Office of Regulation. This Office could undertake the regulation of all access regimes covered by the National Competition Policy. Moreover, the Committee believes that such an Office could be cost effective and provide industry with ready access to a body of expertise and ensure independence from the relevant Minister.

**Comment on Clause 35 of Bill:** This clause provides that the "Regulator" has the functions and powers conferred on the local Regulator under the Gas Pipelines Access (Western Australia) Law and the functions conferred on the local Regulator under the National Gas Agreement. At this point, it is appropriate to discuss the issue of a State based Regulator for transmission pipelines as opposed to this role being undertaken by the ACCC.

Clause 27 provides that a Regulator be appointed by the Governor and an office of the Western Australian Independent Gas Pipelines Access Regulator be established. In accordance with clause 35, the functions and powers of the Regulator include those conferred on the **local Regulator** under the Gas Pipelines Access (Western

Australia) Law (the "Access Law"). Clause 2 of the Access Law provides that the "relevant Regulator" means the "local Regulator in relation to a distribution pipeline or a transmission pipeline or a matter concerning a distribution pipeline or a transmission pipeline ...".

The provision of powers by clause 35 means that the Western Australian Independent Gas Pipelines Access Regulator has the functions and powers in relation to both distribution and transmission pipelines. This position differs from other States where the ACCC will regulate transmission pipelines and various State Regulators will regulate distribution pipelines. For example, clause 2 of the South Australian Access Law provides, inter alia, that the relevant Regulator -

- in relation to a transmission pipeline, or a matter concerning a transmission pipeline or service provider of a transmission pipeline, means the ACCC; and
- in relation to a distribution pipeline, or a matter concerning a distribution pipeline or service provider of a distribution pipeline, situated wholly within the jurisdictional area of this scheme participant, means the local Regulator.

In evidence to the Committee, the Coordinator of Energy, Dr Farrant, supported the intention of the Bill for the local Regulator to regulate transmission pipelines as opposed to the ACCC. Dr Farrant favoured a State based Regulator for a number of reasons which included the following -

- the Western Australian pipeline grid is an integral activity in the State and does not traverse interstate borders. This position differs from other States where there are pipelines (mainly transmission systems) running between jurisdictions. In the latter situation, there was concern about different Regulators for various sections of the network and the States agreed that it was appropriate for the ACCC to be the Regulator for those transmission pipelines;
- the State based Regulator of transmission pipelines would be responsible to the Western Australian Parliament. On the other hand, the ACCC would not be responsible to the Western Australian Parliament in its role as Regulator;
- in relation to dealing with issues concerning pipelines in the State, the State based Regulator would be more effective than the ACCC due to its familiarity with the circumstances of the State and its ready availability; and
- both the NCC and ACCC has been comfortable with the Western Australia's decision to have a State based Regulator for transmission pipelines.

The question of whether to have a State based Regulator or the ACCC responsible



for transmission pipelines has raised debate.

The arguments favouring a State based Regulator include -

- Western Australia's pipelines are internal with no pipelines traversing interstate borders;
- ensuring that the State's energy policy is carried out by the State of Western Australia as opposed to the ACCC. For example, the ACCC could implement its price discrimination policy which would alter existing State arrangements concerning certain energy charges; and
- a local regulator has the ability to take into account the particular circumstances of the State.

The arguments favouring the ACCC as the Regulator include -

- there is a limited number of people in Western Australia from whom the Regulator might be able to chosen. The ACCC is already in existence and has the capabilities of being able to rigorously apply the Code;
- it is not a prerequisite to have an interstate pipeline to have the ACCC perform the function of Regulator of transmission pipelines; and
- the Minister for Energy's powers and responsibilities are clearly set out in the legislation and the ACCC as the Regulator would not detract from those powers and responsibilities.

**Recommendation 18: the clause be fully debated in the House**

**5.19**     ***CLAUSE 36 - Independence of Regulator***

This clauses provides that the Regulator is entirely independent of direction or control by the Crown or any Minister or officer of the Crown in the performance of Regulatory functions.

**Recommendation 19: the clause be passed**

**5.20**     ***CLAUSE 38 - Treatment of certain internal arrangements of the Gas Corporation under the Gas Corporation Act 1994***

This clause deems the memorandum of understanding between the AlintaGas' trading and distribution businesses to be a contract and as such to be protected until 1 January 2000. After that date, it will be covered by an access arrangement under the Code.

**Recommendation 20: the clause be passed**

**5.21**     ***CLAUSE 40 - Conflict of interest***

This clause requires the Regulator to inform the Minister of potential conflicts of interest the Regulator may have and empowers the Minister to direct the Regulator to resolve the conflict of interest or, if the conflict is not resolved to the Minister's satisfaction, to disqualify the Regulator in relation to that matter.

**Recommendation 21: the clause be passed**

**5.22**     ***CLAUSE 47 - Immunity***

This clause confers immunity on the Regulator, acting Regulator, delegate of the Regulator and any person acting under the direction or authority of the Regulator of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, or official powers or functions. Any liability which would otherwise lie upon such a person shall lie instead against the Crown.

**Recommendation 22: the clause be passed**

**5.23**     ***CLAUSE 49 - Western Australian Review Board***

This clause establishes the Western Australian Gas Review Board.

**Recommendation 23: the clause be passed**

**5.24**     ***CLAUSE 50 - Constitution of the Board***

This clause provides that the Board consists of (from time to time as the need arises) a legal practitioner, selected by the Attorney-General from the panel of legal practitioners, and two experts chosen by the legal practitioner from the panel of experts.

**Recommendation 24: the clause be passed**

**5.25**     ***CLAUSE 51 - Panels***

This clause requires the Governor to establish a panel of legal practitioners and experts from amongst whom the Attorney General may constitute the Board.

**Recommendation 25: the clause be passed**

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**5.26** *CLAUSE 56 - Principles governing hearings*

This clause sets out the principles governing hearings by the Board. The clause provides that the Board is not bound by the rules of evidence and may inform itself as it thinks fit. Questions of law or procedure arising before the Board are to be determined by the presiding member and other questions by unanimous or majority decision of the members. The Board's functions include reviewing public submissions concerning access arrangements proposed by the Regulator.

**Recommendation 26: the clause be passed**

**5.27** *CLAUSE 60 - Definition*

This clause defines the "arbitrator" as the Western Australian Gas Dispute Arbitrator appointed under section 61 and, except in section 61(2), 63 and 67(1), includes a person acting under section 69.

**Recommendation 27: the clause be passed**

**5.28** *CLAUSE 61 - Western Australian Gas Disputes Arbitrator*

This clause establishes an office of the Western Australian Gas Disputes Arbitrator.

**Recommendation 28: the clause be passed**

**5.29** *CLAUSE 71 - Functions*

This clause provides that the Arbitrator has the functions conferred on the Arbitrator under the Gas Pipelines Access (Western Australia) Law, the functions of the Gas Referee conferred on the Arbitrator by regulations made under the *Gas Corporation Act 1994*, the *Dampier to Bunbury Pipeline Act 1997* and the *Gas Pipelines Access (Western Australia) Act*, and functions of providing administrative support to the Review Board.

It should be noted that the Gas Referee acts as an Arbitrator in relation to existing access arrangements. This clause confers the functions of the Gas Referee on the Arbitrator by Regulations made under the *Gas Corporation Act 1994*. This clause also provides that Arbitrator has the function of providing administrative support to the Review Board. This latter function means that the Review Board maintains its independence from the Regulator and avoids direct conflict in the case where the Board overturns a decision of the Regulator.

**Recommendation 29: the clause be passed**

**5.30**     ***CLAUSE 72 - Additional functions may be prescribed***

This clause enables the Governor to make Regulations providing for the Arbitrator to have the function of hearing prescribed contractual disputes and that function to be exclusive of the jurisdiction of courts and other tribunals.

**Recommendation 30: the clause be passed**

**5.31**     ***CLAUSE 73 - Independence of arbitrator***

This clause provides that the Arbitrator is entirely independent of direction or control by the Crown or any Minister or officer of the Crown in the performance of the Arbitrator's functions.

**Recommendation 31: the clause be passed**

**5.32**     ***CLAUSE 83 - Immunity***

This clause confers immunity on the Arbitrator, acting Arbitrator, delegate of the Arbitrator and any person acting under the direction or authority of the Arbitrator for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions. Any liability which would otherwise lie upon such a person shall lie instead against the Crown.

**Recommendation 32: the clause be passed**

**5.33**     ***CLAUSE 87 - Protection of certain existing arrangements***

This clause provides for the protection until 1 July 2002 of the distribution and trading franchise for the AlintaGas Mid-West and South-West distribution systems, and the existing trading franchise for the Kalgoorlie/Boulder system. It also provides for the protection of the distribution franchise for the Kalgoorlie/Boulder system until 10 years after the commencement of this Act. The franchises apply only for the supply of gas other than to contestable customers.

**Recommendation 33: the clause be passed**

**5.34**     ***CLAUSE 88 - Meaning of contestable customer***

This clause contains definitions of "contestable customers". For the AlintaGas' Mid-West and South-West distribution systems, these are currently customers consuming more than 250TJ per year at a single site. This figure will decline to 100 TJ per year on 1 January 2000, 1 TJ per year on 1 January 2002 with all customers becoming contestable on 1 July 2002.

In relation to the Kalgoorlie/Boulder's **trading** franchise, these are currently customers consuming more than 100 TJ per year at a single site. This figure will decline to 1 TJ per year on 1 January 2002 with all customers becoming contestable on 1 July 2002.

In relation to the Kalgoorlie/Boulder's **distribution** franchise, these are currently customers consuming more than 100 TJ, remaining at that level for the next ten (10) years with all customers becoming contestable after that.

**Recommendation 34: the clause be passed**

**5.35**     ***CLAUSE 90 - Temporary continuation of access arrangements for Corporation's distribution system***

This clause deems the existing access regimes applying to the AlintaGas distribution systems to comply with the Code until 1 January 2000 and requires AlintaGas to submit to the Regulator a proposed Access Arrangement under the Code within 9 months of the commencement of the Act.

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**Hon Murray Nixon MLC**  
**Chairman**