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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Australian Energy Market Amendment
(Gas Legislation) Bill 2006**

No. , 2006

(Industry, Tourism and Resources)

**A Bill for an Act to amend the law relating to gas,
and for other purposes**

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1 **A Bill for an Act to amend the law relating to gas,**
2 **and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Australian Energy Market*
6 *Amendment (Gas Legislation) Act 2006.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
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.	

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Amendments commencing on**
3 **Proclamation**

4 **Part 1—Amendments**

5 *Administrative Decisions (Judicial Review) Act 1977*

6 **1 Paragraph 2(d) of Schedule 3**

7 Repeal the paragraph, substitute:

8 (d) the National Gas Law set out in the Schedule to the *National*
9 *Gas (South Australia) Act 2007* of South Australia as in force
10 from time to time, as that Law applies as a law of South
11 Australia;

12 (daa) if an Act of another State or of the Australian Capital
13 Territory or the Northern Territory applies the National Gas
14 Law set out in the Schedule to the *National Gas (South*
15 *Australia) Act 2007* of South Australia, as in force from time
16 to time, as a law of that other State or of that Territory—the
17 National Gas Law as so applied;

18 (dab) the National Gas Access Law set out in Schedule 1 to the
19 *National Gas Access (Western Australia) Act 2007* of
20 Western Australia as in force from time to time, as that Law
21 applies as a law of Western Australia;

22 *Australian Energy Market Act 2004*

23 **2 Subsection 3(1)**

24 Omit “(1)”.

25 **3 Subsection 3(1)**

26 Insert:

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

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

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

3 For this purpose, assume that the breadth of the territorial sea of
4 Australia had never been determined or declared to be greater than
5 3 nautical miles, but had continued to be 3 nautical miles.

6 **4 Subsection 3(1)**

7 Insert:

8 *Commonwealth Minister* means the Minister administering this
9 Act.

10 **5 Subsection 3(1)**

11 Insert:

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

15 **6 Subsection 3(1)**

16 Insert:

17 *federal tax-exempt matter* has the meaning given by subsection
18 13D(2).

19 **7 Subsection 3(1)**

20 Insert:

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

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

25 **8 Subsection 3(1) (definition of *National Electricity***
26 ***(Commonwealth) Law, Regulations and Rules*)**

27 Repeal the definition.

28 **9 Subsection 3(1) (definition of *National Electricity***
29 ***(Commonwealth) Rules*)**

30 Repeal the definition.

1 **10 Subsection 3(1)**

2 Insert:

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

5 **11 Subsection 3(1)**

6 Insert:

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

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

10 **12 Subsection 3(1)**

11 Insert:

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

14 **13 Subsection 3(1)**

15 Insert:

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

18 **14 Subsection 3(1)**

19 Insert:

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

- 25 (a) Western Australia; or
26 (b) the coastal waters of Western Australia;
27 but does not include a pipeline any part of which is situated in
28 another State or in a Territory.

29 **15 Subsection 3(1)**

30 Insert:

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

3 **16 Subsection 3(1)**

4 Insert:

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

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

11 **17 Subsection 3(1)**

12 Insert:

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

15 **18 Subsection 3(1)**

16 Insert:

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

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

21 Omit “Act; and”, substitute “Act.”.

22 **20 Subsection 3(1) (paragraph (c) of the definition of South**
23 ***Australian Electricity Legislation*)**

24 Repeal the paragraph.

25 **21 Subsection 3(1) (at the end of the definition of South**
26 ***Australian Electricity Legislation*)**

27 Add:

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

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

3 **22 Subsection 3(1)**

4 Insert:

5 *South Australian Gas Legislation* means:

6 (a) the National Gas Law set out in the Schedule to the *National*
7 *Gas (South Australia) Act 2007* of South Australia as in force
8 from time to time; and

9 (b) any regulations, as in force from time to time, made under
10 Part 3 of that Act.

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

16 **23 Subsection 3(1)**

17 Insert:

18 *State/Territory electricity law* means:

19 (a) the South Australian Electricity Legislation as it applies as a
20 law of South Australia; or

21 (b) the South Australian Electricity Legislation as it applies as a
22 law of another State; or

23 (c) the South Australian Electricity Legislation as it applies as a
24 law of the Australian Capital Territory or the Northern
25 Territory.

26 **24 Subsection 3(1)**

27 Insert:

28 *State/Territory energy law* means:

29 (a) a State/Territory electricity law; or

30 (b) a State/Territory gas law.

31 **25 Subsection 3(1)**

32 Insert:

33 *State/Territory gas law* means:

- 1 (a) the South Australian Gas Legislation as it applies as a law of
2 South Australia; or
3 (b) the South Australian Gas Legislation as it applies as a law of
4 another State; or
5 (c) the South Australian Gas Legislation as it applies as a law of
6 the Australian Capital Territory or the Northern Territory; or
7 (d) the Western Australian Gas Legislation as it applies as a law
8 of Western Australia.

9 **26 Subsection 3(1)**

10 Insert:

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

13 **27 Subsection 3(1) (paragraph (a) of the definition of *uniform***
14 ***energy law*)**

15 Omit “and”, substitute “or”.

16 **28 Subsection 3(1) (after paragraph (a) of the definition of**
17 ***uniform energy law*)**

18 Insert:

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

21 **29 Subsection 3(1)**

22 Insert:

23 *Western Australian Gas Legislation* means:

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

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

1 **30 Subsections 3(2) and (3)**

2 Repeal the subsections.

3 **31 Sections 4 and 5**

4 Repeal the sections, substitute:

5 **4 Crown to be bound**

6 Each of the following:

- 7 (a) this Act;
- 8 (b) the National Electricity (Commonwealth) Law and
9 Regulations;
- 10 (c) the National Gas (Commonwealth) Law and Regulations;
- 11 (d) the Offshore Western Australian Pipelines (Commonwealth)
12 Law and Regulations;
- 13 (e) a prescribed uniform energy law applied as a law of the
14 Commonwealth;

15 binds the Crown in each of its capacities.

16 **5 Extra-territorial operation**

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

- 18 (a) this Act; and
- 19 (b) the National Electricity (Commonwealth) Law and
20 Regulations; and
- 21 (c) the National Gas (Commonwealth) Law and Regulations; and
- 22 (d) the Offshore Western Australian Pipelines (Commonwealth)
23 Law and Regulations; and
- 24 (e) a prescribed uniform energy law applied as a law of the
25 Commonwealth;

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

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

1 **32 Before section 6**

2 Insert:

3 **Division 1—Electricity laws**

4 **33 Section 6**

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

6 **34 At the end of section 6**

7 Add:

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

13 **35 Section 8**

14 Repeal the section.

15 **36 Subsections 9(1) and (2)**

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

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

19 **37 Subsections 10(1) and (2)**

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

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

23 **38 After section 10**

24 Insert:

25 **10A Functions and powers of the Australian Competition Tribunal**
26 **under the National Electricity (Commonwealth) Law and**
27 **Regulations**

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

1 **10B Functions and powers of the Commonwealth Minister under**
2 **the National Electricity (Commonwealth) Law and**
3 **Regulations**

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

10 **39 Subsection 11(1)**

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

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

14 **40 Paragraph 11(2)(b)**

15 Omit “Law; or”, substitute “Law.”.

16 **41 Paragraph 11(2)(c)**

17 Repeal the paragraph.

18 **42 At the end of section 11**

19 Add:

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

24 **43 After section 11**

25 Insert:

1 **Division 2—Gas laws**

2 **Subdivision A—General**

3 **11A Application of National Gas Law in adjacent areas, certain**
4 **Territories etc.**

5 (1) The National Gas Law set out in the Schedule to the *National Gas*
6 (*South Australia*) *Act 2007* of South Australia as in force from time
7 to time:

8 (a) applies as a law of the Commonwealth:

9 (i) in the adjacent area of each State and the Northern
10 Territory; and

11 (ii) in the adjacent area of Norfolk Island; and

12 (iii) in the adjacent area of the Territory of Ashmore and
13 Cartier Islands; and

14 (iv) in the Territory of Christmas Island; and

15 (v) in the adjacent area of the Territory of Christmas Island;
16 and

17 (vi) in the Territory of Cocos (Keeling) Islands; and

18 (vii) in the adjacent area of the Territory of Cocos (Keeling)
19 Islands; and

20 (viii) in the adjacent area of the Territory of Heard Island and
21 McDonald Islands; and

22 (ix) in any other places, to any circumstances, or to any
23 persons, that are prescribed by regulations for the
24 purpose of this subparagraph; and

25 (b) so applying may be referred to as the *National Gas*
26 (*Commonwealth*) *Law*.

27 (2) The National Gas (Commonwealth) Law does not apply in relation
28 to an offshore Western Australian pipeline.

29 (3) The reference in subsection (1) to the National Gas Law set out in
30 the Schedule to the *National Gas (South Australia) Act 2007* of
31 South Australia as in force from time to time includes a reference
32 to any Rules or other instruments, as in force from time to time,
33 made or having effect under that Law.

1 **11B Application of National Gas Regulations in adjacent areas,**
2 **certain Territories etc.**

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

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

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

20 **11D Functions and powers of the Australian Energy Regulator**
21 **under the National Gas (Commonwealth) Law and**
22 **Regulations**

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

1 **11E Functions and powers of the National Competition Council**
2 **under the National Gas (Commonwealth) Law and**
3 **Regulations**

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

7 **11F Functions and powers of the Australian Competition Tribunal**
8 **under the National Gas (Commonwealth) Law and**
9 **Regulations**

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

13 **11G Functions and powers of the Commonwealth Minister under**
14 **the National Gas (Commonwealth) Law and Regulations**

15 (1) The Commonwealth Minister has the functions and powers
16 conferred on him or her under the National Gas (Commonwealth)
17 Law and Regulations.

18 (2) Any delegation by the Commonwealth Minister is taken to extend
19 to, and have effect for the purposes of, the National Gas
20 (Commonwealth) Law and Regulations.

21 **11H Interpretation of some expressions in the National Gas**
22 **(Commonwealth) Law and Regulations etc.**

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

24 *Court* means the Federal Court of Australia.

25 *designated Minister* means the Commonwealth Minister.

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

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

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

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

12 **11J Application of Offshore Western Australian Pipelines Law in** 13 **adjacent area of Western Australia**

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

27 **11K Application of Offshore Western Australian Pipelines** 28 **Regulations in adjacent area of Western Australia**

- 29 Regulations, as in force from time to time, made under Part 3 of
30 the *National Gas Access (Western Australia) Act 2007* of Western
31 Australia:
32 (a) apply as regulations in force for the purposes of the Offshore
33 Western Australian Pipelines (Commonwealth) Law; and
34 (b) so applying may be referred to as the *Offshore Western*
35 *Australian Pipelines (Commonwealth) Regulations*.

1 **11L Functions and powers of the Australian Energy Market**
2 **Commission under the Offshore Western Australian**
3 **Pipelines (Commonwealth) Law and Regulations**

4 (1) The Australian Energy Market Commission has the functions and
5 powers conferred on it under the Offshore Western Australian
6 Pipelines (Commonwealth) Law and Regulations.

7 (2) Any delegation by the Australian Energy Market Commission is
8 taken to extend to, and have effect for the purposes of, the Offshore
9 Western Australian Pipelines (Commonwealth) Law and
10 Regulations.

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

14 (1) The Economic Regulation Authority has the functions and powers
15 conferred on it under the Offshore Western Australian Pipelines
16 (Commonwealth) Law and Regulations.

17 (2) Any delegation by the Economic Regulation Authority is taken to
18 extend to, and have effect for the purposes of, the Offshore
19 Western Australian Pipelines (Commonwealth) Law and
20 Regulations.

21 **11N Functions and powers of the National Competition Council**
22 **under the Offshore Western Australian Pipelines**
23 **(Commonwealth) Law and Regulations**

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

27 **11P Functions and powers of the Australian Competition Tribunal**
28 **under the Offshore Western Australian Pipelines**
29 **(Commonwealth) Law and Regulations**

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

1 **11Q Functions and powers of a Western Australian Minister under**
2 **the Offshore Western Australian Pipelines**
3 **(Commonwealth) Law and Regulations**

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

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

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

1 **11S Inter-governmental arrangements relating to the administration**
2 **of the Offshore Western Australian Pipelines**
3 **(Commonwealth) Law and Regulations**

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

11 **Division 3—Prescribed uniform energy laws**

12 **44 Section 12**

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

15 **45 Subsection 13(1)**

16 Omit “of the Australian Energy Regulator”.

17 **46 Paragraph 13(1)(c)**

18 Repeal the paragraph, substitute:

- 19 (c) the National Gas (Commonwealth) Law; or
20 (ca) the National Gas (Commonwealth) Regulations; or
21 (cb) the Offshore Western Australian Pipelines (Commonwealth)
22 Law; or
23 (cc) the Offshore Western Australian Pipelines (Commonwealth)
24 Regulations; or

25 **47 Paragraph 13(1)(d)**

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

28 **48 After section 13**

29 Insert:

1 **13A Commonwealth consent to conferral of functions etc. on**
2 **Commonwealth Minister**

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

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

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

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

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

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

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

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

30 **13B How duty is imposed**

31 *Application*

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

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

1

State or Territory legislative power sufficient to support duty

2

(2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:

3

4

(a) imposing the duty is within the legislative powers of the State or Territory concerned; and

5

6

(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.

7

8

9

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).

10

11

12

13

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

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15

(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.

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(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.

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(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:

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(a) is within the legislative powers of the Commonwealth; and

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(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commonwealth Minister.

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(6) Subsections (1) to (5) do not limit section 13A.

30

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

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

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

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

4 **13D No Commonwealth tax consequences for certain transfers of**
5 **assets and liabilities etc.**

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

- 13 (2) In this Act:

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

- 17 (a) for the purpose of ensuring that a person does not carry on a
18 business of producing, purchasing or selling natural gas in
19 breach of:
20 (i) a State/Territory gas law; or
21 (ii) the National Gas (Commonwealth) Law; or
22 (iii) the National Gas (Commonwealth) Regulations; or
23 (iv) the Offshore Western Australian Pipelines
24 (Commonwealth) Law; or
25 (v) the Offshore Western Australian Pipelines
26 (Commonwealth) Regulations; or
27 (b) for the purpose of the separation of certain activities from
28 other activities of a person as required by:
29 (i) a State/Territory gas law; or
30 (ii) the National Gas (Commonwealth) Law; or
31 (iii) the National Gas (Commonwealth) Regulations; or
32 (iv) the Offshore Western Australian Pipelines
33 (Commonwealth) Law; or
34 (v) the Offshore Western Australian Pipelines
35 (Commonwealth) Regulations;

36 and for no other purpose.

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

5 **13E Exemption from State and Territory taxes**

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

- 13 (2) In this Act:

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

- 16 (a) for the purpose of ensuring that a person does not carry on a
17 business of producing, purchasing or selling natural gas in
18 breach of:
19 (i) the National Gas (Commonwealth) Law; or
20 (ii) the National Gas (Commonwealth) Regulations; or
21 (iii) the Offshore Western Australian Pipelines
22 (Commonwealth) Law; or
23 (iv) the Offshore Western Australian Pipelines
24 (Commonwealth) Regulations; or
25 (b) for the purpose of the separation of certain activities from
26 other activities of a person as required by:
27 (i) the National Gas (Commonwealth) Law; or
28 (ii) the National Gas (Commonwealth) Regulations; or
29 (iii) the Offshore Western Australian Pipelines
30 (Commonwealth) Law; or
31 (iv) the Offshore Western Australian Pipelines
32 (Commonwealth) Regulations;
33 and for no other purpose.

- 34 (3) In paragraph (a) of the definition of *State/Territory tax-exempt*
35 *matter* in subsection (2), *natural gas* has the same meaning as in

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

3 **13F Legislative instruments**

- 4 (1) To avoid doubt, an instrument made or having effect under:
5 (a) the National Electricity (Commonwealth) Law; or
6 (b) the National Electricity (Commonwealth) Regulations; or
7 (c) a prescribed uniform energy law applied as a law of the
8 Commonwealth;

9 is taken not to be, and never to have been, a legislative instrument
10 for the purposes of the *Legislative Instruments Act 2003*.

- 11 (2) To avoid doubt, an instrument made or having effect under:
12 (a) the National Gas (Commonwealth) Law; or
13 (b) the National Gas (Commonwealth) Regulations; or
14 (c) the Offshore Western Australian Pipelines (Commonwealth)
15 Law; or
16 (d) the Offshore Western Australian Pipelines (Commonwealth)
17 Regulations;

18 is taken not to be a legislative instrument for the purposes of the
19 *Legislative Instruments Act 2003*.

20 **13G Jurisdiction of the Federal Court**

- 21 (1) The Federal Court is invested with jurisdiction with respect to civil
22 and criminal matters arising under:
23 (a) the National Electricity (Commonwealth) Law and
24 Regulations; or
25 (b) the National Gas (Commonwealth) Law and Regulations.

- 26 (2) If a provision of:
27 (a) the National Electricity (Commonwealth) Law; or
28 (b) the National Gas (Commonwealth) Law;
29 whether expressly or by implication, authorises a civil or criminal
30 proceeding to be instituted in the Federal Court in relation to a
31 matter, that provision is taken to vest the Court with jurisdiction in
32 that matter.

1 **13H Jurisdiction of the Supreme Court of Western Australia**

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

14 **13J Jurisdiction of a State or Territory court under a prescribed**
15 **uniform energy law**

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

29 **49 Paragraph 14(3)(c)**

30 Repeal the paragraph, substitute:

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

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

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

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

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

7 **51 Subsection 5(1) (definition of *Gas Pipelines Access Law*)**

8 Repeal the definition.

9 **52 Subsection 5(1) (definition of *gas pipelines access*
10 *legislation*)**

11 Repeal the definition.

12 **53 Subsection 5(1) (definition of *Third Party Access Code*)**

13 Repeal the definition.

14 **54 Subsections 9(1A) and (1B)**

15 Repeal the subsections.

16 **55 Subsections 11(1A) and (1B)**

17 Repeal the subsections.

18 **56 Section 73**

19 Repeal the section.

20 **57 Paragraph 103(1)(f)**

21 Repeal the paragraph.

22 ***Trade Practices Act 1974***

23 **58 Subsection 4(1)**

24 Insert:

25 *designated Commonwealth energy law* means:

- 1 (a) the National Electricity (Commonwealth) Law and
2 Regulations (as defined by the *Australian Energy Market Act*
3 *2004*); or
4 (b) the National Gas (Commonwealth) Law and Regulations (as
5 defined by the *Australian Energy Market Act 2004*); or
6 (c) the Offshore Western Australian Pipelines (Commonwealth)
7 Law and Regulations (as defined by the *Australian Energy*
8 *Market Act 2004*).

9 **59 Subsection 4(1)**

10 Insert:

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

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

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

22 **60 Subsection 4(1)**

23 Insert:

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

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

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

35 **61 Subsection 4(1)**

1 Insert:

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

- 3 (a) a uniform energy law that applies as a law of a State or
4 Territory;
- 5 (b) a law of a State or Territory that applies a law mentioned in
6 paragraph (a) as a law of its own jurisdiction;
- 7 (c) any other provisions of a law of a State or Territory that:
8 (i) relate to energy; and
9 (ii) are prescribed by the regulations for the purposes of this
10 paragraph;
- 11 being those provisions as in force from time to time.

12 **62 Subsection 4(1)**

13 Insert:

14 ***uniform energy law*** means:

- 15 (a) the South Australian Electricity Legislation; or
16 (b) the South Australian Gas Legislation; or
17 (c) the Western Australian Gas Legislation; or
18 (d) provisions of a law of a State or Territory that:
19 (i) relate to energy; and
20 (ii) are prescribed by the regulations for the purposes of this
21 subparagraph;
- 22 being those provisions as in force from time to time.

23 **63 Subsection 4(1)**

24 Insert:

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

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

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

1 **64 Section 29AA**

2 Repeal the section.

3 **65 Subsection 29B(2B)**

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

6 **66 Sections 29BA, 29BB and 29BC**

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

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

11 **67 Section 44AB (definition of *South Australian Electricity***
12 ***Legislation*)**

13 Repeal the definition.

14 **68 Section 44AB (definition of *State/Territory energy law*)**

15 Repeal the definition.

16 **69 Section 44AB (definition of *uniform energy law*)**

17 Repeal the definition.

18 **70 Section 44AH (note)**

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

20 **71 At the end of Subdivision C of Division 4 of Part IIIAA**

21 Add:

22 **44AAEA Arbitration**

23 (1) Sections 44AAD and 44AAE do not apply to the AER as
24 constituted for an arbitration under:

25 (a) the National Electricity (Commonwealth) Law (as defined by
26 the *Australian Energy Market Act 2004*); or

27 (b) the National Gas (Commonwealth) Law (as defined by the
28 *Australian Energy Market Act 2004*); or

29 (c) a provision of a State/Territory energy law.

1 (2) The reference in subsection (1) to an *arbitration* includes a
2 reference to each of the following:

- 3 (a) the making, variation or revocation of an access
4 determination (within the meaning of the law concerned);
5 (b) the performance of a function, or the exercise of a power, in
6 connection with the making, variation or revocation of an
7 access determination (within the meaning of the law
8 concerned).

9 **72 Section 44B**

10 Insert:

11 *National Gas Law* means:

- 12 (a) the National Gas Law set out in the Schedule to the *National*
13 *Gas (South Australia) Act 2007* of South Australia as in force
14 from time to time, as that Law applies as a law of South
15 Australia; or
16 (b) if an Act of another State or of the Australian Capital
17 Territory or the Northern Territory applies the National Gas
18 Law set out in the Schedule to the *National Gas (South*
19 *Australia) Act 2007* of South Australia, as in force from time
20 to time, as a law of that other State or of that Territory—the
21 National Gas Law as so applied; or
22 (c) the National Gas Access Law set out in Schedule 1 to the
23 *National Gas Access (Western Australia) Act 2007* of
24 Western Australia as in force from time to time; or
25 (d) the National Gas (Commonwealth) Law (within the meaning
26 of the *Australian Energy Market Act 2004*); or
27 (e) the Offshore Western Australian Pipelines (Commonwealth)
28 Law (within the meaning of the *Australian Energy Market*
29 *Act 2004*).

30 **73 Section 44B (at the end of the definition of *State or***
31 ***Territory access regime law*)**

32 Add:

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

34 **74 Subsections 44G(5), (6) and (7)**

35 Repeal the subsections, substitute:

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

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

10 Repeal the subsections, substitute:

- 12 (6A) In deciding whether a regime is an effective access regime, the
13 designated Minister must disregard Chapter 5 of a National Gas
14 Law.
- 15 (6B) The designated Minister cannot declare a service provided by
16 means of a pipeline (within the meaning of a National Gas Law) if:
17 (a) a 15-year no-coverage determination is in force under the
18 National Gas Law in respect of the pipeline; or
19 (b) a price regulation exemption is in force under the National
20 Gas Law in respect of the pipeline.

76 Subsection 44M(4A)

21 Repeal the subsection, substitute:

- 22 (4A) In deciding what recommendation it should make, the Council
23 must disregard Chapter 5 of a National Gas Law.

77 Subsection 44N(2A)

24 Repeal the subsection, substitute:

- 25 (2A) In making a decision, the Commonwealth Minister must disregard
26 Chapter 5 of a National Gas Law.

78 Section 44ZZP

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

79 At the end of section 44ZZP

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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:

Schedule 1 Amendments commencing on Proclamation
Part 1 Amendments

- 1 (1B) Regulations made for the purposes of paragraph (1)(a) or (b) do not
2 apply in relation to the functions of the Tribunal under a
3 State/Territory energy law or a designated Commonwealth energy
4 law.
5 Note: See section 44ZZR.

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2 **Part 2—Repeal**

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

4 **82 The whole of the Act**

5 Repeal the Act.

1
2 **Schedule 2—Amendments dependent on the**
3 **commencement of Chapter 2 of the**
4 **Offshore Petroleum Act 2006**
5

6 *Australian Energy Market Act 2004*

7 **1 Subsection 3(1) (definition of *coastal waters*)**

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

11 **2 Subsection 3(1) (definition of *offshore Western Australian***
12 ***pipeline*)**

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

14 **3 Paragraph 11A(1)(a)**

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

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

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

20 **4 Paragraph 11J(a)**

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

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

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

26 *Offshore Petroleum Act 2006*

27 **5 Section 69**

28 Repeal the section.

29 **6 Section 178**

30 Omit:

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2

- The Joint Authority may direct a pipeline licensee to be a common carrier of petroleum in relation to the pipeline.

3

7 Section 192

4

Repeal the section.

5

8 Section 227 (table item 9)

6

Repeal the item.

7

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

8

9

9 Item 4 of Schedule 2 (note 3)

10

Repeal the note.