



Western Australia

## **Energy Arbitration and Review Act 1998**



# Energy Arbitration and Review Act 1998

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Western Australia

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## **Energy Arbitration and Review Act 1998**

**An Act to provide for a review board and for an official who may  
arbitrate certain disputes, and for related purposes.**

*[Long title inserted by No. 16 of 2009 s. 24.]*

*[Preamble deleted by No. 16 of 2009 s. 25.]*

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Energy Arbitration and Review Act 1998*<sup>1</sup>.

*[Section 1 amended by No. 16 of 2009 s. 26.]*

*[2-4. Deleted by No. 16 of 2009 s. 27.]*

### **5. Crown to be bound**

This Act binds the Crown, not only in the right of Western Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

*[Section 5 amended by No. 16 of 2009 s. 28.]*

*[6-8. Deleted by No. 16 of 2009 s. 29.]*

*[Part 2-3 (s. 9-14) deleted by No. 16 of 2009 s. 30.]*

*[Part 4 Div. 1 (s. 15-19) deleted by No. 16 of 2009 s. 30.]*

*[Part 4 Div. 2 and 3 (s. 20-22) deleted by No. 32 of 2001 s. 18.]*

*[Part 5 (s. 23-25) deleted by No. 16 of 2009 s. 30.]*



## **Part 6 — Review board and arbitrator**

*[Heading inserted by No. 16 of 2009 s. 31.]*

*[Division 1: Subdivision 1 heading deleted by No. 67 of 2003 Sch. 2 cl. 35;  
s. 26 deleted by No. 16 of 2009 s. 32;  
Subdivision 2 (s. 27-35) deleted by No. 67 of 2003 Sch. 2 cl. 37;  
Subdivision 3 heading deleted by No. 67 of 2003 Sch. 2 cl. 38;  
s. 36 deleted by No. 16 of 2009 s. 32;  
s. 37 deleted by No. 67 of 2003 Sch. 2 cl. 40;  
s. 38 deleted by No. 16 of 2009 s. 32;  
s. 39-41 deleted by No. 67 of 2003 Sch. 2 cl. 42;  
Subdivision 4-6 (s. 42-48) deleted by No. 67 of 2003 Sch. 2 cl. 43.]*

### **Division 2 — Review board**

*[Heading inserted by No. 16 of 2009 s. 33.]*

#### **Subdivision 1 — Preliminary**

#### **49. Terms used**

In this Division —

**Board** means the Western Australian Electricity Review Board established by section 50;

**legal practitioner** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3.

*[Section 49 amended by No. 65 of 2003 s. 38; No. 21 of 2008 s. 665; No. 16 of 2009 s. 34.]*

**Subdivision 2 — Western Australian Electricity Review  
Board established**

*[Heading inserted by No. 16 of 2009 s. 35.]*

**50.        Western Australian Electricity Review Board**

- (1) The Western Australian Electricity Review Board is established.
- (2A) The Board has the functions conferred on it under the *Electricity Industry Act 2004*, the *Gas Services Information Act 2012* or any other written law.
- (2) The Board is to be taken to be a tribunal that comes within item 4 of Schedule 1 to the *Public Sector Management Act 1994*.

*[Section 50 amended by No. 16 of 2009 s. 36; No. 5 of 2012 s. 16; No. 25 of 2013 s. 40(2).]*

**51.        Constitution of Board**

- (1) The Board is to be constituted, in relation to particular proceedings before the Board, of —
  - (a) a presiding member, being a legal practitioner chosen by the Attorney General from a panel of legal practitioners established under this Division; and
  - (b) 2 experts chosen by the presiding member from a panel of experts established under this Division.
- (2) The Board may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.
- (3) If an expert hearing proceedings dies or is for any reason unable to continue with the proceedings, the Board constituted of the presiding member and the other expert may, if the presiding member so determines, continue and complete the proceedings.

**52. Panels**

- (1) For the purposes of this Division there are to be —
  - (a) a panel of legal practitioners each of whom is of not less than 7 years' standing; and
  - (b) a panel of experts each of whom has relevant expertise in industry, commerce or accounting.
- (2) A person cannot be appointed as a member of a panel if he or she is —
  - (a) an employee as defined in section 3(1) of the *Public Sector Management Act 1994*; or
  - (b) an officer or employee of an entity described in Schedule 1 to that Act.
- (3) The Governor may from time to time make appointments to a panel.
- (4) An appointment is to be notified in the *Gazette*.
- (5) A person is to be appointed for a term of not more than 5 years and is, on the expiration of a term, eligible for reappointment.
- (6) Despite a person ceasing to be a member of a panel through expiry of the term for which the person was appointed the person may continue as a member of the Board for the purpose of completing part-heard proceedings.

**53. Disclosure of interests**

- (1) A person chosen to act as a member of the Board who has a conflict of interest in relation to a matter before, or about to come before, the Board must disclose the nature of the conflict to each party concerned in the matter.  
Penalty: \$10 000.
- (2) A person chosen to act as a member of the Board who has a conflict of interest in relation to a matter before the Board must

not take part in proceedings or exercise any powers in relation to the matter unless each party to the proceedings consents.

Penalty: \$10 000.

- (3) For the purposes of this section, a person has a conflict of interest in relation to a matter if the person has any direct or indirect interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the person's functions in relation to that matter.

**54. Resignation and removal**

- (1) A member of a panel may at any time resign by notice in writing delivered to the Minister.
- (2) The Governor may remove a person from membership of a panel —
- (a) if the Governor considers that the person —
    - (i) is mentally or physically incapable; or
    - (ii) is incompetent; or
    - (iii) has neglected his or her duties; or
    - (iv) has failed to comply with section 53; or
    - (v) has been guilty of misconduct that impairs the performance of his or her duties;
  - or
  - (b) if the person becomes an officer or employee described in section 52(2); or
  - (c) if the person is an insolvent under administration, as that term is defined in the *Corporations Act 2001* of the Commonwealth; or
  - (d) in the case of a panel referred to in section 52(1)(a), if the person ceases to be a legal practitioner.

*[Section 54 amended by No. 10 of 2001 s. 220.]*

**55. Remuneration**

The remuneration and allowances of a member of a panel are to be determined by the Governor.

**56. Administrative support**

- (1) The arbitrator appointed under section 62 is to provide the Board with —
  - (a) the services of such officers and other persons; and
  - (b) such facilities and support,as the Board may reasonably require.
- (2) Without limiting subsection (1), the arbitrator may under that subsection provide the Board with the services of any person suitably qualified in any field of expertise to advise the Board on matters within that field of expertise.

**Subdivision 3 — Proceedings before the Board**

**57. Principles governing hearings**

- (1) Subject to any determination of the Board, proceedings before the Board are to be conducted by way of a fresh hearing and for that purpose the Board may receive evidence given orally or, if the Board determines, by affidavit.
- (2) The Board —
  - (a) is not bound by the rules of evidence and may inform itself as it thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case and without regard to technicalities and forms.
- (3) 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.

*[Section 57 amended by No. 16 of 2009 s. 37.]*

**58. Powers in respect of evidence and information**

- (1) The Board may, for the purposes of proceedings before the Board —
- (a) by summons signed on behalf of the Board by a member of the Board require the attendance of a person before the Board; or
  - (b) by summons signed on behalf of the Board by a member of the Board require the production before the Board of any relevant books, papers or documents; or
  - (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and make copies of any of them or any of their contents; or
  - (d) require any person to make an oath or affirmation to answer truly all questions put by a member of the Board, or by a person appearing before the Board, relating to a matter before the Board; or
  - (e) require any person appearing before the Board to answer any relevant questions put by a member of the Board or by a person appearing before the Board.
- (2) A person commits an offence if he or she —
- (a) has been served with a summons to appear before the Board and fails, without reasonable excuse, to attend in obedience to the summons; or
  - (b) has been served with a summons to produce books, papers or documents and fails, without reasonable excuse, to comply with the summons; or
  - (c) misbehaves before the Board, wilfully insults the Board or any member of the Board, or interrupts the proceedings of the Board; or
  - (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board.

Penalty: \$10 000.

**59. Practice and procedures**

- (1) The Board may —
  - (a) sit at any time or place;
  - (b) adjourn proceedings from time to time and from place to place;
  - (c) refer a matter to an expert for report and accept the expert's report in evidence.
- (2) The Board must give the parties to proceedings reasonable notice of the time and place of the proceedings.
- (3) A party is entitled to appear before the Board personally or by counsel or other representative.
- (4) A party must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.
- (5) The Board may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.
- (6) At the conclusion of proceedings, the Board must give to each party a written statement of the reasons for its decision.

*[Section 59 amended by No. 16 of 2009 s. 38.]*

**Subdivision 4 — General**

**60. Immunity**

No civil liability attaches to —

- (a) a member of the Board; or
- (b) a person acting under section 56,

for an act or omission by the Board, or by the member or person, in good faith in the performance, or purported performance, of official functions.

## **Division 3 — Arbitrator**

### **Subdivision 1 — Preliminary**

#### **61. Term used: arbitrator**

In this Division —

**arbitrator** means the Western Australian Energy Disputes Arbitrator appointed under section 62 and, except in sections 62(2), 65 and 69(1), includes a person acting under section 71.

*[Section 61 amended by No. 16 of 2009 s. 39.]*

### **Subdivision 2 — Office of Western Australian Energy Disputes Arbitrator established**

*[Heading amended by No. 16 of 2009 s. 40.]*

#### **62. Western Australian Energy Disputes Arbitrator**

- (1) An office of the Western Australian Energy Disputes Arbitrator is established.
- (2) The arbitrator is to be appointed by the Governor.
- (3) The arbitrator is not required to devote the whole of his or her time to the performance of the functions of office.

*[Section 62 amended by No. 16 of 2009 s. 41.]*

#### **63. Appointment of arbitrator**

- (1) When there is a vacancy or impending vacancy in the office of arbitrator, the Minister is required to —
  - (a) inform the Commissioner of that vacancy or impending vacancy; and
  - (b) request the Commissioner to act under this section to enable the filling of that vacancy or impending vacancy.
- (2) On receiving the request, the Commissioner is to invite the Minister to inform the Commissioner of any matters that the



Minister wishes the Commissioner to take into account in nominating a person or persons suitable for appointment to the office of arbitrator.

- (3) The Commissioner is to notify the vacancy or impending vacancy in such manner as the Commissioner thinks sufficient to enable suitably qualified persons to apply for appointment.
- (4) The Commissioner is to cause applicants to be examined, but nothing in this section requires the examination of all applicants.
- (5) To assist in the examination of applicants, the Commissioner is to form a selection panel that is to be chaired by the Coordinator of Energy and is to include at least 2 other persons chosen by the Commissioner.
- (6) The Commissioner may seek advice from such sources as the Commissioner considers relevant and may invite such other persons as the Commissioner thinks fit to assist him or her to decide on the person or persons suitable for appointment to the office of arbitrator, and any person so invited may sit on the selection panel when it is examining applicants and may take part in the deliberations of the Commissioner on the matter.
- (7) If the Commissioner decides on a person or persons suitable for appointment to the office of arbitrator, the Commissioner is to nominate that person or those persons and forward to the Minister the name or names of the person or persons nominated, together with full particulars of the qualifications of that person or those persons.
- (8) If the Minister accepts the person, or one of the persons, nominated by the Commissioner, the Minister is to recommend to the Governor that the person accepted be appointed.
- (9) If the Minister rejects the person, or both or all of the persons, nominated by the Commissioner, the Minister may request the nomination of another person by the Commissioner and is to deal with any further nomination as if it were made under subsection (7).

- (10) If the Commissioner does not nominate any person suitable for appointment or a nomination or further nomination by the Commissioner is rejected, the Minister —
- (a) may recommend to the Governor that —
    - (i) in the absence of a nomination by the Commissioner, a named person; or
    - (ii) a named person other than a person nominated by the Commissioner,as the case requires, be appointed to the office of arbitrator; and
  - (b) is to cause notice of the making of that recommendation, together with the reasons for recommending the named person, to be published in the *Gazette* as soon as practicable.

- (11) In this section —

**Commissioner** means the Public Sector Commissioner under the *Public Sector Management Act 1994*;

**Coordinator of Energy** means the Coordinator of Energy appointed as required by the *Energy Coordination Act 1994*.

[Section 63 amended by No. 39 of 2010 s. 77.]

**64. Application of *Public Sector Management Act 1994***

- (1) The office of arbitrator is to be taken to be a tribunal that comes within item 4 of Schedule 1 to the *Public Sector Management Act 1994*.
- (2) Despite subsection (1), sections 8, 9, 24, 30 and 31 of that Act are to apply as if —
  - (a) the arbitrator and any officer or employee whose services are used under section 80 of this Act were a public sector body for the purposes of that Act; and
  - (b) the arbitrator were the chief employee of that public sector body for the purposes of sections 30 and 31 of that Act.

**65. Term of office**

The arbitrator is to be appointed for a term of office of not less than 3 years and not more than 5 years and is, on the expiration of a term of office, eligible for reappointment.

**66. Resignation**

- (1) The arbitrator may resign from office by a signed notice of resignation addressed to the Minister.
- (2) A resignation takes effect on the day on which notice is received by the Minister or on a later day specified in the notice.

**67. Suspension of arbitrator**

- (1) If the Governor is satisfied that the arbitrator —
  - (a) is physically or mentally incapable of performing the functions of office; or
  - (b) has shown incompetence or neglect in performing those functions; or
  - (c) has been guilty of misbehaviour,

the Governor may suspend the arbitrator from office.

- (2) In subsection (1)(c) —  
***misbehaviour*** includes conduct that renders the arbitrator unfit to hold office as arbitrator whether or not the conduct relates to any function of the office.

**68. Removal of arbitrator**

- (1) After being suspended from office under section 67 the arbitrator is entitled to be restored to office unless —
  - (a) a statement of the grounds of suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and
  - (b) each House of Parliament, during the session in which the statement is so laid, and within 30 days of it being so

laid, passes an address praying for the removal of the arbitrator from office.

- (2) If the arbitrator —
- (a) is suspended from office under section 67; and
  - (b) is not restored to office under subsection (1),
- the office of arbitrator becomes vacant.

**69. Remuneration and conditions of office**

- (1) The remuneration and allowances and, subject to this Division, the other conditions of office of the arbitrator are to be determined by the Governor.
- (2) The remuneration and allowances and conditions of office of the arbitrator must not be varied while the arbitrator is in office so as to become less favourable to the arbitrator.

**70. Oath of office**

- (1) Before beginning to perform the functions of office, the arbitrator is to take an oath or make an affirmation that he or she will perform those functions faithfully and impartially.
- (2) The oath or affirmation is to be administered by a Judge.

**71. Acting arbitrator**

- (1) The Governor may appoint a person to act in the office of the arbitrator under this section and a person so appointed has, while so acting, all the functions of the arbitrator.
- (2) A person appointed under subsection (1) may act in the office of the arbitrator if —
  - (a) the arbitrator is temporarily unable to perform official duties; or
  - (b) the arbitrator is suspended from office under section 67; or

- (c) the office of the arbitrator is temporarily vacant; or
  - (d) the arbitrator is disqualified from acting in relation to a particular matter, in relation to that matter.
- (3) Subject to this Division, the terms and conditions of appointment of the person appointed under subsection (1) are to be as determined from time to time by the Governor.
- (4) An act or omission of a person acting under subsection (1) is not to be questioned on the ground that the occasion for his or her acting had not arisen or had ceased.

**72. Duties may be performed concurrently**

- (1) A person acting under section 71 for the reason mentioned in subsection (2)(a) or (b) of that section may complete the hearing of a matter even though —
  - (a) the reason for his or her acting has ceased; and
  - (b) the arbitrator is at the same time performing other duties of the office.
- (2) A person acting under section 71 for the reason mentioned in subsection (2)(d) of that section may hear and determine the matter in relation to which he or she is acting even though the arbitrator is at the same time performing other functions of the office.

**Subdivision 3 — Functions**

**73. Functions**

- (1) The arbitrator has the functions conferred on the arbitrator —
  - (a) by or under the *National Gas Access (WA) Act 2009*; or
  - (b) by or under the *Electricity Industry Act 2004*; or
  - [(c) *deleted*]
  - (da) under the *Gas Supply (Gas Quality Specifications) Act 2009*; or
  - (d) by regulations referred to in section 74 of this Act; or

(e) by section 56 of this Act.

- (2) The arbitrator may do all things that are necessary or convenient to be done for or in connection with the performance of the arbitrator's functions.

*[Section 73 amended by No. 53 of 2003 s. 117; No. 16 of 2009 s. 42; No. 35 of 2009 s. 38.]*

**74. Additional functions may be prescribed**

- (1) Regulations may be made under section 86 providing for the arbitrator to have the function of hearing and determining disputes of a kind provided for in the regulations, being disputes —
- (a) connected with or arising out of contracts for —
    - (i) the distribution, transportation or supply of gas;  
or
    - (ii) access to gas pipeline systems;and
  - (b) not otherwise provided for by section 73(1).
- (2) Regulations referred to in subsection (1) may provide, in relation to the arbitrator —
- (a) for any matter of the kind mentioned in subsection (3) of section 95 of the *Gas Corporation Act 1994*<sup>2</sup>(as enacted immediately before the repeal of that Act), other than paragraph (d) and (i)(ia) of that subsection; and
  - (b) for the function of hearing and determining prescribed disputes to be exclusive of the jurisdiction of courts and other tribunals.
- (3) Regulations referred to in subsection (1) may make provision for and in relation to the imposition and payment of fees and charges in connection with the performance of functions the arbitrator has under those regulations.

- (4) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

*[Section 74 amended by No. 58 of 1999 s. 96; No. 16 of 2009 s. 43.]*

## **75. Independence of arbitrator**

- (1) Except as provided in subsection (2), the arbitrator is independent of direction or control by the Crown or any Minister or officer of the Crown in the performance of the arbitrator's functions.
- (2) The Minister may give directions in writing to the arbitrator to the extent allowed by subsection (3), and the arbitrator is to give effect to any such direction.
- (3) Directions under subsection (2) —
- (a) may relate only to general policies to be followed by the arbitrator in matters of administration, including financial administration; and
  - (b) cannot constrain the arbitrator with respect to the performance of any function referred to in section 73(1).
- (4) If a direction is given under subsection (2), the arbitrator is to cause the text of the direction to be published in the *Gazette* within 14 days after the direction is given and, within 14 days after any person asks the arbitrator to give to the person a copy of the direction, the arbitrator is to comply with the request.
- (5) The text of a direction given under subsection (2) is to be tabled in both Houses of Parliament not later than 14 sitting days of the day on which the direction was given and included in the annual report submitted by the arbitrator under Part 5 of the *Financial Management Act 2006*.

*[Section 75 amended by No. 77 of 2006 Sch. 1 cl. 73(1).]*

**76.        Copies of decisions to be given to Economic Regulation Authority**

Where in performing functions referred to in section 73(1) the arbitrator is required to give a copy of a draft decision or a final decision to the parties to a dispute, the arbitrator is to also give a copy of the decision to the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*.

*[Section 76 amended by No. 67 of 2003 Sch. 2 cl. 44; No. 16 of 2009 s. 44.]*

**77.        Commercial Arbitration Act 2012 does not apply**

The arbitrator is not an arbitrator within the meaning of the *Commercial Arbitration Act 2012*, and the dispute resolution processes involved in performing the arbitrator's functions mentioned in section 73(1) are not arbitrations within the meaning of that Act.

*[Section 77 amended by No. 16 of 2009 s. 45; No. 23 of 2012 s. 45.]*

**78.        Delegation**

- (1) The arbitrator may by instrument delegate the performance of a function to a person who is, in the arbitrator's opinion, competent to perform that function.
- (2) Subsection (1) does not apply to —
  - (a) the hearing and determination, or any aspect of the hearing or determination, of a dispute; and
  - (b) the power conferred by subsection (1).

**79.        Conflict of interest**

- (1) The arbitrator must inform the Minister in writing of —
  - (a) any direct or indirect interest that the arbitrator has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or



- (b) any other direct or indirect interest that the arbitrator has or acquires that conflicts or may conflict with the arbitrator's duties.

Penalty: \$10 000.

- (2) The Minister may —
  - (a) direct the arbitrator to resolve a conflict between a direct or indirect interest and a duty of the arbitrator in relation to a particular matter; and
  - (b) if the conflict is not resolved to the Minister's satisfaction, disqualify the arbitrator from acting in relation to the matter.

#### **Subdivision 4 — Staff and consultants**

#### **80. Use of government staff etc.**

- (1) The arbitrator may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service; or
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State,other than an officer or employee of an electricity corporation.
- (2) The arbitrator may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality, other than an electricity corporation,make use of any facilities of the department, agency or instrumentality.

- (3) An arrangement under subsection (1) is to provide, without limiting its other provisions, that while the arbitrator is making use of the services of an officer or employee —
- (a) the arbitrator has administrative authority over the officer to the exclusion of any person who would normally have that authority; and
  - (b) the salary and allowances of the officer are to be paid out of moneys available to the arbitrator for that purpose.
- (4) Subject to subsection (3), an arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.
- (5) In this section —

***electricity corporation*** means a body established by the *Electricity Corporations Act 2005* section 4(1).

*[Section 80 amended by No. 18 of 2005 s. 139; No. 25 of 2013 s. 40(3).]*

**81. Consultants**

The arbitrator may engage persons under contracts for services to provide such professional, technical or other assistance as the arbitrator considers necessary for the performance of his or her functions.

*[Section 81 amended by No. 16 of 2009 s. 46.]*

**Subdivision 5 — Financial provisions**

**82. Bank account**

- (1) The arbitrator is to have an account at a bank approved by the Treasurer.
- (2) The account is to be called the “Western Australian Energy Disputes Arbitrator Account”, and it is to be a continuation of

the account formerly called the “Western Australian Gas Disputes Arbitrator Account”.

- (3) The account is to be —
- (a) credited with all funds received by, made available to, or payable to, the arbitrator including —
    - (i) moneys appropriated by Parliament; and
    - (ii) fees and charges payable to the arbitrator or the Board in connection with the performance of the functions of the arbitrator or the Board;
  - and
  - (b) charged with all expenditure incurred under this Division and section 56 to enable the functions of the arbitrator to be performed, including the remuneration and allowances referred to in section 69.

*[Section 82 amended by No. 16 of 2009 s. 47.]*

**83. Borrowing from Treasurer**

The arbitrator may borrow from the Treasurer such amounts as the Treasurer approves and on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

**84. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the arbitrator and the arbitrator’s operations.
- (2) Despite subsection (1), any requirement under the Treasurer’s instructions (issued under section 78 of the *Financial Management Act 2006*) that the arbitrator prepare performance indicators is to be limited to the arbitrator’s management

functions (including financial management), and is not to apply to the performance of any function referred to in section 73.

*[Section 84 amended by No. 77 of 2006 Sch. 1 cl. 73(2) and (3).]*

#### **Subdivision 6 — General**

#### **85. Immunity**

- (1) No personal liability attaches to —
- (a) the arbitrator; or
  - (b) a person acting under section 71; or
  - (c) a delegate of the arbitrator; or
  - (d) a person acting under the direction or authority of the arbitrator,
- for an act or omission in good faith in the performance, or purported performance, of official functions.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

#### **Division 4 — Miscellaneous**

#### **86. Regulations**

The Governor may make regulations prescribing all matters that are —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.

*[87. Deleted by No. 16 of 2009 s. 48.]*

*[88. Deleted by No. 16 of 2009 s. 49.]*

*[Parts 7 (s. 89) and 8 (s. 90-97) deleted by No. 16 of 2009 s. 50.]*

*[Schedules 1-3 deleted by No. 16 of 2009 s. 51.]*

## Notes

- <sup>1</sup> This reprint is a compilation as at 19 August 2016 of the *Energy Arbitration and Review Act 1998* and includes the amendments made by the other written laws referred to in the following table<sup>3</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Gas Pipelines Access (Western Australia) Act 1998</i> <sup>4</sup>	65 of 1998	15 Jan 1999	s. 1 and 2: 15 Jan 1999; Act other than s. 1, 2 and Sch. 3 Div. 2 Subdiv. 3 and Div. 7 Subdiv. 3: 9 Feb 1999 (see s. 2 and <i>Gazette</i> 8 Feb 1999 p. 441); Sch. 3 Div. 2 Subdiv. 3 and Div. 7 Subdiv. 3: 1 Jan 2000 (see s. 2(1))
<i>Energy Coordination Amendment Act 1999</i> s. 10(3)	20 of 1999	24 Jun 1999	16 Oct 1999 (see s. 2 and <i>Gazette</i> 15 Oct 1999 p. 4865)
<i>Gas Corporation (Business Disposal) Act 1999</i> s. 62-64, 87, 96	58 of 1999 (as amended by No. 74 of 2003 s. 58(3))	24 Dec 1999	s. 62-64: 24 Dec 1999 (see s. 2(1)); s. 87: 1 Jul 2000 (see s. 2(2) and <i>Gazette</i> 4 Jul 2000 p. 3545); s. 96: 16 Dec 2000 (see s. 2(5) and <i>Gazette</i> 15 Dec 2000 p. 7201)
<b>Reprint of the <i>Gas Pipelines Access (Western Australia) Act 1998</i> as at 11 Aug 2000</b> (includes amendments listed above except those in the <i>Gas Corporation (Business Disposal) Act 1999</i> s. 96)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Federal Courts and Tribunals) Act 2001</i> Pt. 5	32 of 2001	21 Dec 2001	21 Dec 2001 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Gas Pipelines Access (Western Australia) (Reviews) Amendment Act 2003</i>	42 of 2003	30 Jun 2003	s. 1 and 2: 30 Jun 2003; Act other than s 1 and 2: 12 Jul 2003 (see s. 2 and <i>Gazette</i> 11 Jul 2003 p. 2739)
<i>Energy Legislation Amendment Act 2003</i> s. 117	53 of 2003	8 Oct 2003	8 Oct 2003 (see s. 2(1))
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 38	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Economic Regulation Authority Act 2003</i> Sch. 2 Div 8 <sup>5</sup>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 59	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<b>Reprint 2: The Gas Pipelines Access (Western Australia) Act 1998 as at 8 Oct 2004</b> (includes amendments listed above)			
<i>Electricity Corporations Act 2005</i> s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and <i>Gazette</i> 31 Mar 2006 p. 1153)
<i>Energy Operators (Powers) Amendment Act 2006</i> s. 5	8 of 2006	5 May 2006	5 May 2006 (see s. 2)
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 73	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 10	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Legal Profession Act 2008</i> s. 665	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 64	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>National Gas Access (WA) Act 2009</i> Pt. 7 Div. 1	16 of 2009	1 Sep 2009	1 Jan 2010 (see s. 2(b) and <i>Gazette</i> 31 Dec 2009 p. 5327)

Short title	Number and year	Assent	Commencement
<i>Gas Supply (Gas Quality Specifications) Act 2009</i> Pt. 7 Div. 2	35 of 2009	3 Dec 2009	27 Mar 2010 (see s. 2(b) and <i>Gazette</i> 26 Mar 2010 p. 1133)
<b>Reprint 3: The Energy Arbitration and Review Act 1998 as at 19 Mar 2010</b> (includes amendments listed above except those in the <i>Gas Supply (Gas Quality Specifications) Act 2009</i> )			
<i>Public Sector Reform Act 2010</i> s. 77	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Gas Services Information Act 2012</i> Pt. 3	5 of 2012	10 Apr 2012	30 Jun 2012 (see s. 2(b) and <i>Gazette</i> 29 Jun 2012 p. 2929)
<i>Commercial Arbitration Act 2012</i> s. 45 it. 7	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and <i>Gazette</i> 6 Aug 2013 p. 3677)
<i>Electricity Corporations Amendment Act 2013</i> s. 40	25 of 2013	18 Dec 2013	1 Jan 2014 (see s. 2(c) and <i>Gazette</i> 27 Dec 2013 p. 6465)
<b>Reprint 4: The Energy Arbitration and Review Act 1998 as at 19 Aug 2016</b> (includes amendments listed above)			

- <sup>2</sup> Repealed by the *Gas Corporation (Business Disposal) Act 1999*.
- <sup>3</sup> The amendment in the *Federal Courts (State Jurisdiction) Act 1999* s. 10(3) is not included because s. 20 which it sought to amend had been deleted before the amendment purported to come into operation.
- <sup>4</sup> Now known as the *Energy Arbitration and Review Act 1998*; short title changed (see note under s. 1).
- <sup>5</sup> The *Economic Regulation Authority Act 2003* s. 63(1), which gives effect to Sch. 3, reads as follows:

**63. Transitional and saving provisions**

- (1) Schedule 3 has effect to make transitional and saving provisions in respect of the amendments made in Schedule 2 Divisions 8, 12 and 18.

Schedule 3 reads as follows:

**Schedule 3 — Transitional and saving provisions for amendments  
in Schedule 2 Divisions 8, 12 and 18**

[s. 63(1)]

**1. Definitions**

In this Schedule —

**commencement day** means the day on which this Schedule comes into operation;

**former official** means —

- (a) the Coordinator of Water Services referred to in section 4 of the *Water Services Coordination Act 1995* as in effect immediately before the commencement day;
- (b) the Gas Pipelines Access Regulator; or
- (c) the Rail Access Regulator;

**Gas Pipelines Access Regulator** means the Western Australian Independent Gas Pipelines Access Regulator referred to in section 27 of the *Gas Pipelines Access (Western Australia) Act 1998* as in effect immediately before the commencement day;

**Rail Access Regulator** means the Western Australian Independent Rail Access Regulator referred to in section 13 of the *Railways (Access) Act 1998* as in effect immediately before the commencement day.

**2. Interpretation Act 1984 to apply**

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

**3. Decisions of Gas Pipelines Access Regulator**

Without limiting the operation of clause 6, a decision made by the Gas Pipelines Access Regulator as the local Regulator for the purposes of the Gas Pipelines Access (Western Australia) Law that was in effect immediately before the commencement day continues, on and after that day, as if made by the Authority as the local Regulator for the purposes of that Law.

**4. Decisions of Rail Access Regulator**

Without limiting the operation of clause 6, a decision made by the Rail Access Regulator as the Regulator for the purposes of the Code (as defined in the *Railways (Access) Act 1998*) that was in effect immediately before the commencement day continues, on and after that day, as if made by the Authority as the Regulator for the purposes of that Code.



**5. Licences under Part 3 of the *Water Services Coordination Act 1995***

Without limiting the operation of clause 6, an operating licence that was in effect under Part 3 of the *Water Services Coordination Act 1995* immediately before the commencement day continues, on and after that day, as an operating licence in effect under that Part as amended by Schedule 2 Division 18.

**6. Continuing effect of things done**

On and after the commencement day any act, matter or thing done or omitted to be done before that day by, to, or in respect of, a former official (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to, or in respect of, the Authority.

**7. Completion of things begun**

On and after the commencement day anything lawfully commenced by a former official may, so far as it is not contrary to this Act or any other written law that gives functions to the Authority, be carried on and completed by the Authority.

**8. Proceedings etc.**

Any proceedings or remedy that immediately before the commencement day might have been brought or continued by or available against or to a former official, may, on and after that day, be brought or continued and are available, by or against or to the Authority.

**9. Records**

On and after the commencement day the Authority is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of each former official.

**10. Bank accounts**

- (1) The moneys standing to the credit of the account referred to in section 45 of the *Gas Pipelines Access (Western Australia) Act 1998* immediately before the commencement day are to be transferred to the account referred to in section 21 as soon as is practicable after that day.
- (2) The moneys standing to the credit of the account referred to in section 23D of the *Railways (Access) Act 1998* immediately before the commencement day are to be transferred to the account referred to in section 21 as soon as is practicable after that day.

**11. References to former official in agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which a former official is a party; or
- (b) which contains a reference to a former official,

has effect after the commencement day as if —

- (c) the Authority were substituted for the former official as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former official were (unless the context otherwise requires) amended to be or include a reference to the Authority.

**12. References to former official in written law**

A reference to a former official in an enactment in force immediately before the commencement day may, where the context so requires, be read as if it had been amended to be a reference to the Authority.

**13. Immunity to continue**

Despite the amendments made in Schedule 2 Divisions 8, 12 and 18, where a former official had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the Authority.

**14. Saving**

The operation of any provision of this Schedule is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

## 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)
arbitrator .....	61
Board.....	49
Commissioner .....	63(11)
Coordinator of Energy .....	63(11)
electricity corporation .....	80(5)
legal practitioner .....	49
misbehaviour.....	67(2)