



Energy Legislation Amendment Act 2006

No. 60, 2006

**An Act to amend legislation relating to energy, and
for other purposes**

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

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No. 60, 2006

An Act to amend legislation relating to energy, and for other purposes

[Assented to 22 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Energy Legislation Amendment Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 June 2006
2. Schedule 1	The day on which this Act receives the Royal Assent.	22 June 2006
3. Schedule 2, item 1	Immediately after the commencement of Schedules 1 and 2 to the <i>Trade Practices Amendment (Australian Energy Market) Act 2004</i> .	23 May 2005
4. Schedule 2, items 2 to 11	Immediately after the commencement of sections 3 to 14 of the <i>Australian Energy Market Act 2004</i> .	30 June 2005
5. Schedule 2, items 12 and 13	Immediately after the commencement of Schedules 1 and 2 to the <i>Trade Practices Amendment (Australian Energy Market) Act 2004</i> .	23 May 2005
6. Schedule 2, item 14	The day on which this Act receives the Royal Assent.	22 June 2006
7. Schedule 2, items 15 and 16	Immediately after the commencement of Schedules 1 and 2 to the <i>Trade Practices Amendment (Australian Energy Market) Act 2004</i> .	23 May 2005
8. Schedule 3	The day on which this Act receives the Royal Assent.	22 June 2006

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Gas amendments

Gas Pipelines Access (Commonwealth) Act 1998

1 Section 13

Repeal the section, substitute:

13 Commonwealth consent to conferral of functions etc. on Commonwealth Minister

- (1) The gas pipelines access legislation of a State or Territory may confer functions or powers, or impose duties, on the Commonwealth Minister for the purposes of that legislation.

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

Note 2: Functions and powers conferred, and duties imposed, on the NCC under the gas pipelines access legislation of a State or Territory are dealt with under section 29BA of the *Trade Practices Act 1974*.

Note 3: Functions and powers conferred, and duties imposed, on the ACCC or the Australian Competition Tribunal under the gas pipelines access legislation of a State or Territory are dealt with under section 44ZZM of the *Trade Practices Act 1974*.

- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by the gas pipelines access legislation of a State or Territory to the extent to which:
- (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Commonwealth Minister; or
 - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) The Commonwealth Minister cannot perform a duty or function, or exercise a power, under the gas pipelines access legislation of a State or Territory unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

13A How duty is imposed

Application

- (1) This section applies if the gas pipelines access legislation of a State or Territory purports to impose a duty on the Commonwealth Minister.

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

State or Territory legislative power sufficient to support duty

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

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

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

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
 - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commonwealth Minister.

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

13B When the gas pipelines access legislation of a State or Territory imposes a duty

For the purposes of sections 13 and 13A, the gas pipelines access legislation of a State or Territory *imposes a duty* on the Commonwealth Minister if:

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

Trade Practices Act 1974

2 Before section 29A

Insert:

29AA Definitions

In this Part:

Gas Pipelines Access Law has the same meaning as in the *Gas Pipelines Access (Commonwealth) Act 1998*.

Gas Pipelines Access (Western Australia) Law has the same meaning as in the *Gas Pipelines Access (Western Australia) Act 1998* of Western Australia.

State/Territory gas law means:

- (a) the Gas Pipelines Access Law, as it applies as a law of South Australia; or
- (b) if an Act of:
 - (i) another State; or
 - (ii) the Australian Capital Territory; or
 - (iii) the Northern Territory;applies the Gas Pipelines Access Law as a law of that other State or as a law of that Territory—the Gas Pipelines Access Law as so applying; or
- (c) the Gas Pipelines Access (Western Australia) Law.

3 After subsection 29B(2A)

Insert:

(2B) Subsection (2) does not apply to a State/Territory gas law.

Note: Section 29BA provides that a State/Territory gas law may confer functions or powers, or impose duties, on the Council.

4 After section 29B

Insert:

29BA Commonwealth consent to conferral of functions etc. on Council

(1) A State/Territory gas law may confer functions or powers, or impose duties, on the Council for the purposes of that law.

Note: Section 29BC sets out when such a law imposes a duty on the Council.

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

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

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

29BB How duty is imposed

Application

(1) This section applies if a State/Territory gas law purports to impose a duty on the Council.

Note: Section 29BC sets out when such a law imposes a duty on the Council.

State or Territory legislative power sufficient to support duty

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

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 29BA to the imposition of the duty by that law).

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

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Part to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Part 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 Part.
- (5) The duty is taken to be imposed by this Part in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
 - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Council.
- (6) Subsections (1) to (5) do not limit section 29BA.

29BC When a State/Territory gas law imposes a duty

For the purposes of sections 29BA and 29BB, a State/Territory gas law *imposes a duty* on the Council if:

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

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

5 Paragraph 44G(3)(a)

After “must”, insert “, subject to subsection (5),”.

6 At the end of section 44G

Add:

- (5) In deciding whether a regime is an effective access regime, the Council must disregard:
 - (a) Part 3A of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, as that Schedule applies as a law of South Australia; and
 - (b) if an Act of:
 - (i) the Commonwealth; or
 - (ii) another State; or
 - (iii) the Australian Capital Territory; or
 - (iv) the Northern Territory;applies Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as a law of the Commonwealth, as a law of that other State or as a law of that Territory—Part 3A of that Schedule as so applying.
- (6) The Council cannot recommend declaration of a service provided by means of a pipeline (within the meaning of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia) if:
 - (a) a binding no-coverage determination is in force under Part 3A of that Schedule, as that Schedule applies as a law of South Australia, in respect of the pipeline; or
 - (b) a price regulation exemption is in force under Part 3A of that Schedule, as that Schedule applies as a law of South Australia, in respect of the pipeline.
- (7) If an Act of:
 - (a) the Commonwealth; or
 - (b) another State; or
 - (c) the Australian Capital Territory; or

- (d) the Northern Territory;
applies Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as a law of the Commonwealth, as a law of that other State or as a law of that Territory, the Council cannot recommend declaration of a service provided by means of a pipeline (within the meaning of that Schedule as so applying) if:
 - (e) a binding no-coverage determination is in force under Part 3A of that Schedule, as so applying, in respect of the pipeline; or
 - (f) a price regulation exemption is in force under Part 3A of that Schedule, as so applying, in respect of the pipeline.

7 Subsection 44H(5)

Omit “Minister”, substitute “designated Minister”.

8 Paragraph 44H(5)(a)

After “must”, insert “, subject to subsection (6A),”.

9 After subsection 44H(6)

Insert:

- (6A) In deciding whether a regime is an effective access regime, the designated Minister must disregard:
 - (a) Part 3A of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, as that Schedule applies as a law of South Australia; and
 - (b) if an Act of:
 - (i) the Commonwealth; or
 - (ii) another State; or
 - (iii) the Australian Capital Territory; or
 - (iv) the Northern Territory;
applies Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as a law of the Commonwealth, as a law of that other State or as a law of that Territory—Part 3A of that Schedule as so applying.
- (6B) The designated Minister cannot declare a service provided by means of a pipeline (within the meaning of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia) if:

- (a) a binding no-coverage determination is in force under Part 3A of that Schedule, as that Schedule applies as a law of South Australia, in respect of the pipeline; or
 - (b) a price regulation exemption is in force under Part 3A of that Schedule, as that Schedule applies as a law of South Australia, in respect of the pipeline.
- (6C) If an Act of:
- (a) the Commonwealth; or
 - (b) another State; or
 - (c) the Australian Capital Territory; or
 - (d) the Northern Territory;
- applies Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as a law of the Commonwealth, as a law of that other State or as a law of that Territory, the designated Minister cannot declare a service provided by means of a pipeline (within the meaning of that Schedule as so applying) if:
- (e) a binding no-coverage determination is in force under Part 3A of that Schedule, as so applying, in respect of the pipeline; or
 - (f) a price regulation exemption is in force under Part 3A of that Schedule, as so applying, in respect of the pipeline.

10 Paragraph 44M(4)(a)

After “must”, insert “, subject to subsection (4A),”.

11 After subsection 44M(4)

Insert:

- (4A) In deciding what recommendation it should make, the Council must disregard:
- (a) Part 3A of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, as that Schedule applies as a law of South Australia; and
 - (b) if an Act of:
 - (i) another State; or
 - (ii) the Australian Capital Territory; or
 - (iii) the Northern Territory;applies Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as a law of that other

State or as a law of that Territory—Part 3A of that Schedule as so applying.

12 Paragraph 44N(2)(a)

After “must”, insert “, subject to subsection (2A),”.

13 After subsection 44N(2)

Insert:

(2A) In making a decision, the Commonwealth Minister must disregard:

(a) Part 3A of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, as that Schedule applies as a law of South Australia; and

(b) if an Act of:

(i) another State; or

(ii) the Australian Capital Territory; or

(iii) the Northern Territory;

applies Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as a law of that other State or as a law of that Territory—Part 3A of that Schedule as so applying.

Schedule 2—Electricity amendments

Administrative Decisions (Judicial Review) Act 1977

1 Paragraph 2(da) of Schedule 3

Omit “Schedule 1”, substitute “the Schedule”.

Australian Energy Market Act 2004

2 Subsection 3(1) (paragraph (a) of the definition of *South Australian Electricity Legislation*)

Omit “Schedule 1”, substitute “the Schedule”.

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

Omit “rules (including the National Electricity Code)”, substitute “Rules”.

4 Subsection 3(2)

Omit “Schedule 1”, substitute “the Schedule”.

5 Section 6

Omit “Schedule 1”, substitute “the Schedule”.

6 Section 8

Omit “(including the National Electricity Code)”.

7 Section 8

Omit “Schedule 1”, substitute “the Schedule”.

8 Paragraph 8(a)

Omit “rules”, substitute “Rules”.

9 Paragraph 11(2)(a)

Omit “Schedule 1”, substitute “the Schedule”.

10 Paragraph 11(2)(c)

Omit “rules (including the National Electricity Code)”, substitute “Rules”.

11 Paragraph 11(2)(c)

Omit “as rules”, substitute “as Rules”.

Trade Practices Act 1974

12 Section 44AB (paragraph (a) of the definition of *South Australian Electricity Legislation*)

Omit “Schedule 1”, substitute “the Schedule”.

13 Section 44AB (paragraph (c) of the definition of *South Australian Electricity Legislation*)

Omit “rules (including the National Electricity Code)”, substitute “Rules”.

14 After section 44AAG

Insert:

44AAGA Federal Court may order disconnection if an event specified in the National Electricity Rules occurs

(1) If a relevant disconnection event occurs, the Federal Court may make an order, on application by the AER on behalf of the Commonwealth, directing that a Registered participant’s loads be disconnected.

(2) In this section:

National Electricity Law means:

- (a) the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time; or
- (b) that Law as it applies as a law of another State; or
- (c) that Law as it applies as a law of a Territory; or
- (d) that Law as it applies as a law of the Commonwealth.

National Electricity Rules means:

- (a) the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia; or
- (b) those Rules as they apply as a law of another State; or
- (c) those Rules as they apply as a law of a Territory; or
- (d) those Rules as they apply as a law of the Commonwealth.

Registered participant has the same meaning as in the National Electricity Law.

relevant disconnection event means an event specified in the National Electricity Rules as being an event for which a Registered participant's loads may be disconnected, where the event does not constitute a breach of the National Electricity Rules.

15 Subsection 90B(1)

Omit "Code" (wherever occurring), substitute "Rules".

16 Subsection 90B(3)

Repeal the subsection, substitute:

- (3) In this section:

National Electricity Rules means:

- (a) the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia; or
- (b) those Rules as they apply as a law of another State; or
- (c) those Rules as they apply as a law of a Territory; or
- (d) those Rules as they apply as a law of the Commonwealth.

Schedule 3—Repeal of the Pipeline Authority Act 1973

Pipeline Authority Act 1973

1 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
House of Representatives on 25 May 2006
Senate on 13 June 2006]*

(60/06)
