



Western Australia

Fuel, Energy and Power Resources Act 1972

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Fuel, Energy and Power Resources Act 1972

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Western Australia

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at 13 March 2015

Fuel, Energy and Power Resources Act 1972

An Act to make provision for the conservation and utilisation of the present and future sources and supplies of fuel, energy, and power in and to Western Australia, the establishment and functions of the Fuel and Power Commission of Western Australia and the Fuel and Power Advisory Council, and for purposes connected therewith.

Part I — Preliminary

[Heading inserted by No. 22 of 1974 s. 3.]

1. Short title

This Act may be cited as the *Fuel, Energy and Power Resources Act 1972*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Crown bound

This Act binds the Crown.

[4. Deleted by No. 89 of 1994 s. 109.]

[4A. Deleted by No. 10 of 1998 s. 76.]

[Part II (s. 5-40) deleted by No. 25 of 1975 s. 32.]

Part III — Emergency provisions

[Heading inserted by No. 22 of 1974 s. 3.]

41. This Part to prevail over other Acts etc.

- (1) Where the provisions of this Part of this Act are inconsistent with any of the provisions of any other Act, or of any regulation, rule, local law or by-law made under any other Act, the provisions of this Part shall prevail.
- (2) Emergency regulations made under this Part shall have effect notwithstanding anything, whether express or implied, in any other Act or in any law, proclamation or regulation or in any judgment, award or order of any court or tribunal or in any contract or agreement whether oral or written or in any deed, document, security or writing whatsoever.
- (3) All powers given by or under this Part or by or under the emergency regulations shall be in aid of and not in derogation from any other powers exercisable apart from this Act.

[Section 41 inserted by No. 22 of 1974 s. 4; amended by No. 14 of 1996 s. 4.]

42. Administration in emergency

Notwithstanding the provisions of section 5, where a state of emergency is declared under this Part the administration of this Act shall be vested in a responsible Minister of the Crown and, subject to the Minister, shall be carried out by such authorities, departments, instrumentalities, persons or bodies as the Minister in writing directs.

[Section 42 inserted by No. 22 of 1974 s. 5; amended by No. 89 of 1994 s. 109.]

43. Declaration of state of emergency

- (1) At any time, if the Governor is satisfied that by reason of embargoes by oil producing countries, disruption of shipping

services, disruption of other transport whether outside or within the State, natural disasters, or other events, circumstances or causes affecting or likely to affect the provision, supply, or distribution of the resources of fuel, energy or power in or to the State, the community, or any substantial portion of the community, is or may be deprived of essential supplies or services or a shortage may result, the Governor may, by order in writing, declare that a state of emergency shall exist, either in the whole State, or in any part of the State specified in the declaration.

- (2) An order under this section shall take effect from the making thereof or from a later date specified therein and shall, unless sooner revoked, continue in force for such period not exceeding 6 months as is specified therein, but more than one order may be made under this section in respect of an emergency.
- (3) An order under this section shall —
 - (a) be publicised as soon as practicable after the making thereof in such manner as will ensure, so far as practicable, that persons in the area of the State to which the order extends will be informed of the making of the order; and
 - (b) be published in the *Gazette*.
- (4) Where an order under this section is made declaring a state of emergency the occasion thereof shall forthwith be communicated to Parliament.
- (5) If Parliament is adjourned or prorogued and that adjournment or prorogation will not expire within 14 days of the day of the making of the declaration of the state of emergency, Parliament shall be called together on a day to be fixed by proclamation being a day that falls within that period of 14 days, and, notwithstanding any Act, law or standing order of either House of Parliament to the contrary, Parliament shall meet on the day so fixed and for all purposes shall continue to sit and act in the same manner as if it had been adjourned or prorogued to that day.

- (6) Where at the time an order is made declaring a state of emergency the Legislative Assembly is dissolved for the purposes of an election Parliament shall be called together so soon as may be thereafter.

[Section 43 inserted by No. 22 of 1974 s. 6.]

44. Order to be subject to ratification

- (1) An order declaring a state of emergency under section 43 shall be laid before both Houses of Parliament as soon as may be after it is made.
- (2) Where, within the period of 30 days from the date on which the order was laid before that House or reasonably could have been so laid, either House of Parliament does not by resolution ratify that order, the order shall be deemed for all purposes to have been revoked.

[Section 44 inserted by No. 22 of 1974 s. 7.]

45. Limitation on operation of this Part

The powers and authorities conferred by this Part shall not be exercisable —

- (a) except in a part of the State in relation to which a state of emergency has been declared; and
- (b) except in respect of an emergency in relation to which a state of emergency has been declared.

[Section 45 inserted by No. 22 of 1974 s. 8.]

46. Validation of acts done in anticipation of emergency regulations

Where any acts are done before the commencement of any emergency regulations made under this Part, and by virtue of those regulations those acts would have been valid and lawful if those regulations had been in force when the acts were done, the

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acts shall be deemed to have been validly done under the authority of this Part.

[Section 46 inserted by No. 22 of 1974 s. 9.]

47. Emergency regulations

- (1) Where a state of emergency is declared under this Part and continues to subsist, the Governor, for the purposes of —
- (a) providing or securing supplies and services required by the community, or any substantial portion of the community; or
 - (b) preventing supplies or services being disposed of in a manner prejudicial to the attainment of the objects of this Part,

may make emergency regulations not inconsistent with this Part.

- (2) Emergency regulations made under this Part may make provision for or with respect to —
- (a) the coordination of emergency action with national bodies; and
 - (b) ascertaining the holdings of all fuel, energy and power resources and the administration of those resources by the State; and
 - (c) maintaining, controlling and regulating supplies and services so as to secure a sufficiency of those essential to the well being of the community or their equitable distribution, including a permit or rationing system; and
 - (d) the adjustment of industry and commerce to the requirements of the community in time of emergency including the determination of user priority, the prohibition of specified uses, the taking of specified measures, and the allocation of supplies to prescribed consumers; and
 - (e) requiring producers, holders, suppliers, transporters and users to submit returns or information, which may be

- required to be given or verified by statutory declaration or in any other manner specified therein; and
- (f) the delegation of powers and duties to a State Government Department or State instrumentality or any other person, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the community, or any substantial portion of the community, supplies or services; and
 - (g) the imposition of penalties not inconsistent with the provisions of section 49; and
 - (h) the imposition and recovery of charges in connection with any scheme of control; and
 - (i) the making, negotiation and settlement and arbitration of claims for compensation under this Part; and
 - (j) the procedure to be followed in relation to any application, proceedings or appeal under this Part; and
 - (k) engaging persons, whether for reward or otherwise, to perform functions and to carry out acts in order to assist the maintaining, controlling and regulating of supplies and services; and
 - (l) generally, for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community.

[Section 47 inserted by No. 22 of 1974 s. 10.]

48. Intimidation etc.

A person who does, or omits to do, any thing, at any time whether during or after the state of emergency, or in any manner, by way of retaliation, discrimination or intimidation against any other person by reason of, or as a result of, the participation by that other person in emergency supply or distribution operations shall be guilty of an offence against this Part.

[Section 48 inserted by No. 22 of 1974 s. 11.]

49. Offences and penalties

- (1) A person who contravenes or fails to comply with any provision of this Part, or any emergency regulations made thereunder, shall be guilty of an offence against this Part.
- (2) A person who is guilty of an offence against any provision of this Act other than in this Part, which offence occurred whilst a state of emergency existed, shall be liable to the penalty provided for an offence against this Part.
- (3) A person who is guilty of an offence against this Part is liable, where no other penalty is expressly provided, to —
 - (a) in the case of an individual, a fine of \$10 000;
 - (b) in the case of a body corporate, a fine of such amount as the court thinks just having regard to all the circumstances and in particular any financial or other advantage which that body corporate gained or might have gained from the contravention or non-compliance.
- (4) Where an offence is committed by a person by reason of his failure to comply with a provision of this Part or the emergency regulations made thereunder the offence shall be deemed to continue so long as that failure continues, notwithstanding that any period within which the act was required to be done has elapsed.
- (5) Where an offence is committed by a person by reason of his failure to comply, within the period specified in any order given to him under this Part, or the emergency regulations made thereunder, with the requirements specified in the order that offence shall be deemed to continue so long as any requirement specified in the order remains undone, notwithstanding that the period has elapsed.
- (6) Where, under the provisions of this section, an offence is deemed to continue, the person who committed the offence commits an additional offence against this Act on each day during which the offence is deemed to continue and is liable,

upon conviction for such an additional offence, to the penalty provided for an offence against this Part.

[Section 49 inserted by No. 22 of 1974 s. 12; amended by No. 50 of 2003 s. 65(2).]

50. Orders and directions

- (1) Emergency regulations made under this Part may confer upon any Minister of the Crown the power to make any order or give any direction for the purposes of the regulations.
- (2) The power conferred by this Part to make any order or give any direction shall be construed as including a power, exercisable in the like manner and subject to the like conditions, if any, to revoke or vary the order or direction.
- (3) Any power of making orders under this Part shall include power to provide for any incidental and supplementary provisions for which the Minister making the order thinks it expedient for the purposes of the order to provide, and may make such provisions (including provision for requiring any person to furnish any information) as the Minister making the order thinks necessary or expedient for facilitating the introduction or operation of a scheme of rationing or control for which provision has been made, or for which, in the opinion of the Minister, it will or may be found necessary or expedient that provision should be made, under this Part.
- (4) An order under this Part may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order, and may be made so as to apply either to persons generally or to any particular person or class of persons, and so as to have effect either generally or in any circumstance specified therein.
- (5) Where under this Part 2 or more Ministers have power to make orders, the power may be exercised by them jointly or separately.

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- (6) The *Interpretation Act 1918*², shall apply to the interpretation of any order made under this Part as it applies to the interpretation of a regulation, and for the purposes of section 36 of that Act any such order shall be deemed to be a regulation.
- (7) Where any order is given under this Part to any person or body, a person who contravenes or fails to comply with that order shall be guilty of an offence against this Part.
- (8) Where any direction is given under this Part to any person or body, a person or body who fails to comply with the direction commits an offence against this Part, but it shall be a sufficient defence to a prosecution for an offence under this subsection in respect of a failure to comply with a direction if the accused satisfies the court that he so failed with reasonable excuse.

[Section 50 inserted by No. 22 of 1974 s. 13; amended by No. 84 of 2004 s. 82.]

51. Delegation

The powers of the Minister under this Part may be exercised on his behalf by any person for the time being so authorised by the Minister, and where the exercise of those powers is expressed to depend on a discretion or state of mind of the Minister that reference shall be read as if it referred to a discretion or state of mind of the person authorised to exercise those powers.

[Section 51 inserted by No. 22 of 1974 s. 14.]

52. Expenses

Any expenses incurred by any Minister of the Crown, government department, instrumentality, or statutory body in implementing the provisions of this Part in consequence of the declaration of a state of emergency, shall, except in so far as they fall to be otherwise defrayed under any other Act, be defrayed out of moneys provided by Parliament, and any increase attributable to the implementation of those provisions

in any sums falling to be paid under any other Act out of moneys provided by Parliament shall be so paid.

[Section 52 inserted by No. 22 of 1974 s. 15; amended by No. 89 of 1994 s. 109.]

53. Grants to meet expenditure

- (1) The Treasurer may from moneys provided by Parliament for the purpose or from moneys made available to the State by the Parliament of the Commonwealth upon terms which are not inconsistent with the application of those moneys for the purpose, make grants or advances to a local government or any statutory body, person or body of persons for or towards meeting the expenditure incurred by that local government, person or body in the exercise of any powers, authorities, duties or functions conferred or imposed on that local government, person or body by regulations made under this Part.
- (2) No such grant or advance shall be made by the Treasurer except upon the recommendation of the Minister and every such grant or advance shall be made upon such terms and subject to such conditions as the Minister may determine.

[Section 53 inserted by No. 22 of 1974 s. 16; amended by No. 14 of 1996 s. 4.]

54. Acts etc. not to be actionable

Subject to section 55, no action shall lie, and no proceedings of any kind shall be instituted or heard in any court in respect of any act or decision of the Minister or any person or body authorised by him in the exercise or purported exercise of his powers under this Part.

[Section 54 inserted by No. 22 of 1974 s. 17.]

55. Saving for personal injury claims

Nothing in this Part or the emergency regulations made thereunder shall operate to prejudice or affect any right which, if

this Part had not been enacted, a person would have had to recover damages, take any suit or proceeding, or receive any payment or compensation in respect of any personal injury sustained by him.

[Section 55 inserted by No. 22 of 1974 s. 18.]

56. Compensation

- (1) A person who, as the result of compliance with any emergency regulation or while complying with or being engaged in the carrying into effect of any such regulation, suffers loss, damage or injury, other than —
 - (a) personal injury; or
 - (b) any such loss, damage or injury resulting or arising from and by reason of any prohibition, limitation or restriction on the sale or supply of any goods or services,

shall be entitled to compensation under this Part from the Minister.

- (2) Every claim for compensation under this Part shall be made in the prescribed manner, or if no manner is prescribed in relation thereto in a form and within a time approved by the Governor.
- (3) In default of agreement as to the amount of compensation between the Minister and the claimant, the Minister shall direct that the claim shall be referred to arbitration before a single arbitrator who shall be appointed by the Minister from amongst the judges of the Supreme Court and of the District Court of Western Australia.
- (4) The procedure to be followed at the arbitration shall be as determined by the arbitrator, but, subject to any such determination, the procedure shall be as nearly as possible the same as the procedure in the trial of a civil action in the Supreme Court.
- (5) No account shall be taken, in assessing the extent of any loss, damage or injury in respect of which compensation is sought, of

any such loss, damage or injury which was sustained in like manner by the community at large or by any substantial portion of the community.

[Section 56 inserted by No. 22 of 1974 s. 19.]

57. Expiry or revocation of regulations

- (1) The expiration or revocation of any emergency regulation shall not be deemed to have affected the previous operation thereof or the validity of any action taken thereunder or to affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that regulation or affect any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that regulation had not expired or had not been revoked.
- (2) Every emergency regulation shall, unless it is expressed to expire sooner or is revoked, continue in operation for so long as a state of emergency declared by an order made by the Governor pursuant to this Part, or renewed by any such order, subsists.

[Section 57 inserted by No. 22 of 1974 s. 20.]

58. Appeals

A person aggrieved by any act done or omitted, or any decision or order made, or any direction given, pursuant to the implementation or purported implementation of the provisions of this Part may appeal in writing to the Minister in the prescribed manner, if any, and the Minister may thereupon, in his absolute discretion, take such action as he thinks fit and effect shall be given to the determination of the Minister.

[Section 58 inserted by No. 22 of 1974 s. 21.]

59. False documents and false statements

- (1) If, with intent to deceive, any person —
- (a) uses any document issued for the purposes of this Part or of any regulation or order made under this Part; or
 - (b) has in his possession any document so closely resembling a document so issued as to be calculated to deceive; or
 - (c) produces, furnishes, sends or otherwise makes use of, for purposes connected with this Part or any regulation, order, or direction made or given under this Part, any book, account, estimate, return, declaration or other document which is false in a material particular,

he shall be guilty of an offence against this Part.

- (2) If, in furnishing any information for the purposes of this Part or of any regulation or order made under this Part, any person makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence against this Part.

[Section 59 inserted by No. 22 of 1974 s. 22.]

60. Consent to prosecutions

- (1) A prosecution for a contravention of this Part, or of any regulation made thereunder, shall not be commenced without the consent of the Attorney General.
- (2) In any prosecution for a contravention of this Part, or of any regulation made thereunder, a writing purporting to show the consent of the Attorney General for the purposes of subsection (1) shall, in the absence of proof to the contrary, be deemed to be such a consent.

[Section 60 inserted by No. 22 of 1974 s. 23.]

61. Offences to be dealt with by magistrate

A court of summary jurisdiction dealing with an offence under this Part or under regulations made under this Part is to be constituted by a magistrate.

[Section 61 inserted by No. 59 of 2004 s. 141.]

62. Evidence etc.

(1) In any legal proceedings, a certificate purporting to be signed by the Minister and to certify that —

- (a) a state of emergency was in existence, either in the whole State or a part of the State as specified therein, on a day or during a period specified therein, in respect of an emergency specified therein; or
- (b) a delegation by the Minister to a person specified therein of the exercise or performance of any power, authority, duty or function specified therein was in force on a day or during a period specified therein; or
- (c) a delegation by the Minister to a person specified therein was subject to the conditions or limitations specified therein or was not subject to any conditions or limitations other than those specified therein or was not subject to any conditions or limitations at all; or
- (d) a person specified therein was, on a day or during a period specified therein, performing any specified power, duty or function under this Act,

shall be admissible in evidence and shall be *prima facie* evidence of the facts so certified.

(2) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a declaration under section 43 have been complied with and performed.

[Section 62 inserted by No. 22 of 1974 s. 25.]

[First and Second Schedules deleted by No. 25 of 1975 s. 33.]

Notes

¹ This reprint is a compilation as at 13 March 2015 of the *Fuel, Energy and Power Resources Act 1972* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Fuel, Energy and Power Resources Act 1972</i>	56 of 1972	13 Oct 1972	3 Nov 1972 (see s. 2 and <i>Gazette</i> 3 Nov 1972 p. 4259)
<i>Fuel, Energy and Power Resources Act Amendment Act 1974</i>	22 of 1974	17 Oct 1974	1 Nov 1974 (see s. 2 and <i>Gazette</i> 1 Nov 1974 p. 4933)
<i>Acts Amendment (State Energy Commission) Act 1975 Pt. II</i>	25 of 1975	16 May 1975	1 Jul 1975 (see s. 2 and <i>Gazette</i> 27 Jun 1975 p. 2086)
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994 s. 109</i>	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and <i>Gazette</i> 23 Dec 1994 p. 7069)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the <i>Fuel, Energy and Power Resources Act 1972</i> as at 13 Jul 2001 (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 65</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 2: The Fuel, Energy and Power Resources Act 1972 as at 13 Mar 2015 (includes amendments listed above)			

² Repealed by the *Interpretation Act 1984* s. 77(1).