



Australian Capital Territory

National Gas (ACT) Act 2008

A2008-15

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Australian Capital Territory

National Gas (ACT) Act 2008

A2008-15

An Act to establish a framework to enable third parties to gain access to certain natural gas pipeline services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *National Gas (ACT) Act 2008*.

2 Commencement

- (1) This Act (other than section 19 (1) and schedule 1) commences, or is taken to have commenced, on the commencement of the *National Gas (South Australia) Act 2008* (SA), section 7 (Application of National Gas Law).

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Section 19 (1) and schedule 1 commence on the later of—
- (a) the commencement of the *Offshore Petroleum Act 2006* (Cwlth), section 7 (Offshore areas); and
 - (b) the day section 10 commences, or is taken to have commenced.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Terms used in National Gas (ACT) Law

A term used in the *National Gas (ACT) Law* has the same meaning in this Act.

Note A definition in an Act applies except so far as the contrary intention appears (see Legislation Act, s 155).

5 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

6 Crown to be bound

The Legislation Act, section 121 (Binding effects of Acts) applies to the *National Gas (ACT) Law* and the *National Gas (ACT) Regulation* as if—

- (a) the *National Gas (ACT) Law* were an Act; and
- (b) the *National Gas (ACT) Regulation* were a regulation made or in force under the *National Gas (ACT) Law*.

Note 1 The Legislation Act, s 121 provides that an Act binds all governments, including the Territory, the Commonwealth, a State and another Territory. However, the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 27 provides that, except as provided by the regulations under that Act, an ACT enactment does not bind the Crown in right of the Commonwealth.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see s 8 (2) and Legislation Act, s 104).

7 Extra-territorial operation

The Legislative Assembly intends that this Act, the *National Gas (ACT) Law* and the *National Gas (ACT) Regulation* should, so far as possible, operate to the full extent of the extra-territorial legislative power of the Territory.

10 Interpretation of some terms in National Gas (ACT) Law and National Gas (ACT) Regulation

- (1) In the *National Gas (ACT) Law* and the *National Gas (ACT) Regulation*:

adjacent area of another participating jurisdiction means the area that is identified in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), section 5A (Adjacent areas) as being the adjacent area in respect of a State.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1, def *State*).

court means the Supreme Court.

designated Minister means the Commonwealth Minister.

legislature of this jurisdiction means the Legislative Assembly.

National Gas Law or ***this Law*** means the *National Gas (ACT) Law*.

this jurisdiction means the Territory.

- (2) The *Acts Interpretation Act 1915* (SA) and other Acts of South Australia do not apply to—
- (a) the National Gas Law set out in the schedule to the South Australian Act in its application as a territory law; or
 - (b) regulations in force from time to time under the South Australian Act, part 3 (Making of regulations and rules under National Gas Law) in their application as regulations in force for the purposes of the *National Gas (ACT) Law*.

Part 3 Cross-vesting of powers

11 Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in the ACT

- (1) The Commonwealth Minister and the Commonwealth bodies have power to do acts in, or in relation to, the ACT in the exercise of a function expressed to be conferred on them respectively by the national gas legislation of another participating jurisdiction.

Note **Exercise** a function includes perform the function (see Legislation Act, dict, pt 1, def **exercise**), and **function** includes power (see Legislation Act, dict, pt 1, def **function**).

- (2) In this section:

Commonwealth bodies means any of the following:

- (a) AER;
- (b) NCC;
- (c) the Tribunal.

12 Conferral of powers on Ministers of other participating States to act in the ACT

The Minister of another participating jurisdiction has power to do acts in, or in relation to, the ACT in the exercise of a function expressed to be conferred on the Minister by the national gas legislation of another participating jurisdiction.

Note 1 **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).

Note 2 **Exercise** a function includes perform the function (see Legislation Act, dict, pt 1, def **exercise**), and **function** includes power (see Legislation Act, dict, pt 1, def **function**).

13 Conferral of functions on Minister

If the national gas legislation of another participating jurisdiction confers a function on the Minister, the Minister—

- (a) may exercise the function; and
- (b) may do all things necessary or convenient to be done in connection with the exercise of the function.

Note **Exercise** a function includes perform the function (see Legislation Act, dict, pt 1, def **exercise**), and **function** includes power (see Legislation Act, dict, pt 1, def **function**).

Part 4 Miscellaneous

14 Exemption from taxes

- (1) Any duty or other tax imposed under a territory law is not payable in relation to—
 - (a) an exempt matter; or
 - (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, an exempt matter.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In this section:

exempt matter means a transfer of assets or liabilities—

- (a) that is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of the national gas legislation or for the purpose of the separation of certain businesses or business activities from other businesses or business activities of a person as required by an AER ring fencing determination; and
- (b) that the Treasurer declares to be an exempt matter under section 15.

15 Declaration of exempt matter

- (1) The Treasurer may declare that a transfer of assets or liabilities is an exempt matter for section 14.
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

16 Actions in relation to cross boundary pipelines

- (1) If a pipeline is a cross boundary pipeline, any action taken under the national gas legislation of a participating jurisdiction in whose jurisdictional area a part of the pipeline is situated—
- (a) by, or in relation to, a relevant Minister; or
 - (b) by the court within the meaning of that legislation in relation to action taken by, or in relation to, a relevant Minister;
- is taken also to be taken under the national gas legislation of each participating jurisdiction in whose jurisdictional area a part of the pipeline is situated (*that other legislation*)—
- (c) by, or in relation to, a relevant Minister within the meaning of that other legislation; or
 - (d) by the court within the meaning of that other legislation;
- as the case requires.
- (2) Despite subsection (1), no proceeding for judicial review or for a declaration, injunction, writ, order or remedy may be brought before the court to challenge or question any action, or purported action, of a relevant Minister taken, or purportedly taken, in relation to a cross boundary distribution pipeline unless this jurisdiction has been determined under the *National Gas (ACT) Law* to be the participating jurisdiction with which the cross boundary distribution pipeline is most closely connected.
- (3) A reference in this section—
- (a) to an action that is taken includes a reference to—
 - (i) a decision or determination that is made; or
 - (ii) an omission that is made; and
 - (b) to a purported action that is purportedly taken includes a reference to a purported decision or determination that is purportedly made.

- (4) In this section:
- cross boundary pipeline* means—
- (a) a cross boundary transmission pipeline; or
 - (b) a cross boundary distribution pipeline.

17 Conferral of functions on Commonwealth entities

- (1) The *National Gas (ACT) Law*, schedule 2, clause 2 (Law to be construed not to exceed legislative power of Legislature) has effect in relation to the operation of any provision of this Act, or any provision forming part of the *National Gas (ACT) Regulation*, as if the provision formed part of the *National Gas (ACT) Law*.
- (2) Subsection (1) does not limit the effect that a provision would validly have apart from the subsection.

18 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (2) A regulation may also prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (3) Subsection (2) and this subsection expire 1 year after the day this section commences.

19 Legislation amended—schs 1 and 2

- (1) This Act amends the legislation mentioned in schedule 1.
- (2) This Act amends the legislation mentioned in schedule 2.

20 Repeal of Gas Pipelines Access Act 1998

The *Gas Pipelines Access Act 1998* (A1998-15) is repealed.

Schedule 1 Amendment of this Act— Offshore Petroleum Act 2006 (Cwlth)

(see s 19 (1))

[1.1] Section 10 (1), definition of *adjacent area of another participating jurisdiction* and note

substitute

adjacent area of another participating jurisdiction means the offshore area of a State within the meaning of the *Offshore Petroleum Act 2006* (Cwlth), section 7 (Offshore areas).

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1, def *State*).

Schedule 2 Consequential amendments

(see s 19 (2))

Part 2.1 Gas Safety Act 2000

[2.1] Dictionary, note 2, new dot point

insert

- National Gas (ACT) Law

[2.2] Dictionary, definition of *gas* and note

substitute

gas means—

- natural gas; or
- a gas (**LPG**) in its vapour phase composed predominantly of 1 or more of the following hydrocarbons:
 - propane;
 - propene (propylene);
 - butane;
 - butene (butylene).

[2.3] Dictionary, new definition of *natural gas*

insert

natural gas—see the *National Gas (ACT) Law*, section 2.

Part 2.2 Independent Competition and Regulatory Commission Act 1997

[2.4] Section 2, note 1

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*utility*—see the *Utilities Act 2000*, dictionary.’ means that the term ‘*utility*’ is defined in that dictionary and the definition applies to this Act.

[2.5] Section 4B (3)

substitute

(3) In this section:

ACT gas distribution service means a distribution service provided by means of a natural gas distribution pipeline.

ACT gas transmission service means a transmission service provided by means of a natural gas transmission pipeline.

distribution pipeline—see the *National Gas (ACT) Law*, section 2.

transmission pipeline—see the *National Gas (ACT) Law*, section 2.

[2.6] Section 8 (1) (g) (v) to (vii)

substitute

(v) the *National Gas (ACT) Law*;

(vi) the *National Gas (ACT) Regulation*;

[2.7] Dictionary, note 2, new dot points

insert

- National Gas (ACT) Law
- National Gas (ACT) Regulation

[2.8] Dictionary, definitions of *Gas Pipelines Access (A.C.T.) Law* and *Gas Pipelines Access (A.C.T.) Regulations*

omit

[2.9] Dictionary, definition of *law of the Territory*, paragraphs (d) to (f)

substitute

- (d) the *National Gas (ACT) Law*; and
- (e) the *National Gas (ACT) Regulation*.

[2.10] Dictionary, definition of *national gas code* and note

omit

Part 2.3 Legislation Act 2001

[2.11] Dictionary, part 1, new definitions

insert

National Gas (ACT) Law means the provisions applying because of the *National Gas (ACT) Act 2008*, section 8 (Application in the ACT of National Gas Law).

National Gas (ACT) Regulation means the provisions applying because of the *National Gas (ACT) Act 2008*, section 9 (Application in the ACT of regulations under National Gas Law).

Part 2.4 Utilities Act 2000

[2.12] Section 8

substitute

8 Gas—terminology

(1) In this Act:

gas means natural gas.

(2) A term used in any of the following has the same meaning in this Act:

(a) *National Gas (ACT) Act 2008*;

(b) *National Gas (ACT) Law*;

(c) *National Gas (ACT) Regulation*.

Note A definition in an Act applies except so far as the contrary intention appears (see Legislation Act, s 155).

(3) In this section:

natural gas—see the *National Gas (ACT) Law*, section 2.

[2.13] Section 10

substitute

10 Gas networks

(1) For this Act, a *gas transmission network* consists of infrastructure used, or for use, in relation to the transmission of gas by a person through a transmission pipeline to a gas distribution network owned or operated by another person.

(2) For this Act, a *gas distribution network* consists of infrastructure used, or for use, in relation to the distribution of gas by a person through a distribution pipeline for supply to premises of another person.

(3) In this section:

distribution pipeline—see the *National Gas (ACT) Law*, section 2.

infrastructure means—

- (a) pipelines; or
- (b) meters; or
- (c) any equipment (including pressure control devices, excess flow valves, control valves, actuators, electrical equipment, telemetry equipment, cathodic protection installations, compounds, pits, buildings, signs and fences); or
- (d) any other thing ancillary to any other part of the infrastructure.

transmission pipeline—see the *National Gas (ACT) Law*, section 2.

(4) A *gas network* does not include infrastructure that is outside the network boundary.

[2.14] Section 20 (2) (f) to (h)

substitute

- (f) the *National Gas (ACT) Act 2008*;
- (g) the *National Gas (ACT) Law*;
- (h) the *National Gas (ACT) Regulation*;

[2.15] Sections 29 and 30

omit

[2.16] Section 45 (2), examples

omit

[2.17] Dictionary, note 2, new dot points

insert

- National Gas (ACT) Law
- National Gas (ACT) Regulation

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Commonwealth
- exercise
- function
- Legislation Act
- Legislative Assembly
- Minister (see s 162)
- State
- Supreme Court
- territory law
- the Territory
- Treasurer.

National Gas (ACT) Law means the provisions applying because of section 8.

National Gas (ACT) Regulation means the provisions applying because of section 9.

South Australian Act means the *National Gas (South Australia) Act 2008 (SA)*.

Note A reference to a law (including a SA Act) includes a reference to the Act as originally made and as amended (see Legislation Act, s 102).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 May 2008.

2 Notification

Notified under the Legislation Act on 30 June 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the National Gas (ACT) Bill 2008, which was passed by the Legislative Assembly on 25 June 2008.

Clerk of the Legislative Assembly

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