

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Gas Pipelines Access Bill 1998

TABLE OF PROVISIONS

Section

Preamble

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Crown to be bound
5. Extra-territorial operation

PART II—THE GAS PIPELINES ACCESS (A.C.T.) LAW AND THE
GAS PIPELINES ACCESS (A.C.T.) REGULATIONS

6. Application in the Territory of the *Gas Pipelines Access Law*
7. Application in the Territory of the *Gas Pipelines Access Regulations*
8. Interpretation of some expressions in the *Gas Pipelines Access (A.C.T.) Law* and the *Gas Pipelines Access (A.C.T.) Regulations*

TABLE OF PROVISIONS—continued

Section

PART III—NATIONAL ADMINISTRATION AND ENFORCEMENT

Division 1—Conferral of functions and powers

- 9. Conferral of functions on Commonwealth Minister and Commonwealth bodies
- 10. Conferral of power on Commonwealth Minister and Commonwealth bodies to do acts in the Territory
- 11. Conferral of power on Ministers, Regulators and appeals bodies of other scheme participants
- 12. Conferral of functions on Code Registrar
- 13. Functions and powers conferred on the Minister, Regulator or appeals body

Division 2—Federal Court

- 14. Jurisdiction of Federal Court
- 15. Conferral of jurisdiction on Federal Court not to affect cross-vesting

Division 3—Administrative decisions

- 16. Application of the Commonwealth AD (JR) Act
- 17. Application of the Commonwealth AD (JR) Act in relation to other scheme participants

PART IV—GENERAL

- 18. Exemption from taxes
- 19. Actions in relation to cross-boundary pipelines

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Gas Pipelines Access Bill 1998

A BILL

FOR

An Act to make provision for the regulation of third party access to natural gas pipeline systems, and for related purposes

Preamble

The Council of Australian Governments agreed, in February 1994, to general principles of competition policy reform to enable third parties, in particular circumstances, to gain access to essential facilities.

The Council of Australian Governments, as part of that commitment to reform, agreed to more specific proposals for the development of free and fair trade in natural gas.

The Commonwealth, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the Northern Territory and the Australian Capital Territory agreed in November 1997 to the enactment of legislation in the Commonwealth and those States and

Territories so that a uniform national framework applies for third party access to all gas pipelines that—

- (a) facilitates the development and operation of a national market for natural gas;
- (b) prevents abuse of monopoly power;
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders;
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines and persons wishing to use the services of those pipelines; and
- (e) provides for resolution of disputes.

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

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Gas Pipelines Access Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions of this Act commence on a day, or respective days, to be fixed by the Minister by notice in the *Gazette*.

3. Interpretation

(1) In this Act—

“Code body” means any of the following bodies or persons:

- 15 (a) the NCC;
- (b) the ACCC;
- (c) the Australian Competition Tribunal;
- (d) the local appeals body within the meaning given by subsection 8 (1), as amended from time to time;
- 20 (e) the local Minister within the meaning given by subsection 8 (1), as amended from time to time; -
- (f) the local Regulator within the meaning given by subsection 8 (1), as amended from time to time;

- (g) an arbitrator appointed under Part 4 of the *Gas Pipelines Access (A.C.T.) Law*;

“*Gas Pipelines Access (A.C.T.) Law*” means the *Gas Pipelines Access Law* in its application as a law of the Territory because of section 6;

“*Gas Pipelines Access (A.C.T.) Regulations*” means the *Gas Pipelines Access Regulations* in their application as a law of the Territory because of subsection 7 (1);

“*Gas Pipelines Access Law*” means—

- (a) Schedule 1 to the South Australian Act—

(i) as enacted; or

(ii) if amended, as amended and in force for the time being; and

- (b) the National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being;

“*Gas Pipelines Access Regulations*” means the regulations in force for the time being under Part 3 of the South Australian Act;

“South Australian Act” means the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

- (2) Words and expressions used in—

(a) the *Gas Pipelines Access (A.C.T.) Law*; and

(b) this Act;

have the same respective meanings in this Act as they have in that Law.

- (3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

4. Crown to be bound

This Act, the *Gas Pipelines Access (A.C.T.) Law* and the *Gas Pipelines Access (A.C.T.) Regulations* bind the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, in right of the Crown in all its other capacities.

5. Extra-territorial operation

(1) The Legislative Assembly intends that the operation of this Act, the *Gas Pipelines Access (A.C.T.) Law* and the *Gas Pipelines Access (A.C.T.) Regulations* should, as far as possible, extend to the following:

- 5 (a) things situated in or outside the Territory;
- (b) acts, transactions and matters done, entered into or occurring in or outside the Territory,
- 10 (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a State, another Territory, the Commonwealth or a foreign country.

(2) Nothing in subsection (1) has effect in relation to a pipeline to the extent that the pipeline is situated, or partly situated, beyond the jurisdictional areas of all the scheme participants.

15 **PART II—THE GAS PIPELINES ACCESS (A.C.T.) LAW
AND THE GAS PIPELINES ACCESS (A.C.T.)
REGULATIONS**

6. Application in the Territory of the *Gas Pipelines Access Law*

20 The *Gas Pipelines Access Law* applies as a law of the Territory and, as so applying, may be cited as the *Gas Pipelines Access (A.C.T.) Law*.

7. Application in the Territory of the *Gas Pipelines Access Regulations*

- (1) The *Gas Pipelines Access Regulations* apply as—
- 25 (a) regulations in force for the purposes of the *Gas Pipelines Access (A.C.T.) Law*; and
- (b) a law of the Territory.

(2) The *Gas Pipelines Access Regulations*, as so applying, may be cited as the *Gas Pipelines Access (A.C.T.) Regulations*.

30 **8. Interpretation of some expressions in the *Gas Pipelines Access (A.C.T.) Law* and the *Gas Pipelines Access (A.C.T.) Regulations***

(1) Subject to subsection (2), in the *Gas Pipelines Access (A.C.T.) Law* and the *Gas Pipelines Access (A.C.T.) Regulations*—

- 35 “Code” means the National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended

in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being, as it applies because of section 6 of this Act as a law of the Australian Capital Territory;

“Court” means—

- 5 (a) the Supreme Court; or
 (b) the Federal Court;

“designated appeals body” means the Australian Competition Tribunal;

“designated Minister” means the Commonwealth Minister;

10 “*Gas Pipelines Access Law*” or “this Law” means the *Gas Pipelines Access (A.C.T.) Law*;

“Legislature” means the Legislative Assembly of the Australian Capital Territory;

“local appeals body” means the Australian Competition Tribunal;

15 “local Minister” means the Minister for the time being administering this Act;

“local Regulator” means—

- (a) in relation to a transmission pipeline—the ACCC; or
 (b) in relation to a distribution pipeline—the Independent Pricing and Regulatory Commission for the Australian Capital Territory established by section 5 of the *Independent Pricing and Regulatory Commission Act 1997*;
- 20

“Supreme Court” means the Supreme Court of the Australian Capital Territory;

“this scheme participant” means the Australian Capital Territory.

25 (2) On and from the date on which this subsection commences, paragraph (b) of the definition, in subsection (1), of “local Regulator” is omitted and the following paragraph substituted:

 “(b) in relation to a distribution pipeline—the ACCC;”.

30 (3) The Acts (including, in particular, the *Acts Interpretation Act 1915*) and other laws of South Australia do not apply to the *Gas Pipelines Access (A.C.T.) Law* or the *Gas Pipelines Access (A.C.T.) Regulations*.

PART III—NATIONAL ADMINISTRATION AND ENFORCEMENT

Division 1—Conferral of functions and powers

5 **9. Conferral of functions on Commonwealth Minister and
Commonwealth bodies**

(1) The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have the functions and powers conferred or expressed to be conferred on them respectively by or under the *Gas Pipelines Access (A.C.T.) Law*.

10 (2) In addition to the powers mentioned in subsection (1), the Commonwealth Minister and the bodies referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

15 **10. Conferral of power on Commonwealth Minister and
Commonwealth bodies to do acts in the Territory**

20 The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have power to do acts in or in relation to the Territory in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of another scheme participant.

**11. Conferral of power on Ministers, Regulators and appeals
bodies of other scheme participants**

25 The local Minister, the local Regulator and the local appeals body, within the respective meanings of the gas pipelines access legislation of another scheme participant, have power to do acts in or in relation to the Territory in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of that other scheme participant.

30 **12. Conferral of functions on Code Registrar**

(1) The Code Registrar—

- 35 (a) has the functions and powers conferred or expressed to be conferred on the Code Registrar by or under the *Gas Pipelines Access (A.C.T.) Law* or under the National Gas Agreement; and
- (b) has any other functions and powers conferred on the Code Registrar by unanimous resolution of the relevant Ministers of the scheme participants.

(2) The Code Registrar may, by instrument signed by him or her, delegate to any person all or any of those functions and powers.

(3) The Code Registrar or a delegate has power to do all things necessary or convenient to be done in connection with the performance or exercise of—

- 5 (a) in the case of the Code Registrar—the functions and powers referred to in subsection (1); or
- (b) in the case of a delegate—the functions and powers delegated under subsection (2) to him or her.

13. Functions and powers conferred on the Minister, Regulator or appeals body

10 (1) If the gas pipelines access legislation of another scheme participant confers a function or power on the local Minister, the local Regulator or the local appeals body, the local Minister, the local Regulator or the local appeals body, as the case requires—

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

(2) In subsection (1), “local Minister”, “local Regulator” and “local appeals body” have the respective meanings given by subsection 8 (1), as amended from time to time.

20 ***Division 2—Federal Court***

14. Jurisdiction of Federal Court

Jurisdiction is conferred on the Federal Court with respect to—

- (a) civil and criminal matters arising under the *Gas Pipelines Access (A.C.T.) Law*; and
- 25 (b) applications made to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth in its application as a law of the Territory under Division 3.

15. Conferral of jurisdiction on Federal Court not to affect cross-vesting

30 Section 14 does not affect the operation of any law relating to cross-vesting of jurisdiction.

Division 3—Administrative decisions

16. Application of the Commonwealth AD (JR) Act

35 (1) The *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth applies as a law of the Territory to any matter arising in relation to a decision of a Code body under the *Gas Pipelines Access*

(A.C.T.) Law as if that Law were an enactment within the meaning of that Act and not a law of the Territory.

5 (2) For the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as a law of the Territory, a matter arising in relation to a decision of a Code body under the *Gas Pipelines Access (A.C.T.) Law*—

- (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if the *Gas Pipelines Access (A.C.T.) Law* were a law of the Commonwealth; and
- 10 (b) is taken not to be a matter arising in relation to laws of the Territory.

17. Application of the Commonwealth AD (JR) Act in relation to other scheme participants

15 (1) The *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth applies as a law of the Territory to any matter arising in relation to a decision of a Code body under the gas pipelines access legislation of another scheme participant as if that legislation were an enactment within the meaning of that Act and not a law of that scheme participant.

20 (2) For the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as a law of the Territory, a matter arising in relation to a decision of a Code body under the gas pipelines access legislation of another scheme participant—

- 25 (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that legislation were a law of the Commonwealth; and
- (b) is taken not to be a matter arising in relation to laws of that scheme participant.

30 (3) This section does not require, prohibit, empower, authorise, or otherwise provide for, the doing of an act outside the Territory.

PART IV—GENERAL

18. Exemption from taxes

(1) Any stamp duty or other tax imposed by or under a law of the Territory is not payable in relation to—

- 35 (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.

(2) In this section—

“exempt matter” means a transfer of assets or liabilities that the Minister and the Treasurer are satisfied is made—

- 5 (a) for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of the Code; or
- (b) for the purpose of the separation of certain activities from other activities of a person as required by the Code;

and for no other purpose.

10 **19. Actions in relation to cross-boundary pipelines**

(1) If a pipeline is a cross-boundary pipeline, any action taken under the gas pipelines access legislation of a scheme participant in whose jurisdictional area a part of the pipeline is situated—

- 15 (a) by, or in relation to, a relevant Minister, or a relevant Regulator, within the meaning of that legislation;
- (b) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that legislation; or
- 20 (c) by the Federal Court, or by the Supreme Court, or the relevant appeals body, within the meaning of that legislation, in relation to the action taken by, or in relation to, a person or body referred to in paragraph (a) or (b);

is taken also to be action taken under the gas pipelines access legislation of each other scheme participant in whose jurisdiction area a part of the pipeline is situated (in this subsection called “that other legislation”)—

- 25 (d) by, or in relation to, a relevant Minister, or relevant Regulator, within the meaning of that other legislation;
- (e) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that other legislation;
- (f) by the Federal Court; or
- 30 (g) by the Supreme Court, or relevant appeals body, within the respective meanings of that other legislation;

as the case requires.

(2) In this section—

35 “cross-boundary pipeline” means a transmission pipeline, or a distribution pipeline, that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants.

- (3) A reference in this section to an action that is taken includes a reference to a decision that is made.