

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

GAS PIPELINES ACCESS BILL 1998

EXPLANATORY MEMORANDUM

**Circulated by
authority of**

**Brendan Smyth
Minister for
Urban Services**

DRAFT EXPLANATORY MEMORANDUM

GAS PIPELINES ACCESS BILL 1998

Outline

This is a new Bill, developed pursuant to the Natural Gas Pipelines Access Agreement, agreed by Heads of Governments on 7 November 1997. This Agreement committed participating governments to enact nationally consistent Gas Pipelines Access Law by 30 June 1998. The Access Law is based on model legislation passed as the *Gas Pipelines Access (South Australia) Act 1997* by the South Australian Parliament as lead legislature, on 10 December 1997

Competition in gas markets was first agreed by Heads of Governments in 1994 and aims to:

- facilitate the development and operation of a national market for natural gas,
- prevent abuse of monopoly power,
- promote a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders,
- provide 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
- provide for resolution of disputes

The access legislation allows the ACT Government to open the gas market in the ACT to competition from 1 July 1998 and allow the ACT's gas access regime to be assessed by the National Competition Council. The Council will carry out the certification of the regime against the criteria in the Competition Principles Agreement and subject to the regime meeting these tests, the NCC would recommend to the Commonwealth Treasurer that the ACT Government has met the eligibility requirements for payment of the competition dividend.

The Bill applies the *Gas Pipeline Access Law*, which in turn adopts the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) as an extrinsic document. The procedures for changing the Code require the agreement of Ministers of participating jurisdictions.

The enactment of an ACT gas access regime will result in the AGL Gas Networks as the Service Provider, submitting an Access Arrangement to the Independent Pricing and Regulatory Commission, for a Determination of the gas transportation charges. The Access Arrangement is an undertaking to provide access, based on tariffs for providing gas transport and related services, with terms and conditions. The Independent Regulator's review of an Access Arrangement takes into account the consumer benefits and would also seek public submissions on a draft determination.

Revenue/Cost Implications

Revenue and cost implications do not apply to this Bill, but are addressed under the Explanatory Memorandum for the Gas Supply Bill 1998

Formal Clauses

Explanations of the formal clauses are shown below

DETAILED NOTES

PART I - PRELIMINARY

Clause 1 is a formal provision setting out the short title of the Bill

Clause 2 deals with commencement provisions

Clause 3 deals with the interpreting of certain expressions used in the Bill, including the distinction between the ACT's application law and the national *Gas Pipelines Access Law* enacted by South Australia as lead legislature

Clause 4 provides that the access law binds the Crown.

Clause 5 provides that the ACT's access law may apply to a pipeline situated inside or partly outside the Territory, such as is the case with the distribution pipelines which commence at North Watson and extend into Queanbeyan and Yarrowlumla Shire. This provision and its reciprocal provision in NSW, allows the three local government areas of Canberra, Queanbeyan and Yarrowlumla Shire to be treated as one cross-border region for the purpose of having a common access regime and therefore a common Access Arrangement submitted by the Service Provider

PART II - THE GAS PIPELINES ACCESS (ACT) LAW AND THE GAS PIPELINES ACCESS (ACT) REGULATIONS

Clause 6 applies the national *Gas Pipelines Access Law* as the law of the Australian Capital Territory

Clause 7 provides that Regulations passed under the national access law also are applied as Regulations cited under the ACT's pipelines access law

Clause 8 provides that particular expressions used in the national access law relating to Code bodies are given the same meaning under the ACT's pipelines access law. The "local Minister" is the Minister for Urban Services. The Australian Competition and Consumer Commission or ACCC is already the Independent Regulator for the 6 kilometres of the Moomba-Sydney Pipeline System located in the ACT and the

Commonwealth Minister is the “designated Minister” for coverage of gas transmission pipelines.

PART III - NATIONAL ADMINISTRATION AND ENFORCEMENT

Clause 9 provides that functions (for example, those relating to gas transmission pipelines) are conferred on the relevant Commonwealth bodies

Clause 10 provides that functions can be conferred on Commonwealth bodies by scheme participants. For example, Northern Territory has conferred coverage of distribution pipelines on the Commonwealth, while NSW intends to pass coverage of distribution pipelines to the Commonwealth in about three years time.

Clause 11 provides that scheme participants may confer powers on the relevant bodies of another scheme participant

Clause 12 provides that functions are conferred on a *Code Registrar* to administer the National Third Party Access Code for Natural Gas Pipeline Systems and all items which must be registered in accordance with that Code.

Clause 13 provides that the functions and powers may be conferred on the local Minister, local Regulator or appeals body by another scheme participant.

Clause 14 provides that the ACT may confer civil and criminal matters to the Federal Court or matters for judicial review of administrative decisions.

Clause 15 provides that the conferral of powers on a Federal Court does not affect the cross-vesting between jurisdictions, for example if NSW cross-vested the regulation of the cross-border region distribution pipelines with the ACT, pursuant to Clause 13

Clause 16 provides that the application of the Commonwealth AD (JR) Act is extant for the purpose of decisions of an access Code body as further listed in this clause

Clause 17 provides that the Commonwealth AD (JR) Act applies to other scheme participants

PART IV - GENERAL

Clause 18 provides that actions taken by gas market businesses to comply with regulatory requirements under the access Code to separate retail and pipeline network businesses or “ring fencing” into separate legal entities, and the asset transfers therein, are exempt from Territory stamp duty or taxes. The Office of Financial Management has acknowledged that a waiver of stamp duty would be the appropriate mechanism to effect this requirement

Clause 19 provides for an action taken in respect to a pipeline situated across two jurisdictions by the regulatory structure of one jurisdiction is taken as an action under

the access regime of another jurisdiction, there being like access law and a common national access Code. For example, an action taken by ACCC with respect to the Moomba-Sydney Pipeline System would apply to the system in NSW and the ACT.