

1992

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

GAS BILL 1992

EXPLANATORY MEMORANDUM

Circulated by Authority of the Chief Minister

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OUTLINE

The Gas Bill 1992 ('the Bill') regulates the reticulation of natural gas in the Territory.

Reticulation of gas entails the supply or distribution of gas by means of a system of pipes (mostly located underground in the Territory) and associated equipment. This Bill only regulates the reticulation of gas. It is not concerned with gas, such as bottled gas, that is supplied by other means.

Natural gas has been reticulated to Territory consumers by AGL Canberra Limited ('AGL') since the early 1980's on the basis of a franchise agreement that was reached between the Commonwealth Government and AGL in 1980. This arrangement was continued when the Territory was granted Self-government in 1989. The terms of this agreement were recently modified by a further agreement between AGL and the Territory to bring the Territory gas tariff structure into line with that in place in Queanbeyan and Sydney.

This Bill will formalise in legislation the relationship between AGL (and any other company that may reticulate gas in the Australian Capital Territory in the future) and the Territory. The Bill also protects consumers of gas and enables gas distributors to operate in a more predictable commercial environment. It is based on the scheme in force in New South Wales and Britain.

Under this Bill the Territory Executive will no longer have direct control through the franchise agreement with the authorised distributor. The administrative structure is instead comprised by:

- the Gas Authority - a part-time statutory body that monitors the need for changes to the conditions under which gas is supplied, in particular, the price that may be charged to tariff consumers. The Authority handles most of the routine arrangements with AGL that are currently handled by the Territory Executive;

- the Gas Technical Controller - a statutory office holder with responsibility for technical and safety matters involved in the supply of gas;
- the Review Panel - a specialist advisory body that may be appointed from time to time to resolve disputes over changes to the conditions under which gas is supplied in the Territory;
- the Minister - still responsible for the granting and revocation of authorisations to reticulate gas. The Minister has the ability to dispute any proposed change in authorisation conditions proposed by the Authority or an authorised distributor. The Minister is also ultimately responsible for the overall administration of the Act; and
- the Administrative Appeals Tribunal - able to review certain decisions of the Gas Technical Controller, the Minister, and the authorised distributor that are made under the Bill.

AGL is granted, by force of this Bill, an authorisation to reticulate gas in the Territory for a period of 20 years. This grant is an outright grant under the legislation and is not subject to the usual application, notification and review provisions. The initial conditions of this authorisation are however, subject to disallowance by the Assembly.

The Bill also clarifies the existing rights and relationships of the authorised distributor, gas consumers and the Territory. In this respect the Bill recognises that there is currently, and in the immediate future will be, a monopoly on gas reticulation in the Territory. Hence the Bill requires the authorisation to reticulate gas to contain provision for a maximum price formula to control the price that may be charged for gas supplied to consumers.

The Bill also has significant provisions to ensure safety in the reticulation of gas. These include provisions in regard to inspections, standards for gasfitting work, construction and maintenance of gas reticulation systems, interference with gas reticulation systems and the reporting of matters likely to compromise the safe reticulation of gas in the Territory.

FINANCIAL CONSIDERATIONS

The Energy Research and Development Levy in Part V of the Bill will provide funds for energy research and development that is relevant to the Territory. The costs of regulation (remuneration and expenses of the Authority and the Controller and inspectors) will be met from Consolidated Revenue. These costs will be more than offset by the payment into Consolidated Revenue of the gas levy that is paid by all authorised distributors under the *Gas Levy Act 1991*.

Details of the Bill are included in the Attachment.

ATTACHMENT**PART I - PRELIMINARY**

Clauses 1 and 2 of the Bill are formal clauses providing for the citation and commencement of the Bill. The Bill is to commence on a day to be notified by the Minister in the Gazette. This particular formulation has been used to avoid any problems with the current arrangements with AGL which are expressed to expire on the commencement of this legislation.

Clauses 3 and 4 are the interpretation clauses for the Bill. The term "authorised distributor" means a gas distributor who is authorised to reticulate in the Territory by virtue of **clause 36** of the Bill. AGL will be the initial authorised distributor. "Gas" is defined in **clause 3** to include a number of different types of combustible gases. **Clause 4** defines what is meant by the reticulation of gas. The term is defined so that not all persons who distribute or reticulate will be required to obtain an authorisation to do so. For example, a person who reticulates liquid petroleum gas from a service station for use in powering motor vehicles will not be engaging in "reticulation" for the purposes of this Bill as the reticulation system will be located entirely on leased premises (**subparagraph 4(2)(e)**) - that is, the service station.

Clause 5 is a formal clause binding the Crown to the Act.

Clause 6 sets out the objectives to which the Authority and the Review Panel should have regard in the performance of any functions under the Bill. The Minister is also required to have regard to these objectives when making certain decisions under the Bill. These objectives are intended to act as a guide as to the manner in which discretions should be exercised.

PART II - THE GAS AUTHORITY

This Part establishes the Authority, sets out its powers and functions and the way in which the Authority is appointed and operates.

The functions of the Authority are included in **clause 8** of the Bill. In performing these functions the Authority should have regard to those objectives in **clause 6**.

Clause 9 provides that the Minister may direct the Authority to investigate any matter relevant to the functions of the Authority. For example, the Minister may direct the Authority to investigate the need for consumers to provide security to an authorised distributor before gas is supplied.

Clause 10 gives the Authority specific power to require information from an authorised distributor. This power is included in the Bill to allow the Authority access to records that might not otherwise be available. For example, the relationship of an authorised distributor to a parent company may be relevant to the financial ability of the authorised distributor to successfully reticulate gas in the Territory. Such information should be available to the Authority to enable it to make fully informed decisions.

The Authority may be constituted by either only 1 member or 3 members with appropriate qualifications and expertise appointed on a part-time basis (**clause 13**). The flexible structure of the Authority is designed to take account of possible variations in the role and workload of the Authority.

Where the Authority is constituted by 3 members for the first time, **subclause 14(2)** provides for differing terms of appointment for the members. This provision is included to ensure that the terms of appointment of members do not all expire at the same time thus ensuring a continuity in membership of the Authority. Other provisions for conditions of employment for members of the Authority are standard.

Clause 20 provides for the conduct of meetings of the Authority. These provisions will not apply to a 1 member Authority however (because a member cannot conduct a "meeting" with her or himself). **Clauses 21 and 22** deal with disclosure of interests by members of the Authority. **Clause 23** specifically provides that a member of the Authority is not to be taken to have a pecuniary interest in a particular merely because the member is a consumer. This provision is necessary in order not to exclude a significant proportion of the population from potential service as members of the Authority. Where the Authority is constituted by only 1 member and that member discloses an interest to the Minister then **clause 22** provides that the Minister may appoint another member to the Authority to consider the particular matter on which the original member has the conflict of interest. The extra member may only consider that

matter - the original member continues to consider all other matters which require the consideration of the Authority. Apart from the limitation on the period of appointment, the extra member is subject to the same conditions of appointment as an ordinary member of the Authority.

PART III - REVIEW PANELS

Review Panels are set up under the Bill on an "as required" basis. That is, where there is a dispute as to proposed changes to the conditions of an authorisation to reticulate gas in the Territory then the Authority is required by subclause 39(5) to refer the matter to a Review Panel appointed by the Minister under Part III of the Bill.

Where there is a dispute about a proposed variation of conditions the Minister appoints a Chairperson (paragraph 27(1)(a)) and then that Chairperson appoints such other members as she or he considers necessary or desirable to assist in the investigation (paragraph 27(1)(b)). Because of the specialised nature of the decisions which a Review Panel is required to make, all the appointments made under clause 27 are to be persons having appropriate experience and skills having regard to the matter to be investigated (subclause 29(1)). Once a Review Panel has been appointed then, subject to the few requirements in clause 32, the conduct of the business of the Review Panel is at the discretion of the Review Panel.

Clause 33 provides that the remuneration and reasonable costs of the Review Panel are to be paid by the authorised distributor whose conditions are the subject of the review. This provision is intended to encourage authorised distributors to reach agreement with the Authority on proposed amendments to the conditions of an authorisation.

PART IV - AUTHORISATION TO RETICULATE GAS

This Part of the Bill deals with the mechanics of authorisations to reticulate gas in the Territory. The Minister grants and revokes authorisations to reticulate gas however it is the Authority which administers those authorisations. As a consequence of the role of the Authority it has a far greater detailed knowledge of

matters relevant to the reticulation of gas. Because of the "arm's length" position of the Minister that will result from these arrangements with the Authority, the Minister is required to consider the advice of the Authority before granting or revoking an authorisation.

It is an offence under **clause 34** of the Bill to reticulate gas in the Territory otherwise than under an authorisation and in accordance with the conditions of that authorisation. The Minister may grant an authorisation, subject to conditions, by instrument under **clause 36**. The instrument is subject to disallowance by the Assembly - **subclause 36(6)**. Where the Minister refuses to grant an authorisation then the Minister must, within 15 sitting days, table a statement of reasons for that refusal in the Assembly. This provision is intended to ensure accountability by the Minister in the exercise of the discretion to refuse to grant an authorisation.

Subclause 36(5) specifically grants AGL Canberra Limited an authorisation to reticulate gas in the Territory for a period of 20 years beginning on the day on which the Bill commences. This automatic grant recognises the current position of AGL as the supplier of gas under the franchise agreement with the Territory.

All authorisations to reticulate gas to tariff customers are required by **clause 37** to contain a condition relating to the price that may be charged for gas supplied to those customers. Tariff customers are, generally speaking, domestic and small industrial and commercial consumers. This condition is intended to put an upper limit on price increases. The maximum price will be calculated using a formula specified in the authorisation.

Clause 38 specifies other kinds of conditions which may be attached to an authorisation to reticulate gas. **Clause 40** allows the Minister to impose a condition directing an authorised distributor to permit a third party access to the authorised distributor's reticulation system. A decision of the Minister to impose a condition directing third party access to a reticulation system is subject to disallowance by the Legislative Assembly. Where an authorisation is subject to a condition of this type the Minister is required to determine what compensation, if any, is payable to the authorised distributor. The determination of the Minister as to the amount of compensation payable may be reviewed by the Administrative Appeals Tribunal (**clause 110**).

The conditions of an authorisation may be amended following the process set out in **clause 39**. Unlike the requirements of **clause 36**, conditions that are added, removed or varied under **clause 39** are not subject to scrutiny, and possible disallowance, by the Assembly. Either the Authority or the authorised distributor may propose additions, removals or variations to the conditions of an authorisation. The proposed amendment is put to the Minister, the Authority, and the authorised distributor and if there is no disagreement to the proposed amendment within the required period then the amendment is implemented. Where the amendment to the conditions is to add a condition regarding third party access to the authorised distributor's reticulation system the Minister must specifically consent to that condition (**subclause 39(12)**). Where the Minister refuses to consent to an amendment of the authorisation to allow third party access then she or he must table a statement of reasons for that refusal in the Legislative Assembly.

Clause 39 also sets out the procedure for the referral of a matter to a Review Panel should there be a disagreement by the Minister, the Authority or the Review Panel concerning a proposed amendment. Where there is a disagreement by the Minister, the Minister determines the terms of reference for the Review Panel. Where the Authority or the authorised distributor disagrees with the proposed amendment, then the terms of reference for the Review Panel are as agreed between the Authority and the authorised distributor or, if there is no agreement, by the Minister - **subclause 39(6)**. The Review Panel then conducts its investigation in accordance with the terms of reference and makes a recommendation. The recommendation of the Review Panel may be to adopt or not to adopt a proposed variation, or to adopt a variation subject to specified amendments provided that the amendments recommended by the Review Panel are within the terms of reference. The Authority then amends the authorisation in accordance with the Review Panel's recommendation.

The process for revocation of an authorisation is set out in **clause 41**. As part of the "arm's length" role of the Minister under this Bill the Minister may not revoke an authorisation on the grounds of contravention of the conditions of an authorisation or the Act or Manual unless the Authority has made a recommendation that the authorisation be revoked on those grounds. Similarly to the grant of an authorisation under **clause 36**, an instrument revoking an authorisation is also a disallowable instrument.

Clause 42 allows the authorised distributor to surrender an authorisation with the consent of the Minister. This clause recognises that the circumstances of an authorised distributor may change during the course of a 20 year authorisation and allows the distributor to cease the reticulation of gas without breaching the authorisation conditions or the Act.

PART VI - ENERGY RESEARCH AND DEVELOPMENT LEVY

This Part of the Bill sets out the arrangements for the payment, by the authorised distributor, of an annual research and development levy to the Territory. This levy is calculated on a similar basis as the gas levy under the *Gas Levy Act 1991*. The funds collected for this purpose will be paid into a special Trust Fund established under the *Audit Act 1989* and may only be used for the purposes of research into, and development of, energy resources. There is also an obligation to consult all authorised distributors before the moneys are expended.

PART V - GAS TECHNICAL CONTROLLER AND INSPECTORS

This Part of the Bill provides for the appointment and functions of the Gas Technical Controller and inspectors for the purposes of the Bill. The Controller and inspectors are responsible for the enforcement of the technical and safety aspects of the gas legislation. This Part is split into three Divisions.

Division 1 - General:

Division 1 deals with the appointment of the Controller and inspectors and sets out their general powers and functions - these are standard provisions dealing with administrative matters. Similarly to the Authority, the Controller has specific functions allocated under clause 52 of the Bill. Assistance with the preparation of, and administration of matters arising from, the Gas Manual prepared under Part VII of the Bill forms a large part of the Controller's responsibilities.

Division 2 - Gas reticulation systems:

Division 2 deals with the specific powers of the Controller and inspectors to ensure that gas reticulation systems are operated in accordance with the Act and Manual and that safety in relation to those systems are maintained. Clause 59

allows the Controller to give notices to an authorised distributor requiring the authorised distributor to perform work on a gas reticulation system where that reticulation system does not comply with the Manual. The type of work the authorised distributor may be required to do may be modification or repair and, where necessary, reinstatement of any ground opened by an inspector for the purposes of inspection. Subclause 59(4) prevents the Controller from giving a notice where the effect of the notice would be to impose standards retrospectively on a gas reticulation system. Because the gas reticulation system in the Territory has only been installed very recently (installation commenced in the early 1980's) it already meets high standards and it is not necessary to have the power to impose standards retrospectively.

Clause 60 allows the Controller to require the authorised distributor to perform tests on a gas reticulation system or the gas in the reticulation system. The Controller also has powers to direct an authorised distributor to cut off the supply of gas where necessary (clause 61) and emergency powers (clause 62) that may be used where the Controller considers it is necessary to do so to protect persons from injury or property from damage. There is also a requirement in clause 62 that emergency powers be exercised in accordance with the provisions of the Manual. This requirement is necessary to give the Controller some guidance as to the manner in which emergency powers may be exercised without compromising safety.

Clause 63 allows inspectors to uncover a gas reticulation system and to perform tests. There is an obligation imposed on an authorised distributor by clause 64 to assist an inspector in the exercise of her or his functions under clause 63. Clause 65 sets out the powers of the Controller and inspectors to obtain information.

Division 3 - Premises:

Division 3 deals with the powers of inspectors in relation to the entry and inspection of premises - these are standard entry and inspection provisions.

PART VII - GAS MANUAL

The Gas Manual details technical and safety matters relating to the reticulation of gas in the Territory. The function of the Manual is to provide guidance as to

the manner in which technical and safety requirements for the reticulation of gas are to be met.

The Minister is required by clause 70 to prepare the Manual. One of the functions of the Controller under clause 52 of the Bill is to assist and advise the Minister in the preparation and amendment of the Manual. Clauses 71, 72 and 73 provide for the publication, disallowance, and inspection of the Manual.

This Part also contains several offence provisions which are related to the Manual. Clause 74 provides that it is an offence to supply gas which does not meet the qualitative standards prescribed in the Manual. It is also an offence to connect under clause 74 to connect an apparatus to a gas reticulation system unless the apparatus complies with the Manual or to sell an appliance if it does not comply with the Manual. Because of the role of the Manual in fully defining certain offences in the Bill and prescribing standards, clause 72 provides that the Manual may be disallowed by the Legislative Assembly. Clause 75 provides for evidentiary matters in relation to the Manual.

PART VIII - CONSTRUCTION AND MAINTENANCE OF WORKS

Part VII of the Bill gives an authorised distributor the necessary powers to enter land and do things for the purposes of construction and maintenance of a gas reticulation system. The Part also sets out the circumstances in which these powers of entry may be exercised by an authorised distributor and the notification processes which are required.

Clause 76 provides that gas system construction is a controlled activity for the purposes of Schedule 4 of the *Land (Planning and Environment) Act 1991*. Basically, this means that construction is subject to the approval processes set in Part VI of that Act. This is consistent with the way in which public works are treated under that Act.

Clauses 77, 78 and 79 set out the powers of an authorised distributor in respect of the construction and maintenance of a gas reticulation system. These clauses give the authorised distributor powers to enter land and to do things preparatory to, or necessary for, the construction and maintenance of the gas reticulation system.

An important part of the control on the exercise of the powers of entry by the authorised distributor are the notification requirements. Where an authorised distributor needs to enter land for the purposes of constructing or maintaining a gas reticulation system under clause 78, then the authorised distributor must give the owner and the occupier (in the case of land that is not a public street or public place), the requisite notice in writing of the intention to enter the land. The only exception to this rule is in the case of an emergency. This notification provision is backed up by clause 110 which provides that an application may be made to the Administrative Appeals Tribunal for review of a decision of the authorised distributor to exercise its powers under clause 78. Similarly a decision of the authorised distributor to request the removal of vegetation under clause 79 is also subject to notification and review. These notification and review provisions are designed to ensure that the authorised distributor acts reasonably in the exercise of its powers where that exercise is likely to affect the interests of other persons.

Clause 80 provides for the payment of compensation by an authorised distributor in certain circumstances. The payment of compensation is linked to the exercise of powers by the distributor under the Bill. Subclause 80(5) specifically provides that the liability of the authorised distributor in respect of any matters not covered by the clause is not affected.

Other obligations that are imposed on an authorised distributor by this Part are obligations to take certain precautions in respect of underground lines and pipes (clause 81), obligations to remove property and waste after the completion of work (clause 82), and an obligation to maintain all gas reticulation systems in good condition and repair (clause 83).

An authorised distributor is also required to make particulars and plans of the gas reticulation system available to the public and to the administrative head under clause 84. The relevant administrative head for the purposes of this clause would currently be the Secretary of the Department of the Environment, Land and Planning.

PART IX - SUPPLY AND CONSUMPTION OF GAS

This Part of the Bill sets out some of the terms on which an authorised distributor supplies gas to consumers. Other terms of supply remain subject to contract between the authorised distributor and the consumer.

Clause 85 establishes the right of an owner of land to connection to a gas reticulation system. Clause 86 establishes the rights of an occupier to have gas supplied where the relevant connections are already present. The right of a owner or occupier to be connected to, or supplied from, the gas reticulation system is tempered by conditions on that connection or supply which are designed to protect the interests of an authorised distributor by ensuring that the connection or supply is financially viable for the authorised distributor.

An authorised distributor is required by clause 87 to ensure that all gas that is reticulated to a consumer is metered. Conversely, it is also an offence for a consumer to take gas from an authorised distributor otherwise than through a meter. Clause 88 provides that a meter must comply with any requirements specified in the Manual. Clause 89 provides that the installation of any pipes, appliances etc that are connected to the distributor's gas reticulation system must comply with the Manual.

Clauses 90, 91 and 92 deal with the testing of meters and, where a meter is found to measure the flow of gas inaccurately, the adjustment of accounts to take account of faulty readings.

PART X - GASFITTING

Part X of the Bill is designed to ensure that all gasfitting work is done only by appropriately qualified persons. Clauses 94 and 95 make it an offence to, respectively, do gasfitting or advanced gasfitting work without an appropriate licence. The *Plumbers, Drainers and Gasfitters Board Act 1982* provides for the establishment of a licensing Board and sets out the powers of that Board to grant and revoke licences to do gasfitting work. That Act does not however, go as far as making it an offence to do gasfitting work without a licence. Part X of the Bill finally addresses this matter.

PART XI - INTERFERENCE WITH GAS RETICULATION SYSTEMS

This Part of the Bill deals with all offences related to interference with a gas reticulation system. Prosecution for these offences is done by the Territory and in no way derogates from the rights of an authorised distributor to institute civil proceedings against a person who damages or in any other way interferes with a gas reticulation system to the detriment of the rights of the authorised distributor. These offences are aimed at reducing dangerous occurrences involving gas reticulation systems.

Clause 96 provides that it is an offence to connect anything to a gas reticulation system without the consent of the authorised distributor. Clauses 96 and 97 are offences related to digging up a gas reticulation system. Clauses 99 and 100 are offences which relate to causing damage to, or interfering with, a gas reticulation system or things connected with that gas reticulation system.

PART XII - MISCELLANEOUS

This Part deals with leakages in the gas reticulation system, reporting of dangerous occurrences, interference with access to a gas reticulation system, appeals and other miscellaneous matters.

Clause 101 sets out the obligation of an authorised distributor to investigate any report leakages of gas. This obligation is followed up in clause 102 by an obligation to make a regular report to the Controller concerning leakages in the gas reticulation system and an obligation in clause 103 to immediately report any serious occurrences involving gas. These provisions are all designed to ensure that the reticulation of gas is conducted in a safe manner and to ensure that appropriate action is taken where a potential or actual dangerous situation does occur.

Clause 104 is designed to ensure that an authorised distributor continues to have appropriate access to a gas reticulation system and to ensure that no damage is done to a gas reticulation system by the placement of a building or other structure on or near that system.

Clause 105 sets the nature of the interests that the authorised distributor has in the gas reticulation system.

Clause 106 protects the interest that an authorised distributor has in the gas meter that is provided by the authorised distributor by providing that the meter may not be taken in execution of a debt. This provision is necessary, for example, to preserve the property rights of an authorised distributor as against a mortgagee with respect to a gas meter notwithstanding that the meter may be a fixture of the house which is the subject of the mortgage.

Clauses 107 and 108 are provisions to protect the interests of an authorised distributor in relation to the installation of a gas reticulation system. The requirement to notify an authorised distributor of changes to the levels of a public street or public place is to ensure that the distributor does not face any unnecessary burden in varying the depth at which the gas reticulation system is located.

Clause 109 provides that the Minister may approve an activity as a secondary gas activity. "Secondary gas activity" is a term that is defined in **clause 3**.

Clause 110 is a standard provision setting out all of the decisions under the Bill which are subject to review by the Administrative Appeals Tribunal. Importantly, it is not only the decisions of the usual bodies, the Minister and the Controller, which are subject to review. Some of the decisions of an authorised distributor that are made under the Bill may also be reviewed. This clause also sets out the notification requirements for decisions made under the Bill. **Subclause 110(7)** provides an automatic stay on decisions made by the distributor where an appeal against that decision is made. This automatic stay does not apply where the decision is made in an emergency.

Clause 111 and 112 are standard provisions providing for respectively, the determination of fees and the making of regulations for the purposes of the Bill.