

2014

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

GAS SAFETY LEGISLATION AMENDMENT BILL 2014

EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Minister for the Environment and Sustainable Development**

GAS SAFETY AMENDMENT BILL 2014

Overview of the Bill

The Gas Safety Legislation Amendment Bill 2014 (the Bill) amends a number of laws administered by the Environment and Sustainable Development Directorate.

The Bill is intended to improve the operation of gas safety regulation, including revising provisions for setting standards for gasfitting and gas appliance work and product safety approvals for gas appliances. It also consolidates the accreditation of gas appliance workers into the Construction Occupations (Licensing) Act.

The Gas Safety Legislation Amendment Bill 2014 amends the following laws:

- *Gas Safety Act 2000*
- *Gas Safety Regulation 2001*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*

Gas Safety Act 2000 and Gas Safety Regulation 2001

The proposed amendments to the *Gas Safety Act 2000* and *Gas Safety Regulation 2001* are to:

- insert objects for the Gas Safety Act;
- remove requirements for compliance indicators to be attached to premises where gasfitting work has been carried out;
- revise product approval processes to:
 - remove an unused product approval mechanism for the ACT and rely on the existing corresponding law provisions and cooperative national arrangements to recognise approved products, and
 - delineate and clarify processes required for different types of gas appliances;
- allow for the transfer of the accreditation of gas appliance workers to the *Construction Occupations (Licensing) Act 2004*;
- insert new provisions to complement the current powers to set energy efficiency standards for gas appliances in the building code, which allow for regulations to be made for energy efficiency, energy conservation or environmental safety;
- clarify requirements that relate to written directions if given to unqualified people;
- replace all references to the planning and land authority with references to the construction occupations registrar to reflect the administrative responsibilities under the Construction Occupations (Licensing) Act; and
- clarify certain provisions and definitions to improve the Act and its operations, including those for setting standards for gasfitting and gas appliance work.

Objects of the Act

Objects of an Act outline the underlying purpose of the legislation. Objects can set out general aims or principles that help the reader to interpret the legislation. Objects can be used to resolve uncertainty or ambiguity. Legislation principles also require that provisions accord with the general objects of the Acts under which they are made and legislative scrutiny committees require verification of accordance.

The Gas Safety Act does not include objects. Although this does not necessarily affect the general operation of the Act, it does not provide a framework for the legislation or guidance for readers and administrators of the Act.

This Bill will insert objects of the Act – specifically the Act is intended to:

- promote safe and efficient gas usage, and
- establish a regulatory system for:
 - the installation, operation, maintenance and repair of consumer piping systems
 - the connection of gas appliances to consumer piping systems
 - the commissioning, maintenance, repair and servicing of gas appliances connected to consumer piping systems, and
 - the testing and inspection of consumer piping systems and gas appliances.

The transportation and ‘supply’ of gas to a meter and the utility network aspects of gas safety are primarily dealt with in the *Utilities Act 2000*. The Gas Safety Act covers the use of gas past the meter.

These objects align with the long-standing provisions of the Act but reflect the expansion of those powers to include standards for gas appliances and consumer piping systems for efficiency or environmental reasons.

Compliance indicators for gasfitting work

The term compliance indicator in the Act is used to describe two separate concepts:

- (a) a form of self-certification of gasfitting work in relation to a consumer piping system—see section 9 (Compliance indicators and certificates);
- (b) a compliance plate on an appliance placed by the manufacturer of the product similar to those on other appliances, vehicles etc—see section 25 (Compliance indicators to be attached).

Compliance indicators on premises for section 9 were originally used by the utility network provider or the provider of liquefied petroleum gas (LPG) to premises to determine whether it was safe to supply gas to the consumer piping system. The compliance indicator is a self-certification placed by the gasfitter that completed the relevant gasfitting work and does not indicate that the work has passed any particular inspection or provide evidence that the system remains compliant after a period of time.

Template compliance indicators were initially produced by government agencies and supplied to gasfitters for completing and attaching to premises. However, that practice ceased over 5 years ago.

Section 9 also requires that a gasfitter must give a certificate of compliance for gasfitting work to each person prescribed under the regulations. The certificate of compliance is a statutory form and contains more information than a compliance indicator.

For suppliers of LPG bottles, the relevant standard *AS/NZS 1596:2008 The storage and handling of LP Gas* requires that before the initial delivery of LPG to a new installation the relevant statutory approvals and certificates and the installer's test certificates shall be obtained by the person that will connect the LPG. A compliance indicator would not by itself be sufficient to meet the requirements of the standard, and the person connecting the LPG would still need to obtain the certificate of compliance.

The requirements for compliance indicators under section 9 have not been enforced for some time and alternative practices have developed. In particular, gas suppliers will use the certificate of compliance provided by the gasfitter as certification the system is safe to supply instead of a fixed compliance indicator. This practice is preferable as it means there is a single compliance document issued by the gasfitter.

Compliance indicators on consumer piping systems are not used by the regulatory authority and are not required in the ACT to satisfy any other legislation. In addition, a compliance indicator may be confusing to consumers as it relates only to a certain piece of work at a certain time. It is not used as ongoing verification of compliance. There is no strong justification for retaining the requirements for compliance indicators under section 9.

Therefore, the Bill removes all requirements for compliance indicators to be attached to premises under section 9 and instead requires that for a consumer piping system connected to, or intended to be connected to a gas distribution network, the gas distributor to whose network the system is attached must receive a copy of the certificate of compliance within five working days of completion. Failure to provide the certificate is an offence that carries a maximum penalty of 10 penalty units. This is consistent with failure to provide a certificate to any of the other entities prescribed by regulation.

The Bill also removes the existing offences for failing to attach a compliance indicator and interfering with a compliance indicator and relies on the recast offence under section 11 for preventing a person from providing something that falsely indicates it is a statutory certification under the Act. This is because compliance indicators, other than those already attached to premises at the time new legislation commences, will no longer have any legal status under the Gas Safety Act.

Section 18 of the Regulation provides an offence for using a consumer piping system that has not been certified as safe. So that previously attached indicators can still be recognised as verification the system is safe, section 18 (2) (a) in the Regulation is recast to account for indicators placed in accordance with the repealed regulation.

Requirements for compliance indicators for gas appliances are not affected by the Bill.

New and revised offences are discussed further in the *Offences and penalties* section.

Gas appliance approvals

The Gas Safety Act has the capacity to regulate all appliances that use natural gas or LPG and are attached to a consumer piping system.

There are two primary types of gas appliances that are subject to approval, certification, and work accreditation/licensing requirements:

- Type A appliances, which are generally smaller or mass-produced consumer appliances that are covered under a specific product standard and certification scheme,
- Type B appliances, which are generally custom or large commercial and industrial appliances that do not have specific testing and certification requirements in place.

At present the Act does not define which type of appliance that provisions refer to or well define a type A or type B appliance. The definitions of those appliances are included in the Regulation and refer to the definitions in the standard *AS/NZS 5601 Gas Installations*, which are very broad.

Current definitions of appliance work also allow the scope of work that is exempted from accreditation to effectively be determined by manufacturer's instructions. This is not appropriate because the scope of exclusions is indefinite and each manufacturer will have a different assessment of risk, which may differ from that of regulatory authorities. As such, the relevant definitions in this Bill refer to work exempted by regulation. A new regulation will be drafted to coincide with the commencement of the legislation and does not form part of this Bill.

The Bill amends and clarifies the provisions relating to the approval of prescribed appliances and delineates the heads of power for regulating type A and type B appliances. The Bill replaces definitions of *appliance*, *type A appliance*, *type B appliance*, *appliance work*, *gasfitter* and *gasfitting work* with clearer definitions of *gas appliance*, *type A appliance*, *type B appliance*, *type A appliance work*, *type B appliance work*, *gasfitter* and *gasfitting work*.

Part 4 of the Act outlines a system for the declaration and approval of gas appliances. However, as noted, there are two distinct types of gas appliances in the regulatory system – type A and type B appliances. In practice, type A appliances are certified by bodies approved by, but external to, gas regulatory authorities and Type B appliances are approved by the technical regulators in each jurisdiction.

Recent amendments to the *Electricity Safety Act 1971* also recognise that as there is no manufacturing base in the ACT, it is highly unlikely a person will seek to have an appliance approved by the ACT regulator. The electrical product approval system operates under a system of corresponding laws. The gas appliance approval system is moving to a similar arrangement. There is no need to keep a separate approval system as the primary approval mechanism for type A appliances in ACT legislation. However, the Act should allow such a system to be prescribed by regulation if it is required.

The existing provisions allow that the planning and land authority (the authority) can declare products of a stated kind to be approved. Anything that is not approved can't be sold or installed in the ACT. The authority can approve individual appliances under the Act but there is no administrative capacity in the regulatory authority to do so. Unlike the process under the *Electricity Safety Act*, in the *Gas Safety Act* the individual appliances or appliance types and the standards they must meet are not declared or defined. Instead, products approved by certain prescribed certification bodies, and only those products, are approved. This means that in effect anything a certification body approves becomes a type A appliance.

Although the Act allows the operation of a corresponding law, none is declared at present. As such, if an appliance is approved in another jurisdiction it is not approved under ACT legislation. The Act is silent about the obligations of the person that registered the product (as opposed to approved it) and does not sufficiently provide for appliances that are neither type A or type B appliances as at present all gas appliances must be approved.

This Bill responds to the need for clarity in the legislation about which appliances need to be approved, how they are approved, and who they can be certified by.

The Bill removes the existing appliance declaration process under the Act and allows for a declaration of prescribed appliances in a corresponding law or in a safety standard set under regulation if required. The ACT participates in a variety of national processes for setting Australian standards for gas appliances. However, it does not have a significant manufacturing base and has minimal involvement in checking the credentials of certification bodies and ongoing auditing of quality control. Arrangements between state and territory regulatory bodies are continually being refined and it is expected that the bulk of process for approving appliances will be defined through external legislation.

The Registrar would retain the power to prevent the sale of an unsafe item and to refuse to recognise a registration in certain circumstances but the Act would no longer include an approval process.

All functions relating to approvals will also be transferred to the Construction Occupations Registrar in accordance with the provisions described in the *Roles of the Construction Occupations Registrar and the Planning and Land Authority* section below.

The Bill also clarifies requirements for compliance indicators that must be attached to type A and type B appliances.

Reviewable decisions in Schedule 1, Part 1.1 Items 1 and 2 are omitted as they relate to repealed provisions and will no longer be required.

Delegation of powers

In considering whether the provisions, which may delegate relevant powers of the Legislative Assembly, are appropriate, it is useful to consider the context in which these provisions are proposed. To date there have been no direct gas appliance approvals given under Territory law. Therefore, the Act already operates under external approvals requirements.

Although the Assembly may not have direct control over the contents of external laws, in general all corresponding legislation relies on Australian Standards and other nationally agreed safety standards and processes developed by gas technical regulatory authorities. The Territory is generally involved in setting of standards at a national level for gasfitting, gas appliance work and gas appliances.

The ability to manage aspects of product approval under corresponding law is a long-standing power in the Act. This Bill allows a corresponding law to be declared by the Minister in a notifiable instrument. This is the same power as the Minister has under the Electricity Safety Act, which has been operating successfully for many years.

However, should the Assembly or a member of the Assembly feel that the power is not being exercised appropriately; the control of the Assembly does not end once the regulation has been made. A member may present their own regulation to remove or modify the power for the consideration of the Assembly. As such, the delegation of legislative power is appropriate in this case.

Gas appliance work accreditations

The Bill also makes the following amendments to remove sections of the Act and Regulation that form the existing gas appliance worker accreditation scheme:

- Definitions, headings and provisions referring to accreditations are amended to refer to licenses under the *Construction Occupations (Licensing) Act 2004*.
- Removes regulation-making powers and reviewable decisions (Part 1.2 of Schedule 1 to the Regulation) for accreditations and includes transitional provisions so that the Act, including inspection powers, directions, testing etc still applies to work done under an accreditation as if it was a licence.
- Removes the requirements to keep a register of accredited people as the provisions only require that current accreditations are recorded and this information will be moved into the register that must be kept under section 107 of COLA.

- Validates the existing code and by extension accreditations issued under it to remove any doubt about their legitimacy once transferred to the new licensing system.
- Repeals the existing code, ending accreditations on their transfer into a licence under COLA.

Further information on the transfer of this function to the Construction Occupations (Licensing) Act is in the section on that Act below.

Inclusion of regulation-making power for energy efficiency standards

The Gas Safety Act has a traditional focus on the safety of products and installations. Over time the expectations of performance have broadened to include the efficient use of energy for conservation and the need to limit damage to the environment from the use of certain fuels, materials and products. As such, there may be instances where it may be desirable to apply an energy or environmental conservation standard to gas installations or appliances. For example, there may be a requirement for all gas space heaters in schools to meet a minimum efficiency standard, or that gas installations are configured in a way that reduces the greenhouse gas emissions resulting from the operation of the installation.

Standards for some appliances already exist in the building code declared under the *Building Act 2004* and the *Water and Sewerage Act 2000*. These standards include the efficiency levels of gas water heaters installed in new class 1 buildings (houses and townhouses etc). However, these standards apply only when the work is part of either building work that triggers requirements to meet the building code or plumbing work that triggers the requirements of the plumbing code. There is no complementary power under the Gas Safety Act for gas installations and appliances that are not installed or altered as part of building or plumbing work.

This Bill inserts provisions that allow regulations to be made to promote the efficient use or conservation of power and energy or to limit harm to the environment.

The new provisions are intended for standards to promote an environmental or efficiency aim rather than purely a safety outcome i.e. reduce energy consumption and the environmental impact of the use of gas in consumer piping systems. Where there is a clear safety outcome required, an existing safety-related power will be used, but the new power will also be able to make incidental standards such as where an environmental impact may arise from the use of a particular appliance or disposal of certain materials.

The proposed amendments would allow specific standards for gas installations and appliances to be made without requiring corresponding building or other work to be undertaken. Regulatory impact analysis would apply to each regulation made under the head of power.

This amendment is consistent with the Commonwealth *Greenhouse and Energy Minimum Standards Act 2012* as that Act regulates for the supply of products rather than installation standards.

The provisions also mirror those recently included in the Electricity Safety Act as part of the *Construction and Energy Efficiency Legislation Amendment Act 2014 (No 2)*. That Act and Explanatory Statement can be found at <http://www.legislation.act.gov.au/a/2014-10/default.asp>

Offences and human rights implications for the new powers are discussed in the *Offences and penalties* and *Human Rights implications* sections below.

Directions to unlicensed or unqualified people

Sections 50 (3) and (4) and 51 (2) and (3) of the Act allow an inspector to give a person a written direction to arrange for gasfitting work to be done or give a written direction to a gasfitter or accredited person to take stated action to make a consumer piping system or appliance safe and compliant with the Act. Although the Act anticipates that only appropriately licensed people will carry out gasfitting or gas appliance work, and therefore should be able to legally carry out any direction to make the installation safe and compliant, this will not always be the case.

Similarly, certain qualifications may be required to undertake a stated action. For example, a licensed gasfitter or owner may be directed to provide a written report on the compliance of a system that could only reasonably be prepared by an engineer. Engineering is not licensable work but requires particular skills, knowledge and qualifications to undertake.

This Bill inserts provisions to clarify that where the entity is not licensed, qualified, authorised, or does not hold relevant skills or experience required to do something required to be done, that the entity must arrange and pay for the thing to be done.

It is expected that part of the work to make the installation or work safe and compliant will be to have work tested, certified or verified by a person that is qualified to do so. In some cases this may be by the licensee, but in other cases independent certification may be required. This Bill inserts a provision to clarify that a direction may include a requirement for the entity to provide written information. This could include an independent report, certification or other information relating to the order, such as the results of a test that would normally need to be conducted on the work.

These provisions are consistent with similar provisions in section 38 of the Construction Occupations (Licensing) Act, section 22 and 32 of the *Water and Sewerage Act 2000* and section 8 of the *Electricity Safety Act 1971*.

Roles of the Construction Occupations Registrar and the Planning and Land Authority

The Construction Occupations Registrar (Registrar) has a number of functions under section 104 of the *Construction Occupations (Licensing) Act 2004* (COLA), including administering operational Acts. The *Gas Safety Act 2000* (GS Act) is an operational Act under the COLA.

A number of the decisions and administrative functions under the GS Act were transferred to the Registrar on the creation of the COLA. However, although it is the Registrar that holds the statutory office for construction regulation and the responsibility for regulating gas fitting and the safety of gas installations, certain powers still remain in law with the statutory office of the planning and land authority. For example, the planning and land authority is responsible for prescribing and setting relevant safety standards for gas appliances and appointing inspectors under the GS Act. The only defined role of the Registrar under the GS Act is to make copies of code of practices made by the Minister under section 66 available for public inspection.

This not only creates an unwieldy division of responsibilities but is incongruous with the role of the Registrar under COLA. In practice, the Registrar predominantly exercises the relevant functions under the Act under authority delegated by the planning and land authority. Safety notices and prohibition of gas appliances are likely to be prepared on recommendation from the Registrar given that the gasfitting inspectorate is managed by the Registrar. Although the relevant functions were administered by the former agency called the ACT Planning and Land Authority (now incorporated into the Environment and Sustainable Development Directorate), regulation of individual appliances and other gas safety regulatory matters is largely unrelated to the planning functions held by the statutory office of the planning and land authority appointed under the *Planning and Development Act 2007*.

To reflect the administrative responsibilities under the COLA and the intent of the 2004 construction licensing reforms, this Bill transfers all residual powers of the planning and land authority in the GS Act to the construction occupations registrar.

Technical standards and regulation-making powers

The Act creates a series of obligations and offences for failing to comply with relevant standards for gasfitting work and gas appliance work. These standards are not prescribed in the Act but in a code of practice made by the Minister in a disallowable instrument under section 65 of the Act.

A code can be difficult to find for those not familiar with the scope of powers in the Act and instruments made under legislation. Comparable legislation for electrical work, building work and plumbing work clearly outlines the basis of technical standards in the Act.

This Bill includes new section 6H in the Act and other provisions in the Act and Regulation that more clearly define standards to which gasfitting work and gas appliance work must be done and tested. These standards are adopted as in force from time to time, which has been the practice since the inception of the Act. Provisions in the Regulation disapply section 47 (6) of the Legislation Act.

New provisions applying to the regulation-making powers in the Act (new 69 (2A) and 66 (2B)) allow that a regulation may apply, adopt or incorporate the law of another jurisdiction or an instrument as in force from time to time. Further, if adopted, section 47 (5) or (6) of the Legislation Act does not apply in relation to the law of another jurisdiction or an instrument applied, adopted or incorporated under a regulation.

Section 47 (5) of the Legislation Act requires that if a law of another jurisdiction or an instrument is applied as in force at a particular time, the text of the law or instrument (as in force at that time) is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.

Section 47 (6) requires that if a law of another jurisdiction or an instrument is applied as in force from time to time, the text of each of the following is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument:

- (a) the law or instrument as in force at the time the relevant instrument is made;
- (b) each subsequent amendment of the law or instrument;
- (c) if the law or instrument is repealed and remade (with or without changes)—the law or instrument as remade and each subsequent amendment of the law or instrument;
- (d) if a provision of the law or instrument is omitted and remade (with or without changes) in another law or instrument—the provision as remade and each subsequent amendment of the provision.

In considering whether the provisions, which may delegate relevant powers of the Legislative Assembly, are appropriate, it is useful to consider the context in which these provisions are proposed.

Delegation of powers – adoption of documents in force from time to time

The Gas Safety Act predominantly regulates work of a technical nature and requirements for gasfitting and gas appliances usually included in Australian Standards and other technical documents. The vast majority of these technical documents are not prepared or owned by the Territory and it is expected that they will be subject to some form of copyright. Therefore, the Territory could not legally reproduce such documents. Although the Assembly may not have direct control over the contents of these documents as they exist from time to time, the Territory is generally involved in setting of standards for gas fitting work and gas appliances at a national level.

It would be expected that any part of the rules involving the regulation of work and appliances would provide for evolving standards of work, materials and equipment as practices and performance requirements shift over time. This may be by applying or adopting an external technical document.

Adopting documents as in force from time to time means affected parties are aware that the document will be used on an ongoing basis and it is less likely that different documents will be used from one period to the next. If instruments cannot be adopted from time to time, a change, even a minor amendment, to any one of these documents would require a new instrument to be made. This is not only unwieldy but impractical as it would result in an extensive number of instruments each year.

This Bill more clearly defines which standards apply to work and appliances. Additional standards can be made by regulation, which can be disallowed by the Assembly. The Minister remains responsible for the currency and appropriateness of the standards, including the ongoing use of external standards and allowing for transitions in regulation if required.

The Executive is able to exercise discretion on whether it is appropriate to enforce a standard at a point in time or from time to time. If the nature of the standard means that ongoing adoption is desirable, say for a document that prescribes safe and competent installation practices, it is not an unreasonable extension of the existing powers of the Executive to allow the adoption of external documents from time to time. A new regulation can be made at any time if a new version of a document is not appropriate, or a regulation can build in transition periods as part of a determination. For practicality, it is considered that this would be done on a case-by-case basis.

Further, the Assembly may disallow regulations made under section 69 if it feels that the application, adoption or incorporation of a particular document is not appropriate. The control of the Assembly does not end once the regulation has been made. If a member of the Assembly is concerned about a new version of an instrument, the member may present their own regulation for consideration by the Assembly.

Taking the provisions as a whole, the Executive, and not whoever makes an adopted document remains responsible for the contents of the document as it relates to Territory law, including the ongoing use of external documents and ensuring their continuing relevance and appropriateness. In consideration of the above, the delegation of legislative power to adopt instruments from time to time is appropriate in this case.

Disapplication of subsection 47(5) and 47 (6) of the Legislation Act

If subsections 47 (5) and 47 (6) of the Legislation Act are disapplied, any applied document need not be notified on the Legislation Register. In making these provisions, there may be concern that if the content of a law or instrument applied, adopted or incorporated changes from time to time it may not be readily accessible, particularly where a provision does not create any alternative means for access.

The principle of access to law is important; however, any law must be practical and enforceable. Full access to law would require that the Territory could only use its own legislation and external documents that were not subject to copyright. Clearly this is not possible, especially for gasfitting and product standards.

The Legislation Act clearly contemplates that external laws and documents will play a role in ACT legislation and that there would be times that republication of adopted documents would not be possible. Section 47 was included in recognition of this. Further, section 164 provides for how Australian Standards are to be referenced in ACT legislation, indicating the expectation of relatively widespread adoption of such documents.

In relation to enforceability, if a document can't be published than it is not enforceable. Given that adoption of external documents is a vital part of gas safety legislation, it would be unlikely that the Assembly would intend that instruments adopting Australian Standards and the like would be unenforceable. Therefore, concession has to be made that the documents need not be published.

It should be noted that due to the specialised nature of most technical documents, they are usually only accessed by practitioners that require them in the course of their work. Access from members of the public is rarely requested and the content of technical standards may be difficult to decipher even if it is.

In general, it is the practice to provide notes and other information in the text of the instrument or in explanatory information highlighting where adopted instruments can be found. Although in the vast majority of cases involving technical standards publication will not be possible due to copyright reasons, where publication is possible this is not precluded by the proposed provisions. Information on where standards and other documents can be obtained will be provided to people affected by the regulations as standard practice. This practice need not be provided for in legislation.

Construction Occupations (Licensing) Act 2004 and Construction Occupations (Licensing) Regulation 2004

The proposed amendments to the *Construction Occupations (Licensing) Act 2004* (COLA) and the *Construction Occupations (Licensing) Regulation 2004* (COLR) are to transfer regulation of gas appliance worker authorisations to the framework established by COLA.

Accreditation of gas appliance workers

The COLA was introduced to consolidate the numerous regulatory frameworks for different licensed occupations in the construction sector into a single law and respond to national competition policy reforms. Gas appliance work was not included in these reforms as revised arrangements for accreditation had been implemented before the COLA reforms.

As the COLA has been operating for almost a decade and continues to expand to include new occupations and occupation classes, the continuing accreditation of gas appliance workers appears a remnant of previous regulatory systems and could be considered incongruous to the COLA reforms. This is particularly the case when considering that licensing of gasfitters is already under COLA, the Construction Occupations Registrar (the Registrar) will manage both schemes after amendments in the Bill, and the licensing and accreditation schemes have the same aim.

This Bill removes the gas appliance worker accreditation scheme from the GS Act and creates a comparable occupation and construction service subject to licensing under the COLA. Any person supplying a gas appliance work service for type A or type B appliances will need to hold a licence issued by the Registrar.

Eligibility requirements for licensing will be included in a new mandatory qualifications declaration made by the Registrar. Licensing, renewal and disciplinary processes for gas appliance work will follow the provisions established in COLA, including replacing “fit and proper” considerations with defined criteria about convictions and conduct as a licensee.

The transfer does not affect the maximum length of an accreditation (three years), the types of entity that may be licensed or the insurance requirements for carrying out work. The regulatory impact of these amendments is detailed in the Regulatory Impact Statement for the Bill.

Section 103 (2) of COLA provides that a person must not be appointed as the Registrar unless the person has relevant experience or a relevant qualification in any of the occupations regulated under COLA or administration of building or construction industry regulatory schemes. The Bill expands section 103 (2) to include gas appliance work.

Transition of existing accreditations and applications

Accreditations current at the time of commencement will be ‘grandfathered’ into the system at no cost to the accredited person. The term of the new licence will match the term of the existing accreditation.

An application for accreditation or renewal made before the commencement date but for which a decision is not made will be considered an application to the Registrar under COLA and determined under that Act. The criteria in place for accreditation will apply to the application (not the new mandatory qualifications made under COLA) but reviewable decisions in COLA would apply to a decision on an application.

For continuity of disciplinary systems and for fairness across licensed occupations, all of the obligations for licensees in Parts 4, 5, 6, 8 and 11 of COLA will apply to work carried out under the previous accreditation for a period of 10 years. This application is similar to that which applied when a number of occupations were transitioned in to COLA in 2004.

For the purposes of keeping registers of licence information under section 107 and publishing information under new section 107A (see clauses 18 and 19 of the Construction and Energy Efficiency Legislation Amendment Act 2014 (No 2)), the Registrar will be required only to keep and publish historic information that relates to a previous accreditation if it is available. This will be a smaller subset of information than that required in COLA. Any new information generated after the commencement of the legislation will need to be kept in accordance with COLA.

Revision of occupational class categories

The Bill will also recast the existing categories of accreditation. There is some adjustment to the scopes of work under the licenses to reflect current practice and the available training pathways. For existing accreditations, the Registrar may need to condition a licence to make it equivalent to the new scope of work. However, there will be no change in the work people are permitted to undertake.

Existing accreditation level	Approximate equivalent licence class
Type A	Unrestricted Type A
Type A Trainee	Restricted Type A
Type B	Unrestricted Type B
Restricted Type B	Restricted Type B – Level 2
Restricted Type B Trainee	Restricted Type B – Level 1

Endorsements for type B gas flue work

General training for type B gas appliance work does not include work on gas flues. Competency in gas flue work is gained in a separate unit. This is reflected in the current type B accreditation scopes, which do not include gas flue work.

Amendments will clarify that both competencies are required for an Unrestricted Type B licence, which will include type B flue work. However, not all people who have previously trained in type B appliance work have completed the additional competency to be eligible for the full licence. Conversely, some gasfitters may have undertaken training in type B gas flue work as part of a certificate IV level qualification. This can't be recognised on a gasfitter's licence at present.

This Bill creates a new endorsement for type B gas flue work for the following licences:

- Advanced gasfitters licence
- General gasfitters licence

This will better reflect the cross-over between gasfitting and gas appliance work, while allowing for the scope and training under the previous accreditation.

Regulatory Impact Analysis

Section 34 of the Legislation Act requires that if a proposed subordinate law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a regulatory impact statement (RIS) to be prepared for the proposed law.

This Bill amends the *Gas Safety Regulation 2001* and the *Construction Occupations (Licensing) Regulation 2004*. Amendments to the regulations that have an appreciable cost are discussed in the regulatory impact statement for the Bill. Other amendments are not expected to place an appreciable cost on a sector of the community.

General impacts of the Bill

There are no significant costs associated with the Bill and a number of provisions will provide a benefit as they streamline and clarify existing law.

Amendments to insert new objects of the Act will not impose a cost on the community.

The requirement for a gasfitter to attach a compliance indicator to premises after the completion of gasfitting work has not been enforced for a number of years. Not removing the provisions and enforcing the requirements for compliance indicators would be effectively re-introducing an unnecessary regulation.

Therefore, the Bill removes all requirements for compliance indicators and instead requires that the gas distribution entity must be provided with a copy of the certificate of compliance. This is not expected to add a cost to the process as natural gas and LPG suppliers are already using the certificate of compliance as verification that premises are safe to supply. ESDD will bear the small cost of revising the current templates for certificates of compliance to include a copy for the relevant gas distribution entity.

The revised configuration of gas appliance work licence classes and the creation of a new endorsement is not expected to operate to the detriment of currently- accredited gas appliance workers. The scopes of work are consistent with the current administration of the Act. There will be no change in the scope of work an accredited person can undertake at present, noting that this equivalence may be achieved by conditions on licences, particularly in relation to type B gas flue work.

Amendments to the *Gas Safety Act 2000* create a head of power that allows standards to be set for energy efficiency, energy conservation or environmental safety relating to gasfitting and gas appliance work, gas installations and disposal of gas equipment. No regulations are proposed under the new powers as part of this Bill. Any new regulation will require regulatory impact analysis.

Amendments to revise product approval process to remove an unused product approval mechanism for the ACT and rely on corresponding law provisions and cooperative national arrangements to recognise approved products will have no material effect on the manufacturing or supply of equipment. There will be no detriment to people for which an approval operates under section 18B of the Gas Safety Regulation as they will continue to operate within the national arrangements for certification of products. Additional certification bodies may be recognised under the new legislation, improving competitiveness and opportunity in the market. Provisions to clarify processes for type B appliances are expected to benefit practitioners and designers.

Transferring all remaining responsibilities for gas appliance, inspections and standards from the planning and land authority to the construction occupations registrar to reflect the administrative responsibilities under the Construction Occupations (Licensing) Act aligns with current administrative practices.

The Government's Triple Bottom Line Assessment Framework requires an assessment of climate change impacts for government bills or for major policy proposals. A statement of effects must be included in the explanatory statement for the relevant Bill.

The climate change impacts of this Bill have been considered and potential impacts are that new heads of power for energy efficiency and environmental standards for gas appliances and consumer piping systems allow for regulations to be made that may contribute to the reduction of greenhouse gas emissions in the Territory. No regulations are proposed as part of the Bill.

The proposed law is consistent with the policy objectives of the regulatory framework for gas safety, occupational licensing, carrying out construction work, occupational discipline and the investigation of complaints for the construction industry already in place. This law exists to protect the public and responds to the substantial risks to workers, building occupants, users of building services and the general public inherent in construction work involving consumer gas piping systems and the operation of gas appliances. These risks include life safety and public health risks.

Offences and penalties

The Bill includes new offences in the Gas Safety Act and Regulation in relation to:

- Act, new section 8A, *Offences – energy efficiency requirements for gasfitting work* for failing to comply with standards for energy efficiency or limiting harm to the environment carrying a maximum penalty of 50 penalty units per offence.
- Act, new section 14A, *Offences – energy efficiency requirements for gas appliance work* for failing to comply with standards for energy efficiency or limiting harm to the environment carrying a maximum penalty of 50 penalty units per offence.
- Act, new section 24, *Offences – energy efficiency requirements for gas appliances* strict liability offences for selling or labelling a gas appliance other than in accordance with a relevant regulation.
- Act, new section 24A, *Offence – dispose of gas equipment otherwise than in accordance with standards*.
- Regulation, revised section 12 (2), *Certificates of compliance* that extends the existing offence to failing to give a certificate of compliance to the owner of the gas distribution network.
- Regulation, new section 18GB, *Offence – interfere with compliance indicator* that in effect relocates the offence previously provided for in previous section 26 of the Act and has the same maximum penalty.

The Bill recasts a number of offences to be consistent with modern drafting practice and with the Criminal Code. Those offences are listed in section 5 of the Act (clause 18) and section 4AA, note 1 of the Regulation (clause 115). The recast offences preserve the existing penalty levels and the intent of the offences.

The Bill also omits a number of offences that relate to repealed provisions or obligations that have been removed from the Act.

Justification of penalties

The proposed offences and penalties are warranted for the following reasons when considering the Territory's *Guide for Framing Offences*:

1. At its highest function, the services covered by the Act are regulated to protect the public.
2. The consequences of not complying with procedures and technical standards for work can be high and include serious injury or death to workers, building occupants and other members of the public.
3. The penalties reflect the relative seriousness of the particular offences within the legislative scheme and the level of responsibility carried by the people falling within the obligation.

The penalty for each offence is commensurate with like provisions in the respective Acts.

- Offences for failing to comply with standards for energy efficiency and environmental harm (section 8A and 14A of the Act) have the same maximum penalty of 50 penalty units as similar offences in section 8A of the *Electricity Safety Act 1971*.
- Offences for failing to comply with standards for the sale and labelling of gas are based on those for energy efficiency and labelling of electrical equipment in section 27 of the *Electricity Safety Act 1971* and have the same maximum penalties. These penalties are lower than breaches of gas and electrical appliance safety standards, which carry higher risks and can result in imprisonment.
- The penalty of 50 penalty units for not taking reasonable steps to comply with a requirement of the inspector to help with exercising the inspector's functions is consistent with existing provisions for compliance auditors.
- The maximum penalty of 50 penalty units for failing to dispose of gas equipment otherwise than in accordance with standards is commensurate with penalties for failing to carry out other aspects of gasfitting or gas appliance work as it can also carry significant risks to health and property.
- The maximum penalty of 10 penalty units for failing to give a certificate of compliance to the owner of the gas distribution network has the same maximum penalty as failing to give a certificate to the construction occupations registrar.

The amendments in the Bill are intended to improve the operation of construction legislation and give the regulator sufficient options to effectively administer the relevant Acts.

Standard defences available in the *Criminal Code 2002* would apply to these offences.

Level of penalty set for regulation-making power in the Gas Safety Act

The Bill includes a provision that allows the Executive to make a regulation for offences that have a maximum penalty of up to 60 penalty points. The Guide for Framing Offences states that: *Where an Act authorises the creation of offences in a regulation or other subordinate legislation it should specify that these offences may carry a maximum fine not exceeding 30 penalty units.*

However, higher penalty levels exist in a number of pieces of Territory legislation including the section 181 of the Unit Titles Act, section 426 of the Planning and Development Act, section 152 of the Building Act and section 66 of the Electricity Safety Act, which all allow for regulations to create offences and fix maximum penalties of not more than 60 penalty units for the offences.

The Gas Safety Act covers matter of fundamental life safety, health and environment protection, the safe and effective operation of gas installations, managing gas accidents, and minimising the impact of an individual gas installations on the utility network. The potential ramifications of offences under the Act are at least as serious as non-compliance under the above Acts. Therefore, there is justification for a higher level of 60 penalty units.

The Assembly may disallow or amend regulations made under section 66 if it feels that the level of penalty is not appropriate to the offence. The control of the Assembly does not end once the regulation has been made. If a member of the Assembly is concerned about the penalty after the disallowance period expires, the member may present their own amending regulation for consideration by the Assembly. This provides reasonable scrutiny of the exercise of the provisions.

Strict liability offences

This Bill creates strict liability offences in section 24 of the Gas Safety Act for:

- (a) A trader that sells a gas appliance that does not comply with the relevant energy efficiency standard – 50 penalty units.
- (b) A trader that sells an appliance or product that does not have an energy efficiency label as required by regulation – 10 penalty units.
- (c) A person that labels an appliance with the incorrect energy efficiency information or rating – 30 penalty units.
- (d) A person that attaches a label that falsely appears to be an energy efficiency label to an appliance – 30 penalty units.

The offences incorporating strict liability elements have been carefully considered. The strict liability offences arise in a regulatory context where, for reasons such as public protection, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties.

In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental (or fault) element can justifiably be excluded. The rationale is that people who are conducting aspects of trading and labelling gas appliances in their professional capacity can be expected to be aware of their duties and obligations under the Gas Safety Act.

The designation of strict liability offences restricts fault liability, a fundamental protection of the criminal law and is, therefore, a decision not taken lightly. The use of such offence was justified on the creation of the relevant offences in the Gas Safety Act. Under the Bill in general, strict liability offences are needed to ensure that every relevant person complies with their obligations at all times and acts appropriately and conduct their activities so that they will not breach fundamental requirements for health, safety, amenity and environmental protection. The regulatory regime established for this purpose seeks to encourage a culture of compliance.

The offences in the Bill designated as strict liability meet the criteria sets out in the ACT Government Directorate of Justice and Community Safety’s Guide for Framing Offences (April 2010). In each instance the duty holder knows, or ought to know, their legal obligations and the offences are part of a Bill that sets up a regime of regulatory offences. The offences are modelled on existing strict liability offences for like breaches in section 27 of the Electricity Safety Act.

Standard defences that apply to strict liability offences under the Criminal Code, including mistake of fact, apply to these offences.

Human Rights Implications

A penalty for an offence that is seriously disproportionate to the gravity of an offence will engage HRA section 10 on the basis that it is an inhuman punishment. By reference to the standards stated in the *Guide to Framing Offences* issued by the Justice and Community Safety Directorate the offences in this Bill do not have penalties that are seriously disproportionate to the gravity of the offence.

Presumption of innocence

The strict liability provisions in clause 38 of the Bill may engage the right to the presumption of innocence. This limitation is addressed below. Section 22 (1) of the Human Rights Act (HRA) states that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. In effect, s 28 requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

To facilitate consistency with the HRA, strict liability offences only impose an evidential burden on the defendant. Strict liability offences do not lead to a reversal in the onus of proof. Such offences require the prosecution to prove the elements of the offence beyond reasonable doubt. It is then open to a defendant to raise defences and to bear an evidential burden only as to their existence. An evidential burden means that a defendant need only point to evidence that suggests a reasonable possibility that the matter in question exists. It is lower than a legal burden and is less of a limitation on the presumption of innocence. The prosecution must then disprove the existence of any defence beyond reasonable doubt. Furthermore, if strict liability applies, the defence of mistake of fact and other defences under the Criminal Code may be available. The defence of intervening conduct or event in section 39 of the Criminal Code 2002 may also be available in respect of such offences; inasmuch as this defence may in some cases permit the accused to argue that they took ‘reasonable steps’ to avoid committing the elements of the defence.

Importance and purpose of limitation

Gas appliances are regulated primarily because of their capacity to impact on the life safety, health and amenity of workers, the public and the environment. Regulation of gas appliances and consumer piping systems is made in response to the risks and expectations associated with the work. A trader takes on certain responsibilities in relation to the sale of an appliance and a person that labels an appliance does so purposely.

The offences are important and contribute to the need to maintain the integrity of the regulatory scheme and uphold regulatory powers to seek compliance.

Nature and extent of the limitation

The extent to which the presumption of innocence is limited and whether such interference is permissible depends on the context for any limitation. The new strict liability offences in this Bill apply to traders and those that choose to label a gas appliance, which would often be in the course of preparing the appliance for sale. The provisions do not apply to second-hand appliances and so are not likely to affect non-traders or employees of retail establishments conducting private sales of their own goods. Traders of gas appliances have a clear understanding that this is, and has long been, a regulated industry. The strict liability offences relate directly to their work.

Relationship between the limitation and its purpose

Compliance with requirements for the sale and labelling of appliances is related to a business context and is in place to ensure that appliances comply with relevant health, safety, environmental protection and amenity standards. As noted above, in each instance the duty holder knows, or ought to know, their legal obligations and the offences are part of a Bill that sets up a regime of regulatory offences.

Any less restrictive means available to achieve the purpose

These offences mirror those for existing offences in section 27 of the Electricity Safety Act. Other, less restrictive ways are not likely to achieve the required purpose, which is to ensure compliance with standards.

Clause Notes

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Gas Safety Legislation Amendment Act 2014*.

Clause 2 Commencement

This clause provides for the commencement of the Act on a day fixed by the Minister.

Unless commenced sooner, provisions will automatically commence once 6 months have elapsed from the date of notification.

Clause 3 Legislation amended

This clause provides that the legislation mentioned in the clause is amended by the Act. The Act also repeals the legislation mentioned in Part 6 of this Bill.

Clause 4 Legislation repealed

This clause repeals the *Gas Safety (Appliance Worker Accreditation Code) (DI2007-33)* as the accreditation system has been replaced with the licensing of gas appliance workers under the Construction Occupations (Licensing) Act. The code and all accreditations issued under it end when the code is repealed. Accreditations that were current immediately prior to the commencement of relevant provisions in this Bill will be transitioned into a licence in accordance with new section 184 of the Construction Occupations (Licensing) Act (clause 7).

Part 2 Construction Occupations (Licensing) Act 2004 (COLA)

Clause 5 New section 12A

This clause inserts a new occupation of gas appliance worker in the Act. Gas appliance workers are currently accredited under the Gas Safety Act. This Bill transfers the function of regulating practitioner authorisations to COLA, bringing gas appliance workers under the same regulatory framework as other construction occupations in the ACT, including gasfitters.

The scope of work covered by gas accreditation worker licences is set by the definitions of that work in the *Gas Safety Act 2000* (GS Act). This is important as the licensing of practitioners aligns with the risks and standards for certain types of work managed under the GS Act. Gas appliance work includes the doing or supervision of the work.

A number of licence classes specifically require supervision of work by a person with a higher level of licence, which is critical to ensure that people receive sufficient guidance and correction during their training to avoid technical and safety problems when they are able to work without supervision.

Clause 6 Construction occupations registrar
New section 103 (2) (ha)

Section 103 of COLA sets out the range of occupations in which a person can have experience and qualifications to be eligible for appointment as the Construction Occupations Registrar. Section 103 (2) includes all occupations covered by COLA. This clause adds the occupation of ‘gas appliance work’ to reflect the inclusion of that occupation under COLA in the Bill.

Clause 7 New part 21

The clause inserts a new Part 21, which provides for transitional provisions associated with the removal of gas appliance worker accreditation for the GS Act and the inclusion of gas appliance worker licensing under COLA.

New section 182 inserts definitions of *code* and *commencement day*.

New section 183 validates the existing *Gas Safety (Appliance Worker Accreditation Code) DI2007-33* to avoid any doubt about either the validity of the code or the validity of a decision made under that code. This is important so that all accreditations are considered valid at the commencement of this legislation and the system does not operate to the detriment of currently accredited people.

New section 184 provides for the transfer of accredited people to the licensing system. If a person is not affected by a pending suspension or cancellation and holds a current accreditation immediately before the commencement of the provisions, the person is taken to be a licensed gas appliance worker under the Act. The Registrar will be required to issue a licence to the person that has an expiry the same date as the existing accreditation. The licence must have the equivalent scope of work as the existing accreditation.

As there are some differences in the scopes of work in the current code and the new schedule 1, Part 1.7A (clause 12), the equivalence may need to be achieved by conditioning the licence so that the person must undertake stated training to become fully eligible for a licence in that occupation class. This is the same principle that operates under mutual recognition legislation and means that what practitioners are authorised to do will not change when they are transferred into the new licensing system. In addition, existing suspensions and conditions that apply to an accreditation will apply equally to the new licence. The conditioning of licences and continuation of conditions and suspensions is important to protect the public from people carrying out work that they are not qualified or competent to perform.

Section 184 (6) and new section 185 allow for the recording of information about gas appliance accreditation worker licences in the register established under COLA. The minimum level of personal and business details required is set out in section 9 of the Construction Occupations (Licensing) Regulation (COLR). Much of this information would already be recorded in the register required under section 17A (5) of the Gas Safety Regulation, however there are some items of information required under COLA that are not specifically required under the GS Act, including contact phone numbers and email addresses. The provisions allow gas appliance workers 6 months to provide this information if it is not already recorded, including as part of a renewal application.

New section 186 allows for existing applications for accreditation and renewal to be considered as applications under COLA, although for fairness they will be assessed under the eligibility criteria in the code at the time of application. This avoids people having to make a new application under the licensing system.

Under new section 187, any pending decisions on suspensions and cancellations by the chief planning executive that administers the code will need to be finalised. These are taken to be decisions under corresponding sections of the licensing Act. All review rights are preserved for decisions of suspension and cancellation, which will become reviewable under the COLA.

For continuity and fairness for all licensees, rectification orders, occupational discipline, enforcement powers, the demerit point system and complaints may apply to conduct that an accredited gas appliance worker engaged in before the commencement day. Standard periods in the legislation for taking various actions would apply to actions against work done under a previous accreditation. Gas accreditation workers are already subject to a disciplinary system, and other powers such as inspection and information gathering powers and directions to make an installation compliant. New section 189 is important so that there are no periods where appropriate action cannot be taken against non-compliant, defective and or unsafe gas appliance work. This section is the only section in new part 21 that does not expire after 3 years.

Part 3 Construction Occupations (Licensing) Regulation 2004

Clause 8 Terms of licences generally—Act, s 24 New section 7 (1) (g)

Clause 8 provides that the maximum period that a gas appliance worker licence can be issued or renewed is three years. This is the same period that applied under the accreditation system under the Gas Safety Act.

Clause 9 New section 31B

Clause 9 creates a new endorsement for type B gas flue work for a general or advanced gasfitters licence. Although work on a the flue of a type B appliance is not gasfitting work, there is an option in the certificate IV level training for higher classes of gasfitter licences to complete a competency in type B gas flue work. This endorsement allows those practitioners who have completed the relevant competency to gain an endorsement in the scope of work.

Clause 10 Considerations for endorsing under s 30 and s 31 etc Section 32 (1)

This clause expands the section that provides for the things the Registrar must consider before issuing an endorsement to include the new endorsement for type B flue work under new section 31B (clause 9). This is important so that decisions about endorsements on different types of licences are made on a consistent basis.

Clause 11 New section 41A

A construction occupation can be divided into occupational classes, which allows for licence for different scopes of work to reflect different levels of skills and training. This clause divides the occupation of gas appliance worker into those specified in new schedule 1, part 1.7A, column 2 (clause 12).

Clause 12 Schedule 1, new part 1.7A

This clause inserts a new part to schedule 1 of the Regulation, which creates occupation classes for gas appliance work. The occupation classes correspond to the two main types of appliances – type A and type B – and the different training required and experience for work on each type of appliance.

The new type B classes in particular update the previous categories under the accreditation code to reflect existing training and practice. A new mandatory qualifications determination will also be made to outline eligibility requirements.

Clauses 13 to 15 Schedule 2, part 2.5, items 2.5.1, 2.5.26 and 2.5.27

Clauses 13 to 15 make consequential amendments to Schedule 2, Part 2.5 Gasfitters licence demerit grounds for occupational discipline—Act, s 55 (1) (a). The amendments to item 2.5.1, column 2, item 2.5.26 and item 2.5.27 respond to a change in terminology in the GS Act from *appliance* to *gas appliance* (clause 18), the removal of the requirement to attach a compliance indicator to a consumer piping system (clause 20) and the revision of sections and numbering of provisions for gas appliance approvals (clause 38) respectively.

Clause 16 Reviewable decisions
Schedule 4, new item 28A

Clause 16 inserts a new reviewable decision associated with refusing to endorse an advanced or general gasfitters licence for type B gas flue work. The new endorsement is created by new section 31B (clause 9). This is consistent with decisions for refusing any other licence or endorsement available under COLA, which are all reviewable decisions.

Part 4 Gas Safety Act 2000

Clause 17 New division 1.1 heading

Clause 17 inserts a new division 1.1 before the existing section 1. This allows for the inclusion of objects of the Act and important concepts in a new division 1.2. The new division 1.1 includes existing section 1, 3 and 4 and a new section 5 *Offences against Act—application of Criminal Code etc* (see clause 18).

Clause 18 Section 5

This clause substitutes a new section 5, *Offences against Act—application of Criminal Code etc*. It provides that other legislation applies in relation to offences against this Act and lists in a note each of the offences in the Act that the *Criminal Code 2002*, chapter 2 applies to. Each of the offences listed in the note has been redrafted in this Bill to be compliant with the Criminal Code.

The clause also inserts a new Division 1.2 *Objects and important concepts*. The objects outline the underlying purpose of the legislation and help the reader to interpret the legislation.

A number of important concepts for the Act are also relocated from definitions in the Dictionary and updated. This includes meanings of gas appliance, type A gas appliance work, type B appliance work, gas appliance worker, gasfitter and gasfitting work. These definitions remove ambiguities from the corresponding definitions in the current Act.

Section 5 of the current Act creates a concept of gas safety legislation, which effectively is a self-referencing definition that serves no immediate purpose. However, the Gas Safety Act is only one part of the existing legislative framework, which also includes the COLA and any codes of practice made under the COLA that may apply to gasfitters, and now gas appliance workers. As such, new 6G creates a new concept that encompasses the wider range of legislation.

Compliance with the Gas Safety Act is required of people operating under COLA as the Gas Safety Act is an operational Act under COLA. Conversely, the Gas Safety Act requires that any licensing requirements for the work are met. Therefore, the amendment makes no material difference to people's obligations under either Act but better links the two facets of legislation applying to gas safety.

In a number of places the Act refers to the ‘relevant standards’ for work or appliances. Standards for work were previously outlined in a code of practice made under the Act. However, these standards have applied as amended from time to time to gas safety requirements for a considerable amount of time and are not likely to be replaced in the near future. It is common practice to name the primary standards in primary legislation.

Clause 19 Section 8

This clause redrafts the existing offence in section 8 and renames the provision to align with amendments in this Bill to definitions and in line with modern drafting practice. The intent of the provision and the maximum penalty are not changed.

This clause also introduces new offences in 8A that correspond to the new regulation making powers, particularly the power in section 69 (2) (h) for energy efficiency or to prevent environmental harm. These standards would be in addition to existing gas safety standards. Therefore new offences that correspond specifically to carrying out gas appliance work, or working on a gas appliance in a way that does not comply with the energy or environmental standards are also included so that the provisions can be enforced. Further information on the offences is in the *Offences and penalties* section of the explanatory statement.

The new provisions are intended for standards to promote an environmental or efficiency aim rather than purely a safety outcome.

This is consistent with the Commonwealth *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) as that Act regulates for the supply of products rather than installation standards.

Clause 20 Section 9

This clause replaces section 9 with a new renamed section that removes a requirement for a gasfitter to attach a compliance indicator to the relevant consumer piping system after completing gasfitting work. Compliance indicators have been replaced in all functions by the certificate of compliance also required by section 9. Giving a certificate of compliance remains a requirement with the same maximum penalty of 50 penalty units.

The offence is redrafted in line with modern practice and the Criminal Code but the redrafting does not affect the operation or change the intention of the existing offence provision as it applies to certificates of compliance.

Clause 21 Misuse of compliance indicators etc Section 10

This clause omits section 10, which contains two offences – one for not attaching a compliance indicator to a consumer piping system in accordance with section 9, the other for attaching anything to a consumer piping system that falsely purports to be a compliance indicator.

The first offence is no longer required as compliance indicators will not be required to be attached to consumer piping systems (see amendments to section 9 in clause 19).

The second is adequately covered in the offence in section 11 of the GS Act, which provides that a person must not give a certificate that falsely purports to be a certificate of compliance. This would include an indicator attached to premises. The maximum penalty of 50 penalty units is the same as the existing offence and so the amendments do not change the effect or penalty associated with the offence.

Clause 22 Section 12

This clause substitutes a new, renamed section 12 for the GS Act that redrafts the existing offence provisions in line with modern drafting practice and the Criminal Code. The main change in terminology in the section is from a system that is ‘unsafe’ to a system that ‘poses a substantive risk to the safety of any person or property’. However, the intention of the original offence remains – to make sure that gasfitters working on consumer piping systems that may be unsafe and pose a risk to people or property to take immediate measures to make the system safe and inform relevant parties.

The maximum penalty of 50 penalty units is the same as the existing offence.

Clause 24 Work to be done by accredited people Section 13

Clause 24 omits section 13 of the GS Act which contains an offence that a person must not do appliance work of a particular kind unless accredited to do work of that kind. The offence carries a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

This Bill replaces accreditations under the GS Act with licences under the COLA. The COLA includes its own offence provisions for offering a construction service in section 84, which provides that a person commits an offence if the person—

- (a) provides a service (whether as an employee or otherwise) in a construction occupation or occupation class; and
- (b) either—
 - (i) is not licensed in the occupation or class; or
 - (ii) if an endorsement on the licence is required for the person to be authorised to provide the service provided and the licence does not have that endorsement.

The offence has a maximum penalty of 50 penalty units.

Although the offence in section 84 of COLA is a strict liability offence, it carries a lesser penalty than the corresponding offence in the GS Act as it does not include the option of imprisonment. Standard defences available under the Criminal Code apply to the offence.

Clause 25 Section 14

This clause redrafts the existing offence in section 14 and renames to section to align with amendments in this Bill to definitions and in line with modern drafting practice. The intent of the provision and the maximum penalty are not changed.

This clause also introduces new offences that correspond to the new regulation making powers, particularly the power in section 69 (2) (h) for energy efficiency or to prevent environmental harm. These standards would be in addition to existing gas safety standards.

Therefore new offences that correspond specifically to carrying out gas appliance work, or working on a gas appliance in a way that does not comply with the energy or environmental standards are also included so that the provisions can be enforced. Further information on the offences is in the *Offences and penalties* section of the explanatory statement.

The new provisions are intended for standards to promote an environmental or efficiency aim rather than purely a safety outcome.

This is consistent with the Commonwealth *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) as that Act regulates for the supply of products rather than installation standards.

**Clause 26 Consumer piping system—responsibility of owner
Section 15 (3)**

This clause substitutes a new subsection (3) for section 15 that removes a compliance indicator attached to the consumer piping system by the gasfitter as advice of a gasfitter for this section. This is because compliance indicators will not be attached to consumer piping systems under revised section 9 (clause 20) and will have no status as statutory certifications.

Clause 29 Section 16 (2) (a) (ii)

This clause makes a consequential amendment to section 16 (2) (a) (ii) to replace the phrase ‘person accredited to do gas appliance work’ with a reference to *gas appliance worker*, which is a defined term in the Act – see clause 18, new section 6D. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA. Any reference to a gas appliance worker means one that is licensed under COLA.

Clause 32 Section 17 (2) (a) (ii)

This clause makes a consequential amendment to section 17 (2) (a) (ii) to replace the phrase ‘person accredited to do gas appliance work’ with a reference to *gas appliance worker*, which is a defined term in the Act – see clause 18, new section 6D. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA. Any reference to a gas appliance worker means one that is licensed under COLA.

**Clause 34 Definitions for pt 4
Section 18, new definitions**

This clause inserts definitions for part 4 and clarifies when a product is considered approved under the Act. This is important so that there is clear understanding of which appliances must follow which approval processes, or not follow any approval process, to be able to be sold and installed in the ACT.

Clause 36 Section 19

The existing provisions for gas appliances allow the regulation to declare a corresponding law for the purposes of compliance for gas appliances. This clause substitutes a new section 19 that allows the Minister to declare a corresponding law for the approval of type A gas appliances to be a corresponding law for Part 4. The declaration is a notifiable instrument. This is the same process in place under part 10 of the Electricity Safety Act.

Clause 38 Sections 20 to 24

This clause clarifies processes for product approvals by clearly defining which products require a specific approval and delineating between processes for type A and type B appliances.

Product approvals and certification are a critical part of ensuring compliance with safety standards and operate across Australia. However, even under a system of corresponding law new section 20 allows that the Registrar may still refuse to recognise an approval in certain circumstances. This is important so that the Registrar can take immediate action when an issue arises and not rely only on a process under the corresponding law. These powers are similar to existing powers in the Electricity Safety Act.

New section 21 relocates and updates provisions for approvals to apply specifically to type B gas appliances.

New section 22 relocates existing provisions for keeping a register of approved products, cancelled approvals and prohibited appliances in repealed section 19 and updates and expands the requirement to include safety warnings. This is important so that people can access information to better assist compliance with the law and promote safe usage of gas appliance. The Registrar is not required to keep a register of products approved under a corresponding law as there will generally be a register kept under that legislation, maintained by the agency responsible for the registration in the relevant jurisdiction.

This clause also recast the existing offences for selling or using an unapproved gas appliance. The intent of the offence and the maximum penalty is unchanged.

New sections 24 and 24A insert new offences for failing to comply with and energy efficiency or environmental standard set by regulation (clause 98) as well as standards for disposing gas equipment. These powers complement existing powers that apply to the sale and labelling of products.

Energy efficiency standards would be in addition to existing gas safety standards. Therefore new offences that correspond specifically to the energy or environmental standards are also included so that the provisions can be enforced. Further information on the offences is in the *Offences and penalties* section of the explanatory statement.

The new provisions are intended for standards to promote an environmental or efficiency aim rather than purely a safety outcome.

This is consistent with the Commonwealth *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) as that Act regulates for the supply of products rather than installation standards.

**Clause 39 Compliance indicators to be attached
Section 25 (1)**

This clause redrafts the existing offence to be consistent with modern drafting language and the Criminal Code. The level of penalty and the intent of the offence do not change.

Clause 40 Section 25 (2)

This clause omits section 25 (2), which describes what a compliance indicator is for the gas safety legislation. This section is not required because of amendments to section 25 (1) (clause 39), which provides that a compliance indicator must be in accordance with the regulations. The details of compliance indicators for type A appliance are in new section 18G and 18GA of the Regulation in clause 157 of this Bill.

Clause 78 New section 50 (4A) to (4C)

Clause 78 clarifies that a direction may include a requirement for the entity to provide written information about the consumer piping system. Under section 50 if an inspector believes on reasonable grounds a consumer piping system does not comply with the gas safety legislation or is unsafe, or gasfitting work has been done otherwise than in accordance with the gas safety legislation, the inspector may give the occupier of the premises where the consumer piping system is situated a written direction to arrange for the system to be isolated or disconnected until the system is made safe and compliant with the gas safety legislation.

If a test or other work is performed, written evidence of this may be required to verify that either the work has been completed, or that the consumer piping system is compliant or functional as required by the direction. Standard testing requirements apply to work carried out under the Gas Safety Act, and it is reasonable to request written evidence of completion of any work. This provision is necessary as it is expected that part of the rectification process will be to have work certified or verified by a person that is qualified to do so.

In addition, the person who received the written direction to arrange to make the system safe may not legally be able to carry out the work themselves if the person does not hold the appropriate class of licence to do the work. Similarly, certain skills and qualifications may be required to undertake a stated action. For example, a licensed gasfitter may not be skilled enough to provide a report on the compliance of a system that could only reasonably be prepared by an engineer. Engineering is not licensable work in the Territory; however it requires particular skills and qualifications.

To clarify the responsibilities of the person that does not possess a relevant licence, qualification or skills to take a stated action this clause inserts new provisions that if the entity is not licensed, authorised or qualified, or is not appropriately experienced and skilled to do something required to be done under the direction, the entity must arrange, and pay for, the thing to be done by a person that is.

These provisions are important so that directions are complied with safely and competently, without causing damage or breaching a law of the Territory or another jurisdiction. The intention of the existing provisions is not that any entity given a direction can complete the work if they are not licensed or capable of doing the work to the required standard.

These provisions are consistent with similar provisions in section 38 of the Construction Occupations (Licensing) Act, section 22s and 32 of the Water and Sewerage Act and section 8 of the Electricity Safety Act. It also corresponds to provisions for gas appliances (see clause 82).

Clause 83 Section 51 (3)

This clause clarifies that a direction may include a requirement for the entity to provide written information about the consumer piping system. Under section 51 (3) – revised in this Bill to allow for definitional changes – if an inspector believes on reasonable grounds that a gas appliance is unsafe because work done on it by a gas appliance worker was not done in accordance with the gas safety legislation, the inspector may give the gas appliance worker a written direction to take stated action to make the appliance safe and compliant with the gas safety legislation.

If a test or other work is performed, written evidence of this may be required to verify that either the work has been completed, or that the consumer piping system is compliant or functional as required by the direction. Standard testing requirements apply to work carried out under the Gas Safety Act, and it is reasonable to request written evidence of completion of any work. This provision is necessary as it is expected that part of the rectification process will be to have work certified or verified by a person that is qualified to do so.

In addition, the person who received the written direction to arrange to make the system safe may not legally be able to carry out the work themselves if the person does not hold the appropriate class of licence to do the work. Similarly, certain skills and qualifications may be required to undertake a stated action. For example, a gas appliance worker may not be skilled enough to provide a report on the compliance of an appliance that could only reasonably be prepared by a testing or certification body or engineer. Engineering is not licensable work in the Territory; however it requires particular skills and qualifications.

To clarify the responsibilities of the person that does not possess a relevant licence, qualification or skills to take a stated action this clause inserts new provisions that if the entity is not licensed, authorised or qualified, or is not appropriately experienced and skilled to do something required to be done under the direction, the entity must arrange, and pay for, the thing to be done by a person that is. This is important so that directions are complied with safely and competently, without causing damage or breaching a law of the Territory or another jurisdiction. The intention of the existing provisions is not that any entity given a direction can complete the work if they are not licensed or capable of doing the work to the required standard. For example, a direction may involve gasfitting work that the gas appliance worker is not licensed to do.

These provisions are consistent with similar provisions in section 38 of the Construction Occupations (Licensing) Act, section 22s and 32 of the Water and Sewerage Act and section 8 of the Electricity Safety Act. It also corresponds to provisions for consumer piping systems (see clause 78).

This clause also inserts an example of written information for the purposes of a written direction issued under the section. It includes a written report about a test required in the direction by the person who did the test.

Examples are not exhaustive – other information may include invoices, reports or other documents from a third party about the completion or compliance of the work. This may also be in relation to the impact on a gas distribution network caused by non-compliant work.

If a person does not have the correct licence or skills to carry out the stated action, the information would be arranged and paid for by the entity that was given the direction in accordance with new subsection 3B and 3C.

**Clause 92 Approved forms
 Section 68**

This clause removes the need for forms for the GS Act to be approved by the Minister and allows forms to be approved by the Construction Occupations Registrar. As the majority of forms would relate to processes administered by the Registrar and would also be similar to forms determined by the Registrar under other Acts, for efficiency and consistency the Bill transfers the function to the Registrar.

Clause 96 Section 69 (2) (d)

Section 69 (2) (h) provides that regulations may be made about compliance indicators, including their attachment to consumer piping systems or appliances and their removal. In accordance with amendments to section 9 (clause 20) and definitions that remove the notion of compliance indicators for consumer piping systems, this clause makes a consequential amendment so that the provision only applies to compliance indicators for gas appliances.

Clause 97 Section 69 (2) (f)

Clause 93 removes the existing regulation-making power relating to appliance worker accreditation as the function of regulating gas appliance workers is moved to the COLA in this Bill.

To align with changes to the gas appliance approval provisions in part 4, a new section is substituted that allows the regulations to the approval of type A gas appliances and type B gas appliances including—

- (i) requirements in relation to applications for approval
- (ii) requirements in relation to compliance with safety standards
- (iii) conditions for the approval of appliances, and
- (iv) the cancellation of approval of appliances.

This is important as it is intended that safety standards and any associated approval system would be prescribed by regulation or in a corresponding law declared under new section 19.

Clause 98 New section 69 (2) (h) and (i)

This clause includes a new regulation-making power in section 69 for regulations to be made to promote the efficient use or conservation of power and energy or to limit harm to the environment.

With the increasing focus on the efficient use of energy and the need for environmental conservation, there may be instances where a standard for certain installations, or installed equipment and appliances is desirable. As an example, there may new standards that apply when an existing gas installation is upgraded to correspond with similar provisions in the building code for installations in new buildings.

There are no standards for these regulations proposed at the time of presentation of the Bill.

The clause also clarifies that a regulation can include standards in relation to construction, installation, configuration, maintenance, repair, service, replacement, inspection, testing, labelling or disposal of consumer piping systems and gas appliances (or parts of consumer piping systems or gas appliances). This is consistent with existing standards that apply under the Act and with similar provisions under section 66 of the Electricity Safety Act.

Clause 99 New sections 69 (2A) and (2B)

New provisions 69 (2A) and 69 (2B) for the section allow that a regulation may apply, adopt or incorporate the law of another jurisdiction, or a provision or an instrument as in force from time to time. Further that, if adopted the Legislation Act, section 47 (5) or (6) does not apply in relation to the law of another jurisdiction or an instrument applied, adopted or incorporated under a regulation. This is important as the Act predominantly regulates work of a technical nature and requirements for gas appliances generally included in Australian Standards, which are subject to copyright and cannot be reproduced.

Clause 100 Section 69 (3), penalty

Consistent with other legislation, including that for electricity safety, this clause revises the existing maximum penalty for offences created under the Regulations from 10 penalty units to 60 penalty units for the offence. This is justified given the nature of the work the Act regulates and the potential ramifications of unsafe or non-compliant work.

Clause 101 Dictionary, definitions of *accredited*, *appliance* and *appliance work*

This clause makes a consequential amendment to omit definitions of *accredited*, *appliance* and *appliance work* as a result of removing the accreditation process for gas appliance workers for the GS Act in clause 139 and the new definitions for *gas appliance* and *gas appliance work* in clause 18.

Clause 102 Dictionary, definition of *approved*

This clause substitutes a new definition of *approved* to correspond with amendments to the provisions for approved appliances in section 18 (clause 34). Readers are alerted to the definitions contained in that section.

Clause 103 Dictionary, new definitions

Relevant standards for gas appliances, gasfitting and gas appliance work are now prescribed in the Act under new section 6H (clause 18), which replaces a declaration of relevant standards in a code of practice. These standards (AS/NZS 1375, AS/NZS 3841 and AS/NZS 5601) are the primary standards that apply under the GS Act. This includes any standards referenced in the primary standards.

Clause 104 Dictionary, definition of *certificate of compliance*

This clause updates the existing definition to reflect the now singular purpose of section 9 (clause 19). The revision does not change its effect.

Clause 105 Dictionary, definition of *compliance indicator*

This clause updates the existing definition to reflect the removal of a requirement to place a compliance indicator on a consumer piping system under section 9 (clause 20). Compliance indicators are only required to be attached to gas appliances in accordance with section 25. This provision is similar to the description of a compliance indicator in section 25 (2) omitted by this Bill (clause 40).

Clause 106 Dictionary, definition of *corresponding law*

This amendment clarifies what is a corresponding law for the Act and what sections the concept of a corresponding law is relevant to. The concept particularly applies to the approval of gas appliances. The most relevant provisions are section 18 (clause 34) and section 19 (clause 36).

Clause 107 Dictionary, new definitions

This clause inserts new definitions of *gas appliance* and *gas appliance worker* for the Act. These definitions are part of the important concepts for the Act outlined in new division 1.2 (Objects and important concepts) inserted by clause 18.

Clause 108 Dictionary, definitions of *gasfitter* and *gasfitting work*

This clause inserts new definitions of *gasfitter* and *gasfitting work* for the Act. These definitions are part of the important concepts for the Act outlined in new division 1.2 (Objects and important concepts) inserted by clause 18.

Clause 109 Dictionary, definition of *gas safety legislation*

This Bill removes section 5 which created a self-reference to the Act and subordinate legislation as the gas safety legislation. A new definition of *gas safety legislation* is included in new section 6G for the Act (clause 18).

Clause 110 Dictionary, definition of *prohibited*

This clause omits the definition of *prohibited* from the Act. Section 27 describes when an appliance may be prohibited but does not separately define prohibited as this takes the standard meaning. A definition referring to section 27 is not required as each reference in the Act to prohibited appliances refers to section 27.

Clause 111 Dictionary, new definition of *relevant standard*

This clause substitutes a new definition of relevant standards to correspond with the creation of new section 6H in the Act (clause 18), which better defines standards for gasfitting, gas appliances and gas appliance work. Readers are alerted to the definition contained in that section.

Clause 112 Dictionary, definition of *responsible gasfitter*

The Act often refers to the responsible gasfitter for the work. The only types of gasfitters specifically mentioned in the Act are advanced and general gasfitters as they are the only gasfitters at the level that can work unsupervised and complete a certificate of compliance for a job. In practice a licensed journeyman or a trainee under a formal training contract may actually do the work but the advanced or general gasfitter has to sign off on it and take responsibility for its compliance.

This clause clarifies that the gasfitter responsible for the work is firstly the person supervising the work, and if there is not required to be a supervising gasfitter then it is the person who actually completed the work.

This is important as offences will generally apply to the person responsible for the work.

Clause 114 Dictionary, new definitions

This clause inserts new definitions of relevant standard (outlined in section 6H) type A gas appliance work (section 6A) and type B gas appliance work (section 6B).

The clause also inserts new definitions for type A and type B appliances. The definition of type B appliance is particularly critical as it provides for situations where it is intended to use an approved type A or type B appliance for a purpose outside of its original approval, for example, using a domestic heater in a commercial spray booth. This means that the product would have to be approved for the new intended purpose. This is important so that appliances do not become unsafe or create unsafe situations.

Consequential amendments – replacement of definition of *appliance* with definition of *gas appliance*

The following clauses have the effect of omitting a reference or references to *an*, or *the appliance* and substituting a reference to *a*, or *the gas appliance*. These amendments are consequential to a revision in terminology in the Act (clauses 18 and 101) and do not affect the intent or operation of the provisions. Clause 49 also includes amendments that reflect the change of administrative responsibilities from the planning and land authority to the construction occupations registrar.

- Clause 23 Division 2.2 heading
- Clause 27 Section 16 heading
- Clause 28 Section 16 (1)
- Clause 30 Section 17 heading
- Clause 31 Section 17 (1)
- Clause 33 Part 4 heading
- Clause 35 Section 18, definition of *trader*
- Clause 37 Division 4.2, heading
- Clause 41 Section 25 (3)
- Clause 42 Section 25 (3)
- Clause 43 Section 25 (4)
- Clause 44 Misuse of compliance indicators etc, Section 26
- Clause 45 Division 4.3 heading
- Clause 46 Section 27 heading
- Clause 48 Section 27 (1)
- Clause 49 Section 27 (2)
- Clause 51 Section 27 (5)
- Clause 52 Section 28 heading
- Clause 53 Section 28 (1) to (3)
- Clause 54 Section 29 heading
- Clause 56 Section 29
- Clause 57 Section 29
- Clause 60 Section 30 (1)
- Clause 62 Section 30 (2) (a)
- Clause 63 Section 30 (2) (b)

- Clause 64 Reporting by occupiers and gasfitters etc
- Clause 73 General powers on entry to premises, Section 47 (2) (a)
- Clause 74 Section 47 (2) (a) and (b)
- Clause 75 Section 49 heading
- Clause 76 Section 49 (1)
- Clause 77 Powers in relation to consumer piping systems, Section 50 (2)
- Clause 79 Section 51 heading
- Clause 80 Section 51 (1) (a)
- Clause 81 Section 51 (1) (b)
- Clause 82 Section 51 (2)
- Clause 84 Defective equipment—disconnection etc, Section 52 (1)
- Clause 85 Section 52 (1) (b)
- Clause 86 Section 52 (2)
- Clause 89 Codes of practice, Section 65 (2) (b) (i)
- Clause 90 Section 65 (2) (b) (ii)
- Clause 91 Section 65 (4)
- Clause 93 Regulation-making power, Section 69 (2) (a)
- Clause 94 Section 69 (2) (b)
- Clause 95 Section 69 (2) (c)
- Clause 113 Dictionary, definitions of *sell* and *trade*

Transfer of administrative responsibility from the planning and land authority to the construction occupations registrar —related amendments

The following are amendments to replace a reference in a provision or heading to the *planning and land authority* or *authority* with a reference to the *construction occupations registrar* or *registrar* only, other than clause 49 which also contains consequential amendments related to the change in terminology in the Act from appliance to gas appliance. The amendments do not change the intent of the provisions.

- Clause 47 Section 27 (1)
- Clause 49 Section 27 (2)
- Clause 50 Section 27 (4)
- Clause 55 Section 29
- Clause 58 Section 29
- Clause 59 Publication of safety warnings etc, Section 30 (1)

- Clause 61 Section 30 (2)
- Clause 65 Sections 33 to 35
- Clause 66 Section 38 heading
- Clause 67 Section 38
- Clause 68 Section 38
- Clause 69 Section 39 heading
- Clause 70 Appointment of inspectors, Section 40
- Clause 71 Section 40
- Clause 72 Identity cards, Section 41
- Clause 87 Power to seize evidence, Section 54 (5)
- Clause 88 Return of seized things, Section 57 (3)

Part 5 Gas Safety Regulation 2001

Clause 115 Offences against regulation—application of Criminal Code etc

This clause substitutes a new note for section 4AA *Offences against Act—application of Criminal Code etc*. It lists each of the offences in the Act that the Criminal Code, chapter 2 applies to. Each of the offences listed in the note has been redrafted in this Bill to be compliant with the Criminal Code.

Clause 116 New section 5

This clause clarifies that division 2.1, which applies to gasfitting work, does not apply to appliances designed to be portable. Connection and disconnection of portable appliances is not gasfitting work under the Act.

Clause 117 Testing gasfitting work on consumer piping system—Act, s 8 Section 6

This clause clarifies that it is the advanced or general gasfitter that carried out the work on the consumer piping system that is obliged to test the system. This does not change the intent or the operation of the provision.

Clause 125 Section 9 (1) and (2)

This clause redrafts the existing offence to be consistent with modern drafting language and the Criminal Code. The level of penalty and the intent of the offence do not change.

Clause 130 Section 10 (3)

This clause makes clarifying amendment to the provision to make sure that it is the responsible gasfitter that has the obligation to cap and test the system, not a trainee or person working under supervision. The intent of the offence and level of penalty are unchanged.

**Clause 131 Compliance indicators
Section 11**

Section 11 prescribes requirements for compliance indicators for section 9 of the Act. Section 9 has been revised to remove a requirement for compliance indicators (clause 20). Therefore this clause omits section 11.

**Clause 132 Certificates of compliance
Section 12 (2)**

This clause redrafts the existing offence to be consistent with modern drafting language and the Criminal Code. The requirement under the provision also changes in response to the transfer of responsibility from the planning and land authority to the construction occupations registrar and the removal of a requirement for a separate compliance indicator on consumer piping systems. The gasfitter must give a copy of the certificate of compliance to the owner of the gas distribution network the piping system is to be connected to so that they can confirm it is ready for gas supply. The level of penalty is unchanged.

**Clause 134 Interfering with compliance indicators
Section 13**

Section 13 of the Regulation provides an offence for removing, altering, damaging or defacing a compliance indicator placed under section 9 of the Act. With the removal of the requirement to have a compliance indicator for consumer piping systems and that from the commencement of the law they will only be recognised in very limited circumstances (see clause 152 and 154), this offence is also no longer required.

**Clause 135 Unsafe consumer piping systems—Act, s 12
Section 15**

This clause clarifies that it is the gasfitter immediately at hand that discovers a system is unsafe that must respond in accordance with this section. This corresponds to the change in definition of responsible gasfitter and is important to minimise damage and harm caused by unsafe systems. The level of penalty is unchanged.

**Clause 139 Accreditation to do appliance work
Section 17A**

Section 17A requires that must a code in relation to the accreditation of people to do appliance work must be approved. It also requires that a register of accredited people is kept and made available to the public.

As the function of regulation gas appliance workers is being transferred to COLA, this clause omits section 17A. Information in the registers kept under this section will also be transferred in to the register kept by the Registrar under section 107 of COLA.

Clause 140 Sections 17B and 17C

This clause makes a consequential amendment to 17B in response to the transfer of gas appliance worker regulation to COLA. Instead of having to produce the certificate of accreditation a gas appliance worker must produce their licence if requested. Subsections (2) and (3) are omitted as they relate to the repealed accreditation scheme.

This clause also redrafts existing section 17C to clarify which standards the appliance must be inspected and tested to. At present these standards are outlined in a code but not specifically mentioned in the Act. The provision is also redrafted to take into account changes in terminology in this Bill.

Clause 142 Section 17D (1)

This clause makes a consequential amendment to section 17D (1) to replace the phrase ‘an accredited appliance worker’ with a reference to a gas appliance worker, which is a defined term in the Act – see clause 18, new section 6D. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA. Any reference to a gas appliance worker means one that is licensed under COLA.

Clause 144 Section 17D (2)

This clause makes a consequential amendment to section 17D (2) to replace the phrase ‘appliance worker’ with a reference to a gas appliance worker, which is a defined term in the Act – see clause 18, new section 6D. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA. Any reference to a gas appliance worker means one that is licensed under COLA.

Clause 146 Section 17D (2) (c) (iv)

This clause makes a consequential amendment to section 17D (2) (c) (iv) to replace the phrase ‘accreditation number’ with a reference to *gas appliance worker licence number*. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA.

Clause 147 Section 17D (3) and (4)

This clause redrafts the existing offence to be consistent with modern drafting language, changes in definitions in this Bill, and the Criminal Code. The level of penalty and the intent of the offence do not change.

Clause 148 Section 17D (5)

This clause makes a consequential amendment to section 17D (5) to replace the phrase ‘appliance worker’ with a reference to a *gas appliance worker*, which is a defined term in the Act – see clause 18, new section 6D. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA.

Clause 149 Section 17D (6) and (7)

This clause redrafts the existing provisions to be consistent with modern drafting language, changes in definitions in this Bill, and the Criminal Code. The intent of the offence does not change.

Clause 152 Consumer piping system not to be used unless certified safe Section 18 (2) (a)

At present a compliance indicator attached to a consumer piping system can be used as an indicator that it is safe to supply gas to or use that system, This Bill removes the requirement to attach a compliance indicator to a consumer piping system. However, for the purposes of determining whether a system is safe to use, it is reasonable to allow people to rely on these indicators if placed in accordance with the repealed provisions. This clause allows such indicators – now termed ‘compliance plates’ (see clause 154) to continue to be used.

Clause 153 Section 18 (3)

This is a minor amendment to clarify that the test need not have been physically performed by the responsible gasfitter, but by another person under the supervision of a responsible gasfitter.

Clause 154 New section 18 (4)

This clause corresponds to amendments made in clause 152.

Clause 156 Sections 18B and 18C

Under the Act appliances of a stated kind can be declared to be ‘approved’. Anything that is not approved can’t be sold or installed in the ACT. Under the existing sections 18B and 18C, the products themselves are not approved, instead certain bodies are listed in the Act and effectively everything those bodies approve become an approved product. The list refers to processes that are now superseded. Although there is an unofficial understanding of which products these are, the types of products and the standards to which they must be approved are not specifically defined.

Amendments in this Bill revise provisions for product approvals and require the determination of a safety standard either by declaring a corresponding law or by regulation. This allows the Act to better define which products should be approved and then how they are approved, including who they may be approved by.

It is not intended that the ACT will maintain a separate approval process for either individual products or bodies that certify them as there is a national product market. Therefore, this clause omits section 18B and 18C.

Clause 157 Sections 18D to 18H

This clause revises and clarifies the existing provisions for applications for approval of type B appliances, circumstances where sections 23 and 28 of the Act do not apply, and compliance indicators for appliances.

This is important so that people's obligations are clear under the provisions and they align with current practice and standards.

New section 18GB relocates an existing offence for interfering with a compliance indicator under existing 18G (4). The maximum penalty for the offence is not changed but the offence is no longer a strict liability offence. This is because the offence has broad application to any person, which may not be aware of the significance of a compliance indicator like a trader, gas fitter or gas appliance worker would be expected to.

Clause 159 Section 20A

The clause substitutes a new section 20A that omits the previous paragraph (b), which prescribes decisions mentioned in schedule 1, part 1.2 under a code approved under section 17A (1) as reviewable. Part 1.2 of the schedule is repealed by clause 165 in this Bill.

**Clause 160 Reviewable decisions—Act and regulation
Schedule 1, part 1.1 heading**

The clause makes a consequential amendment to as a result of removing part 1.2.

Clause 161 Schedule 1, part 1.1, items 1 and 2

Clause 161 omits the reviewable decisions in relation to refusing an approval for a gas appliance of a particular kind or cancelling an approval. The Act and regulation only prescribed an approval process for type B appliances. The existing reviewable decisions in items 11-13 of the Schedule 1 relate to the type B approval process.

Approvals for other appliances will be made initially under corresponding law but can also be made under regulation. If new approval processes for other type of gas appliances are established under the Regulation, reviewable decisions will be included for any new process.

Clause 163 Schedule 1, part 1.1, item 6, column 4

This clause makes a consequential amendment to section 16 (2) (a) (ii) replace the reference to 'accredited person' with a reference to *gas appliance worker*, which is a defined term in the Act – see clause 18, new section 6D. This responds to the removal of the accreditation system for gas appliance workers under the GS Act and the inclusion of gas appliance work as a construction occupation under the COLA. Any reference to a gas appliance worker means one that is licensed under COLA.

**Clause 165 Reviewable decisions—code approved under s 17A
Schedule 1, part 1.2**

Clause 165 omits the reviewable decisions in relation to gas appliance work accreditations. The schedule is no longer required as accreditations will not be issued under the GS Act. Instead gas appliance work licences will be issued under COLA, with existing review rights in that Act applying to future decisions.

Clause 166 Dictionary, note 3

This clause inserts compliance indicator and gas appliance as items that takes the same meaning as defined in the Act.

Clause 167 Dictionary, new definition of *gas appliance*

This clause omits definitions that have either been superseded by new definitions in the GS Act (*appliances* and *AS/NZS 5601*) or are no longer required as they relate to omitted provisions for gas appliance approvals (*Australian Gas Association*) and gas appliance workers (*certificate of accreditation*).

Clause 168 Dictionary, definitions of *type A appliance* and *type B appliance*

This clause omits the definitions of *type A appliance* and *type B appliance* as they have been relocated into the Act, see clause 18.

Consequential amendments – replacement of definition of *appliance* with definition of *gas appliance*

The following clauses have the effect of omitting a reference or references to *appliance* or an, the, or another *appliance* and substituting a reference to *gas appliance* or a, the, or another *gas appliance* as relevant. These amendments are consequential to a revision in terminology in the Act (clauses 17 and 99) and do not affect the intent of the provisions. Clauses 48 and 50 also include amendments that reflect the change of administrative responsibilities from the planning and land authority to the construction occupations registrar.

- Clause 118 Section 6 (a)
- Clause 119 Testing gas connection service, Section 7 (1)
- Clause 121 Section 7 (2)
- Clause 124 Section 9 heading
- Clause 127 Section 10 heading
- Clause 128 Section 10 (1) (a)
- Clause 129 Section 10 (1) (c)
- Clause 138 Division 2.2 heading

- Clause 141 Section 17D heading
- Clause 143 Section 17D (1) (a)
- Clause 145 Section 17D (2) (a)
- Clause 150 Interfering with defect tag, Section 17E
- Clause 151 Part 3 heading
- Clause 155 Part 3A heading
- Clause 162 Schedule 1, part 1.1, item 3
- Clause 164 Schedule 1, part 1.1, items 11 to 13

Transfer of administrative responsibility from the planning and land authority to the construction occupations registrar —related amendments

The following are amendments to replace a reference in a provision or heading to the *planning and land authority* or *authority* with a reference to the *construction occupations registrar* or *registrar* only, other than clause 48 which also contains consequential amendments related to the change in terminology in the Act from appliance to gas appliance. The amendments do not change the intent of the provisions.

- Clause 120 Section 7 (2)
- Clause 122 Section 7 (2)
- Clause 123 Section 7 (3)
- Clause 126 Section 9 (3)
- Clause 133 Section 12 (4)
- Clause 136 Section 17, heading
- Clause 137 Section 17 (1) and (2)
- Clause 158 Approved defect tags etc, Section 19 and 19A