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

**CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION (NATURAL GAS
TRANSITION) AMENDMENT BILL 2022**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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Minister for Water, Energy and Emissions Reduction**

CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION (NATURAL GAS TRANSITION) AMENDMENT BILL 2022

This explanatory statement relates to the *Climate Change and Greenhouse Gas Reduction (Natural Gas Transition) Amendment Bill 2022* (the **Bill**) as presented to the ACT Legislative Assembly.

The statement is to be read in conjunction with the Bill. It is not a complete description but provides information about the intent of the provisions in the Bill.

It has been prepared to assist the reader. It does not form part of the Bill, has not been endorsed by the Assembly and is not to be taken as providing a definitive interpretation of the meaning of a provision.

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

BACKGROUND

The *Climate Change and Greenhouse Gas Reduction Act 2010* (the **Act**) facilitates successful policy, regulation and program development to allow the ACT to meet its emission reduction targets. Through the Act, the ACT has set the following interim greenhouse gas reduction targets:

- (i) 50-60% less than 1990 emissions by 30 June 2025;
- (ii) 65-75% less than 1990 emissions by 30 June 2030; and
- (iii) 90-95% less than 1990 emissions by 30 June 2040.

Natural gas is a fossil fuel and accounts for approximately 20 per cent of the ACT's current greenhouse gas emissions. To meet the targets set out in the Act, the ACT Government has committed to phasing out new natural (fossil) gas mains connections to premises, such as land, homes and buildings, in specific circumstances. The Territory's commitments to phasing out new gas connections are outlined in the *Parliamentary and Government Agreement for the 10th Assembly of the Australian Capital Territory* and the *ACT Climate Change Strategy 2019-25*.

Through the *Australian Energy Markets Agreement (AEMA)*, the ACT has adopted a national framework and approach to energy legislation and regulation. This includes the adoption of the National Gas Law (through the *National Gas (ACT) Act 2008*) and the National Energy Retail Law (through the *National Energy Retail Law (ACT) Act 2012*). These laws include an obligation for gas distributors to provide new connections to proponents who request it. The laws requiring gas distributors to provide new connection services under the national framework are in conflict with the Territory's policy to phase-out new natural (fossil) gas mains connections.

The AEMA allows jurisdictions to modify the operation of national energy laws for the purposes of environmental (including greenhouse gas reduction), energy efficiency and planning issues within their own jurisdictions.

Changes to the Act are required to create a regulation-making power that modifies the application of the national energy laws to limit new natural (fossil) gas mains connections in particular circumstances. This will assist the Territory to meet its emissions reduction targets.

OVERVIEW OF THE BILL

The Bill makes several amendments by adding a new part 2A to the Act, including the creation of a new regulation-making power that would enable new natural gas connections to be prohibited in prescribed circumstances. The power relates solely to new natural gas connections, and does not extend to 100 per cent renewable gas connections.

The amendments include the power to modify national energy laws, but only to the extent that they give effect to preventing new natural gas connections in prescribed circumstances.

The Bill includes a requirement that the Executive must seek and have regard to the advice of the Chief Planning Executive about proposed regulations made under part 2A.

The Bill makes compliance with part 2A, and therefore any subsequent regulation, a condition of the gas distributor's utility licence. This will provide scope for monitoring and enforcement by the Independent Competition and Regulatory Commission through the *Utilities Act 2000* and the Utility Licence Annual Reporting process.

The objective of the Bill is to give effect to the Government's intention to phase out new natural (fossil) gas connections and meet emissions reductions targets over the long term.

The Bill also amends the long title of the legislation and inserts a new object to allow for the implementation of measures to meet targets under the Act.

CONSULTATION ON THE PROPOSED APPROACH

In developing the Bill, the Government consulted with stakeholders including the Office for Climate Action and Treasury.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill engages the following human rights:

- recognition and equality before the law;
- the right to privacy; and
- the right to life.

The objective of this Bill is to give effect to the Government's intention to phase out new natural gas connections and meet the Government's greenhouse gas emissions reduction targets over the long term. By enacting a regulation-making power, under which a regulation may prohibit gas distributors from providing new gas connections in prescribed circumstances, the Bill potentially engages the right of recognition and equality before the law, and also promotes the right to life.

Rights Promoted

The Bill promotes the right to life under section 9 of the *Human Rights Act 2004*.

The right to life has been interpreted by the UN Human Rights Committee as meaning that member States must take appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity and that environmental degradation and climate change are a threat to present and future generations' enjoyment of the right to life. The Committee has stated that '[i]mplementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.'¹

The Bill promotes the right to life as it facilitates measures to prevent new gas connections for the legitimate aim of reducing greenhouse gas emissions caused by the use of natural gas. Reducing emissions contributes positively to addressing and adapting to climate change, which helps to preserve the environment. These measures protect the right to a life with dignity by addressing the threat of environmental degradation to present and future generation in the Territory.

Rights Limited

The amendments under the Bill have the potential to engage the right to recognition and equality before the law in section 8 of the *Human Rights Act 2004*.

1. Nature of the right and the limitation (section 28 (2) (a) and (c) of the Human Rights Act 2004)

The right to recognition and equality before the law, under section 8 of the *Human Rights Act 2004*, provides that everyone is entitled to enjoy their human rights without distinction or discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination.

¹ Human Rights Committee, [General comment no. 36, Article 6 \(Right to Life\)](#), UN Doc CCPR/C/GC/35 at 62 (3 September 2019).

The Bill enables the Executive to make a regulation to prevent new gas connections for natural gas in prescribed circumstances, unless exempted. This regulation-making power has the potential to directly or indirectly affect particular groups on the basis of their accommodation status by preventing gas distributors from providing individuals in prescribed premises and areas with a new gas connection.

‘Accommodation status’ is a protected attribute under section 7 (1) (a) of the *Discrimination Act 1991*. The measure may also limit the right to privacy under section 12 of the *Human Rights Act 2004* specifically through a potential limit on people’s choice to connect their homes to mains gas depending on where the home is located.

However, the Bill does not prevent individuals in prescribed premises and areas from using gas for cooking, heating and other purposes by using gas from other sources, for example, gas cylinders. The Bill provides a regulation-making power which may place a prohibition on gas distributors from providing new gas connections in certain circumstances, and does not apply to restrict an individual’s option to use gas at their premises by other means (that is, not by a connection to the gas mains infrastructure).

2. Legitimate purpose (section 28 (2) (b) of the Human Rights Act 2004)

The objective of this Bill is to give effect to the Government’s intention to phase out new natural gas connections and meet the Government’s greenhouse gas emissions reduction targets over the long term. Reducing emissions contributes positively to addressing and adapting to climate change, which helps to preserve the environment.

Natural gas is comprised of methane, a powerful greenhouse gas, and is a non-renewable fossil fuel. It accounts for approximately 20 per cent of the Territory’s greenhouse emissions. Through contractual arrangements, the Territory has secured 100 per cent renewable electricity, through wind and solar projects, which have no emissions. On a national scale, approximately 30 per cent of national electricity generation is from renewable sources, with additional renewable generation and storage coming online and plans to close down high emitting generation.

Modern electric appliances can replace gas appliances for heating, hot water and cooking, and are more efficient, and cheaper to run than natural gas. While research and development continues, there are currently cost, supply and technical constraints to implementing a wide-scale renewable gas market.

3. Rational connection between the limitation and the purpose (section 28 (2) (d) of the Human Rights Act 2004)

The Bill provides for a regulation-making power to prevent new natural gas connections. While this could limit an individual’s enjoyment of access in their

premises (such as their home) to a connection to the gas distribution network, this is an effective measure to meet the Government's greenhouse gas emissions reduction targets over the long term, and for the Territory to address and adapt to climate change.

As noted above, the Bill does not prevent individuals in prescribed premises and areas from using gas for cooking, heating and other purposes by using gas at their premises through other means (such as using gas cylinders).

4. Proportionality (section 28 (2) (e) of the Human Rights Act 2004)

Upon enactment, the limitations in the Bill will be accessible to the public as it will be provided in law. Any regulation to be made under new part 2A will only apply to areas that are prescribed after the Bill commences. For clarity, in situations where a premises with an existing gas connection is renovated and that connection is not removed, or that connection requires relocation on the property, a regulation made under new part 2A would not prevent the provision of a gas connection.

Additionally, specific exemptions can be made to exempt the prohibition against new natural gas connections under specific circumstances. This is to ensure warranted exemptions can be made in areas that would otherwise be prescribed under a regulation as an area where gas distributors are prohibited from providing new natural gas connections.

Climate Change and Greenhouse Gas Reduction (Natural Gas Transition)
Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Climate Change and Greenhouse Gas Reduction (Natural Gas Transition) Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the *Climate Change and Greenhouse Gas Reduction (Natural Gas Transition) Amendment Act 2022*.

Clause 2 Commencement

This clause provides for the commencement of the Act on the day after the Act's notification day.

Clause 3 Legislation amended

This clause provides that the Act amends the *Climate Change and Greenhouse Gas Reduction Act 2010*.

Clause 4 Long title

The long title of the Act has been substituted with a simplified title that now includes 'for other purposes'. The new long title is in line with current ACT Government drafting practices.

Clause 5 Objects of Act New section 5 (aa)

This clause inserts an additional object into the Act that relates to the implementation of measures to meet the greenhouse gas emissions reduction targets. This new object provides the scope for specific measures to be made under the Act that will meet the emissions reduction targets.

Clause 6 New part 2A

This clause inserts a new part 2A, which creates a regulation-making power under new section 13A that allows for a regulation to restrict new natural gas connections to the gas distribution network in prescribed circumstances. An additional regulation-making power under new section 13B provides the ability to modify the operation of certain national laws within the ACT to the extent required to give effect to a regulation made under new section 13A.

New section 13A (1) creates a regulation-making power that could restrict the provision of new natural gas connections in prescribed circumstances.

New section 13A (2) requires that the Executive seek and have regard to advice of the chief planning executive prior to making a regulation under new section 13A (2). This section has been included to ensure that the Executive is made aware of any planning concerns prior to a regulation being made.

New section 13A (3) provides that compliance with the part is a condition of the gas distributor's utility licence. This section provides scope for compliance monitoring and enforcement through the *Utilities Act 2000*.

New section 13A (4) provides definitions for the purposes of new section 13A. It provides a definition of **natural gas** to include natural gas blends. The definition of **natural gas** provides an avenue for a regulation to exclude a specific gas, for example a particular natural gas and renewable gas blend, or biogas, which is chemically similar to natural gas, if required. The definitions also set out that the provisions are for new connections only and are not intended to extend to retail customer transfers of existing connections, or to prevent maintenance or alterations of existing connections.

New section 13B (1) provides that a regulation may modify the operation of the *National Energy Retail Law (ACT)* and *National Gas (ACT) Law*. These provisions are required to ensure that a gas distributor does not breach national energy laws by not offering or providing gas connection services in circumstances prescribed by a regulation made under this Act. New section 13B (2) operates to limit a regulation made under new section 13B (1) to modifications only for the purpose of giving effect to new section 13A.

New section 13B (3) provides that a regulation may require a gas distributor to provide information to existing or potential customers and to the Territory. The intent of this section is to ensure compliance information can be sought, but also that the distributor can be asked to publish or provide information on areas where new natural gas connections may not be available.

Clause 7 Dictionary, note 2

This clause is a consequential amendment and notes that the definition of **chief planning executive** is contained within the *Legislation Act 2001*.