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

**CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION AMENDMENT
REGULATION 2023 (No 1)**

SL2023-33

EXPLANATORY STATEMENT

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CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION AMENDMENT REGULATION 2023 (No 1)

INTRODUCTION

This explanatory statement relates to the Climate Change and Greenhouse Gas Reduction Amendment Regulation 2023 (No 1) as presented to the Legislative Assembly. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Assembly. This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE REGULATION

This regulation amends the *Climate Change and Greenhouse Gas Reduction Regulation 2011* by inserting new Parts 2, 3 and 4.

This regulation modifies the application of the national energy laws to restrict new natural (fossil fuel) gas network connections to all residential, commercial and community facility zones and to residential type buildings in the ACT unless a transitional arrangement applies or an exemption application is approved by the Minister.

This will give effect to the ACT Government's intention to phase out new natural gas connections and meet the ACT Government's greenhouse gas emissions reduction targets.

In effect the regulation restricts new natural gas connections.

The regulation does this by prescribing areas, using the zone categories in the Territory Plan, to identify land areas, and identifies stated premises according to building class, as identified in the *Building Code*.

While the definition of 'new gas connection' under Part 2A of the *Climate Change and Greenhouse Gas Reduction Act 2010 (CCGGR Act)* does limit what can be done to an existing connection (e.g. a connection point cannot have its capacity increased or additional points of supply added), the regulation does not impact the use of existing connections.

The regulation provides a short transitional period to allow development applications to be lodged and building approvals to be issued.

The regulation contains a table that sets out specific timeframes by which connection applications must be made to the gas distributor in relation to exempt new connections and by which the gas distributor must make that connection.

The regulation provides that the Minister may decide to approve an exemption to the restriction and that this is available through an application process. Exemptions are not available in residential zones, the Molonglo Commercial Centre or to class 1 or class 2 buildings. The purpose of this is to ensure that new natural gas connections are only available for limited commercial and industrial uses.

The regulation provides a non-exhaustive list of factors the Minister must consider when deciding an exemption application and provides that the Minister retains the discretion to consider any other relevant information.

The regulation requires gas distributors to share relevant information with the Territory and customers through reporting requirements. To ensure that the gas distributor is aware of all approved connections, the regulation also provides that the Minister must give a copy of all approved exemptions to the gas distributors operating in the ACT.

The implementation and operation of the regulation will be subject to Ministerial review and the outcome of that review will be included in the Minister's annual report for the 2026-2027 and 2029-2030 financial years.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Government undertook a public consultation process through the government YourSay website between March and April 2023 to inform the proposed approach under the regulation.

Over 420 people, businesses and industry bodies participated in the consultation for no new gas network connections. Participation was invited through written submissions, a YourSay Survey, an industry stakeholder webinar, a households webinar, a stakeholder workshop, a community workshop and a community councils workshop.

Feedback received from the community has informed the design of the regulation.

CONSISTENCY WITH HUMAN RIGHTS

Section 30 of the *Human Rights Act 2004* requires all Territory laws (that is Acts of the Assembly and statutory instruments) must be interpreted in a way that is compatible with human rights, as far as it is possible. The following analysis is provided to assist the reader.

Rights Promoted

Right to life: section 9 of the *Human Rights Act 2004*

The regulation 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, among other factors, 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 regulation promotes the right to life as it restricts 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 generations in the Territory.

Rights Limited

Right not to have one's home interfered with unlawfully or arbitrarily: section 12(a) of the *Human Rights Act 2004*

The regulation may engage the right to not have one's home interfered with unlawfully or arbitrarily under section 12(a) of the *Human Rights Act 2004*.

New section 6 of the regulation restricts the areas and premises in the ACT where the gas distributor can provide a new connection for natural gas. New section 6 may engage the right to privacy to the extent that the restriction could be considered an interference to a person's home by limiting their choice to connect their homes to the natural gas network in prescribed areas or premises.

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

Section 12 of the *Human Rights Act 2004* provides that the right to privacy, family, home, or correspondence is engaged when the nature of the interference is 'unlawful or arbitrary'.

The limitation to this right is neither an illegal nor arbitrary interference with one's home. The restriction is lawfully made pursuant to section 13A of the *CCGGR Act*. The restriction is not arbitrary and is proportionate to a legitimate aim and provides regulatory certainty. The need to implement the restriction arose from an evidence base that new natural gas network connections should be restricted to reduce greenhouse gas emissions, protect the environment, and protect consumers from being locked into the natural gas network.

Further, the restriction is not an absolute inference and will only apply to 'new gas connections' (as defined under section 13A(4) of the *CCGGR Act*) in prescribed areas and premises. Individuals in homes to which the restriction applies will have ongoing access to alternative energy sources in the home, including other types of gas. All residential appliance needs can be met by electric options.

2. Legitimate purpose (s 28(2)(b))

The restriction under the regulation gives effect to the ACT Government's intention to phase out new natural gas connections as expressed in the Parliamentary and Governing Agreement for the 10th Legislative Assembly for the Australian Capital Territory and the ACT Climate Change Strategy 2019-2025; and to meet the ACT Government's legislated greenhouse gas emissions reduction targets over the long term.

This is an important purpose as the ACT Government has a responsibility to meet commitments to phase out new fossil fuel (natural) gas network connections and legislated emissions reduction targets, and in doing so, contribute positively to addressing and adapting to climate change and preserving the environment.

Natural gas accounts for approximately 20 percent of the Territory's greenhouse gas emissions. Existing government non-regulatory policy interventions have not prevented new gas mains connections to new residences. Therefore, regulatory intervention is required to achieve the ultimate objective of phasing out natural gas use in the ACT.

Preventing new natural gas network connections will also result in an increased uptake of electric appliances for households in the ACT. Modern electric appliance replacements for gas appliances have been found to be more efficient and cheaper to run than natural gas, which has the potential to result in cost savings for households. The potential cost savings of reducing natural gas use is also a legitimate purpose for the limitation.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The restriction in new section 6 of the regulation may limit an individual's choice to connect their premises (such as their home) to the gas distribution network however, 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 regulation does not prevent individuals in prescribed areas and premises from accessing other energy sources to meet residential needs or from using other types of gas for cooking, heating and other purposes.

4. *Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (s 28(2)(e))*

The restriction is a necessary and proportionate measure to achieve the purpose of the limitation and less restrictive measures have proven to be ineffective at achieving this aim.

The restriction does not apply to the entire Territory and will have no impact on existing connections. Premises with an existing gas connection can relocate their gas connection (provided that relocation does not fall within the definition of 'new gas connection': section 13A(4) of the *CCGGR Act*). Individuals will have ongoing access to other energy sources, including access to gas by other means not restricted under the regulation.

The exemption application process is an important safeguard and will allow for warranted exemptions to be made in areas that would otherwise be restricted from receiving a new natural gas connection.

Right to a fair trial: section 21 of the *Human Rights Act 2004*

The regulation has the potential to engage the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing under section 21 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)*

While not apparent on the face of the legislation, the right to a fair trial has been interpreted by the Courts to include a right to merits review for civil matters. New section 11 of the regulation provides a process by which an application can be made to the Minister to seek an exemption to the restriction and the Minister's decision of an application is subject to judicial review by a competent, independent and impartial court. However, the regulation does not provide a right of review by a tribunal. To this extent, the right to a fair trial may be limited by an absence of a right to tribunal review of the Minister's decision under the regulation.

It is anticipated that few individuals will utilise the exemption application process with most applications being received from commercial entities (to which the *Human Rights Act 2004*

does not apply: section 6). Consequently, the anticipated practical impact of the limitation is minimal.

2. *Legitimate purpose (s 28(2)(b))*

Judicial review is available to an applicant who seeks to dispute a decision made by the Minister under new section 11 of the regulation. The regulation does not prescribe a right to administrative review by tribunal.

The tribunal in the ACT is the ACT Civil and Administrative Tribunal (ACAT). The usual model for review of decisions at ACAT is for the tribunal to stand in the shoes of the original decision-maker, which is not the preferred approach in relation to exemption applications.

The exemption application process set out under new section 11 of the regulation will require the Minister to make a decision to depart from the policy intent of the regulation. This will require the Minister to consider each application on a case-by-case basis by weighing up the factors listed at new section 11(4) and any other relevant information (new section 11(5)).

Merits review of the Minister's decision by ACAT is not appropriate as the tribunal would require a prescriptive legislative framework about the circumstances in which exemption decisions should be made. The purpose of not imposing a prescriptive legislative framework is to ensure that the Minister, as decision-maker under new section 11, retains a discretion to consider a wide-range of applications, on a case-by-case basis.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The regulation will preserve access to justice by ensuring that decisions made by the Minister are subject to judicial review. The purpose of the Minister retaining a discretion to consider exemption applications on a case-by-case basis is directly related to this potential limitation.

4. *Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (s 28(2)(e))*

Although the availability of merits review of decisions made under new section 11 might be less restrictive on the right to a fair trial, it would adversely impact the effective operation of the exemption application process.

The availability of judicial review of decisions made under new section 11 is an important safeguard and achieves an appropriate balance of all interests.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Climate Change and Greenhouse Gas Reduction Amendment Regulation 2023 (No 1)*.

Clause 2 Commencement

This clause provides for the commencement of the regulation on 8 December 2023.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Climate Change and Greenhouse Gas Reduction Regulation 2011*.

Clause 4 New part 1 heading

This clause inserts a new heading ‘Part 1 – Preliminary’.

Clause 5 New parts 2 and 3

This clause inserts two new parts: ‘Part 2 – New natural gas connections’ and ‘Part 3 – Functions of Minister’.

The provisions of Part 2 and Part 3 are outlined below.

Part 2 New natural gas connections

Section 5 Definitions – pt 2

New section 5 provides definitions for the purposes of Part 2.

Section 6 Prescribed areas and stated premises – Act, s 13A(1)

Section 13A(1) of the *Climate Change and Greenhouse Gas Reduction Act 2010 (CCGGR Act)* provides that “[a] gas distributor must not provide a new gas connection for natural gas in an area, or to stated premises in an area, prescribed by regulation.” This is the head of power under which this regulation is made.

See new section 5 for the definition of **gas distributor**.

New subsection 6(1) sets out the prescribed areas where a gas distributor must not provide a new natural gas connection. The prescribed areas are identified by Territory Plan zone and include all residential zones, commercial zones and the community facility zone.

New subsection 6(2) sets out the prescribed premises, which can be located in any Territory Plan zone, where a gas distributor must not provide a new natural connection. The prescribed premises are identified by Building Code of Australia building class and include all class 1, class 2, class 3 and class 4 buildings. The intent of subsection 6(2) is to restrict new natural gas connections to all residential type buildings in all Territory Plan zones.

See new section 5 for the definition for **zone** and **class**.

The combined effect of new subsections 6(1) and (2) is intended to ensure that new natural gas connections are only available for areas and to premises that are not prescribed.

Division 2.3 Exempt new connections

This division provides for new natural gas network connections that are exempt from the restrictions set out in new section 6.

Section 7 Definitions – div 2.3

New section 7 provides definitions for the purposes of Division 2.3.

Section 8 Exempt new connections—Act, s 13A (4), def of new gas connection, par (b) (iii)

The definition of **new gas connection** at subsection 13A(b)(iii) of the *CCGGR Act* provides that a new gas connection does not include a new connection exempted by regulation.

New section 8 prescribes circumstances in which certain types of new gas connections are exempted from the restriction set out in new section 6.

Table 8 *Exempt new connections* sets out the different types of exempt new gas connections and their associated requirements.

Table 8 provides the type of connection in column 2, the required circumstances to be considered an exempt new connection in column 3, the last day for which a connection application (to the gas distributor) can be made in column 4, and the timeframe within which the gas distributor must provide (make) the new connection in column 5.

New section 8(1) provides that for each Item in Table 8, only where all the conditions in each respective column are satisfied will the connection be exempted from the restriction set out in new section 6.

Item 1 of Table 8, “Column 2 – new connection”: Provides that where a connection application is made before the regulation commences, the new connection is exempt on the condition that the gas distributor makes the connection within 12 months of the connection application being made. This means that if a connection application is made to the gas distributor before the regulation commences but the gas distributor does not provide a new connection 12 months after the application is made; that connection will no longer be exempt from the restriction under new section 6.

Item 2 of Table 8, “Column 2 – new connection in relation to development approval”: **Development approval** is defined in new section 8(2). Item 2 provides that if a development application is lodged before 2 March 2024, and subsequently approved, then it is an exempt connection if a connection application is made to the gas distributor by 7 December 2028 and a new connection is made by the gas distributor the earlier of the following, within 12 months of the connection application being made, or by 30 March 2029.

Item 3 of Table 8, “Column 2 – new connection in relation to building approval”: **Building approval** is defined in new section 8(2). Item 3 provides that if a building approval is issued before 2 March 2024 then it is an exempt connection if a connection application is made to the gas distributor by 7 December 2028 and a new connection is made by the gas distributor the earlier of the following, within 12 months of the connection application being made, or by 30 March 2029.

Item 1, Item 2 and Item 3 operate to provide for a short transition period of the restriction under the regulation.

The effect of Item 2 and Item 3 are to ensure that after the regulation commences on 8 December 2023, the only new gas connections that are exempt without having to seek approval from the Minister, are those set out in Table 8.

The purpose of this is to allow a short transition period following commencement for applicants that are substantially progressed in design and plans that include new connections to gas to lodge a Development Application or for a Building Approval to be issued. From 2 March 2024, Development Application and Building Approval proponents may have the option to apply to the Minister for an exemption.

Item 4 of Table 8, “Column 2 – new connection for which approval for exemption is issued under s 11(1)”: Provides that where the Minister approves an exemption application for a new connection pursuant to new section 11(1), the new connection is exempt only if the following two conditions are satisfied:

- The last day to make a connection application to the gas distributor is 7 December 2028. The effect of this sub-section is that if an exemption application is approved by the Minister, and the connection application is not made by 7 December 2028 then the exemption lapses and the connection is no longer exempt from the restrictions under the regulation; and
- The gas distributor must make the connection the earlier of the following, 12 months after the connection application is made; or 30 March 2029.

Column 4 of Table 8 for Items 2, 3 and 4 operates to provide that the final day to make a connection application to the gas distributor for all exempt new connections is 7 December 2028, being five years after the regulation commences. The purpose of establishing a deadline for connection applications is to provide regulatory certainty for industry. A period of five years is in line with the standard timelines available to complete new developments under ACT planning law.

Column 5 of Table 8 for Items 2, 3 and 4 operates to assist the gas distributor to manage their pipeline of work in delivering new connections and provides that the gas distributor must make all new gas connections the earlier of the following, 12 months after the connection application is made, or by 30 March 2029.

Section 9 Exempt new connections — application

New Section 9 sets out the application process for an exemption to the restriction on new gas connections under new Section 6.

New Section 9(1) provides that the Minister is the decision-maker for exemption applications. The section provides that the owner of a premises can apply to the Minister to approve an exemption for the gas distributor to make a new natural gas connection to the premises that would otherwise be restriction under new section 6.

New Section 9(2) provides that an exemption application must be in the form required by the Minister by notice on an ACT Government website approved by the Minister.

New section 9(3) provides that the approval under new section 9(2) is a notifiable instrument.

New section 9(4) sets out the circumstances in which an application for an exemption will be considered to be ‘properly completed’.

New section 9(5) provides that if an application for an exemption is not properly completed, then the application does not need to be considered by the Minister.

Section 10 Exempt new connections — request for more information

New section 10(1) provides that where an exemption application has been made, the Minister can make a request to the applicant or the gas distributor for additional information that is reasonably needed to decide whether or not to grant the exemption application.

New section 10(2) provides that where the Minister makes a request for additional information to the *applicant*, and the requested information is not provided within the period stated in the request; the Minister can refuse to further consider the exemption application.

Section 11 Exempt new connections — decision

New Section 11(1) provides that where an exemption application is made, the Minister must (a) approve the application; or (b) approve the application subject to stated conditions; or (c) refuse the application.

If a premises meets any of the criteria stated in new section 11(2), it will automatically be ineligible for an exemption and the Minister must refuse to approve the application.

New section 11(2) provides the circumstances in which an exemption application must be refused by the Minister based on the location of the premises or the class of building to which the new connection is intended to be made.

New section 11(2)(a) gives effect to commitment A.1(vi) of the Parliamentary and Governing Agreement for the 10th Assembly of the Australian Capital Territory.

New section 11(2)(b) is intended to capture all future residential zones to prevent new gas connections to residential homes in future greenfield and infill areas. This is intended to give effect to commitment A.1(vii) and (viii) the Parliamentary and Governing Agreement for the 10th Assembly of the Australian Capital Territory.

New section 11(3) provides that the Minister must refuse an exemption application to provide a new gas connection to a class 1 or class 2 building. The intent of this is to restrict new gas connections to residential homes regardless of the zone they are located in.

New section 11(4) provides the factors that the Minister must have regard to when considering an application. New section 11(4) is not an exhaustive list of factors the Minister must consider. Under this section, the Minister has discretion to determine how the factors are weighted in deciding an application.

New section 11(4)(c) provides that a factor the Minister must consider is “the probable impact on the Territory if the application is approved”. This phrasing is intended to provide for a broad interpretation of “impact” to include consideration of environmental, economic, social and other impacts on the Territory as a whole, or in discrete areas of the Territory, if relevant.

New section 11(5) provides that the Minister retains discretion to consider any other relevant information.

Section 12 Exempt new connection — form of approval

New section 12(1) sets out the requirements for the approval of an exemption application. These requirements will ensure that when the approval for the exemption application is provided to the gas distributor, the approval has the required information for the gas distributor to identify the premises to which the new gas connection can be made, the maximum size of the gas meter permitted, required timeframes and any other conditions on the exemption.

New section 12(2) provides that the Minister must give a copy of the approval of an exemption application to each gas distributor in the ACT. This will ensure that the gas distributor has a copy of all approved applications.

Section 13 Expiry—div 2.3

New section 13 provides that Division 2.2 expires on 31 March 2029. The purpose of this is to ensure that applications for exemption cannot be made indefinitely.

Judicial review proceedings in relation to a decision made under new Division 2.3 will not be impacted by the expiration of new Division 2.3.

Section 14 Modification of National Gas Law—Act, s 13B (1) (b)

Section 13B(1) of the *CCGGR Act* provides that a regulation can modify the operation of certain laws for the purpose of giving effect to section 13 of that Act.

Section 13B(1)(b) of the *CCGGR Act* provides that a regulation can be made to modify the operation of the *National Gas (ACT) Law*.

New section 14 provides that the *National Gas (ACT) Law* is modified by new Schedule 1.

Section 15 Information gas distributor must give Territory—Act, s 13B (3) (a)

New section 15(1) provides the information that the gas distributor must include in the annual report to be given to the Territory for each financial year.

New section 15(2) provides clarity for the gas distributors reporting obligations and requirements for the first year of operation of the regulation, being the annual report for the 2023-2024 financial year. The effect of this section is that the gas distributor is not required to provide information relating to any new connections that were applied for before the regulation commenced.

New section 15(4) provides definitions for *annual report* and connection *type*.

Section 16 Information gas distributor must give customers—Act, s 13B (3) (b)

New section 16 provides that the gas distributor must make available to existing or potential customers certain information if directed by the Minister.

New section 16(2) provides that a direction may include a requirement about how the gas distributor must make the information available.

This will ensure that gas distributors are providing information to the community about areas and premises where a new natural gas mains connection is not available.

Part 3 Functions of Minister

Section 17 Annual report by Minister—reporting in relation to natural gas connections

New section 17 provides that the annual report prepared by the Minister in accordance with section 15 of the *CCGGR Act* must include certain information for the 2026-2027 financial year and 2029-2030 financial year.

Section 18 Expiry—pt 3

New section 18 ensures that the reporting required under Section 17 expires after the Minister provides the relevant information in the annual report for the 2029-2030 financial year.

Clause 6 New part 4 heading

This clause inserts 'Part 4 – Sector agreements' before section 5 in the regulation.

Clause 7 Section 5

This clause rennumbers Section 5 in the regulation to Section 19.

Clause 8 New schedule 1

This clause inserts new Schedule 1

Part 1.1 of the new schedule modifies the operation of Section 133(6) of the National Gas Law to ensure that a refusal to provide access in accordance with the restriction in new section 6 does not constitute a breach of Section 133 of the National Gas Law.

Part 1.2 of the new schedule modifies the operation of the National gas rules to insert a new section 119AA to remove the right of a customer to apply for a connection service that would otherwise be provided for by the National Gas Rules if the new connection is restricted pursuant to section 13A of the *CCGGR Act*.

Clause 9 Dictionary, note 2

This clause inserts 'independent competition and regulatory commission' into *Note 2* of the Dictionary.

Clause 10 Dictionary, note

This clause inserts 'ACT target (see s 6)' into *Note 3* of the Dictionary.

Clause 11 Dictionary, new definitions

This clause inserts new definitions for terms used in the regulation into the dictionary.