

Utilities (Gas Restrictions) Regulation 2005
SL2005-8

Regulatory Impact Statement

1. Introduction

The Utilities (Gas Restrictions) Regulation 2005 is made under the *Utilities Act 2000* (the Act). Section 234 of the Act provides that regulations may be made in relation to the safe or efficient provision of utility services. Regulations may include provisions prohibiting or regulating activities to ensure the safe or efficient operation of a utility network or network facility.

The main purpose of the regulation is to ensure that gas restrictions can be implemented efficiently when there is a potential imbalance between the demand and supply of the system. Such an imbalance, if not addressed properly, may cause damage to the gas distribution and transmission systems.

Identification of the Problem

Although the January 2004 Moomba gas incident did not cause any disruption to the ACT's gas supply, should the incident have happened during a winter peak demand period, it would have had a more drastic impact on the ACT. It would possibly require the ACT, along with other jurisdictions, to implement gas restrictions and loadsheddings in order to stabilise the transmission and distribution systems through reducing the total consumption.

While other jurisdictions have well-developed mandatory restriction implementation mechanisms, there is a major gap in the current ACT legislative regime in this respect.

The current regime is set out under the *Emergencies Act 2004* and the *Utilities Act 2000*. These Acts do not distinguish an ongoing shortage of utility supplies from other forms of utility emergencies that require an immediate response.

The *Emergencies Act 2004* is designed to handle emergencies and natural disasters that require inter-agency and multi-agency organisational actions and significant recovery arrangements. A declaration of a State of Emergency may be made under the Act and the management of the emergency will be transferred to the Emergency Controller who has the power to implement restrictions. The use of emergency powers for the implementation of mandatory restrictions is highly inappropriate in non-emergency situations.

Under the *Utilities Act 2000*, utilities, including gas distributors, are required to have emergency management plans to handle supply emergencies. Such plans are designed to facilitate quick and efficient responses by utilities to emergencies, such as gas leakage, that require immediate action to protect the integrity of the supply and distribution systems and to minimise network damage. These plans do not cover non-emergency situations such as prolonged shortages of supply due to loss of gas production and transmission capacity.

Therefore a new legislative framework is needed for the implementation of gas restrictions in the event of a shortage of supply.

2. Objectives of Government Intervention

Implementation of a flexible utility restriction scheme for gas requires Government legislation and regulations.

While it is Government policy to encourage a free market, in times of crisis there is sometimes a need for Government intervention to cover the possibility that the market may fail. Utility consumers have an expectation that Government will have mechanisms in place to prevent market failure and to protect their interests.

In the case of the gas market, the proposed legislation is necessary to establish the framework for a flexible mandatory restriction scheme, which will allow the ACT Government and the community to swiftly respond to local shortages or incidents that have impact on the wider region.

The proposed regulatory regime will result in:

- a head of power to enable restrictions to be imposed on consumption;
- a co-ordinated response between the Government and gas distributor to address gas shortfalls,
- the minimisation of pressure loss in the gas pipelines which may require a prolonged period of time to re-pressurise and safety check the network systems before normal supply can be resumed;
- the minimisation of inconvenience to consumers by allowing a calculated, monitored, pre-planned and flexible response to supply continuity in non-emergency situations; and;
- the fulfilment of the ACT's obligations under relevant inter-jurisdictional agreements and protocols.

3. Options

Non-regulatory Options

Do Nothing

Eliminated as an option.

Relying solely on utility responses may result in market failure, but Government would be expected to help rectify the situation afterwards.

Voluntary restrictions on consumption

Voluntary rationing of services is possible through appeals to consumers. However, such an approach is an uncertain and unpredictable solution and only possible during short-term restraint on usage. It is not suitable where large reductions must occur within a short period of time.

It is a good measure for introducing consumers to mandatory restrictions, if time permits and depending on the expected duration of the shortage, but lacks enforcement capabilities. Due to the high-risk nature of non-compliance, this requires supplementation with more active forms of intervention.

Regulatory Option

Explicit government legislation

This is the preferred option.

Due to the inappropriate nature of the current legislative regime to deal with prolonged utility shortages, new legislation is justified to protect consumers from load shedding and ensure the secure and reliable supply of essential utility services, and to better align ACT restriction mechanisms with other jurisdictions.

The proposed regulation will provide

- the flexibility necessary for utility restriction schemes;
- appropriate mechanisms to prevent market failure;
- certainty for utilities and consumers; and
- penalties for non-compliance: monitoring by government representatives to detect non-compliance is only practicable in the case of water restrictions, however an appropriate penalty regime will be devised to encourage compliance across the board.

4. Utilities (Shortage of Essential Utility Service) Amendment Bill 2005

It is proposed that a Utilities (Shortage of Essential Supply) Amendment Bill 2005 be drafted for introduction in April 2005. By incorporating the existing electricity and water restriction regulations and this proposed gas restriction regulation, the Bill will establish a regime that governs restrictions for water, electricity and gas. The creation of a clear regulation-making power will improve the legislative robustness of the restrictions regime and is recommended by the Parliamentary Counsel's Office and the Policy and Regulatory Division of Department of Justice and Community Safety.

5. Impacts

Costs and benefits of the introduction of the gas restriction regulation are summarised in the following table.

Costs and Benefits

Sector	Costs	Benefits
Business and industry	<ul style="list-style-type: none"> • Inconvenience during rationing. • Obtaining advice on new regulations. • Some businesses may purchase alternative fuel sources. • Potential loss of business. 	<ul style="list-style-type: none"> • Avoidance or minimisation of the chance of unscheduled supply interruptions and possible associated damages to plant and products. • Certainty resulting from specific regulation which allows planning for contingencies.

Government	<ul style="list-style-type: none"> • Public education costs (media/printing advertising). • Testing of the regulatory regime. 	<ul style="list-style-type: none"> • Preparedness for a non-emergency rationing event. • Avoidance of the social and economic costs of a possible market failure. • Maintenance of long-term viability of existing energy resources. • Raised profile of the importance of energy efficiency will help to reduce energy demand. • Compliance with inter-jurisdictional incident management protocols.
Individuals	<ul style="list-style-type: none"> • Some individuals may purchase alternative fuel sources. • Inconvenience during rationing. 	<ul style="list-style-type: none"> • Equity. • Community safety. • Greater self-reliance. • Services to priority consumers, e.g those with severe medical conditions, can be assured.
Utilities	<ul style="list-style-type: none"> • Public education costs. • Administration of restriction schemes. • Loss of sales. 	<ul style="list-style-type: none"> • Avoidance or minimisation of the chance of unscheduled supply interruptions and costs associated with supply resumption. • Certainty resulting from specific regulation. • Improved customer service perceptions.
Environment	<ul style="list-style-type: none"> • During rationing, especially in winter, people may turn to other sources of energy for heating, such as electrical or wood burning heaters, to the detriment of the environment. 	<ul style="list-style-type: none"> • Publicity campaigns should result in greater public awareness of the importance of conservation of natural resources and energy efficiency and contribute to improved greenhouse gas outcomes.