

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

GAS SUPPLY BILL 1998

EXPLANATORY MEMORANDUM

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Minister for Urban Services**

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Outline

The objective of the Bill is to update the *Gas Act 1992* to meet changes that have occurred within both the public and private sectors in relation to the gas industry over the past five years and in particular the national gas reform agenda and gas competition policy which should result in lower gas prices to consumers.

Gas supply within the Territory is a regulated utility service that has been always been provided by the private sector since the availability of natural gas in the mid 1980's.

The Bill sets out a framework of co-regulation with a balance of gas industry self regulation and government regulatory oversight to ensure acceptable standards of gas safety and infrastructure standards are maintained and that gas consumer issues are addressed.

The proposed regulatory framework is consistent with approach taken in NSW and covers the provision of natural gas through pipelines within the Territory

Gas stored in tanks and cylinders such as liquefied petroleum gas, compressed natural gas and liquefied natural gas and together with associated infrastructure will continue to be covered by Dangerous Good legislation in line with NSW.

The Bill addresses four main issues in relation to gas - the authorisation or permission to operate a gas activity within the Territory, the continuity and availability of gas supply to consumers; see that acceptable levels and standards of infrastructure are in place to ensure continuity of gas supply; and the provision of technical regulatory functions and powers to oversight these activities.

More specific changes that will be introduced by the Bill include:

- abolishing the Gas Authority and Review Panels established under the *Gas Act 1992*.
- having the ACT Independent Pricing and Regulatory Commission oversight pricing and access issues in relation to gas activities in line with other jurisdictions;
- replacing the Gas Technical Controller with a Gas Technical Regulator with an expanded role to act as the public and industry interface, to be the Government purchaser of regulatory compliance, to provide technical policy in relation to the more complex gas technical issues relating to pipeline access, and to manage the regulation of gas activities in line with other jurisdictions;
- removal of the Energy Research and Development Levy, in line with the High Court ruling on State-based taxes based on a quantum of sales;
- having authorisations consistent with national natural gas pipeline system access arrangements and competition policy;
- having technical standards linked directly to gas industry standards and codes of practice,
- changing the focus of regulatory compliance by placing more emphasis on auditing of compliance, the promotion of gas technical and safety standards, and the investigation of gas incidents;

- aligning gasfitting, metering gas quality standards, and safety and operation plans with NSW by regulation, and
- rationalising of penalties under the Bill

Revenue/Cost Implications

The financial implications of the Bill include the removal of the Gas Levy under the Gas Levy Act 1991 which was set at 1.75% of annual gas sales. This Levy is paid at 31 March each year, based on previous calendar year sales and recently accrued \$944,000 to general revenue. The Energy R&D Levy, authorised under Section 44 of the Gas Act 1992, was gazetted at the rate of 0.02% of calendar year sales and recently accrued nearly \$108,000 to the Energy R&D Trust. Both Levies are now contrary to the July 1997 High Court ruling on State-based taxes based on sales, but were previously assessed to be anti-competitive. NSW has removed both levies.

The Bill provides that a cost-of-regulation fee be recovered from authorised gas businesses, similar to that applied by NSW. A cost allocation model has been developed and the estimated cost of regulation is \$435,000, including initial outlay costs for establishing and participating in a national competitive gas market. The cost-of-regulation includes the cost of purchasing independent regulatory and gas safety inspectorial services.

DETAILED NOTES

PART 1 - PRELIMINARY

Clause 1 is a formal provision setting out the short title of the Bill

Clause 2 deals with the commencement provisions. It contains a provision to provide for the automatic start of the legislation six months after gazettal if it has not been commenced earlier.

Clause 3 deals with the interpreting of certain expressions used in the Bill.

PART II - AUTHORISATIONS

Clause 4 lists the three types of authorisations that can be made under the Bill for transmission, distribution and supply activities.

Clause 5 provides that a person (either natural person or body corporate) may apply for an authorisation which is to be accompanied by the applicable fee.

Clause 6 provides that the Minister may issue an authorisation, for a specific period of time; setting out any specific terms and conditions including annual fees and reporting requirements.

Clause 7 describes the three types of authorised activities under the Bill. The authorisations separate activities into transmission pipelines, distribution pipelines and supplying or the sale of natural gas through a gas pipeline in accordance with national gas reform and in particular the Natural Gas Pipelines Access Legislation and Code which requires the separation or ring fencing of each of these three activities to ensure competition within the gas industry. SubClause 7(1) which deals with transmission pipelines will cover six kilometres of the Dalton - Canberra natural gas transmission pipeline which is the Territory's only transmission pipeline at this time. SubClause 7(2) which deals with distribution pipelines will cover the existing natural gas distribution system currently owned and operated by a sole gas distribution company. Clause 7(3) covers the third type of authorisation in relation to the supply or sale of natural gas within the ACT.

Clause 8 provides for the variation of the terms and conditions of an authorisation by either the holder of the authorisation or the Minister.

Clause 9 provides for the surrender of an authorisation.

Clause 10 provides for the revocation of an authorisation by the Minister.

Clause 11 requires a gas pipeline operator (authorised transporters and authorised distributors) to provide an annual report to the Gas Technical Regulator in relation to the operation of their pipeline in a form prescribed in their authorisation.

Clause 12 requires a person holding an authorisation to keep records that will enable them to meet reporting requirements

Clause 13 provides that the Minister will make a decision in relation to an application for an authorisation within two months or within an additional timeframe as agreed to by the applicant

Clause 14 provides that an authorisation is generally extended to employees and agents

Clause 15 lists offences in relation to operating a transmission pipeline or distribution pipeline or supplying natural gas without an authorisation

PART III - SUPPLY

Clause 16 requires that the transfer of gas from the custody of a transporter is to be metered and that a supplier is to meter gas supplied to consumers.

Clause 17 provides for the connection of land to a distribution gas pipeline

Clause 18 provides for the supply of gas to a consumer.

Clause 19 provides for the failure to supply, or to disconnect, gas to due to safety reasons or the failure of a gas installation to meet standards as set out in the Bill

PART IV - INFRASTRUCTURE

Clause 20 requires that infrastructure is kept in good condition and repair

Clause 21 requires the investigation and stoppage of gas leaks by the gas pipeline operators

Clause 22 requires the notification of any death, injury or damage caused by the leakage of gas or any resultant fire or explosion to the Gas Technical Regulator by a gas pipeline operator or the fire brigade.

Clause 23 requires that any work carried out in relation to the design, construction, operation or maintenance of infrastructure is to be done in accordance with Australian Standards and gas industry Codes of Practice

Clause 24 requires that the holder of an authorisation is to make information in relation to a gas pipeline available to the Chief Executive or delegate

Clause 25 provides a gas pipeline operator with powers to construct, maintain and operate a gas pipeline. These range from entry and inspection of land, clearing of vegetation that impedes gas pipeline operation or damages pipelines, constructing access and reinstating land provided that notice is given to the owner and occupier of the land where the work is to be carried out

Clause 26 requires that a gas pipeline operator protects other utilities' underground services when carrying out excavation work.

Clause 27 set out requirements in relation to the notification of changes made to public streets and places that may impact on pipeline infrastructure.

Clause 28 provides that a pipeline operator may recover reasonable costs incurred relocating of pipeline infrastructure in relation to public streets and places

Clause 29 requires that a gas pipeline operator removes their property and waste upon the completion of work carried out on infrastructure.

Clause 30 provides for a gas pipeline operator to pay compensation for any damage to land.

Clause 31 provides that unauthorised connections are not to be made to a gas pipeline.

Clause 32 provide that a person shall not wilfully excavate near a pipeline without first determining the location of the pipeline.

Clause 33 provides that a person will not wilfully interfere with a gas pipeline, a meter or any seal affixed to a gas pipeline or meter connected to the system.

Clause 34 provides a defence for excavating near ,or interfering with, a pipeline when the person has operated with the consent of the gas pipeline operator of the Gas Technical Regulator

Clause 35 provides that a person who wilfully damages a gas pipeline shall make good the damage.

PART V - GAS TECHNICAL REGULATOR AND INSPECTORS

Division 1 - General

Clause 36 provides for the appointment of a Gas Technical Regulator.

Clause 37 lists the functions of the Gas Technical Regulator

Clause 38 provides for the appointment of an Acting Gas Technical Regulator

Clause 39 provides the Gas Technical Regulator with a general power to do all things necessary in connection with the performance the function.

Clause 40 provides for the delegation of the performance or exercise of the Gas Technical Regulator's function to an inspector

Clause 41 provides for the appointment of gas inspectors and the specification of qualifications for a gas inspector

Clause 42 provides for the identification of gas inspectors.

Clause 43 requires that a person or organisation shall not obstruct or hinder the Gas Technical Regulator or an inspector in relation to the performance or exercise a function or power under the Bill

Clause 44 provides that a person who carries out, or is planning to carry out work, in relation to the design, construction, operation or maintenance of infrastructure is as required provide documentation as specified by the Gas Technical Regulator

Clause 45 provides an inspector with powers to inspect and perform tests on gas pipeline infrastructure

Clause 46 requires that a person holding an authorisation is to provide reasonable assistance to an inspector in relation to the exercise of powers under the Bill and allow the inspector to use equipment and facilities to test gas composition and quality and gas pressure in a pipeline

Clause 47 provides that the Gas Technical Controller and an inspector may obtain information to determine whether a gas pipeline complies with, or is being operated in accordance with, the Bill

Division 2 - Premises

Clause 48 deals with the interpreting of certain expressions used in relation to premises

Clause 49 provides for the entry and inspection of land or premises either with the consent the occupier or under a warrant for the inspection of pipe and equipment used for the transmission, distribution, storage or consumption of gas or in the removal of products of combustion

Clause 50 requires that an inspector has to obtain an occupier's consent in writing to enter and inspect a premises and that the occupier has to be informed that they may refuse to give consent

Clause 51 provides that an inspector can obtain a search warrant to enter and search premises where the inspector has reasonable grounds for believing that a material object used in relation to the distribution, transmission, storage or consumption of gas does not comply with the Bill or is likely to become unsafe

Clause 52 provides that an inspector may seize material objects found in a search under warrant

PART IV - MISCELLANEOUS

Clause 53 declares that the construction of transmission and distribution pipelines is a development activity under the Land Act

Clause 54 provides that a person cannot claim to be relieved or absolved from any requirement under the Bill to provide information on the grounds that the information would tend to

incriminate the person as the information provided is not admissible in evidence against the person in any criminal proceedings

Clause 55 provides that the Supreme Court may issue an injunction to restrain a person from contravening *Clause 14* of the Bill where an authorisation under the Bill is extended to employees and agents.

Clause 56 provides that the Gas Technical Regulator is a referring authority under the Independent Pricing and Regulatory Commission Act 1997 and that an industry engaged in the supply of gas is taken to be a regulated industry

Clause 57 provides that a notice issued under the Bill shall be signed by the person giving it but failure sign such a notice will not invalidate it and that a notice is admissible in evidence without being proved

Clause 58 provides that the appointment of a Gas Technical Regulator or acting Gas Technical Regulator ceases to have effect if the person ceases to be a public servant.

Clause 59 provides that the Administrative Appeals Tribunal may review a decision made by the Minister, Chief Executive, Gas Technical Regulator or an inspector.

Clause 60 provides that the Minister may determine fees for the purposes of the Bill.

Clause 61 provides that the executive may make regulations not inconsistent with the Bill.

Clause 62 provides for the exclusion of double compensation or damages

Clause 63 provides that for the purposes of the prosecution of an offence against this act it is necessary to establish the mind of a director, servant or agent of the body corporate.

Clause 64 provides for the amendment of the Dangerous Goods Regulation to the extent that it applies to natural gas in pipelines

Clause 65 provides for the repeal of the *Gas Levy Act 1991* and the *Gas Act 1992*

Clause 66 provides for transitional arrangements in relation certain parts of the *Gas Act 1992* in relation to an existing authorisation, metering and gasfitting