



Gas Supply (Gas Appliances) Regulation 2004

under the

Gas Supply Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Gas Supply Act 1996*.

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Minister for Fair Trading

Explanatory note

The object of this Regulation is to regulate the safety of gas appliances by providing for a system of certification of such appliances and for prohibition of the sale and supply of unsafe gas appliances and types of gas appliances.

The Regulation also makes a consequential amendment to the *Gas Supply (Safety Management) Regulation 2002*.

This Regulation is made under the *Gas Supply Act 1996*, including section 83 (the general regulation-making power) and section 83A (Regulations as to gas appliances and gas meters).

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Regulation not to apply to certain gas appliances	4
Part 2 Certification and labelling of gas appliances	
5 Restrictions on sale and supply of gas appliances	5
6 Certification of gas appliances	5
7 Authority to certify gas appliances or types of gas appliances	5
8 Conditions of certification authority	6
9 Duration of certification authority	7
10 Cancellation of certification authority	7
11 Show cause notice	7
12 Offences relating to compliance labels	8
Part 3 Unsafe gas appliances	
13 Powers of investigators	9
14 Nature of orders under this Part	9
15 When an order may be made under this Part	10
16 Manner of making orders	10
17 Failure to comply with order	10
Part 4 Miscellaneous	
18 Gas Appliances Certification Register	11
19 Change of particulars	11
20 Amendment of Gas Supply (Safety Management) Regulation 2002	11

Gas Supply (Gas Appliances) Regulation 2004

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Gas Supply Act 1996

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Gas Supply (Gas Appliances) Regulation 2004*.

2 Commencement

- (1) This Regulation commences on 1 December 2004, except as provided by subclause (2).
- (2) Clauses 5 (1) and 20 commence on 1 March 2005.

3 Definitions

- (1) In this Regulation:

certification authority means an authority to certify a gas appliance or type of gas appliance granted under clause 7.

certification number means the number issued by the holder of a certification authority to identify a gas appliance or type of appliance that has been certified by the holder or a person authorised to certify it on behalf of the holder.

certified gas appliance means a gas appliance or type of gas appliance in respect of which a certification by the holder of a certification authority is in force.

compliance label, in relation to a gas appliance or type of gas appliance, means a label attached to the gas appliance or type of gas appliance containing the particulars specified in clause 5 (2).

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or

2004 No 761

Clause 4 Gas Supply (Gas Appliances) Regulation 2004

Part 1 Preliminary

(b) if there is no such position in the Department—the Director-General of the Department.

investigator means a person appointed under section 18 of the *Fair Trading Act 1987* as an investigator for the purposes of this Regulation.

Register means the Gas Appliances Certification Register kept by the Director-General in accordance with clause 18.

registered mark for the holder of a certification authority means the mark registered in relation to the holder under clause 18 (2) (c).

the Act means the *Gas Supply Act 1996*.

- (2) In this Regulation, a reference to a type of gas appliance is a reference to each gas appliance of the same design constructed to identical specifications.
- (3) For the purposes of this Regulation, a gas appliance or type of gas appliance is certified by a person or organisation that is a certification authority if it is certified by a person authorised by the person or organisation to certify on the person's or organisation's behalf.

4 Regulation not to apply to certain gas appliances

This Regulation does not apply to or in respect of a gas appliance or type of gas appliance that is connected to a gas installation to which the *Dangerous Goods (Gas Installations) Regulation 1998* applies.

Part 2 Certification and labelling of gas appliances

5 Restrictions on sale and supply of gas appliances

- (1) A person must not sell or supply a gas appliance or type of gas appliance unless:
- (a) the gas appliance or type of gas appliance is a certified gas appliance, and
 - (b) a compliance label in relation to the appliance that is in a form approved by the Director-General and inscribed with the particulars referred to in subclause (2) is attached to the appliance in a manner approved by the Director-General.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (2) A compliance label relating to a gas appliance or type of gas appliance must be inscribed with the following particulars:
- (a) the registered mark of the holder of the certification authority that certified the appliance or type of appliance,
 - (b) the certification number for the appliance or type of appliance,
 - (c) the type of gas that is to be used by the appliance.

6 Certification of gas appliances

A person must not certify a gas appliance or type of gas appliance unless the person:

- (a) is the holder of a certification authority, or
- (b) is a person authorised by the holder of a certification authority to certify gas appliances on the holder's behalf.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

7 Authority to certify gas appliances or types of gas appliances

- (1) An application for a certification authority may be made by any person or person on behalf of an organisation.
- (2) The application is to be made in writing in the form approved by the Director-General.
- (3) The application must be accompanied by:
 - (a) the fee determined by the Director-General, and

2004 No 761

Clause 8 Gas Supply (Gas Appliances) Regulation 2004

Part 2 Certification and labelling of gas appliances

- (b) a description of the mark to be used to identify the holder of the certification authority.
- (4) The Director-General may, by order in writing, authorise the person or organisation to certify individual gas appliances or types of gas appliances (a *certification authority*).
- (5) The Director-General may determine an application for a certification authority by granting or refusing the application.

8 Conditions of certification authority

- (1) A certification authority is subject to the following conditions:
 - (a) the holder of the authority (or any person authorised by the holder to certify gas appliances on the holder's behalf) must not certify a gas appliance or type of gas appliance knowing that it is unsafe to use,
 - (b) the holder of the authority (or a person authorised by the holder to certify a gas appliance or type of gas appliance on the holder's behalf) must attach to each gas appliance or type of gas appliance that he or she certifies a compliance label in relation to the appliance.
- (2) A certification authority is subject to such other conditions as the Director-General considers appropriate and as are specified in the authority or imposed by order in writing given to the holder of the authority.
- (3) The Director-General may by order in writing given to the holder of a certification authority:
 - (a) impose further conditions on the grant of the authority, or
 - (b) vary or revoke any of the conditions (other than a condition referred to in subclause (1)) to which the approval is subject.
- (4) The Director-General must not impose a further condition, or vary a condition, unless the Director-General:
 - (a) has given the holder of the certification authority written notice of the intention to impose or vary the condition, and
 - (b) has given the holder the opportunity to make oral or written submissions within a period of at least 21 days after the notice is given that is specified in the notice concerning the imposition or variation of the condition, and
 - (c) has taken into account any submissions made by the holder.

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- (5) The holder of a certification authority must comply with the conditions (if any) imposed on the authority by this clause and the Director-General.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

9 Duration of certification authority

A certification authority takes effect on the day on which it is granted or on a later day specified in the authority and remains in force (unless it is sooner suspended or cancelled) for the period specified in the authority.

10 Cancellation of certification authority

The Director-General may cancel a certification authority, at any time and for any reason, by notice in writing served on the holder of the authority.

11 Show cause notice

- (1) The Director-General may suspend a certification authority and serve a show cause notice on the holder of the authority if the Director-General is of the opinion that there are grounds for cancelling the authority.
- (2) A show cause notice is a notice requiring the holder of the certification authority to show cause why the authority should not be cancelled on the grounds specified in the notice.
- (3) Without limiting the grounds that may be specified, grounds include that the holder of the authority has failed to comply with a condition of the authority.
- (4) A show cause notice is to be in writing and is to specify a period of not less than 21 days after service of the notice as the period:
- (a) during which the authority is suspended, and
 - (b) within which the holder must show cause as required by the notice.
- (5) The holder on whom a show cause notice is served may, within the period allowed by the notice, make written submissions to the Director-General in respect of the matters to which the notice relates.

2004 No 761

Clause 12 Gas Supply (Gas Appliances) Regulation 2004

Part 2 Certification and labelling of gas appliances

12 Offences relating to compliance labels

A person must not:

- (a) attach a compliance label to a gas appliance or type of gas appliance that is not a certified gas appliance, or
- (b) attach a compliance label to a gas appliance or type of gas appliance that is not a compliance label in relation to that gas appliance or type of gas appliance, or
- (c) remove a compliance label that has been attached to a gas appliance or type of gas appliance in accordance with this Regulation unless the person is authorised by the Director-General to do so, or
- (d) falsify the particulars inscribed on a compliance label or attach a compliance label that is inscribed with false particulars to a gas appliance or type of gas appliance, or
- (e) attach a compliance label to a gas appliance or type of gas appliance that is not in the form approved by the Director-General.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case) penalty units.

Part 3 Unsafe gas appliances

13 Powers of investigators

- (1) An investigator may:
 - (a) by attaching a label to a gas appliance or type of gas appliance that the investigator considers is unsafe to use, prohibit the sale or supply of the appliance, or
 - (b) by notice in writing served on a person, prohibit the sale or supply of any gas appliance or type of gas appliance specified in the notice.
- (2) An investigator may give a notice under subclause (1) (b) only if the investigator has reasonable grounds to believe:
 - (a) that the gas appliance or type of gas appliance is unsafe to use, and
 - (b) the death of, or injury to, any person or damage to any property may arise out of use of the appliance or type of appliance unless the notice is given.
- (3) A notice served on a person under this clause may be varied or revoked by the investigator by serving a notice in writing on the person concerned.

14 Nature of orders under this Part

- (1) By an order under this Part, the Director-General may do any one or more of the following:
 - (a) prohibit the sale or supply of a gas appliance or type of gas appliance specified in the order,
 - (b) give directions, in respect of a gas appliance or type of gas appliance specified in the order:
 - (i) for the recall of the appliance or type of appliance, or
 - (ii) for action to be taken to render the appliance or type of appliance safe to use.
- (2) An order under this Part may be varied or revoked by the Director-General in the same way as the order was made.

2004 No 761

Clause 15 Gas Supply (Gas Appliances) Regulation 2004

Part 3 Unsafe gas appliances

15 When an order may be made under this Part

The Director-General may make an order under this Part only if the Director-General has reasonable grounds to believe:

- (a) that a gas appliance or type of gas appliance is unsafe to use, and
- (b) the death of, or injury to, any person or damage to any property may arise out of use of the appliance or type of appliance unless the order is made.

16 Manner of making orders

- (1) An order under this Part:
 - (a) may be made in writing addressed to the person intended to be bound by it, or
 - (b) may be addressed to several persons, or to all persons, and published in the Gazette, or in such other publication or publications as the Director-General considers appropriate, or both.
- (2) In either case, the order, when it takes effect, is binding on the person or persons to whom it is addressed.
- (3) An order that is served on a person takes effect on the day it is served or a later day specified in the order.
- (4) An order that is published in the Gazette or another publication takes effect on the day it is first published or on a later day specified in the order.

17 Failure to comply with order

A person is guilty of an offence if the person, without reasonable excuse:

- (a) sells or supplies a gas appliance or type of gas appliance in contravention of any prohibition imposed under this Part, or
- (b) contravenes or neglects or refuses to comply with a direction given under this Part.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Part 4 Miscellaneous

18 Gas Appliances Certification Register

- (1) The Director-General must keep a register of persons or organisations granted a certification authority.
- (2) The Director-General is to enter on the Register the following particulars in relation to a person or organisation granted a certification authority:
 - (a) the name of the person or organisation,
 - (b) the full address of the person or organisation, being (in the case of an individual) his or her principal place of residence or (in the case of a corporation or organisation) its registered office or principal office or place of business in New South Wales,
 - (c) the identifying mark for the person or organisation supplied under clause 5 (2) (b) (“the *registered mark*”),
 - (d) such other details supplied in the application for the certification authority as the Director-General considers should be entered on the Register.

19 Change of particulars

If the name and address of the holder of a certification authority changes, the holder must notify the Director-General within 14 business days after the change occurs.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units in any other case.

20 Amendment of Gas Supply (Safety Management) Regulation 2002

The *Gas Supply (Safety Management) Regulation 2002* is amended by omitting clause 29D (2) and by inserting instead the following subclause:

- (2) Without affecting the generality of subclause (1), a person must not connect a gas appliance to a gas installation or modify a gas appliance connected to a gas installation unless the appliance (or appliance as modified) is a certified gas appliance within the meaning of the *Gas Supply (Gas Appliances) Regulation 2004*.

Maximum penalty: 20 penalty units.