

[Act 2001 No 18]



New South Wales

Gas Supply Amendment (Retail Competition) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Gas Supply Act 1996* so as:

- (a) to provide for the regulation of the natural gas retail market, including provision for:
 - (i) a guaranteed right of supply under a standard form customer supply contract to certain classes of customer who are connected to a distribution system and require low-volume supplies of natural gas, and
 - (ii) access by such customers to a gas industry ombudsman scheme for resolution of complaints against natural gas suppliers, and
 - (iii) the adoption of market operation rules in relation to various aspects of the operation of the retail market for natural gas, and
 - (iv) the adoption of a marketing code of conduct in relation to the marketing of natural gas to small retail customers, and
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- (b) to enable the Minister administering that Act to require the Independent Pricing and Regulatory Tribunal to make gas pricing orders for the purposes of that Act, and
- (c) to enable the costs to the State of implementing retail competition in the market for natural gas to be recovered from the holders of reticulators' and suppliers' authorisations under that Act, and
- (d) to enact provisions of a savings or transitional nature, and
- (e) to enact other provisions of a minor, consequential or ancillary nature.

The Bill also makes consequential amendments to the *Electricity Supply Act 1995*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Gas Supply Act 1996* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Electricity Supply Act 1995* set out in Schedule 2.

Schedule 1 Amendment of Gas Supply Act 1996

Operation of natural gas retail market

Schedule 1 [12] inserts a proposed Part 2A into the Act. The proposed Part, which contains provisions adapted from those that have recently been inserted into the *Electricity Supply Act 1995* by the *Electricity Supply Amendment Act 2000*, deals with the operation of the natural gas retail market. The proposed Part contains 6 Divisions:

Division 1 Standard suppliers

Proposed section 33A enables the authorisation by which a natural gas supplier is authorised to supply natural gas to be endorsed with a condition specifying a supply district for the supplier. A supplier whose authorisation contains such an endorsement is referred to as a *standard supplier*.

Proposed section 33B deals with the transfer of such endorsements between different natural gas suppliers.

Division 2 Gas supply

Proposed section 33C entitles a small retail customer to be supplied with natural gas, under a standard form customer supply contract, by the standard supplier within whose supply district the customer is situated (but only if the customer is connected to a natural gas distribution system).

Proposed section 33D ensures that natural gas suppliers can supply natural gas to any customer and, in the case of standard suppliers, can do so within or outside their supply districts.

Division 3 Resolution of customer disputes

Proposed section 33E provides for the regulation of the procedures to be adopted by suppliers in dealing with customers' applications for the review of the suppliers' decisions.

Proposed section 33F entitles a small retail customer, and any other person prescribed by the regulations under the Act, to apply to a gas industry ombudsman for review of a supplier's decision on the customer's dispute or complaint. Such a review is to be free of charge to the customer, and does not affect any jurisdiction of the Fair Trading Tribunal or Residential Tribunal.

Proposed section 33G enables the Minister to approve a gas industry ombudsman scheme for the purposes of the Act, subject to the scheme meeting certain specified criteria. It is proposed that the same scheme may be approved for the purposes of both the *Gas Supply Act 1996* and any other Act (such as the *Electricity Supply Act 1995*).

Proposed section 33H requires all suppliers whose authorisations permit them to supply natural gas to small retail customers to belong to, and to be bound by, an approved gas industry ombudsman scheme.

Proposed section 33I makes it clear that a negotiated customer supply contract may make provision for the resolution of disputes not covered by proposed sections 33E and 33F.

Division 4 Market operations

Proposed section 33J defines *market operations rule* and *retail market business system* for the purposes of the proposed Division.

Proposed section 33K enables the Minister to approve market operations rules with respect to certain specified matters relating to the operation of a retail market for the natural gas industry. It is proposed that the same rules may be approved for the purposes of both the *Gas Supply Act 1996* and any other Act (such as the *Electricity Supply Act 1995*).

Proposed section 33L makes it an offence (and, if committed by a natural gas supplier or natural gas reticulator, a breach of condition of the relevant authorisation) for a person to contravene the market operations rules.

Division 5 Marketing of gas

Proposed section 33M defines *gas marketer* and *Marketing Code of Conduct* for the purposes of the proposed Division.

Proposed section 33N enables the Minister to approve a Marketing Code of Conduct.

Proposed section 33O makes it an offence for a gas marketer to contravene the Marketing Code of Conduct.

Proposed section 33P makes it a condition of a natural gas supplier's authorisation that the supplier complies with the Marketing Code of Conduct, and ensures that any gas marketer that has arranged for a small retail customer to enter into a negotiated customer supply contract with the supplier has also complied with that Code.

Proposed section 33Q requires a gas marketer that arranges for a small retail customer to enter into a negotiated customer supply contract with a natural gas supplier to furnish the supplier with a statement to the effect that the gas marketer has complied with the Marketing Code of Conduct.

Division 6 Miscellaneous

Proposed section 33R defines *small retail customer* for the purposes of the Act.

Proposed section 33S enables the Minister to declare certain activities as *ancillary market activities* and certain persons engaged in such activities to be *ancillary market participants* for the purposes of the Act.

Proposed section 33T provides that nothing in the *Gas Supply Act 1996* or the *Electricity Supply Act 1995* prevents contracts under each of those Acts from being embodied in a single document.

Schedule 1 [5] consequentially amends the heading to existing Part 2 of the Act.

Gas pricing orders

Schedule 1 [9] substitutes section 27 and inserts a new section 27A.

Proposed section 27 enables the Independent Pricing and Regulatory Tribunal (*IPART*) to make gas pricing orders establishing pricing mechanisms that regulate the tariffs, fees, charges and other payments that a standard supplier may impose for the supply of natural gas to small retail customers under standard form customer supply contracts, and requires IPART to do so if given a reference in that regard by the Minister.

Proposed section 27A sets out what may be contained in a pricing mechanism established by a gas pricing order, enables a standard supplier to apply for a new gas pricing order once the current order has been in force for 12 months and makes compliance with a gas pricing order a condition of a standard supplier's authorisation.

As a transitional matter, IPART will be empowered to make interim gas pricing orders (**proposed clause 19 of Schedule 2**, to be inserted by **Schedule 1 [22]**). An interim gas pricing order will have effect for a maximum of 6 months, but will be extendable (on one occasion only) for up to 3 months. Unlike for a gas pricing order under proposed section 27, a standard supplier will not have a right of review of an interim gas pricing order.

Schedule 1 [10] makes a consequential amendment to section 28.

Schedule 1 [11] amends section 28 so as to provide that a gas pricing order is unaffected by an application for review. Under the current section, the making of such an application suspends the operation of the order to which it relates.

Schedule 1 [15] makes a consequential amendment to section 83.

Recovery of costs to the State of implementing retail competition

Schedule 1 [7] amends section 15 so as to ensure that the component of an annual authorisation fee that relates to the recovery of the cost to the State of administering the Act and the *Gas Pipelines Access (New South Wales) Law* (the *State's administration costs*) can include costs referable to previous years as well as costs referable to the current year.

Schedule 1 [8] amends section 15 so as to ensure that the State's administration costs can include the costs of implementing retail competition in the market for natural gas.

Savings and transitional provisions

Schedule 1 [20] amends clause 1 of Schedule 2 so as to enable savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 1 [22] inserts proposed Part 3 into Schedule 2. The proposed Part contains specific savings and transitional provisions consequent on the enactment of the proposed Act.

Minor, consequential or ancillary provisions

Schedule 1 [1] and **[4]** make consequential amendments to section 3 to reflect the customer protection provisions of proposed Part 2A.

Schedule 1 [2], [3], [6], [13], [21] and **[24]** omit various references to "tariff customer" as a consequence of the replacement of that concept by the concept of "small retail customer".

Schedule 1 [14] amends section 83 so as to enable regulations to be made with respect to the regulation of ancillary market participants (see proposed section 33S) and the regulation of the collection, keeping, disclosure or other use of customer information.

Schedule 1 [16] amends section 83 so as to remove any doubt as to the power to make regulations under the Act with respect to all customer supply contracts, rather than standard form contracts only.

Schedule 1 [17] and **[18]** amend section 83 so as to modify the public consultation requirements for amending regulations under the Act.

Schedule 1 [19] amends section 87 so as to provide that the next review of the Act must occur as soon as practicable after 5 years from the date of assent to the proposed Act.

Schedule 1 [23] makes consequential amendments to the Dictionary.

Schedule 2 Amendment of Electricity Supply Act 1995

Schedule 2 [1] amends section 63C so as to ensure that the same market operations rules may be approved for the purposes of both the *Electricity Supply Act 1995* and any other Act (such as the *Gas Supply Act 1996*).

Schedule 2 [2] amends section 63G so as to ensure that the same Marketing Code of Conduct may be approved for the purposes of both the *Electricity Supply Act 1995* and any other Act (such as the *Gas Supply Act 1996*).

Schedule 2 [3] amends section 90 so as to provide that, to the extent to which they are not dealt with in that section, matters relating to the constitution and procedure of a customer consultative group are to be dealt with by the regulations, rather than by the relevant electricity distributor.

Schedule 2 [4] amends section 92 by way of law revision.

Schedule 2 [5] amends section 96B by way of law revision.

Schedule 2 [6] amends section 96B (2) so as to clarify the classes of person who are intended to be protected by an electricity industry ombudsman scheme.

Schedule 2 [7] amends section 96B so as to ensure that the same industry ombudsman scheme may be approved for the purposes of both the *Electricity Supply Act 1995* and any other Act (such as the *Gas Supply Act 1996*).

Schedule 2 [8] amends section 99 so as to ensure that nothing in the *Gas Supply Act 1996* or the *Electricity Supply Act 1995* prevents contracts under each of those Acts from being embodied in a single document.