



New South Wales

Gas Supply Amendment Bill 2008

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* to ensure the continuity of supply of natural gas to customers by enabling the Minister for Energy to approve market operations rules with respect to the establishment and operation of a wholesale natural gas market scheme.

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 the date of assent to the proposed Act.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

Schedule 1 Amendments

Schedule 1 [1] omits a redundant provision.

Schedule 1 [2] provides that it is an object of the *Gas Supply Act 1996* (the *Principal Act*) to facilitate the continuity of supply of natural gas to customers.

Schedule 1 [4] inserts proposed section 33K (1) (d1) into the Principal Act to enable the Minister for Energy (the *Minister*) to approve rules under section 33K with respect to the establishment and operation of a wholesale natural gas market scheme to ensure the continuity of supply of natural gas to customers. The rules will apply to the owners and operators of natural gas transmission pipelines, shippers of natural gas and authorised reticulators and suppliers (the *scheme participants*). **Schedule 1 [5]** provides that any such rule may make provision for or with respect to interruptions in the supply of natural gas and the functions of the scheme regulator (being the person identified as such in the rules) with respect to ensuring compliance with the rules, which may include the power to make orders against scheme participants and the power to impose civil penalties of up to \$50,000 on scheme participants. The rules may also make provision for or with respect to the costs payable by a scheme participant if the scheme regulator makes an order against the scheme participant or imposes a civil penalty on the scheme participant and the recovery of any such costs or civil penalty. **Schedule 1 [8]** sets out the definitions of *natural gas transmission pipeline* and *shipper of natural gas*. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [6] amends section 33K (5) (c) to provide that the Minister is not required to make available a copy of a rule with respect to the establishment and operation of a wholesale natural gas market scheme to each supplier or reticulator as is the case with other rules approved under section 33K.

Schedule 1 [7] inserts proposed section 33K (5) (d) that requires the Minister to make available on the internet site of the Department of Water and Energy, a copy of any rule approved by the Minister under section 33K. **Schedule 1 [13]** clarifies that proposed section 33K (5) (d) does not apply to a rule approved by the Minister before the commencement of that proposed paragraph.

Schedule 1 [9] clarifies that a person may be convicted of an offence under section 33L of the Principal Act of contravening market operations rules even though that person may have been required to pay a civil penalty under market operations rules in respect of the same act or omission.

Schedule 1 [10] inserts proposed section 33LA into the Principal Act, which provides that the scheme operator under rules approved in respect of a matter under proposed section 33K (1) (d1) or an officer or employee of the scheme operator does not incur any civil monetary liability for an act or omission in the exercise of a function under the rules unless the act or omission is done or made in bad faith or through negligence. The proposed section also provides that the operator of a natural gas transmission pipeline, or an officer or employee of the operator, does not incur any civil monetary liability in respect of a disclosure of information to the scheme

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operator in compliance with, or in purported compliance with, a requirement under the rules unless the disclosure is made in bad faith or through negligence. The civil monetary liability for an act, omission or disclosure done or made through negligence is not to exceed the prescribed maximum amount. The scheme operator may enter into an agreement with a person varying or excluding the operation of a provision of the proposed section. The proposed section does not apply to any liability of an officer or employee of the scheme operator to the scheme operator or to any liability for death or bodily injury.

Schedule 1 [11] and [14] update references to a renamed Act and Department.

Schedule 1 [12] amends Schedule 2 to the Principal Act to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

First print



New South Wales

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New South Wales

Gas Supply Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Gas Supply Act 1996* with respect to ensuring the continuity of supply of natural gas to customers; and for other purposes.

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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Gas Supply Amendment Act 2008</i> . | 3 |
| 2 Commencement | 4 |
| This Act commences on the date of assent to this Act. | 5 |
| 3 Amendment of Gas Supply Act 1996 No 38 | 6 |
| The <i>Gas Supply Act 1996</i> is amended as set out in Schedule 1. | 7 |
| 4 Repeal of Act | 8 |
| (1) This Act is repealed on the day following the day on which this Act commences. | 9 10 |
| (2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act. | 11 12 |

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| Schedule 1 | Amendments | 1 |
| | (Section 3) | 2 |
| [1] Section 2 Commencement | | 3 |
| Omit section 2 (2). | | 4 |
| [2] Section 3 Objects | | 5 |
| Insert after section 3 (1) (b): | | 6 |
| (b1) to facilitate the continuity of supply of natural gas to customers, | | 7 8 |
| [3] Part 2A | | 9 |
| Insert “ wholesale and ” after “ gas ” in the heading to the Part. | | 10 |
| [4] Section 33K Market operations rules | | 11 |
| Insert after section 33K (1) (d): | | 12 |
| (d1) the establishment and operation of a wholesale natural gas market scheme, to ensure the continuity of supply of natural gas to customers, that will apply to the owners and operators of natural gas transmission pipelines, shippers of natural gas and authorised reticulators and suppliers, | | 13 14 15 16 17 |
| [5] Section 33K (2A) | | 18 |
| Insert after section 33K (2): | | 19 |
| (2A) Rules referred to in subsection (1) (d1) may make provision for or with respect to the following: | | 20 21 |
| (a) interruptions to the supply of natural gas in circumstances specified in the rules, | | 22 23 |
| (b) the functions of the scheme regulator (being the person identified as such by the rules) with respect to ensuring compliance with the rules, including: | | 24 25 26 |
| (i) the power to make orders against the owners and operators of natural gas transmission pipelines, shippers of natural gas and authorised reticulators and suppliers (the <i>scheme participants</i>), and | | 27 28 29 30 |
| (ii) the power to impose civil penalties of up to \$50,000 on scheme participants for failure to comply with the rules or any order of the scheme regulator, | | 31 32 33 |

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| (c) | the costs payable by a scheme participant if the scheme regulator makes an order against the scheme participant or imposes a civil penalty on the scheme participant, and the recovery of any such costs or civil penalty. | 1 2 3 4 |
| [6] | Section 33K (5) (c) | 5 |
| | Omit “reticulator.” | 6 |
| | Insert instead “reticulator, unless the rule is approved in respect of a matter referred to in subsection (1) (d1), and”. | 7 8 |
| [7] | Section 33K (5) (d) | 9 |
| | Insert after section 33K (5) (c): | 10 |
| | (d) the Minister must make available a copy of the rule on the internet site of the Department. | 11 12 |
| [8] | Section 33K (8) | 13 |
| | Insert after section 33K (7): | 14 |
| | (8) In this section: | 15 |
| | <i>natural gas transmission pipeline</i> means the gas pipes and associated equipment that are used to convey and control the conveyance of natural gas to distribution pipelines and to the premises of customers, but does not include: | 16 17 18 19 |
| | (a) any distribution pipeline (other than a pipeline that the regulations declare to be, or to form part of, a natural gas transmission pipeline), or | 20 21 22 |
| | (b) any gas installation, or | 23 |
| | (c) any gas pipe or associated equipment that is wholly situated on land owned by the person who owns or controls the gas pipe or equipment, or | 24 25 26 |
| | (d) any gas pipe or associated equipment that the regulations declare not to be, or not to form part of, a natural gas transmission pipeline. | 27 28 29 |
| | <i>shipper of natural gas</i> means a person that purchases services with respect to the transmission of natural gas by way of a natural gas transmission pipeline from the owner or operator of the pipeline, whether or not the gas is transported for the person’s own use. | 30 31 32 33 34 |

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| [9] Section 33L Obligations under rules | 1 |
| Insert after section 33L (4): | 2 |
| (5) A person may be convicted of an offence under this section even though that person may have been required to pay a civil penalty under market operations rules in respect of the same act or omission. | 3 4 5 6 |
| [10] Section 33LA | 7 |
| Insert after section 33L: | 8 |
| 33LA Civil liability of scheme operator under section 33K (1) (d1) rules | 9 |
| (1) The scheme operator, or an officer or employee of the scheme operator, does not incur any civil monetary liability for an act or omission in the exercise, or purported exercise, of a function of the scheme operator under the rules unless the act or omission is done or made in bad faith or through negligence. | 10 11 12 13 14 |
| (2) The operator of a natural gas transmission pipeline, or an officer or employee of the operator, does not incur any civil monetary liability in respect of a disclosure of information to the scheme operator in compliance with, or in purported compliance with, a requirement under the rules unless the disclosure is made in bad faith or through negligence. | 15 16 17 18 19 20 |
| (3) The civil monetary liability for an act or omission of a kind referred to in subsection (1), or of a disclosure referred to in subsection (2), done or made through negligence may not exceed the maximum amount prescribed by the regulations. | 21 22 23 24 |
| (4) For the purposes of subsection (3), the regulations may: | 25 |
| (a) prescribe maximum amounts that are limited in their application to persons, events, circumstances, losses or periods specified in the regulations, and | 26 27 28 |
| (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply, and | 29 30 31 32 |
| (c) prescribe the manner in which a maximum amount is to be divided amongst claimants. | 33 34 |
| (5) The scheme operator may enter into an agreement with a person varying or excluding the operation of a provision of this section (other than subsection (6) (b)) and, to the extent of that agreement, that provision does not apply. | 35 36 37 38 |

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| (6) | This section does not apply to: | 1 |
| (a) | any liability of an officer or employee of the scheme operator to the scheme operator, or | 2 |
| (b) | any liability for death or bodily injury. | 3 |
| (7) | In this section: | 4 |
| | <i>civil monetary liability</i> means liability to pay damages or compensation or any other amount in a civil proceeding, but does not include liability to pay a civil penalty under the rules or the costs of proceedings. | 5 |
| | <i>rules</i> means the rules referred to in section 33K (1) (d1). | 6 |
| | <i>scheme operator</i> means the person identified as the scheme operator by the rules. | 7 |
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| [11] | Schedule 1 Amendment of other Acts and instruments | 13 |
| | Omit “ <i>Gas Act 1986</i> ” from Schedule 1.7. | 14 |
| | Insert instead “ <i>Gas Industry Restructuring Act 1986</i> ”. | 15 |
| [12] | Schedule 2 Savings, transitional and other provisions | 16 |
| | Insert at the end of clause 1 (1): | 17 |
| | <i>Gas Supply Amendment Act 2008</i> | 18 |
| [13] | Schedule 2 | 19 |
| | Insert after Part 4: | 20 |
| | Part 5 Provisions consequent on enactment of Gas Supply Amendment Act 2008 | 21 |
| | | 22 |
| 22 | Publication of market operations rules on internet | 23 |
| | Section 33K (5) (d), as inserted by the <i>Gas Supply Amendment Act 2008</i> , does not extend to a rule, or a rule amending or revoking a rule, approved by the Minister before the commencement of that paragraph. | 24 |
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[14] Dictionary

Omit the definition of *Department*. Insert instead:

Department means the Department of Water and Energy.

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