

# Gas Supply Act 1996 No 38

[1996-38]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2014 to 1 November 2015 (accessed 14 June 2024 at 20:07)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**

[Energy Legislation Amendment \(Retail Electricity and Gas Pricing\) Bill 2015](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 October 2015

# Gas Supply Act 1996 No 38



New South Wales

## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Commencement .....	7
3 Objects .....	7
4 Definitions .....	8
<b>Part 2 Natural gas authorisations and pricing orders</b> .....	8
<b>Division 1 Authorisations</b> .....	8
5 Prohibition of unauthorised gas reticulation .....	8
6 Authorisations .....	9
7 Applications .....	9
8 Public consultation .....	9
9 Determination of applications .....	10
10 Duration of authorisations .....	10
11 Conditions of authorisations .....	10
11A Authorisation conditions relating to energy ombudsman scheme .....	11
12 Variation of conditions of authorisations .....	12
13 Enforcement of authorisations by the Minister .....	12
13A Enforcement of authorisations by Tribunal .....	12
14 Holder of authorisation to be notified of proposed action .....	13
15 Annual authorisation fees .....	14

16 (Repealed) .....	14
17 Appeals against decisions concerning authorisations.....	14
17A Administrative review of certain decisions concerning authorisations .....	15
18 Register of authorisations.....	15
<b>Division 2 (Repealed)</b> .....	15
<b>Division 3 Gas pricing orders</b> .....	16
27 Tribunal may make gas pricing orders.....	16
27A Gas pricing orders generally .....	16
28 Review of gas pricing orders.....	17
28A Division to cease to have effect .....	17
<b>Division 4 Review panels</b> .....	17
29 Establishment of review panel.....	17
30 Determinations by review panel.....	18
<b>Division 5 General</b> .....	18
31 (Repealed) .....	18
32 Investigations by Tribunal.....	18
33 Maintenance of records .....	19
<b>Part 2A Operation of natural gas wholesale market</b> .....	19
<b>Divisions 1-3 (Repealed)</b> .....	19
<b>Division 4</b> .....	19
33J Definitions .....	19
33K Market operations rules.....	19
33L Obligations under rules.....	21
33LA Civil liability of scheme operator under section 33K (1) (d1) rules .....	22
<b>Divisions 5, 6 (Repealed)</b> .....	23
<b>Part 3 Liquefied petroleum gas and other gases</b> .....	23
34 Prohibition of unlicensed distribution of LPG and other gases.....	23
35 Licences.....	23

36 Applications .....	23
37 Public consultation .....	23
38 Determination of applications .....	24
39 Duration of licences .....	24
40 Conditions of licences .....	24
41 Variation of conditions of licences .....	25
42 Enforcement of licences by the Minister .....	26
42A Enforcement of licences by Tribunal .....	26
43 Holder of licence to be notified of proposed action .....	27
44 Annual licence fees .....	28
45 Appeals against decisions concerning licences .....	28
45A Administrative review of certain decisions concerning licences .....	29
46 Register of licences .....	29
<b>Part 4 Gas works</b> .....	<b>29</b>
<b>Division 1 Powers and duties relating to gas works</b> .....	<b>29</b>
47 Erection and placement of gas works .....	29
48 Damage to be made good .....	30
49 Altering position of conduits .....	30
50 Obstruction of gas works .....	31
50A Excavation work affecting gas works .....	31
51 Charges for placement of gas works .....	32
52 Ownership of gas works .....	32
53 Interruption to gas supply for maintenance .....	32
54 (Repealed) .....	33
<b>Division 2 Powers of entry</b> .....	<b>33</b>
55 Powers of entry .....	33
56 Notice of entry .....	34
57 Use of force .....	34
58 Notification of use of force or urgent entry .....	34
59 Care to be taken .....	34
60 Recovery of cost of entry and inspection .....	35
61 Compensation .....	35

62 Certificates of authority to enter land .....	35
63 Entry to residential premises .....	36
64 Warrants of entry .....	36
<b>Part 4A Protection of underground gas pipelines .....</b>	<b>36</b>
64A Definitions .....	36
64B Provision of information on underground gas pipelines by network operators .....	37
64C Requirements in relation to carrying out of certain excavation work .....	37
64D Notification of damage to underground gas pipelines .....	38
64E Orders for costs, expenses and compensation at time offence proved .....	38
64F Civil liability of designated information provider .....	39
<b>Part 5 Offences .....</b>	<b>40</b>
<b>Division 1 Offences .....</b>	<b>40</b>
65 Theft of gas .....	40
66 Interference with gas works .....	40
67 Interference with gas meters .....	41
68 Interference with network operators' seals .....	41
69 Unauthorised connections .....	41
70 Unauthorised increase in capacity of connections .....	41
71 Unauthorised alterations and additions to gas installations .....	41
72 Obstruction of inspectors .....	41
<b>Division 2 General .....</b>	<b>42</b>
73 Court may order disconnection and discontinuance of gas supply .....	42
74 Court may order payment for stolen gas .....	42
75 Orders for payment to operate as judgments .....	42
<b>Part 5A Regulatory functions of Tribunal .....</b>	<b>43</b>
75A Regulatory functions of Tribunal .....	43
<b>Part 6 Miscellaneous .....</b>	<b>44</b>
76 Act binds Crown .....	44
76A (Repealed) .....	45
77 Inspectors .....	45

78 Service of documents .....	45
79 Exclusion of personal liability .....	45
79A Personal liability of gas industry inspectors of network operators .....	46
80 Directors and managers liable for offences committed by corporations .....	46
81 Proceedings for offences .....	46
82 Recovery of monetary penalties.....	47
83 Regulations.....	47
83A Regulations as to gas appliances, gas and autogas installations, gasfitting and autogas work and gas meters .....	49
84, 85 (Repealed) .....	49
86 Savings, transitional and other provisions.....	49
87 Review of Act.....	50
<b>Schedule 1 (Repealed)</b> .....	50
<b>Schedule 2 Savings, transitional and other provisions</b> .....	50
<b>Dictionary</b> .....	57

# Gas Supply Act 1996 No 38



New South Wales

An Act to regulate the supply of gas; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Gas Supply Act 1996*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) (Repealed)

### 3 Objects

- (1) The objects of this Act are as follows:
  - (a) to encourage the development of a competitive market in gas, so as to promote the thermally efficient use of gas and to deliver a safe and reliable supply of gas in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (b) to regulate gas reticulation and gas supply, so as to protect the interests of customers,
    - (b1) to facilitate the continuity of supply of natural gas to customers,
  - (c) to promote the safe use of gas.
- (2) For the purpose of enabling the objects of this Act to be achieved, the Minister, the Tribunal and any review panel each have the duties set out in subsections (3)-(6).
- (3) In relation to licensed distributors involved in the reticulation of gas, the duties are as follows:
  - (a) to ensure that such persons satisfy, so far as it is economical for them to do so, all reasonable demands for the conveyance of gas,

(b) to take proper account of the business interests of such persons and the ability of such persons to finance the provision of gas reticulation services,

(c), (d) (Repealed)

(e) to take proper account of the interests of gas users in respect of transportation tariffs and other terms of service.

(3A) In relation to authorised reticulators and licensed distributors involved in the distribution or reticulation of gas, the duties are as follows:

(a) to consider the development of efficient and safe gas distribution pipelines and gas distribution systems,

(b) to promote the efficient and safe operation of gas distribution pipelines and gas distribution systems.

(4) (Repealed)

(5) In relation to gas users, the duties are to promote the efficient and safe use of gas.

(6) Nothing in this section permits or requires this Act to be construed in a way that is inconsistent with the *National Gas (NSW) Law* or the *National Gas (NSW) Regulations* or the *National Energy Retail Law (NSW)* or the *National Energy Retail Regulations (NSW)*.

(7) Nothing in subsections (2)–(6) gives rise to, or can be taken into account in, any civil cause of action.

#### **4 Definitions**

(1) Expressions used in this Act that are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary.

(2) Words and expressions used in this Act (other than **distributor**) have the same meaning as they have in the *National Energy Retail Law (NSW)* but (unless otherwise expressly provided) have that meaning only in relation to the supply of natural gas.

## **Part 2 Natural gas authorisations and pricing orders**

### **Division 1 Authorisations**

#### **5 Prohibition of unauthorised gas reticulation**

(1) A person must not operate a distribution pipeline for the purpose of conveying natural gas to any other person otherwise than under the authority of an authorisation.

Maximum penalty: 500 penalty units (in the case of a corporation) and 50 penalty units (in any other case).



(2) A person does not operate a distribution pipeline for the purpose of conveying natural gas to another person merely because the person supplies natural gas to that other person by means of a distribution pipeline.

(3) (Repealed)

## **6 Authorisations**

Subject to any conditions imposed by or under this Act, a ***reticulator's authorisation*** authorises its holder, and any other person specified in the authorisation, to operate the distribution pipeline so specified for the purpose of conveying natural gas to other persons.

## **7 Applications**

(1) An application for an authorisation or for the transfer of an authorisation:

- (a) must be accompanied by such fee as may be determined by the Minister, and
- (b) must contain such information as may be determined by the Minister, and
- (c) must be lodged at the office of the Tribunal.

(2) Such an application may only be made on behalf of a person who is a body corporate.

## **8 Public consultation**

(1) Before determining an application for an authorisation or for the transfer of an authorisation, the Minister must cause notice of the application to be published in the Gazette and in a daily newspaper circulating throughout New South Wales.

(2) The notice must indicate:

- (a) the nature of the authorisation to which the application relates, and
- (b) the identity of the proposed holder of the authorisation, and
- (c) the district in which the authorisation, if granted or transferred, would operate, and
- (d) where submissions on the application should be lodged, and
- (e) the time (being at least 40 days from the date on which the notice is first published) within which any such submissions should be lodged, and
- (f) such other matters as may be prescribed by the regulations.

(3) The Minister must give due consideration to matters arising from any submissions under this section.

## **9 Determination of applications**

- (1) The Minister may determine an application for an authorisation or for the transfer of an authorisation by granting or transferring the authorisation (either unconditionally or subject to conditions of the kind referred to in section 11) or by refusing the application.
- (2) An application may be refused on any of the following grounds:
  - (a) that the proposed holder of the authorisation fails to satisfy such technical or prudential criteria as have been adopted by the Minister to determine whether a person is able to operate a viable business as an authorised reticulator,
  - (b) such grounds as may be prescribed by the regulations,
  - (c) such grounds as the Minister considers relevant, having regard to the interests of consumers and the need to promote a competitive market for natural gas, to prevent misuse of market power and to ensure the security and reliability of the New South Wales supply system for natural gas.
- (3) The Minister must endeavour to determine an application within 6 months after it is made.

## **10 Duration of authorisations**

Subject to the conditions imposed on it, an authorisation remains in force until it is cancelled.

## **11 Conditions of authorisations**

- (1) An authorisation is subject to the following conditions:
  - (a) the conditions imposed by this Act and the regulations,
  - (b) such other conditions (not inconsistent with those imposed by this Act and the regulations) as the Minister may from time to time impose in relation to the authorisation.
- (2) Without limitation, the Minister may impose the following kinds of conditions on an authorisation:
  - (a) a condition specifying the period for which the authorisation is to remain in force,
  - (b) a condition requiring the holder of the authorisation to exercise its functions under this Act in accordance with specified guidelines or subject to specified restrictions, including conditions as to the district within which those functions may be exercised,
  - (c) a condition requiring the holder of the authorisation to continue to satisfy such

technical or prudential criteria as have been adopted by the Minister to determine whether a person is able to operate a viable business as an authorised reticulator,

- (d) a condition requiring the holder of the authorisation to maintain specified insurance cover in respect of specified risks,
  - (e) a condition requiring the holder of the authorisation:
    - (i) to prepare, and submit to the Minister for approval, a plan setting out (in accordance with guidelines established by the Minister) the holder's policies, practices and procedures with respect to the conduct of its affairs under the authorisation, and
    - (ii) to conduct its affairs under the authorisation in accordance with the plan as so approved,
  - (f) a condition requiring the holder of the authorisation to furnish to the Minister (at such times and in respect of such periods as the Minister may determine) such information as the Minister may determine to enable the Minister to ascertain whether or not the holder is complying with the conditions imposed on the authorisation by this Act or the regulations or by the Minister,
  - (g) a condition requiring the holder of the authorisation to develop and implement a strategy promoting the adoption of thermally efficient appliances and efficient energy-use practices.
- (3) The Minister may not impose conditions on an authorisation with respect to the terms on which an authorised reticulator grants access to its distribution pipelines.

(4) (Repealed)

#### **11A Authorisation conditions relating to energy ombudsman scheme**

- (1) It is a condition of a reticulator's authorisation that:
- (a) the authorisation holder must be a member of the energy ombudsman scheme, and
  - (b) the authorisation holder is bound by, and must comply with, any decision of the energy ombudsman under the scheme relating to a dispute or complaint involving the authorisation holder and a small customer or a regulated offer customer.

**Note—**

The energy ombudsman has power to deal with disputes between retailers and customers under this Act, see sections 96A and 96B of the [Electricity Supply Act 1995](#) and the regulations under that Act.

- (2) This section does not apply in respect of an authorised reticulator if the authorised reticulator is exempt from the requirement to be a member of the energy ombudsman scheme.

(3) The Minister may, by order in writing, exempt an authorised reticulator from the requirement to be a member of the energy ombudsman scheme if of the opinion that the authorised reticulator is not currently engaging in any activities for which an authorisation is required.

(4) In this section:

**energy ombudsman scheme** means the scheme established under section 96B of the *Electricity Supply Act 1995*.

## **12 Variation of conditions of authorisations**

(1) The Minister may vary the conditions of an authorisation, either on his or her own motion or on the application of the holder of the authorisation.

(2) In the case of an application to vary the conditions of an authorisation so as to extend a distribution district, section 8 applies to the application in the same way as it applies to an application for an authorisation.

(3) An application to vary the conditions of an authorisation so as to extend a distribution district must be accompanied by such fee as may be determined by the Minister.

## **13 Enforcement of authorisations by the Minister**

(1) The Minister may do either or both of the following:

(a) the Minister may impose a monetary penalty not exceeding \$100,000 on the holder of an authorisation,

(b) the Minister may cancel an authorisation.

(2) Action may be taken under this section only if the holder of the authorisation has knowingly contravened:

(a) the requirements of this Act or the regulations, or

(b) the conditions of the authorisation.

(3) Nothing in this section prevents an authorisation from being cancelled at the request of its holder.

## **13A Enforcement of authorisations by Tribunal**

(1) The Tribunal may impose a monetary penalty on the holder of an authorisation.

(2) The Tribunal may, instead of imposing a monetary penalty, require the holder of the authorisation to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.

- (3) The Tribunal may not require action to be taken under subsection (2) by the holder of an authorisation if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the holder.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the holder of the authorisation may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the holder or, if the holder is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the holder of the authorisation has knowingly contravened the conditions of the authorisation.
- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the holder of the authorisation has taken or is likely to take in respect of the contravention and the cost to the holder in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section in respect of a contravention if the Minister has already taken action under section 13 in respect of the contravention.
- (10) Nothing in this section affects the Minister's powers under section 13 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.

#### **14 Holder of authorisation to be notified of proposed action**

- (1) The Minister must not take action under section 11, 12 or 13, or the Tribunal must not take action under section 13A, unless:
  - (a) notice of the proposed action has been given to the holder of the authorisation, and
  - (b) the holder of the authorisation has been given a reasonable opportunity to make

submissions with respect to the proposed action, and

(c) the Minister or Tribunal has given due consideration to any such submissions.

(2) In addition, the Minister must not take action under section 13, or the Tribunal must not take action under section 13A, in respect of any contravention referred to in that section unless:

(a) notice of the contravention has been given to the holder of the authorisation, and

(b) the holder of the authorisation has been given a reasonable opportunity to discontinue the contravention and take such steps (if any) as are specified in the notice to remedy the effects of the contravention, and

(c) the holder of the authorisation has failed to discontinue the contravention or take those steps.

(3) Subsection (1) does not apply to action taken at the request of the holder of the authorisation.

#### **15 Annual authorisation fees**

(1) The Minister may require the holder of an authorisation to pay to the Minister such amount, by way of an annual authorisation fee, as the Minister may from time to time determine on the advice of the Treasurer.

(2) The amount of an annual authorisation fee must be determined in such a manner that the amount payable by the holder of the authorisation for a particular year is equivalent to the amount estimated by the Treasurer as being the cost to the State of administering this Act and the *National Gas (NSW) Law* during that year (or the cost of doing so during any previous year to the extent to which that cost has not previously been taken into consideration in any estimate under this section) in relation to that holder.

(3) It is a condition of an authorisation that the holder of the authorisation must comply with all relevant requirements under this section.

(4), (5) (Repealed)

#### **16 (Repealed)**

#### **17 Appeals against decisions concerning authorisations**

(1) A person aggrieved by any of the following decisions of the Minister may appeal to the Supreme Court against the decision:

(a) a decision cancelling an authorisation,

(b) a decision imposing a condition on an authorisation (other than a condition

imposed when the authorisation is granted),

(c) a decision varying the conditions of an authorisation,

(d) a decision refusing an application for the transfer of an authorisation,

(e) a decision imposing a monetary penalty on the holder of an authorisation.

(2) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the original decision was made, may be given on the appeal.

(3) For the purposes of an appeal, the Minister may certify in writing that a specified policy applies to the subject matter of the appeal.

(4) In deciding an appeal to which such a certificate relates, the Supreme Court is required to apply the policy so certified, except to the extent to which the application of that policy would be contrary to law.

(5) The decision of the Supreme Court in respect of an appeal is taken to be the decision of the Minister and is to be given effect to accordingly.

#### **17A Administrative review of certain decisions concerning authorisations**

(1) The holder of an authorisation who is aggrieved by a decision of the Tribunal to take action under section 13A in relation to the holder of the authorisation may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision.

(2) Section 53 (Internal reviews) of the [Administrative Decisions Review Act 1997](#) does not apply to such a decision of the Tribunal.

#### **18 Register of authorisations**

(1) A register of authorisations is to be kept at the office of the Tribunal.

(2) The register is to contain details of all authorisations that are granted or transferred, including details concerning the conditions imposed on them by the Minister, and is also to contain details of all determinations made by the Minister with respect to authorisations and their conditions.

(3) The register is to be kept available for inspection by members of the public, free of charge, during normal office hours.

(4) Copies of entries in the register are to be made available to members of the public, at cost, during normal office hours.

## **Division 2**

### **19-26 (Repealed)**

## **Division 3 Gas pricing orders**

### **27 Tribunal may make gas pricing orders**

- (1) The Tribunal may, by order published in the Gazette, establish a pricing mechanism according to which the following tariffs, fees, charges and other payments are to be fixed in relation to the supply of natural gas to regulated offer customers under regulated offer contracts (a **gas pricing order**):
  - (a) tariffs for natural gas,
  - (b) security deposits and other payments in the nature of security deposits,
  - (c) fees and charges in relation to late or dishonoured payments,
  - (d) fees and charges in relation to the establishment or maintenance of accounts,
  - (e) fees and charges in relation to the disconnection of premises from, or the reconnection of premises to, a distribution pipeline,
  - (f) such other fees, charges and payments as are prescribed by the regulations.
- (2) The Minister may give the Tribunal a written referral requiring the Tribunal to make a gas pricing order within a time specified in the referral and, in that event, the Tribunal must take all reasonable steps to comply with the requirements of the referral.
- (3) Before making a gas pricing order, the Tribunal must notify the Minister of its intention to do so (except in the case of an order given pursuant to a referral under subsection (2)).

### **27A Gas pricing orders generally**

- (1) A gas pricing order:
  - (a) may fix tariffs, fees, charges and other payments, or the methodology by which tariffs, fees, charges and other payments are to be calculated, either generally or in relation to any specified class of regulated offer customers, and
  - (b) may prohibit the imposition of any specified fees, charges or other payments, or any class of fees, charges or other payments for any specified service or class of services, provided to regulated offer customers either generally or in relation to any specified class of regulated offer customers.
- (2) A gas pricing order takes effect on the date on which it is published in the Gazette or on such later date as may be specified in the order in that regard, and continues to have effect until it is superseded by a further gas pricing order.
- (3) At any time after the expiry of 12 months from the date on which the current gas pricing order is published in the Gazette, a regulated offer retailer may apply to the



Tribunal for a new gas pricing order on the basis that changes in circumstances (such as general inflationary trends) mean that the current gas pricing order is out of date.

- (4) (Repealed)
- (5) Section 42 of the *Interpretation Act 1987* applies to and in respect of a gas pricing order in the same way as it applies to and in respect of a statutory rule within the meaning of that Act.

## **28 Review of gas pricing orders**

- (1) A regulated offer retailer who is aggrieved by a gas pricing order may apply to the Minister for a review of that order.
- (2) A regulated offer retailer who is aggrieved by the Tribunal's decision not to make a new gas pricing order as a result of an application made by the retailer under section 27A (3) may apply to the Minister for a review of that decision.
- (3) An application under this section must be made within 28 days after the date on which notice of the decision to which the application relates was given to the applicant.
- (4) The regulations may make provision for or with respect to the procedure for making an application under this section and, in particular, may require the payment of fees in connection with the making of such an application.
- (5) An application under this section does not affect the gas pricing order to which it relates, and that order continues to have effect unless and until it is revoked or amended by a review panel.

### **28A Division to cease to have effect**

- (1) This Division ceases to have effect on 30 June 2013 or on such earlier or later day as may be prescribed by the regulations.
- (2) Regulations containing provisions of a savings or transitional nature may be made consequent on the operation of subsection (1).

## **Division 4 Review panels**

### **29 Establishment of review panel**

- (1) The Minister is to establish a review panel to review a matter in respect of which an application for review has been made under this Part.
- (2) A review panel is to consist of 3 persons appointed by the Minister, of whom one is to be appointed as the chairperson.
- (3) Subject to this Act, the regulations may make provision for or with respect to the

members and procedure of a review panel and, in particular, for or with respect to the payment of costs of proceedings before a review panel.

### **30 Determinations by review panel**

- (1) A review panel is to review the matter in respect of which it has been established.
- (2) In considering the matter under review, the review panel:
  - (a) may conduct investigations, and
  - (b) may have regard to such evidence as it considers relevant including, in particular, any submissions made by persons who are (or who may be) affected by the matter.
- (3) Except to the extent to which the regulations otherwise provide, Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* applies to an investigation under this section in the same way as it applies to an investigation under that Act, and so applies as if a reference in that Division to the Tribunal were a reference to a review panel.
- (4), (5) (Repealed)
- (6) The decision of the review panel on the matter under review:
  - (a) takes effect on the day on which it is given, or on such later day as may be specified in the decision, and
  - (b) has effect as if it were a decision or order, as the case requires, of the person by whom the original decision or order was made, and
  - (c) does not affect any access agreement or access determination that is in force when it takes effect.

## **Division 5 General**

### **31 (Repealed)**

### **32 Investigations by Tribunal**

- (1) The Tribunal may conduct investigations for the purpose of enabling it to exercise its functions under this Part.
- (2) Except to the extent to which the regulations otherwise provide, Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* applies to an investigation under this section in the same way as it applies to an investigation under that Act.
- (3), (4) (Repealed)

### 33 Maintenance of records

- (1) The Tribunal may, by order in writing, direct the holder of an authorisation:
  - (a) to keep specified records, and
  - (b) to furnish specified information to the Tribunal,for the purpose of enabling the Tribunal to ascertain whether or not the holder of the authorisation is complying with the requirements of this Act.
- (2) It is a condition of an authorisation that its holder must comply with the requirements of any such direction.
- (3) It is the duty of the Tribunal to notify the Minister if it becomes aware of any contravention of this Part by the holder of an authorisation.
- (4) In this section, a reference to the holder of an authorisation extends (in the case of a body corporate) to any of its related bodies corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

## Part 2A Operation of natural gas wholesale market

### Divisions 1-3

#### 33A-33I (Repealed)

### Division 4

#### 33J Definitions (cf section 63B of [Electricity Supply Act 1995](#))

In this Part:

**market operations rule** means a rule approved under section 33K.

#### 33K Market operations rules (cf section 63C of [Electricity Supply Act 1995](#))

- (1) The Minister may approve rules for or with respect to the following matters:
  - (a), (b) (Repealed)
  - (c) the operation of distribution pipelines,
  - (d) (Repealed)
  - (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 retailers,
  - (e) (Repealed)

- (f) any other matter prescribed by the regulations,
  - (g) matters ancillary to or consequential on the matters set out in paragraphs (c)–(f).
- (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.
- (2A) Rules referred to in subsection (1) (d1) may make provision for or with respect to the following:
- (a) interruptions to the supply of natural gas in circumstances specified in the rules,
  - (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:
    - (i) the power to make orders against the owners and operators of natural gas transmission pipelines, shippers of natural gas and authorised reticulators and retailers (the **scheme participants**), and
    - (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,
  - (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.
- (3) A rule may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.
- (4) The Minister may from time to time approve amendments to the rules or the revocation of rules.
- (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:
- (a) written notice of the approval of the rule must be published in the Gazette, and
  - (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and
  - (c) the Minister must make available a copy of the rule to each retailer or reticulator, unless the rule is approved in respect of a matter referred to in subsection (1)

(d1), and

(d) the Minister must make available a copy of the rule on the internet site of the Department.

(6) A rule must not be inconsistent with this Act or the regulations, or the *National Energy Retail Law (NSW)* or the *National Energy Retail Regulations (NSW)*, or the *National Gas (NSW) Law* or the *National Gas (NSW) Regulations*, and is unenforceable to the extent of any such inconsistency.

(7) Subject to subsection (6), a rule may be approved for the purposes of both this Act and any other Act or law.

(8) In this section:

**natural gas transmission pipeline** 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:

(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

(b) any gas installation, or

(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

(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.

**shipper of natural gas** 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.

**33L Obligations under rules** (cf section 63D of *Electricity Supply Act 1995*)

(1) A person must not contravene the market operations rules.

Maximum penalty: 200 penalty units.

(2) (Repealed)

(3) It is a condition of a reticulator's authorisation that the reticulator must comply with the market operations rules.

(4) Subsection (1) does not apply to a person in the person's capacity as a customer of a retailer.

- (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.

**33LA Civil liability of scheme operator under section 33K (1) (d1) rules**

- (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.
- (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.
- (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.
- (4) For the purposes of subsection (3), the regulations may:
- (a) prescribe maximum amounts that are limited in their application to persons, events, circumstances, losses or periods specified in the regulations, and
  - (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
  - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (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.
- (6) This section does not apply to:
- (a) any liability of an officer or employee of the scheme operator to the scheme operator, or
  - (b) any liability for death or bodily injury.
- (7) In this section:

***civil monetary liability*** 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.

**rules** means the rules referred to in section 33K (1) (d1).

**scheme operator** means the person identified as the scheme operator by the rules.

## **Divisions 5, 6**

### **33M-33T (Repealed)**

## **Part 3 Liquefied petroleum gas and other gases**

### **34 Prohibition of unlicensed distribution of LPG and other gases**

A person must not operate a distribution system for the purpose of conveying to any other person:

- (a) liquefied petroleum gas, or
- (b) any other gas (other than natural gas) prescribed by the regulations for the purposes of this section,

otherwise than under the authority of a distributor's licence.

Maximum penalty: 500 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **35 Licences**

Subject to any conditions imposed by or under this Act, a **distributor's licence** authorises its holder, and any other person specified in the licence, to operate the distribution system so specified for the purpose of conveying to other persons any gas so specified.

### **36 Applications**

An application for a licence or for the transfer of a licence:

- (a) must be accompanied by such fee as may be determined by the Minister, and
- (b) must contain such information as may be determined by the Minister, and
- (c) must be lodged at the office of the Tribunal.

### **37 Public consultation**

(1) Before determining an application for a licence or for the transfer of a licence, the Minister must cause notice of the application to be published in the Gazette and in a daily newspaper circulating throughout New South Wales.

(2) The notice must indicate:

- (a) the nature of the licence to which the application relates, and
  - (b) the identity of the proposed holder of the licence, and
  - (c) the district in which the licence, if granted or transferred, would operate, and
  - (d) where submissions on the application should be lodged, and
  - (e) the time (being at least 40 days from the date on which the notice is first published) within which any such submissions should be lodged, and
  - (f) such other matters as may be prescribed by the regulations.
- (3) The Minister must give due consideration to matters arising from any submissions under this section.

### **38 Determination of applications**

- (1) The Minister may determine an application for a licence or for the transfer of a licence by granting or transferring the licence (either unconditionally or subject to conditions of the kind referred to in section 40) or by refusing the application.
- (2) An application may be refused on any of the following grounds:
- (a) that the proposed holder of the licence fails to satisfy such technical or prudential criteria as have been adopted by the Minister to determine whether a person is able to operate a viable business as a licensed distributor,
  - (b) such grounds as may be prescribed by the regulations,
  - (c) such grounds as the Minister considers relevant, having regard to the interests of consumers and the need to promote a competitive market for the gas concerned, to prevent misuse of market power and to ensure the security and reliability of the New South Wales supply system for gas (other than natural gas).
- (3) The Minister must endeavour to determine an application within 6 months after it is made.

### **39 Duration of licences**

Subject to the conditions imposed on it, a licence remains in force until it is cancelled.

### **40 Conditions of licences**

- (1) A licence is subject to the following conditions:
- (a) the conditions imposed by this Act and the regulations,
  - (b) such other conditions (not inconsistent with those imposed by this Act and the regulations) as the Minister may from time to time impose in relation to the



licence.

- (2) Without limitation, the Minister may impose the following kinds of conditions on a licence:
- (a) a condition specifying the period for which the licence is to remain in force,
  - (b) a condition requiring the holder of the licence to exercise its functions under this Act in accordance with specified guidelines or subject to specified restrictions, including conditions as to:
    - (i) the district within which those functions may be exercised, and
    - (ii) the implementation of Government policy on community service obligations to small retail customers,
  - (c) a condition requiring the holder of the licence to continue to satisfy such technical or prudential criteria as have been adopted by the Minister to determine whether a person is able to operate a viable business as a licensed distributor,
  - (d) a condition requiring the holder of the licence to maintain specified insurance cover in respect of specified risks,
  - (e) a condition requiring the holder of the licence:
    - (i) to prepare, and submit to the Minister for approval, a plan setting out (in accordance with guidelines established by the Minister) the holder's policies, practices and procedures with respect to the conduct of its affairs under the licence, and
    - (ii) to conduct its affairs under the licence in accordance with the plan as so approved,
  - (f) a condition requiring the holder of the licence to furnish to the Minister (at such times and in respect of such periods as the Minister may determine) such information as the Minister may determine to enable the Minister to ascertain whether or not the holder is complying with the conditions imposed on the licence by this Act or the regulations or by the Minister.
- (3) The Minister may not impose a condition on a licence of the kind referred to in subsection (2) (b) (ii) unless the Minister has entered into an undertaking, on behalf of the State, to indemnify the holder of the licence with respect to the costs incurred by the holder in complying with the requirements of the condition.

#### **41 Variation of conditions of licences**

- (1) The Minister may vary the conditions of a licence, either on his or her own motion or on the application of the holder of the licence.

- (2) In the case of an application to vary the conditions of a licence so as to extend a distribution district, section 37 applies to the application in the same way as it applies to an application for a licence.
- (3) An application to vary the conditions of a licence so as to extend a distribution district must be accompanied by such fee as may be determined by the Minister.

#### **42 Enforcement of licences by the Minister**

- (1) The Minister may do either or both of the following:
  - (a) the Minister may impose a monetary penalty not exceeding \$100,000 on the holder of a licence,
  - (b) the Minister may cancel a licence.
- (2) Action may be taken under this section only if the holder of the licence has knowingly contravened:
  - (a) the requirements of this Act or the regulations, or
  - (b) the conditions of the licence.
- (3) Nothing in this section prevents a licence from being cancelled at the request of its holder.

#### **42A Enforcement of licences by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the holder of a licence.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the holder of the licence to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subsection (2) by the holder of a licence if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the holder.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the holder of the licence may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the holder or, if the holder is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the holder of the licence has knowingly contravened the conditions of the licence.
- (6) The monetary penalty that the Tribunal may impose under this section must not

exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.

- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the holder of the licence has taken or is likely to take in respect of the contravention and the cost to the holder in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section in respect of a contravention if the Minister has already taken action under section 42 in respect of the contravention.
- (10) Nothing in this section affects the Minister's powers under section 42 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.

#### **43 Holder of licence to be notified of proposed action**

- (1) The Minister must not take action under section 40, 41 or 42, or the Tribunal must not take action under section 42A, unless:
  - (a) notice of the proposed action has been given to the holder of the licence, and
  - (b) the holder of the licence has been given a reasonable opportunity to make submissions with respect to the proposed action, and
  - (c) the Minister or Tribunal has given due consideration to any such submissions.
- (2) In addition, the Minister must not take action under section 42, or the Tribunal must not take action under section 42A, in respect of any contravention referred to in that section unless:
  - (a) notice of the contravention has been given to the holder of the licence, and
  - (b) the holder of the licence has been given a reasonable opportunity to discontinue the contravention and take such steps (if any) as are specified in the notice to remedy the effects of the contravention, and
  - (c) the holder of the licence has failed to discontinue the contravention or take those steps.

- (3) Subsection (1) does not apply to action taken at the request of the holder of the licence.

#### **44 Annual licence fees**

- (1) The Minister may require the holder of a licence to pay to the Minister such amount, by way of an annual licence fee, as the Minister may from time to time determine on the advice of the Treasurer.
- (2) The amount of an annual licence fee must be determined in such a manner that the amount payable by the holder of the licence for a particular year is equivalent to the amount estimated by the Treasurer as being the cost to the State of administering this Act during that year in relation to that holder.
- (3) It is a condition of a licence that the holder of the licence must comply with all relevant requirements under this section.

#### **45 Appeals against decisions concerning licences**

- (1) A person aggrieved by any of the following decisions of the Minister may appeal to the Supreme Court against the decision:
- (a) a decision cancelling a licence,
  - (b) a decision imposing a condition on a licence (other than a condition imposed when the licence is granted),
  - (c) a decision varying the conditions of a licence,
  - (d) a decision refusing an application for the transfer of a licence,
  - (e) a decision imposing a monetary penalty on the holder of a licence.
- (2) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the original decision was made, may be given on the appeal.
- (3) For the purposes of an appeal, the Minister may certify in writing that a specified policy applies to the subject matter of the appeal.
- (4) In deciding an appeal to which such a certificate relates, the Supreme Court is required to apply the policy so certified, except to the extent to which the application of that policy would be contrary to law.
- (5) The decision of the Supreme Court in respect of an appeal is taken to be the decision of the Minister and is to be given effect to accordingly.

#### **45A Administrative review of certain decisions concerning licences**

- (1) The holder of a licence who is aggrieved by a decision of the Tribunal to take action under section 42A in relation to the holder of the licence may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply to such a decision of the Tribunal.

#### **46 Register of licences**

- (1) A register of licences is to be kept at the office of the Tribunal.
- (2) The register is to contain details of all licences that are granted or transferred, including details concerning the conditions imposed on them by the Minister, and is also to contain details of all determinations made by the Minister with respect to licences and their conditions.
- (3) The register is to be kept available for inspection by members of the public, free of charge, during normal office hours.
- (4) Copies of entries in the register are to be made available to members of the public, at cost, during normal office hours.

### **Part 4 Gas works**

#### **Division 1 Powers and duties relating to gas works**

##### **47 Erection and placement of gas works**

- (1) This section applies to work connected with the erection, installation, extension, alteration, maintenance and removal of gas works.
- (2) For the purposes of this Act, a network operator:
  - (a) may carry out work to which this section applies, and
  - (b) in particular, may carry out any such work on a public road.
- (3) Work to which this section applies is exempt from the requirement for an approval under the *Local Government Act 1993* except in relation to buildings.
- (4) However, no such work (other than routine connections, repairs or maintenance work) may be carried out unless:
  - (a) notice of the proposal to carry out the work has been given to the local council, and

- (b) the local council has been given a reasonable opportunity (being at least 40 days from the date on which the notice was given) to make submissions to the network operator in relation to the proposal, and
  - (c) the network operator has given due consideration to any submissions so made.
- (5) Subsection (4) does not apply to the carrying out of any such work to cope with emergencies.

#### **48 Damage to be made good**

- (1) If a public road or public reserve is damaged by any work carried out by a network operator, the local council or roads authority may require the network operator to make good the damage without delay.
- (2) If the network operator fails to carry out appropriate work in accordance with any such requirement, the local council or roads authority may carry out the work itself.
- (3) The cost of carrying out the work may be recovered by the local council or roads authority in a court of competent jurisdiction as a debt owed to it by the network operator.

#### **49 Altering position of conduits**

- (1) A network operator may serve a written notice on a person if:
  - (a) the network operator needs an alteration to be made in the position of a conduit owned by the person, and
  - (b) the alteration would not permanently damage the conduit or adversely affect its operation.
- (2) The notice:
  - (a) must specify the work to be carried out, and
  - (b) must specify a reasonable time within which the work is to be carried out, and
  - (c) must include an undertaking by the network operator to pay the reasonable cost of carrying out the work.
- (3) If the work is not carried out as required by the notice, the network operator may carry out the work in a manner that does not permanently damage the conduit or adversely affect its operation.
- (4) In this section, **conduit** means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

## **50 Obstruction of gas works**

- (1) This section applies if a network operator has reasonable cause to believe that any structure of thing placed in, on or near its gas works is destroying, damaging or interfering with those works.
- (2) In those circumstances, a network operator:
  - (a) may serve a written notice on the person having control of the structure or thing requiring that person to modify or remove it, or
  - (b) in an emergency, may, at its own expense, modify or remove the structure or thing itself.
- (3) A notice under subsection (2) (a):
  - (a) must specify the work to be carried out, and
  - (b) must specify a reasonable time within which the work is to be carried out.
- (4) If the person fails to carry out the work in accordance with the requirement, the network operator may carry out the work itself.
- (5) The costs of:
  - (a) carrying out the work, and
  - (b) repairing any damage done to the network operator's gas works by the structure or thing,may be recovered by the network operator in a court of competent jurisdiction as a debt owed to it by the person.
- (6) A network operator may apply for an injunction to prevent a structure or thing being placed in, on or near its gas works.

## **50A Excavation work affecting gas works**

- (1) This section applies if a network operator has reasonable cause to believe that the carrying out or proposed carrying out of excavation work in, on or near its gas works:
  - (a) could destroy, damage or interfere with those works, or
  - (b) could make those works become a potential risk to public safety.
- (2) In those circumstances, a network operator may serve a written notice on the person carrying out or proposing to carry out the excavation work requiring the person:
  - (a) to modify the excavation work, or
  - (b) not to carry out the excavation work, but only if the network operator is of the

opinion that modifying the excavation work will not be effective in preventing the destruction or damage of, or interference with, the gas works concerned or in preventing those works becoming a potential risk to public safety.

- (3) A notice under subsection (2) must specify the excavation work that is to be modified or not carried out.
- (4) A network operator may recover the following costs in a court of competent jurisdiction as a debt owed to it by a person who carried out excavation work the subject of a notice under subsection (2):
  - (a) the costs incurred in replacing any of the network operator's gas works destroyed by the excavation work,
  - (b) the costs incurred in repairing any damage to the network operator's gas works caused by the excavation work,
  - (c) the costs incurred in remedying or mitigating any interference with the network operator's gas works caused by the excavation work.
- (5) A network operator may apply for an injunction to prevent the carrying out of excavation work in, on or near its gas works.
- (6) A network operator may take action under this section even if the person carrying out the excavation work owns or occupies the land in, on or over which the network operator's gas works are situated.

### **51 Charges for placement of gas works**

No annual or other periodic or special charge is payable by a network operator to a local council or roads authority in respect of any gas works located in a public reserve or public road or in respect of the space in a public reserve or public road that is occupied by any such works.

### **52 Ownership of gas works**

- (1) A network operator is the owner of its gas works, whether or not the land in, on or over which they are situated is owned by the network operator.
- (2) A network operator's gas works are not to be taken in execution of any judgment against a person other than the network operator under any process of a court.
- (3) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

### **53 Interruption to gas supply for maintenance**

A network operator may interrupt the supply of gas to a customer, at such reasonable times as the network operator determines:



- (a) for the purpose of inspecting, testing or carrying out repairs or maintenance work on its gas works, or
- (b) for such other purpose as the network operator considers necessary for the safe and efficient operation of its gas works.

#### **54 (Repealed)**

### **Division 2 Powers of entry**

#### **55 Powers of entry**

- (1) A gas industry inspector may enter any premises for the purpose of exercising any function conferred or imposed on a network operator by or under this Act, including:
  - (a) carrying out preliminary investigations in connection with the proposed installation or extension of gas works, or
  - (b) installing, extending, maintaining, repairing or removing gas works, or
  - (c) reading gas meters, or
  - (d) checking if the network operator's conditions relating to tariffs and the use of gas are being complied with, or
  - (e) ascertaining whether an offence against this Act or the regulations has been committed, or
  - (f) monitoring any excavation work in accordance with regulations under section 64C, or
  - (g) exercising any function conferred on the network operator by section 50 or 50A.
- (2) A government inspector may enter any premises for the purpose of ascertaining whether an offence against this Act or the regulations has been committed.
- (2A) A person appointed under section 18 of the *Fair Trading Act 1987* as an investigator for the purposes of any provision of this Act that is administered by the Minister for Fair Trading (or any regulations made under such a provision):
  - (a) may enter any premises for the purpose of ascertaining whether an offence against the provision (or the regulations made under the provision) has been committed, and
  - (b) is taken to be an inspector for the purposes of this Act (except section 77).
- (3) Except in emergencies, the power of entry may be exercised only during daylight hours.

## **56 Notice of entry**

- (1) Before an inspector exercises a power of entry under this Division, the network operator must give the owner or occupier of the land written notice of the intention to enter the land.
- (2) The notice must specify the day on which the inspector intends to enter the land and must be given before that day.
- (3) This section does not require notice to be given:
  - (a) if entry to the land is made with the consent of the owner or occupier of the land, or
  - (b) if entry is required for the sole purpose of reading a gas meter, or
  - (c) if entry is required in an emergency.

## **57 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Division, but only if authorised by the network operator in accordance with this section.
- (2) The authority:
  - (a) must be in writing, and
  - (b) must be given in respect of the particular entry concerned, and
  - (c) must specify the circumstances that must exist before force may be used.

## **58 Notification of use of force or urgent entry**

- (1) An inspector:
  - (a) who uses force for the purpose of gaining entry to land, or
  - (b) who enters land in an emergency without giving written notice to the owner or occupier of the land,must promptly advise the network operator of that fact.
- (2) The network operator must give notice of the entry to such persons or authorities as appear to the network operator to be appropriate in the circumstances.

## **59 Care to be taken**

- (1) In the exercise of a power under this Division, an inspector must do as little damage as possible.

- (2) As far as practicable, entry onto fenced land is to be made through an existing opening in the enclosing fence or, if entry through an existing opening is not practicable, through a new opening.
- (3) Any new opening is to be properly closed when the need for entry ceases.
- (4) If, in the exercise of a power under this Division, any pit, trench, hole or bore is made, the network operator must, if the owner or occupier of the land so requires:
  - (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down, and
  - (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

#### **60 Recovery of cost of entry and inspection**

If an inspector enters any land for the purpose of making an inspection and, as a result of the inspection, the network operator requires any work to be carried out on the land, the network operator may recover the reasonable costs of the entry and inspection from the owner or occupier of the land.

#### **61 Compensation**

The network operator must pay compensation to the owner of any land in respect of which a power has been exercised under this Division for any loss or damage arising from the exercise of the power, but is not so liable to the extent to which the loss or damage arises from work done for the purposes of an inspection which reveals that there has been a contravention by the owner of any provision of this Act or the regulations.

#### **62 Certificates of authority to enter land**

- (1) A power of entry under this Division may not be exercised by an inspector unless the inspector:
  - (a) is in possession of a certificate of authority issued by the network operator, and
  - (b) produces the certificate when required to do so by the owner or occupier of the land.
- (2) The certificate of authority:
  - (a) must state that it is issued under this Act, and
  - (b) must give the name of the person to whom it is issued, and
  - (c) must describe the nature of the powers conferred and the source of those powers, and
  - (d) must state the date (if any) on which it expires, and

- (e) must describe the kind of land to which the power extends, and
- (f) must be under the seal of the network operator or must bear the signature of the principal officer of the network operator, of a prescribed officer of the network operator or of an officer belonging to a prescribed class of officers of the network operator.

### **63 Entry to residential premises**

A power of entry conferred by this Division is not exercisable in relation to such part of a building as is used for residential purposes except:

- (a) with the consent of the occupier of that part of the premises, or
- (b) for the sole purpose of reading a gas meter, or
- (c) under the authority conferred by a warrant of entry.

### **64 Warrants of entry**

- (1) The network operator may apply to an authorised officer for a warrant of entry if it is of the opinion that it is necessary for an inspector to enter and inspect any land (including any building used for residential purposes) for the purposes of this Act.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant of entry authorising an inspector named in the warrant to enter and inspect the land for the purposes of this Act.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a warrant of entry under this section in the same way as it applies to a search warrant under that Act.
- (4) In this section:

**authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

## **Part 4A Protection of underground gas pipelines**

### **64A Definitions**

In this Part, **designated information provider** means:

- (a) Dial Before You Dig NSW/ACT Incorporated, or
- (b) if another person or body is prescribed by the regulations for the purposes of this definition, that other person or body.

**64B Provision of information on underground gas pipelines by network operators**

- (1) It is a condition of a distributor's licence that the distributor must:
  - (a) be a member of the designated information provider, and
  - (b) comply with any obligations imposed by that membership.
- (2) It is a condition of a reticulator's authorisation that the reticulator must:
  - (a) be a member of the designated information provider, and
  - (b) comply with any obligations imposed by that membership.
- (3) The regulations may make provision for or with respect to the provision of information by network operators in respect of underground gas pipelines, including (but not limited to) the provision of such information in connection with a request for information under section 64C.

**64C Requirements in relation to carrying out of certain excavation work**

- (1) A person must not commence to carry out excavation work to which this section applies, or authorise such excavation work to be commenced, unless the person has first:
  - (a) contacted the designated information provider and requested information as to the location and type of any underground gas pipelines in the vicinity of the proposed work, and
  - (b) complied with any reasonable procedures of the designated information provider as to the manner of contacting the designated information provider and the information to be provided by the person in connection with the person's request for information, and
  - (c) allowed a reasonable period for the requested information to be provided.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not require a person to whom that subsection applies to comply with the requirements of that subsection in relation to excavation work if another person to whom that subsection applies has already complied with those requirements in relation to that excavation work.
- (3) A person must not carry out excavation work to which this section applies, or authorise such excavation work to be carried out, unless the person has ensured that any requirements of the regulations in relation to the carrying out of the work are complied with.

Maximum penalty: 20 penalty units.

- (4) The regulations may make provision for or with respect to the following:
- (a) prescribing requirements in relation to the carrying out of excavation work to which this section applies,
  - (b) requiring notification to be given to a specified person or body, or person or body of a specified class, in relation to the carrying out of excavation work to which this section applies,
  - (c) the monitoring of excavation work to which this section applies,
  - (d) what constitutes reasonable procedures for the purposes of subsection (1),
  - (e) what constitutes a reasonable period for requested information to be provided for the purposes of subsection (1).
- (5) This section applies to excavation work in an area, and of a kind, prescribed by the regulations.

**64D Notification of damage to underground gas pipelines**

- (1) A person must, as soon as practicable after becoming aware that any action of the person or any action authorised by the person has damaged an underground gas pipeline, notify the network operator that owns the pipeline of the damage.
- Maximum penalty: 20 penalty units.
- (2) The regulations may make provision for the manner in which a person must notify for the purposes of subsection (1).
- (3) Subsection (1) does not require a person to notify the network operator of the damage concerned if another person to whom that subsection applies has already notified the network operator of the damage.

**64E Orders for costs, expenses and compensation at time offence proved**

- (1) This section applies where a court convicts a person of an offence against this Part or section 66.
- (2) The court may, if it appears to the court that a network operator has, by reason of the commission of the offence:
- (a) suffered loss or damage to its gas works, or
  - (b) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
- order the offender to pay to the network operator the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such

amount as is fixed by the order.

- (3) A court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.
- (4) Orders may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.
- (5) Orders may be made under this section regardless of whether any penalty is imposed, or other action taken, in relation to the offence concerned.

- (6) In this section:

**the court** means the court that convicts a person of the offence concerned.

**the offender** means the person who is convicted of the offence.

#### **64F Civil liability of designated information provider**

- (1) This section applies to the following persons:
  - (a) the designated information provider, any officer or employee of the designated information provider or any person acting on behalf of the designated information provider,
  - (b) a network operator, any officer or employee of the network operator or any person acting on behalf of the network operator.
- (2) A person to whom this section applies does not incur any civil monetary liability for any act or omission in connection with a request for information under section 64C or the provision of information in compliance or purported compliance with the regulations under section 64B unless the act or omission is done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (2) done or made through negligence may not exceed the maximum amount prescribed by the regulations.
- (4) For the purposes of subsection (3), the regulations may:
  - (a) prescribe maximum amounts that are limited in their application to persons, events, circumstances, losses or periods specified in the regulations, and
  - (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

(c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

(5) A person to whom this section applies may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

(6) This section does not apply to any liability of an officer or employee of a person to whom this section applies to the person.

(7) In this section:

***civil monetary liability*** means liability to pay damages or compensation or any other amount in a civil proceeding, but does not include the costs of proceedings.

## **Part 5 Offences**

### **Division 1 Offences**

#### **65 Theft of gas**

A person must not abstract, cause to be wasted or diverted, consume or use any gas from a distribution pipeline or distribution system unless authorised to do so under a contract with a retailer or licensed distributor.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

#### **66 Interference with gas works**

(1) A person must not interfere with a network operator's gas works unless authorised to do so by the network operator.

Maximum penalty:

(a) in the case of a corporation—4,000 penalty units, or

(b) in any other case—200 penalty units or imprisonment for 5 years (or both).

(2) An offence under this section that is committed by an individual is an indictable offence.

(3) Chapter 5 of the [Criminal Procedure Act 1986](#) (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an indictable offence under this section.

(4) Section 81 does not apply to an indictable offence under this section.

**Note—**

Offences by corporations are to be dealt with summarily (see section 81 (1) and (2)).



### **67 Interference with gas meters**

A person must not alter or otherwise interfere with a meter that is connected to a network operator's distribution pipeline or distribution system unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **68 Interference with network operators' seals**

A person must not alter or otherwise interfere with any seal that has been attached to a gas installation by a network operator unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **69 Unauthorised connections**

A person must not connect a gas installation to a network operator's distribution pipeline or distribution system unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **70 Unauthorised increase in capacity of connections**

A person must not increase the capacity of an existing connection to a network operator's distribution pipeline or distribution system unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **71 Unauthorised alterations and additions to gas installations**

A person must not alter or add to a gas installation that is connected to a network operator's distribution pipeline or distribution system so as to cause the supply of gas to the installation or any part of it to be incorrectly metered unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

### **72 Obstruction of inspectors**

A person must not:

- (a) prevent an inspector from exercising any function conferred on the inspector under this Act, or

- (b) hinder or obstruct an inspector in the exercise of any such function, or
- (c) impersonate an inspector.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

## **Division 2 General**

### **73 Court may order disconnection and discontinuance of gas supply**

- (1) A court that finds a person guilty of an offence under Division 1 may make either or both of the following orders:
  - (a) an order that the premises to which the offence relates be disconnected from the distribution pipeline or distribution system of the network operator concerned, or
  - (b) an order that the supply of gas to those premises be discontinued.
- (2) An order under this section has effect regardless of the provisions of any contract.
- (3) An order under this section has effect despite any other law.

### **74 Court may order payment for stolen gas**

A court that finds a person guilty of an offence under section 65 of unlawfully causing gas to be abstracted, wasted, diverted, consumed or used may make an order directing the person to pay to the retailer or licensed distributor concerned such amount as the court considers appropriate for the gas so abstracted, wasted, diverted, consumed or used.

### **75 Orders for payment to operate as judgments**

- (1) An order under this Division for the payment of money:
  - (a) may be made by a court on its own motion, or on the application of the retailer or licensed distributor concerned, at any time within 6 months after the date of the finding, and
  - (b) if made by the Local Court, may be enforced in the Local Court in its exercise of jurisdiction under Part 3 of the [Local Court Act 2007](#).
- (2) Part 8 of the [Civil Procedure Act 2005](#) applies to and in respect of an order made by the Local Court under this Division as if:
  - (a) the order were a judgment of the Local Court in civil proceedings, and
  - (b) the amount ordered to be paid were a judgment debt, and
  - (c) the person against whom the order is made were a judgment debtor, and

(d) the person in whose favour the order is made were a judgment creditor.

(3) The remedy provided by this section is an alternative to any other remedy that may be available apart from this section.

## **Part 5A Regulatory functions of Tribunal**

### **75A Regulatory functions of Tribunal**

(1) The regulatory functions of the Tribunal under this Act are:

(a) the function of making recommendations under subsection (2), and

(b) the function of monitoring and reporting under subsections (3) and (3A), and

(c) the function of imposing monetary penalties, or requiring other action to be taken, under section 13A or 42A, and

(d) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.

(2) The Tribunal has the function of making recommendations to the Minister for or with respect to:

(a) the grant, transfer or cancellation of an authorisation or licence, and

(b) the imposition, variation or cancellation of conditions in relation to an authorisation or licence, and

(c) action to be taken, and sanctions to be applied, in respect of a contravention of the conditions of an authorisation or licence, and

(d) any remedial action that may be warranted as a result of a contravention of the conditions of an authorisation or licence.

(3) The Tribunal has the function of monitoring compliance by the holder of an authorisation or licence with the conditions of the authorisation or licence.

(3A) The Tribunal has the function of monitoring the extent to which regulated offer retailers comply, or fail to comply, with the obligation (under section 37C of the [National Energy Retail Law \(NSW\)](#)) to ensure that regulated offer prices comply with the gas pricing orders of the Tribunal under Division 3 of Part 2 or any applicable voluntary transitional pricing arrangement for gas.

(3B) For the purpose of enabling the Tribunal to exercise its functions, the Minister must furnish to the Tribunal such information in the possession of the Minister as the Tribunal may request in relation to compliance with the obligation (under section 37C of the [National Energy Retail Law \(NSW\)](#)) to ensure that regulated offer prices comply with the gas pricing orders under Division 3 of Part 2 or any applicable voluntary

transitional pricing arrangement for gas.

- (3C) As soon as practicable after 30 June (but on or before 31 October) in each year, the Tribunal must prepare and forward to the Minister a report on the following:
- (a) the extent to which holders of authorisations or licences have complied, or failed to comply, with the conditions imposed on the authorisations or licences held by them during the 12 months ending on 30 June in that year,
  - (b) the extent to which regulated offer retailers have complied, or failed to comply, with the obligation (under section 37C of the *National Energy Retail Law (NSW)*) to ensure that regulated offer prices comply with the gas pricing orders of the Tribunal under Division 3 of Part 2 or any applicable voluntary transitional pricing arrangement for gas during the 12 months ending on 30 June in that year.
- (3D) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3E) If a House of Parliament is not sitting when the Minister seeks to table the report, the Minister may present copies of the report to the Clerk of the House concerned.
- (3F) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.
- (4) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

## **Part 6 Miscellaneous**

### **76 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative

power of Parliament permits, the Crown in all its other capacities.

## **76A (Repealed)**

## **77 Inspectors**

- (1) The Minister may appoint inspectors (**government inspectors**) for the purposes of this Act.
- (2) A network operator may, in accordance with any guidelines in force under this section, appoint inspectors (**gas industry inspectors**) for the purposes of this Act.
- (3) A gas industry inspector has such of a network operator's functions under this Act as are specified in the inspector's instrument of appointment.
- (4) A gas industry inspector may exercise a network operator's functions under this Act only within the network operator's distribution district.
- (5) The Head of the Department may, by order published in the Gazette, establish guidelines for the appointment of gas industry inspectors.
- (6) An order under this section takes effect on the day on which it is published in the Gazette or on such later day as is specified in the order.

### **Note—**

For the purposes of any provisions of this Act administered by the Minister for Fair Trading (and any regulations made under any such provisions), investigators may be appointed under section 18 of the [Fair Trading Act 1987](#).

## **78 Service of documents**

- (1) A document that by this Act or the regulations is required to be served on a person may be served:
  - (a) on an individual, by delivering it to the individual personally or by sending it by post to (or leaving it at) the person's place of residence or business, and
  - (b) on a corporation, by sending it by post to (or leaving it at) the corporation's registered office within the meaning of the [Corporations Act 2001](#) of the Commonwealth.
- (2) This section does not affect any other law governing the service of documents.

## **79 Exclusion of personal liability**

A matter or thing done or omitted to be done by a review panel, a member of a review panel or an inspector does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject any such member or inspector personally to any action, liability, claim or demand.

**79A Personal liability of gas industry inspectors of network operators**

- (1) A matter or thing done or omitted to be done by a gas industry inspector appointed by a network operator does not, if the matter or thing was done or omitted in good faith for the purpose of exercising a function under this Act, subject any such inspector personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the network operator concerned.

**80 Directors and managers liable for offences committed by corporations**

- (1) If a corporation contravenes a provision of this Act or the regulations, each person who:
  - (a) is a director of the corporation, or
  - (b) is concerned in the management of the corporation,is to be treated as having contravened that provision if the person knowingly authorised or permitted the contravention.
- (2) A person may, under this section, be proceeded against and convicted for a contravention of that provision whether or not the corporation has been proceeded against or convicted for a contravention of that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**81 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act may instead be dealt with summarily before the Supreme Court in its summary jurisdiction.
- (3) Proceedings for an offence against this Act or the regulations may be instituted at any time within 2 years after the commission of the offence.
- (4) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against a provision of this Act or the regulations is:
  - (a) the maximum monetary penalty specified by that provision in respect of the offence, or
  - (b) 100 penalty units (in the case of a corporation) and 50 penalty units (in any other case),whichever is the lesser.

- (5) The maximum penalty that may be imposed by the Supreme Court in proceedings for an offence against a provision of this Act or the regulations is the maximum penalty specified by that provision in respect of the offence.

## **82 Recovery of monetary penalties**

A monetary penalty imposed by the Minister on the holder of an authorisation or licence may be recovered in any court of competent jurisdiction as a debt due to the Crown.

## **83 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act, the *National Energy Retail Law (NSW)*, the *National Energy Retail Regulations (NSW)*, the *National Gas (NSW) Law* or the *National Gas (NSW) Regulations* for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following matters:
- (a) the production, storage and conveyance of gas,
  - (b) the establishment of gas quality and gas safety standards,
  - (c) the design and construction of gas pipes and associated equipment,
  - (d) distributor service standards for reticulators that are distributors within the meaning of the *National Energy Retail Law (NSW)*,
  - (e) (Repealed)
  - (f) the construction, alteration, extension, maintenance, repair and operation of distribution pipelines or distribution systems,
  - (g) the carrying out of work involving the installation or replacement of a gas meter or any part of the basic metering equipment,
  - (g1) the installation, alteration, extension or repair of, or any other work on, a consumer service,
  - (h) the reporting of accidents,
  - (i) the keeping of records, information and statistics in relation to the operation of distribution pipelines or distribution systems and the supply of gas,
  - (j) the circumstances under which gas supply may be refused or discontinued,
  - (k) the procedures to be adopted by distributors for the resolution of customer complaints,

- (l) fees, charges and payments (other than fees, charges and payments of the kind for which orders may be made under section 27),
- (m) facilitating the Government's social programs for gas, including:
  - (i) the adoption of Codes with respect to the implementation of any such program in relation to a specified class or specified classes of customers, and
  - (ii) the payment and assessment of implementation and enforcement costs, and
  - (iii) the publication of Codes, and
  - (iv) the application of such programs to distributors, reticulators, retailers and exempt sellers, and
  - (v) the enforcement of Codes, in particular the giving and enforcement of undertakings with respect to compliance with Codes, and
  - (vi) the conferral of jurisdiction on the Local Court with respect to the enforcement of undertakings.
- (3) Without limiting subsection (2), the regulations must make provision for each of the following matters:
  - (a) customer supply contracts to be used in connection with the supply of gas to customers by distributors,
  - (b) the form and content of bills to be rendered to customers by distributors in connection with the supply of gas,
  - (c) the debt collection procedures to be observed by distributors in relation to amounts owed by customers in connection with the supply of gas,
  - (d) the standards of service to be provided to customers by distributors in connection with the supply of gas,
  - (e) the constitution and procedures of customer councils to advise distributors on matters concerning the supply of gas to customers.
- (4) Regulations may not be made with respect to any of the matters referred to in subsection (3) unless the Minister certifies to the Governor that the Minister has consulted with appropriate representatives of consumers, the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by those regulations and with the Minister for Fair Trading in connection with those regulations.
- (5) (Repealed)
- (5A) Regulations may not be made with respect to any of the matters referred to in subsection (3) (a) unless the Minister certifies to the Governor that the Minister has



consulted with the Tribunal in connection with those regulations.

(5B) The regulations may, either unconditionally or subject to conditions, exempt:

(a) any specified person or class of persons, or

(b) any specified matter or class of matters,

from the operation of any one or more of sections 64B and 64C.

(6) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

(7) A regulation may apply, adopt or incorporate the provisions of any standard, code or specification, either as in force as at a particular day or as in force for the time being.

### **83A Regulations as to gas appliances, gas and autogas installations, gasfitting and autogas work and gas meters**

Without limitation, the regulations may make provision for or with respect to the following matters:

(a) the design, construction and labelling of gas appliances,

(b) the prohibition of the sale or supply of unsafe gas appliances,

(c) the imposition of conditions on the sale or supply of gas appliances to ensure their safe use,

(d) the connection, alteration, maintenance, repair, replacement and operation of gas appliances,

(e) gas installations and the carrying out of gasfitting work,

(e1) autogas installations and the carrying out of autogas work,

(f) the examination and testing of gas meters,

(g) fees, charges and payments relating to the matters in paragraphs (a)-(f),

(h) exemptions (or the granting of exemptions) relating to the matters in paragraphs (a)-(g).

### **84, 85 (Repealed)**

### **86 Savings, transitional and other provisions**

Schedule 2 has effect.

## **87 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Gas Supply Amendment (Retail Competition) Act 2001*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**

## **Schedule 2 Savings, transitional and other provisions**

(Section 86)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Gas Supply Act 1996*

*Gas Supply Amendment (Safety) Act 1999*

*Gas Supply Amendment (Retail Competition) Act 2001*

*Gas Supply Amendment Act 2008*

*Gas Supply Amendment (Ombudsman Scheme) Act 2009*

*Energy Legislation Amendment (Infrastructure Protection) Act 2009*

*Gas Supply Amendment Act 2010*

*Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Act 2010*, but only to the extent that it amends this Act

*National Energy Retail Law (Adoption) Act 2012*

any other Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than

the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of [Gas Supply Act 1996](#)**

### **2 Definition**

In this Part:

**the 1986 Act** means the [Gas Industry Restructuring Act 1986](#).

### **3 Authorisations for natural gas**

- (1) An authorisation for natural gas that, immediately before the repeal of Part 2 of the 1986 Act, was in force under that Act is taken:
  - (a) to be both a reticulator's authorisation and a supplier's authorisation under this Act, and
  - (b) to be subject to the same conditions (in addition to those to which it is subject under this Act) as those to which it was subject immediately before that repeal.
- (2) A reticulator's authorisation arising under subclause (1) is taken to be subject to the following additional conditions:
  - (a) a condition to the effect that the reticulator must not supply or install a gas meter unless the gas meter complies with the standards prescribed by or in accordance with the regulations,
  - (b) a condition to the effect that the reticulator must not reticulate gas to a gas user unless the gas complies with the standards prescribed by or in accordance with the regulations.
- (3) Any condition referred to in subclause (1) (b) that relates to the price that may be charged for the supply of gas has effect despite section 11 (3) (b), but ceases to have effect when a gas pricing order first comes into effect.
- (4) The regulations may provide for:
  - (a) any specified gas supplier's authorisation arising under subclause (1) to be taken to have become 2 authorisations, namely:
    - (i) an authorisation with respect to the supply of natural gas to tariff customers,

and

- (ii) an authorisation with respect to the supply of natural gas to persons who are not tariff customers, and
  - (b) the transfer of either or both of the authorisations referred to in paragraph (a) (i) and (ii) to other persons or bodies.
- (5) A regulation referred to in subclause (4) may exclude any application for a transfer referred to in subclause (4) (b) from the operation of section 8, but only in respect of an application that is made within 12 months after the commencement of this clause.

#### **4 Authorisations for LPG**

- (1) An authorisation for liquefied petroleum gas that, immediately before the repeal of Part 2 of the 1986 Act, was in force under that Act is taken:
- (a) to be a distributor's licence under this Act, and
  - (b) to be subject to the same conditions (in addition to those to which it is subject under this Act) as those to which it was subject immediately before that repeal.
- (2) A distributor's licence arising under subclause (1) is taken to be subject to the following additional conditions:
- (a) a condition to the effect that the distributor must not supply gas to a gas user unless the gas complies with the standards prescribed by or in accordance with the regulations,
  - (b) a condition to the effect that the distributor must not supply or install a gas meter unless the gas meter complies with the standards prescribed by or in accordance with the regulations.

#### **5 (Repealed)**

#### **6 Applications relating to authorisations**

- (1) An application with respect to an authorisation under the 1986 Act is taken to be:
- (a) to the extent to which it relates to an authorisation for natural gas, the corresponding application with respect to an authorisation under Part 2 of this Act, or
  - (b) to the extent to which it relates to an authorisation for a gas other than natural gas, the corresponding application with respect to a licence under Part 3 of this Act,
- and anything done in connection with the application is taken to have been done under Part 2 or 3 of this Act, as the case requires.

- (2) Sections 8 and 37 do not apply to any application arising under subclause (1) in connection with an amendment of an authorisation or licence that was originally proposed under section 16 of the 1986 Act.

## **7, 8 (Repealed)**

## **9 Inspectors**

- (1) A person who, immediately before the repeal of section 121 of the 1986 Act, held office as a government inspector or gas inspector under that section is taken to hold office as a government inspector or gas industry inspector under section 77 of this Act.
- (2) A certificate of authority that, immediately before the repeal of section 121 of the 1986 Act, had effect under that section is taken to have effect as a certificate of authority under section 62 of this Act.

## **10 Search warrants**

A search warrant that, immediately before the repeal of section 127 of the 1986 Act, was in force under that section continues to have effect as if it were a warrant of entry in force under section 64 of this Act.

## **11 Abolition of Gas Council**

- (1) The Gas Council is abolished.
- (2) Part 8 of the *Public Sector Management Act 1988* applies to each member of the Gas Council as if the member had been removed from office by the Governor under section 90 of that Act.

## **12 Gas Customers Reserve Account**

- (1) Pending the repeal of section 70 of the 1986 Act, money standing to the credit of the Gas Customers Reserve Account may be applied only for such purposes as are approved by the Tribunal after consultation with the persons or bodies referred to in Schedule 1 to that Act.
- (2) Such an approval may be given only if the Tribunal is satisfied that the money is to be applied in such a manner as to benefit small retail customers.
- (3) On the repeal of section 70 of the 1986 Act, the Gas Customers Reserve Account referred to in that section is abolished.

## **13 Regulations**

The *Gas Regulation 1991* is taken to be a regulation under this Act, and may be amended and repealed accordingly.

#### **14 Amendment of regulations**

An amendment made by this Act to a Regulation referred to in Schedule 1 does not affect the future amendment or repeal of that Regulation.

#### **15 Construction of certain references**

A reference in any other Act or instrument to the *Gas Act 1986* extends to this Act.

### **Part 3 Provisions consequent on enactment of Gas Supply Amendment (Retail Competition) Act 2001**

#### **16 Definitions**

In this Part:

**the 2001 amending Act** means the *Gas Supply Amendment (Retail Competition) Act 2001*.

#### **17 Reviews of suppliers' decisions**

Section 33E, as inserted by the 2001 amending Act, extends to matters arising before the commencement of that section.

#### **18 Gas industry ombudsman**

Section 33F, as inserted by the 2001 amending Act, extends to disputes and complaints arising before the commencement of that section.

#### **19 Interim gas pricing orders**

(1) The Tribunal may, by order served on a standard supplier, establish an interim pricing mechanism according to which the following tariffs, fees, charges and payments are to be fixed by the supplier in relation to the supply of natural gas to small retail customers under standard form customer supply contracts (an **interim gas pricing order**):

- (a) tariffs for natural gas,
- (b) security deposits and other payments in the nature of security deposits,
- (c) fees and charges in relation to late or dishonoured payments,
- (d) fees and charges in relation to the establishment or maintenance of accounts,
- (e) fees and charges in relation to the disconnection of premises from, or the reconnection of premises to, a distribution pipeline,
- (f) such other fees, charges and payments as are prescribed by the regulations.

- (2) Such an order may not be made in relation to any class of small retail customers in respect of whom a gas pricing order is in force under section 27.
- (3) The Minister may give the Tribunal a written referral requiring the Tribunal to make an interim gas pricing order within a time specified in the referral and, in that event, the Tribunal must take all reasonable steps to comply with the requirements of the referral.
- (4) Before making an interim gas pricing order, the Tribunal must notify the Minister of its intention to do so (except in the case of an order given pursuant to a referral under subclause (3)).
- (5) An interim gas pricing order:
  - (a) takes effect on the date on which it is served on the standard supplier concerned or on such later date as may be specified in the order in that regard, and
  - (b) continues in force for such period as is specified in the order, not exceeding 6 months from the date on which it takes effect,but may be extended by the Tribunal (on one occasion only) for up to 3 months by a further order served on the standard supplier.
- (6) Section 27A (subsections (2) and (3) excepted) applies to an interim gas pricing order under this clause in the same way as it applies to a gas pricing order under section 27.
- (7) Section 28 does not apply to or in respect of an interim gas pricing order under this clause.
- (8) This clause ceases to have effect on such date as may be appointed by a regulation published in the Gazette before 1 July 2003 or, if no such date is so appointed, on 1 July 2003.

## **Part 4 Provisions consequent on enactment of [Occupational Health and Safety Amendment \(Dangerous Goods\) Act 2003](#)**

### **20 Saving of regulation**

- (1) The [Dangerous Goods \(Gas Installations\) Regulation 1998](#) is taken to be a regulation made under this Act.
- (2) For the purposes of Part 3 of the [Subordinate Legislation Act 1989](#), the [Dangerous Goods \(Gas Installations\) Regulation 1998](#) is taken to have been published on the commencement of this clause.

### **21 Saving of appointment of inspectors**

A person appointed as an inspector under section 77 (1) of this Act and holding office as

such immediately before the amendment of that section by the *Occupational Health and Safety Amendment (Dangerous Goods) Act 2003* is taken to have been appointed to that office under that section as so amended.

## **Part 5 Provisions consequent on enactment of Gas Supply Amendment Act 2008**

### **22 Publication of market operations rules on internet**

Section 33K (5) (d), as inserted by the *Gas Supply Amendment Act 2008*, does not extend to a rule, or a rule amending or revoking a rule, approved by the Minister before the commencement of that paragraph.

## **Part 6 Provision consequent on enactment of Gas Supply Amendment (Ombudsman Scheme) Act 2009**

### **23 Extension of gas industry ombudsman scheme to authorised reticulators**

- (1) A gas industry ombudsman scheme approved by the Minister under section 33G for which approval was in force immediately before the commencement of the *Gas Supply Amendment (Ombudsman Scheme) Act 2009*:
  - (a) is taken, on that commencement, to extend to authorised reticulators (despite the requirements of section 33G (2) (a)), and
  - (b) so extends to disputes or complaints dealt with by the gas industry ombudsman on or after that commencement (whether or not relating to conduct that occurred before that commencement).
- (2) This clause does not prevent the Minister from approving any changes to the gas industry ombudsman scheme in connection with its extension to authorised reticulators.

## **Part 7 Provisions consequent on enactment of Energy Legislation Amendment (Infrastructure Protection) Act 2009**

### **24 Application of certain provisions**

- (1) In this clause, **amending Act** means the *Energy Legislation Amendment (Infrastructure Protection) Act 2009*.
- (2) Section 64B (1) (as inserted by the amending Act) applies to licences whether or not granted before, on or after the commencement of that subsection.
- (3) Section 64B (2) (as inserted by the amending Act) applies to authorisations whether or not granted before, on or after the commencement of that subsection.
- (4) A provision of section 64E or 66 (2)-(4) (as inserted by the amending Act) applies to



offences committed on or after the commencement of that provision.

- (5) Section 64F (as inserted by the amending Act) applies to acts or omissions done or made on or after the commencement of that section.

## Dictionary

(Section 4)

**authorisation** means a reticulator's authorisation.

**authorised reticulator** means a person who holds a reticulator's authorisation.

**autogas installation** means a system of pipes and associated equipment that forms part of a vehicle, vessel or machine and that is designed to convey liquefied petroleum gas or natural gas to an internal combustion engine that is installed in, or forms part of, the vehicle, vessel or machine.

**autogas work** means work involved in:

- (a) the installation, alteration, extension or repair of an autogas installation, or
- (b) the connection of a gas cylinder to, or the disconnection of a gas cylinder from, an autogas installation.

**basic metering equipment** means a gas meter and any equipment prescribed by the regulations for the purposes of this definition when used in conjunction with gas meters.

**consumer service** means any pipe or system of pipes used to convey or control gas, and any associated fittings and equipment, that are connected to a gas network upstream of the gas supply point, but does not include any part of a gas network.

**council** means the council of a local government area.

**Department** means the Department of Trade and Investment, Regional Infrastructure and Services.

**distribution district** means the district to which a network operator is restricted under the conditions of an authorisation or licence.

**distribution pipeline** means the gas pipes and associated equipment that are used to convey and control the conveyance of natural gas to the premises of customers, but does not include:

- (a) any pipeline in respect of which a licence is in force under the [Pipelines Act 1967](#) (other than a pipeline that the regulations declare to be, or to form part of, a distribution pipeline), or
- (b) any gas installation, or
- (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
- (d) any gas pipe or associated equipment that the regulations declare not to be, or not to form part of, a distribution pipeline.

**distribution system** means the gas pipes and associated equipment that are used to convey and

control the conveyance of gas (other than natural gas) to the premises of customers, but does not include:

- (a) any pipeline in respect of which a licence is in force under the *Pipelines Act 1967* (other than a pipeline that the regulations declare to be, or to form part of, a distribution system), or
- (b) any gas installation, or
- (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
- (d) any gas pipe or associated equipment that the regulations declare not to be, or not to form part of, a distribution system.

**distributor** means a person who supplies gas (other than natural gas) to other persons by means of a distribution system.

**distributor's licence** means a licence referred to in section 35.

**exercise** a function includes perform a duty.

**flue** means any system of pipes and associated fittings designed to convey exhaust gases away from a gas appliance.

**function** includes a power, authority or duty.

**gas** means:

- (a) natural gas, or
- (b) liquefied petroleum gas, or
- (c) any other substance that the regulations declare to be a gas for the purposes of this Act.

**gas appliance** means any gas burning or gas using appliance that is manufactured, adapted or designed for connection to a gas installation, whether by means of a gas outlet socket or otherwise, and includes any liquefied petroleum gas dispenser, catalytic burner or vaporiser, but does not include an internal combustion engine that is installed in, or forms part of, a vehicle, vessel or machine.

**gas container** includes a gas cylinder, a gas cartridge, a pressure vessel and a gas tank.

**gas installation** means:

- (a) any pipe or system of pipes used to convey or control gas, and any associated fittings and equipment, that are downstream of the gas supply point, but does not include anything beyond the gas installation end point, and

- (b) any flue that is downstream of the gas supply point,

but does not include an autogas installation.

**gas installation end point** means:

- (a) in the case of a gas installation to which gas is supplied from a gas network—the gas outlet socket,

or

- (b) in any other case—the control valve or other connection point of a gas appliance or of another gas container.

**gas network** means a distribution pipeline or a distribution system.

**gas pricing order** means a gas pricing order referred to in section 27 (1).

**gas supply point** means:

- (a) in the case of a gas installation to which gas is supplied from a gas network—the outlet of the gas meter at which the gas is supplied, or
- (b) in any other case—the control valve or other connection point of a gas container.

**gas works** means any gas pipes or associated equipment that form part of, or connect premises to, distribution pipeline or a distribution system.

**gasfitting work** means any work involved in:

- (a) the installation, alteration, extension or repair of a gas installation, or
- (b) the installation, alteration, extension, removal or repair of a flue, or
- (c) the connection of a gas installation to, or the disconnection of a gas installation from, a gas supply point, or
- (d) the connection of a gas appliance to, or the disconnection of a gas appliance from, a gas installation (otherwise than where the point of connection is a gas outlet socket), or
- (e) the connection of a gas container, gas regulator or gas appliance to, or the disconnection of a gas container, gas regulator or gas appliance from, a gas installation (otherwise than where it is designed to be readily detachable from the installation whether by the use of a tool, mechanical force or otherwise).

**inspector** means a government inspector or gas industry inspector appointed under section 77 (1) or (2).

**licence** means a distributor's licence.

**licensed distributor** means a person who holds a distributor's licence.

**liquefied petroleum gas** means a liquid or gaseous substance containing a mixture of hydrocarbons, basically consisting of butane or butene or propane or propene, or any mixture of them.

**natural gas** has the same meaning as it has in the [National Gas \(NSW\) Law](#).

**network operator** means a reticulator or a distributor.

**premises** includes any building or part of a building, any structure or part of a structure, any land (whether built on or not) and any river, lake or other waters.

**reticulator** means a person who owns or controls a distribution pipeline for natural gas.

**reticulator's authorisation** means an authorisation referred to in section 6.

**roads authority** has the same meaning as it has in the [Roads Act 1993](#).

**Tribunal** means the Independent Pricing and Regulatory Tribunal established under the [Independent Pricing and Regulatory Tribunal Act 1992](#).