

Gas Pipelines Access (New South Wales) Act 1998 No 41

[1998-41]



New South Wales

Status Information

Currency of version

Repealed version for 27 November 2003 to 30 June 2008 (accessed 23 November 2024 at 12:57)

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—

- **Does not include amendments by**
Sch 1.1 to this Act (not commenced)
- **Repeal**
The Act was repealed by sec 17 of the [National Gas \(New South Wales\) Act 2008 No 31](#) with effect from 1.7.2008.

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](#).

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New South Wales

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Gas Pipelines Access (New South Wales) Act 1998 No 41



New South Wales

An Act to make provision for the regulation of third party access to natural gas pipeline systems; and for other purposes.

Preamble

The Council of Australian Governments agreed, in February 1994, to general principles of competition policy reform to enable third parties, in particular circumstances, to gain access to essential facilities.

The Council of Australian Governments, as part of that commitment to reform, agreed to more specific proposals for the development of free and fair trade in natural gas.

The Commonwealth, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the Northern Territory and the Australian Capital Territory agreed in November 1997 to the enactment of legislation in the Commonwealth and those States and Territories so that a uniform national framework applies for third party access to all gas pipelines that:

- (a) facilitates the development and operation of a national market for natural gas, and
- (b) prevents abuse of monopoly power, and
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders, and
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines and persons wishing to use the services of those pipelines, and
- (e) provides for resolution of disputes.

The Legislature of New South Wales therefore enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Gas Pipelines Access (New South Wales) Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Gas Pipelines Access Law means:

(a) Schedule 1 to the South Australian Act:

(i) as enacted, or

(ii) if amended, as amended and in force for the time being, and

(b) the *National Third Party Access Code for Natural Gas Pipeline Systems* (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being.

Gas Pipelines Access (New South Wales) Law means the provisions applying because of section 7.

Gas Pipelines Access (New South Wales) Regulations means the provisions applying because of section 8.

South Australian Act means the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

(2) Words and expressions used in Schedule 1 to the South Australian Act, as applying because of section 7, and in this Act have the same respective meanings in this Act as they have in that Law as so applying.

Note—

The following words and expressions are used in both that Schedule and this Act, namely, **ACCC**, **adjacent area**, **asset**, **Australian Competition Tribunal**, **Code Registrar**, **Commonwealth Minister**, **distribution pipeline**, **Federal Court**, **gas pipelines access legislation**, **jurisdictional area**, **liabilities**, **natural gas**, **NCC**, **relevant appeals body**, **relevant Minister**, **relevant Regulator**, **scheme participant** and **transmission pipeline**.

(3) Subsection (2) does not apply to the extent that the context or subject-matter otherwise indicates or requires.

(4) The note to subclause (2) does not form part of this Act.

4 Crown to be bound

This Act, the *Gas Pipelines Access (New South Wales) Law* and the *Gas Pipelines Access (New South Wales) Regulations* bind the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5 Application to coastal waters

(1) This Act, the *Gas Pipelines Access (New South Wales) Law* and the *Gas Pipelines Access (New South Wales) Regulations* apply in the coastal waters of this State.

(2) In subsection (1), **coastal waters**, in relation to this State, means any sea that is on the landward side of the adjacent area of this State but is not within the limits of this State.

6 Extra-territorial operation

(1) It is the intention of Parliament that the operation of this Act, the *Gas Pipelines Access (New South Wales) Law* and the *Gas Pipelines Access (New South Wales) Regulations* should, as far as possible, include operation in relation to the following:

- (a) things situated in or outside this State,
- (b) acts, transactions and matters done, entered into or occurring in or outside this State,
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.

(2) Nothing in subsection (1) has effect in relation to a pipeline to the extent that the pipeline is situated, or partly situated, beyond the jurisdictional areas of all the scheme participants.

Part 2 Gas Pipelines Access (New South Wales) Law and Gas Pipelines Access (New South Wales) Regulations

7 Application in New South Wales of Gas Pipelines Access Law

The Gas Pipelines Access Law:

- (a) applies as a law of New South Wales, and
- (b) as so applying, may be referred to as the *Gas Pipelines Access (New South Wales) Law*.

8 Application in New South Wales of regulations under Gas Pipelines Access Law

The regulations in force for the time being under Part 3 of the South Australian Act:

- (a) apply as regulations in force for the purposes of the *Gas Pipelines Access (New South Wales) Law*, and
- (b) as so applying, may be referred to as the *Gas Pipelines Access (New South Wales) Regulations*.

9 Interpretation of some expressions in Gas Pipelines Access (New South Wales) Law and Gas Pipelines Access (New South Wales) Regulations

- (1) In the *Gas Pipelines Access (New South Wales) Law* and the *Gas Pipelines Access (New South Wales) Regulations*:

Code means the *National Third Party Access Code for Natural Gas Pipeline Systems* (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being, as it applies because of section 7 of this Act as a law of New South Wales.

the Court means the Supreme Court.

designated appeals body means the Australian Competition Tribunal.

designated Minister means the Commonwealth Minister.

Gas Pipelines Access Law or **this Law** means the *Gas Pipelines Access (New South Wales) Law*.

Legislature means the Legislature of New South Wales.

local appeals body means the Australian Competition Tribunal.

local Minister means the Minister responsible for the administration of this Act.

local Regulator means the Independent Pricing and Regulatory Tribunal.

this scheme participant means the State of New South Wales.

Supreme Court means the Supreme Court of New South Wales.

- (2) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to:
 - (a) the Gas Pipelines Access Law in its application as a law of New South Wales, or
 - (b) the regulations in force for the time being under Part 3 of the South Australian Act in their application as regulations in force for the purposes of the *Gas Pipelines*

Access (New South Wales) Law.

Part 3 National administration and enforcement

Division 1 Conferral of functions and powers

10 Conferral of functions on Commonwealth Minister and Commonwealth bodies

- (1) The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have the functions and powers conferred or expressed to be conferred on them respectively under the *Gas Pipelines Access (New South Wales) Law*.
- (2) In addition to the powers mentioned in subsection (1), the Commonwealth Minister and the bodies referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

11 Conferral of power on Commonwealth Minister and Commonwealth bodies to do acts in this State

The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of another scheme participant.

12 Conferral of power on Ministers, Regulators and appeals bodies of other scheme participants to do acts in this State

The local Minister, local Regulator and local appeals body within the meaning of the gas pipelines access legislation of another scheme participant have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of that other scheme participant.

13 Conferral of functions on Code Registrar

- (1) The Code Registrar:
 - (a) has the functions and powers conferred or expressed to be conferred on the Code Registrar under the *Gas Pipelines Access (New South Wales) Law* or under the National Gas Agreement, and
 - (b) has any other functions and powers conferred on the Code Registrar by unanimous resolution of the relevant Ministers of the scheme participants.
- (2) In addition to the powers mentioned in subsection (1), the Code Registrar has power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

- (3) The Code Registrar may delegate to any person any of the functions and powers conferred on the Code Registrar by this section, other than this power of delegation.

14 Functions and powers conferred by other scheme participants on local Minister, local Regulator and local appeals body

If the gas pipelines access legislation of another scheme participant confers a function or power on the local Minister, local Regulator or local appeals body within the meaning of the *Gas Pipelines Access (New South Wales) Law*, the local Minister, local Regulator or local appeals body:

- (a) may perform that function or exercise that power, and
- (b) may do all things necessary or convenient to be done in connection with the performance or exercise of that function or power.

15 Functions of IPART in its capacity as local Regulator

In its capacity as the local Regulator within the meaning of the *Gas Pipelines Access (New South Wales) Law*, the Independent Pricing and Regulatory Tribunal:

- (c) may perform and exercise only such functions and powers as are conferred on it by that Law or by the gas pipelines access legislation of another scheme participant, and
- (d) is not subject to the control or direction of the Minister administering the *Independent Pricing and Regulatory Tribunal Act 1992* in the performance or exercise of any such function or power.

Divisions 2, 3

16-19 (Repealed)

Part 4 Miscellaneous

20 Exemption from taxes

- (1) Any stamp duty or other tax imposed by or under a law of this State is not payable in relation to:
- (a) an exempt matter, or
- (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, an exempt matter.
- (2) In this section, **exempt matter** means a transfer of assets or liabilities that the Minister and the Treasurer are satisfied is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of the Code or for the purpose of the separation of certain activities from other

activities of a person as required by the Code, and for no other purpose.

21 Actions in relation to cross-boundary pipelines

(1) If a pipeline is a cross-boundary pipeline, any action taken under the gas pipelines access legislation of a scheme participant in whose jurisdictional area a part of the pipeline is situated:

- (a) by, or in relation to, a relevant Minister, or a relevant Regulator, within the meaning of that legislation, or
- (b) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that legislation, or
- (c) by the Supreme Court, or the relevant appeals body, within the meaning of that legislation, in relation to the action taken by, or in relation to, a person or body referred to in paragraph (a) or (b),

is taken also to be action taken under the gas pipelines access legislation of each other scheme participant in whose jurisdictional area a part of the pipeline is situated (**that other legislation**):

- (d) by, or in relation to, a relevant Minister, or relevant Regulator, within the meaning of that other legislation, or
- (e) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that other legislation, or
- (f) by the Supreme Court, or relevant appeals body, within the meaning of that other legislation,

as the case requires.

(1A) Despite subsection (1), the Supreme Court does not have jurisdiction to make a declaration or order about the validity, or affecting the operation, of a decision of a relevant Minister, relevant Regulator or arbitrator in relation to a cross-boundary distribution pipeline unless this State has been determined to be the scheme participant most closely connected to the pipeline.

(2) In this section, **cross-boundary pipeline** means a transmission pipeline, or a distribution pipeline, that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants.

(3) A reference in this section to an action that is taken includes a reference to a decision that is made.

22 Amendment of other Acts and instruments

Each Act and instrument referred to in Schedule 1 is amended as set out in that Schedule.

23 Savings, transitional and other provisions

Schedule 2 has effect.

24 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 this Act.
- (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 Amendment of other Acts and instruments

(Section 22)

1.1 Gas Pipelines Access (New South Wales) Act 1998

[1] Section 9 Interpretation of some expressions in Gas Pipelines Access (New South Wales) Law and Gas Pipelines Access (New South Wales) Regulations

Omit the definitions of *local Minister* and *local Regulator* from section 9 (1).

Insert instead:

local Minister means:

- (a) in relation to a distribution pipeline, the Commonwealth Minister, and
- (b) in relation to any other matter, the Minister responsible for the administration of this Act.

local Regulator means the ACCC.

[2] Section 15 Functions of IPART in its capacity as local Regulator

Omit the section.

1.2-1.6

(Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 23)

Part 1 Preliminary

1 Savings and transitional regulations

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

 this Act

- (2) If the regulations so provide, they have effect despite any provision of the *Gas Pipelines Access (New South Wales) Law* or the *Gas Pipelines Access (New South Wales) Regulations*.
- (3) A provision of a regulation made under this clause may, if the regulation so provides, take effect from the date of assent to this Act or from a later day.
- (4) To the extent to which a provision takes effect from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by:
- (a) decreasing the person's rights, or
 - (b) imposing liabilities on the person.

Part 2 Provisions consequent on enactment or commencement of [Gas Pipelines Access \(New South Wales\) Act 1998](#)

2 Definitions

In this Part:

the new Access Code means the *National Third Party Access Code for Natural Gas Pipeline Systems* (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being, as it applies because of section 7 of this Act as a law of New South Wales.

the old Access Code means the Access Code under the [Gas Supply Act 1996](#), as in force immediately before the commencement of this clause.

3 Access undertakings

- (1) An access undertaking for which an application for approval had been made, but not determined, before the repeal of section 20 of the [Gas Supply Act 1996](#) is taken to be

an access arrangement for which an application for approval has been made under the new Access Code.

(2) An application for approval of an access undertaking referred to in subclause (1) (the **original application**) is taken to be an application for approval of an access arrangement (the **corresponding application**) and anything done in connection with the original application is taken to have been done for the purposes of the corresponding application.

(3) Each of the following:

- (a) an access undertaking in force under section 20 of the *Gas Supply Act 1996*, as in force immediately before its repeal by this Act,
- (b) an access undertaking arising from an application for a review that is dealt with as referred to in clause 6,
- (c) an access order in force under section 21 of that Act, as in force immediately before its repeal by this Act,
- (d) an access order arising from an application for a review that is dealt with as referred to in clause 6,

is taken to be an access arrangement in force under the new Access Code and has effect accordingly.

- (4) An access undertaking or access order that is taken to be an access arrangement in force under the new Access Code, as referred to in subclause (3):
- (a) is subject to sections 3 and 8 of the old Access Code (but, subject to subclause (5), is not subject to any of the other provisions of the old Access Code), and
 - (b) is not subject to section 3 or 8 of the new Access Code (but is subject to all of the other provisions of the new Access Code),

until its first review is completed under section 2 of the new Access Code.

(5) The provisions of sections 9.1, 9.2, 9.3, 9.4, 9.5 and 9.6 of the old Access Code apply to:

- (a) an access undertaking the subject of an application referred to in subclause (1), and
- (b) an access undertaking or access order that is taken to be an access arrangement in force under the new Access Code, as referred to in subclause (3).

(6) A reference in any of those sections to any other section of the old Access Code (other than a reference to section 9.1 or 9.5) is taken to be a reference to the equivalent provision (if any) of the new Access Code.

- (7) Unless it sooner ceases to have effect, any transitional component of the kind referred to in section 9.1 or 9.3 of the old Access Code ceases to have effect on 1 July 2002.

4 Access determinations

- (1) Section 23 of the *Gas Supply Act 1996*, as in force immediately before its repeal by this Act, continues to apply to any dispute referred to arbitration under that section before that repeal as if it had not been repealed.
- (2) Each of the following:
- (a) an access determination in force under section 23 of the *Gas Supply Act 1996*, as in force immediately before its repeal by this Act,
 - (b) an access determination arising from a dispute to which that section applies as referred to in subclause (1),
 - (c) an access determination arising from an application for a review that is dealt with as referred to in clause 6,

is taken to be an arbitrator's determination under Part 4 of the *Gas Pipelines Access (New South Wales) Law* and has effect accordingly.

5 Transactions between associated parties

- (1) Section 24 of the *Gas Supply Act 1996*, as in force immediately before its repeal by this Act, continues to apply to any access agreement the subject of an application for the Tribunal's approval under that section before that repeal as if it had not been repealed.
- (2) Each of the following:
- (a) an access agreement the subject of an approval in force under section 24 of the *Gas Supply Act 1996*, as in force immediately before its repeal by this Act,
 - (b) an access agreement approved under that section as referred to in subclause (1),
 - (c) an access agreement the subject of an approval arising from an application for a review that is dealt with as referred to in clause 6,

is taken to be an Associate Contract approved by the relevant Regulator under section 7.1 of the new Access Code.

6 Review of decisions

Sections 26, 29 and 30 of the *Gas Supply Act 1996*, as in force immediately before the repeal by this Act of section 26 of that Act, continue to apply to any application for review that was made under section 26 of that Act before its repeal as if it had not been repealed.

7 Certain pipelines remain distribution pipelines

- (1) Despite any provision of the new Access Code, each of the following pipelines is taken to be a distribution pipeline for the purposes of the *Gas Pipelines Access (New South Wales) Law*:
 - (a) the pipeline from Wilton to Horsley Park (Pipeline Licence No 1),
 - (b) the pipeline from Wilton to Wollongong (Pipeline Licence No 2),
 - (c) the pipeline from Horsley Park to Plumpton (Pipeline Licence No 3),
 - (d) the pipeline from Plumpton to Killingworth (Pipeline Licence No 7),
 - (e) the pipeline from Killingworth to Walsh Point (Pipeline Licence No 8).
- (2) Subclause (1) ceases to apply to a pipeline referred to in that subclause:
 - (a) on such date as may be prescribed by the regulations in respect of that pipeline, being a date occurring before, on or after 1 July 2002, or
 - (b) if no such date is prescribed on or before 1 July 2002, on 1 July 2002.

8 Certain persons not users or prospective users until 1 July 1999

- (1) A person who:
 - (a) but for the repeal by this Act of the definition of **system user** in the Dictionary to the *Gas Supply Act 1996*, and
 - (b) but for the repeal by this Act of the regulations under that Act with respect to that definition,would not have been a system user within the meaning of that definition during the period between the repeal of that definition and 1 July 1999 is taken not to be a user or prospective user within the meaning of the new Access Code.
- (2) This clause ceases to have effect on 1 July 1999.
- (3) In the event of any inconsistency between this clause and the regulations, the regulations prevail to the extent of the inconsistency.

9 Exemption from stamp duty for ongoing ringfencing transactions

- (1) A transfer of assets or liabilities that the Minister and the Treasurer are satisfied has been or is to be made for the purpose of complying with the requirements of:
 - (a) the conditions of an authorisation under the *Gas Supply Act 1996*, or
 - (b) the regulations under section 16 of the *Gas Supply Act 1996*, or

(c) the old Access Code,

is taken to be an exempt matter for the purposes of section 20 of this Act.

(2) Section 20 extends to any such transfer that occurred before the commencement of this clause.