

Gas Supply (Natural Gas Retail) Regulation 2001

[2001-1013]



New South Wales

Status Information

Currency of version

Repealed version for 1 July 2013 to 31 August 2014 (accessed 19 December 2024 at 21:22)

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Gas Supply (Natural Gas Retail Competition) Regulation 2001
- **Repeal**
The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2014.

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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Gas Supply (Natural Gas Retail) Regulation 2001



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Gas Supply (Natural Gas Retail) Regulation 2001*.

2 Commencement

This Regulation commences on 1 January 2002.

3 Definitions

In this Regulation:

delivery point means the point on a natural gas distribution system at which gas is withdrawn from the system for delivery to a customer, being:

- (a) the inlet at a gas installation at a customer's premises, or
- (b) the outlet of basic metering equipment at a customer's premises.

Delivery Point Identifier means the numeric name of the delivery point.

Director-General means the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services.

gas means natural gas.

market operations rule means a rule approved under section 33K of the Act.

natural gas distribution system means the gas pipes and associated equipment that are used to convey and control the conveyance of gas to the premises of customers.

recognised code or **recognised document** means a code or document approved in writing by the Director-General, notice of which has been given in a newspaper circulating throughout the State.

review panel means a review panel established under section 29 of the Act.

the Act means the *Gas Supply Act 1996*.

4 Notes

The notes in this Regulation do not form part of the Regulation.

Part 2 Review of Tribunal decisions

5 Applications for review: section 28

- (1) An application to the Minister for a review of a decision or a gas pricing order of the Independent Pricing and Regulatory Tribunal:
 - (a) must be in writing, and
 - (b) must state the basis of the application, and
 - (c) must be accompanied by a fee determined by the Minister.
- (2) The Minister must give notice of the application, and of the proposed review:
 - (a) in a daily newspaper circulating throughout New South Wales, or
 - (b) in such other manner as the Minister considers appropriate.

6 Qualifications of members of review panels: section 29

- (1) A person is not to be appointed to be a member or a deputy of a member of a review panel unless, in the opinion of the Minister, the person has appropriate qualifications or experience having regard to the matter to be investigated by the panel.
- (2) A person is not to be appointed to a review panel if the person:
 - (a) is an employee or an associate of the holder of the authorisation with which the review panel's investigation will be concerned, or
 - (b) has a direct or indirect pecuniary interest in a matter with which the review panel's investigation will be concerned, other than such an interest that the person has merely as a result of being a gas user.

7 Appointment of deputies of members of review panels

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member of a review panel.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and

(b) while so acting, has all the functions of the member and is to be taken to be a member.

- (3) The deputy of the member who is chairperson of the review panel has the functions of the chairperson while acting in the place of the chairperson.
- (4) No act, determination or proceeding of a review panel is invalid merely because at the time of the act, determination or proceeding there is a vacancy in the office of a member of the panel.

8 Allowances for members of review panels

A member or deputy of a member of a review panel is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member or deputy.

9 General procedure of review panels

The procedure for:

- (a) the calling of and the conduct of business at meetings of a review panel, and
- (b) the conduct of investigations by a review panel,

is, subject to the Act and this Regulation, to be as determined by the panel.

10 Quorum

The quorum for a meeting of a review panel is 2 members.

11 Presiding member

- (1) The chairperson of a review panel (or, in the absence of the chairperson, another member elected to chair the meeting by the members present) is to preside at a meeting of the panel.
- (2) The person presiding at a meeting of a review panel has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of a review panel at which a quorum is present is the decision of the panel.

13 Determination and payment of costs

- (1) The costs of and incidental to proceedings before a review panel are, subject to the Act and this Regulation, to be as determined by the panel.
- (2) The costs may include any allowances payable to the members of the panel.
- (3) The liability for the payment of the costs is to be as determined by the Minister on the

recommendation of the panel.

- (4) The costs may be recovered by or on behalf of the Minister in a court of competent jurisdiction as a debt due to the Crown.

Part 3 Social programs for energy

14 Objects of Part

The objects of this Part are:

- (a) to facilitate the delivery by retailers, distributors, reticulators and exempt persons of aspects of the Government's social programs for energy, and
- (b) to provide a mechanism by which the nature and extent of obligations under those programs and the ascertainment of how much retailers, distributors, reticulators and exempt persons are to be paid for meeting those obligations, are to be established.

15 Social Programs for Energy Codes

- (1) The Minister may, with the concurrence of the Treasurer, prepare and adopt a Social Programs For Energy Code for the purpose of facilitating the delivery of any aspect of the Government's social programs for gas.
- (2) A Code may require a distributor, reticulator or retailer, or an exempt seller or other person exempted from the application of the *National Energy Retail Law (NSW)* (**exempt persons**), to take such action as the Minister thinks appropriate for that purpose.
- (3) The Minister may adopt or amend a Code by publishing it in the Gazette. A Code or an amendment takes effect on the day it is so published or on such later day as is specified in the Code.
- (4) Before adopting or amending a Code, the Minister must consult with the distributors, reticulators, retailers or exempt persons proposed to be made subject to the Code.
- (5) The Minister may revoke a Code by publishing a notice of revocation in the Gazette. A revocation takes effect on the day the notice is published in the Gazette or on such later day as is specified in the notice.
- (6) Any consultation undertaken by the Minister before the commencement of this clause, in respect of a Code adopted after the commencement of this clause, is taken to be consultation for the purposes of subclause (4) in respect of that Code.

16 Code requirements and compliance

- (1) A Social Programs for Energy Code:
 - (a) may specify that particular services of distributors, retailers, reticulators or

exempt persons are to be provided to particular classes of persons free of charge, at specified charges or subject to specified discounts or rebates, and

- (b) may require specified classes of customers to be supplied with gas at discounted charges or to be given rebates on the charges paid by them for the supply of gas, and
 - (c) may require a retailer or exempt person to establish and maintain facilities to ensure that Government payments that are provided to finance the supply of gas at discounted charges are applied in accordance with the Code, and
 - (d) may require a retailer or exempt person to establish and maintain trust accounts in which Government payments that are provided to finance the supply of gas at discounted charges are to be held pending their application in accordance with the Code, and
 - (e) may require a distributor, reticulator, retailer or exempt person to furnish the Minister with periodic reports as to compliance with the Code, and
 - (f) may require a distributor, reticulator, retailer or exempt person to establish and maintain accounting procedures to enable such reports to be prepared, and
 - (g) must specify the amount or a methodology by which the amount may be assessed by the Minister as the estimated cost to a distributor, reticulator, retailer or exempt person of efficiently complying with the Code, and
 - (h) must specify arrangements for the payment to the distributor, reticulator, retailer or exempt person of an amount equivalent to the estimated efficient costs assessed by the Minister, as referred to in paragraph (g), or, if the distributor, reticulator, retailer or exempt person disputes that assessment, the costs assessed on a re-assessment under this Part.
- (2) If a Code adopted under this Part applies to a distributor or a reticulator, it is a condition of the distributor's licence or the reticulator's authorisation that the distributor or reticulator must take the action required by the Code in accordance with the Code.
- (3) A distributor, reticulator, retailer or exempt person must not fail to comply with a Social Programs for Energy Code that is applicable to the distributor, reticulator, retailer or exempt person.

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

17 Re-assessment of costs of compliance with direction

- (1) Any dispute between a distributor, reticulator, retailer or exempt person and the

Minister as to the cost of a Social Programs for Energy Code is to be referred to a committee constituted by one or more assessors.

- (2) The assessor or assessors to constitute such a committee are to be suitably qualified persons appointed by agreement between the distributor, reticulator, retailer or exempt person and the sponsoring Minister or, if no such agreement can be reached:
 - (a) by the Minister administering the Act, or
 - (b) if the Minister administering the Act is the sponsoring Minister, by the Premier.
- (3) In determining a dispute that has been referred to it under this clause, a committee:
 - (a) must consider any representations made by the parties to the dispute, and
 - (b) must determine, on the basis of those representations and any other information available to it, the amount or a methodology by which the amount may be assessed as the efficient cost to the distributor, reticulator, retailer or exempt person of complying with the direction to which the dispute relates.
- (4) A committee may conduct proceedings under this clause in the manner it considers appropriate.
- (5) The committee's decision on a dispute binds the parties to the dispute, but does not prevent the direction to which it relates from being withdrawn.
- (6) The committee's decision as to the efficient costs is taken to be the amount of or the methodology for assessing costs for the purposes of the Minister's direction and the direction is accordingly varied from the date specified in the decision.
- (7) A committee may determine 2 or more disputes in the same proceedings if it considers that it is appropriate to do so.

18 Costs of proceedings

- (1) The costs of any proceedings under clause 17, including the costs of the committee, are to be borne by the parties in equal proportions unless the committee determines otherwise.
- (2) The committee may determine the proportion of the costs to be borne by each of the parties, having regard to the merits of the case, and, in that event, the costs are to be borne by the parties according to the committee's determination.

19 Enforceable undertakings

- (1) The Minister may accept a written undertaking given by a distributor, reticulator, retailer or exempt person in connection with compliance with a Social Programs for Energy Code.

- (2) The distributor, reticulator, retailer or exempt person may, with the consent of the Minister, withdraw or vary the undertaking at any time.
- (3) If the Minister considers that a distributor, reticulator, retailer or exempt person that gave the undertaking has breached any of its terms, the Minister may apply to the Local Court for an order under this clause.
- (4) If the Local Court is satisfied that the distributor, reticulator, retailer or exempt person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the distributor, reticulator, retailer or exempt person to comply with the undertaking,
 - (b) an order directing the distributor, reticulator, retailer or exempt person to pay to the State an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
 - (d) any other order that the Court considers appropriate.

20 Auditing of Code compliance

- (1) The Minister may at any time conduct or require an audit to be conducted to determine whether a retailer has complied with a Social Programs for Energy Code.
- (2) The Minister may require the audit to be conducted by:
 - (a) a person nominated by the Minister, or
 - (b) a person chosen by the retailer from a panel of persons nominated by the Minister, or
 - (c) a person nominated by the retailer and approved by the Minister.
- (3) The reasonable costs of an audit of a retailer under this clause are payable by the retailer.
- (4) A person must not impersonate an auditor who is required to carry out an audit under this clause.

Maximum penalty: 250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

Part 4 Miscellaneous

21 Distributor service standard—post-disconnection notices

(1) The requirements set out in this clause are distributor service standards.

Note—

The requirements of this clause are enforceable under the *National Energy Retail Rules*.

(2) A distributor must issue a notice to a small customer when the distributor de-energises the customer's premises at the request of a retailer on a ground permitted under the *National Energy Retail Rules*.

(3) The notice must be in writing and contain the following information:

- (a) the matter for which premises were de-energised,
- (b) details of the telephone number of a contact person for the retailer,
- (c) the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer,
- (d) the dispute resolution procedures available to the small customer, including contact details for the Energy Ombudsman.

22 Liability of scheme operator under market operations rules

For the purposes of section 33LA (3) of the Act:

(a) the maximum amount payable by the scheme operator is as follows:

- (i) \$50,000 to any person for any particular negligent act or omission,
- (ii) \$500,000 in total for all negligent acts or omissions occurring in any calendar year, and

(b) the maximum amount payable by an officer or employee of the scheme operator is nil.

23 How notice is to be given

(1) A requirement of this Regulation that a person be given written notice is a requirement that the person be given notice in writing either personally or by post.

(2) If previously agreed between the parties, a person may be given written notice by personal e-mail or facsimile transmission.

(3) For the purposes of section 76 of the *Interpretation Act 1987*, a notice served by post on a person for the purposes of this Regulation is to be treated as being properly addressed if it is addressed to the address of the person last known to the person giving the notice.

24 Service of documents on retailer

For the purposes of this Regulation, a document may be given to or served on a retailer by leaving it at or sending it by post to any office of the retailer. This clause does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a retailer in a different manner.

25 Delegations

The Director-General may delegate to any person the exercise of all or any of the Director-General's functions under this Regulation or any other regulation under the Act, other than this power of delegation.

Schedule 1 (Repealed)