



New South Wales

# Gas Supply Act 1996 No 38

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The dictionary defines the following words and expressions

access agreement	gas appliance
Access Code	gas installation
access determination	gas pricing order
access order	gas works
access undertaking	gasfitting work
associated system user	inspector
authorisation	licence
authorised reticulator	licensed distributor
authorised supplier	liquefied petroleum gas
council	natural gas
declared distribution system	network operator
Department	premises
Director-General	reticulator
distribution district	reticulator's authorisation
distribution system	roads authority
distributor	supplier
distributor's licence	supplier's authorisation
exercise	system user
function	tariff customer
gas	Tribunal



New South Wales

## **Gas Supply Act 1996 No 38**

Act No 38, 1996

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An Act to regulate the supply of gas; and for other purposes. [Assented to 25 June 1996]

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**The Legislature of New South Wales enacts:**

## **Part 1        Preliminary**

### **1    Name of Act**

This Act is the *Gas Supply Act 1996*

### **2    Commencement**

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

### **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 facilitate open access to gas reticulation systems and promote customer choice in relation to gas supply,
  - (c) to provide for the adoption of an access code in accordance with which the reticulation and supply of natural gas are to be regulated.
- (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 persons involved in the reticulation of gas (authorised reticulators and licensed distributors), 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) to consider the development of efficient and safe gas distribution systems,
  - (d) to promote the efficient and safe operation of gas distribution systems,
  - (e) to take proper account of the interests of gas users in respect of transportation tariffs and other terms of service.
- (4) In relation to persons involved in the supply of gas (authorised suppliers and licensed distributors), the duties are as follows:
- (a) to ensure that the public receives the benefit of a competitive gas market,
  - (b) to take proper account of the interests of tariff customers in respect of gas pricing and other terms of gas supply,
  - (c) to take proper account of the business interests of persons supplying gas to the tariff market,
  - (d) to encourage the development of competitive gas supply in the non-tariff market, with a focus on free and fair trade.
- (5) In relation to gas users, the duties are to promote the efficient and safe use of gas.
- (6) In relation to both persons involved in the reticulation of natural gas (authorised reticulators) and persons seeking third party access rights to gas distribution systems (system users), the duties are to ensure that those rights are given effect to in accordance with the access code adopted by this Act.
- (7) Nothing in subsections (2)–(6) gives rise to, or can be taken into account in, any civil cause of action.

#### **4 Definitions**

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.

## Part 2 Natural gas

### Division 1 Authorisations

#### 5 Prohibition of unauthorised gas reticulation and gas supply

- (1) A person must not:
- (a) operate a distribution system for the purpose of conveying natural gas to any other person, or
  - (b) supply natural gas to any other person by means of a distribution system,

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 system 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 system.
- (3) A person does not supply natural gas to another person merely because the person operates a distribution system for the purpose of conveying natural gas to that other person.

#### 6 Authorisations

Subject to any conditions imposed by or under this Act:

- (a) a *reticulator's authorisation* authorises its holder, and any other person specified in the authorisation, to operate the distribution system so specified for the purpose of conveying natural gas to other persons, and
- (b) a *supplier's authorisation* authorises its holder, and any other person specified in the authorisation, to supply natural gas to other persons by means of a distribution system.

#### 7 Applications

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 head office of the Department.

## **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 or authorised supplier, as the case may be,
  - (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:
    - (i) the district within which those functions may be exercised, and
    - (ii) the implementation of Government policy on community service obligations to tariff customers,

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- (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 or authorised supplier, as the case may be,
  - (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:
- (a) the terms on which an authorised reticulator grants access to its distribution systems, or
  - (b) the price at which an authorised supplier supplies natural gas to its customers.
- (4) The Minister may not impose a condition on an authorisation 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 authorisation with respect to the costs incurred by the holder in complying with the requirements of the condition.

## **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.

## **13 Enforcement of authorisations**

- (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.

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

- (1) The Minister must not take action under section 11, 12 or 13 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 has given due consideration to any such submissions.
- (2) In addition, the Minister must not take action under section 13 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 during that year 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.

#### **16 Separation of gas reticulation and gas supply functions**

- (1) The regulations may do any one or more of the following:
  - (a) they may require persons who hold both authorised reticulators' and authorised suppliers' authorisations to keep their affairs in relation to the operation of distribution systems separate (in such manner and to such extent as may be required by the Access Code) from their affairs in relation to the supply of natural gas,

- (b) they may prohibit a person who holds one kind of authorisation from holding another kind of authorisation or from being associated (in such manner or to such extent as may be required by the Access Code) with any other person holding another kind of authorisation,
  - (c) they may prohibit an authorised reticulator, or an authorised supplier that supplies natural gas to tariff customers, from engaging in any specified outside activity, in all outside activities or in all outside activities other than specified outside activities (but only if the Access Code so requires).
- (2) It is a condition of an authorisation that the authorised reticulator or authorised supplier, as the case may be, must comply with the requirements of any such regulation.
- (3) The regulations under this section may not themselves require an authorised reticulator or authorised supplier to divest itself of any assets, but this does not prevent the regulations from imposing a requirement that can only be complied with if assets used for the purpose of gas reticulation are separately owned from assets used for the purpose of gas supply.
- (4) In this section, *outside activity* means any business activity other than that of a reticulator or supplier.

## **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.

## **18 Register of authorisations**

- (1) The Minister is to cause a register of authorisations to be kept at the head office of the Department.
- (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 Third party access**

### **19 Declared distribution systems**

- (1) The Minister may, by order published in the Gazette, declare any distribution system for natural gas to be a distribution system to which this Division applies (a *declared distribution system*).

- (2) Such an order is not to be made unless any relevant requirements of the Access Code have been complied with.
- (3) 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.

## **20 Access undertakings**

- (1) For each of a reticulator's declared distribution systems, the reticulator must, within 3 months after the date on which the system becomes a declared distribution system, establish an undertaking (an *access undertaking*) with respect to the use of that system by system users.
- (2) The Tribunal may, by order, extend the time by which an access undertaking must be established.
- (3) An access undertaking is not established until it is approved by the Tribunal.
- (4) Subject to any exemption under subsection (5), the Tribunal must not approve an access undertaking unless it is satisfied that the undertaking complies with the Access Code.
- (5) The Tribunal may, by order in writing, exempt an authorised reticulator from:
  - (a) the obligation imposed by subsection (1), or
  - (b) any specified requirement of the Access Code,but only on the grounds specified in the Access Code.
- (6) An exemption under subsection (5) may be given unconditionally or subject to specified conditions.
- (7) If the Tribunal refuses to approve an access undertaking, it must cause notice to be given to the reticulator of the reasons for its refusal.

- (8) An access undertaking has effect for the period ending on the date specified in the undertaking in that regard, and may only be varied during that period:
- (a) with the consent of the Tribunal and the reticulator that owns or operates the distribution system concerned, and
  - (b) in accordance with the Access Code.
- (9) An access undertaking that concerns a distribution system situated partly in New South Wales and partly in some other State or Territory may be expressed to apply to any part of the system situated in the other State or Territory.
- (10) An undertaking under a law of another State or Territory, being an undertaking:
- (a) that is recognised by the regulations as being the equivalent of an access undertaking established under this section, and
  - (b) that concerns a distribution system situated partly in New South Wales and partly in some other State or Territory, and
  - (c) that is expressed to apply to a part of the system situated in New South Wales,
- has effect in relation to the part of the system situated in New South Wales as if it were an access undertaking established under this section.
- (11) Contravention of the obligation imposed by subsection (1) does not constitute an offence against this Act or grounds for the taking of action under section 13, but merely grounds for the making of an access order under section 21.

## 21 Access orders

- (1) This section applies to a declared distribution system if an access undertaking is not established for the system within the time required under section 20.
- (2) Pending the establishment of an access undertaking for a declared distribution system, the Tribunal may make an order (an *access order*) establishing the access conditions that are to apply to any access agreements entered into with respect to the system.

- (3) Subject to any exemption under section 20 (5), an access order must comply with the Access Code.
- (4) An access order for a declared distribution system has the same effect as an access undertaking, but ceases to have effect as soon as an access undertaking is established for the system.

## **22 Right of access**

- (1) The Minister may, by order published in the Gazette, fix a date (the *access date*) on which system users become entitled to be granted access to a declared distribution system.
- (2) Such an order may not be made before an access undertaking has been established for the distribution system under section 20 or an access order has been made in relation to the system under section 21.
- (3) On and from the access date for a declared distribution system, any system user is entitled to be granted access to the system.
- (4) The terms on which access is granted are to be set out:
  - (a) in an agreement between the system user and the authorised reticulator (an *access agreement*), or
  - (b) if no such agreement can be reached, in an access determination under section 23.
- (5) It is a condition of a reticulator's authorisation that any access agreement entered into by the reticulator must, subject to any exemption under section 20 (5), comply with:
  - (a) the Access Code, and
  - (b) the access undertaking or access order that applies to the distribution system concerned.

## **23 Arbitration of disputes as to terms of access**

- (1) If a dispute exists between an authorised reticulator and a system user:

- 
- (a) as to the terms on which the system user is to be granted access to a declared distribution system, or
  - (b) as to any matter arising under an access determination under this section,

either party to the dispute may refer the dispute to arbitration.

- (2) The *Commercial Arbitration Act 1984* applies to an arbitration under this section, but subject to this section and the regulations.
- (3) Sections 24B–24E of the *Independent Pricing and Regulatory Tribunal Act 1992* apply to an arbitration under this section in the same way as they apply to an arbitration under section 24A of that Act, and so apply as if
  - (a) a reference in those sections to a government agency were a reference to an authorised reticulator, and
  - (b) a reference in those sections to a service were a reference to a distribution system, and
  - (c) the words “from a panel approved by the Minister” were omitted from section 24B (1) of that Act, and
  - (d) sections 24B (2) and (3) and 24C (2) of that Act were omitted.
- (4) The arbitrator must determine the dispute:
  - (a) in accordance with, and so as to give effect to, the requirements of the Access Code, and
  - (b) in accordance with the access undertaking or access order for the distribution system to which the dispute relates,but, if the access undertaking or access order is or becomes the subject of an application for review under section 26, must defer making a determination until the decision on the review takes effect.
- (5) The arbitrator’s determination of the dispute (an *access determination*) has effect according to its terms.
- (6) An access determination that concerns a distribution system situated partly in New South Wales and partly in some other State or Territory may, if the parties to the dispute agree, be expressed to apply to any part of the system situated in the other State or Territory.

- (7) A determination under a law of another State or Territory, being a determination:
- (a) that is recognised by the regulations as being the equivalent of an access determination under this section, and
  - (b) that concerns a distribution system situated partly in New South Wales and partly in some other State or Territory, and
  - (c) that, with the agreement of the parties, is expressed to apply to a part of the system situated in New South Wales,
- has effect in relation to the part of the system situated in New South Wales as if it were an access determination under this section.

#### **24 Transactions between associated parties**

- (1) If the Tribunal considers that a reticulator is associated (whether through ownership or control or otherwise) with a system user, the Tribunal may, by order in writing served on the reticulator, make a determination that the system user is an *associated system user* with respect to the reticulator.
- (2) It is a condition of a reticulator's authorisation that the reticulator must not enter into an access agreement with an associated system user unless the access agreement has been approved by the Tribunal.
- (3) Subject to any exemption under section 20 (5), the Tribunal must not approve an access agreement unless it is satisfied that the agreement complies with:
  - (a) the Access Code, and
  - (b) the access undertaking or access order that applies to the distribution system concerned.
- (4) If the Tribunal refuses to approve an access agreement, it must cause notice to be given to the reticulator of the reasons for its refusal.

**25 Registration of access agreements**

- (1) An authorised reticulator that enters into an access agreement must provide the Tribunal with a copy of the agreement within 14 days after the agreement is entered into.
- (2) The reticulator must also provide the Tribunal with such information with respect to the agreement as the Tribunal requires.
- (3) It is a condition of a reticulator's authorisation that the reticulator must comply with the requirements of subsections (1) and (2), but a failure to comply with those requirements does not affect the validity of any access agreement.
- (4) The Tribunal must maintain a register in which the following details are entered in relation to each access agreement that is provided to it under this section:
  - (a) the parties to the agreement,
  - (b) the date on which the agreement was entered into,
  - (c) the duration of the agreement,
  - (d) the distribution system to which the agreement relates,
  - (e) such other information with respect to the agreement as the Tribunal considers appropriate to include in the register.
- (5) The register is to be kept available for inspection by members of the public, free of charge, during normal office hours.
- (6) Copies of entries in the register are to be made available to members of the public, at cost, during normal office hours.

**26 Review of decisions**

- (1) A reticulator who is aggrieved by any of the following decisions of the Tribunal may apply to the Minister for a review of that decision, but only on the grounds specified in the Access Code:
  - (a) a decision to refuse the reticulator's application for approval of an access undertaking,
  - (b) a decision to refuse consent to the variation of an access undertaking,

- (c) a decision with respect to the terms of an access order in relation to a declared distribution system that is owned or controlled by the reticulator,
  - (d) a decision to refuse the reticulator's application for approval of an access agreement between the reticulator and an associated system user.
- (2) A reticulator or system user who is aggrieved by an arbitrator's decision with respect to the terms of an access determination to which the reticulator or system user is subject (other than a determination of the kind referred to in section 23 (7)) may apply to the Minister for a review of that decision, but only on the grounds specified in the Access Code.
- (3) The Tribunal may apply to the Minister for a review of a reticulator's decision to refuse consent to the variation of an access undertaking.
- (4) An application for a review of the Tribunal's or a reticulator's refusal to consent to the variation of an access undertaking may only be made:
  - (a) if the access undertaking is expressed to have effect for 5 years or more from the date on which it came into force, and
  - (b) if the application for variation is made more than 5 years after that date.
- (5) 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.
- (6) 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 and the giving of notice to persons who are (or who may be) affected by the decision to which the application relates.
- (7) An application under this section does not affect the decision to which it relates, and that decision continues to have effect unless and until it is varied or revoked by a review panel.

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## Division 3 Gas pricing orders

### 27 Gas pricing orders

- (1) The Tribunal may make an order (a *gas pricing order*) establishing a pricing mechanism according to which charges for natural gas supplied to tariff customers are to be fixed.
- (2) A gas pricing order:
  - (a) may fix maximum gas tariffs or maximum average gas tariffs and other charges, or the methodology by which maximum gas tariffs or maximum average gas tariffs and other charges are to be calculated, either in relation to tariff customers generally or in relation to any specified class of tariff customers, and
  - (b) may prohibit the imposition of any specified charges or class of charges for any specified service or class of services provided to tariff customers generally or to any specified class of tariff customers.
- (3) It is a condition of a supplier's authorisation that the supplier must not impose charges on a tariff customer otherwise than in accordance with any relevant gas pricing order, subject to any other condition imposed on the authorisation with respect to the implementation of Government policy on community service obligations to tariff customers (such as a condition requiring the granting of discounts or rebates).
- (4) At any time after the expiry of 12 months from the date on which the current gas pricing order was made, an authorised supplier 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 now out of date.

### 28 Review of orders

- (1) An authorised supplier who is aggrieved by a gas pricing order may apply to the Minister for a review of that order.
- (2) An authorised supplier 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 supplier under section 27 (4) 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 operates to suspend the order to which it relates, and that order ceases to have effect unless and until it is confirmed by a review panel.

## **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, Part 4 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 Part to the Tribunal were a reference to a review panel.

- (4) In the case of a review of a decision referred to in section 26 (1), (2) or (3), the review panel must conduct the review in accordance with, and so as to give effect to, the requirements of the Access Code.
- (5) To the extent to which a matter under review deals with the pricing mechanism under which a reticulator may charge for granting third party access rights to its distribution systems, the review panel's decision may establish a new pricing mechanism that enables the reticulator to recoup any losses sustained as a result of the old pricing mechanism during the period for which the new pricing mechanism is to have effect.
- (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 Access Code**

- (1) The Minister may, by order published in the Gazette, establish a code (the *Access Code*) with respect to third party access to distribution systems.
- (2) An order under this section may establish the Access Code by applying, adopting or incorporating the provisions of some other publication, either as in force on a particular day or as in force for the time being.

### **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, Part 4 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) For the purposes of this Act, the matter in respect of which the Tribunal must be satisfied under section 22A (2) (c) of the *Independent Pricing and Regulatory Tribunal Act 1992* (as applied by subsection (2)) before it makes a document referred to in subsection (4) available is not the matter referred to in that paragraph, but rather that the document is (or would be likely to be) relevant to negotiations between the reticulator who owns or operates the distribution system to which the document relates and persons seeking access to that system.
- (4) Subsection (3) applies to any document whose contents have affected:
- (a) the Tribunal's decision to approve an access undertaking for a distribution system, or
  - (b) an access order made by the Tribunal in respect of a distribution system,

but only to the extent to which the Access Code requires such documents to be made available and only to the extent to which the regulations authorise such documents to be made available.

### **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 Law*.

## **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 head office of the Department.

### **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 tariff 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.

#### **42 Enforcement of licences**

- (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.

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

- (1) The Minister must not take action under section 40, 41 or 42 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 has given due consideration to any such submissions.
- (2) In addition, the Minister must not take action under section 42 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.

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

- (1) The Minister is to cause a register of licences to be kept at the head office of the Department.
- (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 or 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.

### **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.

### **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 Liability for failure of gas supply**

A network operator is not liable for any loss suffered by any person as a consequence of any failure to supply gas, or of any defect in that supply, if the failure or defect arises from causes beyond the network operator's control.

## **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.

- (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.
- (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 justice 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.

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- (2) An authorised justice 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) Part 3 of the *Search Warrants Act 1985* 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 justice*** has the same meaning as it has in the *Search Warrants Act 1985*.

## **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 system unless authorised to do so under a contract with an authorised supplier 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**

A person must not interfere with a network operator's gas works 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).

#### **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 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 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 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 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 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.

#### **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 authorised supplier 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 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 authorised supplier or licensed distributor concerned, at any time within 6 months after the date of the finding, and
  - (b) if made by a Local Court, may be enforced in a Local Court exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*.
- (2) Part 5 of the *Local Courts (Civil Claims) Act 1970* applies to and in respect of such an order made by a Local Court as if:
  - (a) the order were a judgment of the Local Court exercising that jurisdiction, and
  - (b) the amount ordered to be refunded were a judgment debt referred to in that Part, and
  - (c) the person against whom the order was made were a judgment debtor referred to in that Part, and
  - (d) the person in favour of whom the order was made were a judgment creditor referred to in that Part.
- (3) The remedy provided by this section is an alternative to any other remedy that may be available apart from this section.

## 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.

### 77 Inspectors

- (1) The Minister administering section 31 of the *Dangerous Goods Act 1975* 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 Director-General 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.

### 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 Law*.
- (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.

**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 a Local Court constituted by a Magistrate sitting alone.
- (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 penalty that may be imposed by a Local Court in proceedings for an offence against a provision of this Act or the regulations is:
- (a) the maximum 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 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) the design, construction and labelling of gas appliances,
  - (e) the examination and testing of gas meters,
  - (f) the construction, alteration, extension, maintenance, repair and operation of distribution systems,
  - (g) the carrying out of gasfitting work,

- (h) the reporting of accidents,
  - (i) the keeping of records, information and statistics in relation to the operation of 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 reticulators, suppliers and distributors for the resolution of customer complaints,
  - (l) the imposition of fees and charges (other than charges for third party access to natural gas distribution systems or charges of the kind for which gas pricing orders may be made).
- (3) Without limiting subsection (2), the regulations must make provision for each of the following matters:
- (a) standard form contracts to be used in connection with the supply of gas to customers by suppliers and distributors,
  - (b) the form and content of bills to be rendered to customers by suppliers and distributors in connection with the supply of gas,
  - (c) the debt collection procedures to be observed by suppliers and 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 suppliers and distributors in connection with the supply of gas,
  - (e) the constitution and procedures of customer councils to advise suppliers and distributors on matters concerning the supply of gas to customers.
- (4) Regulations with respect to each of the matters referred to in subsection (3):
- (a) must be made, and must take effect, no later than 6 months after the date of assent to this Act, and
  - (b) may only be made on the recommendation of the Minister for Fair Trading.

- (5) Section 5 of the *Subordinate Legislation Act 1989* applies to an amending regulation with respect to a matter referred to in subsection (3) in the same way as it applies to a principal regulation with respect to such a matter, and applies to both amending regulations and principal regulations as if the reference in section 5 (2) (a) (iv) of that Act to 21 days were instead a reference to 40 days.
- (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.

#### **84 Repeals**

The following Acts are repealed:

- (a) the *Liquefied Petroleum Gas Act 1961*,
- (b) the *Liquefied Petroleum Gas (Grants) Act 1980*,
- (c) the *Liquefied Petroleum Gas (Grants) Amendment Act 1981*.

#### **85 Amendment of other Acts and instruments**

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

#### **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 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 85)

### **1.1 Building Services Corporation Act 1989 No 147**

#### **Section 135 Proceedings for certain offences under other Acts**

Omit paragraphs (c) and (e). Insert instead:

- (c) the *Gas Supply Act 1996*, or

### **1.2 Building Services Corporation Regulation 1990**

#### **Clause 8 “Relevant law” regulating gasfitting or plumbing work**

Omit paragraph (a). Insert instead:

- (a) gasfitting work:
- *Gas Supply Act 1996* (reticulated gas)  
*Gas Regulation 1991*
  - *Dangerous Goods Act 1975* (gas cylinders)  
*Dangerous Goods (Gas Installations)  
Regulation 1982*  
*Dangerous Goods Regulation 1978*

### **1.3 Dangerous Goods (Gas Installations) Regulation 1982**

#### **Clause 5 Application**

Omit “Part 2 of the *Gas Act 1986*” from paragraph (b).  
Insert instead “the *Gas Supply Act 1996*”.

### **1.4 Energy Administration Act 1987 No 103**

#### **[1] Section 35 Energy Administration Account**

Omit “(except under section 35B)” from subsection (2) (a).

**[2] Section 35A State Energy Research and Development Fund**

Omit subsection (2) (a).

**[3] Section 35A (2) (b)**

Omit “other”.

**[4] Section 35B Contributions by holders of gas reticulation authorisations**

Omit the section.

**1.5 Energy Administration (General) Regulation 1995**

**Clause 6 Sales exempt from contributions to State Energy Research and Development Fund**

Omit subclause (2).

**1.6 Freedom of Information (General) Regulation 1995**

**Schedule 3 Public authorities**

Omit “Review panel established under the *Gas Act 1986*” from Part 3 of the Schedule.

Insert instead “Review panel established under the *Gas Supply Act 1996*”.

**1.7 Gas Act 1986 No 213**

**[1] Section 1**

Omit the section. Insert instead:

**1 Name of Act**

This Act is the *Gas Industry Restructuring Act 1986*.

**[2] Section 3 Definitions**

Omit section 3 (1).

**[3] Section 4 Reticulation of gas**

Omit the section.

**[4] Section 5 Application of Act**

Omit the section.

**[5] Section 7 Duty of the Minister, Council and Review Panels**

Omit the section.

**[6] Part 2 Authorisations to reticulate gas**

Omit the Part.

**[7] Section 30 AGL not to carry on certain gas activities**

Omit the section.

**[8] Section 52 Additional director appointed by Minister**

Omit the section.

**[9] Section 56 Separation and self-containment of gas distributors**

Omit the section.

**[10] Part 5 Regulation of gas distributors**

Omit the Part.

**[11] Part 6 Gas Council of New South Wales**

Omit the Part.

**[12] Part 8 Supply of gas**

Omit the Part.

**[13] Section 136 General offence**

Omit the section.

**[14] Section 137 Injunctions**

Omit the section.

**[15] Section 139 Regulations**

Omit subsections (2)–(6).

**[16] Schedule 2 Provisions relating to members and procedure of the Council**

Omit the Schedule.

**[17] Schedule 2A Provisions relating to Review Panels**

Omit the Schedule.

**[18] Schedule 3 Savings and transitional provisions**

Omit clause 17 (1). Insert instead:

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

- (a) *Gas Act 1986*,
- (b) *Gas (Amendment) Act 1990*,
- (c) *Gas Supply Act 1996*.

## **1.8 Gas Regulation 1991**

### **[1] Clause 3 Definitions**

Omit the definition of *the Act* from clause 3 (1). Insert instead:

*the Act* means the *Gas Supply Act 1996*.

### **[2] Part 2 Authorisations**

Omit the Part.

### **[3] Clause 48 Annual maintenance and safety reports**

Omit the clause.

### **[4] Clause 49 Certificates of authority**

Omit the clause.

### **[5] Clause 50A Sec 30 (1) not to apply to certain AGL contracts**

Omit the clause.

### **[6] Schedule 2 Forms**

Omit the Schedule.

## **1.9 Land Tax Management Act 1956 No 26**

### **Section 10 Land exempted from tax**

Omit "*Gas Act 1986*" from subsection (1) (n).  
Insert instead "*Gas Supply Act 1996*".

## **1.10 Pipelines Act 1967 No 90**

### **Section 5 Application of Act**

Omit “gas company, as defined in the *Gas Act 1986*,” from subsection (6).

Insert instead “network operator, within the meaning of the *Gas Supply Act 1996*,”.

## **1.11 Roads Act 1993 No 33**

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

Omit “or a gas distributor within the meaning of the *Gas Act 1986*” from clause 5 (1).

Insert instead “or a network operator within the meaning of the *Gas Supply Act 1996*”.

## **1.12 Search Warrants Act 1985 No 37**

### **Section 10 Definitions**

Omit “section 127 of the *Gas Act 1986*” from the definition of search warrant.

Insert instead “section 64 of the *Gas Supply Act 1996*”.

## **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*

- (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 Annual authorisation and licence fees**

- (1) The annual authorisation fee payable under section 15 by the holder of an authorisation who, immediately before the repeal of section 18 of the 1986 Act, was required to pay authorisation fees under that section is taken to be:
  - (a) the amount that would have been payable by that holder under that section, as in force immediately before its repeal, had that section not been repealed, or
  - (b) such lesser amount as the Minister, on the advice of the Treasurer, may determine.
- (2) The annual authorisation fee or annual licence fee payable under section 15 or 44 by the holder of an authorisation or licence (not being a holder referred to in subclause (1)) is taken to be such amount as the Minister, on the advice of the Treasurer, may determine.
- (3) This clause ceases to have effect on 1 July 1999.

## **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 Review panels**

- (1) Except to the extent to which the regulations otherwise provide, the provisions of Schedule 2A to the 1986 Act, as in force immediately before the repeal of that Schedule, apply to a review panel under this Act in the same way as they applied to a Review Panel under the 1986 Act.
- (2) This clause ceases to have effect on 31 December 1996.

## **8 Charges for use of public roads and public reserves**

- (1) Section 51 does not prevent a local authority or roads authority from imposing on a network operator a periodic charge of the kind referred to in that section if, immediately before the commencement of that section, the network operator was liable to pay such a charge to the authority.
- (2) This clause ceases to have effect on 1 July 1999.

## **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 tariff 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.

## Dictionary

(Section 4)

***access agreement*** means an access agreement referred to in section 22 (4).

***Access Code*** means the Access Code referred to in section 31 (1).

***access determination*** means an access determination referred to in section 23 (5).

***access order*** means an access order referred to in section 21 (2).

***access undertaking*** means an access undertaking referred to in section 20 (1).

***associated system user*** means an associated system user referred to in section 24 (1).

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

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

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

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

***declared distribution system*** means a declared distribution system referred to in section 19 (1).

***Department*** means the Department of Energy.

***Director-General*** means the Director-General of the Department.

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

***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, 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.

***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 appliance that is manufactured, adapted or designed for connection to a gas installation, whether by means of a gas outlet socket or otherwise.

***gas installation*** means the gas pipes and associated equipment that are used to convey and control the conveyance of gas within premises to which gas is supplied, whether from a distribution system or otherwise, but does not include anything connected to and extending or situated beyond a gas outlet socket.

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

***gas works*** means any gas pipes or associated equipment that form part of a distribution system.

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

- (a) the installation, alteration, extension or repair of a gas installation, or

- (b) the connection of a gas installation to, or the disconnection of a gas installation from, a distribution system, or
- (c) 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).

**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** means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases, the principal constituent of which is methane.

**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 system for natural gas.

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

**roads authority** has the same meaning as it has in the *Roads Act 1993*.

**supplier** means a person who supplies natural gas to other persons, whether end user customers or other suppliers.

**supplier's authorisation** means an authorisation referred to in section 6 (b).

**system user** means a person whom the regulations declare to be a system user or who belongs to a class of persons so declared.

***tariff customer*** means a person whom the regulations declare to be a tariff customer or who belongs to a class of persons so declared.

***Tribunal*** means the Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992*.

[Minister's second reading speech made in—  
Legislative Assembly on 5 June 1996  
Legislative Council on 19 June 1996]