

(Reprint No. 1)

SOUTH AUSTRALIA

GAS ACT 1997

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **18 December 1997**.*

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GAS ACT 1997

being

Gas Act 1997 No. 24 of 1997
[Assented to 10 April 1997]¹

as amended by

Gas (Miscellaneous) Amendment Act 1997 No. 73 of 1997 [Assented to 18 December 1997]²

¹ Came into operation 1 July 1997: *Gaz.* 26 June 1997, p. 3052.

² Came into operation 18 December 1997: *Gaz.* 18 December 1997, p. 1644.

N.B. The amendments effected to this Act by the *Gas Pipelines Access (South Australia) Act 1997* had not been brought into operation at the date of, and have not been included in, this reprint.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

An Act to regulate the gas supply industry; to make provision for safety and technical standards for gas installations and gas appliances; to repeal the Gas Act 1988; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Gas Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects

3. The objects of this Act are—
 - (a) to promote efficiency and competition in the gas supply industry; and
 - (b) to promote the establishment and maintenance of a safe and efficient system of gas distribution and supply; and
 - (c) to establish and enforce proper standards of safety, reliability and quality in the gas supply industry; and
 - (d) to establish and enforce proper safety and technical standards for gas installations and appliances; and
 - (e) to protect the interests of consumers of gas.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"**authorised officer**" means a person appointed under Part 6 as an authorised officer;

"**condition**" includes a limitation or restriction;

"**consumer**" means a person who has a supply of gas available from a distribution system for consumption in a place, and includes—

- (a) the occupier for the time being of a place to which gas is supplied by a distribution system for consumption in the place; and
- (b) where the context requires, a person seeking a supply of gas from a distribution system for consumption in a place;

"**contravention**" includes a failure to comply;

"**council**" means a council within the meaning of the *Local Government Act 1934*;

"**disconnect**" a gas supply includes a procedure to interrupt or discontinue the gas supply to a consumer;

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"distribution system" means the whole or a part of a system of pipes and equipment for use for, or in connection with, the distribution and supply of gas to persons for consumption, but does not include—

- (a) a pipeline in respect of which a licence has been granted or is required under Part 2B of the *Petroleum Act 1940* (other than a pipeline declared by the regulations to be, or form part of, a distribution system); or
- (b) a system of pipes and equipment—
 - (i) installed in a place for the conveyance and use of gas from a pressurised vessel situated in the place; and
 - (ii) not extending to, or connected to pipes in, some other place in separate occupation; or
- (c) pipes or equipment declared by the regulations not to be, or form part of, a distribution system;

"gas" means a fuel consisting of hydrocarbons or predominantly of hydrocarbons that is in a gaseous or vapour form when it is at the pressure and temperature of its normal pipeline transportation and utilisation conditions, but does not include anything declared by regulation not to be gas;

"gas appliance" means an appliance that uses gas as a fuel, but does not include anything declared by regulation not to be a gas appliance;

"gas entity" means a person licensed under Part 3, and includes (where the context requires) a person who has been licensed under that Part whose licence has been suspended or cancelled or has expired;

"gas infrastructure" means any part of a distribution system owned or operated by a gas entity;

"gas installation" means fixed pipes and any fixed gas appliances, and associated equipment (including flues), installed in a place for the conveyance, control, measurement or use of gas that is, is to be, or has been, supplied (whether by a distribution system or pressurised vessel) for consumption in the place, but does not include gas infrastructure;

"gas officer" means a person appointed under Part 4 as a gas officer;

"gas supply industry" means the operation of a distribution system, the retailing of gas and any other operation for which a licence is required under Part 3;

"land" includes—

- (a) an estate or interest in land (including an easement); or
- (b) a right or power over or in respect of land;

"**non-contestable consumer**" means a consumer other than—

- (a) consumers classified by regulation as contestable consumers; or
- (b) consumers classified by the Minister under subsection (2) as contestable consumers;

"**occupier**" of land or a place means a person who has, or is entitled to, possession or control of the land or place;

"**operations**" includes activities;

"**Pricing Regulator**" means the person holding the office of Pricing Regulator under Part 2;

"**retailing**" of gas means the sale and supply of gas to a person for consumption (and not for resale) where the gas is to be conveyed (whether or not by the seller) to the person by a distribution system, but does not include an activity declared by regulation not to be retailing of gas;

"**Technical Regulator**" means the person holding the office of Technical Regulator under Part 2.

(2) The Minister may classify a consumer or consumers as contestable consumers if satisfied that such action is consistent with the orderly introduction of a fully competitive gas market.

Crown bound

5. (1) This Act binds the Crown.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

(3) For the purposes of this section, a reference to the Crown extends—

- (a) not only to the Crown in right of this State but also (so far as the legislative power of the State permits) to the Crown in any other capacity; and
- (b) to any instrumentality of the Crown, and to an officer or employee of the Crown and any contractor or other person who carries out functions on behalf of the Crown.

Environment protection and other statutory requirements not affected

6. This Act is in addition to and does not derogate from the provisions of the *Environment Protection Act 1993* or any other Act.

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**PART 2
ADMINISTRATION**

DIVISION 1—TECHNICAL REGULATOR

Technical Regulator

7. (1) There is to be a *Technical Regulator*.

(2) The Technical Regulator is to be appointed by the Governor.

(3) The office of Technical Regulator may be held in conjunction with a position in the Public Service.

(4) The Minister may assign an employee in the Public Service to act as the Technical Regulator—

(a) during a vacancy in the office of Technical Regulator; or

(b) when the Technical Regulator is absent from, or unable to discharge, official duties.

Functions

8. (1) The Technical Regulator has the following functions:

(a) the administration of the licensing system for gas entities established by this Act; and

(b) the monitoring and regulation of safety and technical standards in the gas supply industry; and

(c) the monitoring and regulation of safety and technical standards with respect to gas installations and gas appliances; and

(d) the establishment and monitoring of standards in respect of services provided by gas entities to consumers; and

(e) any other functions assigned to the Technical Regulator under this Act.

(2) The Technical Regulator must, in performing any functions of a discretionary nature, endeavour to act in a fair and even-handed manner taking proper account of the interests of participants in the gas supply industry and the interests of consumers of gas.

(3) Nothing in subsection (2) gives rise to, or can be taken into account in, any civil cause of action.

Delegation

9. (1) The Technical Regulator may delegate powers to a person or body of persons that is, in the Technical Regulator's opinion, competent to exercise the relevant powers.

(2) A delegation under this section—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent the delegator from acting in any matter.

Technical Regulator's power to require information

10. (1) The Technical Regulator may, by written notice, require a person to give the Technical Regulator, within a time stated in the notice (which must be reasonable), information in the person's possession that the Technical Regulator reasonably requires for the administration of this Act.

(2) A person required to give information under this section must provide the information within the time stated in the notice.

Maximum penalty: \$10 000.

(3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

Obligation to preserve confidentiality

11. (1) The Technical Regulator must preserve the confidentiality of information gained in the course of administering this Act (including information gained by an authorised officer under Part 6) that—

- (a) could affect the competitive position of a gas entity or other person; or
- (b) is commercially sensitive for some other reason.

(2) Subsection (1) does not apply to the disclosure of information between persons engaged in the administration of this Act (including the Pricing Regulator and persons assisting the Pricing Regulator).

(2) Information classified by the Technical Regulator as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

Executive committees

12. (1) An executive committee may be established by regulation to exercise specified powers and functions as a delegate of the Technical Regulator.

(2) A regulation establishing an executive committee to exercise specified powers and functions operates as a delegation of the relevant powers and functions to the committee (which is revocable only as provided in the regulation itself or by a later regulation).

(3) The members of an executive committee are appointed and hold office on terms and conditions determined by the Minister.

(4) A committee established under this section—

- (a) is responsible to the Technical Regulator for the proper exercise of its powers and functions; and
- (b) is subject to control and direction by the Technical Regulator; and
- (c) must report on the exercise of delegated powers and functions as required by the Technical Regulator.

Advisory committees

13. (1) The Minister or the Technical Regulator may establish an advisory committee to advise the Minister or the Technical Regulator (or both) on specified aspects of the administration of this Act.

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(2) The members of an advisory committee are appointed and hold office on terms and conditions determined by the Minister.

Annual report

14. (1) The Technical Regulator must, within three months after the end of each financial year, deliver to the Minister a report on the Technical Regulator's operations during that financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

DIVISION 2—PRICING REGULATOR

Pricing Regulator

15. (1) There is to be a *Pricing Regulator*.

(2) The Pricing Regulator is to be a Minister of the Crown appointed by the Governor.

Functions

16. (1) The Pricing Regulator has the gas price fixing functions assigned to the Pricing Regulator under Part 3.

(2) The Pricing Regulator must, in performing the Pricing Regulator's functions, endeavour to act in a fair and even-handed manner taking proper account of the interests of participants in the gas supply industry and the interests of consumers of gas.

(3) Nothing in subsection (2) gives rise to, or can be taken into account in, any civil cause of action.

Pricing Regulator's power to require information

17. (1) The Pricing Regulator may, by written notice, require a person to give the Pricing Regulator, within a time stated in the notice (which must be reasonable) information in the person's possession that the Pricing Regulator reasonably requires for the performance of the Pricing Regulator's functions under this Act.

(2) A person required to give information under this section must provide the information within the time stated in the notice.

Maximum penalty: \$10 000.

Obligation to preserve confidentiality

18. (1) The Pricing Regulator must preserve the confidentiality of information that—

- (a) could affect the competitive position of a gas entity or other person; or
- (b) is commercially sensitive for some other reason.

(2) Subsection (1) does not apply to the disclosure of information between persons engaged in the administration of this Act (including the Technical Regulator and persons assisting the Technical Regulator).

(3) Information classified by the Pricing Regulator as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

**PART 3
GAS SUPPLY INDUSTRY**

DIVISION 1—LICENSING OF GAS ENTITIES

Requirement for licence

19. A person must not carry on—

- (a) the operation of a distribution system; or
- (b) the retailing of gas; or
- (c) any other operation for which a licence is required by the regulations,

unless the person holds a licence under this Part authorising the relevant operation.

Maximum penalty: \$50 000.

Application for licence

20. (1) An application for the issue or renewal of a licence must—

- (a) be made to the Technical Regulator in a form approved by the Technical Regulator; and
- (b) contain the information specified in the form.

(2) The applicant must pay to the Technical Regulator an application fee fixed by the Minister of an amount that the Minister considers appropriate to meet the reasonable costs of determining the application.

(3) The Technical Regulator may, as he or she considers appropriate, accept a single application from an applicant in respect of different operations of the applicant or operations of the applicant at different locations or may require separate applications.

(4) The applicant must give the Technical Regulator further relevant information requested by the Technical Regulator.

Consideration of application for issue of licence

21. (1) The Technical Regulator must consider an application for the issue of a licence and may, subject to this Division, issue or refuse to issue the licence.

(2) Subject to this section, the Technical Regulator may only issue a licence if satisfied that—

- (a) the applicant is a suitable person to hold the licence; and
- (b) in the case of a licence authorising the operation of a distribution system—the system has (or the proposed system will have) the necessary capacity for distributing gas safely; and
- (c) in the case of a licence authorising retailing of gas—the applicant will be able to meet reasonably foreseeable obligations under contracts for the sale of gas; and
- (d) in the case of a licence authorising other operations for which a licence is required under the regulations—the applicant meets any special requirements imposed by the regulations for the holding of the licence; and

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- (e) in the case of a licence of any class—the grant of the licence would be consistent with criteria (if any) prescribed by regulation for a licence of the relevant class.

(3) In deciding whether an applicant is a suitable person to hold a licence, the Technical Regulator may consider—

- (a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and
- (b) the financial, technical and human resources available to the applicant; and
- (c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and
- (d) other matters prescribed by regulation.

(4) A licence may not be issued by the Technical Regulator on or after the commencement of this subsection authorising the retailing of gas to a non-contestable consumer.

Authority conferred by licence

22. (1) A licence authorises the person named in the licence to carry on operations in accordance with the terms and conditions of the licence.

(2) The operations authorised by a licence need not be all of the same character or at the same location but may consist of a combination of different operations or operations at different locations.

Licence term and renewal

23. (1) A licence is granted for a term (not exceeding 10 years) stated in the licence.

(2) Subject to this Division and the conditions of the licence, the Technical Regulator must, on due application, renew a licence unless satisfied that the applicant—

- (a) has been guilty of a material contravention of a requirement imposed by or under this Act or any other Act in connection with the operations authorised by the licence such that the licence should not be renewed; or
- (b) would no longer for any reason be entitled to the issue of such a licence.

(3) An application for renewal of a licence must be made, in writing, to the Technical Regulator at least three months, but not more than six months, before the end of the licence term (but the Technical Regulator may grant an exemption from this requirement in an appropriate case).

Licence fees and returns

24. (1) A person is not entitled to the issue or renewal of a licence unless the person first pays to the Technical Regulator the relevant annual licence fee, or the first instalment of the relevant annual licence fee, as the case may require.

(2) The holder of a licence issued for a term of two years or more must—

- (a) in each year lodge with the Technical Regulator, before the date prescribed for that purpose, an annual return containing the information required by the Technical Regulator by condition of the licence or by written notice; and

(b) in each year (other than a year in which the licence is due to expire) pay to the Technical Regulator, before the date prescribed for that purpose, the relevant annual licence fee, or the first instalment of the relevant annual licence fee, as the case may require.

(3) Subject to subsection (4), the annual licence fee—

(a) for the retailing of gas, is—

(i) five per cent, or such lesser percentage as the Minister may fix from time to time, of gross revenue derived by the holder of a licence from the retailing of gas during the previous financial year; or

(ii) if the holder of the licence did not retail gas throughout the previous financial year, or fails to supply the Technical Regulator with satisfactory evidence enabling the calculation of the fee under subparagraph (i)—a fee fixed at the Minister's discretion;

(b) for—

(i) the operation of a distribution system; or

(ii) any other operations for which a licence is required by the regulations,

is a fee fixed by the Minister of an amount that the Minister considers appropriate as a reasonable contribution towards the costs of administration of this Act having regard to the nature and scale of the operations that are authorised by the licence.

(4) The regulations may, for the purposes of subsection (3)(a), exclude gas retailed to certain consumers or certain classes of consumers from the calculation of licence fees.

(5) The annual licence fee for the retailing of gas is payable in four equal instalments at three monthly intervals fixed by the Technical Regulator.

(6) The annual licence fee for—

(a) the operation of a distribution system; or

(b) any other operations for which a licence is required by the regulations,

may, if the Technical Regulator so determines, be paid in equal instalments at intervals fixed by the Technical Regulator.

(7) If the holder of a licence fails to lodge the annual return or pay the annual licence fee (or an instalment of the annual licence fee) in accordance with this section, the Technical Regulator may, by written notice, require the holder to make good the default and, in addition, to pay to the Technical Regulator the amount prescribed as a penalty for default.

(8) An annual licence fee (including any instalment of an annual licence fee or any penalty for default) payable under this section is recoverable as a debt due to the Crown.

(9) In this section—

"holder" of a licence includes the holder of a licence that has been suspended.

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Licence conditions

25. (1) A licence held by a gas entity will be subject to—

- (a) conditions determined by the Technical Regulator requiring compliance with specified standards or codes or other safety or technical requirements; and
- (b) conditions determined by the Technical Regulator requiring the entity—
 - (i) to produce to the Regulator for approval plans and procedures relating to safety and technical matters; and
 - (ii) to implement the plans and procedures and conduct compliance audits as approved by the Regulator; and
- (c) conditions determined by the Technical Regulator relating to the financial or other capacity of the entity to continue operations under the licence for the term of the licence; and
- (d) any other conditions determined by the Technical Regulator.

(2) Without limiting the effect of subsection (1), if a person holds a licence or licences authorising both—

- (a) the operation of a distribution system; and
- (b) the retailing of gas,

the Technical Regulator may make the licence or licences subject to conditions requiring that the person's affairs in relation to the operation of the distribution system be kept separate from the person's affairs in relation to the retailing of gas in the manner and to the extent specified in the conditions.

Licences authorising retailing

26. (1) If a licence authorises the retailing of gas by a gas entity—

- (a) the licence must, if the Minister so determines, confer on the entity an exclusive right to sell and supply gas to non-contestable consumers from a specified distribution system subject to specified limitations; and
- (b) the Technical Regulator may make the licence subject to conditions—
 - (i) requiring or relating to standard contractual terms and conditions to apply to the sale and supply of gas to non-contestable consumers or consumers of a prescribed class; and
 - (ii) requiring the entity to comply with specified minimum standards of service in respect of the entity's non-contestable consumers or consumers of a prescribed class, and requiring monitoring and reporting of levels of compliance with those standards; and
 - (iii) requiring a specified process to be followed to resolve disputes between the entity and consumers as to the sale and supply of gas.

(2) The Technical Regulator must, on the grant of a licence to which subsection (1) applies and before determining, varying or revoking conditions under subsection (1)(b), consult with and have regard to the advice of—

- (a) the Commissioner for Consumer Affairs; and
- (b) any advisory committee established under Part 2 for that purpose.

(3) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising retailing of gas.

Offence to contravene licence conditions

27. A gas entity must not contravene a condition of its licence.

Maximum penalty: \$50 000.

Notice of licence decisions

28. (1) The Technical Regulator must give an applicant for the issue or renewal of a licence written notice of the Technical Regulator's decision on the application.

(2) The Technical Regulator must give the holder of a licence written notice of any decision by the Technical Regulator affecting the terms or conditions of the licence.

Variation of licence

29. (1) The Technical Regulator may vary the terms or conditions of a gas entity's licence by written notice to the entity.

(2) A variation may only be made—

- (a) on application by the gas entity or with the gas entity's agreement; or
- (b) after giving the gas entity reasonable notice of the proposed variation and allowing the entity a reasonable opportunity to make representations about the proposed variation.

Transfer of licence

30. (1) A licence may be transferred with the Technical Regulator's agreement.

(2) The Technical Regulator may impose conditions on the transfer of a licence, or vary the terms and conditions of the licence on its transfer.

Surrender of licence

31. (1) A gas entity may, by written notice given to the Technical Regulator, surrender its licence.

(2) The notice must be given to the Technical Regulator at least six months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.

(3) The Technical Regulator may, by agreement with the gas entity, shorten the required period of notice.

Register of licences

32. (1) The Technical Regulator must keep a register of the licences issued to gas entities under this Act.

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- (2) The register must include—
 - (a) the terms and conditions of each licence; and
 - (b) other information required under the regulations.
- (3) A person may, on payment of a fee fixed by the Technical Regulator, inspect the Register.

DIVISION 2—GAS PRICING

Gas pricing

33. (1) The Pricing Regulator may, from time to time, by notice in the *Gazette*, fix a maximum price, or a range of maximum prices, for the sale of gas to non-contestable consumers.

(2) A notice under subsection (1) may be limited in application, or have varying application, according to factors specified in the notice.

(3) The Pricing Regulator may, by notice in the *Gazette*, vary or revoke a notice under subsection (1).

(4) The Pricing Regulator may, from time to time, publish in such manner as the Pricing Regulator thinks fit, principles and guidelines that the Pricing Regulator will observe or take into account in fixing prices.

(5) A gas entity must not charge a price for the sale of gas to non-contestable consumers that exceeds an applicable maximum price fixed by the Pricing Regulator under this section.

Maximum penalty: \$50 000.

DIVISION 3—STANDARD TERMS AND CONDITIONS FOR RETAILING OF GAS

Standard terms and conditions for retailing of gas

34. (1) A gas entity may, from time to time, fix standard terms and conditions governing the sale and supply of gas by the entity to non-contestable consumers or consumers of a prescribed class.

(2) A gas entity must publish in the *Gazette* and in a daily newspaper circulating in the area in which the entity is supplying gas a notice setting out any standard terms and conditions fixed by the entity.

- (3) Standard terms and conditions fixed under this section—
 - (a) must comply with the conditions of the gas entity's licence; and
 - (b) must not fix prices that exceed maximum prices fixed by the Pricing Regulator under this Part; and
 - (c) come into force on the day specified by the gas entity in the notice of the standard terms and conditions published under this section, being a day not earlier than the day on which the notice is published; and
 - (d) when in force are contractually binding on the gas entity and the class of consumers to which the terms and conditions are expressed to apply.

(4) Subject to the conditions of a gas entity's licence, a standard term or condition fixed under this section may be modified or excluded by express agreement between the entity and a consumer of the entity.

DIVISION 4—PROTECTION OF PROPERTY IN GAS INFRASTRUCTURE

Gas infrastructure does not merge with land

35. In the absence of agreement in writing to the contrary, the ownership of a pipe or equipment is not affected by the fact it has been laid or installed as gas infrastructure in or under land.

Seizure and dismantling of gas infrastructure

36. (1) Gas infrastructure cannot be seized and dismantled in execution of a judgment.

(2) This section does not prevent the sale of a distribution system as a going concern in execution of a judgment.

DIVISION 5—TEMPORARY GAS RATIONING

Temporary gas rationing

37. (1) If for any reason the volume of gas available for supply through a distribution system is insufficient to meet the requirements of all consumers who draw gas from that system—

- (a) the Minister may, by notice in writing to the gas entity by which the system is operated, give directions to ensure the most efficient and appropriate use of the available gas; and
- (b) the Minister may, by notice published in such manner as may be appropriate in the circumstances, direct consumers not to draw gas from the system except for the purposes (if any) allowed by the directions.

(2) A direction under this section will operate for a period (not exceeding 30 days) specified in the notice by which the direction is given.

(3) No civil liability arises from compliance with a direction under this section.

(4) A person who fails to comply with a direction under this section is guilty of an offence.

Maximum penalty: If the person is a gas entity—\$50 000;
 In any other case—\$2 500.

Expiation fee (if the person is not a gas entity): \$210.

DIVISION 6—SUSPENSION OR CANCELLATION OF LICENCES

Suspension or cancellation of licences

38. (1) The Technical Regulator may, if satisfied that—

- (a) the holder of a licence obtained the licence improperly; or
- (b) the holder of a licence has been guilty of a material contravention of a requirement imposed by or under this Act or any other Act in connection with the operations authorised by the licence; or
- (c) the holder of a licence has ceased to carry on operations authorised by the licence; or

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- (d) there has been any act or default such that the holder of a licence would no longer be entitled to the issue of such a licence,

suspend or cancel the licence with effect from a specified date.

(2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Technical Regulator.

(3) Before the Technical Regulator acts under this section, the Technical Regulator must—

- (a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and
- (b) allow the holder of the licence at least 14 days within which to make submissions to the Technical Regulator in relation to the proposed action.

DIVISION 7—TECHNICAL REGULATOR'S POWERS TO TAKE OVER OPERATIONS

Power to take over operations

39. (1) If—

- (a) a gas entity contravenes this Act, or a gas entity's licence ceases, or is to cease, to be in force; and
- (b) it is necessary, in the Technical Regulator's opinion, to take over the entity's operations (or some of them) to ensure an adequate supply of gas to consumers,

the Governor may make a proclamation under this section.

(2) Before a proclamation is made under this section, the Technical Regulator must give the gas entity a reasonable opportunity to make written representations giving reasons why the proclamation should not be made.

(3) A proclamation under this section—

- (a) authorises the Technical Regulator to take over the gas entity's operations or a specified part of the gas entity's operations; and
- (b) may contain ancillary directions (and may, in particular, contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with).

(4) A direction under subsection (3)(b) operates to the exclusion of rights that are inconsistent with it.

Appointment of operator

40. (1) When a proclamation is made under this Part, the Technical Regulator must appoint a suitable person (who may, but need not, be a gas entity) to take over the relevant operations on agreed terms and conditions.

(2) A person appointed to take over a gas entity's operations is referred to in this section as the "**operator**".

(3) The gas entity must facilitate the take over of the relevant operations by the operator.

(4) The operator may have access to the distribution system and other property of the gas entity for the purposes of carrying on the relevant operations.

(5) A person must not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Part.

Maximum penalty: \$50 000.

(6) A person must comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.

Maximum penalty: \$50 000.

DIVISION 8—DISPUTES

Disputes

41. (1) If a dispute arises as to the activities of a gas entity, a party to the dispute may ask the Technical Regulator to mediate in the dispute.

(2) The Technical Regulator has a discretion whether to mediate or to decline to mediate in a dispute and may impose conditions that must be satisfied if the mediation is to proceed.

(3) If the Technical Regulator proceeds with the mediation—

(a) the Regulator may give directions to the parties to assist in the resolution of the matters in issue; and

(b) the Regulator must make a reasonable attempt to get the parties to agree to a negotiated settlement of the dispute.

(4) If a dispute is resolved, parties and the Technical Regulator must sign an agreement setting out the terms of the settlement and the agreement is binding on the parties to the dispute.

(5) This section is not intended to provide an exclusive method of dispute resolution.

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**PART 4
GAS ENTITIES' POWERS AND DUTIES**

DIVISION 1—GAS OFFICERS

Appointment of gas officers

42. (1) A gas entity may, subject to the conditions of the entity's licence, appoint a person to be a gas officer for the entity.

(2) A gas officer may only exercise powers under this Act subject to the conditions of appointment and any directions given to the gas officer by the entity.

Conditions of appointment

43. (1) A gas officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) A gas officer may be removed from office by the gas entity.

Gas officer's identity card

44. (1) A gas entity must give each gas officer for the entity an identity card.

(2) The identity card must be in a form approved by the Technical Regulator and must—

(a) contain a photograph of the gas officer taken for the purpose; and

(b) be signed by the gas officer; and

(c) identify the gas officer as a gas officer for the relevant gas entity.

(3) A person must, within 21 days after ceasing to be a gas officer, return the identity card to the gas entity.

Maximum penalty: \$250.

Production of identity card

45. A gas officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

DIVISION 2—POWERS AND DUTIES RELATING TO GAS INFRASTRUCTURE

Acquisition of land

46. (1) A gas entity may acquire land in accordance with the *Land Acquisition Act 1969*.

(2) A gas entity may only acquire land by compulsory process under the *Land Acquisition Act 1969* if the acquisition is authorised in writing by the Minister.

Power to carry out work on public land

47. (1) Subject to this section, a gas entity may—

(a) install gas infrastructure on public land; or

(b) operate, maintain, repair, alter, add to, remove or replace gas infrastructure on public land; or

(c) carry out other work on public land for the distribution or supply of gas.

(2) Without limiting subsection (1), the gas entity may excavate public land for the purposes of carrying out work under subsection (1).

(3) Subject to this section, a gas entity must—

- (a) give the authority responsible for the management of public land not less than seven days' notice of the entity's intention to carry out work on the land; and
- (b) secure the authority's agreement to the carrying out of the work.

(4) An agreement under this section may contain conditions the authority responsible for management of the land considers appropriate in the public interest.

(5) Prior notice and agreement are not required under subsection (3) for work of a kind prescribed by regulation for the purposes of this subsection.

(6) Agreement is not required under subsection (3) for work of a kind prescribed by regulation for the purposes of this subsection.

(7) If a dispute arises between a gas entity and the authority responsible for managing public land about whether work should be permitted under this section on the land or about the conditions on which work should be permitted on public land, either party to the dispute may refer the dispute to the Minister.

(8) Subsection (7) does not apply to a dispute where the authority responsible for managing the public land is a Minister or a person or body to whom directions may be given by a Minister in relation to the matter in dispute.

(9) If a dispute is referred to the Minister under this section, the Minister must—

- (a) allow the parties to the dispute the opportunity to make representations to the Minister on the questions at issue in the dispute; and
- (b) make a reasonable attempt to get the parties to agree to settlement of the dispute on agreed terms.

(10) If the Minister cannot get the parties to agree, the Minister may make—

- (a) an order that the work is or is not permitted on the land;
- (b) if the Minister orders that the work is permitted, an order fixing the conditions on which the work is permitted,

as the Minister thinks fit.

(11) The Minister may delegate a duty or power of the Minister under subsection (9) or (10) to some other person.

(12) A delegation under this section is revocable at will and does not prevent the Minister from acting in any matter.

(13) A gas entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

(14) This section does not derogate from the obligation to comply with the provisions of any other Act.

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(15) In this section—

"**public land**" means land owned by the Crown or an instrumentality or agent of the Crown or by a council or other local government body.

Power to enter for purposes related to gas entity's infrastructure

48. (1) A gas officer for a gas entity may, at any reasonable time—

- (a) enter and remain on land to carry out preliminary investigations in connection with the installation of gas infrastructure; or
- (b) enter and remain on land where the gas infrastructure of the entity is situated to inspect, operate, maintain, repair, alter, add to, remove or replace the infrastructure or to carry out work for the protection of the infrastructure or the protection of public safety.

(2) Subject to this section, if a gas officer seeks to enter land under this section, the officer must give prior written notice to the occupier of the land stating the reason and the date and time of the proposed entry.

(3) The period of notice of entry must be reasonable.

(4) If the proposed entry is refused or obstructed, a gas officer may obtain a warrant under Part 8 to enter the land.

(5) In an emergency, a gas officer may exercise a power of entry under this section—

- (a) at any time and without prior notice if it is not practicable to give such notice; and
- (b) if necessary in the circumstances, by the use of reasonable force.

(6) When a gas officer enters land under this section, the gas officer—

- (a) may be accompanied by such assistants as the gas officer considers necessary or appropriate; and
- (b) may take any vehicles or equipment the gas officer considers necessary or appropriate for the functions the gas officer is to carry out on the land.

(7) A gas officer must be accompanied by a member of the police force—

- (a) when entering a place under a warrant;
- (b) if it is practicable to do so, when entering a place by force in an emergency.

(8) Subject to this section, a gas entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

DIVISION 3—POWERS RELATING TO GAS INSTALLATIONS

Entry to inspect, etc., gas installations

49. (1) A gas officer for a gas entity may, at any reasonable time, enter and remain in a place to which gas is, is to be, or has been, supplied by the entity—

- (a) to inspect gas installations in the place to ensure that it is safe to connect or reconnect gas supply; or

- (b) to take action to prevent or minimise a gas hazard; or
- (c) to investigate suspected theft of gas.

(2) In an emergency, a gas officer may exercise a power of entry under this section at any time and, if necessary in the circumstances, by the use of reasonable force.

(3) When a gas officer enters a place under this section, the gas officer—

- (a) may be accompanied by such assistants as the gas officer considers necessary or appropriate; and
- (b) may take any vehicles or equipment the gas officer considers necessary or appropriate for the functions the gas officer is to carry out in the place.

(4) A gas officer must, if it is practicable to do so, be accompanied by a member of the police force when entering a place by force in an emergency.

(5) If in the opinion of a gas officer a gas installation is unsafe, the gas officer may disconnect the gas supply to the place in which the installation is situated until the installation is made safe to the satisfaction of the gas officer.

Entry to read meters, etc.

50. A gas officer for a gas entity may, at any reasonable time, enter and remain in a place to which gas is, or is to be, supplied by the entity—

- (a) to read, or check the accuracy of, a meter for recording consumption of gas; or
- (b) to install, repair or replace meters or control apparatus or any part of a gas installation.

Entry to disconnect supply

51. If a gas officer has proper authority to disconnect a gas supply to a place, the gas officer may, at any reasonable time, enter and remain in the place to disconnect the gas supply to the place.

Disconnection of supply if entry refused

52. (1) If a gas officer seeks to enter a place under this Division and entry is refused or obstructed, the gas entity may, by written notice to the occupier of the place, ask for consent to entry by a gas officer.

(2) The notice must state the reason and the date and time of the proposed entry.

(3) If entry is again refused or obstructed, the gas entity may—

- (a) if it is possible to do so—disconnect the gas supply to the place without entering the place; or
- (b) if not—obtain a warrant under Part 8 to enter the place for the purpose of disconnecting the gas supply, enter the place under the warrant and disconnect the gas supply.

(4) A gas officer may not enter a place under a warrant unless accompanied by a member of the police force.

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- (5) The gas entity must restore the gas supply if—
- (a) the occupier—
 - (i) consents to the proposed entry; and
 - (ii) pays the appropriate reconnection fee; and
 - (b) it is safe to restore the gas supply; and
 - (c) there is no other lawful ground for refusing to restore the gas supply.

DIVISION 4—POWERS AND DUTIES IN EMERGENCIES

Gas entity may cut off gas supply to avert danger

53. A gas entity may, without incurring any liability, cut off the supply of gas to any region, area, land or place if it is, in the entity's opinion, necessary to do so to avert danger to person or property.

Emergency legislation not affected

54. Nothing in this Act affects the exercise of any power, or the obligation of a gas entity to comply with any direction, order or requirement, under the *Emergency Powers Act 1941*, *Essential Services Act 1981*, *State Disaster Act 1980* or the *State Emergency Service Act 1987*.

**PART 5
SAFETY AND TECHNICAL ISSUES**

**DIVISION 1—GAS INFRASTRUCTURE, GAS INSTALLATIONS
AND GAS FITTING WORK**

Responsibility of owner or operator of gas infrastructure or gas installation

55. (1) A person who owns or operates gas infrastructure or a gas installation must take reasonable steps to ensure that—

- (a) the infrastructure or installation complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and
- (b) the infrastructure or installation is safe and safely operated.

Maximum penalty: \$50 000.

(2) For the purpose of ensuring under this section that a gas installation complies with the technical and safety requirements, a person may, subject to the regulations, rely on a certificate of compliance issued under this Division in relation to the installation.

Certain gas fitting work

56. (1) A person who carries out work on a gas installation or proposed gas installation must ensure that—

- (a) the work is carried out as required under the regulations; and
- (b) examinations and tests are carried out as required under the regulations; and
- (c) the requirements of the regulations as to notification and certificates of compliance are complied with.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) If a person has a licensed gas fitting contractor carry out the work, this section does not apply to the person but applies to the contractor.

(3) If a person (other than a licensed gas fitting contractor) has a registered gas fitting worker carry out the work, this section does not apply to the person but applies to the worker.

Power to require rectification, etc., in relation to gas infrastructure or gas installations

57. (1) If gas infrastructure or a gas installation is unsafe, or does not comply with this Act, the Technical Regulator may give a direction requiring—

- (a) rectification of the infrastructure or installation to the Technical Regulator's satisfaction;
- (b) if appropriate, the temporary disconnection of the gas supply while the rectification work is carried out;
- (c) the disconnection and removal of the infrastructure or installation.

(2) Subject to this section, a direction under this section must be given—

- (a) in relation to gas infrastructure—to the gas entity in charge of the infrastructure;

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(b) in relation to an installation—to the person in charge of the installation or the occupier of the place in which the installation is situated.

(3) A direction may be given by written notice or, if the Technical Regulator is of the opinion that immediate action is required, orally (but if the direction is given orally it must be confirmed in writing).

(4) A person to whom a direction is given under this section must comply with the direction.

Maximum penalty: \$10 000.

(5) If a person does not comply with a direction, the Technical Regulator may take the action that is reasonable and necessary to have the direction carried out.

(6) A person, authorised in writing by the Technical Regulator, may do what is reasonable and necessary to carry out the direction.

(7) The costs incurred in carrying out the direction are recoverable as a debt due to the Crown.

Reporting of accidents

58. If an accident of a class prescribed by regulation happens that involves gas caused by the operation or condition of gas infrastructure or a gas installation—

(a) the accident must be reported as required under the regulations—

(i) if the accident involves part of a gas entity's infrastructure—by the gas entity; or

(ii) if the accident happens while a gas fitting worker is working on a gas installation and the worker is able to make the report—by the worker; or

(iii) in any other case—by the occupier of the place in which the accident happens; and

(b) the gas infrastructure or gas installation must not be altered or interfered with unnecessarily by any person so as to prevent a proper investigation of the accident.

Maximum penalty: \$2 500.

Expiation fee: \$210.

DIVISION 2—GAS APPLIANCES

Interpretation

59. In this Division, unless the contrary intention appears—

"label" includes a stamp or mark;

"to sell" includes—

(a) to let on hire;

(b) to advertise for sale or hire;

(c) to offer or expose for sale or hire;

and "sale" has a corresponding meaning;

"trader" means a person who sells gas appliances in the course of a trade or business.

Approval and labelling of gas appliances

60. (1) A trader must not sell a gas appliance of a declared class unless—

(a) it is of a kind approved by a declared body or the Technical Regulator; and

(b) it is labelled, under the authority of the declared body or the Technical Regulator, to indicate that approval.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) No offence is committed under subsection (1) if the sale takes place within six months after the relevant class of appliances is declared.

(3) This section does not apply to the sale of second-hand goods.

(4) The Technical Regulator may, by notice in the *Gazette*—

(a) declare a specified class of gas appliances for the purposes of this section;

(b) declare a specified body for the purposes of this section;

(c) vary or revoke a notice previously made under this section.

Prohibition of sale or use of unsafe gas appliances

61. (1) If, in the Technical Regulator's opinion, a gas appliance of a particular class is or is likely to become unsafe in use, the Regulator may prohibit the sale or use (or both sale and use) of gas appliances of the relevant class.

(2) If, in the Technical Regulator's opinion, a gas appliance of a particular class is or is likely to become unsafe in use, the Regulator may require traders who have sold the appliance in the State—

(a) to take specified action to recall the appliance from use; and

(b) —

(i) to take specified action to render the appliance safe; or

(ii) if it is not practicable to render the appliance safe or the trader chooses not to do so—to refund the purchase price on return of the appliance.

(3) A prohibition or requirement is imposed under this section—

(a) by notice in writing given personally or by post to the person to whom it is addressed; or

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(b) if addressed to a class of persons, or the public generally—by public notice,
and may be varied or revoked in the same way.

(4) A person must not contravene or fail to comply with a prohibition or requirement under this section.

Maximum penalty: \$10 000.

**PART 6
ENFORCEMENT**

DIVISION 1—APPOINTMENT OF AUTHORISED OFFICERS

Appointment of authorised officers

62. (1) The Technical Regulator may appoint suitable persons as authorised officers.

(2) An authorised officer may (but need not be) a Public Service employee.

(3) In the exercise of the authorised officer's powers, the authorised officer is subject to control and direction by the Technical Regulator.

Conditions of appointment

63. (1) An authorised officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) An authorised officer holds office on the conditions stated in the instrument of appointment.

(3) An authorised officer may resign by written notice given to the Technical Regulator.

(4) An authorised officer may be removed from office by the Technical Regulator.

Authorised officer's identity card

64. (1) The Technical Regulator must give each authorised officer an identity card.

(2) The identity card must—

(a) contain a photograph of the authorised officer taken for the purpose; and

(b) be signed by the authorised officer.

(3) A person must, within 21 days after ceasing to be an authorised officer, return the identity card to the Technical Regulator.

Maximum penalty: \$250.

Production of identity card

65. An authorised officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

DIVISION 2—AUTHORISED OFFICERS' POWERS

Power of entry

66. (1) An authorised officer may, as reasonably required for the purposes of the enforcement of this Act, enter and remain in any place.

(2) When an authorised officer enters a place under this section, the authorised officer—

(a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and

(b) may take any vehicles or equipment the authorised officer considers necessary or appropriate for the functions the authorised officer is to carry out in the place.

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(3) An authorised officer may use reasonable force to enter a place under this Part if—

- (a) the entry is authorised under a warrant under Part 8; or
- (b) the entry is necessary in an emergency.

(4) An authorised officer must be accompanied by a member of the police force—

- (a) when entering a place under a warrant;
- (b) if it is practicable to do so, when entering a place by force in an emergency.

General investigative powers of authorised officers

67. (1) An authorised officer who enters a place under this Part may exercise any one or more of the following powers:

- (a) investigate whether the provisions of this Act are being or have been complied with;
- (b) examine and test any gas infrastructure, gas installation or gas appliance in the place to find out whether the infrastructure, installation or appliance is safe and complies with the requirements of this Act;
- (c) investigate an accident suspected to involve gas;
- (d) investigate a suspected interference with gas infrastructure or a gas installation;
- (e) investigate a suspected theft or diversion of gas;
- (f) search for, examine and copy or take an extract from a document or record of any kind as reasonably required for the purposes of the enforcement of this Act;
- (g) take photographs or make films or other records of activities in the place and any gas infrastructure, gas installation or gas appliance in the place;
- (h) take possession of any object that may be evidence of an offence against this Act.

(2) If an authorised officer takes possession of an object that may be evidence of an offence—

- (a) the authorised officer must give the occupier of the place a receipt for the object; and
- (b) the object must be returned to its owner—
 - (i) if proceedings for an offence are not commenced within six months after the authorised officer takes possession of the object—at the end of that period; or
 - (ii) if such proceedings are commenced within that period—on completion of the proceedings, unless the court, on application by the Technical Regulator, orders confiscation of the object.

(3) A court may order the confiscation of an object of which an authorised officer has taken possession under subsection (1) if of the opinion that the object has been used for the purpose of committing an offence or there is some other proper reason for ordering its confiscation.

(4) If the court orders the confiscation of an object, the Technical Regulator may dispose of the object.

Disconnection of gas supply

68. (1) If an authorised officer finds that gas is being supplied or consumed contrary to this Act, the authorised officer may disconnect the gas supply.

(2) If an authorised officer disconnects a gas supply under this section, the officer must give written notice to the occupier of the relevant place—

- (a) informing the occupier that the gas supply has been disconnected under this section; and
- (b) directing that the gas supply must not be reconnected until arrangements have been made to the satisfaction of an authorised officer to ensure against future contravention of this Act.

(3) If a gas supply has been disconnected under this section, a person must not reconnect the gas supply, or have it reconnected, without the approval of an authorised officer.

Maximum penalty: \$10 000.

Power to make gas infrastructure or gas installation safe

69. (1) If an authorised officer finds that any gas infrastructure or gas installation is unsafe, the officer may—

- (a) disconnect the gas supply or give a direction requiring the disconnection of the gas supply;
- (b) give a direction requiring the carrying out of the work necessary to make the infrastructure or installation safe before the gas supply is reconnected.

(2) Subject to this section, a direction under this section must be given—

- (a) in relation to gas infrastructure—to the gas entity in charge of the infrastructure;
- (b) in relation to a gas installation—to the person in charge of the installation or the occupier of the place in which the installation is situated.

(3) A direction under this section may be given by written notice or, if the authorised officer is of the opinion that immediate action is required, orally (but if the direction is given orally it must be confirmed in writing).

(4) A person to whom a direction is given under this section—

- (a) must comply with the direction; and
- (b) must not reconnect or permit the reconnection of the gas supply unless the work required by the direction under this section has been carried out, or an authorised officer approves the reconnection of the gas supply.

Maximum penalty: \$10 000.

Power to require information

70. (1) An authorised officer may require a person to provide information in the person's possession relevant to the enforcement of this Act.

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(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to the enforcement of this Act for inspection by the authorised officer.

(3) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty: \$10 000.

(4) A person is not required to give information or produce a document under this section if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

PART 7
REVIEW OF DECISIONS AND APPEALS

Review of decisions by Technical Regulator

71. (1) An application may be made to the Technical Regulator—

- (a) by an applicant for the issue, renewal or variation of a licence for review of a decision of the Technical Regulator to refuse to issue, renew or vary the licence; or
- (b) by a gas entity for review of a decision of the Technical Regulator to suspend or cancel the entity's licence or to vary the terms or conditions of the entity's licence; or
- (c) by a person to whom a direction has been given under this Act by the Technical Regulator or an authorised officer for review of the decision to give the direction; or
- (d) by a person affected by the decision for review of a decision of an authorised officer or a gas officer to disconnect a gas supply.

(2) If the Technical Regulator, authorised officer or gas officer does not give reasons in writing for a decision referred to in subsection (1) when the decision is made, the Regulator or officer must do so on request made by the person affected by the decision within one month of the making of the decision.

(3) An application for review of a decision must be made—

- (a) within one month of the making of the decision; or
- (b) if a request for reasons in writing for the decision has been made under subsection (2)—within one month of the receipt of the reasons in writing.

(4) The Technical Regulator may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an application be made within the period fixed by this section.

(5) An application for review must be in writing and must set out in detail the grounds on which the applicant seeks review of the decision.

Stay of operation

72. (1) The Technical Regulator may stay the operation of a decision that is subject to review or appeal under this Part.

(2) A stay cannot be granted if its effect would be to create a danger to person or property or to allow a danger to person or property to continue.

Powers of Technical Regulator on review

73. (1) After considering an application for review of a decision, and taking advice the Technical Regulator considers appropriate, the Technical Regulator may—

- (a) confirm the disputed decision; or
- (b) amend the disputed decision; or
- (c) substitute another decision for the disputed decision.

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(2) The Technical Regulator must give the applicant written notice of the Technical Regulator's decision and the reasons for the Technical Regulator's decision on the review.

Appeal

74. (1) A person who is dissatisfied with a decision of the Technical Regulator on a review under this Part may appeal against the decision to the Administrative and Disciplinary Division of the District Court (the "**Court**").

(2) The Court may, in exercising its jurisdiction under this Part, be constituted of a Magistrate.

(3) An appeal must be made within one month of the making of the decision appealed against.

(4) The Court may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an application be made within the period fixed by this section.

(5) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court so determines, by affidavit.

Stay of operation

75. (1) The Court may stay the operation of a decision that is subject to appeal under this Part.

(2) A stay cannot be granted if its effect would be to create a danger to person or property or to allow a danger to person or property to continue.

Powers of Court on appeal

76. (1) On an appeal, the Court may—

(a) confirm the decision under appeal; or

(b) amend the decision; or

(c) set aside the decision and substitute another decision; or

(d) set aside the decision and return the issue to the primary decision maker with directions the Court considers appropriate.

(2) The Court may make ancillary directions to deal with incidental matters.

**PART 8
MISCELLANEOUS**

Power of exemption

77. The Technical Regulator may grant an exemption from this Act, or specified provisions of this Act, on terms and conditions the Technical Regulator considers appropriate.

Obligation to comply with conditions of exemption

78. A person in whose favour an exemption is given must comply with the conditions of the exemption.

Maximum penalty: \$10 000.

Application and issue of warrant

79. (1) An authorised officer or a gas officer may apply to a magistrate for a warrant to enter a place specified in the application.

(2) A magistrate may issue a warrant if satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant authorises the authorised officer or gas officer, with any assistance and by any force reasonably necessary—

(a) to enter the place specified in the warrant; and

(b) to do anything authorised by this Act,

at any time, or within any period, specified in the warrant.

(4) A gas officer must be accompanied by a member of the police force when entering a place under a warrant.

(5) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

Urgent situations

80. (1) An authorised officer or a gas officer may apply to a magistrate for a warrant by telephone, facsimile or other prescribed means if the officer considers the urgency of the situation requires it.

(2) The magistrate may complete and sign the warrant in the same terms as for a warrant applied for in person if satisfied that there are reasonable grounds for issuing the warrant urgently.

(3) The magistrate must—

(a) tell the officer—

(i) the terms of the warrant; and

(ii) the date on which, and the time at which, the warrant was signed; and

(iii) the date on which, and the time at which, the warrant ceases to have effect; and

(b) record on the warrant the reasons for granting the warrant.

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- (4) The officer must—
- (a) complete a form of warrant in the same terms as the warrant signed by the magistrate; and
 - (b) write on the form—
 - (i) the name of the magistrate; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the magistrate the completed form of warrant not later than the day after the warrant is executed or ceases to have effect.

(5) On receipt of the form of warrant, the magistrate must attach it to the warrant the magistrate signed.

(6) A form of warrant completed by an authorised officer or a gas officer under subsection (4) has the same force as a warrant signed by the magistrate under subsection (2).

Unlawful interference with distribution system or gas installation

81. A person must not, without proper authority—

- (a) attach a gas installation or other thing, or make any connection, to a distribution system; or
- (b) disconnect or interfere with a supply of gas from a distribution system; or
- (c) damage or interfere with gas infrastructure or a gas installation in any other way.

Maximum penalty: \$10 000 or imprisonment for 2 years.

Unlawful abstraction or diversion of gas

82. (1) A person must not, without proper authority—

- (a) abstract or divert gas from a distribution system; or
- (b) interfere with a meter or other device for measuring the consumption of gas supplied by a gas entity.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A person must not install or maintain a pipe capable of conveying a gas supply beyond the boundaries of property occupied by the person unless—

- (a) the person is a gas entity; or
- (b) the person does so with the approval of a gas entity responsible for gas supply to the property; or
- (c) the pipe is authorised under the regulations.

Maximum penalty: \$10 000.

(3) If, in proceedings for an offence against subsection (1), it is proved that a device has been installed or any other act done, without proper authority, the apparent purpose of which is to abstract or divert gas to any particular land or place or to affect the proper measurement of gas supplied to any particular land or place, it will be presumed, in the absence of proof to the contrary, that the occupier of the land or place installed the device or did the other act with that purpose.

(4) If a gas entity suffers loss or damage as a result of a contravention of this section, the entity may recover compensation for the loss or damage from a person guilty of the contravention—

- (a) on application to a court convicting the person of an offence against this section; or
- (b) by action in a court of competent jurisdiction.

Notice of work that may affect gas infrastructure

83. (1) A person who proposes to do work near gas infrastructure must give the appropriate gas entity at least seven days' notice of the proposed work if—

- (a) there is a risk of equipment or a structure coming into dangerous proximity to gas infrastructure; or
- (b) the work may interfere with gas infrastructure in some other way.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(2) It is a defence to a charge of an offence against subsection (1) if, in the circumstances of an emergency, it is not practicable to give the notice required by subsection (1), and the notice is given as soon as practicable.

(3) A person who does work near gas infrastructure must comply with—

- (a) requirements prescribed by regulation that are applicable to the work; and
- (b) reasonable requirements made by the gas entity for the protection of the infrastructure or the safety of the persons carrying out the work.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Impersonation of officials, etc.

84. A person must not impersonate an authorised officer, a gas officer or anyone else with powers under this Act.

Maximum penalty: \$5 000.

Obstruction

85. (1) A person must not, without reasonable excuse, obstruct an authorised officer, a gas officer, or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: \$5 000.

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(2) A person must not use abusive or intimidatory language to, or engage in offensive or intimidatory behaviour towards, an authorised officer, a gas officer, or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: \$5 000.

False or misleading information

86. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under this Act.

Maximum penalty: If the person made the statement knowing that it was false or misleading—\$10 000.
In any other case—\$5 000.

Statutory declarations

87. If a person is required by or under this Act to furnish information to the Technical Regulator or Pricing Regulator, the Technical Regulator or Pricing Regulator may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Technical Regulator or Pricing Regulator.

General defence

88. (1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

(2) It is a defence to a charge of an offence against this Act if the defendant proves that the act or omission constituting the offence was reasonably necessary in the circumstances in order to avert, eliminate or minimise danger to person or property.

Offences by bodies corporate

89. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defences under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

90. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Recovery of profits from contravention

91. If a gas entity profits from a contravention of this Act, the Technical Regulator may recover an amount equal to the profit from the entity—

- (a) on application to a court convicting the entity of an offence in respect of the contravention; or
- (b) by action in a court of competent jurisdiction.

Immunity from personal liability for Technical Regulator, authorised officer, etc.

92. (1) No personal liability attaches to the Technical Regulator, a delegate of the Technical Regulator, an authorised officer or any officer or employee of the Crown engaged in the administration or enforcement of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Evidence

93. (1) If, in any legal proceedings, a person is alleged to have held a specified appointment under this Act at a specified time, the allegation is taken to have been proved in the absence of proof to the contrary.

(2) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Technical Regulator certifying—

- (a) that a person was or was not the holder of a licence at a specified date or as to the particulars or conditions of a licence; or
- (b) as to the giving and contents of a direction, delegation, exemption, approval or authorisation under this Act,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(3) In any legal proceedings, an apparently genuine document purporting to be a certificate of an authorised officer certifying as to the giving and contents of a direction by the officer under this Act, constitutes proof of the matters so certified in the absence of proof to the contrary.

(4) If, in any legal proceedings, a person is alleged to have acted without proper authority or a specified approval required under this Act, the absence of such authority or approval will be presumed in the absence of proof that such authority or approval in fact existed or had been given.

Service

94. (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

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(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may, if the person is a body corporate, be given to or served on the person in accordance with section 220 of the *Corporations Law*.

(3) If a notice or other document is required or authorised to be given to or served on the holder of a licence under this Act and the licence is held by two or more persons, it is sufficient for the purposes of this Act if the notice or other document is given to or served on any one of those persons.

Regulations

95. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may deal with the following matters:

- (a) the distribution and supply of gas; and
- (b) the construction, installation and positioning of gas infrastructure and gas installations; and
- (c) technical, operational and safety requirements and standards and monitoring and enforcing compliance with the prescribed requirements and standards; and
- (d) the odourising of gas; and
- (e) testing, approving and installation of meters; and
- (f) examination and testing of gas appliances; and
- (g) labelling of gas appliances of a declared class; and
- (h) the exemption (conditionally or unconditionally) of classes of persons, things or operations from the application of this Act or specified provisions of this Act; and
- (i) fees to be paid in respect of any matter under this Act and the waiver or refund of such fees; and
- (j) penalties not exceeding \$5 000 for contravention of a regulation.

(3) The regulations may—

- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Technical Regulator;
- (c) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time.

SCHEDULE

Repeal and Transitional Provisions

Repeal of Gas Act 1988

1. The *Gas Act 1988* (the "**repealed Act**") is repealed.

Transitional provision—licensed supplier of reticulated gas under repealed Act

2. (1) A person who is licensed to carry on a business of supplying reticulated gas under Part 2 of the repealed Act immediately before the commencement of this Act will be issued with a licence—

- (a) authorising the operation of a distribution system; and
- (b) authorising the retailing of gas,

under Division 1 of Part 3 of this Act for a period of not less than 12 months from the commencement of this Act until 30 September in any year, subject to terms and conditions specified by the Technical Regulator.

(2) The regulations may modify the application of the provisions of this Act with respect to the payment of licence fees in relation to a person referred to in subclause (1) and the initial licence period of not less than 12 months referred to in that subclause.

(3) Subject to subclause (4), a person referred to in subclause (1) is not liable for loss or damage resulting from cutting off, or failing to supply, gas to any premises.

(4) Subclause (3) applies only in relation to the supply of gas under a contract made before the commencement of this Act.

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APPENDIX

LEGISLATIVE HISTORY

- Section 4: redesignated as s. 4(1) by 73, 1997, s. 3(e)
definition of "distribution system" substituted by 73,
1997, s. 3(a)
definition of "gas infrastructure" amended by 73, 1997, s.
3(b)
definition of "non-contestable consumer" substituted by
73, 1997, s. 3(c)
definition of "retailing" substituted by 73, 1997, s. 3(d)
definition of "supply" repealed by 73, 1997, s. 3(d)
- Section 4(2): inserted by 73, 1997, s. 3(e)
- Section 21(4): inserted by 73, 1997, s. 4
- Section 25(1): amended by 73, 1997, s. 5
- Section 66(4): amended by 73, 1997, s. 6