

South Australia

## Gas Act 1997

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.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

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

### **3—Objects**

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.

### **4—Interpretation**

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

***annual gas consumption level*** means a level of consumption of gas determined in accordance with the regulations (and the regulations may, for that purpose, make provision for the estimation or agreement of the level in specified circumstances);

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

***Commission*** means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

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

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

***council*** means a council within the meaning of the *Local Government Act 1999*;

***customer*** means a person who has a supply of gas available from a distribution system for consumption by that person, and includes—

- (a) the occupier for the time being of a place to which gas is supplied by a distribution system; and
- (b) where the context requires, a person seeking a supply of gas from a distribution system; and
- (c) a person of a class declared by regulation to be customers;

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

***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 transmission pipeline (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;

***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;

***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;

***retail market administrator*** means an administrator of retail market rules;

**retail market rules** means—

- (a) rules relating to interactions between any of the following:
  - (i) gas entities retailing gas;
  - (ii) gas entities operating distribution systems;
  - (iii) the retail market administrator administering the rules; or
- (b) rules relating to prescribed matters,

being such rules—

- (c) as initially approved by the Minister; and
- (d) if an amendment is made to the rules in accordance with their terms and, subject to subsections (2) and (3), approved by the Commission—as so amended from time to time;

**small customer** means a customer classified by regulation as a small customer;

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

**transmission pipeline** means a transmission pipeline within the meaning of the *Petroleum Act 2000*.

- (2) Retail market rules may make exceptions from the requirement that amendments of the rules be approved by the Commission.
- (3) The regulations—
  - (a) may make provisions relating to the process for approval of amendments of retail market rules; and
  - (b) may deem an amendment of retail market rules to have the approval of the Commission in certain circumstances.

## **5—Crown bound**

- (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.

## **6—Environment protection and other statutory requirements not affected**

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

## **Part 2—Administration**

### **Division A1—Essential Services Commission**

#### **6A—Functions and powers of Commission**

- (1) The Commission has (in addition to the Commission's functions and powers under the *Essential Services Commission Act 2002*)—
  - (a) the licensing, price regulation and other functions and powers conferred by this Act; and
  - (b) any other functions and powers conferred by regulation under this Act.
- (2) If gas entities are required by licence condition to participate in an ombudsman scheme, the Commission must, in performing licensing functions under this Act, liaise with the ombudsman appointed under the scheme.

### **Division 1—Technical Regulator**

#### **7—Technical Regulator**

- (1) There is to be a *Technical Regulator*.
- (2) The Technical Regulator is to be appointed by the Minister.
- (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.

#### **8—Functions of Technical Regulator**

- (1) The Technical Regulator has the following functions:
  - (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
  - (da) the provision of advice in relation to safety or technical standards in the gas supply industry to the Commission at the Commission's request; and
  - (e) any other functions assigned to the Technical Regulator under this Act.

#### **9—Delegation**

- (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.

### **10—Technical Regulator's power to require information**

- (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 performance of the Technical 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: \$20 000.
- (3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

### **11—Obligation to preserve confidentiality**

- (1) The Technical Regulator must preserve the confidentiality of information gained in the course of the performance of the Technical Regulator's functions under 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 Commission and persons assisting the Commission) or the *Gas Pipelines Access (South Australia) Law*.
- (3) Information classified by the Technical Regulator as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

### **14—Annual report**

- (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—Advisory committees**

### **15—Consumer advisory committee**

- (1) The Commission must establish an advisory committee comprising representatives of consumers (the *consumer advisory committee*)—
  - (a) to provide advice to the Commission in relation to the performance of the Commission's licensing functions under Part 3; and

- (b) to provide advice to the Commission, either on its own initiative or at the request of the Commission, on any other matter relating to the gas supply industry.
- (2) Despite subsection (1), the consumer advisory committee will, if the Commission so determines, be the same committee as the committee of that name established under Division 4 of Part 2 of the *Electricity Act 1996* and have the functions referred to in subsection (1) in addition to its functions under that Division.

### **16—Technical advisory committee**

The Technical Regulator must establish an advisory committee (the *technical advisory committee*) including representatives of—

- (a) gas entities; and
- (b) contractor and employee associations involved in the gas supply industry; and
- (c) local government,

to provide advice to the Technical Regulator, either on its own initiative or at the request of the Technical Regulator, on any matter relating to the functions of the Technical Regulator.

### **17—Other advisory committees**

The Minister, the Commission or the Technical Regulator may establish other advisory committees to provide advice on specified aspects of the administration of this Act.

## **Part 3—Gas supply industry**

### **Division A1—Declaration as regulated industry**

#### **18B—Declaration as regulated industry**

The gas supply industry is declared to be a regulated industry for the purposes of the *Essential Services Commission Act 2002*.

### **Division 1—Licensing of gas entities**

#### **19—Requirement for licence**

A person must not carry on—

- (a) the operation of a distribution system; or
- (b) the retailing of gas; or
- (ba) the business of a retail market administrator; 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: \$1 000 000.

## 20—Application for licence

- (1) An application for the issue of a licence must—
  - (a) be made to the Commission in a form approved by the Commission; and
  - (b) contain the information specified in the form.
- (2) The applicant must pay to the Commission 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 Commission may, as the Commission 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 Commission further relevant information requested by the Commission.

## 21—Consideration of application

- (1) The Commission must consider an application for the issue of a licence and may, subject to this Division, issue or refuse to issue the licence.
- (2) The Commission must have regard to the general factors specified in Part 2 of the *Essential Services Commission Act 2002* and, subject to this section, 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
  - (ca) in the case of a licence authorising the business of a retail market administrator—the applicant will be able adequately to carry on that business; 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
  - (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 Commission 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) If—
- (a) a person carries on or proposes to carry on operations for which a licence is required as agent of another person; and
  - (b) the agent makes application for the issue of such a licence on the agent's own behalf and on behalf of the principal; and
  - (c) the Commission is satisfied that the criteria for the issue of the licence are met in relation to the agent,

the Commission may, at the Commission's discretion, dispense with the requirement that the Commission be satisfied that the criteria are met in relation to the principal and issue the licence to the agent and the principal to be held by them jointly.

#### **21A—Licences may be held jointly**

- (1) A licence may be held jointly by two or more persons.
- (2) If a licence is held jointly by two or more persons, those persons are jointly and severally liable to meet requirements imposed under this Act or the *Essential Services Commission Act 2002*.

#### **22—Authority conferred by licence**

- (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.

#### **23—Term of licence**

A licence may be issued for an indefinite period or for a term specified in the licence.

#### **24—Licence fees and returns**

- (1) A person is not entitled to the issue of a licence unless the person first pays to the Commission 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 Commission, before the date prescribed for that purpose, an annual return containing the information required by the Commission 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 Commission, 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) The annual licence fee for a licence is the fee fixed, from time to time, by the Minister in respect of that licence as an amount that the Minister considers to be a reasonable contribution towards administrative costs.
- (4) The annual licence fee may, if the Commission so determines, be paid in equal instalments at intervals fixed by the Commission.
- (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 Commission may, by written notice, require the holder to make good the default and, in addition, to pay to the Commission 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—  
*administrative costs* means—
  - (a) the costs of administration of this Act; and
  - (b) any costs of administration of the *Essential Services Commission Act 2002* relating to the gas supply industry; and
  - (c) the costs of administration of the *Gas Pipelines Access (South Australia) Act 1997*; and
  - (d) other costs prescribed by regulation;

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

## 25—Licence conditions

- (1) The Commission must make a licence subject to conditions determined by the Commission—
  - (a) requiring compliance with applicable codes or rules made under the *Essential Services Commission Act 2002* as in force from time to time; and
  - (b) requiring compliance with specified technical or safety requirements or standards; and
  - (c) relating to the gas entity's financial or other capacity to continue operations under the licence; and
  - (d) requiring the gas entity to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Commission; and
  - (e) requiring the gas entity to notify the Commission about changes to officers and, if applicable, major shareholders of the entity; and
  - (f) requiring the gas entity to provide, in the manner and form determined by the Commission, such other information as the Commission may from time to time require; and
  - (g) requiring the gas entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by gas entities.

- (2) The Commission must make a licence subject to further conditions that the Commission is required by regulation to impose on the issue of such a licence.
- (3) The Commission may make a licence subject to further conditions considered appropriate by the Commission.
- (4) The Commission must provide to the Minister any information that the Minister requires for the purposes of the administration of a scheme for the provision by the State of customer concessions, or the performance of community service obligations, relating to the sale or supply of gas.

## 26—Licences authorising operation of distribution system

- (1) The Commission must make a licence authorising the operation of a distribution system subject to conditions determined by the Commission—
  - (a) requiring compliance with applicable retail market rules; and
  - (b) requiring the gas entity—
    - (i) to prepare and periodically revise a safety, reliability, maintenance and technical management plan dealing with matters prescribed by regulation; and
    - (ii) to obtain the approval of the Commission (which may only be given by the Commission on the recommendation of the Technical Regulator) to the plan and any revision; and
    - (iii) to comply with the plan as approved from time to time; and
    - (iv) to audit from time to time the entity's compliance with the plans and report the results of those audits to the Technical Regulator; and
  - (c) requiring the gas entity to maintain specified accounting records and to prepare accounts according to specified principles; and
  - (d) requiring the gas entity to participate in an ombudsman scheme—
    - (i) that applies to the gas supply industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*) prescribed by regulation; and
    - (ii) the terms and conditions of which are approved by the Commission; and
  - (e) requiring the gas entity to monitor and report as required by the Commission on indicators of service performance determined by the Commission; and
  - (f) requiring the gas entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) limiting the grounds on which the supply of gas to customers may be disconnected and prescribing the process to be followed before the supply of gas is disconnected; and
  - (g) requiring a specified process to be followed to resolve disputes between the gas entity and customers as to the supply of gas.
- (2) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the operation of a distribution system.

**26A—Licences authorising retailing**

- (1) A licence authorising the retailing of gas must, if the Minister so determines and despite section 7 of the *Essential Services Commission Act 2002*, confer on the gas entity an exclusive right to sell gas as permitted under Annex E (Franchising Principles) of the *Natural Gas Pipelines Access Agreement* made on 7 November 1997 between the Commonwealth and the States and Territories of the Commonwealth.
- (2) The Commission must make a licence authorising the retailing of gas subject to conditions determined by the Commission—
  - (a) requiring compliance with applicable retail market rules; and
  - (b) if the gas entity sells gas to customers of a prescribed class, requiring the entity to maintain specified accounting records and to prepare accounts according to specified principles; and
  - (c) requiring the gas entity to establish customer consultation processes of a specified kind; and
  - (d) requiring the gas entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002* on or before the prescribed date) relating to the provision of pricing information to enable small customers to compare competing offers in the retailing of gas; and
  - (da) requiring the gas entity to include (in a print size and form prescribed by regulation) in each account for gas charges sent to a small customer information prescribed by regulation, including information relating to—
    - (i) the customer's gas consumption during the preceding 12 months; and
    - (ii) the entity's daily charges for gas during the period to which the account relates; and
    - (iii) obtaining advice through the Commission about reducing gas consumption and about gas consumer choices; and
    - (iv) greenhouse gas emissions associated with the customer's gas consumption; and
  - (e) requiring the gas entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) relating to standard contractual terms and conditions to apply to the sale or supply of gas to small customers or customers of a prescribed class; and
  - (f) requiring the gas entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) imposing minimum standards of service for customers that take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards; and

- (g) requiring the gas entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) limiting the grounds on which the supply of gas to customers may be discontinued or disconnected and prescribing the process to be followed before the supply of gas is discontinued or disconnected; and
  - (h) requiring a specified process to be followed to resolve disputes between the gas entity and customers as to the sale or supply of gas; and
  - (i) if the gas entity sells gas to customers with an annual gas consumption level of less than the level prescribed, requiring the entity to participate in an ombudsman scheme—
    - (i) that applies to the gas supply industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*) prescribed by regulation; and
    - (ii) the terms and conditions of which are approved by the Commission.
- (3) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the retailing of gas.

#### **26B—Licence authorising business of retail market administrator**

- (1) The Commission must make a licence authorising the business of a retail market administrator subject to conditions determined by the Commission—
- (a) requiring compliance with applicable retail market rules; and
  - (b) requiring the gas entity to maintain specified accounting records and to prepare accounts according to specified principles; and
  - (c) requiring the gas entity's business as a retail market administrator to be kept separate from any other business of the gas entity or any other person in the manner and to the extent specified in the conditions; and
  - (d) requiring the gas entity to publish on a website the retail market rules administered by the entity, and its constitution and any other rules that it has adopted to govern its processes; and
  - (e) requiring the gas entity to submit to the Commission for its approval any amendment of the retail market rules (not being an amendment excluded by the rules from the requirement for such approval) and a statement of the reasons for the amendment; and
  - (f) requiring the gas entity to inform persons seeking or in receipt of its services as a retail market administrator of the terms on which the services are provided (including its charges for the services) and of any changes in those terms; and
  - (g) requiring the gas entity to comply with—
    - (i) specified provisions for or relating to the granting to other gas entities of rights to use or have access to the entity's retail market business systems (on non-discriminatory terms) for the retailing of gas; and



- (ii) any scheme that the Commission may establish by a code made under the *Essential Services Commission Act 2002* for the resolution of disputes in relation to such rights; and
  - (h) requiring the gas entity to establish consultation processes of a specified kind.
- (2) This section does not limit the matters that may be dealt with by terms or conditions of a licence authorising the business of a retail market administrator.

### **27—Offence to contravene licence conditions**

- (1) A gas entity must not contravene a condition of its licence.  
Maximum penalty: \$1 000 000.
- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.

### **29—Variation of licence**

- (1) The Commission 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.

### **30—Transfer of licence**

- (1) A licence may be transferred with the Commission's agreement.
- (2) The Commission may impose conditions on the transfer of a licence, or vary the terms and conditions of the licence on its transfer.
- (3) The Commission must not agree to the transfer of a licence if the transferee would not be entitled to the issue of the licence.
- (4) An application for agreement to the transfer of a licence must—
- (a) be made by the transferor with the consent of the transferee to the Commission in a form approved by the Commission; and
  - (b) contain the information specified in the form.
- (5) The applicant must pay to the Commission an application fee fixed by the Minister of an amount that the Minister considers appropriate to meet the reasonable costs of determining the application.
- (6) The applicant must give the Commission further relevant information requested by the Commission.

### **30A—Consultation with consumer bodies**

The Commission may, before issuing a licence, agreeing to the transfer of a licence or determining or varying conditions of a licence, consult with and have regard to the advice of—

- (a) the Commissioner for Consumer Affairs; and
- (b) the consumer advisory committee under Part 2.

### **30B—Notice of licence decisions**

- (1) The Commission must give an applicant for a licence, or for agreement to the transfer of a licence, written notice of the Commission's decision on the application.
- (2) The Commission must give the holder of a licence written notice of any decision by the Commission affecting the terms or conditions of the licence.

### **31—Surrender of licence**

- (1) A gas entity may, by written notice given to the Commission, surrender its licence.
- (2) The notice must be given to the Commission 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 Commission may, by agreement with the gas entity, shorten the required period of notice.

### **32—Register of licences**

- (1) The Commission must keep a register of the licences currently held by gas entities under this Act.
- (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, without payment of a fee, inspect the Register.

## **Division 2—Price regulation**

### **33—Price regulation by determination of Commission**

- (1) The Commission may make a determination under the *Essential Services Commission Act 2002* regulating prices, conditions relating to prices and price-fixing factors for—
  - (a) the sale and supply of gas to small customers or customers of a prescribed class;
  - (b) services provided in accordance with applicable retail market rules by a gas entity operating a distribution system to a gas entity carrying on retailing;
  - (c) services provided by a gas entity carrying on the business of a retail market administrator to another gas entity;
  - (d) the sale and supply of gas by a gas entity to customers of another gas entity in accordance with a condition of the entity's licence imposed under Division 3B;

- (e) other goods and services in the gas supply industry specified by the Minister by notice in the Gazette.
- (2) Despite section 7 of the *Essential Services Commission Act 2002*, the Minister may, by notice published in the Gazette, direct the Commission about—
  - (a) factors to be taken into account by the Commission in making a determination in addition to those that the Commission is required by the *Essential Services Commission Act 2002* to take into account; and
  - (b) the distributive effect as between classes of customers that a determination of a kind referred to in subsection (1)(a), (b) or (c) may have; and
  - (c) the period over which a determination of a kind referred to in subsection (1)(a), (b) or (c) will allow cost recovery for costs incurred by gas entities in preparing for full competition in the gas supply industry.
- (3) The Minister may, by further notice in the Gazette, vary or revoke a notice published by the Minister under this section.
- (4) Despite the provisions of the *Essential Services Commission Act 2002*, the operation of a determination of a kind referred to in subsection (1)(a) is not to be stayed pending the determination of an application for review or an appeal under Part 6 of that Act.
- (5) The Governor may, by proclamation, fix a day on which subsection (2) expires.

### **Division 3—Standard terms and conditions for retailing of gas**

#### **34—Standard terms and conditions for retailing of gas**

- (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 small customers or customers of a prescribed class.
- (2) A gas entity must publish in the Gazette a notice setting out any standard terms and conditions fixed by the entity.
- (2a) A gas entity must, when it publishes a notice in the Gazette under subsection (2), also publish a notice in a newspaper circulating generally in the State describing the general nature of the standard terms and conditions and advising where a person may read or obtain a copy of the standard terms and conditions.
- (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 under this Act; and
  - (c) come into force on the day specified by the gas entity in the notice of the standard terms and conditions published in the Gazette 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 customers 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 customer of the entity.

- (5) A gas entity that has fixed standard terms and conditions under this section must—
- (a) supply a copy of the standard terms and conditions, without charge, on request made to the entity at a place approved by the Commission; and
  - (b) publish the standard terms and conditions on a website maintained by the entity.

Maximum penalty: \$2 500.

## **Division 3A—Standing contracts and default contracts**

### **34A—Standing contracts**

- (1) This section applies to a gas entity holding a licence authorising the retailing of gas that is declared by the Governor under this section to be a gas entity to which this section applies.
- (2) It is a condition of the gas entity's licence that the entity must, at the request of a small customer or customer of a prescribed class, agree to sell and supply gas to the customer at the entity's standing contract price and subject to the entity's standing contract terms and conditions.
- (3) A customer to whom the gas entity was selling gas immediately before the commencement of this section is, on that commencement, if—
- (a) the customer is then a small customer or a customer of a prescribed class; and
  - (b) has not contracted with another gas entity for the purchase of gas from that commencement,

to be taken to have requested that the entity sell and supply gas to the customer on the basis referred to in subsection (2).

- (4) The entity is not required to sell and supply gas to a customer in compliance with the condition imposed under subsection (2) if the entity is entitled in accordance with the entity's standing contract terms and conditions to refuse to sell and supply gas to the customer.
- (4a) The following provisions apply in relation to the fixing by the Commission of a standing contract price for an entity and class of customers for the purposes of this section:
- (a) the Commission may fix the price by a determination of a kind referred to in section 33(1)(a);
  - (b) a determination must provide for the expiry of the determination at the end of a period of not less than 3 years specified in the determination;
  - (c) a determination may provide for prices that vary at specified times according to a formula specified in the determination;
  - (d) unless the Commission determines that special circumstances exist—
    - (i) a determination may not be made to take effect before the expiry date of the last preceding determination made by the Commission in accordance with this subsection;

- (ii) a determination may only be made if the entity has made a submission to the Commission stating the price that the entity proposes be fixed by the Commission as the entity's standing contract price, and the entity's justification for the price, not less than 6 months and not more than 9 months before the making of the determination;
  - (iii) the Commission must, before making a determination, have conducted an inquiry under Part 7 of the *Essential Services Commission Act 2002* into the question of the appropriate price to be fixed as the standing contract price;
  - (e) a submission under paragraph (d) must comply with any requirements as to the form and content of such submissions imposed by the Commission by written notice served on the entity.
- (5) The Governor may, by proclamation—
- (a) declare that this section applies to a specified gas entity; and
  - (b) vary or revoke such a declaration.

- (6) In this section—

***standing contract price***, in relation to a gas entity and a customer, means—

- (a) until 1 July 2005—the price last fixed by the Minister under Schedule 2 for the sale and supply of gas to a class of customers to which the customer belongs;
- (b) on and from 1 July 2005—
  - (i) the price fixed by the Commission in accordance with subsection (4a) as the entity's standing contract price for a class of customers to which the customer belongs; or
  - (ii) if there is no price for the time being fixed by the Commission as the entity's standing contract price in accordance with subsection (4a), the price fixed under this Act as at 31 December 2002 for the sale and supply of gas to a class of customers to which the customer belongs;

***standing contract terms and conditions*** means terms and conditions that have been published by the gas entity under section 34 as the entity's standing contract terms and conditions.

- (7) The Governor may, by proclamation, fix a day on which this section expires.

### **34B—Default contracts**

- (1) This section applies to a gas entity holding a licence authorising the retailing of gas that sells gas to one or more small customers in South Australia.
- (2) It is a condition of the gas entity's licence that the entity must, if the entity becomes bound, in accordance with the regulations, to sell and supply gas to a small customer under a default contract arrangement for a period specified in the regulations—
  - (a) give the customer a written notice in accordance with the regulations; and

- (b) sell and supply gas to the customer at the entity's default contract price and subject to the entity's default contract terms and conditions for that period.
- (3) In this section—
- default contract price**, in relation to a gas entity and a customer, means whichever of the following is the price last fixed:
- (a) the price last fixed under this Act for the sale and supply of gas to a class of customers to which the customer belongs;
  - (b) a price fixed by the entity as the entity's default contract price for a class of customers to which the customer belongs by notice published in the Gazette and in a newspaper circulating generally in the State, where—
    - (i) the price was fixed by the notice with effect from the end of the prescribed period from the date of publication of the notice; and
    - (ii) the notice contained a statement of the entity's justification for the price; and
    - (iii) the Commission did not, within the prescribed period, fix the entity's default contract price as referred to in paragraph (c);
  - (c) a price fixed by the Commission as the entity's default contract price for a class of customers to which the customer belongs by a determination of a kind referred to in section 33(1)(a);

**default contract terms and conditions** means terms and conditions that have been published by the gas entity under section 34 as the entity's default contract terms and conditions.

## Division 3B—Retailer of last resort scheme

### 34C—Retailer of last resort scheme

The regulations may make provision—

- (a) requiring the Commission to make the licence of a prescribed gas entity subject to conditions requiring the entity to sell and supply gas (on terms and conditions approved by the Commission) to customers of another gas entity in the event that the Minister declares the other entity to be in default; and
- (b) empowering the Minister to declare, by notice in the Gazette, that a gas entity specified in the notice is in default for the purposes of paragraph (a) if the Minister is satisfied that prescribed circumstances apply to the entity; and
- (c) relating to the period for which the obligation to sell and supply gas to customers of another gas entity will continue to apply; and
- (d) requiring the Commission to make a prescribed licence, or licence of a prescribed class, subject to conditions imposing obligations on the gas entity in the event that a declaration referred to in paragraph (b) is made by the Minister.

### **34D—Minister's power to require information**

- (1) The Minister may require the Commission, a gas entity or other person to give the Minister, within a time specified by the Minister (which must be reasonable), information in the person's possession that the Minister reasonably requires for the purposes of this Division.
- (2) A person required to give information under this section must provide the information within the time specified by the Minister.

Maximum penalty: \$20 000.

## **Division 4—Protection of property in gas infrastructure**

### **35—Gas infrastructure does not merge with land**

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.

### **36—Seizure and dismantling of gas infrastructure**

- (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**

### **37—Temporary gas rationing**

- (1) If for any reason the volume of gas available for supply through a distribution system is, in the opinion of the Minister, insufficient or likely to become insufficient to meet the requirements of customers who draw gas from that system—
  - (a) the Minister may give directions to—
    - (i) the gas entity or other body by which the system, or part of the system, is operated; or
    - (ii) a person who sells gas by retail or otherwise (whether or not the person is required to hold a licence under this Act),  
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 customers, or specified customers, not to draw gas from the system except for the purposes (if any) allowed by the directions.
- (2) A direction under subsection (1)(a) may (without limitation) relate to the quantity of gas that may be supplied through a distribution system or to the quality of that gas.
- (2a) A direction under this section—
  - (a) operates for a period (which may be defined by reference to specified days or to the happening of specified events) specified in the direction; and

- (b) may be varied or revoked (with effect at a specified time or on the happening of a specified event) by a subsequent direction under this section.
- (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: \$250 000.
- (4a) An offence against subsection (4) may be prosecuted as an indictable offence or summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$5 000.
- (5) In this section—  
*distribution system* has the meaning otherwise assigned to the term under this Act, and includes a transmission pipeline.

### 37A—Minister's power to require information or documents

- (1) The Minister may require a person—
  - (a) to give the Minister within a specified time specified information; or
  - (b) to produce to the Minister within a specified time specified documents,that the Minister reasonably requires to determine the sufficiency of gas supply, frame directions, plan for the future exercise of powers under this Division or otherwise administer or enforce this Division (or regulations made for the purposes of this Division).
- (1a) The power of the Minister to require information includes (without limitation) power to require a seller of gas affected by directions under this Division—
  - (a) to conduct an audit of the seller's compliance with regulations made for the purposes of this Division; and
  - (b) to report the results of the audit to the Minister.
- (2) A person required to give information under this section must provide the information or produce documents within the time specified by the Minister.  
Maximum penalty: \$100 000.
- (3) If a person is required to give information or produce a document under this section and the information or document would tend to incriminate the person of an offence, the person must nevertheless give the information or produce the document, but—
  - (a) if the person is a natural person, the information or document so given or produced will not be admissible in evidence against the person in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
  - (b) if the person is a body corporate—
    - (i) the information or document so given or produced will not be admissible in evidence against a director of the body corporate in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and



- (ii) a director will not be guilty of an offence (other than an offence relating to the making of a false or misleading statement or declaration) as a result of the body corporate having been found guilty of an offence in proceedings in which the information or document so given or produced was admitted in evidence against the body corporate.

### **37AB—Obligation to preserve confidentiality**

- (1) The Minister must preserve the confidentiality of information gained in the course of the performance of the Minister's functions under this Division (or regulations made for the purposes of this Division), 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—
  - (a) the disclosure of information between persons engaged in the administration of this Division; or
  - (b) the disclosure of information as required for the purposes of legal proceedings related to this Division (or regulations made for the purposes of this Division).
- (3) Information classified by the Minister as confidential under this section is not liable to disclosure under the *Freedom of Information Act 1991*.

### **37AC—Regulations relating to gas rationing**

The power of the Governor to make regulations under this Act includes (without limitation) power to make regulations for the purposes of this Division—

- (a) making provision relating to contractual relations between customers and sellers of gas affected by directions under this Division;
- (b) requiring sellers of gas affected by directions under this Division to repay to customers any amounts that under applicable contractual terms were not payable by the customers;
- (c) prescribing a penalty not exceeding \$10 000 for contravention of a regulation made for the purposes of this Division.

### **37AD—Prosecution for contravention of Division requires Minister's consent**

- (1) A prosecution for a contravention of this Division (or regulations made for the purposes of this Division), may only be commenced with the consent of the Minister.
- (2) In any legal proceedings an apparently genuine certificate, purporting to be signed by the Minister, certifying that the Minister consented to the commencement of a prosecution referred to in subsection (1) will, in the absence of proof to the contrary, be accepted as proof of the matters so certified.

### **37B—Manner in which notices may be given**

Except as otherwise provided, a direction or requirement to be given to or made of a person or body under this Division may—

- (a) be given or made by notice in writing served on the person or body; or
- (b) if the Minister is of the opinion that good reason exists for doing so, be given or made by telephone, facsimile transmission, E-mail or some other form of electronic transmission (however, in such a case, a written record of the direction or requirement must be served on the person or body in accordance with section 94 as soon as is reasonably practicable).

### **37C—Minister's power to delegate**

- (1) The Minister may delegate powers or functions under this Division—
  - (a) to a particular person; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## **Division 6—Suspension or cancellation of licences**

### **38—Suspension or cancellation of licences**

- (1) The Commission 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
  - (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 Commission.

- (3) Before the Commission acts under this section, the Commission 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 Commission in relation to the proposed action.

## **Division 7—Commission's powers to take over operations**

### **39—Power to take over operations**

- (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 Commission's opinion, to take over the entity's operations (or some of them) to ensure an adequate supply of gas to customers,the Governor may make a proclamation under this section.
- (2) Before a proclamation is made under this section, the Commission 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 Commission 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.

### **40—Appointment of operator**

- (1) When a proclamation is made under this Part, the Commission 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 a 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: \$250 000.

- (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: \$250 000.

## **Part 4—Gas entities' powers and duties**

### **Division 1—Gas officers**

#### **42—Appointment of gas officers**

- (1) A gas entity may, subject to conditions determined by the Minister, 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.

#### **43—Conditions of appointment**

- (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.

#### **44—Gas officer's identity card**

- (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 Minister 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 2 days after ceasing to be a gas officer, return the identity card to the gas entity.

Maximum penalty: \$250.

#### **45—Production of identity card**

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**

#### **46—Acquisition of land**

- (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.

#### **47—Power to carry out work on public land**

- (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.
- (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.
- (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.

## **48—Power to enter for purposes related to gas entity's infrastructure**

- (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**

### **49—Entry to inspect etc gas installations**

- (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.

### **50—Entry to read meters etc**

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.

### **51—Entry to disconnect supply**

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.

### **52—Disconnection of supply if entry refused**

- (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.
- (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**

### **53—Gas entity may cut off gas supply to avert danger**

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.

### **54—Emergency legislation not affected**

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 Management Act 2004*, *Essential Services Act 1981*, *Fire and Emergency Services Act 2005* or Part 4A of the *Public and Environmental Health Act 1987*.

## **Part 5—Safety and technical issues**

### **Division 1—Gas infrastructure, gas installations and gas fitting work**

#### **55—Responsibility of owner or operator of infrastructure or installation**

- (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: \$250 000.

- (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.

#### **56—Certain gas fitting work**

- (1) A person to whom this section applies 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.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) If work on a gas installation or proposed gas installation is personally carried out by a registered gas fitting worker, the person to whom this section applies must ensure that the requirements of the regulations as to notification and certificates of compliance are complied with.

Maximum penalty: \$5 000.

Expiation fee: \$315.



- (3) This section applies—
- (a) if a licensed gas fitting contractor or licensed building work contractor has been engaged to carry out the work (whether personally or not)—to the licensed gas fitting contractor or licensed building work contractor; or
  - (b) in any other case—to the person who personally carries out the work.
- (4) A prosecution for an offence against this section may be brought at any time within the period of two years after the date on which the offence is alleged to have been committed.

### **57—Power to require rectification etc in relation to infrastructure or installations**

- (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 or part 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 that operates the infrastructure;
  - (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: \$50 000.
- (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.

### **57A—Prohibition of sale or use of unsafe components for infrastructure or installations**

- (1) If, in the Technical Regulator's opinion, a particular component or component 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 the component or components of the relevant class.

- (2) If, in the Technical Regulator's opinion, a particular component or component of a particular class is or is likely to become unsafe in use, the Regulator may require traders who have sold the component in the State—
- (a) to take specified action to recall the component from use; and
  - (b) —
    - (i) to take specified action to render the component safe; or
    - (ii) if it is not practicable to render the component safe or the trader chooses not to do so—to refund the purchase price on return of the component.
- (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
  - (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.
- (5) In this section—
- component** means a component for gas infrastructure or a component for a gas installation.

### **57B—Public warning statements about unsafe gas installations, components, practices etc**

- (1) The Technical Regulator may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about any of the following:
- (a) components for gas installations that, in the opinion of the Technical Regulator, are or are likely to become unsafe in use and persons who supply the components;
  - (b) uses of gas installations or components for gas installations, or installation practices, that, in the opinion of the Technical Regulator, pose a danger to persons or property;
  - (c) any other dangers to persons or property associated with gas installations or components for gas installations.
- (2) A statement under subsection (1) may identify particular gas installations, components, services, practices and persons.

### **57C—Immunity from liability**

- (1) Neither the Technical Regulator nor the Crown incurs any liability for a statement made by the Technical Regulator in good faith in the exercise or purported exercise of powers under section 57B.

- (2) No liability is incurred by a person for publishing in good faith—
- (a) a statement referred to in subsection (1); or
  - (b) a fair report or summary of such a statement.

## 58—Reporting of accidents

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

### 59—Interpretation

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.

### 60—Approval and labelling of gas appliances

- (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.

### **61—Prohibition of sale or use of unsafe gas appliances or components**

- (1) If, in the Technical Regulator's opinion, a particular gas appliance or component or gas appliance or component 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 the appliance or component or appliances or components of the relevant class.
- (2) If, in the Technical Regulator's opinion, a particular gas appliance or component or gas appliance or component of a particular class is or is likely to become unsafe in use, the Regulator may require traders who have sold the appliance or component in the State—
  - (a) to take specified action to recall the appliance or component from use; and
  - (b) —
    - (i) to take specified action to render the appliance or component safe; or
    - (ii) if it is not practicable to render the appliance or component safe or the trader chooses not to do so—to refund the purchase price on return of the appliance or component.
- (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
  - (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.
- (5) In this section—  
**component** means a component for a gas appliance.

### **61AA—Public warning statements about unsafe gas appliances, components, practices etc**

- (1) The Technical Regulator may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about any of the following:
  - (a) gas appliances or components for gas appliances that, in the opinion of the Technical Regulator, are or are likely to become unsafe in use and persons who supply the appliances or components;
  - (b) uses of gas appliances or components for gas appliances, or installation practices, that, in the opinion of the Technical Regulator, pose a danger to persons or property;
  - (c) any other dangers to persons or property associated with gas appliances or components for gas appliances.
- (2) A statement under subsection (1) may identify particular gas appliances, components, services, practices and persons.

### **61AB—Immunity from liability**

- (1) Neither the Technical Regulator nor the Crown incurs any liability for a statement made by the Technical Regulator in good faith in the exercise or purported exercise of powers under section 61AA.
- (2) No liability is incurred by a person for publishing in good faith—
  - (a) a statement referred to in subsection (1); or
  - (b) a fair report or summary of such a statement.

## **Part 6—Enforcement**

### **Division A1—Warning notices and assurances**

#### **61A—Warning notices and assurances**

- (1) If it appears to the Commission that a person has been guilty of a contravention of Part 3, the Commission may issue a warning notice to the person, warning the person that it will be prosecuted for the contravention unless—
  - (a) if the contravention is capable of being rectified, the person takes action specified in the notice to rectify the contravention within the period specified in the notice; and
  - (b) the person gives the Commission an assurance, in the terms specified in the notice, and within the period specified in the notice, that the person will avoid a future such contravention.

- (2) If it appears to the Technical Regulator that a person has been guilty of a contravention of Part 5, the Technical Regulator may issue a warning notice to the person, warning the person that it will be prosecuted for the contravention unless—
  - (a) if the contravention is capable of being rectified, the person takes action specified in the notice to rectify the contravention within the period specified in the notice; and
  - (b) the person gives the Technical Regulator an assurance, in the terms specified in the notice, and within the period specified in the notice, that the person will avoid a future such contravention.
- (3) A warning notice issued under this section, and an assurance given under this section, must be in writing.
- (4) The action that may be specified in a warning notice to rectify a contravention may include action to remedy adverse consequences of the contravention, for example (without limitation)—
  - (a) the refunding of an amount wrongly paid to the person as a result of the contravention; or
  - (b) the payment of compensation to a person who has suffered loss, damage or injury as a result of the contravention; or
  - (c) the disclosure of information; or
  - (d) the publication of advertisements relating to the contravention or relating to action to rectify or remedy the contravention.
- (5) The Commission or the Technical Regulator may, by written notice to a person, vary a warning notice issued to the person.
- (6) If the Commission or the Technical Regulator issues a warning notice to a person, the Commission or the Technical Regulator must not proceed against the person in respect of the contravention to which the notice relates, unless the person—
  - (a) fails to take action specified in the notice to rectify the contravention within the period specified in the notice; or
  - (b) fails to give the Commission or the Technical Regulator, as the case requires, an assurance in the terms specified in the notice within the period specified in the notice; or
  - (c) contravenes an assurance given by the person in response to the notice.

### **61B—Register of warning notices and assurances**

- (1) The Commission must keep a register of warning notices issued by the Commission under this Division, and a register of assurances given to the Commission under this Division.
- (2) The Technical Regulator must keep a register of warning notices issued by the Technical Regulator under this Division, and a register of assurances given to the Technical Regulator under this Division.
- (3) A person may, without payment of a fee, inspect a register kept under this section.

## Division A2—Injunctions

### 61C—Injunctions

- (1) If the District Court is satisfied, on the application of the Minister, the Commission, the Technical Regulator or any other person, that a person has engaged or proposes to engage in conduct that constitutes or would constitute a contravention of this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) If the District Court is satisfied, on the application of the Minister, the Commission, or the Technical Regulator, that a person has engaged in conduct constituting a contravention of this Act, the Court may grant an injunction requiring that person to take specified action to remedy any adverse consequence of that conduct.
- (3) The action that may be required by an injunction to remedy adverse consequences of conduct constituting a contravention may include (without limitation)—
  - (a) the refunding of an amount wrongly paid as a result of the contravention; or
  - (b) the payment of compensation to a person who has suffered loss, damage or injury as a result of the contravention; or
  - (c) the disclosure of information; or
  - (d) the publication of advertisements relating to the contravention or relating to action to rectify or remedy the contravention.
- (4) An injunction may be granted by the District Court under this section—
  - (a) in proceedings in which the Court convicts a person of an offence to which the application relates; or
  - (b) in proceedings brought before the Court for the purpose of obtaining the injunction.
- (5) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (6) The power of the District Court to grant an injunction requiring a person to do an act or thing may be exercised—
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (7) An interim injunction may be granted under this section pending final determination of the application.

- (8) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.
- (9) Where the Minister, the Commission or the Technical Regulator applies for an injunction under this section, no undertaking as to damages will be required.
- (10) The Minister may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.
- (11) An injunction under this section may be rescinded or varied at any time.

## **Division 1—Appointment of authorised officers**

### **62—Appointment of authorised officers**

- (1) The Minister may appoint suitable persons as authorised officers.
- (2) An authorised officer may (but need not be) a Public Service employee.
- (3) An authorised officer may be assigned to assist one or more of—
  - (a) the Minister;
  - (b) the Commission;
  - (c) the Technical Regulator,as the Minister considers appropriate.
- (4) An authorised officer will—
  - (aa) in the exercise of powers for the enforcement of Part 3 Division 5—be subject to the direction and control of the Minister;
  - (a) in the exercise of powers for the enforcement of Part 3 (other than Division 5)—be subject to control and direction by the Commission;
  - (b) in the exercise of powers for the enforcement of any other provisions under this Act—be subject to control and direction by the Technical Regulator.

### **63—Conditions of appointment**

- (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 Minister.
- (4) An authorised officer may be removed from office by the Minister.

### **64—Authorised officer's identity card**

- (1) The Minister 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 2 days after ceasing to be an authorised officer, return the identity card to the Minister.

Maximum penalty: \$250.

### **65—Production of identity card**

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**

### **66—Power of entry**

- (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.
- (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.

### **67—General investigative powers of authorised officers**

- (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 Commission or 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 Minister, the Commission or Technical Regulator may dispose of the object.

## **68—Disconnection of gas supply**

- (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: \$50 000.

## **69—Power to make infrastructure or installation safe**

- (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 that operates 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: \$50 000.

#### **70—Power to require information or documents**

- (1) An authorised officer may require a person to provide information in the person's possession relevant to the enforcement of this Act.
- (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: \$20 000.
- (4) Subject to subsection (5), 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.
- (5) If a person is required to give information or produce a document under this section for the enforcement of Part 3 Division 5 and the information or document would tend to incriminate the person of an offence, the person must nevertheless give the information or produce the document, but—
  - (a) if the person is a natural person, the information or document so given or produced will not be admissible in evidence against the person in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
  - (b) if the person is a body corporate—
    - (i) the information or document so given or produced will not be admissible in evidence against a director of the body corporate in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and

- (ii) a director will not be guilty of an offence (other than an offence relating to the making of a false or misleading statement or declaration) as a result of the body corporate having been found guilty of an offence in proceedings in which the information or document so given or produced was admitted in evidence against the body corporate.

## **Part 7—Reviews and appeals**

### **71—Review of decisions by Commission or Technical Regulator**

- (1) An application may be made to—
  - (a) the Commission by an applicant for the issue or variation of the terms or conditions of a licence under Part 3, or for agreement to the transfer of such a licence, for review of a decision of the Commission to refuse the application; or
  - (b) the Commission by a gas entity for review of a decision of the Commission under Part 3 to suspend or cancel the entity's licence or to vary the terms or conditions of the entity's licence; or
  - (c) the Technical Regulator 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) the Technical Regulator 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) An application for review must—
  - (a) be in writing; and
  - (b) set out the decision to which the application relates; and
  - (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
  - (d) be accompanied by any information that the applicant considers should be taken into account by the Commission or the Technical Regulator on the review; and
  - (e) be lodged with the Commission or the Technical Regulator—
    - (i) in the case of a decision relating to a licence or application for a licence—within 10 working days after written notice of the decision is given to the gas entity or applicant;
    - (ii) in the case of a decision to give a direction—within 10 working days after the direction is given;
    - (iii) in the case of a decision to disconnect a gas supply—within 10 working days after notice of the disconnection is given or, if notice is not given, within 10 working days after the supply is disconnected.
- (3) The Commission or the Technical Regulator, as the case requires, may stay the operation of the decision to which the application relates.

- (4) A review must be decided within 4 weeks of the application being lodged.
- (5) If a review is not decided within that period, the Commission or the Technical Regulator, as the case requires, is to be taken to have confirmed the decision.
- (6) After considering the application, the Commission or the Technical Regulator, as the case requires, may confirm, amend or substitute the decision.
- (7) The Commission or the Technical Regulator must give the applicant written notice of the decision, and the reasons for the decision, on the review.

## **72—Appeal**

- (1) An applicant for review who is dissatisfied with a decision as confirmed, amended or substituted by the Commission or the Technical Regulator on the review under this Part may appeal against the decision to the Administrative and Disciplinary Division of the District Court (the *Court*).
- (2) The Court must sit with experts selected in accordance with Schedule 3.
- (3) An appeal must be made within 10 working days after receipt of the written notice of the decision appealed against or, if the Commission or the Technical Regulator failed to make a decision on the review within the allowed period, within 10 working days after the end of that period.
- (4) The Court may, on an appeal—
  - (a) affirm the decision appealed against; or
  - (b) remit the matter to the original decision maker for consideration or further consideration in accordance with any directions of the Court.
- (5) An appeal under the *District Court Act 1991* will lie against a decision of the Court under this section on a question of law (but not on a question of fact).

## **73—Minister's power to intervene**

The Minister may intervene, personally or by counsel or other representative, in a review or appeal under this Part for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.

## **Part 8—Miscellaneous**

### **77—Power of exemption**

- (1) The Commission may, with the approval of the Minister, grant an exemption from Part 3 (other than Division 5), or specified provisions of Part 3 (other than Division 5), on terms and conditions the Commission considers appropriate.
- (1a) Without limiting subsection (1), the power to exempt includes power to exempt a person from the application of a provision requiring the Commission to make a licence held by the person subject to a specified condition.
- (2) A person exempted from a requirement to hold a licence under Part 3 is, if the Commission has so determined by writing, to be treated as a gas entity for the purposes of specified provisions of this or another Act.

- (3) Except as otherwise provided in the exemption, an exemption under subsection (1), or a determination under subsection (2), may be varied or revoked by the Commission by notice in writing.
- (4) The Minister may grant an exemption from Division 5 of Part 3, or specified provisions of that Division, on terms and conditions the Minister considers appropriate.
- (5) Except as otherwise provided in the exemption, an exemption under subsection (4) may be varied or revoked by the Minister.
- (6) The Technical Regulator may grant an exemption from Part 5, or specified provisions of that Part, on terms and conditions the Technical Regulator considers appropriate.
- (7) Except as otherwise provided in the exemption, an exemption under subsection (6) may be varied or revoked by the Technical Regulator by notice in writing.

#### **77A—Register of exemptions**

- (1) The Commission and the Technical Regulator must each keep a register of exemptions granted by the Commission or the Technical Regulator (as the case may be) under this Act.
- (2) A register kept under this section must include the terms and conditions of each exemption recorded in it.
- (3) A person may, without payment of a fee, inspect a register kept under this section.

#### **78—Obligation to comply with conditions of exemption**

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

Maximum penalty: \$50 000.

#### **78A—Delegation by Minister**

- (1) The Minister may delegate any of his or her functions or powers under this Act to a person or body of persons.
- (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 Minister from acting in any matter.

#### **78B—Gas infrastructure and liability to council rates**

- (1) A gas entity has no liability to pay rates under the *Local Government Act 1999* in relation to land where gas infrastructure of the entity is situated unless the entity would, apart from this section, have such liability as holder of an estate in fee simple in the land or as lessee under a lease expressly granted by a person with an interest in the land.

- (2) In this section—

*gas infrastructure* has the meaning assigned to the term by section 4, but does not include a transmission pipeline.

### **79—Application and issue of warrant**

- (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.

### **80—Urgent situations**

- (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.
- (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).

### **81—Unlawful interference with distribution system or gas installation**

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.

### **82—Unlawful abstraction or diversion of gas**

- (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.



### **83—Notice of work that may affect gas infrastructure**

- (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.

### **84—Impersonation of officials etc**

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

Maximum penalty: \$5 000.

### **85—Obstruction**

- (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.
- (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.

### **86—False or misleading information**

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 or imprisonment for 2 years.

In any other case—\$5 000.

## 87—Statutory declarations

If a person is required by or under this Act to furnish information to the Minister, Commission or Technical Regulator, the Minister, Commission or Technical 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 Minister, Commission or Technical Regulator.

## 88—General defence

- (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.

## 89—Offences by bodies corporate

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.

## 90—Continuing offences

- (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-fifth 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.

## 91—Order for payment of profit from contravention

The court convicting a person of an offence against this Act may order the convicted person to pay to the Crown an amount not exceeding the court's estimation of the amount of any monetary, financial or economic benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence.

## 91A—Energy efficiency shortfalls

- (1) Subject to this section, if the Commission is satisfied that a relevant gas retailer has an energy efficiency shortfall (or *REES shortfall*) with respect to a particular year, the Commission may recover an amount in respect of the shortfall (a *shortfall penalty*).

- (2) The amount that the Commission may recover as a shortfall penalty from the relevant gas retailer in respect of a REES shortfall will be—
  - (a) the prescribed base penalty; and
  - (b) an additional amount, calculated in accordance with the regulations, to reflect the extent of the shortfall.
- (3) The Commission may not proceed to recover a shortfall penalty from a relevant gas retailer under this section unless the Commission has served on the retailer a notice (a *shortfall notice*)—
  - (a) stating that the retailer has a REES shortfall and the grounds on which the shortfall has been determined; and
  - (b) setting out—
    - (i) the prescribed base penalty; and
    - (ii) the calculation used by the Commission to arrive at the amount payable under subsection (2)(b).
- (4) A shortfall notice must include, or be accompanied by, a statement advising that the relevant gas retailer may, by written notice to the Commission served within a period specified by the Commission, elect to be prosecuted in respect of the shortfall as an alternative to paying the shortfall penalty.
- (5) The period specified by the Commission under subsection (4) must be at least 21 days from the date of service of the shortfall notice on the relevant gas retailer.
- (6) If the relevant gas retailer elects to be prosecuted within the time specified under subsection (4), the Commission may not proceed to recover the shortfall penalty specified in the shortfall notice.
- (7) If the relevant gas retailer does not elect to be prosecuted within the time specified under subsection (4), the Commission may proceed to recover the shortfall penalty specified in the shortfall notice.
- (8) The Commission may, if it thinks fit, by subsequent notice—
  - (a) withdraw a shortfall notice;
  - (b) issue a new shortfall notice in place of an existing notice,on account of recalculations undertaken by the Commission (and this section will apply to any new shortfall notice published under this subsection as if the original notice had not been issued).
- (9) Subject to subsection (10), nothing in this section prevents the commencement of criminal proceedings at any time in relation to a contravention of this Act but if such proceedings are commenced then the Commission may not commence or continue proceedings to recover a shortfall penalty under this section in respect of the conduct to which the criminal proceedings relate.
- (10) If a shortfall penalty specified in a shortfall notice is paid by the relevant gas retailer (other than where the payment is made in response to an original shortfall notice after a new shortfall notice is served on the retailer), the retailer cannot be prosecuted in relation to the relevant contravention of the Act.

- (11) Subject to the preceding subsections, the Commission may recover the amount of any shortfall penalty as a debt from the relevant gas retailer.
- (12) If an amount is recovered as a shortfall penalty under this section, it must be applied under a scheme established by the Commission for 1 or more of the following purposes:
  - (a) to assist persons who may have failed to benefit from activities relating to energy efficiency on account of any gas retailer's energy efficiency shortfall;
  - (b) to support other programs or activities to promote or support energy efficiency or renewable energy initiatives within South Australian households.
- (13) For the purposes of this section—
  - (a) a relevant gas retailer has an energy efficiency shortfall if the retailer has failed to engage, in accordance with and to the extent required by the regulations, in activities relating to energy efficiency identified by the regulations for the purposes of this section; and
  - (b) the extent of an energy efficiency shortfall is to be calculated in accordance with the regulations.
- (14) This section extends to an energy efficiency shortfall occurring in 2009 (including a shortfall that is attributable to requirements arising before the commencement of this section).
- (15) In this section—

*prescribed base penalty* means an amount, not exceeding \$100 000, prescribed by the regulations for the purposes of this section;

*relevant gas retailer* means a gas entity that is authorised to sell gas by retail identified by the regulations for the purposes of this section.

## 92—Immunity from personal liability

- (1) No personal liability attaches to any person 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.

## 93—Evidence

- (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 Commission 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, issuing, receipt or contents of an order, direction, delegation, exemption, approval, authorisation, notice or assurance by the Commission; or
  - (c) as to the contents of retail market rules at a specified date,
- constitutes proof of the matters so certified in the absence of proof to the contrary.
- (2a) An apparently genuine document purporting to be a certificate of the Commission certifying as to a person's status as a small customer, or a customer of a prescribed class, in relation to a specified time and place constitutes proof of the matters so certified in the absence of proof to the contrary.
  - (2b) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Technical Regulator certifying as to the giving, issuing, receipt or contents of a direction, requirement, delegation, exemption, approval, authorisation, notice or assurance by the Technical Regulator, 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.

#### **94—Service**

- (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.
- (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 the *Corporations Act 2001* of the Commonwealth.
- (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.

#### **95—Regulations**

- (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, sale and supply of gas; and
  - (ab) matters relating to the operation of a transmission pipeline insofar as the operation affects a gas retail market; 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 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.
- (2a) If the regulations grant an exemption from the requirement to hold a licence under Part 3, the regulations may require a person exempted from the requirement to be treated as a gas entity for the purposes of specified provisions of this Act.
- (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, Commission 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 1—Repeal and transitional provisions

### 1—Repeal of *Gas Act 1988*

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

## **2—Transitional provision—licensed supplier of reticulated gas under repealed Act**

- (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.

## **Schedule 3—Appointment and selection of experts for Court**

- (1) The Minister must establish a panel of experts who may sit as assessors with the Court consisting of persons with knowledge of, or experience in, the gas supply industry or in the fields of commerce or economics.
- (2) A member of a panel is to be appointed by the Minister for a term of office not exceeding 3 years and on conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (4) Subject to subclause (5) and except in the case of an appeal limited to a question of law, a judicial officer of the Court must select 2 members from the panel to sit with the Court on an appeal.
- (5) A member of a panel who has a direct or indirect pecuniary or other interest in a matter before the Court is disqualified from participating in the hearing of the matter.
- (6) Subclause (5) does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.
- (7) If a member of a panel sitting with the Court dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other member of the panel sitting with the Court may, if the judicial officer so determines, continue and complete the proceedings.
- (8) If proceedings are reheard, the Court may have regard to any record of proceedings made in the earlier proceedings (including a record of evidence taken in those proceedings).

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1997	24	<i>Gas Act 1997</i>	10.4.1997	1.7.1997 ( <i>Gazette 26.6.1997 p3052</i> )
1997	73	<i>Gas (Miscellaneous) Amendment Act 1997</i>	18.12.1997	18.12.1997 ( <i>Gazette 18.12.1997 p1644</i> )
1997	74	<i>Gas Pipelines Access (South Australia) Act 1997</i>	18.12.1997	30.7.1998 (being the day on which the <i>Gas Pipelines Access (Commonwealth) Act 1998</i> received the Royal Assent: Commonwealth of Australia Gazette No. GN 34, 26.8.1998); <i>Gazette 2.4.1998 p1606</i>
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 cl 16—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2000	29	<i>Gas (Miscellaneous) Amendment Act 2000</i>	29.6.2000	30.6.2000 ( <i>Gazette 29.6.2000 p3414</i> ) except s 3 & Sch—1.7.2001: s 2(2)
2003	9	<i>Statutes Amendment (Gas and Electricity) Act 2003</i>	12.6.2003	Pt 2 (ss 4—64)—1.7.2003 except s 36—1.11.2003 ( <i>Gazette 26.6.2003 p2812</i> ) and except new ss 26(1)(a), 26A(2)(a) & 26B(1)(a) (as inserted by s 19) and new ss 34B—34D (as inserted by s 29)—28.7.2004 ( <i>Gazette 22.7.2004 p2595</i> ) and except new s 33(1)(a) (as inserted by s 27) & new s 34A (as inserted by s 29)—19.8.2004 ( <i>Gazette 19.8.2004 p3280</i> )
2004	17	<i>Gas (Temporary Rationing) Amendment Act 2004</i>	3.6.2004	15.1.2004: s 2(2) except ss 4, 6—8—19.8.2004 ( <i>Gazette 19.8.2004 p3278</i> )
2004	30	<i>Emergency Management Act 2004</i>	29.7.2004	Sch 1 (cl 3)—25.11.2004 ( <i>Gazette 25.11.2004 p4406</i> )
2004	36	<i>Statutes Amendment (Electricity and Gas) Act 2004</i>	5.8.2004	Pt 3 (ss 7—9)—19.8.2004 ( <i>Gazette 19.8.2004 p3279</i> )



2005	40	<i>Fire and Emergency Services Act 2005</i>	14.7.2005	Sch 6 (cl 9)—1.10.2005 ( <i>Gazette</i> 29.9.2005 p3547)
2006	21	<i>Statutes Amendment (Electricity and Gas) Act 2006</i>	5.10.2006	Pt 3 (ss 18—20) & Sch 2—1.9.2007 ( <i>Gazette</i> 19.4.2007 p1233)
<b>2009</b>	<b>19</b>	<b><i>Statutes Amendment (Energy Efficiency Shortfalls) Act 2009</i></b>	<b>4.6.2009</b>	<b>Pt 3 (s 5)—3.9.2009 (<i>Gazette</i> 3.9.2009 p4368)</b>
2009	29	<i>Statutes Amendment (Public Health Incidents and Emergencies) Act 2009</i>	25.6.2009	Pt 6 (s 22)—25.6.2009
2009	32	<i>Statutes Amendment (Australian Energy Market Operator) Act 2009</i>	25.6.2009	Pt 4 (s 31) & Sch 1 (cll 14, 19 & 28—30)—1.7.2009; ss 24—30 & 32 & Sch 1 (cll 15—18 & 20—27)—1.10.2009 ( <i>Gazette</i> 25.6.2009 p3001)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2003
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 73/1997 s 3(e)	18.12.1997
annual gas consumption level	inserted by 9/2003 s 4(1)	1.7.2003
Commission	inserted by 9/2003 s 4(2)	1.7.2003
<i>consumer</i>	<i>deleted by 9/2003 s 4(3)</i>	1.7.2003
council	amended by 9/2003 s 4(4)	1.7.2003
customer	inserted by 9/2003 s 4(5)	1.7.2003
disconnect	amended by 9/2003 s 4(6)	1.7.2003
distribution system	substituted by 73/1997 s 3(a)	18.12.1997
	amended by 9/2003 s 4(7)	1.7.2003
gas infrastructure	amended by 73/1997 s 3(b)	18.12.1997
National Gas Procedures (South Australia)	inserted by 32/2009 s 24(1)	1.10.2009—not incorporated
<i>non-contestable consumer</i>	<i>substituted by 73/1997 s 3(c)</i>	18.12.1997
	<i>deleted by 9/2003 s 4(8)</i>	1.7.2003
<i>Pricing Regulator</i>	<i>deleted by 9/2003 s 4(9)</i>	1.7.2003
retailing	substituted by 73/1997 s 3(d)	18.12.1997
retail market administrator	inserted by 9/2003 s 4(10)	1.7.2003
	deleted by 32/2009 s 24(2)	1.10.2009—not incorporated
retail market rules	inserted by 9/2003 s 4(10)	1.7.2003
	deleted by 32/2009 s 24(2)	1.10.2009—not incorporated

**Gas Act 1997—3.9.2009 to 30.9.2009**

## Legislative history

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small customer	inserted by 9/2003 s 4(10)	1.7.2003
supply	<i>deleted by 73/1997 s 3(d)</i>	18.12.1997
transmission pipeline	inserted by 9/2003 s 4(11)	1.7.2003
s 4(2)	inserted by 73/1997 s 3(e)	18.12.1997
	substituted by 9/2003 s 4(12)	1.7.2003
	deleted by 32/2009 s 24(3)	1.10.2009—not incorporated
s 4(3)	inserted by 9/2003 s 4(12)	1.7.2003
	deleted by 32/2009 s 24(3)	1.10.2009—not incorporated
Pt 2		
Pt 2 Div A1	inserted by 9/2003 s 5	1.7.2003
Pt 2 Div 1		
s 7		
s 7(2)	amended by 9/2003 s 6	1.7.2003
s 8		
s 8(1)	amended by 74/1997 s 51	30.7.1998
	amended by 9/2003 s 7(3)	1.7.2003
	(a) deleted by 9/2003 s 7(1)	1.7.2003
	(d) deleted by 9/2003 s 7(2)	1.7.2003
s 8(2) and (3)	<i>deleted by 9/2003 s 7(4)</i>	1.7.2003
s 10		
s 10(1)	amended by 9/2003 s 8(1)	1.7.2003
s 10(2)	amended by 9/2003 s 8(2)	1.7.2003
s 11		
s 11(1)	amended by 9/2003 s 9(1)	1.7.2003
s 11(2)	amended by 74/1997 s 52	30.7.1998
	amended by 9/2003 s 9(2)	1.7.2003
ss 12 and 13	<i>deleted by 9/2003 s 10</i>	1.7.2003
Pt 2 Div 2	amended by 74/1997 s 53	30.7.1998
	substituted by 9/2003 s 11	1.7.2003
Pt 3		
Pt 3 Div A1	inserted by 9/2003 s 12	1.7.2003
Pt 3 Div 1		
s 19	amended by 9/2003 s 13	1.7.2003
	(ba) deleted by 32/2009 s 25	1.10.2009—not incorporated
s 20		
s 20(1)	amended by 9/2003 s 14(1), (2)	1.7.2003
s 20(2)	amended by 9/2003 s 14(2)	1.7.2003
s 20(3)	amended by 9/2003 s 14(2), (3)	1.7.2003
s 20(4)	amended by 9/2003 s 14(2)	1.7.2003
s 21		
s 21(1)	amended by 9/2003 s 15(1)	1.7.2003
s 21(2)	amended by 9/2003 s 15(2), (3)	1.7.2003

	(ca) deleted by 32/2009 s 26	1.10.2009—not incorporated
s 21(3)	amended by 9/2003 s 15(4)	1.7.2003
s 21(4)	inserted by 73/1997 s 4	18.12.1997
	substituted by 9/2003 s 15(5)	1.7.2003
s 21A	inserted by 9/2003 s 16	1.7.2003
s 23	substituted by 9/2003 s 17	1.7.2003
s 24		
s 24(1)	amended by 9/2003 s 18(1), (2)	1.7.2003
s 24(2)	amended by 9/2003 s 18(2)	1.7.2003
s 24(3)	amended by 74/1997 s 54	30.7.1998
	substituted by 29/2000 s 3	1.7.2001
	substituted by 9/2003 s 18(3)	1.7.2003
s 24(4)	substituted by 29/2000 s 3	1.7.2001
	amended by 9/2003 s 18(2)	1.7.2003
s 24(5) and (6)	deleted by 29/2000 s 3	1.7.2001
s 24(7)	amended by 9/2003 s 18(2)	1.7.2003
s 24(9)		
	administrative costs inserted by 9/2003 s 18(4)	1.7.2003
s 25	amended by 73/1997 s 5	18.12.1997
	substituted by 9/2003 s 19	1.7.2003
s 26	substituted by 9/2003 s 19	1.7.2003 except s 26(1)(a)—28.7.2004
s 26(1)	amended by 32/2009 s 27	1.10.2009—not incorporated
s 26A	inserted by 9/2003 s 19	1.7.2003 except s 26A(2)(a)—28.7.2004
s 26A(2)	amended by 36/2004 s 7	19.8.2004
	amended by 32/2009 s 28	1.10.2009—not incorporated
s 26B	inserted by 9/2003 s 19	1.7.2003 except s 26B(1)(a)—28.7.2004
	deleted by 32/2009 s 29	1.10.2009—not incorporated
s 27		
s 27(1)	s 27 amended and redesignated as s 27(1) by 9/2003 s 20(1), (2)	1.7.2003
s 27(2)	inserted by 9/2003 s 20(2)	1.7.2003
s 28	deleted by 9/2003 s 21	1.7.2003
s 29		
s 29(1)	amended by 9/2003 s 22	1.7.2003
s 30		
s 30(1)	amended by 9/2003 s 23(1)	1.7.2003
s 30(2)	amended by 9/2003 s 23(2)	1.7.2003
s 30(3)—(6)	inserted by 9/2003 s 23(3)	1.7.2003
ss 30A and 30B	inserted by 9/2003 s 24	1.7.2003
s 31		
s 31(1)—(3)	amended by 9/2003 s 25	1.7.2003

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s 32		
s 32(1)	amended by 9/2003 s 26(1), (2)	1.7.2003
s 32(3)	amended by 9/2003 s 26(3)	1.7.2003
Pt 3 Div 2	amended by 29/2000 s 4	30.6.2000
	substituted by 9/2003 s 27	1.7.2003 except s 33(1)(a)—19.8.2004
s 33		
s 33(1)	(b), (c) deleted by 32/2009 s 30(1)	1.10.2009—not incorporated
s 33(2)	may expire by proclamation: s 33(5)	
	amended by 32/2009 s 30(2), (3)	1.10.2009—not incorporated
s 33A	<i>amended by 36/2004 s 8</i>	<i>19.8.2004</i>
	<i>deleted by 32/2009 s 31</i>	<i>1.7.2009</i>
Pt 3 Div 3		
s 34		
s 34(1)	amended by 9/2003 s 28(1)	1.7.2003
s 34(2)	amended by 9/2003 s 28(2)	1.7.2003
s 34(2a)	inserted by 9/2003 s 28(3)	1.7.2003
s 34(3)	amended by 9/2003 s 28(4)—(6)	1.7.2003
s 34(4)	amended by 9/2003 s 28(7)	1.7.2003
s 34(5)	inserted by 9/2003 s 28(8)	1.7.2003
Pt 3 Div 3A	inserted by 9/2003 s 29	28.7.2004 except s 34A—19.8.2004
s 34A		
s 34A(4a)	inserted by 36/2004 s 9(1)	19.8.2004
s 34A(6)		
standing contract price	substituted by 36/2004 s 9(2)	19.8.2004
Pt 3 Div 3B	inserted by 9/2003 s 29	28.7.2004
Pt 3 Div 5		
s 37		
s 37(1)	amended by 29/2000 s 5(a)—(c)	30.6.2000
	amended by 9/2003 s 30(1)	1.7.2003
s 37(2)	substituted by 29/2000 s 5(d)	30.6.2000
s 37(2a)	inserted by 29/2000 s 5(d)	30.6.2000
s 37(4)	substituted by 9/2003 s 30(2)	1.7.2003
s 37(4a)	inserted by 9/2003 s 30(2)	1.7.2003
s 37(5)	inserted by 29/2000 s 5(e)	30.6.2000
	amended by 9/2003 s 30(3)	1.7.2003
s 37A	inserted by 29/2000 s 6	30.6.2000
s 37A(1)	amended by 9/2003 s 31(1)	1.7.2003
	substituted by 17/2004 s 4(1)	19.8.2004
s 37A(1a)	inserted by 17/2004 s 4(1)	19.8.2004
s 37A(2)	amended by 9/2003 s 31(2)	1.7.2003
	amended by 17/2004 s 4(2), (3)	19.8.2004

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s 37A(3)	inserted by 17/2004 s 4(4)	19.8.2004
ss 37AB—37AD	inserted by 17/2004 s 5	15.1.2004
ss 37B and 37C	inserted by 29/2000 s 6	30.6.2000
Pt 3 Div 6		
s 38		
s 38(1)—(3)	amended by 9/2003 s 32	1.7.2003
Pt 3 Div 7		
s 39		
s 39(1)	amended by 9/2003 s 34(1), (2)	1.7.2003
s 39(2) and (3)	amended by 9/2003 s 34(3)	1.7.2003
s 40		
s 40(1)	amended by 9/2003 s 35(1)	1.7.2003
s 40(4)	amended by 9/2003 s 35(2)	1.7.2003
s 40(5)	amended by 9/2003 s 35(3)	1.7.2003
s 40(6)	amended by 9/2003 s 35(4)	1.7.2003
Pt 3 Div 8	<i>deleted by 9/2003 s 36</i>	1.11.2003
Pt 4		
s 42		
s 42(1)	amended by 9/2003 s 37	1.7.2003
s 44(2)	amended by 9/2003 s 38(1)	1.7.2003
s 44(3)	amended by 9/2003 s 38(2)	1.7.2003
s 47		
s 47(11) and (12)	<i>deleted by 9/2003 s 39</i>	1.7.2003
s 54		
	amended by 30/2004 Sch 1 cl 3	25.11.2004
	amended by 40/2005 Sch 6 cl 9(1), (2)	1.10.2005
	amended by 21/2006 Sch 2	1.9.2007
	amended by 29/2009 s 22	25.6.2009
Pt 5		
s 55		
s 55(1)	amended by 9/2003 s 40	1.7.2003
s 56		
s 56(1)	amended by 29/2000 s 7(a)	30.6.2000
	(c) deleted by 29/2000 s 7(b)	30.6.2000
s 56(2) and (3)	substituted by 29/2000 s 7(c)	30.6.2000
s 56(4)	inserted by 29/2000 s 7(c)	30.6.2000
s 57		
s 57(1)	amended by 9/2003 s 41(1)	1.7.2003
s 57(2)	amended by 9/2003 s 41(2)	1.7.2003
s 57(4)	amended by 9/2003 s 41(3)	1.7.2003
s 57A	inserted by 9/2003 s 42	1.7.2003
ss 57B and 57C	inserted by 21/2006 s 18	1.9.2007
s 61		
s 61(1)	amended by 9/2003 s 43(1), (2)	1.7.2003

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s 61(2)	amended by 9/2003 s 43(3), (4)	1.7.2003
s 61(5)	inserted by 9/2003 s 43(5)	1.7.2003
ss 61AA and 61AB	inserted by 21/2006 s 19	1.9.2007
Pt 6		
Pt 6 Div A1	inserted by 9/2003 s 44	1.7.2003
Pt 6 Div A2	inserted by 9/2003 s 44	1.7.2003
Pt 6 Div 1		
s 62		
s 62(1)	amended by 9/2003 s 45(1)	1.7.2003
s 62(3)	substituted by 9/2003 s 45(2)	1.7.2003
	substituted by 17/2004 s 6(1)	19.8.2004
s 62(4)	inserted by 9/2003 s 45(2)	1.7.2003
	amended by 17/2004 s 6(2)	19.8.2004
s 63		
s 63(3) and (4)	amended by 9/2003 s 46	1.7.2003
s 64		
s 64(1)	amended by 9/2003 s 47(1)	1.7.2003
s 64(3)	amended by 9/2003 s 47(1), (2)	1.7.2003
Pt 6 Div 2		
s 66		
s 66(4)	amended by 73/1997 s 6	18.12.1997
s 67		
s 67(2)	amended by 9/2003 s 48(1)	1.7.2003
s 67(4)	amended by 9/2003 s 48(2)	1.7.2003
	amended by 17/2004 s 7	19.8.2004
s 68		
s 68(3)	amended by 9/2003 s 49	1.7.2003
s 69		
s 69(2)	amended by 9/2003 s 50(1)	1.7.2003
s 69(4)	amended by 9/2003 s 50(2)	1.7.2003
s 70		
s 70(3)	amended by 9/2003 s 51	1.7.2003
s 70(4)	amended by 17/2004 s 8(1)	19.8.2004
s 70(5)	inserted by 17/2004 s 8(2)	19.8.2004
Pt 7		
	amended by 4/2000 s 9(1) (Sch 1 cl 16(a)—(e))	1.6.2000
	substituted by 9/2003 s 52	1.7.2003
Pt 8		
s 77	substituted by 9/2003 s 53	1.7.2003
s 77(1a)	inserted by 21/2006 s 20(1)	1.9.2007
s 77(2)	substituted by 21/2006 s 20(1)	1.9.2007
s 77(3)	amended by 21/2006 s 20(2)	1.9.2007
s 77A	inserted by 9/2003 s 53	1.7.2003
s 78	amended by 9/2003 s 54	1.7.2003

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ss 78A and 78B	inserted by 9/2003 s 55	1.7.2003
s 86	amended by 9/2003 s 56	1.7.2003
s 87	amended by 9/2003 s 57	1.7.2003
s 90		
s 90(1)	amended by 9/2003 s 58	1.7.2003
s 91	substituted by 29/2000 s 8	30.6.2000
	substituted by 9/2003 s 59	1.7.2003
<b>s 91A</b>	<b>inserted by 19/2009 s 5</b>	<b>3.9.2009</b>
s 92		
s 92(1)	amended by 9/2003 s 60	1.7.2003
s 93		
s 93(2)	substituted by 9/2003 s 61	1.7.2003
	(c) deleted by 32/2009 s 32	1.10.2009—not incorporated
s 93(2a) and (2b)	inserted by 9/2003 s 61	1.7.2003
s 94		
s 94(2)	amended by 9/2003 s 62	1.7.2003
s 95		
s 95(2)	amended by 9/2003 s 63(1)—(3)	1.7.2003
s 95(2a)	inserted by 9/2003 s 63(4)	1.7.2003
s 95(3)	amended by 9/2003 s 63(5)	1.7.2003
Sch 1	Sch redesignated as Sch 1 by 9/2003 s 64	1.7.2003
Sch 2	<i>inserted by 9/2003 s 64</i>	<i>1.7.2003</i>
	<i>expired: proclamation (Gazette 19.8.2004 p3282)—omitted under Legislation Revision and Publication Act 2002</i>	<i>(1.7.2005)</i>
Sch 3	inserted by 9/2003 s 64	1.7.2003

## **Transitional etc provisions associated with Act or amendments**

### ***Gas (Miscellaneous) Amendment Act 2000, Sch***

#### **1—Licence fees to remain payable**

Nothing in this Act affects the liability of the holder of a licence issued under Part 3 of the principal Act to pay instalments (whether payable before or after the commencement of this Schedule) of an annual licence fee the first instalment of which has become payable before the commencement of this Schedule.

### ***Statutes Amendment (Gas and Electricity) Act 2003***

#### **76—Provisions relating to Technical Regulator and ESC under Gas Act**

- (1) The Essential Services Commission may continue and complete any process commenced by the Technical Regulator under Part 3 of the *Gas Act 1997* but not completed before the commencement of this section.
- (2) A reference to the Technical Regulator in an instrument or document that has been made or issued under, or relates to, Part 3 of the *Gas Act 1997* is (where the context permits) to be read as a reference to the Essential Services Commission.

- (3) Subclause (2) does not apply to a reference to a safety or technical matter within the functions of the Technical Regulator.

## **78—Acts Interpretation Act**

The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this Part, to the amendments effected by this Act.

## **Gas (Temporary Rationing) Amendment Act 2004**

### **9—Provision relating to *Gas Regulations 1997***

Regulation 22 of the *Gas Regulations 1997* (as inserted by the *Gas Variation Regulations 2004*, *Gazette 15.1.2004 p213*) is to be taken to have been made under section 37AC of the *Gas Act 1997* for the purposes of Part 3 Division 5 of that Act.

## ***Statutes Amendment (Australian Energy Market Operator) Act 2009, Sch 1***

### ***Part 2—Transitional provisions—Gas market***

#### ***Division 1—Preliminary***

#### **14—Preliminary**

In this Part, unless the contrary intention appears—

***AEMO*** means the Australian Energy Market Operator Limited (ACN 072 010 327);

***asset*** means tangible or intangible real or personal property of any description and includes—

- (a) a present, future or contingent legal or equitable interest in real or personal property;
- (b) a chose in action;
- (c) a right, power, privilege or immunity;
- (d) goodwill;
- (e) a security;
- (f) money;
- (g) documents;
- (h) information (including data and records) in any form;

***liability*** means a monetary or non-monetary obligation and includes a future or contingent obligation;

***principal Act*** means the *Gas Act 1997*;

***property*** includes intellectual property;

***relevant day*** means a day appointed by the relevant Minister by notice in the *Gazette* as the relevant day for the purposes of the provision in which the term is used;

***relevant Minister*** means the Minister responsible for the administration of the principal Act;

***REMC*** means the Retail Energy Market Company Limited (ACN 103 318 556).



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## *Division 5—Imposition of additional costs on service providers*

### **19—Imposition of additional costs on service providers**

- (1) This clause applies if—
- (a) AEMO changes the National Gas Procedures (South Australia); and
  - (b) the effect of the change is to alter the retail market obligations of a service provider in the State; and
  - (c) the service provider is able to satisfy AEMO—
    - (i) that the alteration imposes additional obligations on the service provider that result, or will result, in new costs being incurred by the service provider that are, or will be, fair and reasonable material costs; and
    - (ii) that the service provider is unable to recover those costs under existing pricing and access arrangements applying in the State with respect to services provided by the service provider (after taking into account reasonable accounting and regulatory cost recovery principles).
- (2) In a case where this clause applies, the change referred to in subclause (1)(a) will not apply to or in relation to the relevant service provider unless or until—
- (a) the service provider is able to recover the costs referred to in subclause (1)(c); or
  - (b) AEMO implements steps that result in the service provider not having to incur the relevant costs.
- (3) This clause will expire on the relevant day.
- (4) In this clause—

*National Gas Procedures (South Australia)* means the National Gas Procedures under the *National Gas Law* that apply in, or in relation to, South Australia, as in force from time to time;

*service provider* means a service provider under the *National Gas (South Australia) Law*.

### **Part 3—Related matters**

#### **28—Corporations Act displacement**

To the extent that any provision of this Schedule is incapable of concurrent operation with a provision of the *Corporations Act 2001* of the Commonwealth (a *designated Commonwealth provision*), the provision of this Schedule is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the designated Commonwealth provision.

**Note—**

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

## 29—Validity and effect of steps taken under Schedule

- (1) Nothing done under this Schedule—
- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
  - (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
  - (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right of remedy in respect of or to terminate any agreement or obligation; or
  - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any relevant property; or
  - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) is to be regarded as frustrating any contract; or
  - (g) releases any surety or other obligor wholly or in part from any obligation; or
  - (h) gives rise to any right or entitlement to damages or compensation.
- (2) The transfer of a liability of an entity under this Part releases the entity from the liability.
- (3) If the books or records of an entity are transferred to AEMO under this Part, AEMO must—
- (a) preserve the books and records for at least 7 years; and
  - (b) allow—
    - (i) the entity and, if relevant, any director or former director of the entity; and
    - (ii) any other person authorised by the relevant Minister, reasonable access to the books and records.
- (4) In this clause—
- AEMO** means the Australian Energy Market Operator Limited (ACN 072 010 327);
- relevant Minister** means the Minister responsible for the administration of the *Electricity Act 1996*.

## 30—Exemption from taxes

Any stamp duty or other tax imposed by or under a law of this State is not payable in relation to a transfer of assets or liabilities under this Schedule.

## Historical versions

Reprint No 1—18.12.1997

Reprint No 2—30.7.1998

Reprint No 3—1.6.2000

Reprint No 4—30.6.2000

Reprint No 5—1.7.2001

Reprint No 6—1.7.2003

Reprint No 7—1.11.2003

15.1.2004

28.7.2004

19.8.2004

25.11.2004

1.10.2005

1.9.2007

25.6.2009 (electronic only)

1.7.2009