

South Australia

Statutes Amendment (Gas and Electricity) Act 2003

An Act to amend the *Gas Act 1997*, the *Gas Pipelines Access (South Australia) Act 1997*, the *Electricity Act 1996* and the *Local Government Act 1999*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Gas Act 1997*

- 4 Amendment of section 4—Interpretation
- 5 Insertion of Division A1 of Part 2
 - Division A1—Essential Services Commission
 - 6A Functions and powers of Commission
- 6 Amendment of section 7—Technical Regulator
- 7 Amendment of section 8—Functions of Technical Regulator
- 8 Amendment of section 10—Technical Regulator's power to require information
- 9 Amendment of section 11—Obligation to preserve confidentiality
- 10 Repeal of sections 12 and 13
- 11 Substitution of Division 2 of Part 2
 - Division 2—Advisory committees
 - 15 Consumer advisory committee
 - 16 Technical advisory committee
 - 17 Other advisory committees
- 12 Insertion of Division A1 of Part 3
 - Division A1—Declaration as regulated industry
 - 18B Declaration as regulated industry
- 13 Amendment of section 19—Requirement for licence
- 14 Amendment of section 20—Application for licence
- 15 Amendment of section 21—Consideration of application
- 16 Insertion of section 21A
 - 21A Licences may be held jointly
- 17 Substitution of section 23
 - 23 Term of licence
- 18 Amendment of section 24—Licence fees and returns
- 19 Substitution of sections 25 and 26
 - 25 Licence conditions
 - 26 Licences authorising operation of distribution system

	26A	Licences authorising retailing
	26B	Licence authorising business of retail market administrator
20		Amendment of section 27—Offence to contravene licence conditions
21		Repeal of section 28
22		Amendment of section 29—Variation of licence
23		Amendment of section 30—Transfer of licence
24		Insertion of sections 30A and 30B
	30A	Consultation with consumer bodies
	30B	Notice of licence decisions
25		Amendment of section 31—Surrender of licence
26		Amendment of section 32—Register of licences
27		Substitution of Part 3 Division 2
		Division 2—Price regulation
	33	Price regulation by determination of Commission
	33A	Recovery of prices for services provided in accordance with retail market rules
28		Amendment of section 34—Standard terms and conditions for retailing of gas
29		Insertion of Part 3 Divisions 3A and 3B
		Division 3A—Standing contracts and default contracts
	34A	Standing contracts
	34B	Default contracts
		Division 3B—Retailer of last resort scheme
	34C	Retailer of last resort scheme
	34D	Minister's power to require information
30		Amendment of section 37—Temporary gas rationing
31		Amendment of section 37A—Minister's power to require information
32		Amendment of section 38—Suspension or cancellation of licences
33		Amendment of heading to Part 3 Division 7
34		Amendment of section 39—Power to take over operations
35		Amendment of section 40—Appointment of operator
36		Repeal of Part 3 Division 8
37		Amendment of section 42—Appointment of gas officers
38		Amendment of section 44—Gas officer's identity card
39		Amendment of section 47—Power to carry out work on public land
40		Amendment of section 55—Responsibility of owner or operator of infrastructure or installation
41		Amendment of section 57—Power to require rectification, etc, in relation to infrastructure or installations
42		Insertion of section 57A
	57A	Prohibition of sale or use of unsafe components for infrastructure or installations
43		Amendment of section 61—Prohibition of sale or use of unsafe gas appliances or components
44		Insertion of Part 6 Divisions A1 and A2
		Division A1—Warning notices and assurances
	61A	Warning notices and assurances
	61B	Register of warning notices and assurances
		Division A2—Injunctions
	61C	Injunctions
45		Amendment of section 62—Appointment of authorised officers
46		Amendment of section 63—Conditions of appointment
47		Amendment of section 64—Authorised officer's identity card
48		Amendment of section 67—General investigative powers of authorised officers
49		Amendment of section 68—Disconnection of gas supply

50	Amendment of section 69—Power to make infrastructure or installation safe
51	Amendment of section 70—Power to require information
52	Substitution of Part 7
	Part 7—Reviews and appeals
	71 Review of decisions by Commission or Technical Regulator
	72 Appeal
	73 Minister's power to intervene
53	Substitution of section 77
	77 Power of exemption
	77A Register of exemptions
54	Amendment of section 78—Obligation to comply with conditions of exemption
55	Insertion of sections 78A and 78B
	78A Delegation by Minister
	78B Gas infrastructure and liability to council rates
56	Amendment of section 86—False or misleading information
57	Amendment of section 87—Statutory declarations
58	Amendment of section 90—Continuing offences
59	Substitution of section 91
	91 Order for payment of profit from contravention
60	Amendment of section 92—Immunity from personal liability
61	Amendment of section 93—Evidence
62	Amendment of section 94—Service
63	Amendment of section 95—Regulations
64	Insertion of Schedules 2 and 3
	Schedule 2—Temporary price fixing provisions
	1 Interpretation
	2 Fixing retail gas prices
	3 Minister's power to require Commission's advice
	4 Minister's power to require information
	5 Statutory declarations
	6 Obligation to preserve confidentiality
	7 Expiry of Schedule
	Schedule 3—Appointment and selection of experts for Court
	Part 3—Amendment of <i>Gas Pipelines Access (South Australia) Act 1997</i>
65	Amendment of section 9—Interpretation of some expressions in the Gas Pipelines Access (South Australia) Law and Regulations
66	Amendment of section 17—Functions and powers conferred on South Australian Minister, Regulator and appeals body
67	Repeal of section 29
68	Amendment of section 30—Functions and powers
69	Amendment of section 31—Independence of local Regulator
70	Substitution of sections 32 to 39
	32 Certain provisions of Essential Services Commission Act not to apply
71	Amendment of section 40—Annual report
72	Amendment of section 41—Immunity
73	Substitution of sections 42 to 46
	42 Experts to sit with District Court as assessors
	43 Certain provisions of District Court Act not to apply
	Part 4—Amendment of <i>Electricity Act 1996</i>
74	Amendment of section 36—Standard terms and conditions for sale or supply

Part 5—Amendment of *Local Government Act 1999*

- 75 Amendment of section 217—Power to order owner of infrastructure on road to carry out specified maintenance or repair work

Part 6—Transitional provisions

- 76 Provisions relating to Technical Regulator and ESC under Gas Act
77 Provisions relating to SAIPAR and ESC under Gas Pipelines Access (South Australia) Act
78 Acts Interpretation Act
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Gas and Electricity) Act 2003*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Gas Act 1997*

4—Amendment of section 4—Interpretation

- (1) Section 4 (1)—before the definition of *authorised officer* insert:

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);

- (2) Section 4(1)—after the definition of *authorised officer* insert:

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

- (3) Section 4(1), definition of *consumer*—delete the definition

- (4) Section 4(1), definition of *council*—delete "1934" and substitute:

1999

- (5) Section 4(1)— after the definition of *council* insert:

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;
- (6) Section 4(1), definition of ***disconnect***—delete "consumer" and substitute:
customer
- (7) Section 4(1), definition of ***distribution system***, (a)—delete "pipeline in respect of which a licence has been granted or is required under Part 2B of the *Petroleum Act 1940*" and substitute:
transmission pipeline
- (8) Section 4(1), definition of ***non-contestable consumer***—delete the definition
- (9) Section 4(1), definition of ***Pricing Regulator***—delete the definition
- (10) Section 4(1)—after the definition of ***retailing*** insert:
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;
- (11) Section 4(1)—after the definition of ***Technical Regulator*** insert:
transmission pipeline means a transmission pipeline within the meaning of the *Petroleum Act 2000*.
- (12) Section 4(2)—delete subsection (2) and substitute:
 - (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—Insertion of Division A1 of Part 2

Part 2—before Division 1 insert:

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.

6—Amendment of section 7—Technical Regulator

Section 7(2)—delete "Governor" and substitute:

Minister

7—Amendment of section 8—Functions of Technical Regulator

- (1) Section 8(1)(a)—delete paragraph (a)
- (2) Section 8(1)(d)—delete paragraph (d)
- (3) Section 8(1)(da)—delete "South Australian Independent Pricing and Access Regulator at that regulator's" and substitute:

Commission at the Commission's
- (4) Section 8(2) and (3)—delete subsections (2) and (3)

8—Amendment of section 10—Technical Regulator's power to require information

- (1) Section 10(1)—delete "the administration of this Act" and substitute:

the performance of the Technical Regulator's functions under this Act
- (2) Section 10(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

9—Amendment of section 11—Obligation to preserve confidentiality

- (1) Section 11(1)—delete "administering this Act" and substitute:

the performance of the Technical Regulator's functions under this Act
- (2) Section 11(2)—delete "Pricing Regulator" wherever occurring and substitute in each case:

Commission

10—Repeal of sections 12 and 13

Sections 12 and 13—delete the sections

11—Substitution of Division 2 of Part 2

Part 2 Division 2—delete the Division and substitute:

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.

12—Insertion of Division A1 of Part 3

Part 3—before Division 1 insert:

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*.

13—Amendment of section 19—Requirement for licence

(1) Section 19—after paragraph (b) insert:

(ba) the business of a retail market administrator; or

(2) Section 19, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$1 000 000.

14—Amendment of section 20—Application for licence

(1) Section 20(1)—delete "or renewal"

(2) Section 20—delete "Technical Regulator" wherever occurring and substitute in each case:

Commission

(3) Section 20(3)—delete "he or she" and substitute:

the Commission

15—Amendment of section 21—Consideration of application

(1) Section 21(1)—delete "Technical Regulator" and substitute:

Commission

(2) Section 21(2)—delete "Subject to this section, the Technical Regulator" and substitute:

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,

(3) Section 21(2)—after paragraph (c) insert:

(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

(4) Section 21(3)—delete "Technical Regulator" and substitute:

Commission

(5) Section 21(4)—delete subsection (4) and substitute:

(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.

16—Insertion of section 21A

After section 21 insert:

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*.

17—Substitution of section 23

Section 23—delete the section and substitute:

23—Term of licence

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

18—Amendment of section 24—Licence fees and returns

- (1) Section 24(1)—delete "or renewal"
- (2) Section 24—delete "Technical Regulator" wherever occurring and substitute in each case:

Commission

- (3) Section 24(3)—delete subsection (3) and substitute:
 - (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) Section 24(9)—before the definition of *holder* insert:

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;

19—Substitution of sections 25 and 26

Sections 25 and 26—delete the sections and substitute:

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
 - (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.

20—Amendment of section 27—Offence to contravene licence conditions

- (1) Section 27, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$1 000 000.
- (2) Section 27—after its present contents, as amended (now to be designated as subsection (1)) insert:
 - (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.

21—Repeal of section 28

Section 28—delete the section

22—Amendment of section 29—Variation of licence

Section 29(1)—delete "Technical Regulator" and substitute:

Commission

23—Amendment of section 30—Transfer of licence

- (1) Section 30(1)—delete "Technical Regulator's" and substitute:
Commission's
- (2) Section 30(2)—delete "Technical Regulator" and substitute:
Commission
- (3) Section 30—after subsection (2) insert:
 - (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.

24—Insertion of sections 30A and 30B

After section 30—insert:

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.

25—Amendment of section 31—Surrender of licence

Section 31—delete "Technical Regulator" wherever occurring and substitute in each case:

Commission

26—Amendment of section 32—Register of licences

- (1) Section 32(1)—delete "Technical Regulator" and substitute:
Commission
- (2) Section 32(1)—delete "issued to" and substitute:
currently held by
- (3) Section 32(3)—delete "on payment of a fee fixed by the Technical Regulator" and substitute:
without payment of a fee

27—Substitution of Part 3 Division 2

Part 3 Division 2—delete the Division and substitute:

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.

33A—Recovery of prices for services provided in accordance with retail market rules

A gas entity operating a distribution system is entitled to recover from another gas entity carrying on the retailing of gas, as if there were an agreement between the entities to that effect, prices for services provided by it to the other entity in accordance with applicable retail market rules that match the prices allowed for such services by an applicable determination of a kind referred to in subsection (1)(b).

28—Amendment of section 34—Standard terms and conditions for retailing of gas

- (1) Section 34(1)—delete "non-contestable consumers or consumers" and substitute:
small customers or customers
- (2) Section 34(2)—delete "and in a daily newspaper circulating in the area in which the entity is supplying gas"
- (3) Section 34—after subsection (2) insert:
 - (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.
- (4) Section 34(3)(b)—delete "by the Pricing Regulator under this Part" and substitute:
under this Act
- (5) Section 34(3)(c)—after "conditions published" insert:
in the Gazette
- (6) Section 34(3)(d)—delete "consumers" and substitute:
customers
- (7) Section 34(4)—delete "consumer" and substitute:
customer
- (8) Section 34—after subsection (4) insert:
 - (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.

29—Insertion of Part 3 Divisions 3A and 3B

Part 3—after Division 3 insert:

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.
- (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 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 standing 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 period of 3 months 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 period of 3 months, fix the entity's standing contract price as referred to in paragraph (c);
- (c) a price fixed by the Commission as the entity's standing 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);

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.

30—Amendment of section 37—Temporary gas rationing

- (1) Section 37—delete "consumers" wherever occurring and substitute in each case:
customers

- (2) Section 37(4)—delete subsection (4) and substitute:
- (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.
- (3) Section 37(5)—delete "pipeline in respect of which a licence has been granted or is required under Part 2B of the *Petroleum Act 1940*" and substitute:
- transmission pipeline

31—Amendment of section 37A—Minister's power to require information

- (1) Section 37A(1)—after "this Division" insert:
- , including investigations and planning related to the future exercise of powers under this Division
- (2) Section 37A(2), penalty provision—delete the penalty provision and substitute:
- Maximum penalty: \$20 000.

32—Amendment of section 38—Suspension or cancellation of licences

Section 38—delete "Technical Regulator" wherever occurring and substitute in each case:

Commission

33—Amendment of heading to Part 3 Division 7

Heading to Part 3 Division 7—delete the heading and substitute:

Division 7—Commission's powers to take over operations

34—Amendment of section 39—Power to take over operations

- (1) Section 39(1)(b)—delete "Technical Regulator's" and substitute:
- Commission's
- (2) Section 39(1)(b)—delete "consumers" and substitute:
- customers
- (3) Section 39(2) and(3)—delete "Technical Regulator" wherever occurring and substitute in each case:
- Commission

35—Amendment of section 40—Appointment of operator

- (1) Section 40(1)—delete "Technical Regulator" and substitute:
- Commission

- (2) Section 40(4)—delete "the gas entity" and substitute:
a gas entity
- (3) Section 40(5), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$250 000.
- (4) Section 40(6), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$250 000.

36—Repeal of Part 3 Division 8

Part 3 Division 8—delete the Division

37—Amendment of section 42—Appointment of gas officers

Section 42(1)—delete "the conditions of the entity's licence" and substitute:
conditions determined by the Minister

38—Amendment of section 44—Gas officer's identity card

- (1) Section 44(2)—delete "Technical Regulator" and substitute:
Minister
- (2) Section 44(3)—delete "21" and substitute:
2

39—Amendment of section 47—Power to carry out work on public land

Section 47(11) and (12)—delete subsections (11) and (12)

40—Amendment of section 55—Responsibility of owner or operator of infrastructure or installation

Section 55(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$250 000.

41—Amendment of section 57—Power to require rectification, etc, in relation to infrastructure or installations

- (1) Section 57(1)(c)—after "installation" insert:
or part of the infrastructure or installation
- (2) Section 57(2)(a)—delete "in charge of" and substitute:
that operates
- (3) Section 57(4), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$50 000.

42—Insertion of section 57A

After section 57 insert:

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.

43—Amendment of section 61—Prohibition of sale or use of unsafe gas appliances or components

- (1) Section 61(1)—delete "gas appliance" and substitute:
particular gas appliance or component or gas appliance or component
- (2) Section 61(1)—delete "gas appliances" and substitute:
the appliance or component or appliances or components

- (3) Section 61(2)—delete "gas appliance" and substitute:
particular gas appliance or component or gas appliance or component
- (4) Section 61(2)—after "the appliance" wherever occurring insert in each case:
or component
- (5) Section 61—after subsection (4) insert:
(5) In this section—
component means a component for a gas appliance.

44—Insertion of Part 6 Divisions A1 and A2

Part 6—before Division 1 insert:

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.

45—Amendment of section 62—Appointment of authorised officers

- (1) Section 62(1)—delete "Technical Regulator" and substitute:
Minister
- (2) Section 62(3)—delete subsection (3) and substitute:
 - (3) An authorised officer may be assigned by the Minister to assist the Commission, the Technical Regulator or both, as the Minister considers appropriate.
 - (4) An authorised officer will—
 - (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.

46—Amendment of section 63—Conditions of appointment

Section 63(3) and (4)—delete "Technical Regulator" wherever occurring and substitute in each case:

Minister

47—Amendment of section 64—Authorised officer's identity card

- (1) Section 64(1) and (3)—delete "Technical Regulator" wherever occurring and substitute in each case:
Minister
- (2) Section 64(3)—delete "21" and substitute:
2

48—Amendment of section 67—General investigative powers of authorised officers

- (1) Section 67(2)(b)(ii)—before "Technical Regulator" insert:
Commission or
- (2) Section 67(4)—before "Technical Regulator" insert:
Commission or

49—Amendment of section 68—Disconnection of gas supply

Section 68(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$50 000.

50—Amendment of section 69—Power to make infrastructure or installation safe

(1) Section 69(2)(a)—delete "in charge of" and substitute:

that operates

(2) Section 69(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$50 000.

51—Amendment of section 70—Power to require information

Section 70(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

52—Substitution of Part 7

Part 7—delete the Part and substitute:

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.

53—Substitution of section 77

Section 77—delete the section and substitute:

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.
- (2) If the Commission exempts a person from the requirement to hold a licence under Part 3, the Commission may (without limiting subsection (1)) by conditions of the exemption require that the person is to be treated as a gas entity for the purposes of specified provisions of this Act.
- (3) Except as otherwise provided in the exemption, an exemption under subsection (1) 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.

54—Amendment of section 78—Obligation to comply with conditions of exemption

Section 78, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$50 000.

55—Insertion of sections 78A and 78B

After section 78 insert:

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.

56—Amendment of section 86—False or misleading information

Section 86, penalty provision—after "\$10 000" insert:

or imprisonment for 2 years

57—Amendment of section 87—Statutory declarations

Section 87—delete "Technical Regulator or Pricing Regulator" wherever occurring and substitute in each case:

Minister, Commission or Technical Regulator

58—Amendment of section 90—Continuing offences

Section 90(1)(b)—delete "one-tenth" and substitute:

one-fifth

59—Substitution of section 91

Section 91—delete the section and substitute:

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.

60—Amendment of section 92—Immunity from personal liability

Section 92(1)—delete "the Technical Regulator, a delegate of the Technical Regulator, an authorised officer or any officer or employee of the Crown" and substitute:

any person

61—Amendment of section 93—Evidence

Section 93(2)—delete subsection (2) and substitute:

- (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.

62—Amendment of section 94—Service

Section 94(2)—delete "section 220 of the Corporations Law" and substitute:
the *Corporations Act 2001* of the Commonwealth

63—Amendment of section 95—Regulations

- (1) Section 95(2)(a)—after "distribution" insert:
, sale
- (2) Section 95(2)—after paragraph (a) insert:
(ab) matters relating to the operation of a transmission pipeline insofar as the operation affects a gas retail market; and
- (3) Section 95(2)(h)—delete "classes of"
- (4) Section 95—after subsection (2) insert:
(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.
- (5) Section 95(3)(b)—after "Minister" insert:
, Commission

64—Insertion of Schedules 2 and 3

After the Schedule (now to be designated as Schedule 1) insert:

Schedule 2—Temporary price fixing provisions

1—Interpretation

In this Schedule—

the repealed provisions means Division 2 of Part 3 as in force before the commencement of this Schedule.

2—Fixing retail gas prices

- (1) The Minister may, from time to time, by notice in the Gazette, fix a maximum price, or a range of maximum prices, for the sale and supply of gas to prescribed customers.
- (2) A notice under subclause (1) may be limited in application, or have varying application, according to factors specified in the notice.

- (3) The Minister may, by notice in the Gazette, vary or revoke a notice under this clause or the repealed provisions.
- (4) The Minister must, in performing the Minister's functions under this Schedule, endeavour to act in a fair and even-handed manner taking proper account of the interests of participants in the gas supply industry and the interests of customers.
- (5) Nothing in subclause (4) gives rise to, or can be taken into account in, any civil cause of action.
- (6) A gas entity must not charge a price for the sale or supply of gas to prescribed customers that exceeds an applicable maximum price fixed by the Minister under this clause.
Maximum penalty: \$50 000.
- (7) For the purposes of this clause, if the actual consumption of gas at a single site during the previous financial year was less than 10 terajoules, the customer at that site is a prescribed customer in respect of that site.

3—Minister's power to require Commission's advice

The Minister may require the Commission to provide the Minister with advice on a matter relating to the Minister's functions under this Schedule.

4—Minister's power to require information

- (1) The Minister may, by written notice, require a person to give the Minister, within a time stated in the notice (which must be reasonable) information in the person's possession that the Minister reasonably requires for the performance of the Minister's functions under this Schedule.
- (2) A person required to give information under this clause must provide the information within the time stated in the notice.
Maximum penalty: \$20 000.

5—Statutory declarations

If a person is required under this Schedule to furnish information to the Minister, the Minister 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.

6—Obligation to preserve confidentiality

- (1) The Minister must preserve the confidentiality of information that—
 - (a) could affect the competitive position of a gas entity or other person; or
 - (b) is commercially sensitive for some other reason.

- (2) Subclause (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 Minister as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

7—Expiry of Schedule

The Governor may, by proclamation, fix a day on which this Schedule expires.

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).

Part 3—Amendment of *Gas Pipelines Access (South Australia) Act 1997*

65—Amendment of section 9—Interpretation of some expressions in the Gas Pipelines Access (South Australia) Law and Regulations

- (1) Section 9—after the definition of *designated Minister* insert:

District Court means the Administrative and Disciplinary Division of the District Court;

Essential Services Commission means the body of that name established under the *Essential Services Commission Act 2002*;

- (2) Section 9, definition of *local appeals body*—delete the definition and substitute:

local appeals body means the District Court;

- (3) Section 9, definition of *local Regulator*—delete the definition and substitute:

local Regulator means the Essential Services Commission;

66—Amendment of section 17—Functions and powers conferred on South Australian Minister, Regulator and appeals body

- (1) Section 17(b) and (c)—delete paragraphs (b) and (c) and substitute:

(b) the local Regulator; or

(c) the local appeals body,

- (2) Section 17—delete "person or board" and substitute:

the local Regulator or the local appeals body

67—Repeal of section 29

Section 29—delete the section

68—Amendment of section 30—Functions and powers

- (1) Section 30(1)—after "The" insert:

local

- (2) Section 30(2)—after "functions the" insert:

local

69—Amendment of section 31—Independence of local Regulator

- (1) Section 31—delete "Regulator (or a person acting in the office of Regulator)" and substitute:

local Regulator

70—Substitution of sections 32 to 39

Sections 32 to 39 (inclusive)—delete the sections and substitute:

32—Certain provisions of Essential Services Commission Act not to apply

Section 6 and Part 5 of the *Essential Services Commission Act 2002* do not apply to the Essential Services Commission when acting as the local Regulator.

71—Amendment of section 40—Annual report

- (1) Section 40(1)—After "The" insert:

local

- (2) Section 40—after subsection (1) insert:

- (1a) The report may be incorporated with the Essential Services Commission's report under section 39 of the *Essential Services Commission Act 2002*.

72—Amendment of section 41—Immunity

Section 41(1)—delete "Regulator, acting Regulator," and substitute:

local Regulator, a

73—Substitution of sections 42 to 46

Sections 42 to 46 (inclusive)—delete the sections and substitute:

42—Experts to sit with District Court as assessors

- (1) The Minister must establish a panel of experts who may sit as assessors with the District 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 subsection (5) and except in the case of an appeal limited to a question of law, a judicial officer of the District Court must select 2 members from the panel to sit with the Court in proceedings under the *Gas Pipelines Access (South Australia) Law*.
- (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) Subsection (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 District 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 District Court may have regard to any record of proceedings made in the earlier proceedings (including a record of evidence taken in those proceedings).

43—Certain provisions of District Court Act not to apply

The following provisions of the *District Court Act 1991* do not apply to the District Court when acting as the local appeals body:

section 42C

section 42D

section 42F

section 42G(2)

Part 7.

Part 4—Amendment of *Electricity Act 1996*

74—Amendment of section 36—Standard terms and conditions for sale or supply

- (1) Section 36(2)—delete "and in a daily newspaper circulating in the area in which the entity is selling or supplying electricity"
- (2) Section 36—after subsection (2) insert:
 - (2a) An electricity 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) Section 36(3)(b)—after "conditions published" insert:

in the Gazette
- (4) Section 36—after subsection (4) insert:
 - (5) An electricity 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.

Part 5—Amendment of *Local Government Act 1999*

75—Amendment of section 217—Power to order owner of infrastructure on road to carry out specified maintenance or repair work

- (1) Section 217(3)—delete "or public lighting infrastructure" and substitute:
 , public lighting infrastructure or gas infrastructure
- (2) Section 217(4)—after the definition of *electricity infrastructure* insert:
 gas infrastructure has the same meaning as in the *Gas Act 1997*, but does not include a transmission pipeline within the meaning of the *Petroleum Act 2000*;

Part 6—Transitional provisions

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.

77—Provisions relating to SAIPAR and ESC under Gas Pipelines Access (South Australia) Act

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

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.