

House of Assembly—No 123

As laid on the table and read a first time, 25 May 2016

South Australia

**Statutes Amendment (Electricity and Gas)
Bill 2016**

A BILL FOR

An Act to amend the *Electricity Act 1996* and the *Gas Act 1997*.

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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 *Statutes Amendment (Electricity and Gas) Act 2016*.

5 **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.

10 **Part 2—Amendment of *Electricity Act 1996***

4—Amendment of section 3—Objects

Section 3(d)—after "installations" insert:

(including such standards relating to the design of electrical installations)

5—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *bush fire* insert:

bushfire risk area—see subsection (4);

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

5 *internal switching manual* means an internal manual relating to switching that—

- (a) the holder of a licence authorising the generation of electricity; or
(b) the holder of a licence authorising the operation of a transmission or distribution network; or
10 (c) the holder of a licence authorising system control over a power system; or
(d) a person exempted from the requirement to hold a licence of a kind referred to in paragraphs (a) to (c),

15 is required (under the conditions of the licence or exemption) to prepare and maintain in accordance with the regulations for the purposes of safety in connection with switching relevant to the operations of the licence holder or person;

- (3) Section 4(1)—after the definition of *network services* insert:

20 *non-bushfire risk area* means a part of the State not within the bushfire risk area;

- (4) Section 4—after subsection (3) insert:

- (4) For the purposes of this Act, the regulations may designate an area of the State to be the *bushfire risk area*.

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

25 Section 10(3)—delete subsection (3) and substitute:

- (3) Subject to subsection (4), a natural person is not required to give information under this section if the information would tend to incriminate the person of an offence.
30 (4) If a natural person is required to give information under this section relating to the safety of electricity infrastructure, an electrical installation or electrical equipment, and the information would tend to incriminate the person of an offence, the person must nevertheless
35 give the information, but the information so given 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).

7—Amendment of section 22—Licences authorising generation of electricity

- (1) Section 22(1)(c)(i)—after "prepare" insert:

40 , maintain

(2) Section 22(1)(c)(ii)—delete subparagraph (ii) and substitute:

(ii) to obtain the approval of the Technical Regulator—

(A) to the plan (prior to the commencement of the operation of the generating plant to which the plan relates); and

(B) to any revision of the plan; and

(3) Section 22—after subsection (1) insert:

(1a) In addition, it is a condition of a licence authorising the generation of electricity that the holder of the licence—

(a) prepare and maintain an internal switching manual in accordance with the regulations; and

(b) comply with any other requirements relating to switching prescribed in the regulations.

8—Amendment of section 23—Licences authorising operation of transmission or distribution network

(1) Section 23(1)(c)(i)—after "prepare" insert:

, maintain

(2) Section 23(1)(c)(ii)—delete subparagraph (ii) and substitute:

(ii) to obtain the approval of the Technical Regulator—

(A) to the plan (prior to the commencement of the operation of the transmission or distribution system to which the plan relates); and

(B) to any revision of the plan; and

(3) Section 23—after subsection (1) insert:

(1a) In addition, it is a condition of a licence authorising the operation of a transmission or distribution network that the holder of the licence—

(a) prepare and maintain an internal switching manual in accordance with the regulations; and

(b) comply with any other requirements relating to switching prescribed in the regulations.

9—Amendment of section 24A—Licences authorising system control

Section 24A—after subsection (1) insert:

(1a) In addition, it is a condition of a licence authorising system control over a power system that the holder of the licence—

(a) prepare and maintain an internal switching manual in accordance with the regulations; and

(b) comply with any other requirements relating to switching prescribed in the regulations.

10—Insertion of Part 4 Division 1A

Part 4—after Division 1 insert:

Division 1A—General investigative powers of electricity officers

44A—General investigative powers of electricity officers

An electricity officer may, in the course of exercising powers under this Part, take photographs, films or audio, video or other recordings as reasonably required in connection with the exercise of those powers.

11—Amendment of section 48—Entry for purposes related to infrastructure

Section 48(2)—delete subsection (2) and substitute:

(1) Where electricity infrastructure owned or operated by an electricity entity is situated on land—

- (a) that is in the bushfire risk area; and
- (b) that does not belong to the entity; and
- (c) that is not public land under section 47,

an electricity officer for the entity may, at any reasonable time and without prior notice, enter the land for the purpose of conducting an inspection in relation to the infrastructure.

(2) Subject to this section and without limiting subsection (1), the following provisions apply to an electricity officer seeking to enter land pursuant to rights conferred on an electricity entity by a statutory or other easement relating to electricity infrastructure situated on the land:

- (a) if the entry is for the purpose of conducting an inspection in relation to the infrastructure and the land is in the bushfire risk area—the officer may enter the land at any reasonable time and without prior notice;
- (b) in any other case—the officer may only enter the land after giving reasonable written notice to the owner or occupier of the land stating the reason and the date and, if it is practicable to do so, the time of the proposed entry.

12—Amendment of heading to Part 5 Division 1

Heading to Part 5 Division 1—after "Duties" insert:

and powers

13—Insertion of section 55AA

After section 55 insert:

55AA—Powers of electricity entity in relation to vegetation clearance

- 5 (1) An electricity entity with a duty under this Part to keep vegetation clear of powerlines may clear vegetation that is within the bushfire risk area if the entity is satisfied that the vegetation is likely to fall onto a public powerline or private powerline under the entity's control so as to damage the powerline, or give rise to a risk of fire, electric shock, or interruption of electricity supply, despite the entity not having a duty under this Part to carry out such work (but the entity incurs no liability for failure to clear such vegetation).
- 10
- 15 (2) An electricity entity must, before clearing vegetation under subsection (1), obtain a report on the extent of clearance necessary to prevent the vegetation from falling onto a powerline from a person who holds qualifications prescribed by the regulations.

14—Amendment of section 57—Power to enter for vegetation clearance purposes

Section 57(2)—after "notice" insert:

- 20 (or such lesser period of notice as is agreed to by the occupier)

15—Amendment of section 59—Requirements relating to electrical installation connection and meter installation

- (1) Section 59(1d), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 25 (a) in the case of the person personally carrying out the work of making the connection—\$10 000;
- (b) in the case of the prescribed person—\$50 000.

Expiation fee: in the case of a contravention of paragraph (b) by the person personally carrying out the work of making the connection—\$1 000.

- 30 (2) Section 59(4)(c)—delete paragraph (c) and substitute:

- (c) *the work of installing or replacing a meter* includes—
- (i) the temporary disconnection of the electricity supply while the work is carried out; and
- 35 (ii) connecting or reconnecting electricity supply from a transmission or distribution network to the electrical installation to which the meter is wired following the installation or replacement of the meter.

16—Amendment of section 60—Responsibility of owner or operator of infrastructure or installation

Section 60(1)—delete subsection (1) and substitute:

- 5 (1) A person who owns or operates electricity infrastructure must take reasonable steps to ensure that—
- (a) the infrastructure complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and
 - (b) the infrastructure is safe and safely operated.
- 10 (1a) A person who contravenes subsection (1) is guilty of an offence.
Maximum penalty:
- (a) if the person committed the offence intentionally or recklessly and with the knowledge that an immediate and material risk of harm to any person will or might result—
 - 15 (i) if the offender is a body corporate—a penalty of \$250 000; or
 - (ii) in any other case—a penalty of \$50 000; or
 - (b) in any other case—
 - 20 (i) if the offender is a body corporate—a penalty of \$100 000; or
 - (ii) in any other case—a penalty of \$20 000.
- (1b) A person who owns or operates an electrical installation must take reasonable steps to ensure that—
- 25 (a) the installation complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and
 - (b) the installation is safe and safely operated.
- Maximum penalty:
- (a) if the offender is a body corporate—a penalty of \$50 000;
 - 30 (b) in any other case—a penalty of \$10 000.
- Expiation fee: \$315.

17—Insertion of section 60B

After section 60A insert:

60B—Safety, reliability, maintenance and technical management plans

5 A person exempted from the requirement to hold a licence authorising the generation of electricity or the operation of a transmission or distribution network must, if so required by the Technical Regulator by written notice—

- 10 (a) prepare, maintain and periodically revise a safety, reliability, maintenance and technical management plan dealing with matters prescribed by regulation; and
- (b) obtain the approval of the Technical Regulator to the plan and any revision; and
- (c) comply with the plan as approved from time to time; and
- 15 (d) audit from time to time the entity's compliance with the plan and report the results of those audits to the Technical Regulator.

Maximum penalty: \$50 000.

18—Amendment of section 61—Electrical installation work

- 20 (1) Section 61(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) if the offender is a body corporate—a penalty of \$50 000;
- (b) in any other case—a penalty of \$10 000.

Expiation fee: \$315.

- 25 (2) Section 61(2)(a)—delete "licensed electrical contractor or licensed building work contractor" first occurring and substitute:

licensed electrical contractor under the *Plumbers, Gas Fitters and Electricians Act 1995* or licensed building work contractor under the *Building Work Contractors Act 1995*

- 30 (3) Section 61(2)(a)—after "worker" insert:

under the *Plumbers, Gas Fitters and Electricians Act 1995*

- (4) Section 61(2)(b)—after "worker" first occurring insert:

under the *Plumbers, Gas Fitters and Electricians Act 1995*

- 35 (5) Section 61(2)(b)—delete "licensed electrical contractor or licensed building work contractor" and substitute:

licensed electrical contractor under the *Plumbers, Gas Fitters and Electricians Act 1995* or licensed building work contractor under the *Building Work Contractors Act 1995*

- (6) Section 61(3)—delete "2 years" and substitute:

3 years

19—Insertion of section 61B

After section 61A insert:

5

61B—Design of electrical installations

An electrical installation must be designed in accordance with technical and safety requirements under the regulations.

Maximum penalty: \$10 000.

Expiation fee: \$315.

10

20—Amendment of section 62—Power to require rectification etc in relation to infrastructure, installations or equipment

- (1) Section 62(1)—after "unsafe," insert:

or the Technical Regulator believes on reasonable grounds that the infrastructure, installation or equipment is, or may become, unsafe when in use,

15

- (2) Section 62(1)(a)—after "satisfaction" insert:

within a period specified in the direction

- (3) Section 62(2)(b)—delete paragraph (b) and substitute:

(b) in relation to an installation or equipment—

20

- (i) in the case of an installation or equipment that is unsafe, or in relation to which it is reasonably believed that the installation or equipment is, or may become, unsafe when in use, as a result of work performed on the installation or equipment within 2 years before the giving of the direction and with the consent of the person in charge of the installation or equipment or the occupier of the place in which the installation or equipment is situated—to the person who carried out the work, unless that person is not authorised to carry out such work; or

25

- (ii) in any other case—to the person in charge of the installation or equipment or the occupier of the place in which the installation or equipment is situated.

30

- (4) Section 62(4)—delete subsection (4) and substitute:

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

35

- (a) must comply with the direction; and
(b) must not fail to take action specified in the direction to rectify the contravention within the period specified in the direction; and

- (c) must not reconnect or permit the reconnection of the electricity supply, or connect or permit the connection of the infrastructure (or part of the infrastructure), installation or equipment to any other supply of electricity, without the written approval of an authorised officer.

Maximum penalty: \$50 000.

Expiation fee:

- (a) in the case of an offence against paragraph (c)—\$1 000;
(b) in any other case—\$315.

21—Amendment of section 62A—Public warning statements

Section 62A—after subsection (2) insert:

- (3) The Technical Regulator is not obliged to conduct a hearing or invite submissions in connection with—
- (a) the exercise of a power under this section if the Technical Regulator considers that urgent action is required; or
- (b) a preliminary investigation conducted by the Technical Regulator for the purposes of this section.

22—Amendment of section 62B—Immunity from liability

Section 62B—after subsection (2) insert:

- (3) It is the intention of the Parliament that the immunity from liability provided for in this section apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

23—Substitution of section 63

Section 63—delete the section and substitute:

63—Reporting of accidents etc

- (1) If an accident involving or associated with any electricity infrastructure, electrical installation or electrical equipment results in electric shock, electrical burns or a prescribed fire the accident must be reported as required under the regulations—
- (a) if the accident involves part of an electricity entity's infrastructure—by the electricity entity; or
- (b) if the accident happens while an electrical worker is working on an electrical installation or equipment and the electrical worker is able to make the report—by the electrical worker; or
- (c) in any other case—by the occupier of the place in which the accident happens.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- 5
- (2) Despite subsection (1)(c), an occupier is not required to report an accident that results in a prescribed fire.
- (3) For the purposes of an investigation of an accident of a kind referred to in subsection (1), the Technical Regulator may prohibit, restrict or regulate access to any infrastructure, installation or equipment involved in or associated with the accident.
- (4) A person must not alter or interfere with—
- 10
- (a) any infrastructure, installation or equipment involved in or associated with an accident of a kind referred to in subsection (1); or
- (b) anything prohibiting, restricting or regulating access to any such infrastructure, installation or equipment.

Maximum penalty: \$10 000.

Expiation fee: \$315.

- 15
- (5) Despite subsections (3) and (4), a person may alter or interfere with the infrastructure, installation or equipment or anything prohibiting, restricting or regulating access to it—
- (a) if to do so is necessary to—
- 20
- (i) maintain the integrity of a network; or
- (ii) avert an immediate and serious danger to a person or property; or
- (b) with the approval of the Technical Regulator.
- (6) In this section—

25

prescribed fire means a fire that involves the attendance of an officer (including a volunteer officer) or employee of an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*.

24—Substitution of section 63A

Section 63A—delete the section and substitute:

63A—Warning notices

- 30
- (1) If it appears to the Commission that a person has been guilty of a contravention of Part 3 or Part 6A (other than in relation to contraventions of Part 6A for which the Technical Regulator may issue a warning notice under subsection (2)) and the contravention is capable of being rectified, the Commission may issue a warning notice to the person, warning the person that the person may be prosecuted for the contravention unless the person takes action specified in the notice to rectify the contravention within the period specified in the notice.
- 35

- 5
- (2) If it appears to the Technical Regulator that a person has been guilty of a contravention of Part 6, or Part 6A in relation to contraventions relating to technical and safety matters arising under Part 6A, and the contravention is capable of being rectified, the Technical Regulator may issue a warning notice to the person, warning the person that the person may be prosecuted for the contravention unless the person takes action specified in the notice to rectify the contravention within the period specified in the notice.
- (3) A warning notice issued under this section must be in writing.
- 10 (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)—
- 15 (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.
- 20 (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 fails to take action specified in the notice to rectify the contravention within the period specified in the notice.
- 25

63B—Assurances

- 30 (1) The Commission may accept an assurance given by a person in connection with a matter in relation to which the Commission has a power or function under this Act.
- (2) The Technical Regulator may accept an assurance given by a person in connection with a matter in relation to which the Technical Regulator has a power or function under this Act.
- 35 (3) An assurance under this section must be in writing.
- (4) A person who has given an assurance may, with the consent of the Commission or the Technical Regulator (as the case requires), withdraw or vary the assurance at any time.

- 5 (5) If the Commission or the Technical Regulator accepts an assurance, the Commission or the Technical Regulator must not proceed against the person who has given the assurance in respect of the conduct specified in the assurance, unless it appears to the Commission or the Technical Regulator that the person has acted contrary to, or has failed to comply with, the assurance.

25—Redesignation of section 63B

Section 63B—redesignate the section as section 63BA

26—Insertion of sections 63BB and 63BC

10 After section 63B (now designated as section 63BA—see section 25 of this Act) insert:

63BB—Offence to act contrary to assurance

- 15 (1) A person who acts contrary to, or fails to comply with, an assurance accepted by the Commission or the Technical Regulator is guilty of an offence.
Maximum penalty: \$20 000.
- (2) Proceedings for an offence against subsection (1) must not be commenced except—
- 20 (a) in the case of an assurance accepted by the Commission—on the authorisation of the Commission; or
- (b) in the case of an assurance accepted by the Technical Regulator—on the authorisation of the Technical Regulator.
- (3) An apparently genuine document purporting to be under the hand of the Commission or the Technical Regulator and to authorise the commencement of proceedings under this section must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- 25

63BC—Enforcement orders in relation to assurances

- 30 (1) If the District Court is satisfied, on an application under this section, that a person has acted contrary to, or failed to comply with, an assurance accepted under this Division, the Court may make any or all of the following orders:
- (a) an order prohibiting the person from engaging in specified conduct;
- 35 (b) an order directing the person to take specified action to comply with the assurance;
- (c) an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach of, or non-compliance with, the assurance;
- 40

(d) any order that the Court considers appropriate directing the person to compensate any person who has suffered loss or damage as a result of the breach of, or non-compliance with, the assurance;

(e) any other order that the Court considers appropriate.

(2) An application under this section may be made—

(a) in the case of an assurance accepted by the Commission—by the Commission; or

(b) in the case of an assurance accepted by the Technical Regulator—by the Technical Regulator.

(3) The Court may make an interim order under subsection (1)(a) pending final determination of the application.

(4) The Court may, on the application of the Commission, the Technical Regulator or a person, vary or discharge an order under subsection (1)(a).

(5) An order under subsection (1)(a) may be made subject to such conditions as the Court thinks fit.

(6) The Court must not make an order under this section (other than an interim order) unless satisfied on the balance of probabilities that proper grounds for the order have been established.

27—Insertion of Part 7 Division A3

Part 7—after Division A2 insert:

Division A3—Enforcement notices

63D—Enforcement notices

(1) An authorised officer may issue a notice (an *enforcement notice*) under this section for the purpose of securing compliance with a requirement imposed by or under this Act (including a standard referred to or incorporated by this Act).

(2) A notice under this section—

(a) subject to subsection (3), must be in the form of a written notice served on the person to whom it is issued; and

(b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and

(c) may direct 2 or more persons to do something specified in the notice jointly; and

(d) without limiting any other provision, in the case of a notice that relates to a situation existing on any premises, may be issued to any person who—

(i) is the owner or occupier of the premises; or

- 5
- (ii) has the management or control of the premises; and
- (e) without limiting any other provision, may be issued to any person who has performed, or is performing, any work (including work on any premises owned or occupied by another person); and
- (f) must state the grounds on which the notice is issued; and
- (g) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:
- 10
- (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a relevant authority;
- 15
- (ii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;
- (iii) a requirement that the person comply with any specified standard or code published by the Technical Regulator or any other specified person or body referred to in the notice;
- 20
- (iv) a requirement that the person undertake specified tests or monitoring;
- (v) a requirement that the person furnish to a relevant authority specified results or reports;
- 25
- (vi) a requirement prescribed by the regulations; and
- (h) must state that the person may, within 10 days, apply for a review of the notice.
- (3) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(g) as reasonably required in the circumstances.
- 30
- (4) An emergency enforcement notice may be issued orally (and without compliance with a requirement to give preliminary notice) but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to apply for a review of the notice.
- 35
- (5) If an emergency enforcement notice is issued by an authorised officer, the notice will cease to have effect on the expiration of 72 hours from the time of issuing unless confirmed by a written notice served on the relevant person.
- 40
- (6) An authorised officer may, by written notice served on a person to whom a notice under this section has been issued, vary or revoke the notice.

(7) A relevant authority may, by written notice served on a person to whom a notice under this section has been issued by the relevant authority, vary or revoke the notice.

(8) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty: \$20 000.

(9) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: \$20 000.

(10) If the requirements of a notice under this section are not complied with, a relevant authority may take any action required by the notice.

(11) Action to be taken by a relevant authority under subsection (10) may be taken on the relevant authority's behalf by an authorised officer or another person authorised by the relevant authority for the purpose.

(12) A person taking action under subsection (10) or (11) may enter any premises at any reasonable time.

(13) The reasonable costs and expenses incurred by a relevant authority in taking action under subsections (10) and (11) may be recovered by the relevant authority as a debt from the person who failed to comply with the requirements of the notice.

(14) If an amount is recoverable from a person by a relevant authority under this section, the relevant authority may, by written notice to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.

(15) In this section—

relevant authority means—

- (a) the Minister; or
- (b) the Commission; or
- (c) the Technical Regulator.

28—Amendment of section 68—Power of entry

Section 68—after "place" wherever occurring insert in each case:

or vehicle

29—Substitution of section 69

Section 69—delete the section and substitute:

69—General investigative powers of authorised officers

- 5 (1) An authorised officer who enters a place or vehicle under this Part may exercise any 1 or more of the following powers:
- 5 (a) investigate whether the provisions of this Act are being or have been complied with;
 - 10 (b) examine and test electrical infrastructure, electrical installations or equipment to find out whether the infrastructure, installations or equipment are safe and comply with the requirements of this Act, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
 - 15 (c) require a report on any testing conducted under paragraph (b);
 - (d) investigate a suspected electrical accident;
 - (e) investigate a suspected interference with electrical infrastructure or an electrical installation;
 - (f) investigate a suspected theft or diversion of electricity;
 - 20 (g) search for, examine and copy or take an extract from a document or record of any kind;
 - (h) take photographs or make films or other records of activities in the place or vehicle and electrical infrastructure, installations or equipment in the place or vehicle;
 - 25 (i) give directions with respect to the stopping or movement of a vehicle;
 - (j) take possession of any object that may be evidence of an offence against this Act;
 - 30 (k) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
 - 35 (l) require a person, by written notice served on the person, to attend at a specified time and place.
- (2) An authorised officer may only exercise the powers conferred by subsection (1) as reasonably required for the administration or enforcement of this Act.

- 5
- (3) 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 or person apparently in charge of the vehicle (as the case requires) a receipt for the object; and
- (b) the object must be returned to its owner—
- 10
- (i) if proceedings for an offence are not instituted within the designated period after the authorised officer takes possession of the object—at the end of that period; or
- (ii) if proceedings have been so instituted—on completion of the proceedings, unless the court, on application by the Commission or Technical Regulator (as the case may be), orders confiscation of the object.
- 15
- (4) 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.
- 20
- (5) If the court orders the confiscation of an object, the Commission or Technical Regulator may dispose of the object.
- (6) A person who—
- 25
- (a) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or
- (b) refuses or fails to comply with a requirement or direction of an authorised officer under this section; or
- 30
- (c) being the person in charge of a place or vehicle subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fail to provide such assistance,
- is guilty of an offence.
Maximum penalty: \$20 000.
- 35
- (7) In this section—
- designated period* means 1 year or such longer period as a magistrate may, on application by the Technical Regulator, allow.

30—Amendment of section 70—Disconnection of electricity supply

- (1) Section 70(3)—after "without the" insert:

40 written

- (2) Section 70(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$50 000.
Expiation fee: \$1 000.

31—Amendment of section 71—Power to require disconnection of cathodic protection system

Section 71(3)—delete subsection (3) and substitute:

(3) 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 electricity supply without the written approval of an authorised officer.

Maximum penalty: \$50 000.

Expiation fee:

- (a) in the case of an offence against paragraph (b)—\$1 000;
(b) in any other case—\$315.

32—Amendment of section 72—Power to make infrastructure, installation or equipment safe

(1) Section 72(1)—after "unsafe," insert:

or believes on reasonable grounds that the infrastructure, installation or equipment is, or may become, unsafe when in use,

(2) Section 72(1)(b)—after "safe" insert:

within a period specified in the direction

(3) Section 72(2)(b)—delete paragraph (b) and substitute:

(b) in relation to an installation or equipment—

- (i) in the case of installation or equipment that is unsafe, or in relation to which it is reasonably believed that the installation or equipment is, or may become, unsafe when in use, as a result of work performed on the installation or equipment within 2 years before the giving of the direction and with the consent of the person in charge of the installation or equipment or the occupier of the place in which the installation or equipment is situated—to the person who carried out the work, unless that person is not authorised to carry out such work; or
(ii) in any other case—to the person in charge of the installation or equipment or the occupier of the place in which the installation or equipment is situated.

(4) Section 72(4)—delete subsection (4) and substitute:

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

- (a) must comply with the direction; and

(b) must not fail to take action specified in the direction to make the infrastructure, installation or equipment safe within the period specified in the direction; and

(c) must not reconnect or permit the reconnection of the electricity supply, or connect or permit the connection of the infrastructure (or part of the infrastructure), installation or equipment to any other supply of electricity, without the written approval of an authorised officer.

Maximum penalty: \$50 000.

Expiation fee:

(a) in the case of an offence against paragraph (c)—\$1 000;

(b) in any other case—\$315.

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

(6) A person, authorised in writing by an authorised officer, 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.

33—Amendment of section 73—Power to require information or documents

Section 73(4)—delete subsection (4)

34—Insertion of Part 7 Division 3

Part 7—after Division 2 insert:

Division 3—Related matters

74—Self-incrimination

(1) Subject to subsection (2), a natural person is not required to give information or produce a document under this Part if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

(2) If an authorised officer informs a natural person required to give information or produce a document under this Part that the requirement is made for the administration or enforcement of Part 6 relating to the safety of electricity infrastructure, an electrical installation or electrical equipment, 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 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).

35—Amendment of section 75—Review of decisions by Commission or Technical Regulator

- (1) Section 75(1)—delete "An application" and substitute:

Subject to this section, an application

- (2) Section 75—after subsection (1) insert:

- (1a) An application may not be made under subsection (1) in relation to a decision to issue an enforcement notice under Part 7 Division A3, or any matter associated with the requirements or enforcement of such a notice.

36—Substitution of section 76

Section 76—delete the section and substitute:

76—Appeals

- (1) The following rights of appeal lie to the Administrative and Disciplinary Division of the District Court (the *Court*):

(a) an applicant for review under section 75 who is dissatisfied with a decision as confirmed, amended or substituted by the Commission or the Technical Regulator on the review;

(b) a person to whom an enforcement notice has been issued under Part 7 Division A3.

- (2) An appeal must be made—

(a) in the case of an appeal under subsection (1)(a)—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; and

(b) in the case of an appeal under subsection (1)(b)—within 10 working days after the notice is issued to the relevant person.

- (3) In the case of an appeal under subsection (1)(a), the Court must sit with experts selected in accordance with Schedule 1A.

- (4) The Court may—

(a) on an appeal under subsection (1)(a)—

(i) affirm the decision appealed against; or

(ii) remit the matter to the original decision maker for consideration or further consideration in accordance with any directions of the Court; and

(b) on an appeal under subsection (1)(b)—

(i) confirm, vary or revoke the notice; or

(ii) remit the matter to any person or body under this Act for further consideration; and

(c) in any event—make any consequential or ancillary order or direction, or impose any condition, that the Court considers necessary or expedient on account of an appeal under this section.

(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).

37—Amendment of section 80—Power of exemption

Section 80(1a)—delete "a provision requiring the Commission to make a licence held by the person subject to a specified condition." and substitute:

-
- (a) a provision requiring the Commission to make a licence held by the person subject to a specified condition; and
 - (b) the operation of section 22(1a), 23(1a) or 24A(1a).

38—Amendment of section 84—Unlawful interference with electricity infrastructure or electrical installation

(1) Section 84(2), penalty provision—delete the penalty provision and substitute:

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

(2) Section 84(3)—delete subsection (3) and substitute:

(3) A person must not discharge a firearm or throw or project an object or substance towards electrical infrastructure or an electrical installation if there is a risk of damage to the infrastructure or installation, or interruption of electricity supply.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(4) A person must not burn any material in proximity to electricity infrastructure such that there is a risk of damage to the infrastructure, outages or flashovers, without the written authority of the person who owns or operates the infrastructure.

Maximum penalty: \$10 000.

Expiation fee: \$315.

39—Insertion of section 91B

After section 91A insert:

91B—Offences

- 5 (1) The following persons are authorised to give expiation notices for an alleged offence against this Act (in addition to any person authorised under the *Expiation of Offences Act 1996*):
- (a) any authorised officer authorised in writing by the Technical Regulator;
- 10 (b) any electricity officer authorised in writing by the Technical Regulator.
- (2) An authorisation under subsection (1) may be given subject to such conditions or limitations as the Technical Regulator thinks fit.
- 15 (3) An apparently genuine document purporting to be under the hand of the Technical Regulator and to give an authorisation under subsection (1) must be accepted, in the absence of proof to the contrary, as proof of the authorisation.

40—Amendment of section 92—General defence

Section 92—after subsection (2) insert:

- 20 (2a) If a body corporate or other employer seeks to establish a defence provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof—
- 25 (a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and
- 30 (b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.
- 35

41—Insertion of section 93A

After section 93 insert:

93A—Imputing conduct to bodies corporate

- 40 (1) For the purposes of proceedings for an offence against this Act, the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate.

- (2) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

42—Amendment of section 97—Service

Section 97(1)—after paragraph (c) insert:

5 or

- (d) by transmitting to the person by email to the email address last provided to the Commission or Technical Regulator by the person for that purpose.

43—Amendment of section 98—Regulations

10 Section 98(2)(g)—delete "\$5 000" and substitute:

\$10 000

44—Transitional provisions

- (1) An amendment to section 22, 23 or 24A of the principal Act effected by a provision of this Act applies to a licence granted under the principal Act, or the holder of a licence under the principal Act, whether the licence was granted before or after the commencement of the relevant provision (and any existing licence is taken to be modified accordingly).

- (2) In particular, a reference to the Commission in a condition relating to section 22(1)(c)(ii) or section 23(1)(c)(ii) of the principal Act under a licence in force immediately before the commencement of section 7 or 8 of this Act (as the case requires) will be taken, on the commencement of the relevant section, to be a reference to the Technical Regulator (but nothing in this subsection is to be taken to require a licence holder to obtain a fresh approval to an existing safety, reliability, maintenance and technical management plan).

- (3) For the purposes of the preceding subsections, the Commission may, as it thinks fit, issue to the holder of a licence under the principal Act in force immediately before the commencement of a provision of this Act a replacement copy of the licence in order to take account of modifications effected by the provision.

- (4) In this section—

30 *principal Act* means the *Electricity Act 1996*.

Part 3—Amendment of *Gas Act 1997*

45—Amendment of section 3—Objects

Section 3(d)—after "appliances" insert:

(including such standards relating to the design of gas installations)

46—Amendment of section 8—Functions of Technical Regulator

Section 8(1)(e)—delete paragraph (e) and substitute:

- (e) any other functions prescribed by regulation or assigned to the Technical Regulator by or under this or any other Act.

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

Section 10(3)—delete subsection (3) and substitute:

- 5 (3) Subject to subsection (4), a natural person is not required to give information under this section if the information would tend to incriminate the person of an offence.
- 10 (4) If a natural person is required to give information under this section relating to the safety of gas infrastructure, or a gas installation or appliance, and the information would tend to incriminate the person of an offence, the person must nevertheless give the information, but the information so given 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).

15 **48—Amendment of section 26—Licences authorising operation of distribution system**

(1) Section 26(1)(b)(i)—after "prepare" insert:

, maintain

(2) Section 26(1)(b)(ii)—delete subparagraph (ii) and substitute:

20 (ii) to obtain the approval of the Technical Regulator—

(A) to the plan (prior to the commencement of the operation of the distribution system to which the plan relates); and

(B) to any revision of the plan; and

25 **49—Amendment of section 37A—Minister's power to require information or documents**

(1) Section 37A(1)—after "time" wherever occurring insert:

, or at specified times,

(2) Section 37A(2)—after "time" insert:

, or at the times,

30 **50—Insertion of Part 4 Division 1A**

Part 4—after Division 1 insert:

Division 1A—General investigative powers of gas officers

45A—General investigative powers of gas officers

35 A gas officer may, in the course of exercising powers under this Part, take photographs, films or audio, video or other recordings as reasonably required in connection with the exercise of those powers.

51—Amendment of section 48—Power to enter for purposes related to gas entity's infrastructure

(1) Section 48(2)—before "occupier" insert:

owner or

(2) Section 48(2)—after "date and" insert:

, if it is practicable to do so, the

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

Section 55(1)—delete subsection (1) and substitute:

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

(a) the infrastructure complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and

(b) the infrastructure is safe and safely operated.

(1a) A person who contravenes subsection (1) is guilty of an offence.

Maximum penalty:

(a) if the person committed the offence intentionally or recklessly and with the knowledge that an immediate and material risk of harm to any person will or might result—

(i) if the offender is a body corporate—a penalty of \$250 000; or

(ii) in any other case—a penalty of \$50 000; or

(b) in any other case—

(i) if the offender is a body corporate—a penalty of \$100 000; or

(ii) in any other case—a penalty of \$20 000.

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

(a) the installation complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and

(b) the installation is safe and safely operated.

Maximum penalty:

(a) if the offender is a body corporate—a penalty of \$50 000;

(b) in any other case—a penalty of \$10 000.

Expiation fee: \$315.

53—Insertion of section 55A

After section 55 insert:

55A—Safety, reliability, maintenance and technical management plans

5 A person exempted from the requirement to hold a licence authorising the operation of a distribution system must, if so required by the Technical Regulator by written notice—

- 10 (a) prepare, maintain and periodically revise a safety, reliability, maintenance and technical management plan dealing with matters prescribed by regulation; and
- (b) obtain the approval of the Technical Regulator to the plan and any revision; and
- (c) comply with the plan as approved from time to time; and
- 15 (d) audit from time to time the entity's compliance with the plan and report the results of those audits to the Technical Regulator.

Maximum penalty: \$50 000.

54—Amendment of section 56—Certain gas fitting work

- (1) Section 56(1), penalty provision—delete the penalty provision and substitute:

20 Maximum penalty:

- (a) if the offender is a body corporate—a penalty of \$50 000;
- (b) in any other case—a penalty of \$10 000.

Expiation fee: \$315.

- (2) Section 56(2)—after "worker" insert:

25 under the *Plumbers, Gas Fitters and Electricians Act 1995*

- (3) Section 56(3)(a)—delete "licensed gas fitting contractor or licensed building work contractor" first occurring and substitute:

30 licensed gas fitting contractor under the *Plumbers, Gas Fitters and Electricians Act 1995* or licensed building work contractor under the *Building Work Contractors Act 1995*

- (4) Section 56(4)—delete "two years" and substitute:

3 years

55—Insertion of section 56A

After section 56 insert:

56A—Design of gas installations

A gas installation must be designed in accordance with technical and safety requirements under the regulations.

Maximum penalty: \$10 000.

Expiation fee: \$315.

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

(1) Section 57(1)—after "unsafe," insert:

or the Technical Regulator believes on reasonable grounds that the infrastructure or installation is, or may become, unsafe when in use,

(2) Section 57(1)(a)—after "satisfaction" insert:

within a period specified in the direction

(3) Section 57(2)(b)—delete paragraph (b) and substitute:

(b) in relation to an installation—

- (i) in the case of an installation that is unsafe, or in relation to which it is reasonably believed that the installation is, or may become, unsafe when in use, as a result of work performed on the installation within 2 years before the giving of the direction and with the consent of the person in charge of the installation or the occupier of the place in which the installation is situated—to the person who carried out the work, unless that person is not authorised to carry out such work; or
- (ii) in any other case—to the person in charge of the installation or the occupier of the place in which the installation is situated.

(4) Section 57(4)—delete subsection (4) and substitute:

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

- (a) must comply with the direction; and
- (b) must not fail to take action specified in the direction to rectify the contravention within the period specified in the direction; and
- (c) must not reconnect or permit the reconnection of the gas supply, or connect or permit the connection of the infrastructure (or part of the infrastructure) or installation to any other supply of gas, without the written approval of an authorised officer.

Maximum penalty: \$50 000.

Expiation fee:

- (a) in the case of an offence against paragraph (c)—\$1 000;
- (b) in any other case—\$315.

57—Amendment of section 57B—Public warning statements about unsafe gas installations, components, practices etc

Section 57B—after subsection (2) insert:

- (3) The Technical Regulator is not obliged to conduct a hearing or invite submissions in connection with—
 - (a) the exercise of a power under this section if the Technical Regulator considers that urgent action is required; or
 - (b) a preliminary investigation conducted by the Technical Regulator for the purposes of this section.

58—Amendment of section 57C—Immunity from liability

Section 57C—after subsection (2) insert:

- (3) It is the intention of the Parliament that the immunity from liability provided for in this section apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

59—Substitution of section 58

Section 58—delete the section and substitute:

58—Reporting of accidents etc

- (1) If an accident involving or associated with any gas infrastructure, gas installation or gas appliance results in injury, an explosion or a prescribed fire the accident must be reported as required under the regulations—
 - (a) if the accident involves part of a gas entity's infrastructure—by the gas entity; or
 - (b) if the accident happens while a gas fitting worker is working on a gas installation or appliance and the worker is able to make the report—by the worker; or
 - (c) in any other case—by the occupier of the place in which the accident happens.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) For the purposes of an investigation of an accident of a kind referred to in subsection (1), the Technical Regulator may prohibit, restrict or regulate access to any infrastructure, installation or appliance involved in or associated with the accident.

- 5
- (3) A person must not alter or interfere with any infrastructure, installation or appliance involved in or associated with an accident of a kind referred to in subsection (1) or anything prohibiting, restricting or regulating access to any such infrastructure, installation or appliance.

Maximum penalty: \$10 000.

Expiation fee: \$315.

- 10
- (4) Despite subsections (2) and (3), a person may alter or interfere with the infrastructure, installation or appliance or anything prohibiting, restricting or regulating access to it—

(a) if to do so is necessary to—

(i) maintain the gas supply or the integrity of a network; or

(ii) avert an immediate and serious danger to a person or property; or

(b) with the approval of the Technical Regulator.

- (5) In this section—

injury includes harm resulting from the inhalation of a product of combustion;

20 *prescribed fire* means a fire that involves the attendance of an officer (including a volunteer officer) or employee of an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*.

60—Substitution of section 61A

25 Section 61A—delete the section and substitute:

61A—Warning notices

- 30
- (1) If it appears to the Commission that a person has been guilty of a contravention of Part 3 or Part 5A (other than in relation to contraventions of Part 5A for which the Technical Regulator may issue a warning notice under subsection (2)) and the contravention is capable of being rectified, the Commission may issue a warning notice to the person, warning the person that the person may be prosecuted for the contravention unless the person takes action specified in the notice to rectify the contravention within the period specified in the notice.
- 35
- (2) If it appears to the Technical Regulator that a person has been guilty of a contravention of Part 5, or Part 5A in relation to contraventions relating to technical and safety matters arising under Part 5A, and the contravention is capable of being rectified, the Technical Regulator may issue a warning notice to the person, warning the person that the person may be prosecuted for the contravention unless the person takes action specified in the notice to rectify the contravention within the period specified in the notice.
- 40

- (3) A warning notice issued 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)—
- 5 (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
- 10 (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.
- 15 (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 fails to take action specified in the notice to rectify the contravention within the period
- 20 specified in the notice.

61AB—Assurances

- (1) The Commission may accept an assurance given by a person in connection with a matter in relation to which the Commission has a power or function under this Act.
- 25 (2) The Technical Regulator may accept an assurance given by a person in connection with a matter in relation to which the Technical Regulator has a power or function under this Act.
- (3) An assurance under this section must be in writing.
- (4) A person who has given an assurance may, with the consent of the Commission or the Technical Regulator (as the case requires),
- 30 withdraw or vary the assurance at any time.
- (5) If the Commission or the Technical Regulator accepts an assurance, the Commission or the Technical Regulator must not proceed against the person who has given the assurance in respect of the conduct
- 35 specified in the assurance, unless it appears to the Commission or the Technical Regulator that the person has acted contrary to, or has failed to comply with, the assurance.

61—Insertion of sections 61BA and 61BB

After section 61B insert:

61BA—Offence to act contrary to assurance

- 5 (1) A person who acts contrary to, or fails to comply with, an assurance accepted by the Commission or the Technical Regulator is guilty of an offence.

Maximum penalty: \$20 000.

- 10 (2) Proceedings for an offence against subsection (1) must not be commenced except—
- (a) in the case of an assurance accepted by the Commission—on the authorisation of the Commission; or
- (b) in the case of an assurance accepted by the Technical Regulator—on the authorisation of the Technical Regulator.
- 15 (3) An apparently genuine document purporting to be under the hand of the Commission or the Technical Regulator and to authorise the commencement of proceedings under this section must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

61BB—Enforcement orders in relation to assurances

- 20 (1) If the District Court is satisfied, on an application under this section, that a person has acted contrary to, or failed to comply with, an assurance accepted under this Division, the Court may make any or all of the following orders:
- 25 (a) an order prohibiting the person from engaging in specified conduct;
- (b) an order directing the person to take specified action to comply with the assurance;
- 30 (c) an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach of, or non-compliance with, the assurance;
- 35 (d) any order that the Court considers appropriate directing the person to compensate any person who has suffered loss or damage as a result of the breach of, or non-compliance with, the assurance;
- (e) any other order that the Court considers appropriate.
- (2) An application under this section may be made—
- 40 (a) in the case of an assurance accepted by the Commission—by the Commission; or
- (b) in the case of an assurance accepted by the Technical Regulator—by the Technical Regulator.

- 5
- (3) The Court may make an interim order under subsection (1)(a) pending final determination of the application.
- (4) The Court may, on the application of the Commission, the Technical Regulator or a person, vary or discharge an order under subsection (1)(a).
- (5) An order under subsection (1)(a) may be made subject to such conditions as the Court thinks fit.
- 10 (6) The Court must not make an order under this section (other than an interim order) unless satisfied on the balance of probabilities that proper grounds for the order have been established.

62—Insertion of Part 6 Division A3

Part 6—after Division A2 insert:

Division A3—Enforcement notices

61D—Enforcement notices

- 15 (1) An authorised officer may issue a notice (an *enforcement notice*) under this section for the purpose of securing compliance with a requirement imposed by or under this Act (including a standard referred to or incorporated by this Act).
- 20 (2) A notice under this section—
- (a) subject to subsection (3), must be in the form of a written notice served on the person to whom it is issued; and
- (b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and
- 25 (c) may direct 2 or more persons to do something specified in the notice jointly; and
- (d) without limiting any other provision, in the case of a notice that relates to a situation existing on any premises, may be issued to any person who—
- 30 (i) is the owner or occupier of the premises; or
- (ii) has the management or control of the premises; and
- (e) without limiting any other provision, may be issued to any person who has performed, or is performing, any work (including work on any premises owned or occupied by another person); and
- 35 (f) must state the grounds on which the notice is issued; and
- (g) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:

(i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a relevant authority;

5 (ii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;

10 (iii) a requirement that the person comply with any specified standard or code published by the Technical Regulator or any other specified person or body referred to in the notice;

(iv) a requirement that the person undertake specified tests or monitoring;

15 (v) a requirement that the person furnish to a relevant authority specified results or reports;

(vi) a requirement prescribed by the regulations; and

(h) must state that the person may, within 10 days, apply for a review of the notice.

20 (3) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(g) as reasonably required in the circumstances.

25 (4) An emergency enforcement notice may be issued orally (and without compliance with a requirement to give preliminary notice) but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to apply for a review of the notice.

30 (5) If an emergency enforcement notice is issued by an authorised officer, the notice will cease to have effect on the expiration of 72 hours from the time of issuing unless confirmed by a written notice served on the relevant person.

(6) An authorised officer may, by written notice served on a person to whom a notice under this section has been issued, vary or revoke the notice.

35 (7) A relevant authority may, by written notice served on a person to whom a notice under this section has been issued by the relevant authority, vary or revoke the notice.

(8) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.
Maximum penalty: \$20 000.

40 (9) A person must not hinder or obstruct a person complying with a notice under this section.
Maximum penalty: \$20 000.

- 5
- (10) If the requirements of a notice under this section are not complied with, a relevant authority may take any action required by the notice.
- (11) Action to be taken by a relevant authority under subsection (10) may be taken on the relevant authority's behalf by an authorised officer or another person authorised by the relevant authority for the purpose.
- (12) A person taking action under subsection (10) or (11) may enter any premises at any reasonable time.
- 10 (13) The reasonable costs and expenses incurred by a relevant authority in taking action under subsections (10) and (11) may be recovered by the relevant authority as a debt from the person who failed to comply with the requirements of the notice.
- 15 (14) If an amount is recoverable from a person by a relevant authority under this section, the relevant authority may, by written notice to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- 20 (15) In this section—
relevant authority means—
(a) the Minister; or
(b) the Commission; or
(c) the Technical Regulator.

63—Amendment of section 66—Power of entry

25 Section 66—after "place" wherever occurring insert in each case:
or vehicle

64—Substitution of section 67

Section 67—delete the section and substitute:

67—General investigative powers of authorised officers

- 30 (1) An authorised officer who enters a place or vehicle under this Part may exercise any 1 or more of the following powers:
- (a) investigate whether the provisions of this Act are being or have been complied with;
- 35 (b) examine and test any gas infrastructure or gas installation to find out whether the infrastructure or installation is safe and complies with the requirements of this Act, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
- 40 (c) require a report on any testing conducted under paragraph (b);

- 5
- (d) investigate an accident suspected to involve gas;
- (e) investigate a suspected interference with gas infrastructure or a gas installation;
- (f) investigate a suspected theft or diversion of gas;
- (g) search for, examine and copy or take an extract from a document or record of any kind;
- (h) take photographs or make films or other records of activities in the place or vehicle and gas infrastructure or gas installations in the place or vehicle;
- 10
- (i) give directions with respect to the stopping or movement of a vehicle;
- (j) take possession of any object that may be evidence of an offence against this Act;
- 15
- (k) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (l) require a person, by written notice served on the person, to attend at a specified time and place.
- 20
- (2) An authorised officer may only exercise the powers conferred by subsection (1) as reasonably required for the administration or enforcement of this Act.
- 25
- (3) 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 or person apparently in charge of the vehicle (as the case requires) a receipt for the object; and
- (b) the object must be returned to its owner—
- 30
- (i) if proceedings for an offence are not instituted within the designated period after the authorised officer takes possession of the object—at the end of that period; or
- 35
- (ii) if proceedings have been so instituted—on completion of the proceedings, unless the court, on application by the Commission or Technical Regulator (as the case may be), orders confiscation of the object.
- 40
- (4) 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.

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

(6) A person who—

- 5 (a) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or
- (b) refuses or fails to comply with a requirement or direction of an authorised officer under this section; or
- 10 (c) being the person in charge of a place or vehicle subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fail to provide such assistance,

is guilty of an offence.

Maximum penalty: \$20 000.

15 (7) In this section—

designated period means 1 year or such longer period as a magistrate may, on application by the Technical Regulator, allow.

65—Amendment of section 68—Disconnection of gas supply

(1) Section 68(3)—after "without the" insert:

20 written

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

Maximum penalty: \$50 000.

Expiation fee: \$1 000.

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

25 (1) Section 69(1)—after "unsafe," insert:

or believes on reasonable grounds that the infrastructure or installation is, or may become, unsafe when in use,

(2) Section 69(1)(b)—after "safe" insert:

30 within a period specified in the direction

(3) Section 69(2)(b)—delete paragraph (b) and substitute:

(b) in relation to a gas installation—

5 (i) in the case of an installation that is unsafe, or in relation to which it is reasonably believed that the installation is, or may become, unsafe when in use, as a result of work performed on the installation within 2 years before the giving of the direction and with the consent of the person in charge of the installation or the occupier of the place in which the installation is situated—to the person who carried out the work, unless that person is not authorised to carry out such work; or

10 (ii) in any other case—to the person in charge of the installation or the occupier of the place in which the installation is situated.

(4) Section 69(4)—delete subsection (4) and substitute:

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

15 (a) must comply with the direction; and

(b) must not fail to take action specified in the direction to make the infrastructure or installation safe within the period specified in the direction; and

20 (c) must not reconnect or permit the reconnection of the gas supply, or connect or permit the connection of the infrastructure (or part of the infrastructure) or installation to any other supply of gas, without the written approval of an authorised officer.

Maximum penalty: \$50 000.

25 Expiation fee:

(a) in the case of an offence against paragraph (c)—\$1 000.

(b) in any other case—\$315.

30 (5) If a person does not comply with a direction, an authorised officer may take any action that is reasonable and necessary to have the direction carried out.

(6) A person, authorised in writing by an authorised officer, 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.

35 **67—Amendment of section 70—Power to require information or documents**

Section 70(4) and (5)—delete subsections (4) and (5)

68—Insertion of Part 6 Division 3

Part 6—after Division 2 insert:

Division 3—Related matters

70A—Self-incrimination

- 5 (1) Subject to subsection (2), a natural person is not required to give
information or produce a document under this Part if the information
or the contents of the document would tend to incriminate the person
of an offence.
- 10 (2) If an authorised officer informs a natural person required to give
information or produce a document under this Part that the
requirement is made for—
- 15 (a) the administration or enforcement of Part 5 relating to the
safety of gas infrastructure, or a gas installation or
appliance; or
- (b) 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 the information or
document so given or produced will not be admissible in evidence
20 against the person in proceedings for an offence (other than an
offence relating to the making of a false or misleading statement or
declaration).

69—Amendment of section 71—Review of decisions by Commission or Technical Regulator

- 25 (1) Section 71(1)—delete "An application" and substitute:
Subject to this section, an application
- (2) Section 71—after subsection (1) insert:
- 30 (1a) An application may not be made under subsection (1) in relation to a
decision to issue an enforcement notice under Part 6 Division A3, or
any matter associated with the requirements or enforcement of such a
notice.

70—Substitution of section 72

Section 72—delete the section and substitute:

72—Appeals

- 35 (1) The following rights of appeal lie to the Administrative and
Disciplinary Division of the District Court (the *Court*):
- (a) an applicant for review under section 71 who is dissatisfied
with a decision as confirmed, amended or substituted by the
Commission or the Technical Regulator on the review;

(b) a person to whom an enforcement notice has been issued under Part 6 Division A3.

(2) An appeal must be made—

(a) in the case of an appeal under subsection (1)(a)—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; and

(b) in the case of an appeal under subsection (1)(b)—within 10 working days after the notice is issued to the relevant person.

(3) In the case of an appeal under subsection (1)(a), the Court must sit with experts selected in accordance with Schedule 3.

(4) The Court may—

(a) on an appeal under subsection (1)(a)—

(i) affirm the decision appealed against; or

(ii) remit the matter to the original decision maker for consideration or further consideration in accordance with any directions of the Court; and

(b) on an appeal under subsection (1)(b)—

(i) confirm, vary or revoke the notice; or

(ii) remit the matter to any person or body under this Act for further consideration; and

(c) in any event—make any consequential or ancillary order or direction, or impose any condition, that the Court considers necessary or expedient on account of an appeal under this section.

(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).

71—Amendment of section 81—Unlawful interference with distribution system or gas installation

Section 81—after its present contents (now to be designated as subsection (1)) insert:

(2) A person must not, without proper authority—

(a) be in an enclosure where gas infrastructure is situated; or

(b) climb structures that are part of gas infrastructure.

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

- (3) A person must not discharge a firearm or throw or project an object or substance towards gas infrastructure or a gas installation if there is a risk of damage to the infrastructure or installation, or interruption of gas supply.

5 Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) A person must not burn any material in proximity to gas infrastructure such that there is a risk of damage to the infrastructure, without the written authority of the person who owns or operates the infrastructure.

10

Maximum penalty: \$10 000.

Expiation fee: \$315.

72—Insertion of section 87A

After section 87 insert:

15

87A—Offences

- (1) The following persons are authorised to give expiation notices for an alleged offence against this Act (in addition to any person authorised under the *Expiation of Offences Act 1996*):

20

(a) any authorised officer authorised in writing by the Technical Regulator;

(b) any gas officer authorised in writing by the Technical Regulator.

- (2) An authorisation under subsection (1) may be given subject to such conditions or limitations as the Technical Regulator thinks fit.

25

- (3) An apparently genuine document purporting to be under the hand of the Technical Regulator and to give an authorisation under subsection (1) must be accepted, in the absence of proof to the contrary, as proof of the authorisation.

73—Amendment of section 88—General defence

Section 88—after subsection (2) insert:

- 5 (2a) Where a body corporate or other employer seeks to establish a defence provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof—
- 10 (a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer;
- 15 and
- (b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.
- 20

74—Amendment of section 89—Offences by bodies corporate

Section 89(3)—delete "34D,"

75—Insertion of section 89A

After section 89 insert:

89A—Imputing conduct to bodies corporate

- 25 (1) For the purposes of proceedings for an offence against this Act, the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate.
- 30 (2) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

76—Amendment of section 94—Service

Section 94(1)—after paragraph (c) insert:

or

- 35 (d) by transmitting to the person by email to the email address last provided to the Commission or Technical Regulator by the person for that purpose.

77—Amendment of section 95—Regulations

Section 95(2)(j)—delete "\$5 000" and substitute:

\$10 000

78—Transitional provisions

- 5 (1) The amendment to section 26 of the principal Act effected by section 48 of this Act applies to a licence granted under the principal Act, or the holder of a licence under the principal Act, whether the licence was granted before or after the commencement of section 48 of this Act (and any existing licence is taken to be modified accordingly).
- 10 (2) In particular, a reference to the Commission in a condition relating to section 26(1)(b)(ii) of the principal Act under a licence in force immediately before the commencement of section 48 of this Act will be taken, on the commencement of section 48, to be a reference to the Technical Regulator (but nothing in this subsection is to be taken to require a licence holder to obtain a fresh approval to an existing safety, reliability, maintenance and technical management plan).
- 15 (3) For the purposes of the preceding subsections, the Commission may, as it thinks fit, issue to the holder of a licence under the principal Act in force immediately before the commencement of section 48 of this Act a replacement copy of the licence in order to take account of the modifications effected by section 48.
- (4) In this section—
principal Act means the *Gas Act 1997*.