

South Australia

# Gas (Temporary Rationing) Amendment Act 2004

An Act to amend the *Gas Act 1997*.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Gas Act 1997*

- 4 Amendment of section 37A—Minister's power to require information or documents
- 5 Insertion of sections 37AB and 37AC
  - 37AB Obligation to preserve confidentiality
  - 37AC Regulations relating to gas rationing
  - 37AD Prosecution for contravention of Division requires Minister's consent
- 6 Amendment of section 62—Appointment of authorised officers
- 7 Amendment of section 67—General investigative powers of authorised officers
- 8 Amendment of section 70—Power to require information or documents

### Part 3—Provision relating to *Gas Regulations 1997*

- 9 Provision relating to *Gas Regulations 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 *Gas (Temporary Rationing) Amendment Act 2004*.

### 2—Commencement

- (1) This Act (other than sections 5 and 9) will come into operation on a day to be fixed by proclamation.
- (2) Sections 5 and 9 will be taken to have come into operation on 15 January 2004.

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

- (1) Section 37A(1)—delete subsection (1) and substitute:
- (1) The Minister may require a person—
    - (a) to give the Minister within a specified time specified information; or
    - (b) to produce to the Minister within a specified time specified documents,that the Minister reasonably requires to determine the sufficiency of gas supply, frame directions, plan for the future exercise of powers under this Division or otherwise administer or enforce this Division (or regulations made for the purposes of this Division).
  - (1a) The power of the Minister to require information includes (without limitation) power to require a seller of gas affected by directions under this Division—
    - (a) to conduct an audit of the seller's compliance with regulations made for the purposes of this Division; and
    - (b) to report the results of the audit to the Minister.
- (2) Section 37A(2)—after "information" insert:  
or produce documents
- (3) Section 37A(2)—delete the penalty provision and substitute:  
Maximum penalty: \$100 000.
- (4) Section 37A—after subsection (2) insert:
- (3) If a person is required to give information or produce a document under this section and the information or document would tend to incriminate the person of an offence, the person must nevertheless give the information or produce the document, but—
    - (a) if the person is a natural person, the information or document so given or produced will not be admissible in evidence against the person in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
    - (b) if the person is a body corporate—
      - (i) the information or document so given or produced will not be admissible in evidence against a director of the body corporate in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and

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

## 5—Insertion of sections 37AB and 37AC

After section 37A insert:

### 37AB—Obligation to preserve confidentiality

- (1) The Minister must preserve the confidentiality of information gained in the course of the performance of the Minister's functions under this Division (or regulations made for the purposes of this Division), including information gained by an authorised officer under Part 6, that—
  - (a) could affect the competitive position of a gas entity or other person; or
  - (b) is commercially sensitive for some other reason.
- (2) Subsection (1) does not apply to—
  - (a) the disclosure of information between persons engaged in the administration of this Division; or
  - (b) the disclosure of information as required for the purposes of legal proceedings related to this Division (or regulations made for the purposes of this Division).
- (3) Information classified by the Minister as confidential under this section is not liable to disclosure under the *Freedom of Information Act 1991*.

### 37AC—Regulations relating to gas rationing

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

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

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

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

### **6—Amendment of section 62—Appointment of authorised officers**

- (1) Section 62(3)—delete subsection (3) and substitute:
  - (3) An authorised officer may be assigned to assist one or more of—
    - (a) the Minister;
    - (b) the Commission;
    - (c) the Technical Regulator,as the Minister considers appropriate.
- (2) Section 62(4)—before paragraph (a) insert:
  - (aa) in the exercise of powers for the enforcement of Part 3 Division 5—be subject to the direction and control of the Minister;

### **7—Amendment of section 67—General investigative powers of authorised officers**

Section 67(4)—after "object," insert:  
the Minister,

### **8—Amendment of section 70—Power to require information or documents**

- (1) Section 70(4)—delete "A" and substitute:  
Subject to subsection (5), a
- (2) Section 70—after subsection (4) insert:
  - (5) If a person is required to give information or produce a document under this section for the enforcement of Part 3 Division 5 and the information or document would tend to incriminate the person of an offence, the person must nevertheless give the information or produce the document, but—
    - (a) if the person is a natural person, the information or document so given or produced will not be admissible in evidence against the person in proceedings for an offence (other than an offence relating to the making of a false or misleading statement or declaration); and
    - (b) if the person is a body corporate—

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

### **Part 3—Provision relating to *Gas Regulations 1997***

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

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