

ELECTRICITY AND GAS LEGISLATION AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The main objectives of this legislation are to:

- (1) amend the *Electricity Amendment Act (No.3) 1997* so that the provisions relating to the appointment of an Electricity Industry Ombudsman do not commence until 5 December 2000;
- (2) amend the *Gas Pipelines Access (Queensland) Act 1998* to:
 - (a) extend the date within which the Minister may approve tariff arrangements for the existing major gas transmission pipelines in Queensland and to clarify that such approval will be provided by the Queensland Minister for Mines and Energy; and
 - (b) amend dates referred to in the Act as consequential amendments to the *Gas Act 1965*, but which establish a timetable for the introduction of contestability into the retail gas market.

Reasons for the Bill

The uncommenced provisions of the *Electricity Amendment Act (No.3) 1997* relating to the appointment of an Electricity Industry Ombudsman are to automatically commence on 5 December 1999. However, as it is proposed to allow for the trial of an alternative process of dispute resolution and arbitration, the commencement of these provisions needs to be postponed for a further 12 months.

Effecting the above mentioned minor amendments to the *Gas Pipelines Access (Queensland) Act 1998* will enable commencement of the Act to proceed at the appropriate time, and allow the access arrangements for transmission pipelines to be dealt with under the National Gas Access Code in the future. It will also allow for the introduction of contestability into the retail gas market in Queensland.

Ways in which the objectives are to be achieved

Electricity

The proposed amendments are to delay the commencement of the Electricity Industry Ombudsman provisions for a 12 month period. A Consumer Protection Office will be established and its operations will be evaluated over the next twelve months. This process will be reviewed against the Electricity Industry Ombudsman model, prior to December 2000.

Gas

The *Gas Pipelines Access (Queensland) Act 1998* currently requires the Minister to approve by 1 July 1998 a tariff arrangement for each of the five major transmission pipelines in Queensland, in order to protect existing tariff arrangements.

As this date could not be met it is necessary to amend the provision to allow the Minister to approve the tariffs, following proclamation of the Act. It is proposed to set the new date at 30 days following commencement of the Act. It is also intended to clearly indicate that it is the Queensland Minister for Mines and Energy who will be responsible for approving tariff arrangements for the derogated pipelines.

As part of the Natural Gas Pipelines National Access Agreement each jurisdiction agreed to a timetable for the introduction of full contestability in the retail gas market. Queensland's timetable provides for the commencement of contestability for a particular class of consumers from 1 January 2000 with full contestability commencing from 1 September 2001.

Prior to the introduction of contestability, the distribution companies require Regulator approval of access and tariff arrangements for pipeline networks. Proclamation of the Act will be the trigger for the National Gas

Access Code processes such as approval of access and tariff arrangements to be commenced. Experience in other States has shown that this can be a lengthy process and, because of the time frames involved, the existing date for introduction of contestability will not be able to be met.

It is proposed to subsequently amend the *Gas Act 1965* to alter the date for introduction of contestability from 1 January 2000 to 1 December 2000.

Alternatives to the Bill

The objectives can only be achieved through amendments to legislation.

Administrative cost to Government

There are no financial implications for the Government associated with the proposed legislative amendments.

Consistency with Fundamental Legislative Principles

It is not intended to proclaim those provisions of the *Gas Pipelines Access (Queensland) Act 1998* which confer powers on the Federal Court, due to the recent High Court decision which held that such conferral of powers was invalid. Crown Law has advised that proclamation of the Act without a provision allowing a right of appeal establishes an inconsistency with the requirements of the *Legislative Standards Act 1992*.

However, this situation would only be temporary and would apply for only a short period of time during which there is not expected to be any party disadvantaged. Upon development of a solution to the conferral of powers matter, provisions for which are currently included in the gas access legislation of all jurisdictions, the matter will be rectified by an appropriate amendment and the amendment proclaimed as soon as possible. A solution to this matter which is acceptable to all jurisdictions is still under discussion.

Crown Law has further advised that proclamation of the Act in this manner would not be constitutionally invalid.

Consultation

Electricity

As this amendment merely seeks to postpone the uncommenced provisions of the Act which relate to the Electricity Industry Ombudsman, no consultation has been conducted.

A comprehensive consultation strategy is being conducted with regard to the proposed changes of consumer dispute resolution procedures.

Gas

In accordance with the requirements of the National Agreement, the consent of the other jurisdictions to the proposed amendments has been sought.

Consultation has been held with officers of the Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney-General (Crown Law), Department of State Development and the Office of the Parliamentary Counsel.

Discussions have been held with officers of the Australian Competition and Consumer Commission and the National Competition Council.

NOTES ON PROVISIONS

Part 1—Preliminary

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides that the amendment to the *Electricity Amendment Act (No. 3) 1997* in part 2 commences or is taken to have commenced on 4 December 1999.

Part 2—Amendment of *Electricity Amendment Act (No.3) 1997*

Clause 3 indicates that part 2 amends the *Electricity Amendment Act (No.3) 1997*.

Clause 4 amends section 2 by providing for the various provisions relating to the appointment of an Electricity Industry Ombudsman to now commence on 5 December 2000 and for the remaining provisions to commence on a day to be fixed by proclamation.

Part 3—Amendment of *Gas Pipelines Access (Queensland) Act 1998*

Clause 5 indicates that part 3 amends the *Gas Pipelines Access (Queensland) Act 1998*.

Clause 6 amends section 58 by changing the date by which the Minister may approve a tariff arrangement for the existing gas pipelines and clearly identifies that such approval will be made by the Queensland Minister for Mines and Energy.

Clause 7 amends section 65 by changing the date, in sections 5B and 5C of the *Gas Act 1965*, for introduction of contestability into the gas retail market in Queensland from 1 January 2000 to 1 December 2000.