

GAS SUPPLY BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The main objectives of the *Gas Supply Bill 2003* (“the Bill”) are to:

- implement the franchising and licensing principles under *Clauses 13* and *14* of the *Natural Gas Pipelines Access Agreement* made between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of South Australia, the State of Western Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory, the agreement being made on the 7 November 1997;
- promote efficient and economical fuel gas supply; and
- protect customers in the reticulated fuel gas market.

Reasons for the Bill

Pursuant to *Clauses 13*, Franchising Principles, and *14*, Licensing Principles, of the *Natural Gas Pipelines Access Agreement* made on the 7 November 1997, between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of South Australia, the State of Western Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, each jurisdiction agreed to conform to the franchising principles contained in Annex E to the *Natural Gas Pipelines Access Agreement* and the licensing principles contained in Annex F to the *Natural Gas Pipelines Access Agreement*.

The franchising principles contained in Annex E to the *National Agreement* state;

1. Bypass to, and interconnection in order to supply gas to, contestable customers should be allowed if the operator has the necessary

operating licences and can meet the requirements of the relevant network operating procedures (contestable customers being customers who are able to choose their suppliers of gas from any appropriately licensed retailer or other supplier in accordance with the phase in timetable as contained in Annex H to the *Natural Gas Pipelines Access Agreement*.)

2. No new exclusive franchises should be granted for the sale of gas in a geographic area or through a specific facility except for a prospective natural gas pipeline service which meets all of the following criteria:
 - (a) a franchise for the sale of gas must be limited to significant “greenfields” projects (infill and extensions to existing networks would be excluded) where there is evidence that investment and pipelines would not otherwise occur, or the services provided to some customer classes would be severely limited, and the franchise has been justified on the balance of public interest;
 - (b) any retail franchise applies to specific small use customer classes and is limited in duration and non-renewable:
 - limited to customer classes that normally fall into a consumption range of no more than 1terajoule per year;
 - limited to a period from the grant of the franchise of normally no more than five years, consistent with the maximum period for grant of a franchise for the provision of Gas Pipeline services (but in any event no more than 10 years);
 - (c) the pipeline service operator is selected through a competitive tender process, Prospective Users are consulted, where possible, in determining the conditions of franchise, and any other conditions that are considered necessary to protect the public interest are met;
 - (d) consideration is given to the longer term benefits and feasibility of encouraging market structures which enhance competition by splitting the franchise into smaller or multiple franchise areas to be allocated to competing bidders; and
 - (e) there is price oversight, by an independent body, for franchise customers over the duration of any proposed franchise.
3. No new exclusive franchises should be granted for provision of natural gas pipeline services in a geographic area or through a specific

facility except for a prospective natural gas pipeline service which meets all of the following criteria:

- (a) the pipeline service will be provided through an integrated pipeline network which will require a systematic development over a significant period in order to achieve the lowest expected long term cost;
- (b) there is a strong likelihood that in the absence of any exclusive franchise that the pipeline network will not be developed in line with the lowest expected long term cost;
- (c) the pipeline service operator is selected through a competitive public tender process, prospective users are consulted in determining the conditions of the franchise, and any other conditions that are considered necessary to protect the public interest are met; and
- (d) the exclusive franchise is limited to a period of not more than five years, and is non-renewable.

Annex F (Licensing Principles) to the *Natural Gas Pipelines Access Agreement* requires the licensing arrangements and conditions will be consistent with the requirements of the Council of Australian Government agreements in relation to free and fair trading in gas (for example, the agreement to remove legislative or regulatory barriers to both inter- and intra-jurisdictional trade in gas).

Specifically, the following licensing principles were agreed to:

1. Licences to operate natural gas pipelines to be unbundled from any other type of licence and open to all appropriately qualified pipeline service operators;
2. Licensing will not be used to restrict the construction or operation of pipelines that could deliver gas to the same market as the licensed pipeline;
3. A licence will not limit the services an operator may provide;
4. Bypass to, and inter-connection in order to supply gas to, contestable customers should be allowed if the operator has the necessary operating licences and can meet the requirements of the relevant network operating procedures (contestable customers being customers who are able to choose their supplier of gas from any appropriately licensed retailer or other supplier in accordance with the phase in

timetable as contained in Annex H to the *Natural Gas Pipelines Access Agreement*);

5. Licence conditions may include an obligation to connect customers onto the natural gas pipeline network. This may include an obligation to undertake minor or infill extensions to the geographic range of the network;
6. There will be full transparency in decision making on licensing through public notification and accountability for decisions.

In addition to implementing the franchising and licensing principles under *Clauses 13 and 14* of the *Natural Gas Pipelines Access Agreement* (referred to above), the Bill is required to promote the efficient and economical supply of fuel gas and to protect customers in the reticulated fuel gas market. Currently the fuel gas market is regulated by the *Gas Act 1965*. The *Gas Act 1965* is antiquated in this approach to the fuel gas industry and is out of date. This has necessitated the complete review of the *Gas Act 1965* and this review has resulted in the drafting of the Bill, which regulates the distribution and retail markets for reticulated fuel gas and provides for the resolution of disputes between customers and distributors and also retailers of fuel gas. The Bill does not provide for the safety of persons involved in, or who may be affected by, the supply or use of fuel gas or provide for the measurement of fuel gas or regulate gases other than fuel gas. In addition, other than for Chapter 4, the Bill does not provide for or regulate transmission pipelines or the transmission of fuel gas. These issues are dealt with by the *Petroleum and Gas (Production and Safety) Bill 2003* which is administered by the Department of Natural Resources and Mines.

The principal impediment to the reform of the distribution and retail markets for fuel gas in Queensland is Part 3 of the *Gas Act 1965*, which deals with the granting of franchises. This part does not allow the separation of the distribution function and the retailing function in the fuel gas market. In relation to the reticulation of natural gas, the principle reform implemented by the Bill is the abolition of franchises granted under that part of the *Gas Act 1965* and the separation of those franchises into distribution licenses and retail licenses.

Achievement of Objectives

The main objectives of the Bill are the implementation of the franchising and licensing principles under *Clauses 13 and 14* of the *Natural Gas Pipelines Access Agreement*, the promotion of an efficient and economic

fuel gas supply and the protection of customers in the reticulated fuel gas market. These objectives are achieved by regulating the distribution and retail market for reticulated fuel gas and by providing under Chapter 5 of the Bill for the resolution of disputes between customers and distributors and retailers. The Bill relates to the supply of fuel gas, defined to mean either liquefied petroleum gas (LPG) or processed natural gas. The Bill defines LPG and processed natural gas as well as transmission pipelines, distribution pipelines and distribution systems. These are key concepts throughout the Bill.

The Bill regulates the reticulation of processed natural gas and LPG (these two substances being defined as fuel gas). The Bill does not regulate the supply of fuel gas contained in cylinders. The structure and effect of the Bill is based largely on the structure and effect of the *Electricity Act 1994* and the *Electricity Regulation 1994*. As the electricity and gas markets are converging, the intention is that the Bill, in so far as it regulates the distribution and retailing of fuel gas, mirrors, so far as possible, the regulation of the distribution and retailing of electricity by the *Electricity Act 1994* and the *Electricity Regulation 1994*.

In this context, distributors on pipelines that are “covered” under the National Third Party Access Code for Natural Gas Pipeline Systems can only provide customer connection services. They cannot provide customer retail services in relation to any other pipeline even pipelines that are not “covered”. Conversely, persons who provide customer retail services in relation to a “covered” pipeline cannot provide customer connection services in relation to any pipeline whether covered or not. This means that a person who is a retailer in relation to a covered pipeline cannot hold a distribution authority for any pipeline. Nor can they hold a point to point distribution authority. These provisions are intended to achieve a structural separation between distributors and retailers supplying processed natural gas, as required by the National Third Party Access Code for Natural Gas Pipeline Systems.

Point to point distribution authorities are provided for under the Bill to allow certain persons to supply large users directly using a distribution pipeline. The persons who are so supplied are usually large users who have a degree of power to ensure that they can counteract the power of a point to point authority holder in dealing with them. The point to point distribution pipeline will, by necessity, not be a “covered” pipeline under the National Third Party Access Code for Natural Gas Pipeline Systems. This is so because, if it were a covered pipeline, the holder of a point to point distribution authority would be in breach of the ring fencing requirements referred to earlier. They would be in breach because they would be

providing customer connection services and customer retail services in relation to a covered pipeline. This is not permitted. If a point to point pipeline became covered, the authority holder would have to separate its business and apply for a separate distribution authority to be held by one entity and a separate retail authority to be held by another entity.

There are three types of distribution authority proposed. These are:

- Point to Point Distribution Authorities;
- Area Distribution Authorities; and
- Greenfield Distribution Authorities.

If the holder of a Point to Point Distribution Authority subsequently wishes to supply customers in addition to the stated customer at the end of the distribution pipe, that person should have to apply for an Area Distribution Authority, the area being at the end of the area distribution pipe enabled by the existing Point to Point Distribution Authority. Distributors cannot supply customer connection services to persons outside the area of the Distribution Authority. Greenfield Distribution Authorities are a special type of Area Distribution Authority that gives the distributor the exclusive right to transport fuel gas in the stated area.

There are three types of retail authorities. These are:

- The Area Retail Authority;
- The Exclusive Retail Authority; and
- A General Retail Authority.

Overlaying these concepts is the concept of contestable and non-contestable customers. Contestable customers have the right to choose their retailer. However, some contestable customers may be subject to an Exclusive Retail Authority and, so long as that Exclusive Retail Authority exists, those contestable customers subject to it must only be sold fuel gas by that Exclusive Retailer. Area Retailers can supply contestable customers located anywhere in the State (except those subject to an Exclusive Retail Authority), but cannot sell fuel gas to noncontestable customers in another area that is not subject to their retail authority.

Exclusive retail authorities are provided for to go hand in hand with a Greenfield distribution authority. General retail authorities permit the holder to supply contestable customers anywhere in the State except contestable customers that are subject to an exclusive right.

Alternatives to the Bill

The policy objectives require statutory enactment to give them ongoing effect.

Estimated Cost for Government Implementation

The provision under Chapter 5 of the Bill for the resolution of disputes between customers and distributors or retailers is estimated to cost \$150,000 per annum. This is a new initiative, and the cost will be recovered from participants in the industry through charges to those participants. The licensing regime (Chapter 2—Distribution Authorities and Chapter 3—Retail Authorities) is also new, in that it replaces *Gas Act 1965* fuel gas franchises; (there are existing regulatory and administrative costs associated with the fuel gas franchises). Estimated cost of regulatory and administrative activities associated with the new licensing regime amount to \$255,000. These costs will also be recovered through charges to industry participants. The overall net cost to Government of implementing the Bill will be nil, since the costs will be recovered in the form of revenue from fees and charges under the Bill.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with due regard to fundamental legislative principles (“FLPs”), as defined in the *Legislative Standards Act 1992*. The Bill’s provisions represent a balance of FLPs, with the community benefits accruing from the underlying policy imperatives. Hence, it could be perceived the Bill departs from FLPs in some instances. Any such departure has occurred in the context of tension between FLPs as defined, and Government policy commitments and community expectations for economic and reliable supply of fuel gas.

Clause 18 (FLP Issue—Henry VII clause (regulation amends meaning of protected customer): The Bill itself defines the other ‘protected customer’ elements. It was considered necessary to add the category of ‘another customer...under a regulation’ because of the potential impact of forthcoming contestability policy decisions on draft provisions concerning ‘area retail authorities’ and ‘exclusive retail authorities’. (Area and exclusive retail authorities confer, respectively, exclusive access in existing or non-greenfield distribution areas to noncontestable customer, and exclusive access in greenfield distribution authority areas to stated contestable and all non-contestable customers).

A decision on further tranche/s of contestability was unavailable at time of drafting; hence, the Bill had to accommodate a number of probable outcomes. One such outcome is more than one further tranche of contestability; another is FRC, perhaps following an intermediate tranche. Either outcome may necessitate more than one amendment to the protected customer definition in the principal legislation. The decision was taken to provide for a regulation-making power in this clause on the basis that, in this instance, successive amendments of the principal legislation would increase executive government administrative burden without adding value.

Clause 80 (FLP Issue—no right or review/appeal): The entity needs to be given certainty in decision-making. Providing for an appeal would make it extremely difficult to manage existing or future operations on the publicly controlled place.

Note the entity may approve with stated conditions, to provide certainty in managing the publicly controlled place. This clause also gives the distributor a reasonable level of certainty, in that the entity must not unreasonably refuse to grant approval.

Clause 81 (FLP Issue—no right or review/appeal): No such right is provided for in this clause, for the reasons given in Clause 80.

Clause 92 (FLP Issue—no right or review/appeal): Clauses 90 to 94 relate to a public entity for a publicly controlled place undertaking work that may affect the safety, location or operation of gas infrastructure. Clause 92 requires the public entity to notify the distributor of its proposed work and invite submissions from the distributor. The entity must not do any work until any submissions have been considered.

Clause 97 (FLP Issue—no right or review/appeal): The preceding clause (Clause 96) provides a public entity may take “remedial action” if gas infrastructure interferes with a public place because of an emergency. This clause (Clause 94) empowers the public entity to require a distributor to take the necessary remedial action. In the public interest, no right of review or appeal is considered necessary or advisable.

In effect, this means the distributor knows what work is being done and the possible impact such work could have on its gas infrastructure. “Consequential work” is work the distributor needs to do to the gas infrastructure, as result of the completed public entity work. In the public interest, no right of review or appeal is considered necessary or advisable.

Clause 138 to 140 (FLP Issue—Entry powers): Entry to read meters is a long-standing, well-known and accepted practice in gas and electricity retail. All but the emergency powers have time-of-day or ‘no-dwelling

place' restrictions. Requiring warrants or equivalent for all the listed purposes would be onerous and ultimately unworkable for industry, and detrimental to community expectations of efficient service.

Clause 146 (FLP Issue—scrutiny of the Legislative Assembly over exercise of delegated legislative power): The market operating arrangements, by their nature, contain numerous technical references which are difficult to render in a legislative format. Nevertheless, all parts of the arrangements which confer a power or responsibility will be duplicated in the regulation itself. The arrangements (and subsequent regulation) will be the product of extensive industry consultation. The regulation will be subject to the usual Parliamentary disallowance process, and the Minister will table the market operating arrangements.

Clause 199 FLP Issue—no right of review/repeal (contestable customers): Clause 198 (Applying for customer retail services) and Clause 199 exist only to act as a means to implement the following policy: retailers should be obliged to serve small or exclusive right customers. The right of review exists so the regulator may determine whether or not a retailer has legitimate cause not fulfil this obligation.

There is no policy intent to oblige a given retailer to serve a given (or any) contestable customer; hence, a review right for a contestable customer would serve no policy end. (Any retailer may serve any contestable customer and, implied in this right to serve, is the right not to serve).

Clause 228 FLP Issue—natural justice, rights and liberties (affected retailers and on-sellers): The inclusion of an appeal would conflict with the key purposes of the Bill to 'promote efficient and economical fuel gas supply' and to 'protect customers in reticulated fuel gas markets'. The Ministerial price-related powers are a consumer protection measure aimed at preventing the exploitation of those unable to freely choose between competing gas retailers. At the same time, the Bill obliges the Minister to consider the interests of relevant parties, ie. industry and consumers, in exercising these powers. (The Minister may also delegate all or part of these price setting powers to the Queensland Competition Authority). The Minister's decision should, as it is currently, be final and binding.

Clause 237 (FLP Issue—no right of review/repeal; administrative power...sufficiently defined): Contingency supply planning is recognised in all Australian jurisdictions as being a legitimate 'public benefit' concern of government, and is respondent to public benefit matters listed in the CoAG Competition Principles Agreement, particularly section 1(3)(e), (h) and (j).

Industry has been consulted on the contingency provisions and they consider development of such plans to be normal business risk management practices. No right of appeal is considered particularly as the requirement is only “may” and would only occur after lengthy discussions with the relevant party.

The regulator’s power under this clause is clearly defined: the regulator may, or may not require a participant to make a plan. Clause 239 details a plan’s required contents. This is an entirely adequate definition of the ‘administrative power’.

Clause 241 (FLP Issue—effect on rights and liberties): A defence on the grounds of acts or omissions made honestly and without negligence is commonplace in legislation. Since an industry participant is required to prepare a contingency plan for emergency situations and required to comply with its contents, it is reasonable to provide a limitation on any resultant liability. (Also note, the provision allows for the participant and affected person to come to an agreement over the matter of loss, costs or damages.)

It is considered limiting the affected person’s rights at law is justified on the basis of community benefit (effective planning for gas shortages or curtailment of supply) and natural justice (conferring a degree of protection to a participant acting under a statutory obligation).

Clauses 248 to 250 (FLP Issue—delegation of legislative power only in appropriate cases): Since the Governor-in-Council would make such a regulation, the issue is: whether a (developed) retailer of last resort scheme should be inserted as an amendment in the principal legislation.

The Bill sets out the objects and the matters which a scheme may provide for. Under the proposed regulatory regime, distribution and retail authority holders would be required to participate in the creation of a scheme and, if directed by the Regulator, in any activation of the scheme. Actively involving industry participants in the process of making the scheme is the best means of producing a scheme that is practicable, workable and relevant to the Queensland gas market. A regulation to give the scheme legal force would necessarily be the outcome of government/industry consultation, discussion and cooperation.

It is considered a consultative, participatory development process would be the most effective safeguard against any adverse effects on the participants’ rights. In addition, since Queensland has literally dozens of discrete gas distribution networks with a number of differing distributors and retailers, it cannot be assumed there will be one scheme only. The

decision was taken to provide for a ROLR scheme under a regulation, on the basis that (potentially) multiple amendments of the principal legislation would increase executive government administrative burden without adding value.

Clauses 251 to 257 (FLP Issue—effect on rights and liberties, no right of review/appeal, no provision for compensation for loss or damage): In making an insufficiency of supply declaration, the Minister would be acting in the community interest. The exercise of such power would be undertaken in emergent circumstances where an appeal process would mitigate against the intent of the provision.

It is considered the limiting of the affected person's rights at law is justified on the basis of community benefit (effective planning for gas shortages). The Bill does not provide for compensation on the same basis.

Clause 260 (FLP Issue—no right of review/repeal) (customers using 1 terajoule or greater): The clause reflects a policy decision that public benefit lies in this consumer protection measure being available to smaller (domestic and small business) consumers who may otherwise lack the financial or legal wherewithal to act effectively in their own interests. This is in line with a similar consumer protection measure in the CoAG National Gas Pipelines Access Agreement Franchising Principles, whereby government is obliged to provide prices oversight for exclusive-access retail customers who consume less than 1 terajoule per year.

It is considered limiting access to the dispute resolution service to smaller consumers is justifiable in the public interest. Larger customers will be directly contracted and disputation issues would be addressed in their negotiated contract.

Clause 316 (FLP Issue—effect on rights and liberties): It is considered the Bill provides sufficient consumer protection measures to ensure customers' rights are protected in normal circumstances. This limitation on liability applies only under extraordinary circumstances; that is, in circumstances beyond the distributor's or retailer's control.

Also note, as per the similar Clause 241, the provision allows for the participant and affected person to come to an agreement over the matter of loss, costs or damages.

Clauses 325 and 326 (FLP Issue for 2 preceding—effects on rights and liberties): This part would, it is true, effect franchise and authorisation holders' rights and liberties by 'cancelling' the franchises and authorisations. However, Chapter 7 Part 3 will confer on the holders the rights and liberties applicable to retail or distribution authority holders

Consultation

The Bill has been developed through a process of public consultation. The *Gas Supply Bill 2003* was forwarded to, and comment was requested from, Agility Management Pty Ltd, Allgas Energy Ltd, Australian Pipeline Industry Association Inc, Australian Petroleum Production and Exploration Association Ltd, the Australian Gas Association, the Australian Liquefied Petroleum Gas Association Ltd, Australian Pipeline Trust, Brisbane City Council, CS Energy Ltd, Dalby Town Council, Department of Main Roads, Department of Natural Resources and Mines, Department of State Development, Department of the Premier and Cabinet, Department of Transport, Duke Energy International, Envestra Ltd, the Environmental Protection Agency, Epic Energy, Ergon Energy, the National Competition Council, Origin Energy Asset Management Ltd, Origin Energy LPG Ltd, Origin Energy Retail Ltd, Property Council of Australia, Queensland Competition Authority, Real Estate Institute Queensland, Roma Town Council, Santos Ltd, and WesFarmers Kleenheat.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Bill.

Clause 2 specifies this Bill will commence on a day fixed by proclamation.

Clause 3 states the main purposes of the Bill and how those purposes are to be achieved.

Clause 4 specifies those areas of the fuel gas industry and market that the Bill does not regulate. These areas are generally regulated by the *Petroleum Act 1923* and the *Gas Act 1965*. The Petroleum and Gas (Production and Safety) Bill 2003 is being drafted to replace the *Petroleum Act 1923* and the parts of the *Gas Act 1965* that will not be repealed by this Bill.

Clause 5 states which persons are bound by this Bill.

Clause 6 states this Bill does not affect other rights or remedies that persons have.

Clause 7 specifies the dictionary is contained in the Schedule 3, and the dictionary defines particular words used in the Bill.

Clause 8 specifies the Chief Executive of the department administering the Bill is the regulator.

Clause 9 states fuel gas is LPG or processed natural gas.

Clause 10 defines LPG.

Clause 11 defines what processed natural gas is.

Clause 12 defines what is a transmission pipeline. An example of a transmission pipeline is the pipeline that transports natural gas from Wallumbilla (located near Roma) to Brisbane. The transmission pipeline ceases at the “city gate” in Brisbane where it connects to a distribution system.

Clause 13 defines what is a distribution pipeline. Distribution pipelines are usually part of a distribution system, but they can be a single point to point pipeline that is not part of a distribution system, where that pipeline services a specific customer.

Clause 14 defines what is a distribution system. The definition of a distribution system does not include the pipes that transmit natural gas and LPG from an exit point of a meter to a customer. Examples of distribution systems are the systems owned by Allgas Energy Ltd and the systems owned by Envestra Ltd.

Clause 15 specifies when fuel gas is “reticulated”. Examples of where fuel gas is reticulated include the distribution systems that reticulates LPG at Noosa Springs on the Sunshine Coast and the distribution system that reticulates fuel gas on the Southside of Brisbane, being the distribution system owned by Allgas Energy Ltd.

Clause 16 defines who is the customer.

Clause 17 defines who contestable customers are and who non-contestable customers are. Contestable customers are defined by reference to threshold consumption amounts. Schedule 1 allows a regulation to be made specifying the threshold consumption amount. Currently the threshold consumption amount is 100 Terajoules per annum. This consumption amount is enacted in this Act and can be effectively varied by regulation. Contestable customers, excepting those contestable customers that are subject to an exclusive retail authority, can choose their retailer. Non-contestable customers cannot choose their retailer.

Clause 18 defines who is a protected customer. Protected customers are non-contestable customers and customers who are subject to a Greenfield Distribution Authority or an Exclusive Retail Authority. This definition is

required because it is possible that a person can be a contestable customer, but be subject to a Greenfield Distribution Authority or an Exclusive Retail Authority, in which case, although they are contestable for purposes of the Act, they cannot choose their retailer until the Exclusive Authority or Greenfield Distribution Authority to which they are subject expires or is amended.

Clause 19 defines customer connection services. Customer Connection Services are usually provided by a distributor, but can be arranged by a retailer. The definition deals with making provision for the actual physical connection of premises to a distribution system and, if premises are already physically connected to a distribution system, allowing fuel gas to be transported to those premises.

Clause 20 defines customer retail services. Customer Retail Services involve the selling of reticulated fuel gas to someone else and can include the arranging of customer connection services, if those are not already in place. It is possible for a retailer to provide for the selling of fuel gas to someone else and for the arranging of customer connection services.

Clause 21 defines what is a distribution authority.

Clause 22 defines who is a distributor.

Clause 23 specifies that there are 3 types of Distribution Authorities. These are;

- Point to Point Distribution Authorities;
- Area Distribution Authorities; and
- Greenfield Distribution Authorities.

If a distributor currently has a point to point distribution authority and services one customer at the end of that pipeline, but intends to service a number of customers at the end of that pipeline at a future time the distributor will have to apply for an Area Distribution Authority, the area being the area covered by the customers at the end of the pipeline. Area Distribution Authorities will be the usual Distribution Authorities granted.

Clause 24 defines what is a Retail Authority.

Clause 25 describes who is the retailer in three different situations.

Clause 26 states that there are three types of retailer. These are:

- Area Retailers;
- Exclusive Retailers; and

- General Retailers.

Area Retailers have the exclusive right to service noncontestable customers located within their area and a general right to service contestable customers located anywhere except in those contestable customers that are subject to an exclusive retail authority. An Exclusive Retail Authority is a type of Area Retail Authority that gives the retailer the right to service non contestable customers in its area and the exclusive right to provide customer retail services to certain contestable customers in the area of the Exclusive Retail Authority. An Exclusive Retailer can service the contestable customers located throughout Queensland except those subject to another exclusive right. A general retailer cannot service non-contestable customers and contestable customers subject to an Exclusive Retail Authority but can service contestable customers located throughout Queensland.

Clause 27 provides a person may apply for a distribution authority.

Clause 28 states the procedure that must be followed when someone is applying for a Distribution Authority. *Clause 28* deals with three types of Distribution Authority being Point to Point Distribution Authorities, Area Distribution Authorities and Greenfield Distribution Authorities. The process for applying for each of those three types of Distribution Authorities is slightly different.

Clause 29 provides that the Regulator must publish a notice concerning an application and call for submissions in respect of the application.

Clause 30 provides that a competitive tender process must be followed for Greenfield Distribution Authorities. The Regulator may carry out the competitive tender process in the way the Regulator considers appropriate. Usually the Regulator will carry out the process in accordance with the National Third Party Access Code for Natural Gas Pipeline Systems.

Clause 31 states how the Regulator must respond to an application.

Clause 32 states the criteria the Regulator must consider in deciding an application.

Clause 33 states additional criteria that the regulator must consider in determining applications for Greenfield Distribution Authorities.

Clause 34 outlines what terms for each authority the Regulator may grant.

Clause 35 states what must be done when an application is granted.

Clause 36 states that the Regulator is taken to refuse an application if the Regulator has given notice of acceptance of the application and the applicant has not given the Regulator an acceptance notice within the period stated in the notice.

Clause 37 states the process to be followed prior to and following on issue of the distribution authority.

Clause 38 provides that, if the Regulator decides to refuse an application, the Regulator must give the application an information notice about the decision. Information notices trigger certain appeal rights. See Section 264.

Clause 39 states that Division 2 imposes conditions on each distribution authority that applies as well as conditions stated in the authority.

Clause 40 states four general conditions that apply to Distribution Authorities.

Clause 41 provides that a distributor must not provide customer retail services relating to processed natural gas through a pipeline if that person provides customer connection services relating to natural gas in respect of a covered pipeline. This provision is designed to ensure that persons who hold a retail licence for the sale of processed natural gas in relation to a covered pipeline cannot also hold a distribution licence for the transportation of processed natural gas through a pipeline whether that pipeline is covered or not. A person may hold a retail licence for the sale of reticulated LPG and at the same time hold a distribution licence for the transportation of reticulated LPG.

Clause 42 provides for a general obligation to safely operate and maintain distribution pipelines. The obligation is imposed on the distributor. This is a general obligation and does not detract from or anyway limit the obligations that a distributor has under the Gas Act 1965 or any Act that repeals or replaces it.

Clause 43 effectively provides that persons who hold a Distribution Authority can only service persons within the area of the Authority.

Clause 44 provides that persons subject to an exclusive right under a Greenfield Distribution Authority cannot be supplied fuel gas by other distributors.

Clause 45 imposes a condition on Greenfield distribution authorities that they must complete the construction of the distribution system within a specified timeframe. This provision is to ensure that investment in the system is not delayed once the authority is granted. The time constraint

only relates to the system described in the application. It does not relate to any extensions to the system that are not described in the application.

Clause 46 provides that pipes must be constructed in accordance with the *Gas Act 1965*.

Clause 47 is a consumer protection measure and provides for the establishment of inquiry practices and procedures.

Clause 48 is a consumer protection measure and provides for the establishment of contingency practices and procedures.

Clause 49 provides that a distributor must comply with the contingency supply requirements within Chapter 4 Part 2.

Clause 50 provides that, if a retailer of the last resort scheme is made under Chapter 4, Part 4, a distributor must comply with the scheme to the extent that it applies to the distributor.

Clause 51 provides that the distributor must comply with any conditions prescribed under a regulation for or relating to the provision of customer connection services or any code, inter-governmental agreement, protocol or other, for or relating to, the provision of customer connection services, that is prescribed under a regulation.

Clause 52 provides for minor amendments to distribution authorities.

Clause 53 provides for circumstances when a regulator may amend a distribution authority.

Clause 54 provides that regulators may amend conditions of distribution authorities.

Clause 55 provides that distributors may apply for amendments to a distribution authority.

Clause 56 provides how the Regulator is to respond to a distributor application to amend its distribution authority.

Clause 57 states the circumstances in which a Regulator may amend, cancel or suspend a distribution authority.

Clause 58 sets out the procedure for immediate suspension of a distribution authority.

Clause 59 sets out the circumstances in which Subdivision 5 – Procedure for Amendment, Cancellation, or Suspension other than immediate suspension – applies.

Clause 60 states that notice must be given in relation to the proposed amendment, cancellation or suspension. The distributor has the right to make written representations to show why the proposed actions should not be taken.

Clause 61 provides that the Regulator must consider the representations made by the distributor.

Clause 62 states how the proposed action to amend, cancel or suspend can be implemented.

Clause 63 provides that the distributor has the right to receive an information notice about the decision. This has implications for a review of the decision and an appeal of the decision.

Clause 64 sets out the circumstances in which the Distribution Authority may be extended or renewed. This section does not apply to Greenfield Distribution Authorities.

Clause 65 sets out the procedure for deciding an application to renew a Distribution Authority.

Clause 66 provides that Distribution Authority continues in effect even if has expired if an application for renewal is made. It continues until the application for renewal is determined.

Clause 67 provides that the Distribution Authorities cannot be transferred in any way other than under subdivision two. Purported transfer of a Distribution Authority other than in accordance with sub Division 2 is of no effect.

Clause 68 sets out the procedure a distributor must follow applying for a transfer of Distribution Authority.

Clause 69 describes how the Regulator may respond to an application for a transfer of a Distribution Authority.

Clause 70 provides that a distributor may mortgage a distribution authority without notice or approval from the Regulator.

Clause 71 provides that if a mortgagee of a distribution Authority proposes to exercise its powers under the mortgage it must give the regulator at least 20 business days notice of the mortgagee's intention to exercise those powers.

Clause 72 is structured so that a mortgagee of a Distribution Authority in exercising its powers in relation to the authority is subject to the Act and other laws as if it were the distributor. This section is to ensure that

mortgagees are subject to the provisions of the Act including the consumer protection provisions as if they were the distributor.

Clause 73 provides that a distributor can only surrender its authority if it has the approval of the Regulator. This provision is to ensure that Regulator has a degree of control over the provision of customer connection services to the community.

Clause 74 provides that a regulation may provide standards of the quality of customer connection services. A Regulator may ask the Queensland Competition Authority to monitor, investigate and report on compliance with the standards. This is a consumer protection measure.

Clause 75 defines what is gas infrastructure and gas infrastructure work. Gas infrastructure does not include pipes and equipment connected to the exit point of a meter. A Distribution Authority only extends to pipes that enter the meter and the meter itself. It does not extend to pipes that exit the meter. *Clause 75* also defines what is gas infrastructure work.

Clause 76 defines what is a Public Entity. The definition relies on the definition of Government Entity under the Government Owned Corporations Act 1993. A Government Entity is defined in that Act in Section 5. Section 5 defines government entity to mean that:

- A government company or part of a government entity; and
- A state instrumentality, agency, authority or entity or a Division, branch or other part of a State instrumentality, agency, authority or entity; or
- A department, Division, branch or other part of a department; or
- A GOC act entity; or
- A statutory GOC or part of a statutory GOC; or
- An entity prescribed by regulation.

For example the Department of Transport and the Department of Main Roads are Government entities as they are State Government Departments. Public Entity is defined to include Local Governments.

Clause 77 defines what is a publicly controlled place and who is the Public Entity for that public controlled place. Examples of publicly controlled places include roads and footpaths. The principal publicly controlled places that are relevant to the carrying out of gas infrastructure work are State controlled roads and streets controlled by local governments. If a distributor is to carry out work on a local government controlled street or a State controlled road, the works are regulated by the

Gas Supply Act 2003. They are not regulated by the *Transport Infrastructure Act 1994*. See also Sections 379, 380 and 381 of the *Gas Supply Act 2003*. If a distributor is to carry out work on busway land, light rail land, a railway or rail corridor land, the works are regulated by the *Transport Infrastructure Act 1994*.

Clause 78 Gives distributors the right to carry out works in publicly controlled places.

Clause 79 states the circumstances in which a distributor may carry out gas infrastructure work on publicly controlled places.

Clause 80 sets out how the public entities approval is to be obtained. (Sections 266 to 270 set out how gas infrastructure work disputes are resolved).

Clause 81 provides that the public entity may impose conditions on the approval it gives to carry out the gas infrastructure work. For example the conditions may relate to:

- the location of the gas infrastructure on the publicly controlled place including the alignment and depth of the gas infrastructure on the publicly controlled place;
- traffic control while the gas infrastructure is being constructed, augmented, altered or maintained;
- the dates, times and locations of access to the publicly controlled place;
- construction where it is likely to adversely effect the publicly controlled place;
- re-instatement of the publicly controlled place after the gas infrastructure has been constructed, augmented, altered or maintained;
- public risk insurance to be held by the owner of the gas infrastructure in relation to the construction, augmentation, alteration or maintenance of the gas infrastructure; or
- the indemnification of the public entity from risks associated with the construction, augmentation, alteration or maintenance of the gas infrastructure and the presence of the gas infrastructure on the publicly controlled place.

Clause 82 to 86 set out the basic obligations a distributor must observe when carrying out the work. Note especially *Clause 85(1)(d)*. *Clause 85(1)(d)(ii)* is intended to ensure that the distributor, in carrying out the

work, complies with all the technical and safety requirements of the *Gas Act 1965* and any Act that replaces it. This is because the *Gas Supply Act 2003* does not deal with safety and technical matters.

Clause 87 states that the public entity can give to the distributor a notice directing the distributor carry out stated work. The clause states when the power can be exercised and the circumstances in which the power may be exercised.

Clause 88 states that the distributor must carry out the work direction and it states the consequences if the distributor does not carry out the work direction.

Clause 89 states who pays the cost of carrying out work to comply with directions.

Clause 90 provides Division 3 – Public Entity Work – applies if a public entity proposes work which may affect gas infrastructure.

Clause 91 provides that a public entity that is proposing work must consult the distributor if the work is to effect existing gas infrastructure.

Clause 92 provides if a public entity has complied with *Clause 91*, the entity may require the distributor to carry out consequential work.

Clause 93 states that the distributor must comply with a consequential work requirement.

Clause 94 provides that public entities are liable for the cost of consequential works.

Clause 95 provides when Division 4 – Gas infrastructure interfering with publicly controlled place – applies.

Clause 96 provides a public entity may take remedial action in an emergency if gas infrastructure interferes with a controlled place.

Clause 97 provides a public entity may, by notice, require a distributor to take remedial action in a reasonable period.

Clause 98 states that a distributor must comply with a remedial action requirement.

Clause 99 states that public entities must bear the cost of remedial works.

Clause 100 provides that gas infrastructure remains the property of the distributor.

Clause 101 provides that in certain circumstances compensation is payable by the distributor.

Clause 102 sets out the circumstances in which Part 3 – Customer Connection Services – applies.

Clause 103 states who may apply for customer connection services. A retailer may apply for customer connection services on behalf of a consumer.

Clause 104 states that a distributor must decide to grant or refuse the application. The clause states when the distributor must make that decision.

Clause 105 provides that, if a distributor decides to grant an application for customer connection services, the distributor must propose to the applicant the terms and conditions upon which the distributor proposes to provide customer connection services to the applicant. The distributor must propose terms that are fair and reasonable where the application is by a protected customer. Protected customer is defined in the Act and means non-contestable customers and contestable customers who are subject to an exclusive right.

Clause 106 states that, if a distributor and an applicant agree about the terms of providing customer connection services, the agreement is called a customer connection contract. A customer connection contract can be oral or in writing, or partly oral and partly in writing.

Clause 107 is a consumer protection measure and provides that a person who enters into a customer connection contract may, within five days, elect to terminate a contract.

Clause 108 is a consumer protection measure and states when a distributor must commence to provide customer connection services.

Clause 109 provides limits on a distributor's obligation to provide customer connection services. The clause is inter-linked with Clause 100 – Deciding Application. The clause in effect limits Clause 100. Section 109 (2) refers to Section 60B of the *Gas Act 1965*. Section 60B sets out provisions with respect to defective or dangerous fittings. Section 60B can in effect, override the obligation to serve that exists under the *Gas Supply Act 2003*. It is necessary to refer to Section 60B since the *Gas Supply Act 2003* does not deal with safety and technical matters.

Clause 110 provides that Division 3 – Changes to Gas installation – applies if a distributor provides customer connection services to a persons premises.

Clause 111 provides that the distributor must give the required information to a customer if a customer requires information from a distributor to change or replace the fuel gas installation at the premises.

Clause 112 provides that a person may apply to the distributor to change the connection of the fuel gas installation.

Clause 113 states the operation of Division 4 – Provisions about what is fair and reasonable. Division 4 assists in determining what are fair and reasonable terms. This is relevant to the obligation of the distributor to provide customer connection services to protected customers on fair and reasonable terms.

Clause 114 provides that, if the terms of the customer connection contract are the same as the relevant approved contract, the approval is evidence that the terms of the customer connection contract are fair and reasonable. This provision is to in effect, allow the Regulator, to approve customer connection contracts. The Regulator could take the initiative and draft a contract itself and approve that contract. Alternatively, the distributor may take the initiative and then seek the approval of the Regulator.

Clause 115 provides that the terms of the customer connection contract are fair and reasonable if the customer connection contract relates to services provided by the owner of a covered pipeline under the Gas Pipeline Access Law and the terms of the customer connection contract comply with the access arrangement. The intent is to ensure the obligation to provide customer connection services on fair and reasonable terms to protected customers does not affect the terms for access regulated under to any access arrangements entered into under the Gas Pipeline Access Law; (see *Gas Pipeline Access (Queensland) Act 1998*).

Clause 116 provides that the mere use by the distributor of differing methods of charging of services to different customers is not in itself unfair or unreasonable.

Clause 117 provides that the mere making of, or compliance with the customer connection contract by the distributor, is not unfair or unreasonable.

Clause 118 provides that a distributor can require differing types of security for differing types of customers and that of itself is not unfair or unreasonable.

Clause 119 provides the mere imposition of differing terms is not unreasonable if the circumstances require it.

Clause 120 sets out the circumstances under which a distributor may discontinue customer connection services.

Clause 121 provides that a retailer may request a distributor to discontinue customer connection services. This provision is necessary as many customer connection services will be provided by, or arranged by, a retailer. The retailer may be the only interface the customer has.

Clause 122 sets out the circumstances under which a distributor may discontinue customer connection services.

Clause 123 sets out an obligation upon a distributor to recommence customer connection services in certain circumstances.

Clause 124 provides that in certain circumstances relating to a failure to discontinue or to recommence, a distributor must pay compensation.

Clause 125 sets out the circumstances in which Part 4 – Meter and Control Apparatus Requirements - applies.

Clause 126 provides that a distributor must provide a meter for a customer

Clause 127 sets out what may be considered by a distributor in deciding placement of a meter.

Clause 128 provides that a customer must provide space, housing, mounting and connecting facilities for each meter.

Clause 129 states what is to occur if building changes necessitate a change to the position of a meter.

Clause 130 imposes an obligation on a customer to provide safe access to the meter.

Clause 131 provides for the consequences of a customer not providing safe access under Clause 130.

Clause 132 provides that distributors may appoint persons to carry out certain functions.

Clause 133 sets out the functions a distribution officer may perform.

Clause 134 provides for a distribution officer to be considered a public official under *Police Powers and Responsibilities Act 2000*, when the distribution officer is performing a function under Clause 133.

Clause 135 provides that a distributor must issue identity cards to the persons it has appointed under Clause 127.

Clause 136 provides that a person appointed under Clause 132 must produce or display the identity card.

Clause 137 provides that a person appointed under Clause 132 must return an identity card under certain circumstances.

Clause 138 states the power to enter to read or test a meter.

Clause 139 states the power to enter to make gas infrastructure safe.

Clause 140 states the power to enter in an emergency.

Clause 141 provides the powers of a person appointed under Clause 132 are not limited not under the *Body Corporate and Community Management Act 1997* in respect of entering common property.

Clause 142 states the duty to avoid damage.

Clause 143 sets out the circumstances in which a person appointed under Clause 132 must provide notice of damage.

Clause 144 sets out the matters to be contained in the notice.

Clause 145 states the circumstances in which compensation from a distributor to an owner or occupier is payable.

Clause 146 provides that a regulation may be made setting out business arrangements on a covered distribution pipeline or a transmission pipeline affecting a covered distribution pipeline. This provision is designed to ensure that appropriate market rules can be drafted to govern gas allocations and other matters relevant to contestability.

Clause 147 provides that if a regulation under Clause 146 applies, amends or adopts a code of conduct, the Minister must table the code in Parliament.

Clause 148 states that a person may apply for a retail authority. The clause states what must be included in the application.

Clause 149 sets out requirements for an application.

Clause 150 states that before deciding an application the Regulator must publish the application and consider written submissions.

Clause 151 states the Regulator must decide whether to grant or refuse the application.

Clause 152 sets out the criteria the Regulator may consider in deciding an application.

Clause 153 sets out additional criteria the Regulator must consider when the application is for an exclusive retail authority.

Clause 154 states the term a retail authority may be for.

Clause 155 states that, if the Regulator decides to grant an application, the Regulator must give the applicant a decision notice setting out certain things provided for in Clause 142.

Clause 156 sets out the circumstances in which the Regulator is taken to have decided to refuse the application.

Clause 157 provides for the issuing of the retail authority and the publishing of a notice for the authority.

Clause 158 provides that, if the Regulator refuses an application for a retail authority, the Regulator must give the applicant an information notice about the decision. This enables the applicant to have the decision reviewed and subsequently appealed.

Clause 159 states the operation of Division 2 – Retail Authority Conditions.

Clause 160 is a consumer protection measure and provides that a retailer must give to a customer a copy of or a document describing the terms of the relevant customer retail contract, a summary of the dispute resolution procedures and a contact telephone number for internal or external dispute mechanisms.

Clause 161 is a consumer protection measure. It imposes on a retailer an obligation to make certain information available to a customer.

Clause 162 is a consumer protection measure and provides that a customer cannot be billed for periods in excess of three months.

Clause 163 sets out the required content for accounts. It is a consumer protection measure.

Clause 164 is a consumer protection measure and provides that certain customer notices must be given under Clause 121 before a retailer can give the distributor a discontinuance request on the ground that the retailer is not obliged to provide or continue to provide retail services.

Clause 165 sets out an obligation to give a recommencement notice in certain circumstances.

Clause 166 provides that the retailer is subject to general conditions at law. For example a retailer would be subject to the consumer protection measure of the *Trade Practices Act 1974*. This provision is inserted in this

Bill so that a breach of other laws that apply to the retailer can lead to disciplinary action against the retailer by the regulator.

Clause 167 provides that any retailer can service contestable customers located anywhere in the State.

Clause 168 is the ring-fencing provision. At a general level, the holder of a retail authority in relation to a covered pipeline cannot hold a distribution authority for any pipeline, covered or not. The exceptions to this are persons who retail and/or distribute LPG by reticulation systems. This exception exists as the competition reforms are not relevant to LPG. In addition, another exception to this is point to point distribution authorities. The holder of a point to point distribution authority may provide customer retail services to the person stated in their authority. If a person holds a retail licence in relation to services on a covered pipeline that person cannot hold a point to point distribution authority.

Clause 169 states that persons who hold a general retail authority cannot provide customer retail services to non-contestable customers.

Clause 170 provides that retailers cannot provide customer retail services to customers subject to another retailer's exclusive retail authority.

Clause 171 states that an area retailer must not provide customer retail services to non-contestable customers outside the retail area of the retailer's retail authority, unless the services are provided under another area retail authority. This provision effectively ties non-contestable customers to the area retailer whose area they are in.

Clause 172 provides an obligation to provide a telephone hotline. It is a consumer protection measure.

Clause 173 provides that retailers must comply with Chapter 4, Part 2 which relate to contingency supply plans. A retailer may face disciplinary action if it does not so comply. This could lead to a suspension or cancellation of the retailer's authority.

Clause 174 provides that, if a retailer of last resort scheme exists, a retailer must comply with the scheme to the extent that it applies to the retailer. The effect of this provision is that if the retailer does not comply with the provision, the Regulator may take disciplinary action against the retail and cancel, suspend or amend its authority.

Clause 175 provides that a retailer must comply with regulations made under the Act. The effect of this provision is that the Regulator may discipline the retailer if the retailer does not comply.

Clause 176 provides for what could be termed immaterial amendments to a retail authority.

Clause 177 provides for material amendments to a retail authority.

Clause 178 provides that the Regulator cannot amend the conditions of a retail authority that are imposed under Division 2 – Retail Authority Conditions. Division 2 comprises Clauses 159 – 175.

Clause 179 provides that a retailer may apply to the Regulator to amend the retail authority.

Clause 180 sets out the procedure the Regulator must follow in deciding an application.

Clause 181 sets out the circumstances in which the Regulator may cancel or suspend a retail authority.

Clause 182 sets out the circumstances in which the Regulator may immediately suspend a retail authority.

Clause 183 sets out the application of Subdivision 5 – Procedure for Amendment, Cancellation or suspension other than an immediate suspension.

Clause 184 provides that, when the Regulator intends to amend, cancel or suspend a retail authority other than an immediate suspension, the Regulator must give the retailer notice as set out in Clause 184.

Clause 185 provides that a Regulator must consider written representation made under Clause 184.

Clause 186 states when a decision to amend, suspend or cancel can be made.

Clause 187 provides for notice of the decision and the taking effect of the proposed action consequent upon the decision.

Clause 188 provides for the circumstances in which an exclusive retail authority may be renewed.

Clause 189 sets out the procedure for deciding a renewal application.

Clause 190 provides for the continuation of the authority pending the decision on the renewal application. This is to ensure the authority does not lapse or the decision is pending.

Clause 191 provides that a retail authority cannot be transferred under Subdivision 2 being sections 190 – 193. Purported transfers of retail authorities that are not made under this sub Division are of no effect.

Clause 192 sets out the procedure for applying for transfer of a retail authority.

Clause 193 sets out the circumstances in which a Regulator may decide a transfer application.

Clause 194 provides that a retailer may mortgage the retail authority without notice to or the approval of the Regulator. For example, a retailer that is a company may change its assets. As a retail authority would be an asset of a company the change would apply to the retail authority and the Regulator's approval would not be needed to the change.

Clause 195 provides that the holder of a mortgage over a retail authority must give notice to the Regulator prior to the mortgagee taking action under its mortgage in relation to the retail authority. If such notice is not given, purported exercise by the mortgagee of the power is of no effect.

Clause 196 provides that a mortgagee exercising its powers under the mortgage relating to a retail authority is, for the purposes of the Act, the retailer.

Clause 197 provides that a retailer cannot surrender its Retail Authority without the approval of the Regulator.

Clause 198 sets out the circumstances in which a person may apply for customer retail services.

Clause 199 sets out the procedure a retailer must follow in deciding an application for customer retail services.

Clause 200 states the retailer must propose terms to the applicant. If the applicant is a protected customer the proposed terms must be fair and reasonable.

Clause 201 defines customer retail contract.

Clause 202 is a consumer protection measure. The customer has the right to terminate a contract in the circumstance in *Clause 202*.

Clause 203 is a consumer protection measure and provides for an obligation on the retail to commence customer retail services.

Clause 204 sets out limits on the retailer's obligations to provide customer retail services.

Clause 205 is a consumer protection measure that provides a remedy to a customer if a retailer is overcharging the customer.

Clause 206 is a consumer protection measure and sets out the procedure a retailer must follow if the retailer believes it has undercharged a customer.

Clause 207 provides for the operation of Division 3 – Provisions about what is fair and reasonable.

Clause 208 effectively states that the Regulator may approve a customer retail contract and, if the retailer provides customer retail services in accordance with the contract, that it is evident that those services were provided on fair and reasonable terms. The Regulator may take the initiative and approve a customer retail contract itself or the retailer may draft a contract and submit it to the regulator for approval.

Clause 209 provides the mere use by the retailer of differing methods of charging for the services is not unfair or unreasonable.

Clause 210 provides that the mere making of or compliance with the customer retail contract by a retailer is not unfair or unreasonable.

Clause 211 provides that the requiring of differing security is not itself unfair or unreasonable.

Clause 212 provides for the circumstance for which differing terms may be reasonable.

Clause 213 defines on-supplier, on-supplier's premises and receiver.

Clause 214 defines common area and common area consumption for the purposes of the part concerning on-supply. Common area consumption would, for example, include processed natural gas utilised to air-condition the common areas of a shopping centre.

Clause 215 defines accounting period and first accounting period.

Clause 216 states a restriction on the application of Part 3 (On-supply) for LPG. The intent is that the on-supply Division does not apply to the supply of LPG from a pressurised container on a lot on a plan under a Body Corporate Act to another lot on the same plan. However, the on-supply provisions would apply to on-supply from that (other) lot referred to in the preceding sentence.

Clause 217 states that an on-supplier and a receiver may agree on how an on-supplier will supply fuel gas to the receiver. Most on-supplier agreements will be contained in a receiver's lease arrangement on the premises.

Clause 218 states the circumstances in which Division 3 – Preliminary disclosure requirements about common area charges – applies.

Clause 219 states that preliminary consumption estimates for common area consumption must be given to the receiver.

Clause 220 states what an on-supply agreement must contain.

Clause 221 sets out the consequences for not complying with Division 3 – Preliminary disclosure requirements about common area charges. In effect the receiver can award liability for common area consumption. See Clause 220 (3).

Clause 222 states the receiver has the right to install a meter with respect to the fuel gas supplied to the receiver.

Clause 223 sets out the circumstances in which compensation for installation damage is payable.

Clause 224 sets out the circumstances in which Division 5 – Disclosure for requirements, area consumption charges – applies.

Clause 225 states that periodic consumption estimates must be given. This applies to common area consumption of fuel gas for the on-suppliers premises.

Clause 226 states the requirement for audited statements.

Clause 227 states the content requirements for audited statements.

Clause 228 retains a price fixing power in the Minister. The Minister may fix the prices or a methodology to fix the prices. The power applies to the provision of customer retail services to protected customers and the on-supply of customer retail services. The power extends beyond just the actual charge for fuel gas consumption and also includes the provision of related services. Clause 228(3) requires the Minister to consider the interests of the protected customers, receivers and retailers. It is intended that one of the interests the Minister must consider is whether the price set for a retailer to provide customer retail services to protected customers enables that retailer to serve all protected customers on what are economic terms. The Minister should consider whether the overall obligation to serve at the prices set is economic and allows the retailer an appropriate return.

Clause 229 provides that a retailer can apply to have prices reviewed at any time and from time to time. The Minister must complete the review in a reasonable time.

Clause 230 provides the Regulator may publish details of notified prices in a newspaper.

Clause 231 obliges a retailer to comply with notified prices.

Clause 232 provides for additional consequences of failure to comply with notified prices. Amounts charged in excess of the notified prices cannot be recovered.

Clause 233 gives to the Minister power to give directions and obtain information from retailers that may be required by the Minister in order to carry out the Ministers price fixing function.

Clause 234 states an obligation to comply with directions for prices notification.

Clause 235 provides that a regulation may be made to provide for standards about the quality of customer retail services.

Clause 236 defines industry participant. Industry participant is defined broadly.

Clause 237 states an industry participant obligation to make an industry supply plan, if required by the Regulator.

Clause 238 states the Regulator's power to make a contingency supply plan, if the industry participant's supply plan does not do so.

Clause 239 sets out the content requirements for the contingency supply plans.

Clause 240 states that industry participants must comply with the contingency supply plan if the contingency or the identified event occurs.

Clause 241 sets out the limitation on an industry participant's liabilities when complying with a contingency supply plan.

Clause 242 states the circumstance in which a contingency supply plan must be revised.

Clause 243 states the Regulator's power to amend the contingency supply plan.

Clause 244 states an obligation on industry participants to notify the Regulator of disruptions to fuel gas supply.

Clause 245 is an information gathering power and provides that the Regulator may require information from industry participants if that information will help the Regulator assist the current or probable future sufficiency supply of fuel gas.

Clause 246 sets out the penalty for failure to comply with an information requirement.

Clause 247 states that the holder of a transmission pipeline licence, an area distributor and a retailer must give the regulator at least three months notice before stopping or significantly reducing the transportation of fuel gas through the pipeline or the sale of fuel gas, as the case may be. This provision is provided to ensure that the regulator is properly informed with respect to the supply of fuel gas.

Clause 248 provides that a regulation may provide for a retailer of last resort scheme.

Clause 249 sets out what the primary objects of a retailer of last resort scheme are.

Clause 250 sets out the matters which may be provided for in the regulation which provides for the retailer of last resort scheme.

Clause 251 provides that the Minister has the power to make a declaration – an insufficiency of supply declaration – and upon making that declaration Part 5 – Insufficiency of supply Declarations and Direction – applies. Part 5 is a Security of Supply Part so that the Minister can appropriately protect the security of supply.

Clause 252 states the requirements for making an insufficiency of supply declaration.

Clause 253 sets out what the duration of an insufficiency of supply declaration can be.

Clause 254 states that the Minister has the power to give directions while the insufficiency of supply declaration is enforced. This power is to enable the Minister deal with a supply emergency.

Clause 255 states the consequences of a person failing to comply with a direction from the Minister.

Clause 256 states the liability a recipient of fuel gas, who is supplied due to an insufficiency of supply direction, has for that fuel gas.

Clause 257 sets out when a direction may over-ride a contract.

Clause 258 states that the Regulator's functions under the Bill, include investigating complaints by customers about the performance or operation of gas entities and the referral of disputes between the distributor or a retailer and a customer.

Clause 259 states that the Regulator has the power to acquire certain information from a distributor or a retailer.

Clause 260 states when Part 2 – Referral, Mediation and Arbitration – applies.

Clause 261 states that, notwithstanding Part 2 – Mediation and Arbitration – persons may avail themselves of other remedies subject to the provisions of Clause 259.

Clause 262 states that a person may refer a dispute to the Regulator in the approved form.

Clause 263 states the circumstances in which the Regulator must refer the dispute to an energy mediator or an energy arbitrator.

Clause 264 states the procedure and process to apply if, under Clause 263, the dispute is referred to an energy mediator.

Clause 265 states the procedure and process if, under Clause 263, a dispute is referred to an energy arbitrator.

Clause 266 to 270 set out a specific regime to apply to resolve disputes in relation to the carrying out of gas infrastructure works.

Clause 271 sets out who may apply for a review of certain decisions under the Gas Supply Act 2003.

Clause 272 states the requirements for making a review application.

Clause 273 states the reviewer may grant a stay of the original decision to secure the effectiveness of the review. A stay of the original decision can be given on conditions.

Clause 274 states the process the reviewer must follow.

Clause 275 states the review procedure.

Clause 276 states that the reviewer may seek advice or information. This is to ensure that the reviewer can adequately make a decision and is well informed.

Clause 277 states the consequence if a party does not maintain confidentiality.

Clause 278 states that the reviewer must within 10 business days after making a review decision give the application notice of the decision.

Clause 279 provides for appeals. Clause 279 sets out who may appeal a decision.

Clause 280 sets out the period within which an appeal must be made. It is a limiting provision.

Clause 281 states how an appeal is started.

Clause 282 states that the District Court may grant a stay of the decision to secure the effectiveness of the appeal.

Clause 283 sets out the procedure the District Court must follow in hearing the appeal.

Clause 284 states the power of the District Court in hearing an appeal.

Clause 285 states the appeal rights from the decision of the District Court.

Clause 286 sets out the general prohibition on operating a distribution pipeline without holding a distribution authority.

Clause 287 sets out an offence to apply if a person wilfully tampers with the distributor's gas infrastructure.

Clause 288 provides for a general obligation that a person must not unlawfully sell reticulated fuel gas. If a person is selling fuel gas in any circumstance, other than that mentioned in Clause 281 (2), a person is unlawfully selling reticulated fuel gas.

Clause 289 provides for a general obligation that a person must not unlawfully take reticulated fuel gas.

Clause 290 is a general provision providing for false or misleading information and the consequences of providing such information.

Clause 291 sets out the consequences of attempting to commit an offence.

Clause 292 states that offences under the Bill are summary offences.

Clause 293 is an evidentiary provision.

Clause 294 is a general evidentiary provision.

Clause 295 is an evidentiary provision.

Clause 296 is an evidentiary provision dealing with actual and apparent authority. For example it can apply to employees.

Clause 297 is an evidentiary provision that assists in establishing the unlawful taking of fuel gas.

Clause 298 is a provision to assist in prosecuting persons who unlawfully take fuel gas. It is necessary because it may be impossible to establish the exact date on which an offence is committed.

Clause 299 is a provision to assist in prosecuting persons who unlawfully take fuel gas. It is necessary as a number of retailers may transport gas through a pipeline. The provision enables prosecutors to establish who owns the gas that is unlawfully taken.

Clause 300 states certain powers of forfeiture vested in the court.

Clause 301 states the consequences of unlawfully transporting fuel gas through a distribution pipeline.

Clause 302 states the consequences of unlawfully selling reticulated fuel gas. A person who unlawfully sells reticulated fuel gas cannot recover amounts for the sale.

Clause 303 provides for the recovery of unlawful profit.

Clause 304 states when Part 5 – Evidentiary Provisions – applies.

Clause 305 states the presumption that is to apply in proceedings.

Clause 306 states a further presumption to apply in relation to signatures.

Clause 307 states other evidentiary aids.

Clause 308 states that the Regulator must keep a register setting out details about distribution and retail authorities and other documents relating to the *Gas Supply Act 2003*, that the Regulator considers appropriate.

Clause 309 sets out the terms and conditions governing the keeping of the register referred to in Clause 308.

Clause 310 provides for access to the register.

Clause 311 states that substantial compliance with the application may be accepted.

Clause 312 states that additional information may be required about an application.

Clause 313 states the power to refund an application fee on withdrawal.

Clause 314 states the procedure to be applied on replacement of an authority.

Clause 315 states certain protection from civil liability to be applied to the Minister, the Regulator and a directed person.

Clause 316 states certain protection from civil liability to be applied to distributors or retailers.

Clause 317 states the power to require additional information.

Clause 318 Imposes an obligation on “officials” to maintain the confidentiality of material given to the official.

Clause 319 states how other provisions of the *Gas Supply Bill 2003*, and other laws or provisions of other laws, apply in relation to the *Gas Supply Bill 2003*.

Clause 320 states the delegation power of the Minister. Enables the Minister to delegate the price setting power to the Queensland Competition Authority.

Clause 321 states the delegation power of the Regulator.

Clause 322 states that the Regulator may approve forms for use under the *Gas Supply Bill 2003*.

Clause 323 states the regulation making power under the *Gas Supply Bill 2003*.

Clause 324 defines certain terms that are used in Chapter 7.

Clause 325 provides that franchises and authorisations given under the *Gas Act 1965* cease to have effect.

Clause 326 states that, as of the commencement of the *Gas Supply Bill 2003*, an application for a franchise under the *Gas Act 1965* lapses.

Clause 327 is a transitional provision transitioning the various franchises under the *Gas Act 1965* to area distribution authorities under the *Gas Supply Bill 2003*.

Clause 328 is a transitional provision transitioning certain franchises held under the *Gas Act 1965* to area retail authorities under the *Gas Supply Act 2003*.

Clause 329 provides that the new authorities provided for in Clauses 327 and 328 expire one year after the commencement of the *Gas Supply Bill 2003*. However, they do not expire if, before the date one year after the commencement of the *Gas Supply Bill 2003*, the holder of the new authority makes an application to amend or consolidate the authority.

Clause 330 provides that a holder of a new authority may apply to the Regulator to amend the authority by imposing further conditions on it.

Clause 331 provides that the Regulator must decide whether to impose further conditions on a new authority.

Clause 332 is a deeming section that links this Clause to Clauses 57 and 181.

Clause 333 to 335 provide for the consolidation of two or more authorities.

Clause 336 provides that, if the Regulator is deciding whether to impose conditions on a new authority, the Regulator must have regard to any relevant franchise or authorisation under the *Gas Act 1965*.

Clause 337 provides that the part does not otherwise limit or otherwise effect the Regulator's power to amend the authority under another provision of the *Gas Supply Bill 2003*.

Clause 338 is a transitional provision continuing to enforce any prices or tariffs approved under the *Gas Act 1965*.

Clause 339 is a transitional provision effectively providing that persons operating point to point distribution pipelines are not in breach of the *Gas Supply Bill 2003* until the date one year after commencement of the Bill. In effect, Clause 339 is a one year grace period within which persons who may operate point to point distribution pipelines may apply for an appropriate licence under the *Gas Supply Bill 2003*. There has been no specific transitioning over of such point to point distribution pipelines that existed under the *Gas Act 1965*. The one year transitional period is to enable such persons to apply for the appropriate authority.

Clause 340 is a transitional provision. It is necessary because, due to the effect of certain provisions in the *Gas Act 1965*, persons could in effect retail to customers who use more than 100 terajoules without holding an authority or licence under the *Gas Act 1965*. Rather than providing that such persons must hold a licence under the *Gas Supply Bill 2003*, Clause 340 effectively grandfathers any such contracts entered into by such persons.

Clause 341 states that Chapter 8, Part 1 amends the *Dangerous Goods Safety Management Act 2001*.

Clause 342 Amends Section 3 of the *Dangerous Goods Safety Management Act 2001*

Clause 343 states that Chapter 8, Part 2 amends the *Electricity Act 1994*.

Clause 344 effectively incorporates a dispute resolution mechanisms in the *Electricity Act 1994* into the Gas Supply Act 2003.

Clause 345 amends Section 64S of the *Electricity Act 1994*.

Clause 346 states that Chapter 8 Part 2 amends the *Gas Act 1965*. The *Gas Supply Bill 2003* does not repeal the *Gas Act 1965*. Those provisions of the *Gas Act 1965* that relate to safety and technical issues are retained. It is anticipated that the Petroleum and Gas (Production and Safety) Bill will, when enacted, repeal the *Gas Act 1965* and provide for safety and technical issues with respect to gas.

Clause 347 amends the short title of the Act.

Clause 348 Amends the title of the Act.

Clause 349 amends Section 2 of the *Gas Act 1965*.

Clause 350 amends Section 5 of the *Gas Act 1965*.

Clause 351 amends Section 5A of the *Gas Act 1965*.

Clause 352 amends Section 7 of the *Gas Act 1965*.

Clause 353 amends Section 10C of the *Gas Act 1965*.

Clause 354 amends Part 3 of the *Gas Act 1965* and substitutes in a new Part 3.

Clause 355 to 367 make consequential amendments to the *Gas Act 1965*.

Clause 368 provides that Part 4 of the *Gas Supply Bill 2003* amends the *Gas Pipelines Access (Queensland) Act 1998*.

Clause 369 amends Section 56 of the *Gas Pipelines Access (Queensland) Act 1998*.

Clause 370 amends Section 59 of the *Gas Pipelines Access (Queensland) Act 1998*.

Clause 371 amends Section 60 of the *Gas Pipelines Access (Queensland) Act 1998*.

Clause 372 states that Part 5 of the *Gas Supply Bill 2003* amends the *Petroleum Act 1923*.

Clause 373 to 379 make consequential amendments to the *Petroleum Act 1923*.

Clause 380 provides that Part 6 amends the *Queensland Competition Authority Act 1997*.

Clause 381 amends Section 70 of the *Queensland Competition Authority Act 1997* to ensure the access provisions of that Act also apply to petroleum and gas facilities.

Clause 382 states that Part 7 of the *Gas Supply Bill 2003* amends the *Transport Infrastructure Act 1994*.

Clause 383 effectively provides that, if distributors wish to carry out gas infrastructure work in relation to state controlled roads, the distributors actions are regulated by the *Gas Supply Act 2003* and not by the *Transport Infrastructure Act 1994*.

Clause 384 makes a consequential amendment.

Clause 385 amends Section 187AB of the *Transport Infrastructure Act 1994*.

Clause 386 states that Part 8 of the *Gas Supply Bill 2003* amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 387 amends Section 151 of the *Transport Operations (Road Use Management) Act 1995*.

Schedule 1 sets out the provisions that apply to determine who are contestable customers. The schedule provides for a certification procedure to be followed to determine whether a customer is consuming at least the threshold amount. At the commencement of the *Gas Supply Bill 2003* the threshold amount was 100 terajoules. A regulation can prescribe a lesser amount as the threshold amount. Prior to the commencement of the *Gas Supply Bill 2003* contestable customers were provided for pursuant to the *Gas Act 1965*. Section 3 of Schedule 1 provides that if a customer was a contestable customer under the *Gas Act 1965*, the customer is deemed to be a contestable customer under the *Gas Supply Bill 2003*.

Clause 1 Schedule 1 states the provisions the Schedule encompasses. Schedule 1 provides for who is a contestable customer for purposes of the *Gas Supply Bill 2003*. If a customer becomes a contestable customer for premises, the customer continues to be a contestable customer despite the actual consumption of reticulated fuel gas for the premises varying from that it was determined to be when it became a contestable customer, and despite the purpose for which the premise is used.

Clause 2 Schedule 1 defines registered owner, single premises and same business enterprise for the purpose of Schedule 1. The importance of the definition of single premises is that it does not allow a customer to aggregate its consumption over a number of premises to ensure that it meets the threshold amount. Aggregation can only be allowed within the definition and purposes of “single premises” in Clause 2 Schedule 1. If a number of premises are not “single premises” within the meaning of that

term in Clause 2 Schedule 1 those premises cannot be aggregated to ensure that consumption meets the threshold amount.

Clause 3 Schedule 1 states that if a customer was a contestable customer under the *Gas Act 1965* that customer continues to be a contestable customer.

Clause 4 Schedule 1 provides that a customer may apply to a distributor for certification that a customer is a contestable customer for their premises.

Clause 5 Schedule 1 states the distributor must decide to grant the application in two circumstances. These are if:

- Consumption of reticulated fuel gas was at least the threshold amount; or
- The consumption of reticulated fuel gas, being the estimated consumption for a future period, is the threshold amount.
- The threshold amount is 100 terajoules or a lesser amount if a regulation prescribes a lesser amount. This means that a regulation can be passed at a later date de-regulating the reticulated gas industry to a lesser amount than 100 terajoules.

Clause 6 Schedule 1 sets out the procedure the distributor must follow in issuing a certification.

Clause 7 Schedule 1 states that the distributor must give an information notice to the applicant if the distributor decides to refuse the application. This has ramifications for a review and appeal of the distributor's decision.

Clause 8 Schedule 1 deals with the procedure to be followed where there are new or replacement premises for a registered owner.

Clause 9 Schedule 1 sets out the procedure and framework to be followed where there is a subsequent registered owner for premises.

Schedule 2 sets out what decisions under the Bill are subject to review.

Schedule 3 sets out the new authorities that come about by virtue of the transitional provisions in Clauses 327 and 328.

Schedule 4 is a dictionary setting out definitions of terms and phrases utilised in the *Gas Supply Bill 2003*.

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