

Queensland



# **GAS SUPPLY ACT 2003**

**Reprinted as in force on 1 July 2003  
(Act not amended up to this date)**

**Reprint No. 1**

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# Queensland



## GAS SUPPLY ACT 2003

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# **GAS SUPPLY ACT 2003**

[reprinted as in force on 1 July 2003]

**An Act about the transport and supply of fuel gas, and for other purposes**

## **CHAPTER 1—PRELIMINARY**

### **PART 1—INTRODUCTION**

#### **1 Short title**

This Act may be cited as the *Gas Supply Act 2003*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **PART 2—PURPOSE AND APPLICATION OF ACT**

#### **3 Main purposes of Act**

(1) The main purposes of this Act are to—

- (a) implement the franchising and licensing principles under clauses 13 and 14 of the national gas agreement; and
- (b) promote efficient and economical fuel gas supply; and
- (c) protect customers in reticulated fuel gas markets.

(2) The purposes under subsection (1)(b) and (c) are achieved by—

- (a) regulating the distribution and retail markets for reticulated fuel gas; and
- (b) the power under chapter 2, part 6, for a regulation to provide for market operating arrangements in the natural gas market; and
- (c) providing, under chapter 5, part 2 for the resolution of disputes between particular customers and distributors or retailers.<sup>1</sup>

#### **4 Gas-related matters to which Act does not apply**

(1) This Act does not—

- (a) provide for the safety of persons involved in, or who may be affected by, the supply or use of fuel gas; or
- (b) provide for the measurement or quality of fuel gas; or
- (c) regulate gases other than fuel gas.

(2) This Act provides for access to a distribution pipeline or system only to the extent of the physical connection, or the opening of the connection, to the pipeline or system.<sup>2</sup>

(3) Other than for chapter 2, part 6, and chapter 4, this Act does not provide for or regulate transmission pipelines.<sup>3</sup>

#### **5 Act binds all persons**

(1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

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1 See section 260(1) (Application of pt 2).

2 For other laws about access to a distribution pipeline or system, see the Gas Pipelines Access Law, the *Queensland Competition Authority Act 1997* and the *Trade Practices Act 1974* (Cwlth).

3 Chapter 2, part 6 (Market operating arrangements in natural gas market) and chapter 4 (Sufficiency of supply)

## **6 Act does not affect other rights or remedies**

(1) Subject to sections 241, 256, 315 and 316, this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.<sup>4</sup>

(2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

(3) In addition, a breach of an obligation under this Act does not, of itself, give rise to an action for breach of statutory duty or another civil right or remedy.

(4) This Act does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law.

## **PART 3—INTERPRETATION**

### *Division 1—Dictionary*

## **7 Definitions**

The dictionary in schedule 4 defines particular words used in this Act.

### *Division 2—Key definitions*

#### *Subdivision 1—The regulator*

## **8 Who is the “regulator”**

The chief executive of the department is the “regulator”.

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<sup>4</sup> Sections 241 (Limitation of industry participant's liability because of compliance with plan), 256 (Liability of recipient for fuel gas supplied under direction), 315 (Protection from civil liability for particular persons) and 316 (Limitation of liability of distributors and retailers)

*Subdivision 2—Fuel gas and types of fuel gas***9 What is “fuel gas”**

“**Fuel gas**” is LPG or processed natural gas.

**10 What is “LPG”**

“**LPG**”, also called ‘LP gas’ and ‘liquefied petroleum gas’, is a substance that—

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) is more than half propane, propylene (also called propene) or butane, in any combination; and
- (c) has been processed to be suitable for consumption.

**11 What is “processed natural gas”**

“**Processed natural gas**” is a substance that—

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) consists of naturally occurring hydrocarbons and other substances; and
- (c) is more than half methane; and
- (d) has been processed to be suitable for consumption.

*Subdivision 3—Pipelines and pipeline systems***12 What is a “transmission pipeline”**

A “**transmission pipeline**” is a pipeline operated, or to be operated, for the primary purpose of conveying fuel gas directly to a market after it has been processed, whether or not it is subsequently processed or reprocessed.

**13 What is a “distribution pipeline”**

A “**distribution pipeline**” is a pipeline that—

- (a) transports fuel gas as—

- (i) part of a reticulation system within a fuel gas market; or
  - (ii) a single point-to-point pipeline to a specific commercial or industrial facility; and
- (b) is not a transmission pipeline.

#### **14 What is a “distribution system”**

(1) A **“distribution system”** is a system of distribution pipelines and meters and other equipment used for, or in connection with, the supply of fuel gas to more than 1 customer within a fuel gas market.

(2) However, a **“distribution system”** does not include—

- (a) pipelines connected from the exit point of a meter installed for a customer’s premises; or
- (b) appliances or equipment connected to pipelines mentioned in paragraph (a).

#### **15 When fuel gas is “reticulated”**

Fuel gas is **“reticulated”** if it is supplied by way of a distribution pipeline.

### *Subdivision 4—Customers*

#### **16 Who is a “customer”**

A **“customer”** is a person who receives reticulated fuel gas.

#### **17 “Contestable customers” and “non-contestable customers”**

(1) A customer is a **“contestable customer”** for premises if schedule 1 provides that the customer is a contestable customer for the premises.

(2) If a customer is not a contestable customer for premises, the customer is called a **“non-contestable customer”** for the premises.

## 18 Who is a “protected customer”

A “protected customer” is—

- (a) a non-contestable customer; or
- (b) a customer the subject of a greenfield distribution authority or an exclusive retail authority; or
- (c) another customer or type of customer prescribed under a regulation.<sup>5</sup>

### *Subdivision 5—Customer connection and retail services*

## 19 What are “customer connection services”

(1) A person provides “customer connection services” to premises by—

- (a) either—
  - (i) if the premises are not already connected to a distribution pipeline or system—physically connecting the premises to the pipeline or system; or
  - (ii) if the premises are already connected to a distribution pipeline or system—opening a physical connection to the pipeline or system to allow reticulated fuel gas to be transported to the premises by way of the pipeline or system; and
- (b) leaving the connection open to allow fuel gas to be transported to the premises by way of the pipeline or system.

(2) The provision of customer connection services does not include the transportation of fuel gas.

## 20 What are “customer retail services”

(1) A person provides “customer retail services” to someone else’s premises by selling reticulated fuel gas to the other person at the premises.

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<sup>5</sup> See sections 23(5) (Types of distribution authority and their distributors) and 26(7) (Types of retail authority and their retailers).



(2) Also, if the person does not arrange for the provision of customer connection services to the premises, “**customer retail services**” includes arranging, as the agent of the other person, for a distributor to provide the customer connection services.

### *Subdivision 6—Distribution authorities and distributors*

#### **21 What is a “distribution authority”**

A “**distribution authority**” authorises its holder to—

- (a) transport fuel gas through a distribution pipeline or system; and
- (b) provide customer connection services to the premises of others.

#### **22 Who is a “distributor”**

The “**distributor**” for—

- (a) a distribution authority—is its holder; or
- (b) a customer—is the person who holds a distribution authority and provides customer connection services to the customer; or
- (c) premises—is the person who holds a distribution authority and provides customer connection services to a customer at the premises; or
- (d) gas infrastructure—is the person who holds the authority to which the infrastructure is subject; or
- (e) a distribution officer—is the distributor that appointed the officer.<sup>6</sup>

#### **23 Types of distribution authority and their distributors**

(1) A “**point-to-point distribution authority**” authorises the distributor to—

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<sup>6</sup> For when a distribution authority is required, see section 286 (Unlawfully operating distribution pipeline).

See also section 72 (Consequence of exercising powers under mortgage).

- (a) transport, through a distribution pipeline, fuel gas from one stated point to another; and
- (b) provide a stated customer with customer connection and retail services.<sup>7</sup>

(2) An “**area distribution authority**” authorises the distributor to—

- (a) transport, using a distribution system, fuel gas within a stated area; and
- (b) provide customer connection services to premises in the area.

(3) The holder of an area distribution authority is called an “**area distributor**”.

(4) The area mentioned in subsection (2) is called the “**distribution area**” for the area distribution authority.

(5) A “**greenfield distribution authority**” is a type of area distribution authority that gives the distributor the exclusive right to transport fuel gas to stated customers or stated types of customers.

### *Subdivision 7—Retail authorities and retailers*

#### **24 What is a “retail authority”**

A “**retail authority**” authorises its holder to provide customer retail services to its customers.

#### **25 Who is a “retailer”**

The “**retailer**” for—

- (a) a retail authority—is its holder; or
- (b) a customer—is the person who holds a retail authority and provides customer retail services to the customer; or

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<sup>7</sup> See also section 288(2)(a) (Unlawfully selling reticulated fuel gas).

- (c) premises—is the person who holds a retail authority and provides customer retail services to a customer at the premises.<sup>8</sup>

## **26 Types of retail authority and their retailers**

(1) An **“area retail authority”** is a retail authority issued for a stated area.

(2) An **“area retailer”** is a retailer who holds an area retail authority.

(3) The area mentioned in subsection (1) is called the **“retail area”** for the authority.

(4) An **“exclusive retail authority”** is a type of area retail authority that gives the retailer the exclusive right to provide customer retail services to stated contestable customers, or a stated type of contestable customer, in its retail area.

(5) An **“exclusive retailer”** is a retailer who holds an exclusive retail authority.

(6) A **“general retail authority”** is a retail authority issued for no particular area.

(7) A **“general retailer”** is a retailer who holds a general retail authority.

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<sup>8</sup> For when a retail authority is required, see section 288 (Unlawfully selling reticulated fuel gas).

See also section 196 (Consequence of exercising powers under mortgage).

## CHAPTER 2—FUEL GAS DISTRIBUTION

### PART 1—DISTRIBUTION AUTHORITIES

#### *Division 1—Applying for and obtaining distribution authority*

##### *Subdivision 1—Application*

#### **27 Who may apply for distribution authority**

(1) A person may, in the approved form, apply to the regulator for a distribution authority.

(2) However, a retailer can not apply for a distribution authority to provide customer connection services relating to processed natural gas to be transported through a pipeline if the retailer sells processed natural gas transported through a covered pipeline.<sup>9</sup>

#### **28 Requirements for application**

The application must—

- (a) if it is for a point-to-point distribution authority—describe the route of the pipeline to be the subject of the authority; and
- (b) if it is for an area distribution authority—describe the area to be the subject of the authority; and
- (c) if it is for a greenfield distribution authority—state each of the following—
  - (i) a timetable for building the distribution system to be the subject of the authority;
  - (ii) milestones in the timetable;
  - (iii) the type of customer proposed to be the subject of the authority;

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<sup>9</sup> See also sections 41 (Ring fencing requirement) and 57 (Conditions for amendment, cancellation or suspension).

- (iv) a proposed day to complete the building of the distribution system; and
- (d) state a proposed start day for the transport of fuel gas through the distribution pipeline or system to be the subject of the authority; and
- (e) state the codes or standards under which it is proposed to operate the distribution pipeline or system; and
- (f) be accompanied by the fee prescribed under a regulation.

## **29 Public notice by regulator and submissions**

**(1)** This section does not apply if—

- (a) the applicant holds a corresponding authority for the distribution authority; or
- (b) the distribution authority is a point-to-point distribution authority.

**(2)** Before deciding the application, the regulator must—

- (a) publish in a Statewide newspaper a notice stating each of the following—
  - (i) that an application for a distribution authority has been made;
  - (ii) the applicant's name;
  - (iii) a period of at least 20 business days during which anyone may make written submissions to the regulator about the application;
  - (iv) where the application, other than any part of the application that is FOI exempt matter, may be inspected;
  - (v) if the application is for a greenfield distribution authority—that the regulator will conduct a competitive tender process to select the most suitable person to hold the authority; and
- (b) consider written submissions about the application made to the regulator within the stated period.

### **30 Competitive tender process for greenfield distribution authority**

(1) This section applies only if the application is for a greenfield distribution authority.

(2) Before deciding the application, the regulator must carry out a competitive tender process to select the most suitable person to hold the authority.

(3) The regulator may carry out the process in a way the regulator considers appropriate.

### **31 Deciding application**

(1) The regulator must decide whether to grant or refuse the application.

(2) If the regulator decides to grant the application, the regulator may impose conditions on the distribution authority the regulator considers appropriate.<sup>10</sup>

(3) If the application is for a greenfield distribution authority, the regulator must fix a day for the distributor to complete the building of the distribution system the subject of the authority.

### **32 Criteria for deciding application**

(1) The regulator may decide to grant the application only if satisfied the applicant is a suitable person to hold the distribution authority.

(2) For subsection (1), the regulator may consider any of the following (the “**suitability criteria**”), to the extent they are relevant to the applicant’s competence to hold the distribution authority—

- (a) ability to provide an adequate level of customer connection services;
- (b) financial capacity;
- (c) commercial and other dealings and the standard of honesty and integrity shown in the dealings;
- (d) failure to perform contractual or statutory obligations and the reasons for the failure;
- (e) criminal history;

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<sup>10</sup> See also division 2 (Distribution authority conditions).

- (f) technical expertise;
- (g) knowledge of, or experience in, the gas or energy industries;
- (h) if the applicant is a corporation—the matters mentioned in paragraphs (a) to (g) for persons who are executive officers of, or substantial shareholders in, the corporation.

(3) However, the regulator may, without regard to any of the suitability criteria, decide the applicant is a suitable person to hold the distribution authority if the applicant holds a corresponding authority.

(4) In deciding the application, the regulator must consider any relevant government policies about energy issues.

### **33 Additional criteria for greenfield distribution authority application**

If, under section 30, there is a competitive tender process for the application, the regulator must also consider—

- (a) the criteria mentioned in annexure E<sup>11</sup> to the national gas agreement to the extent they are relevant; and
- (b) whether the applicant is the most suitable person; and
- (c) the public interest.

### **34 Term of authority**

(1) This section applies if the regulator decides to grant the application.

(2) If the application is for a greenfield distribution authority, the regulator must decide the term of the authority of no more than 5 years.

(3) If the application is other than for a greenfield distribution authority, the regulator may decide to grant the authority for a stated term.

(4) If no term is decided for a distribution authority other than a greenfield distribution authority, it continues in force unless cancelled or surrendered under this part.

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11 Annexure E to the national gas agreement (Franchising principles)

*Subdivision 2—Steps after deciding application***35 Notice of decision to grant application**

(1) If the regulator decides to grant the application, the regulator must, as soon as practicable, give the applicant notice (“**decision notice**”) stating each of the following—

- (a) the decision;
- (b) the conditions the regulator has decided to impose on the authority;<sup>12</sup>
- (c) any other matter relevant to the grant of the authority;
- (d) a period after the giving of the decision notice for the applicant to give the regulator notice (“**acceptance notice**”) that the applicant agrees to the conditions, or the conditions with changes to which the regulator has agreed;
- (e) the application will be taken to have lapsed unless the applicant gives acceptance notice within the period or later period as extended by the regulator.

(2) The stated period must end at least 20 business days after the applicant is given the decision notice.

(3) The regulator may, by notice to the applicant given before the stated period ends, extend the period for giving an acceptance notice.

**36 Lapsing of application if conditions not accepted**

The regulator is taken to have decided to refuse the application if—

- (a) the regulator has given the applicant a decision notice; and
- (b) the applicant has not given the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.

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12 For conditions that are automatically imposed under this Act, see division 2 (Distribution authority conditions).



**37 Issue and public notice of authority**

(1) This section applies if the applicant gives the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.

(2) The regulator must, as soon as practicable—

- (a) issue the applicant the distribution authority; and
- (b) publish a notice about the authority in a Statewide newspaper.<sup>13</sup>

(3) The notice must state—

- (a) that the applicant has been issued a distribution authority; and
- (b) each of the following about the authority—
  - (i) its type;
  - (ii) if it is a point-to-point distribution authority—the points;
  - (iii) if it is an area distribution authority—its distribution area;
  - (iv) if it is a greenfield distribution authority—the nature of the exclusive right given under the authority; and
- (c) the conditions of the authority, or where they may be inspected.

**38 Information notice about refusal**

If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

***Division 2—Distribution authority conditions*****39 Operation of div 2**

(1) This division imposes conditions on each distribution authority that apply as well as any conditions stated in the authority.

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<sup>13</sup> See also chapter 6, part 6 (Register of authorities).

(2) If an imposed condition conflicts with a condition stated in the authority, the imposed condition prevails to the extent of the inconsistency.

(3) As well as imposing a condition, section 43<sup>14</sup> also imposes a penalty.

#### **40 General conditions**

A distributor must—

- (a) take appropriate account of the environmental effects of activities carried out under the distributor's distribution authority; and
- (b) pay amounts required to be paid under the authority or this Act; and
- (c) in carrying out activities under the authority, comply with this Act, the Gas (Residual Provisions) Act and all other relevant laws; and
- (d) in carrying out gas infrastructure work, comply with part 2.

#### **41 Ring fencing requirement**

A distributor must not sell processed natural gas transported through a pipeline if the distributor provides customer connection services relating to processed natural gas transported through a covered pipeline.<sup>15</sup>

#### **42 Obligation to operate and maintain distribution pipes**

(1) This section imposes obligations on a distributor for each distribution pipeline the subject of the distributor's distribution authority.

(2) If, under this Act or another Act, someone else is entitled to have the distributor transport fuel gas through the pipeline, the distributor must operate, maintain and protect the pipeline to ensure the transportation is adequate, reliable and safe.

(3) Otherwise, the distributor must ensure the pipeline is operated and maintained and protected so that it is able to be used for the adequate, reliable and safe connection, transport and sale of fuel gas.

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14 Section 43 (Restriction for area distributors)

15 See also sections 27 (Who may apply for distribution authority) and 57 (Conditions for amendment, cancellation or suspension).

(4) In this section—

“**maintain**” includes repair and replace as necessary.

#### **43 Restriction for area distributors**

An area distributor must not provide customer connection services to a customer outside the distribution area of the distributor’s distribution authority unless the services are provided under another distribution authority.

Maximum penalty—500 penalty units.

#### **44 Exclusive rights must not be contravened**

A distributor must not use a distribution pipeline or system the subject of the distributor’s distribution authority to transport fuel gas to customers if the transport is inconsistent with an exclusive right under a greenfield distribution authority.<sup>16</sup>

#### **45 Additional condition for greenfield distribution authority**

(1) A distributor for a greenfield distribution authority must, on or before the completion day, complete the building of the distribution system described in the application for the authority.

(2) In this section—

“**completion day**” means the day fixed by the regulator under section 31(3) for the distributor to complete the building of the distribution system.

#### **46 Standard for distribution pipes**

A distributor must ensure each distribution pipe, or each distribution pipeline in a distribution system, the subject of the distributor’s distribution authority is built in a way that complies with the Gas (Residual Provisions) Act and any other relevant Act.

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<sup>16</sup> See also section 286 (Unlawfully operating distribution pipeline).

**47 Inquiry practices and procedures**

(1) A distributor must establish and maintain appropriate practices and procedures to allow inquiries by customers and the public to be addressed or appropriately responded to within 5 business days.

(2) For subsection (1) an appropriate response means giving the inquirer notice or telling the inquirer—

- (a) the work that needs to be done to address the inquiry; and
- (b) the period needed to address it.

**48 Contingency practices and procedures**

(1) A distributor must establish and maintain appropriate practices and procedures to manage the prompt and efficient handling of all of the following reported to the distributor by anyone—

- (a) emergency incidents;
- (b) gas leakages;
- (c) fuel gas outages;
- (d) faults and difficulties in the distributor's gas infrastructure;
- (e) unplanned interruptions to fuel gas transport;
- (f) other situations relevant to the distributor that relate to safety.

(2) A distributor must have a telephone number at which customers can report to the distributor matters mentioned in subsection (1)—

- (a) at any time; and
- (b) for the cost of a local telephone call.

(3) Each account of the distributor must include the number.

(4) The number may be the number of a relevant retailer from which the call is transferred to the distributor.

(5) An automated answering telephone service complies with subsection (2) only if it provides for the transfer of calls to a human being.

**49 Compliance with contingency supply plan requirements**

A distributor must comply with chapter 4, part 2.<sup>17</sup>

**50 Participation in retailer of last resort scheme**

A distributor must comply with the retailer of last resort scheme to the extent it applies to the distributor.

**51 Conditions imposed under a regulation**

(1) A distributor must comply with—

- (a) any conditions prescribed under a regulation for, or relating to, the provision of customer connection services; or
- (b) any code, intergovernmental agreement, protocol or other agreement prescribed under a regulation.

(2) A code or agreement may be prescribed only if it relates to the provision of customer connection services.

***Division 3—Amendment, cancellation and suspension of  
distribution authority***

***Subdivision 1—Amendment by regulator***

**52 Amendments for which proposed action notice is not required**

(1) The regulator may amend a distribution authority at any time by giving the distributor notice of the amendment and recording particulars of the amendment in the register if the amendment—

- (a) is to correct a clerical or formal error; or
- (b) does not affect the interests of the distributor or anyone else and the distributor has, in writing, agreed to the amendment.

(2) However, a greenfield distribution authority can not be amended in a way that extends its term.

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17 Chapter 4, part 2 (Contingency supply plans)

**53 Amendments for which proposed action notice is required**

The regulator may amend a distribution authority if—

- (a) the regulator considers the amendment necessary or desirable; and
- (b) the procedure under subdivision 5 is followed.

**54 Imposed condition can not be amended**

The regulator can not amend a condition of a distribution authority imposed under division 2.

*Subdivision 2—Amendment by application***55 Applying for amendment**

(1) A distributor may, in the approved form, apply to the regulator to amend its authority in a stated way, other than—

- (a) to amend a condition imposed under division 2; and
- (b) if the authority is a greenfield distribution authority—to extend its term.

(2) The application must be accompanied by the fee prescribed under a regulation.

(3) Subsection (1) does not limit section 69(3).<sup>18</sup>

**56 Deciding application**

(1) The regulator must decide to make or refuse to make the amendment.

(2) If the decision is to make the amendment, the regulator must, as soon as practicable, make the amendment to the distribution authority and give the applicant notice of the decision.

(3) If the decision is to refuse to make the amendment, the regulator, must, as soon as practicable, give the applicant an information notice about the decision.

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<sup>18</sup> Section 69 (Deciding transfer application)

***Subdivision 3—Amendment, cancellation or suspension by regulator*****57 Conditions for amendment, cancellation or suspension**

(1) The regulator may amend, cancel or suspend a distribution authority if—

- (a) an event mentioned in subsection (2) has happened; and
- (b) either—
  - (i) for immediate suspension—the procedure under section 58 is followed; or
  - (ii) for cancellation or suspension other than immediate suspension—the procedure under subdivision 5 is followed.

(2) For subsection (1), the event is that the distributor—

- (a) obtained the authority because of a materially false or misleading declaration or representation, made orally or in writing; or
- (b) is, or is likely to become, unsuitable to hold, or continue to hold, the authority, including, for example because of a contravention of any of the following by the distributor or, if the distributor is a corporation, any executive officer of, or substantial shareholder in, the corporation—
  - (i) this Act;
  - (ii) the Gas (Residual Provisions) Act or another relevant Act;
  - (iii) a direction given under this Act, the Gas (Residual Provisions) Act or another relevant Act;
  - (iv) the authority; or
- (c) has contravened, or is contravening, section 41;<sup>19</sup> or
- (d) has used the authority for a purpose other than for a purpose for which it was issued.

(3) In deciding whether the distributor is a suitable person to hold, or continue to hold, the authority the regulator must have regard to the suitability criteria.

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<sup>19</sup> Section 41 (Ring fencing requirement)

*Subdivision 4—Procedure for immediate suspension***58 Immediate suspension**

(1) The regulator may, by notice (“**suspension notice**”) to the distributor, immediately suspend a distribution authority if the regulator reasonably believes—

- (a) a ground exists to suspend or cancel the authority; and
- (b) the circumstances are so extraordinary that it is imperative to immediately suspend the authority to control or prevent—
  - (i) a significant adverse economic or social impact on the State or a part of the State; or
  - (ii) a danger to the public.

(2) The suspension notice must—

- (a) state each of the following—
  - (i) that the authority is suspended immediately;
  - (ii) the grounds for the suspension;
  - (iii) the facts and circumstances forming the basis for the grounds;
  - (iv) the suspension period;
  - (v) that the distributor may make written submissions to the regulator to show why the suspension should end; and
- (b) include, or be accompanied by, an information notice about the decisions to give the notice and to fix the suspension period.

(3) The suspension period must not be more than 40 business days.

(4) The suspension has effect immediately after the distributor is given the suspension notice.

(5) The authority is ineffective during the suspension period.



*Subdivision 5—Procedure for amendment, cancellation or suspension  
other than immediate suspension*

## **59 Application of sdiv 5**

This subdivision applies if—

- (a) under section 53,<sup>20</sup> the regulator proposes to amend a distribution authority; or
- (b) the regulator proposes to cancel or suspend a distribution authority, other than an immediate suspension under section 58.

## **60 Notice of proposed action**

(1) The regulator must give the distributor a notice stating each of the following—

- (a) the action (the “**proposed action**”) the regulator proposes to take under this division;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances that are the basis for the grounds;
- (d) if the proposed action is to amend—the proposed amendment;
- (e) if the proposed action is to suspend—the proposed suspension period;
- (f) that the distributor may make, within a stated period, written submissions to show why the proposed action should not be taken.

(2) The stated period must end at least 20 business days after the notice is given.

(3) The notice may be given for a retail authority the subject of an immediate suspension.

## **61 Considering submissions**

(1) The regulator must consider any written submission made under section 60 by the distributor within the period stated in the notice.

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<sup>20</sup> Section 53 (Amendments for which proposed action notice is required)

(2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give the distributor notice of the decision.

## **62 Decision on proposed action**

If, after complying with section 61, the regulator still believes a ground exists to take the proposed action, the regulator may decide to—

- (a) if the proposed action was to amend—make the amendment; or
- (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel—
  - (i) cancel the distribution authority; or
  - (ii) suspend it for a stated period.

## **63 Notice and taking of effect of proposed action decision**

(1) The regulator must, as soon as practicable after making a decision under section 62, give the distributor an information notice about the decision.

(2) The decision takes effect on the later of the following—

- (a) the day the information notice is given;
- (b) a later day of effect stated in the notice.

(3) However, if the decision was to amend, cancel or suspend because of a conviction, the amendment, cancellation or suspension—

- (a) does not take effect until—
  - (i) the period to appeal against the conviction ends; and
  - (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
- (b) has no effect if the conviction is quashed on appeal.

***Division 4—Dealings with distribution authority******Subdivision 1—Renewals*****64 Applying for renewal**

(1) This section applies to a distribution authority, other than a greenfield distribution authority, that is issued for a term.

(2) The distributor may apply to the regulator to renew the authority for a stated term or to renew it without a term.

(3) An application under this section—

- (a) must be made in the approved form and accompanied by the fee prescribed under a regulation; and
- (b) can not be made if the authority has ended.

**65 Deciding renewal application**

(1) The regulator must decide whether to grant or refuse the application.

(2) Division 1 (other than section 27) applies to the application as if it were an application for the authority.<sup>21</sup>

**66 Continuing effect of authority for renewal application**

If the term of the distribution authority ends before the application is decided, despite the ending of the term, the authority continues in force until—

- (a) the start of any renewal of the authority; or
- (b) the applicant is given an information notice about a decision to refuse the application; or
- (c) the application is withdrawn; or
- (d) the authority is cancelled under this Act.

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<sup>21</sup> Division 1 (Applying for and obtaining distribution authority)  
Section 27 (Who may apply for distribution authority)

### ***Subdivision 2—Transfers***

#### **67 Transfer only by application**

(1) A distribution authority may be transferred only under this subdivision.

(2) A purported transfer of a distribution authority not made under this subdivision is of no effect.<sup>22</sup>

#### **68 Applying for transfer**

(1) A distributor may apply to the regulator to transfer the distributor's authority.

(2) The application must be—

- (a) in the approved form; and
- (b) made by the distributor and the proposed transferee; and
- (c) accompanied by the fee prescribed under a regulation.

#### **69 Deciding transfer application**

(1) The regulator may decide to grant the application only if the regulator is satisfied the proposed transferee is a suitable person to hold the authority.

(2) For subsection (1), the regulator may consider any suitability criteria to the extent it is relevant to the proposed transferee's competence to hold the distribution authority.

(3) The regulator may, in granting the application, impose conditions on the authority.

(4) If the regulator decides to refuse the application or impose a condition on the authority, the regulator must, as soon as practicable, give the applicants an information notice about the decision.

(5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicants.

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<sup>22</sup> See also section 301 (Additional consequences of unlawfully operating distribution pipe).

***Subdivision 3—Mortgages*****70 Mortgage of distribution authority**

A distributor may mortgage the distributor's distribution authority without the approval of, or notice to, the regulator.

**71 Notice of intention to exercise powers under mortgage**

(1) This section applies if a mortgage has been granted over a distribution authority and the distributor has defaulted under the mortgage.

(2) The mortgagee may exercise its powers under the mortgage only if the mortgagee has given the regulator at least 20 business days notice of the mortgagee's intention to exercise powers under the mortgage that relate to the authority.

(3) Any purported exercise of a power under the mortgage relating to the authority in contravention of subsection (2) is of no effect.

**72 Consequence of exercising powers under mortgage**

If a mortgagee under a mortgage over a distribution authority exercises any power under the mortgage relating to the authority, this Act applies to the mortgagee as if the mortgagee were the distributor under the authority.

***Subdivision 4—Surrenders*****73 Surrenders**

(1) A distributor may surrender its authority only if the regulator has, on the distributor's application, approved the surrender.

(2) The application must be in the approved form and accompanied by the fee prescribed under a regulation.

(3) The regulator—

- (a) may impose conditions on giving the approval; and
- (b) must fix a time, no later than 6 months after deciding the application, for the surrender to take effect.

(4) If the regulator decides to refuse the application or impose a condition on the surrender, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

(5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

### *Division 5—Service quality standards*

#### **74 Standards about quality of customer connection services**

(1) A regulation may prescribe standards about the quality of customer connection services.

(2) A distributor must not contravene the standards.

Maximum penalty—100 penalty units.

(3) QCA must, if the regulator asks, monitor, investigate and report to the regulator on compliance with the standards.

## **PART 2—GAS INFRASTRUCTURE**

### *Division 1—Preliminary*

#### **75 What is “gas infrastructure” and “gas infrastructure work”**

(1) “**Gas infrastructure**” is the whole or any part of a distribution pipeline or system the subject of a distribution authority.

(2) “**Gas infrastructure work**” is the installation, operation, maintenance, repair, alteration or removal of gas infrastructure.

(3) For subsection (2), installation includes installation by way of excavation.

#### **76 What is a “public entity”**

A “**public entity**” is—

- (a) a government entity under the *Government Owned Corporations Act 1993*, section 5; or
- (b) a local government.

## 77 “Publicly controlled places” and their public entities

(1) A “publicly controlled place” is—

- (a) a State-controlled road under the *Transport Infrastructure Act 1994*; or
- (b) a place for which a public entity is responsible that—
  - (i) the public is entitled to use; or
  - (ii) is open to members of the public; or
  - (iii) is used by the public, whether or not on payment of money.

(2) However, “publicly controlled place” does not include any of the following under the *Transport Infrastructure Act 1994*—

- (a) busway land;
- (b) light rail land;
- (c) a railway;
- (d) rail corridor land.<sup>23</sup>

(3) The “public entity” for a publicly controlled place is the public entity immediately and primarily responsible for the place.

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23 For provisions relevant to gas infrastructure works for places mentioned in subsection (2), see the *Transport Infrastructure Act 1994*, chapter 6 (Rail transport infrastructure), chapter 7A, part 4 (Management of busway land and busway transport infrastructure), divisions 3 (Public utility plant) and 4 (Use of busway land) and chapter 7B, part 4 (Management of light rail land and light rail transport infrastructure), divisions 3 (Public utility plant) and 4 (Use of light rail land).

***Division 2—Carrying out gas infrastructure work on publicly controlled places***

***Subdivision 1—When work may be carried out***

**78 Right to carry out work on publicly controlled place**

Subject to sections 79 and 88 and subdivision 2,<sup>24</sup> a distributor may carry out gas infrastructure work on a publicly controlled place if the place is subject to, or is in the distribution area of, the distributor's distribution authority.

**79 Requirements for carrying out work**

(1) A distributor may carry out gas infrastructure work on a publicly controlled place only if—

- (a) the public entity has given its written approval for the carrying out of the work; or
- (b) the carrying out of the work is necessary because of an emergency.

(2) If the work is carried out because of an emergency, the distributor must, as soon as practicable, give the entity notice of the work.

**80 Obtaining public entity's approval**

(1) The distributor may, in writing, apply to the public entity for approval to carry out the gas infrastructure work.

(2) The application must—

- (a) describe the work and how it is proposed to be carried out; and
- (b) give particulars of where it is to be carried out; and
- (c) be supported by other relevant information, reasonably required by the entity, to enable it to consider the application.

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24 Section 88 (Compliance with work direction)  
Subdivision 2 (Obligations in carrying out work)



(3) The entity must, within 30 business days after receiving the information mentioned in subsection (2)(c), decide to grant or refuse the approval.

(4) The entity must not unreasonably refuse to grant the approval.

## **81 Conditions of approval**

(1) The public entity may impose conditions on the approval it considers are reasonable.

*Example of a possible condition—*

A condition that, to minimise interference with public access to the place, the work may be carried out only on stated days or at stated times.

(2) However, a condition about an alignment for gas infrastructure on, or proposed to be built on, a road must ensure the alignment is—

- (a) situated to ensure reasonable protection for the infrastructure; and
- (b) if practicable, on the footpath or verge of the road.

### *Subdivision 2—Obligations in carrying out work*

## **82 Application of sdiv 2**

This subdivision applies if a distributor is carrying out gas infrastructure work on a publicly controlled place.

## **83 Guarding**

(1) This section applies if the distributor has opened or broken up (the “**interference**”) the place, or any part of the place.

(2) The distributor must, at all times while the interference continues, ensure—

- (a) the interference is barricaded and guarded; and
- (b) signs and lights sufficient to warn and guide the public are set up and maintained against or near the interference.

(3) If required by the public entity, the distributor must also set up and maintain against or near the interference additional warning or protection devices to safeguard the public while the interference continues.

(4) The requirement may be made—

- (a) before or during the carrying out of the work; and
- (b) as well as any condition imposed under section 81.

#### **84 Warning signs on roads**

If the work is carried out on a road, lights and signs set up or maintained to safeguard the public must be the appropriate official signs under the *Transport Operations (Road Use Management) Act 1995*.

#### **85 General obligations in carrying out work**

(1) The distributor must—

- (a) complete the work as soon as practicable; and
- (b) restore, as nearly as practicable, the relevant part of the place to the condition it was in before the work started; and
- (c) remove any rubbish or surplus earth caused by the work; and
- (d) comply with—
  - (i) conditions the public entity has imposed on any approval it has given to carry out the work; and
  - (ii) any relevant provisions of the Gas (Residual Provisions) Act and any other relevant law.

(2) If, in carrying out the work, the distributor causes damage to the place, the distributor must fix the damage as soon as practicable.

#### **86 Maintenance**

(1) This section applies if the distributor has opened or broken up the place or any part of it and has, under section 85, restored the place or part.

(2) The distributor must carry out maintenance to ensure the place or part it is kept in good repair until the later of the following periods to end—

- (a) the period that ends 3 months after the restoration was finished;

- (b) if, because of the carrying out of the work or the restoration, the ground at the place or part subsides within the 3 months, the period that ends on the earlier of the following—
    - (i) the day the subsidence ends;
    - (ii) the first anniversary of the day the restoration was finished.
- (3) The maintenance must be carried out in the way agreed between the public entity and the distributor.

### *Subdivision 3—Work directions*

#### **87 Power to give work direction**

- (1) This section applies if—
- (a) a distributor is carrying out, or has carried out, gas infrastructure work on a publicly controlled place; and
  - (b) the public entity reasonably considers work should be, or should have been, carried out to ensure compliance with a condition imposed under section 81 or an obligation under subdivision 2.<sup>25</sup>
- (2) The entity may give the distributor a notice (a “**work direction**”) directing the distributor to carry out stated work to comply with the condition or obligation within a stated reasonable period.
- (3) The work direction must—
- (a) identify the condition or obligation; and
  - (b) include, or be accompanied by, an information notice about the decision to give the direction.

#### **88 Compliance with work direction**

- (1) A distributor to whom a work direction has been given must comply with the direction to the reasonable satisfaction of the public entity that gave the direction.

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25 Section 81 (Conditions of approval)  
Subdivision 2 (Obligations in carrying out work)

(2) If the distributor does not comply with subsection (1), the entity may carry out the relevant work.

(3) In carrying out the work, the entity must comply with any relevant provisions of the Gas (Residual Provisions) Act and any other relevant law.

### **89 Costs of carrying out directed work**

(1) A distributor to whom a work direction has been given must bear the costs of complying with the direction.

(2) If, under section 88(2), the public entity has carried out the relevant work, it may recover from the distributor as a debt the amount of its reasonable costs of carrying out the work.

### *Division 3—Public entity work*

### **90 Application of div 3**

This division applies if a public entity for a publicly controlled place proposes to do work (“**public entity work**”) that is likely to affect the safety, location or operation of gas infrastructure.

### **91 Requirement to consult if gas infrastructure affected**

(1) The public entity must give the distributor for the gas infrastructure a notice stating—

- (a) details of the proposed public entity work; and
- (b) that the distributor may, within a stated period, make written submissions to the entity about the proposal.

(2) The stated period must not end before 30 business days after the notice is given.

(3) Before deciding to make the change, the entity must consider any written submission made by the distributor within the stated period.

### **92 Power to require consequential work**

(1) This section applies if—

- (a) the public entity has complied with section 91; and

(b) to carry out the public entity work, it is reasonably necessary for any of the following work to be done (“**consequential work**”)—

- (i) changing the position of the gas infrastructure;
- (ii) carrying out other work in relation to the gas infrastructure.

(2) The entity may, by notice (a “**consequential work requirement**”), require the distributor to do the consequential work within a stated reasonable period.

### **93 Compliance with consequential work requirement**

(1) A distributor of whom a consequential work requirement has been made must comply with the requirement to the reasonable satisfaction of the public entity that made the requirement.

(2) If the distributor does not comply with subsection (1), the entity may carry out the relevant consequential work.

(3) In carrying out the work, the entity must comply with any relevant provisions of the Gas (Residual Provisions) Act and any relevant law.

### **94 Costs of carrying out required consequential work**

(1) A public entity must bear the costs of complying with any consequential work requirement it makes.

(2) If the relevant distributor has complied with section 93(1), the distributor may recover from the entity as a debt the amount of the distributor’s reasonable costs of carrying out the work.

### ***Division 4—Gas infrastructure interfering with publicly controlled place***

### **95 Application of div 4**

This division applies if gas infrastructure on a publicly controlled place interferes with the use of the place by the public entity or the public.

**96 Remedial action by public entity in emergency**

If, because of an emergency, it is necessary to take action (“**remedial action**”) to ensure the gas infrastructure ceases to interfere with the use of the place, the public entity may take the remedial action.

**97 Power to require remedial action**

The public entity may, by notice (a “**remedial action requirement**”), require the distributor for the gas infrastructure to take remedial action within a stated reasonable period.

**98 Compliance with remedial action requirement**

(1) A distributor of whom a remedial action requirement has been made must comply with the requirement to the reasonable satisfaction of the public entity that made the requirement.

(2) If the distributor does not comply with subsection (1), the entity may take the relevant remedial action.

(3) In taking the remedial action, the entity must comply with any relevant provisions of the Gas (Residual Provisions) Act and any other relevant law.

**99 Costs of taking required remedial action**

(1) A public entity must bear the costs of complying with any remedial action requirement it makes.

(2) If the relevant distributor has complied with section 98(1), the distributor may recover from the entity as a debt the amount of the distributor’s reasonable costs of taking the action.

*Division 5—Miscellaneous provisions***100 Ownership of gas infrastructure that becomes part of land**

(1) Gas infrastructure owned by a distributor remains the distributor’s personal property despite—

- (a) it becoming part of any land; or

(b) the sale or other disposal of the land.

(2) However, subsection (1) ceases to apply if the distributor agrees that the gas infrastructure is no longer the distributor's property.

(3) This section applies despite—

- (a) an Act or law of a State; or
- (b) a contract, covenant or claim of right under a law of a State.

(4) This section ceases to apply if—

- (a) the distribution authority is cancelled or otherwise ends; or
- (b) the land on which the infrastructure is situated ceases to be land subject to, or in the distribution area of, the authority.

(5) For subsection (4), if the term of the authority ends but, under section 66,<sup>26</sup> it is continued in force, the authority only ends if, under that section, it stops being in force.

### **101 Compensation**

(1) This section applies if a person (the “**claimant**”) suffers a cost, damage or loss because of the exercise, or purported exercise, of a power under this part by a distributor.

(2) Compensation for the cost, damage or loss is payable by the distributor to the claimant.

(3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

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<sup>26</sup> Section 66 (Continuing effect of authority for renewal application)

## **PART 3—CUSTOMER CONNECTION SERVICES**

### *Division 1—Preliminary*

#### **102 Application of pt 3**

This part only applies to an area distributor under a greenfield distribution authority or other area distribution authority.

### *Division 2—Applying for and obtaining customer connection services*

#### *Subdivision 1—Applying for customer connection services*

#### **103 Who may apply for customer connection services**

(1) Each person as follows may apply to a distributor for the provision of customer connection services to premises within the distributor's distribution area—

- (a) a person who owns or occupies the premises;
- (b) a retailer, for a customer or proposed customer of the retailer.

(2) The application must be made in the way and give the information reasonably required by the distributor.

#### **104 Deciding application**

(1) The distributor must decide to grant or refuse the application within—

- (a) 10 business days after the application is made; or
- (b) a longer period agreed between the distributor and the applicant.

(2) The distributor must decide to grant the application unless a limit under section 109 on the obligation to provide customer connection services applies.

(3) If the distributor decides to refuse the application, the distributor must as soon as practicable, give the applicant notice stating that if the



applicant disputes the decision, the applicant may, in the approved form, refer the dispute to the regulator.

### *Subdivision 2—Steps after granting application*

#### **105 Distributor's obligation to propose terms**

(1) If the distributor decides to grant the application, the distributor must, within the relevant period, tell or give the applicant notice of, each of the following—

- (a) that the application has been granted;
- (b) the terms on which the distributor will provide the customer connection services;
- (c) that the applicant may ask for the terms in writing;
- (d) if the customer is a protected customer—that the applicant may, in writing, refer any dispute about the terms to the regulator.

(2) If the customer is a protected customer, the proposed terms must be fair and reasonable.

(3) Also, if—

- (a) the services relate to natural gas transported through a covered pipeline; and
- (b) there is an approved access arrangement for the pipeline;

the terms must not be inconsistent with the access arrangement.

(4) If the applicant asks, the distributor must, as soon as practicable, give the applicant notice of the terms.

(5) If the distributor does not comply with subsection (1) within the relevant period the distributor is taken to have decided to refuse the application.

(6) In this section—

**“relevant period”** means—

- (a) 10 business days after the application is decided; or
- (b) a longer period agreed between the distributor and the applicant within the 10 business days.

## **106 Customer connection contract**

(1) If the distributor and the applicant agree about the terms for providing the customer connection services, the agreement is called a **“customer connection contract”**.<sup>27</sup>

(2) The agreement may be oral or written.

## **107 Cooling-off period for customer connection contracts**

(1) If a person enters into a customer connection contract and the application for the customer connection services was not made by a retailer for the customer, the person may, within 5 business days, elect to terminate the contract.

(2) The election may be made only by notice given to the distributor.

(3) The termination ends any liability the person has accrued or incurred under the contract, because of the termination or otherwise, for customer connection services to the customer’s premises, other than for charges for the services actually provided under the contract.

## **108 Commencement of customer connection services**

(1) If the distributor and the applicant enter into a customer connection contract and the contract is not terminated under section 107, the distributor must, subject to section 109, start to provide the customer connection services at the time provided under this section.

(2) Generally, the distributor must use reasonable endeavours to comply with the obligation within the required period after entering into the contract.

(3) However, if, within the required period after entering into the contract, the distributor requires any of the following the obligation ceases—

- (a) the giving of security for the services in an amount and a way that is fair and reasonable;
- (b) the giving of a reasonable advance payment for the services.

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27 See also section 125 (Operation of pt 4).

(4) If the requirement is met, the distributor must use reasonable endeavours to connect the premises within the required period after meeting the requirement.

(5) In this section—

**“required period”**, after entering into the contract or meeting the requirement, means—

- (a) if starting to provide the services only involves opening a physical connection to the distributor’s pipeline or system—
  - (i) 5 business days; or
  - (ii) any longer period agreed to by the applicant within the 5 business days;
- (b) if starting to provide the services involves more than opening a physical connection to the distributor’s pipeline or system—
  - (i) a reasonable period; or
  - (ii) any longer period agreed to by the applicant.

### **109 Limits on provision of customer connection services**

(1) The distributor is not obliged to provide the customer connection services to a person’s premises in any of the following circumstances—

- (a) providing the services—
  - (i) contravenes safety requirements under the Gas (Residual Provisions) Act or another relevant Act; or
  - (ii) contravenes technical requirements under the Gas (Residual Provisions) Act or another relevant Act; or
  - (iii) would unreasonably interfere with the connection, transport or sale of fuel gas to other customers; or
  - (iv) is denied or limited under an insufficiency of supply direction;
- (b) the distributor has asked the person to do any of the following and the person has not complied with the request within a reasonable period—
  - (i) perform work, or changes to the person’s fuel gas installation, necessary to allow connection of the distributor’s meter to measure consumption of fuel gas;

(ii) provide or maintain access, equipment, facilities, space or anything else reasonably needed for the provision of the services;

(c) a circumstance beyond the distributor's control prevents the distributor from providing the customer connection services.

(2) Also, the obligation ceases to apply during any period in which the provision of the services is discontinued under division 5 or under the Gas (Residual Provisions) Act, section 60B.<sup>28</sup>

(3) This section does not prevent the distributor from lawfully providing the customer connection services even though it is not obliged to do so.

### *Division 3—Changes to fuel gas installation*

#### **110 Application of div 3**

This division applies if the distributor provides customer connection services to a person's premises.

#### **111 Obligation to give information to allow proposed changes**

The distributor must, if asked by the person, give the person reasonable information about the distributor's requirements to allow the person to change or replace a fuel gas installation at the premises.

#### **112 Applying to change connection**

(1) The person may apply to the distributor to change the connection of a fuel gas installation at the premises to the distributor's distribution system.

(2) The distributor must, subject to section 109,<sup>29</sup> make the change within a reasonable period and on fair and reasonable terms.

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28 Division 5 (Discontinuance and recommencement)

Gas (Residual Provisions) Act, section 60B (Provisions with respect to defective or dangerous fittings)

29 Section 109 (Limits on provision of customer connection services)

*Division 4—Provisions about what is fair and reasonable***113 Operation of div 4**

This division makes special provisions for deciding what are fair and reasonable terms for the provision of customer connection services or to change the connection of a fuel gas installation at premises.

**114 Terms approved by regulator**

(1) If the terms of a customer connection contract are the same as the terms of a relevant approved contract, the approval is evidence that the terms of the customer connection contract are fair and reasonable.

(2) In this section—

**“relevant approved contract”** means a form of customer connection contract approved by the regulator for—

- (a) the customer connection services agreed to be provided under the customer connection contract; or
- (b) customer connection services of the same type.

**115 Services provided under approved access arrangement**

The terms are taken to be fair and reasonable if—

- (a) the services relate to natural gas transported through a covered pipeline under the Gas Pipelines Access Law; and
- (b) the terms comply with an access arrangement approved by the relevant regulator under the laws.

**116 Differing methods of charging**

The mere use by a distributor of differing methods of charging for the services to different customers is not unfair or unreasonable.

**117 Customer connection contracts**

The mere making of, or compliance with, a customer connection contract by a distributor is not unfair or unreasonable.

**118 Differing security**

(1) The mere requiring of differing security by a distributor is not unfair or unreasonable.

(2) In this section—

**“differing security”** means an agreement, advance payment or amount as security for performance of obligations to the distributor under a customer connection contract that—

- (a) is different to an agreement, payment or security the distributor requires of another customer; and
- (b) is not manifestly unfair.

**119 Different terms that are reasonable**

(1) This section applies if the distributor provides, or is to provide, the services on different terms to different customers or types of customers.

(2) The mere imposition of the different terms is not unfair or unreasonable if—

- (a) the circumstances required for providing the services are different; and
- (b) the terms reasonably reflect the impact on the distributor of the—
  - (i) differences between the customers or types of customers; or
  - (ii) different circumstances; or
  - (iii) provisions of this Act or any relevant standard or code that binds the distributor.

*Examples of different circumstances—*

1. The quantities of fuel gas supplied to the customers or types of customers.
2. The geographical location of the customers or types of customers.
3. The periods for which the services are to be provided.

*Division 5—Discontinuance and recommencement***120 When distributor may discontinue**

(1) The distributor may discontinue the provision of customer connection services to a person's premises on a ground mentioned in subsection (3).

(2) The discontinuance may be to the extent and for the period that the distributor reasonably believes is appropriate in the circumstances.

(3) For subsection (1), the ground is each of the following—

- (a) because of an emergency or for a health or safety reason;
- (b) the discontinuance has been directed under the Gas (Residual Provisions) Act, section 60A;<sup>30</sup>
- (c) to carry out work that needs to be carried out without delay to prevent an emergency or a health or safety incident;
- (d) to carry out work to the distributor's distribution system if—
  - (i) the work is reasonably required and is done at a reasonable time; and
  - (ii) the person is given reasonable notice of the discontinuance;
- (e) a ground for discontinuance under a relevant customer connection or retail contract;
- (f) customer connection services to the premises are denied or limited under an insufficiency of supply direction;
- (g) the customer has contravened section 130.<sup>31</sup>

(4) This section does not limit or otherwise affect a requirement under the Gas (Residual Provisions) Act, section 60B,<sup>32</sup> to disconnect or not to reconnect.

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30 The Gas (Residual Provisions) Act, section 60A (Provisions to ensure standards and safety requirements complied with)

31 Section 130 (Customer must provide safe access)

32 The Gas (Residual Provisions) Act, section 60B (Provisions with respect to defective or dangerous fittings)

**121 Request by retailer to discontinue**

(1) The retailer for a customer to whose premises the distributor provides customer connection services may, by notice (a **“discontinuance request”**), ask the distributor to discontinue the services—

- (a) if—
  - (i) under chapter 3, part 2,<sup>33</sup> the retailer is not obliged to provide, or continue to provide, customer retail services to the premises; and
  - (ii) the retailer has given the customer at least 2 notices (**“customer notices”**) of the retailer’s intention to ask the distributor to discontinue customer connection services to the premises; or
- (b) because of a ground mentioned in section 120(3); or
- (c) if the customer asks the retailer to arrange for the discontinuance.

(2) The customer notices must—

- (a) be given at an interval of at least 1 week; and
- (b) state each of the following—
  - (i) the grounds on which the retailer proposes to give the discontinuance request;
  - (ii) the day on which the retailer proposes to give the discontinuance request;
  - (iii) that if the customer disputes that the retailer is not obliged to provide, or continue to provide, the services the customer may, in writing, refer the dispute to the regulator.

(3) The stated day must be at least 10 business days after the first customer notice is given.

(4) The discontinuance request must state—

- (a) the reason for the request; and
- (b) if the reason for the request is that the retailer is not obliged to provide, or continue to provide, customer retail services to the premises—that subsection (1)(a) and (2) have been complied with.

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33 Chapter 3, part 2 (Customer retail services)



## **122 When distributor must discontinue**

If the distributor receives a discontinuance request, the distributor must, within 5 business days, comply with the request unless—

- (a) a retailer has given the distributor notice that the retailer wishes to sell reticulated fuel gas to the person's premises; or
- (b) the distributor reasonably believes it would be unsafe or impractical to comply.<sup>34</sup>

## **123 Recommencement**

(1) This section applies if—

- (a) under section 122, the distributor has discontinued the provision of customer connection services to a customer's premises; and
- (b) a retailer gives the distributor a notice asking for the services to be recommenced.

(2) If the relevant fuel gas installation and meters comply with all requirements under the Gas (Residual Provisions) Act and any other relevant Act, the distributor must recommence the services within 5 business days.

(3) The obligation to recommence is subject to the limits on the distributor's obligation to provide customer connection services under section 109.

(4) If no customer connection contract applies to the recommenced services, they must be provided on fair and reasonable terms.

## **124 Compensation for failure to discontinue or recommence**

(1) This section applies if a distributor contravenes section 122 or 123 and a person as follows (the "**claimant**") suffers a cost, damage or loss because of the contravention—

- (a) a person who wants to recommence fuel gas supply;
- (b) for section 122—the retailer who made the discontinuance request;

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<sup>34</sup> See also the Gas (Residual Provisions) Act, section 60B (Provisions with respect to defective or dangerous fittings).

(c) for section 123—the retailer that gave the notice asking for services to be recommenced.

(2) Compensation for the cost, damage or loss is payable by the distributor to the claimant.

(3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

## **PART 4—METER AND CONTROL APPARATUS REQUIREMENTS**

### **125 Operation of pt 4**

(1) This part imposes obligations for the provision of customer connection services to non-contestable customers.

(2) The obligations are taken to be terms of each customer connection contract between a distributor or retailer and a non-contestable customer.

### **126 Distributor must provide meter**

(1) The distributor must, unless the distributor and the customer otherwise agree, provide, install and maintain a meter used or to be used to measure or record reticulated fuel gas transported to the premises.

Maximum penalty—20 penalty units.

(2) Subsection (1) is subject to section 131.

### **127 Matters that may be considered for placement**

In deciding placement of a meter the distributor may consider—

- (a) safe access; and
- (b) aesthetics; and
- (c) protection against damage from—
  - (i) mechanisms; or
  - (ii) vibration; or

- (iii) the effects of weather; or
- (iv) corrosive atmosphere.

### **128 Placing meter on customer's premises**

(1) The customer must, at the customer's cost—

- (a) provide on the customer's premises space, housing, mounting and connecting facilities for each meter; and
- (b) maintain the facilities in a safe and sound condition.

(2) The facilities must be in a position that meets the distributor's reasonable requirements.

### **129 Change of meter placement**

(1) This section applies if, because of building changes or similar works, the position of a meter no longer meets the distributor's reasonable requirements for its placement.

(2) The customer must provide space, housing, mounting and connecting facilities in another position on the customer's premises that meets the requirements.

(3) If the distributor relocates the meter to meet the requirements, the distributor may, by notice, require the customer to pay the distributor the amount of the distributor's costs reasonably incurred in relocating the meter.

(4) If the customer does not comply with the notice, the distributor may recover the amount from the customer as a debt.

### **130 Customer must provide safe access**

The customer must not prevent the distributor's distribution officers from safely exercising a power under section 138.<sup>35</sup>

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35 Section 138 (Power to enter—general)

**131 Alternative measurement**

(1) This section applies if the distributor reasonably believes the customer has contravened section 130 by preventing any distribution officer of the distributor from safely reading or testing a meter connected to the distributor's distribution pipeline or system.

(2) The distributor may, by notice, require the customer to remedy the contravention within a stated period of at least 1 month.

(3) If the customer does not comply with the notice, the distributor may install alternative metering or other equipment to measure or record reticulated fuel gas transported to the premises by remote or other suitable ways.

(4) Subsection (3) does not limit section 120<sup>36</sup> or another remedy the distributor has against the customer.

(5) If the distributor acts under subsection (3), the distributor may, by notice, require the customer to pay the distributor the amount of the distributor's costs reasonably incurred in taking the action.

(6) If the customer does not comply with the notice, the distributor may recover the amount from the customer as a debt.

**PART 5—DISTRIBUTION OFFICERS*****Division 1—Appointment and functions*****132 Appointment**

(1) A distributor may appoint distribution officers to perform the functions mentioned in section 133.

(2) However, the distributor may appoint a person under subsection (1) only if the person is appropriately qualified for the appointment and has the necessary expertise or experience.

(3) Subject to subsection (2), an officer of a retailer may be appointed as a distribution officer.

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<sup>36</sup> Section 120 (When distributor may discontinue)

### **133 Functions**

A distribution officer's functions are to—

- (a) install and maintain the distributor's gas infrastructure; and
- (b) read or test meters connected to the distributor's distribution pipeline or system; and
- (c) ensure the distributor's gas infrastructure is safe; and
- (d) prevent or deal with an emergency involving, or that may involve, fuel gas transported through the distributor's distribution pipeline or system.

### **134 Distribution officers are public officials for particular functions**

A distribution officer is declared to be a public official for the *Police Powers and Responsibilities Act 2000* if the officer is, or is proposing to, perform a function mentioned in section 133(c) or (d).<sup>37</sup>

### **135 Issue of identity card**

(1) A distributor must issue an identity card to each of its distribution officers.

(2) The identity card must—

- (a) contain a recent photo of the person; and
- (b) contain a copy of the person's signature; and
- (c) identify the person as a distribution officer for the distributor; and
- (d) state an expiry date for the card.

### **136 Production or display of identity card**

(1) In exercising a power under division 2 in relation to another person, a distribution officer must—

- (a) produce his or her identity card for the person's inspection before exercising the power; or

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<sup>37</sup> See the *Police Powers and Responsibilities Act 2000*, chapter 1, part 3, division 2 (Helping public officials).

- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.

### **137 Return of identity card**

A person who ceases to be a distribution officer must return the person's identity card to the distributor within 20 business days after ceasing to be a distribution officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## *Division 2—Powers of entry*

### **138 Power to enter—general**

(1) A distribution officer may enter a place to—

- (a) install, maintain or take away the distributor's gas infrastructure;  
or  
(b) read or test a meter connected to the distributor's distribution pipeline or system.

(2) However, the officer can not under subsection (1)—

- (a) enter a part of the place where a person resides; or  
(b) enter the place between 5 p.m. on any day and 8 a.m. on the next day.

(3) The power under subsection (1) may be exercised without the consent of, or notice to, the occupier of the place.

### **139 Power to enter to make gas infrastructure safe**

(1) A distribution officer may enter a place to make the distributor's gas infrastructure safe if the occupier of the place has been given at least 48 hours notice of the entry.

(2) However, the officer can not under subsection (1)—

- (a) enter a part of the place where a person resides; or

(b) enter the place between 5 p.m. on any day and 8 a.m. on the next day.

(3) The power under subsection (1) may be exercised without the occupier's consent.

#### **140 Power to enter for emergency**

(1) A distribution officer may enter a place to prevent or deal with an emergency involving, or that may involve, fuel gas transported through the distributor's distribution pipeline.

(2) The power under subsection (1) may be exercised without the consent of, or notice to, the occupier of the place.

(3) However, if the occupier is present at the place, before entering the place, the officer must do, or make a reasonable attempt to do, the following things—

- (a) comply with section 136<sup>38</sup> for the occupier;
- (b) tell the occupier the purpose of the entry;
- (c) seek the consent of the occupier to the entry;
- (d) tell the occupier the officer is permitted under this Act to enter the place without the occupier's consent.

(4) Also, if the occupier is not present at the place, the officer must take reasonable steps to advise the occupier of the officer's intention to enter the place.

(5) Subsections (3) and (4) do not require the officer to take a step that the officer reasonably believes may frustrate or otherwise hinder the prevention or dealing with the emergency.

#### **141 Power to enter common property unaffected**

(1) The powers under this division are in addition to and do not limit a distribution officer's power, under the *Body Corporate and Community Management Act 1997*, section 263,<sup>39</sup> to enter common property.

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38 Section 136 (Production or display of identity card)

39 *Body Corporate and Community Management Act 1997*, section 316 (Powers of entry by local government, utility service provider or other authorised entity)

(2) However, if the entry is also authorised under this division, section 145 applies to the entry.

### *Division 3—Safeguards*

#### **142 Duty to avoid damage**

In performing a function or exercising a power under this part, a distribution officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage as is practicable.

#### **143 Notice of damage**

(1) This section applies if a distribution officer damages something when performing a function or exercising a power under this part.

(2) However, this section does not apply to damage the officer reasonably considers is trivial or if the officer reasonably believes—

- (a) there is no-one apparently in possession of the thing; or
- (b) the thing has been abandoned.

(3) The officer must promptly give notice of the damage to the person who appears to the officer to be the owner or person in possession of the thing.

(4) However, if for any reason it is not practicable to comply with subsection (3), the officer must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure it is left in a conspicuous position and in a reasonably secure way.

(5) The officer may delay complying with subsection (3) or (4) if the officer is exercising a power under section 139 or 140.

(6) However, the delay may be only for so long as it is reasonably necessary—

- (a) for section 139—to make the gas infrastructure safe; or
- (b) for section 140—to prevent or deal with the emergency.



**144 Content of notice of damage**

(1) A notice of damage under section 143 must state—

- (a) particulars of the damage; and
- (b) that the person who suffered the damage may claim compensation under section 145.

(2) If the distribution officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's control, the officer may state the belief in the notice.

**145 Compensation from distributor to owner or occupier**

(1) This section applies if an owner or occupier of land (the “**claimant**”) suffers a cost, damage or loss because of performance, or purported performance or the exercise, or purported exercise, of a function or power under this part by a distribution officer.

(2) Compensation for the cost, damage or loss is payable by the distributor to the claimant.

(3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

**PART 6—MARKET OPERATING ARRANGEMENTS IN  
NATURAL GAS MARKET****146 Regulation-making power for arrangements**

(1) A regulation may—

- (a) provide for arrangements relating to the operation or use of—
  - (i) a distribution pipeline that is a covered pipeline; or
  - (ii) a transmission pipeline, to the extent its operation or use affects the operation or use of a distribution pipeline that is a covered pipeline; and

*Examples of arrangements that may be provided for—*

1. The registration and identification of, or access to, delivery points.

2. The provision of meters and telemetry equipment.
  3. The nature and storage of information and the communication of, and access to, that information.
  4. Gas nomination and balancing.
  5. Consumer transfer processes.
- (b) impose stated terms on the arrangements; and
- (c) provide for the legal effect or enforcement of the terms, including, for example, by dispute resolution, arbitration or court proceedings.

(2) The regulation may apply, adopt or incorporate a code of conduct, or an amendment of a code of conduct, made by the Minister about the arrangements mentioned in subsection (1).

(3) The code, or amendment of the code, does not take effect unless it is approved under a regulation.

### **147 Tabling and inspection of code of conduct**

(1) This section applies if, under section 146(2), a regulation applies, adopts or incorporates a code of conduct, or an amendment of a code of conduct.

(2) The Minister must, within 14 sitting days after the regulation is gazetted, table a copy of the code, or the amendment or amended code, in the Legislative Assembly.

(3) The Minister must keep a copy of the code, as in force from time to time, open for inspection, free of charge, by members of the public during office hours on business days at—

- (a) the department's head office; and
- (b) other places the Minister considers appropriate.

(4) A failure to comply with this section does not invalidate or otherwise affect the code or the regulation.

## **CHAPTER 3—SUPPLY OF RETICULATED FUEL GAS**

### **PART 1—RETAIL AUTHORITIES**

#### *Division 1—Applying for and obtaining retail authority*

##### *Subdivision 1—Application*

#### **148 Who may apply for retail authority**

(1) A person may, in the approved form, apply to the regulator for a retail authority.

(2) However, a person can not apply for an area retail authority if the retail area for the proposed authority is or includes the retail area of an existing retail authority.

(3) Also, a distributor can not apply for a retail authority to provide customer retail services relating to processed natural gas to be transported through a pipeline if the distributor provides customer connection services relating to processed natural gas transported through a covered pipeline.<sup>40</sup>

#### **149 Requirements for application**

The application must—

- (a) state whether it is for an area or general retail authority; and
- (b) if it is for an area retail authority—
  - (i) describe the area; and
  - (ii) state whether it is for an exclusive retail authority; and
- (c) if it is for an exclusive retail authority—
  - (i) state the contestable customers, or type of contestable customer, for which the exclusive right is sought; and

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<sup>40</sup> See also sections 168 (Ring fencing requirement) and 181 (Conditions for amendment, cancellation or suspension).

- (ii) state the prices the applicant proposes for the provision of customer retail services under the authority; and
- (d) be accompanied by the fee prescribed under a regulation.

### **150 Public notice by regulator and submissions**

(1) This section does not apply if the applicant holds a corresponding authority for the retail authority.

(2) Before deciding the application, the regulator must—

- (a) publish in a Statewide newspaper a notice stating each of the following—
  - (i) that an application for a retail authority has been made;
  - (ii) the applicant's name;
  - (iii) if the application is for an area retail authority—a description of the area;
  - (iv) if the application is for an exclusive retail authority—the contestable customers, or type of contestable customer, for which the exclusive right is sought;
  - (v) a period of at least 20 business days during which anyone may make written submissions to the regulator about the application;
  - (vi) where the application, other than any part of the application that is FOI exempt matter, may be inspected; and
- (b) consider written submissions about the application made to the regulator within the stated period.

### **151 Deciding application**

(1) The regulator must decide whether to grant or refuse the application.

(2) If the regulator decides to grant the application, the regulator may impose conditions on the retail authority the regulator considers appropriate.<sup>41</sup>

### **152 Criteria for deciding application**

(1) The regulator may decide to grant the application only if satisfied the applicant is a suitable person to hold the retail authority.

(2) For subsection (1), the regulator may consider any of the following (the “**suitability criteria**”), to the extent they are relevant to the applicant’s competence to hold the retail authority—

- (a) ability to provide an adequate level of customer retail services;
- (b) financial capacity;
- (c) commercial and other dealings and the standard of honesty and integrity shown in the dealings;
- (d) failure to perform contractual or statutory obligations and the reasons for the failure;
- (e) criminal history;
- (f) knowledge of, or experience in, the gas or energy industries;
- (g) if the applicant is a corporation—the matters mentioned in paragraphs (a) to (f) for persons who are executive officers of, or substantial shareholders in, the corporation.

(3) However, the regulator may, without regard to any of the suitability criteria, decide the applicant is a suitable person to hold the retail authority if the applicant holds a corresponding authority.

(4) In deciding the application, the regulator must consider any relevant government policies about energy issues.

### **153 Additional criteria for exclusive retail authority application**

If the application is for an exclusive retail authority, the regulator must also consider each of the following—

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41 See also division 2 (Retail authority conditions).

- (a) the criteria mentioned in annexure E<sup>42</sup> to the national gas agreement to the extent they are relevant to the application;
- (b) whether the applicant is the most suitable person to hold the authority;
- (c) the public interest;
- (d) the prices the applicant proposes for the provision of customer retail services under the authority.

### **154 Term of authority**

(1) This section applies if the regulator decides to grant the application.

(2) If the application is for an exclusive retail authority, the regulator must decide the term of the authority of no more than 5 years.

(3) If the application is other than for an exclusive retail authority, the regulator may decide to grant the authority for a stated term.

(4) If no term is decided for a retail authority other than an exclusive retail authority, it continues in force unless cancelled or surrendered under this part.

### *Subdivision 2—Steps after deciding application*

### **155 Notice of decision to grant application**

(1) If the regulator decides to grant the application, the regulator must, as soon as practicable, give the applicant notice (“**decision notice**”) stating each of the following—

- (a) the decision;
- (b) the conditions the regulator has decided to impose on the authority;<sup>43</sup>
- (c) any other matter relevant to the grant of the authority;
- (d) a period after the giving of the decision notice for the applicant to give the regulator notice (“**acceptance notice**”) that the

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42 Annexure E to the national gas agreement (Franchising principles)

43 For conditions that are automatically imposed under this Act, see division 2 (Retail authority conditions).

applicant agrees to the conditions, or the conditions with changes to which the regulator has agreed;

- (e) the application will be taken to have lapsed unless the applicant gives an acceptance notice within the period or later period as extended by the regulator.

(2) The stated period must end at least 20 business days after the applicant is given the decision notice.

(3) The regulator may, by notice given to the applicant before the stated period ends, extend the period for giving an acceptance notice.

### **156 Lapsing of application if conditions not accepted**

The regulator is taken to have decided to refuse the application if—

- (a) the regulator has given the applicant a decision notice; and
- (b) the applicant has not given the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.

### **157 Issue and public notice of authority**

(1) This section applies if the applicant gives the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.

(2) The regulator must, as soon as practicable—

- (a) issue the applicant the retail authority; and
- (b) publish a notice about the authority in a Statewide newspaper.<sup>44</sup>

(3) The notice must state—

- (a) that the applicant has been issued a retail authority; and
- (b) each of the following about the authority—
  - (i) its type;
  - (ii) if it is an area retail authority—its retail area;

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44 See also chapter 6, part 6 (Register of authorities).

- (iii) if it is an exclusive retail authority—the contestable customers, or type of contestable customer, the subject of the authority;
  - (iv) if it has been issued for a term—its term; and
- (c) the conditions of the authority, or where they may be inspected.

### **158 Information notice about refusal**

If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

#### *Division 2—Retail authority conditions*

##### *Subdivision 1—Preliminary*

### **159 Operation of div 2**

(1) This division imposes conditions on each retail authority that apply as well as any conditions stated in the authority.

(2) If an imposed condition conflicts with a condition stated in the authority, the imposed condition prevails to the extent of the inconsistency.

(3) As well as imposing a condition, sections 162, 163, 169, 170 and 171<sup>45</sup> also impose a penalty.

#### *Subdivision 2—Information, charges and accounts*

### **160 Publication obligations**

(1) A retailer must—

- (a) make available for inspection by any customer of the retailer, during office hours on business days—

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<sup>45</sup> Sections 162 (Account intervals), 163 (Requirement content for accounts), 169 (Restriction on general retailers), 170 (Exclusive rights must not be contravened) and 171 (Area retailers—restriction for non-contestable customers)



- (i) each customer retail contract the customer has with the retailer (a “**relevant contract**”) or a document that identifies the parties to each relevant contract and describes its terms; and
  - (ii) a customer information statement; and
- (b) if the customer requires, give the customer a copy of a stated relevant contract or a document that identifies the parties to the contract and describes its terms.
- (2) The inspection or copy must be free of charge.
- (3) The customer information statement must include—
- (a) a summary of the dispute resolution procedures under chapter 5, part 2; and
  - (b) a telephone number for the regulator at which advice may be obtained about how to refer a dispute under chapter 5, part 2; and
  - (c) a telephone number for the retailer at which information may be obtained about the provision of customer retail services by the retailer and matters related to the provision of the services.
- (4) The obligations under subsection (1)(a) in relation to a document may be complied with by publishing it on the retailer’s website on the internet.

### **161 Information obligations to customers**

A retailer must, before the retailer starts to sell fuel gas to a customer’s premises, give the customer a notice stating that the customer may—

- (a) inspect, free of charge, during office hours on business days—
  - (i) the customer’s customer retail contract for the premises or a document that identifies the parties to the contract and describes its terms; and
  - (ii) a summary of the dispute resolution procedures under chapter 5, part 2; and
- (b) require the retailer to give the customer a copy of the contract or document, free of charge.

**162 Account intervals**

A retailer must give each of its customers an account for customer retail services provided to the customer at least once every 3 months.

Maximum penalty—100 penalty units.

**163 Required content for accounts**

An account from a retailer to a customer must state each of the following—

- (a) the customer's name, mailing address and bill number;
- (b) the address of the premises at which the relevant customer retail services were given;
- (c) the days on which the account period started and ended;
- (d) the total charge the customer must pay;
- (e) the charges for services provided or arranged by the retailer;
- (f) for the charge mentioned in paragraph (e), the amount of the charges for—
  - (i) fuel gas sales; and
  - (ii) other services;
- (g) the day by which the total charge must be paid;
- (h) the amount of any arrears and the day by which the arrears must be paid;
- (i) the amount of any credit received;
- (j) the methods by which an amount owing to the retailer may be paid;
- (k) particulars of relevant meter readings;
- (l) the estimated or measured amount of fuel gas supplied, in MJ;
- (m) particulars of any rates of charge for the fuel gas supplied;
- (n) a contact telephone number at which the retailer will answer account inquiries;
- (o) particulars, in MJ, of the average daily consumption of all fuel gas supplied during the account period;

- (p) if the retailer gave the customer an account for the corresponding account period in the previous year—particulars, in MJ, of the average daily consumption of all fuel gas supplied during that account period;
- (q) a contact telephone number at which the distributor can be advised of any matter mentioned in section 48(1).<sup>46</sup>

Maximum penalty—100 penalty units.

### *Subdivision 3—Discontinuance and recommencement*

#### **164 Notice requirements for discontinuance**

A retailer must not give, or purport to give, a distributor a discontinuance request on the ground that the retailer is not obliged to provide, or continue to provide, customer retail services to the customer unless the retailer has given the customer notices as required under section 121.<sup>47</sup>

#### **165 Obligation to give recommencement notice**

If, under section 122,<sup>48</sup> the distributor has discontinued the provision of customer connection services to a customer's premises, the retailer must give the distributor notice under section 123<sup>49</sup> asking for the services to be recommenced if the customer—

- (a) asks the retailer to give the notice; and
- (b) if the discontinuance was other than at the customer's request—remedies the ground on which the discontinuance was based; and
- (c) pays the retailer any reasonable fee the retailer requires for the recommencement.<sup>50</sup>

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46 Section 48 (Contingency practices and procedures)

47 Section 121 (Request by retailer to discontinue)

48 Section 122 (When distributor must discontinue)

49 Section 123 (Recommencement)

50 See however section 228(1) (Fixing of prices for customer retail services or on-supply).

***Subdivision 4—Other conditions*****166 General conditions**

A retailer must—

- (a) pay amounts required to be paid under the authority or this Act; and
- (b) in carrying out activities under the authority, comply with this Act, the Gas (Residual Provisions) Act and all other relevant laws.

**167 General right of retailer**

(1) Any retailer may provide customer retail services to a contestable customer, anywhere in the State.

(2) However, a contestable customer the subject of an exclusive retail authority may be provided customer retail services only by the exclusive retailer.

**168 Ring fencing requirement**

A retailer must not transport processed natural gas through a pipeline if the retailer provides customer retail services relating to processed natural gas transported through a covered pipeline.<sup>51</sup>

**169 Restriction on general retailers**

A general retailer must not provide customer retail services to a non-contestable customer.

Maximum penalty—500 penalty units.

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<sup>51</sup> See also sections 148 (Who may apply for retail authority) and 181 (Conditions for amendment, cancellation or suspension).

**170 Exclusive rights must not be contravened**

A retailer must not provide customer retail services to a customer, or type of customer, the subject of an exclusive retail authority unless the retailer holds the exclusive retail authority.

Maximum penalty—500 penalty units.

**171 Area retailers—restriction for non-contestable customers**

An area retailer must not provide customer retail services to a non-contestable customer outside the retail area of the retailer's retail authority unless the services are provided under another area retail authority.

Maximum penalty—500 penalty units.

**172 Telephone hotline**

(1) A retailer must operate a telephone service to which its customers can, at any time, tell the retailer about difficulties and faults with gas infrastructure.

(2) The service must be operated on the basis that the cost of telephoning it is no more than the cost of a local telephone call.

**173 Compliance with contingency supply plan requirements**

A retailer must comply with chapter 4, part 2.<sup>52</sup>

**174 Participation in retailer of last resort scheme**

A retailer must comply with the retailer of last resort scheme to the extent it applies to the retailer.

**175 Conditions imposed under a regulation**

(1) A retailer must comply with—

- (a) any conditions prescribed under a regulation for, or relating to, the provision of customer retail services; or

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52 Chapter 4, part 2 (Contingency supply plans)

- (b) any code, intergovernmental agreement, protocol or other agreement prescribed under a regulation.

(2) A code or agreement may be prescribed only if it relates to the provision of customer retail services.

### ***Division 3—Amendment, cancellation and suspension of retail authority***

#### ***Subdivision 1—Amendment by regulator***

#### **176 Amendments for which proposed action notice is not required**

The regulator may amend a retail authority at any time by giving the relevant retailer notice of the amendment and recording particulars of the amendment in the register if the amendment—

- (a) is to correct a clerical or formal error; or
- (b) does not affect the interests of the retailer or anyone else and the retailer has, in writing, agreed to the amendment.

#### **177 Amendments for which proposed action notice is required**

The regulator may amend a retail authority if—

- (a) the regulator considers the amendment necessary or desirable; and
- (b) the procedure under subdivision 5 is followed.

#### **178 Imposed condition can not be amended**

The regulator can not amend a condition of a retail authority imposed under division 2.

***Subdivision 2—Amendment by application*****179 Applying for amendment**

(1) A retailer may, in the approved form, apply to the regulator to amend its authority in a stated way, other than to amend a condition imposed under division 2.

(2) The application must be accompanied by the fee prescribed under a regulation.

(3) Subsection (1) does not limit section 193(3).<sup>53</sup>

**180 Deciding application**

(1) The regulator must decide to make or refuse to make the amendment.

(2) If the decision is to make the amendment, the regulator must, as soon as practicable, make the amendment to the retail authority and give the applicant notice of the decision.

(3) If the decision is to refuse to make the amendment, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

***Subdivision 3—Cancellation and suspension*****181 Conditions for amendment, cancellation or suspension**

(1) The regulator may cancel or suspend a retail authority if—

(a) an event mentioned in subsection (2) has happened; and

(b) either—

(i) for immediate suspension—the procedure under section 182 is followed; or

(ii) for cancellation or suspension other than immediate suspension—the procedure under subdivision 5 is followed.

(2) For subsection (1), the event is that the retailer—

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53 Section 193(3) (Deciding transfer application)

- (a) obtained the authority because of a materially false or misleading declaration or representation, made orally or in writing; or
- (b) is, or is likely to become, unsuitable to hold, or continue to hold, the authority, including, for example because of a contravention of any of the following by the retailer or, if the retailer is a corporation, any executive officer of, or substantial shareholder in, the corporation—
  - (i) this Act;
  - (ii) the Gas (Residual Provisions) Act or another relevant Act;
  - (iii) a direction given under this Act or the Gas (Residual Provisions) Act or another relevant Act;
  - (iv) the authority; or
- (c) has contravened, or is contravening, section 168;<sup>54</sup> or
- (d) has used the authority for a purpose other than for a purpose for which it was issued.

(3) In deciding whether the retailer is a suitable person to hold, or continue to hold, the authority the regulator must have regard to the suitability criteria.

#### *Subdivision 4—Procedure for immediate suspension*

### **182 Immediate suspension**

(1) The regulator may, by notice (“**suspension notice**”) to the retailer, immediately suspend a retail authority if the regulator reasonably believes—

- (a) a ground exists to suspend or cancel the authority; and
- (b) the circumstances are so extraordinary that it is imperative to immediately suspend the authority to control or prevent—
  - (i) a significant adverse economic or social impact on the State or a part of the State; or
  - (ii) a danger to the public.

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54 Section 168 (Ring fencing requirement)



- (2) The suspension notice must—
- (a) state each of the following—
    - (i) that the authority is suspended immediately;
    - (ii) the grounds for the suspension;
    - (iii) the facts and circumstances forming the basis for the grounds;
    - (iv) the suspension period;
    - (v) that the retailer may make written submissions to the regulator to show why the suspension should end; and
  - (b) include, or be accompanied by, an information notice about the decisions to give the notice and to fix the suspension period.
- (3) The suspension period must not be more than 40 business days.
- (4) The suspension has effect immediately after the retailer is given the suspension notice.
- (5) The authority is ineffective during the suspension period.

***Subdivision 5—Procedure for amendment, cancellation or suspension other than immediate suspension***

**183 Application of sdiv 5**

This subdivision applies if—

- (a) under section 177,<sup>55</sup> the regulator proposes to amend a retail authority; or
- (b) the regulator proposes to cancel or suspend a retail authority, other than an immediate suspension under section 182.

**184 Notice of proposed action**

(1) The regulator must give the retailer a notice stating each of the following—

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55 Section 177 (Amendments for which proposed action notice is required)

- (a) the action (the “**proposed action**”) the regulator proposes to take under this division;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances that are the basis for the grounds;
- (d) if the proposed action is to amend—the proposed amendment;
- (e) if the proposed action is to suspend—the proposed suspension period;
- (f) that the retailer may make, within a stated period, written submissions to show why the proposed action should not be taken.

(2) The stated period must end at least 20 business days after the notice is given.

(3) The notice may be given for a retail authority the subject of an immediate suspension.

### **185 Considering submissions**

(1) The regulator must consider any written submission made under section 184(1)(f) by the retailer within the period stated in the notice.

(2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give the retailer notice of the decision.

### **186 Decision on proposed action**

If, after complying with section 185, the regulator still believes a ground exists to take the proposed action, the regulator may decide to—

- (a) if the proposed action was to amend—make the amendment; or
- (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel—
  - (i) cancel the retail authority; or
  - (ii) suspend it for a stated period.

**187 Notice and taking of effect of proposed action decision**

(1) The regulator must, as soon as practicable after making a decision under section 186, give the retailer an information notice about the decision.

(2) The decision takes effect on the later of the following—

- (a) the day the information notice is given;
- (b) a later day of effect stated in the notice.

(3) However, if the decision was to amend, cancel or suspend because of a conviction, the amendment, cancellation or suspension—

- (a) does not take effect until—
  - (i) the period to appeal against the conviction ends; and
  - (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
- (b) has no effect if the conviction is quashed on appeal.

***Division 4—Dealings with retail authority******Subdivision 1—Renewals*****188 Applying for renewal**

(1) An exclusive retailer may apply to the regulator to renew the retailer's exclusive retail authority for a stated term.

(2) However, the exclusive retailer can not apply to renew the authority for a renewed term that ends more than 10 years after the authority was originally issued.

(3) A retailer, other than an exclusive retailer may apply to the regulator to renew the retailer's authority for a stated term or to renew it without a term.

(4) An application under this section—

- (a) must be made in the approved form and accompanied by the fee prescribed under a regulation; and
- (b) can not be made if the authority has ended.

**189 Deciding renewal application**

- (1) The regulator must decide whether to grant or refuse the application.
- (2) Division 1 (other than section 148) applies to the application as if it were an application for the authority.<sup>56</sup>

**190 Continuing effect of authority for renewal application**

If the term of the retail authority ends before the application is decided, despite the ending of the term, the authority continues in force until—

- (a) the start of any renewal of the authority; or
- (b) the applicant is given an information notice about a decision to refuse the application; or
- (c) the application is withdrawn; or
- (d) the authority is cancelled under this Act.

***Subdivision 2—Transfers*****191 Transfer only by application**

- (1) A retail authority may be transferred only under this subdivision.
- (2) A purported transfer of a retail authority not made under this subdivision is of no effect.<sup>57</sup>

**192 Applying for transfer**

- (1) A retailer may apply to the regulator to transfer the retailer's retail authority.
- (2) The application must be—
- (a) in the approved form; and

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56 Division 1 (Applying for and obtaining retail authority)  
Section 148 (Who may apply for retail authority)

57 See also section 302 (Additional consequences of unlawfully selling reticulated fuel gas).

- (b) made by the retailer and the proposed transferee; and
- (c) accompanied by the fee prescribed under a regulation.

### **193 Deciding transfer application**

(1) The regulator may decide to grant the application only if the regulator is satisfied the proposed transferee is a suitable person to hold the authority.

(2) For subsection (1), the regulator may consider any suitability criteria to the extent it is relevant to the proposed transferee's competence to hold the retail authority.

(3) The regulator may, in granting the application, impose conditions on the authority.

(4) If the regulator decides to refuse the application or impose a condition on the authority, the regulator must, as soon as practicable, give the applicants an information notice about the decision.

(5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicants.

### ***Subdivision 3—Mortgages***

#### **194 Mortgage of retail authority**

A retailer may mortgage the retailer's retail authority without the approval of, or notice to, the regulator.

#### **195 Notice of intention to exercise powers under mortgage**

(1) This section applies if a mortgage has been granted over a retail authority and the retailer has defaulted under the mortgage.

(2) The mortgagee may exercise its powers under the mortgage only if the mortgagee has given the regulator at least 20 business days notice of the mortgagee's intention to exercise powers under the mortgage that relate to the authority.

(3) Any purported exercise of a power under the mortgage relating to the authority in contravention of subsection (2) is of no effect.

**196 Consequence of exercising powers under mortgage**

If a mortgagee under a mortgage over a retail authority exercises any power under the mortgage relating to the authority, this Act applies to the mortgagee as if the mortgagee were the retailer under the authority.

***Subdivision 4—Surrenders*****197 Surrenders**

(1) A retailer may surrender its authority only if the regulator has, on the retailer's application, approved the surrender.

(2) The application must be in the approved form and accompanied by the fee prescribed under a regulation.

(3) The regulator—

(a) may impose conditions on giving the approval; and

(b) must fix a time, no later than 6 months after deciding the application, for the surrender to take effect.

(4) If the regulator decides to refuse the application or impose a condition on the surrender, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

(5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

**PART 2—CUSTOMER RETAIL SERVICES*****Division 1—Applying for and obtaining customer retail services******Subdivision 1—Applying for customer retail services*****198 Applying for customer retail services**

(1) Any person may apply to a retailer to become a customer of the retailer for particular premises.

(2) The application must be made in the way, and give the information reasonably required, by the retailer.

### **199 Deciding application**

(1) The retailer must decide to grant or refuse the application within—

- (a) 10 business days after the application is made; or
- (b) a longer period agreed between the retailer and the applicant.

(2) The retailer must decide to grant the application if—

- (a) were the application to be granted, the applicant would become a protected customer of the retailer; and
- (b) a limit under section 204 on the obligation to provide customer retail services does not apply.

(3) If—

- (a) were the application to be granted, the applicant would become a protected customer of the retailer; and
- (b) the retailer decides to refuse the application;

the retailer must as soon as practicable, give the applicant notice stating that if the applicant disputes the decision, the applicant may, in writing, refer the dispute to the regulator.

### *Subdivision 2—Steps after granting application*

### **200 Retailer's obligation to propose terms**

(1) If the retailer decides to grant the application, the retailer must, within the relevant period, tell the applicant or give the applicant notice of, each of the following—

- (a) that the application has been granted;
- (b) the terms on which the retailer proposes to provide the customer retail services;
- (c) that the applicant may ask for the terms in writing;
- (d) if the customer is a protected customer—that the applicant may, in writing, refer any dispute about the terms to the regulator.

(2) The proposed terms must be fair and reasonable if—

- (a) the retailer is an area retailer; and
- (b) the application is for premises in the retailer’s retail area; and
- (c) the customer is a protected customer.

(3) If the applicant asks, the retailer must, as soon as practicable, give the applicant notice of the terms.

(4) If the retailer does not comply with subsection (1) within the relevant period the retailer is taken to have decided to refuse the application.

(5) In this section—

**“relevant period”** means—

- (a) 10 business days after the application is decided; or
- (b) a longer period agreed between the retailer and the applicant within the 10 business days.

## **201 Customer retail contract**

(1) If the retailer and the applicant agree about the terms for providing the customer retail services, the agreement is called a **“customer retail contract”**.<sup>58</sup>

(2) The agreement may be oral or written.

## **202 Cooling-off period for customer retail contracts**

(1) If the customer enters into a customer retail contract, the customer may, within 5 business days after the retailer complies with section 161,<sup>59</sup> elect to terminate the contract.

(2) If the customer is a protected customer, the election may be made by notice or orally to the retailer.

(3) Otherwise, the election may be made only by notice to the retailer.

(4) The termination ends any liability the customer has accrued or incurred under the contract, because of the termination or otherwise, for

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58 See also section 125 (Operation of pt 4).

59 Section 161 (Information obligations to customers)



customer retail services to the customer's premises, other than for charges for services actually provided under the contract.

### **203 Commencement of customer retail services**

(1) If the retailer and the applicant enter into a customer retail contract and the contract is not terminated under section 202, the retailer must, subject to section 204, start to provide the customer retail services at the time provided under this section.

(2) Generally, the retailer must use reasonable endeavours to comply with the obligation within the required period after entering into the contract.

(3) However, if, within the required period after entering into the contract, the retailer requires any of the following the obligation ceases—

- (a) the giving of security for the services in an amount and a way that is fair and reasonable;
- (b) the giving of a reasonable advance payment for the services.

(4) If the requirement is met, the retailer must use reasonable endeavours to start to provide the services within the required period after meeting the requirement.

(5) In this section—

**“required period”**, after entering into the contract or meeting the requirement, means—

- (a) if the premises have previously been supplied by a retailer—
  - (i) 5 business days; or
  - (ii) any longer period agreed to by the applicant within the 5 business days;
- (b) if the premises have not previously been supplied by a retailer—
  - (i) a reasonable period; or
  - (ii) any longer period agreed to by the applicant.

### **204 Limits on provision of customer retail services**

(1) The retailer is not obliged to provide the customer retail services to a person's premises in any of the following circumstances—

- (a) the retailer is to arrange for customer connection services for the premises and the distributor for the premises is not obliged to provide, or has the right to discontinue, the services;<sup>60</sup>
- (b) the person is to arrange for customer connection services for the premises and no customer connection contract has been entered into with the distributor for the premises;
- (c) the retailer has asked the person for information the retailer reasonably requires to allow the retailer to provide the customer retail services and the person has not complied with the request within a reasonable period;
- (d) the retailer has asked the person to provide or maintain access, equipment, facilities, space or anything else the retailer reasonably needs to provide the customer retail services and the person has not complied with the request within a reasonable period;
- (e) the person contravenes this Act, the Gas (Residual Provisions) Act or another relevant Act and the contravention relates to safety;
- (f) a circumstance beyond the retailer's control prevents the retailer from providing the customer retail services.

(2) Also, the obligation ceases to apply during any period in which the provision of customer connection services to the premises is discontinued under chapter 2, part 3, division 5 or under the Gas (Residual Provisions) Act, section 60B.<sup>61</sup>

(3) This section does not prevent the retailer from lawfully providing the customer connection services even though it is not obliged to do so.

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60 See section 109 (Limits on provision of customer connection services), chapter 2, part 3, division 5 (Discontinuance and recommencement) and the Gas (Residual Provisions) Act, section 60B (Provisions with respect to defective or dangerous fittings).

61 Chapter 2, part 3, division 5 (Discontinuance and recommencement)

***Division 2—Overcharging and undercharging*****205 Overcharging**

(1) This section applies if a retailer discovers the retailer has overcharged a customer for customer retail services.

(2) The retailer must, as soon as practicable, give the customer an amended account that states particulars of the overcharge and deducts or credits the overcharge.

Maximum penalty—200 penalty units.

(3) In this section—

“**overcharge**”, for customer retail services means to charge more than the amount that, under the relevant customer retail contract, the customer should have been charged for the services.

**206 Undercharging**

(1) This section applies if a retailer discovers the retailer has undercharged a customer for customer retail services and wishes to recover the undercharged amount.

(2) The retailer must, as soon as practicable, give the customer an amended account that states particulars of the undercharge.

Maximum penalty—200 penalty units.

(3) Despite the *Limitation of Actions Act 1974*, section 10,<sup>62</sup> a proceeding to recover the amount of the undercharge can not be brought more than 1 year after the later of the following—

- (a) the day the amended account is given;
- (b) if the customer requests a period to pay the undercharge that is no more than the period during which the undercharging happened—the day the period ends.

(4) The request can not be made more than 3 months after the amended account is given.

(5) In this section—

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62 *Limitation of Actions Act 1974*, section 10 (Actions of contract and tort and certain other actions)

“**undercharge**”, for customer retail services means to charge less than the amount that, under the relevant customer retail contract, the customer should have been charged for the services.

### *Division 3—Provisions about what is fair and reasonable*

#### **207 Operation of div 3**

This division makes special provisions for deciding what are fair and reasonable terms for the provision of customer retail services.

#### **208 Terms approved by regulator**

(1) If the terms of a customer retail contract are the same as the terms of a relevant approved contract, the approval is evidence that the terms of the customer retail contract are fair and reasonable.

(2) In this section—

“**relevant approved contract**” means a form of customer retail contract approved by the regulator for—

- (a) the customer retail services agreed to be provided under the customer retail contract; or
- (b) customer retail services of the same type.

#### **209 Differing methods of charging**

The mere use by a retailer of differing methods of charging for the services to different customers is not unfair or unreasonable.

#### **210 Customer retail contracts**

The mere making of, or compliance with, a customer retail contract by a retailer is not unfair or unreasonable.

#### **211 Differing security**

(1) The mere requiring of differing security by a retailer is not unfair or unreasonable.

(2) In this section—

**“differing security”** means an agreement, advance payment or amount as security for performance of a person’s obligations to the retailer under a customer retail contract that—

- (a) is different to an agreement, payment or security the retailer requires of another customer; and
- (b) is not manifestly unfair.

## **212 Different terms that are reasonable**

(1) This section applies if a retailer provides, or is to provide, the services on different terms to different customers or types of customers.

(2) The mere imposition of the different terms is not unfair or unreasonable if—

- (a) the circumstances required for providing the services are different; and
- (b) the terms reasonably reflect the impact on the retailer of the—
  - (i) differences between the customers or types of customers; or
  - (ii) different circumstances; or
  - (iii) provisions of this Act or any relevant standard or code that binds the retailer.

*Examples of different circumstances—*

1. The quantities of fuel gas supplied to the customers or types of customers.
2. The geographical location of the customers or types of customers.
3. The periods for which the services are to be provided.

## PART 3—ON-SUPPLY<sup>63</sup>

### *Division 1—Preliminary*

#### **213 “On-suppliers” and their “receivers”**

(1) An **“on-supplier”** is a person who—

- (a) is the owner or occupier of premises or has the right to use premises; and

*Example—*

An owner, occupier or a person who has a right to use a caravan park, exhibition centre, hostel, hotel, industrial park, lodging house, marina, market arcade, motel or shopping centre.

- (b) supplies, by reticulation, fuel gas for use in the premises.

(2) An **“on-supplier”** also includes a body corporate or body corporate manager under a body corporate Act who supplies, or authorises someone else to supply, by reticulation, fuel gas to—

- (a) members of the body corporate or;
- (b) persons who occupy the premises that make up the body corporate.

(3) The premises for which a person is an on-supplier is called the **“on-supplier’s premises”**.

(4) A **“receiver”** is a person who owns, occupies or has the right to use an on-supplier’s premises and to whom the on-supplier supplies fuel gas, by reticulation.

#### **214 “Common areas” and “common area consumption”**

(1) A **“common area”**, of an on-supplier’s premises, means a part of the premises that the on-supplier and each lessee or other person the on-supplier has given a right to use the premises have agreed is a common area of the premises.

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63 For the consequence of failure to comply with this part, see section 288 (Unlawfully selling reticulated fuel gas).

*Examples of a part of an on-supplier's premises that may be a common area—*

- community, entertainment, information and leisure facilities in a caravan park
- malls and walkway
- parking areas
- rest rooms and toilets.

(2) “**Common area consumption**”, for an on-supplier's premises, is the whole or part of the fuel gas consumed in a common area of the on-supplier's premises.

### **215 Accounting periods**

(1) An “**accounting period**”, for an on-supply agreement, is a period of 1 year beginning on a day fixed by the on-supplier.

(2) The “**first accounting period**”, for an on-supply agreement, is the accounting period in which the agreement is made, or proposed to be made.

### **216 Restriction of application of pt 3 for LPG**

This part does not apply to the supply by an on-supplier of LPG from a pressurised container located on the on-supplier's premises.

*Example—*

This part does not apply for 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.<sup>64</sup>

## ***Division 2—On-supply agreements***

### **217 On-supply agreements**

(1) An on-supplier and a receiver may agree about how—

- (a) the on-supplier is to supply fuel gas to the receiver; or
- (b) the on-supplier may charge the receiver for common area consumption for the on-supplier's premises.

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<sup>64</sup> However, in the circumstance mentioned in the example see also section 286 (Unlawfully operating distribution pipeline).

(2) The agreement may provide for a stated charge or for no charge for the supply or common area consumption.<sup>65</sup>

(3) The agreement may be—

- (a) written or oral; or
- (b) made in any way permitted by law; or
- (c) incorporated in a lease or other agreement between the on-supplier and the receiver.

(4) An agreement made under this section is called an “**on-supply agreement**”.

*Division 3—Preliminary disclosure requirements about  
common area charges*

### **218 Application of div 3**

This division applies if—

- (a) a person (the “**prospective on-supplier**”) proposes to enter into an on-supply agreement as an on-supplier; and
- (b) under the agreement, the on-supplier will charge someone else (the “**prospective receiver**”) for common area consumption for the on-supplier’s premises.

### **219 Preliminary consumption estimate**

(1) The prospective on-supplier must, within a reasonable period before making the on-supply agreement, give the prospective receiver—

- (a) notice of the accounting period that is to apply to the on-supply agreement; and
- (b) an estimate of the common area consumption for the first accounting period for the agreement.

(2) In deciding what is reasonable for subsection (1), regard must be had to whether the period was enough to allow the prospective receiver to

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<sup>65</sup> See however sections 231 (Requirement to comply with notified prices) and 232 (Additional consequences of failure to comply with notified prices).



estimate his or her liability for the common area consumption for the first accounting period for the agreement.

### **220 Required contents for on-supply agreement**

(1) The prospective on-supplier must not enter into the on-supply agreement unless it provides for—

- (a) how the common area consumption is to be worked out; and
- (b) if the receiver is only required to pay part of the common area consumption—how that part is to be worked out.

(2) Subject to section 221, a failure to comply with subsection (1) does not invalidate or otherwise affect the agreement.

### **221 Additional consequences of not complying with div 3**

(1) This section does not limit section 288.<sup>66</sup>

(2) This section applies if the prospective on-supplier—

- (a) does not comply with section 219(1) before entering into the on-supply agreement; or
- (b) enters into an on-supply agreement in contravention of section 220.

(3) The receiver under the agreement, may by notice to the on-supplier, terminate any liability that the receiver would, other than for this section, have had for common area consumption to which the agreement applies.

(4) However, the notice may be given only within 2 months after the agreement is made.

(5) A termination under this section ends any liability for common area consumption accrued or incurred under the agreement or otherwise at any time before or after the termination.

(6) To remove any doubt, it is declared that a termination under this section does not, of itself, affect any other liability of the receiver to the on-supplier under the agreement or another agreement.

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66 Section 288 (Unlawfully selling reticulated fuel gas)

***Division 4—Individual metering*****222 Individual metering option**

(1) This section applies if an on-supply agreement for the supply of fuel gas from an on-supplier to a receiver is in force.

(2) The receiver may, at any time—

- (a) elect, by notice to the on-supplier, to be charged on the basis of the receiver's consumption of fuel gas supplied from the on-supplier, as measured by a meter; and
- (b) install the meter, at the receiver's expense.

(3) However, the election has effect only if the installation—

- (a) complies with the Gas (Residual Provisions) Act and any other relevant Act; and
- (b) is done in a way—
  - (i) that complies with any reasonable written directions the on-supplier gives the receiver within 5 business days after the giving of the notice; or
  - (ii) if no written directions are given within the 5 business days—that is reasonable.

(4) In deciding what is reasonable for subsection (3), regard must be had to the interests of the on-supplier and anyone who is an occupier of the on-supplier's premises.

**223 Compensation for installation damage**

(1) This section applies if—

- (a) a receiver has, under section 222, given an on-supplier a notice of election; and
- (b) the receiver installs a meter for fuel gas supplied from the on-supplier to the receiver; and
- (c) either—
  - (i) no written direction was given by the on-supplier under section 222(3)(b); or

- (ii) the installation was done in a way that does not comply with the on-supplier's reasonable written directions under that section; or
- (iii) the installation was not done in a way that is reasonable; and
- (d) a person as follows (the “**claimant**”) suffers damage to property because of the installation—
  - (i) the on-supplier;
  - (ii) anyone who is an occupier of the on-supplier's premises.

(2) Compensation for the damage is payable by the receiver to the claimant.

(3) The compensation may be claimed and recovered in a proceeding brought in a court of competent jurisdiction.

(4) In making the order the court must have regard to—

- (a) whether it was reasonable for the claimant to give the receiver an opportunity to fix the damage; and
- (b) if paragraph (a) applies—whether the receiver was given a reasonable period to fix the damage.

### *Division 5—Disclosure requirements for common area consumption charges*

#### **224 Application of div 5**

This division applies if, under an on-supply agreement, the on-supplier may charge a receiver for common area consumption.

#### **225 Periodic consumption estimates**

(1) The on-supplier must, for each accounting period after the first accounting period for the agreement, give the receiver an estimate of the common area consumption for the on-supplier's premises during the accounting period.

(2) An estimate for an accounting period must be given at least 1 month before the accounting period begins.

**226 Audited statements for each accounting period**

(1) The on-supplier must, for each accounting period give the receiver audited statements of the common area consumption.

(2) A statement for an accounting period must—

- (a) comply with section 227; and
- (b) be given within 3 months after the accounting period ends.

**227 Content requirements for audited statement**

Each audited statement under section 226 must—

- (a) comply with the standards in the statements of accounting and auditing standards made by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia (the “**bodies**”); and
- (b) be prepared by a person (the “**auditor**”) who is—
  - (i) registered, or taken to be registered, as an auditor under the Corporations Act; or
  - (ii) a member of, and holds a practising certificate from, either of the bodies; and
- (c) contain the auditor’s opinion about whether the statement presents fairly the on-supplier’s charges for the common area consumption during the period to which it relates, in accordance with the on-supplier’s financial records; and
- (d) compare each relevant estimate given under this part with the amount actually spent by the on-supplier on the common area consumption during the period; and
- (e) compare the total amount actually spent by the on-supplier on common area consumption during the period with the amount actually paid for the period by anyone for the on-supplier’s premises.

## **PART 4—PRICING AND SERVICE QUALITY STANDARDS**

### **228 Fixing of prices for customer retail services or on-supply**

(1) The Minister may fix prices, or a methodology to fix the prices, for—

- (a) the provision of services that are, or relate to, customer retail services for protected customers; or
- (b) the supply of fuel gas by on-suppliers to receivers.<sup>67</sup>

*Examples of matters for which prices or a methodology may be fixed—*

- charges for selling fuel gas
- security for the provision of customer retail services
- charges or fees for late or dishonoured payments
- charges or fees for discontinuing or recommencing customer connection or retail services.

(2) The power under subsection (1) includes a power to fix maximum prices or a methodology to fix maximum prices.

(3) In exercising the power, the Minister must consider the interests of protected customers, receivers, retailers and on-suppliers to whom the prices or methodology will apply.

*Example of the interests of protected customers or receivers—*

Protection from rapid price increases.

*Example of the interests of retailers—*

The legitimate business interest of retailers, including, for example, the economic sustainability of the provision of customer retailer services by a retailer to all protected customers to which the retailer is required to provide the services.

(4) The prices, or prices fixed under the methodology, are called “**notified prices**”.

(5) The notified prices, or methodology to fix the prices—

- (a) must be notified by gazette notice; and
- (b) take effect on the later of the following days—
  - (i) the day the notice is gazetted;

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<sup>67</sup> See also section 320(3) (Delegation by Minister).

- (ii) if the gazette notice states a later day of effect—the later day.

### **229 Review of notified prices**

(1) A retailer or on-supplier to whom notified prices apply may ask the Minister to review the notified prices.

(2) The Minister must complete the review within a reasonable period after the request was made.

### **230 Public advertisement of notified prices**

(1) The regulator may, at any time, publish in a newspaper generally circulating throughout the State a notice giving particulars of any notified prices that apply to a stated retailer.

(2) If the regulator asks, the retailer must pay the regulator's reasonable costs of the publication.

### **231 Requirement to comply with notified prices**

(1) If—

- (a) there is a notified price for the provision of services that are, or relate to, customer retail services; and
- (b) the notified price applies to a retailer;

the retailer must comply with the notified price unless otherwise required under the retailer of last resort scheme.

Maximum penalty—500 penalty units.

(2) If—

- (a) there is a notified price for the supply of fuel gas by on-suppliers to receivers; and
- (b) the notified price applies to an on-supplier;

the on-supplier must comply with the notified price unless otherwise required under the retailer of last resort scheme.

Maximum penalty—500 penalty units.

**232 Additional consequences of failure to comply with notified prices**

(1) This section applies if—

- (a) a retailer or on-supplier contravenes a notified price for a matter;  
and
- (b) the contravention was not caused by a compliance with the retailer of last resort scheme.

(2) The retailer or on-supplier has no right to recover from the relevant customer or receiver any amount for the matter that is more than the notified price.

(3) The customer or receiver may recover from the retailer or on-supplier as a debt any amount paid for the matter that is more than the notified price.

(4) The failure to comply with the notified price does not, of itself, affect the customer's or receiver's liability to the retailer or on-supplier to pay an amount for the matter that is no more than the notified price.

(5) This section applies despite any customer retail contract or on-supply agreement.

**233 Directions for prices notification**

(1) The Minister may, by notice, give a retailer or on-supplier a direction to do any of the following if the Minister reasonably believes the direction may help the Minister to fix notified prices—

- (a) give the Minister stated information at stated reasonable times or intervals;
- (b) keep stated records;
- (c) give the Minister copies of the records at stated times or intervals.<sup>68</sup>

*Examples of stated information—*

- how many customers the retailer has in stated consumption ranges
- how many customers the retailer has in stated consumption ranges
- the total fuel gas supplied to the retailer's customers
- how much fuel gas the retailer supplied its customers in stated consumption ranges

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68 See also section 318 (Confidentiality of particular information).

- the cost of fuel gas at the point, commonly called the ‘city gate’, where a distributor’s distribution system connects with a transmission pipeline
- the fees and charges paid to the retailer for customer retail services
- the retailer’s gas transportation costs
- the cost to the retailer of fuel gas
- the retailer’s margin for fuel gas supplied
- the total cost to the retailer’s customers of fuel gas supplied
- the retailer’s total revenue from customer retail services
- a profile of the number of the retailer’s customers in stated consumption ranges
- other information relating to the retailer’s cost and revenue bases for fuel gas supply.

(2) The direction must be accompanied by, or include, an information notice about the decision to give the direction.

### **234 Requirement to comply with direction for prices notification**

If a retailer or on-supplier is given a direction under section 233, the retailer must comply with the direction unless the retailer has a reasonable excuse.

Maximum penalty—500 penalty units.

### **235 Standards about quality of customer retail services**

(1) A regulation may provide for standards about the quality of customer retail services.

(2) A retailer must not contravene the standards.

Maximum penalty—100 penalty units.

(3) QCA must, if the regulator asks, monitor, investigate and report to the regulator on compliance with the standards.



## CHAPTER 4—SUFFICIENCY OF SUPPLY

### PART 1—PRELIMINARY

#### 236 Who is a “industry participant”

Each of the following is a “industry participant”—

- (a) a distributor;
- (b) a retailer;
- (c) the holder of a transmission pipeline licence;
- (d) a person who—
  - (i) holds a petroleum lease under the *Petroleum Act 1923*; and
  - (ii) conducts a business in relation to the lease that significantly affects, or may significantly affect, the supply of fuel gas to the community or part of the community;
- (e) a person who ships gas to a retail market under an agreement with a person who is an industry participant under paragraph (a), (b), (c) or (d);
- (f) a customer who, in the last 12 months, consumed more than 100 TJ of fuel gas;
- (g) a customer who, in the next 12 months, is likely to consume more than 100 TJ of fuel gas.

### PART 2—CONTINGENCY SUPPLY PLANS

#### 237 Regulator’s power to require plan

(1) The regulator may, by notice, require an industry participant to, within a stated reasonable period, make a plan that complies with section 239 for the contingency supply of fuel gas (a “contingency supply plan”).

(2) The industry participant must comply with the notice.

Maximum penalty—500 penalty units.

(3) For subsection (1), the plan is not made until the regulator is given a copy.

(4) Before the industry participant makes the plan, the participant must make reasonable endeavours in the circumstances to consult with the regulator and stakeholders in the fuel gas industry about the proposed plan.

(5) However, subsection (4) does not apply if the industry participant has made a plan under another Act and the plan complies or substantially complies with section 239.

(6) A failure to comply with subsection (4) does not invalidate or otherwise affect the plan.

### **238 Regulator’s power to make plan**

(1) If, in contravention of section 237, an industry participant does not make a contingency supply plan, the regulator may, by notice to the participant, make the plan for the participant.

(2) However, before making the plan, the regulator must give the industry participant—

- (a) a proposed plan; and
- (b) a reasonable opportunity to make submissions to the regulator about the proposed plan.

(3) This section does not prevent the industry participant from making another contingency supply plan or amending the plan made by the regulator if the other plan or amended plan complies with the content requirements.

### **239 Contingency supply plan—content requirements**

(1) This section imposes requirements (the “**content requirements**”) for an industry participant’s contingency supply plan.

(2) Despite the content requirements, a matter must not be provided for in the plan to the extent it conflicts with—

- (a) a requirement under the Gas (Residual Provisions) Act or a provision of a relevant safety management plan made under another Act; or

(b) a contingency supply plan made for the State by the regulator.

(3) The plan must—

(a) identify the contingencies or events that may lead to an interruption or curtailment of fuel gas supply in relation to the industry participant; and

(b) provide for the following if any of the contingencies or events happen—

(i) alternative arrangements for fuel gas supply;

(ii) a list stating the priority for supply to customers, or types of customer;

(iii) how essential services are to be supplied; and

(c) give information on the types of customer each contingency or event is likely to affect; and

(d) contact details for the industry participant; and

(e) another matter prescribed under a regulation.

(4) The alternative arrangements must, as far as reasonably practicable, ensure supply to customers is maximised if any of the contingencies or events happen.

### **240 Requirement to comply with plan**

If a contingency or event identified in an industry participant's contingency supply plan happens, the industry participant must comply with the plan, unless the industry participant has a reasonable excuse.

Maximum penalty—500 penalty units.

### **241 Limitation of industry participant's liability because of compliance with plan**

(1) This section applies if—

(a) a person incurs a cost, damage or loss because of an act done or omission made by an industry participant; and

(b) doing the act or making the omission was required by the industry participant's contingency supply plan.

(2) The industry participant is not civilly liable for the cost, damage or loss if—

- (a) in doing the act or making the omission the industry participant complied with this Act and the conditions of any relevant distribution or retail authority; and
- (b) the doing of the act or the making of the omission was carried out in good faith and without negligence.

(3) Subsection (2)—

- (a) is subject to any agreement between the person and the industry participant; and
- (b) does not limit section 6(3).<sup>69</sup>

## **242 When plan must be revised**

(1) This section applies if—

- (a) a circumstance happens that affects, or may affect, an industry participant's contingency supply plan complying with the content requirements; and
- (b) the industry participant becomes aware, or ought reasonably to have become aware, of the happening of the circumstance.

(2) The industry participant must, as soon as practicable, amend or re-make the plan so that it complies with the content requirements.

Maximum penalty—500 penalty units.

(3) For subsection (2), the plan is not amended or re-made until the regulator is given a copy.

## **243 Regulator's power to amend plan**

(1) If the regulator reasonably believes an industry participant's contingency supply plan does not comply with the content requirements, the regulator may, by complying with subsections (3) and (4), amend the plan so that it does comply with the requirements.

(2) The regulator must give the industry participant a notice stating each of the following—

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<sup>69</sup> Section 6 (Act does not affect other rights or remedies)

- (a) how the plan does not comply with the requirements;
- (b) that the regulator proposes to amend the plan so that it does comply;
- (c) the proposed amendment;
- (d) that the industry participant may within a stated reasonable period—
  - (i) amend the plan so that it does comply with the requirements; or
  - (ii) make written submissions to the regulator about why the proposed amendment should not be made.

(3) The regulator must consider any written submissions or amendments made by the industry participant within the stated period.

(4) The amendment does not take effect until the industry participant is given an information notice about the decision to make the amendment.

(5) This section does not prevent the industry participant from further amending the plan if the further amended plan complies with the content requirements.

(6) In this section—

“**amend**” includes re-make and replace.

## **PART 3—INFORMATION REQUIREMENTS**

### **244 Notice of significant disruption**

If an industry participant becomes aware of any significant disruption, or event likely to result in a significant disruption, to the supply of fuel gas, the participant must, as soon as practicable, give the regulator notice of the disruption or event.

Maximum penalty—100 penalty units.

## **245 Regulator's power to require information from industry participant**

(1) This section applies if the regulator reasonably believes an industry participant has information that will help the regulator assess the current or probable future sufficiency of supply of fuel gas.

*Examples of information—*

- fuel gas production and estimated future production, by location
- fuel gas purchases, by location
- fuel gas supplied and future contractual obligations to supply, by location
- the number of customers in each stated class of customer
- transportation prices
- fuel gas prices for a stated class of customer
- estimated reserves of coal seam gas and natural gas.

(2) The regulator may, by notice, require the industry participant to give the regulator in the approved form stated information of a type mentioned in subsection (1), at stated reasonable times or intervals.

(3) The direction must be accompanied by, or include, an information notice about the decision to give the direction.<sup>70</sup>

## **246 Failure to comply with information requirement**

(1) An industry participant of whom a requirement under section 245 has been made must comply with the requirement unless the participant has a reasonable excuse.

Maximum penalty—500 penalty units.

(2) It is a reasonable excuse not to give the information if giving it might tend to incriminate the industry participant.

## **247 Notice of intention to stop fuel gas transport or customer connection or retail services**

(1) The holder of a transmission pipeline licence for a pipeline that transports fuel gas must give the regulator the required notice at least

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<sup>70</sup> See also section 318 (Confidentiality of particular information).

3 months before stopping, or significantly reducing, the transportation of fuel gas through the pipeline.

Maximum penalty—100 penalty units.

(2) An area distributor must give the regulator the required notice at least 6 months before stopping, or significantly reducing, the provision of customer connection services.

Maximum penalty—100 penalty units.

(3) A retailer must give the regulator the required notice at least 6 months before stopping, or significantly reducing, the provision of customer retail services.

Maximum penalty—100 penalty units.

(4) Subsections (1) to (3)—

- (a) do not apply for a distributor or retailer if the stoppage or reduction is because of a discontinuance under chapter 2; and
- (b) do not apply if there is a reasonable excuse for the stopping or significant reduction.

(5) In this section—

**“required notice”** means a notice stating each of the following—

- (a) whether the notice is a notice of a stoppage or of a significant reduction;
- (b) reasons for the stoppage or reduction;
- (c) each type of customer (**“affected customers”**) who will, or are likely to be, affected by the stoppage or reduction;
- (d) details of any arrangements that have been, or will be, put in place to ensure affected customers continue to be supplied with fuel gas;
- (e) information to be provided to affected customers about the stoppage or reduction and the arrangements;
- (f) details of any level of help to be to be offered to affected customers.

## **PART 4—RETAILER OF LAST RESORT SCHEME**

### **248 Regulation may provide for scheme**

A regulation may provide for—

- (a) the establishment of a scheme to be called the ‘retailer of last resort scheme’; and
- (b) the compulsory participation in the scheme by industry participants whose activities affect the sale of reticulated processed natural gas.

### **249 Primary objects of scheme**

The primary objects of the retailer of last resort scheme are to—

- (a) manage the effects of a retailer being unable to sell reticulated processed natural gas to its customers (a “**defaulting retailer**”); and
- (b) protect customers of a defaulting retailer from interruption in the sale to them of reticulated processed natural gas.

### **250 Matters that may be provided for under scheme**

Without limiting section 249, the retailer of last resort scheme may provide for any of the following—

- (a) other objects of the scheme;
- (b) circumstances in which it applies;
- (c) industry participants to which it applies;
- (d) customers, or types of customer, to benefit from the scheme;
- (e) a default customer retail contract;
- (f) the effects of the scheme applying to a defaulting retailer and its affected customers, including, for example, the following—
  - (i) a charter for the scheme, including, for example, its duration and other matters concerning its administration;
  - (ii) ending the defaulting retailer’s customer retail contracts with its affected customers;



- (iii) ending the defaulting retailer's customer connection contract for its affected customers' premises;
- (iv) a default customer retail contract taken to have been entered into between each of the affected customers and the retailer of last resort;
- (v) a default customer connection contract taken to be entered into between the retailer of last resort and a distributor for the premises of each affected customer;
- (g) the imposition of requirements on distributors to ensure the sale of reticulated fuel gas to the defaulting retailer's customers is not interrupted;
- (h) the regulator's functions and powers under the scheme, including, for example, any of the following—
  - (i) establishing the charter for a particular defaulting retailer and its affected customers;
  - (ii) applying the scheme to a particular defaulting retailer and to particular customers or class of customers;
  - (iii) appointing a retailer to be the retailer of last resort;
  - (iv) procedures to be followed in making the appointment;
  - (v) supervising and giving directions to the retailer of last resort about the administration of the scheme;
- (i) the imposition of conditions on relevant retailers to give effect to the scheme;
- (j) fees for customer retail services or other services provided under the scheme.

## **PART 5—INSUFFICIENCY OF SUPPLY DECLARATIONS AND DIRECTIONS**

### *Division 1—Insufficiency of supply declarations*

#### **251 Minister’s power to make declaration**

The Minister may make a declaration (an “**insufficiency of supply declaration**”) that this part applies to a stated area if the Minister reasonably believes the supply of fuel gas in the area—

- (a) is, or is likely to be, disrupted; or
- (b) is, or is likely to become, insufficient for the reasonable requirements of the community, or a part of the community, in the area.

*Examples of when the supply of fuel gas may be disrupted—*

- 1. A retailer for the area has given a notice under section 247.<sup>71</sup>
- 2. A retailer for the area becomes an externally-administered body corporate under the Corporations Act and the retailer’s financial position does not, or may not, allow the retailer to continue to sell fuel gas in the area.

#### **252 Requirements for making declaration**

(1) Generally, an insufficiency of supply declaration must be made by gazette notice.

(2) However, the Minister may make an insufficiency of supply declaration by another document if the Minister is reasonably satisfied extraordinary circumstances require it to be made immediately.

(3) If an insufficiency of supply declaration is made under subsection (2), the Minister must immediately publish the making of the declaration in the way the Minister considers most appropriate to notify persons likely to be affected by it.

(4) A failure to comply with subsection (3) does not invalidate or otherwise affect the declaration.

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71 Section 247 (Notice of intention to stop fuel gas transport or customer connection or retail services)

**253 Duration of declaration**

(1) If an insufficiency of supply declaration was not made by gazette notice, it expires on the third day after its making.

(2) If an insufficiency of supply declaration is not tabled in the Legislative Assembly before the end of the next sitting day after its making, it expires at the end of that day.

(3) Otherwise, an insufficiency of supply declaration continues in force until—

- (a) any time provided in the declaration for its expiry; or
- (b) it is repealed.

***Division 2—Insufficiency of supply directions*****254 Minister’s power to give directions while declaration in force**

(1) The Minister may give a person as follows a direction (“**an insufficiency of supply direction**”) to do or not do something to ensure the safe supply of fuel gas to customers in the area the subject of an insufficiency of supply declaration—

- (a) an industry participant;
- (b) a stated customer, or type of customer.

(2) However, before making the direction, the Minister must, if it is practicable to do so, give the person a reasonable opportunity to make submissions about the proposed direction.

(3) A failure to comply with subsection (2) does not invalidate or otherwise affect the direction.

(4) Subsection (1)(a) applies even if the person or the relevant business of the person is not in the area.

(5) The direction may be given in any way the Minister considers appropriate including, for example, by—

- (a) publishing a notice in a newspaper; or
- (b) television transmission or radio broadcast.

*Examples of possible insufficiency of supply directions—*

1. A direction to control, direct, restrict, or prohibit the production, distribution, supply, or the consumption or use of, fuel gas.
2. A direction to a person who extracts, produces, transports or distributes fuel gas to extract, produce or transport it for supply, or to extract produce, transport or distribute it in a stated way.
3. A direction to comply with stated conditions for the extraction, production, distribution, supply or consumption or use of fuel gas.
4. A direction to carry out stated work to ensure the production, distribution or transportation or supply of fuel gas.
5. A direction to make available stated gas infrastructure.
6. A direction not to operate or use stated gas infrastructure, or to use it only with the Minister's consent.
7. A direction fixing prices for fuel gas.
8. Directing an occupier of land to allow a stated person authorised by the Minister, to enter the land to carry out a stated activity to ensure the safe supply of fuel gas in the area.
9. A direction to comply with a contingency supply plan made for the State by the regulator.

**255 Failure to comply with direction**

(1) A person to whom an insufficiency of supply direction has been given must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

(2) It is a reasonable excuse to not comply with the direction if compliance would reasonably, or is reasonably likely to, result in a risk to—

- (a) the safety of any one; or
- (b) the operation or security of a pipeline or other plant or equipment.

**256 Liability of recipient for fuel gas supplied under direction**

(1) This section applies if—

- (a) under an insufficiency of supply direction a person (the “**supplier**”) supplies someone else (the “**recipient**”) with fuel gas; and

- (b) the recipient consumes the fuel gas; and
- (c) the supplier was not, other than for the direction, legally obliged to supply the fuel gas to the recipient.

(2) The recipient must, unless the Minister otherwise approves, pay the supplier a reasonable amount for the fuel gas.

(3) In working out what is a reasonable amount for the fuel gas, regard must be had to—

- (a) the cost to the supplier of producing or transporting the gas; and
- (b) any lost revenue to the supplier as a result of the gas being redirected.

### **257 Direction overrides contracts**

If there is an inconsistency between an insufficiency of supply direction and a contract as follows, the direction prevails to the extent of the inconsistency—

- (a) a customer connection contract;
- (b) a customer retail contract;
- (c) another contract relating to the production, transport or sale of fuel gas.<sup>72</sup>

## **CHAPTER 5—DISPUTE RESOLUTION**

### **PART 1—REGULATOR’S ROLE**

#### **258 Complaint investigation and dispute resolution**

The regulator’s functions under this Act include—

- (a) investigating complaints by customers about the performance or operation of distributors or retailers; and

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<sup>72</sup> See also section 315 (Protection from civil liability for particular persons).

- (b) the referral, under part 2, of disputes between a distributor or retailer and a customer; and
- (c) the resolution, under part 3, of disputes between a distributor and a public entity about gas infrastructure work or proposed gas infrastructure work.

### **259 Regulator's power to require information**

(1) The regulator may, by notice, require a distributor, retailer or public entity (the “**party**”) to give the regulator stated information the regulator reasonably requires to enable the regulator to perform the functions under section 258.

(2) The notice must be accompanied by, or include, an information notice about the decision to make the requirement.

(3) The information must be given within a reasonable period after the regulator gives the notice, unless the party has a reasonable excuse.

Maximum penalty—500 penalty units.

(4) It is a reasonable excuse not to give the information if giving it might tend to incriminate the party.

## **PART 2—CUSTOMER DISPUTES**

### *Division 1—Preliminary*

#### **260 Application of pt 2**

(1) This section applies to a customer only if the customer's consumption of reticulated fuel gas has been less than 1 TJ in all 12 month periods.

(2) This part applies to disputes between a distributor or retailer and the customer about any of the following—

- (a) whether the distributor or retailer is obliged under this Act to grant an application for customer connection or retail services to premises of the customer;

- (b) if the customer is a protected customer—whether the terms of a customer connection or retail contract, or proposed customer connection or retail contract are fair and reasonable;
- (c) the performance of a function or exercise of a power of the distributor or retailer under this Act;
- (d) the performance or operation of an entity as a distributor or retailer.

(3) This part applies even if the dispute may be dealt with under another Act.<sup>73</sup>

(4) However, this part does not apply if the dispute may be dealt with under—

- (a) the *Queensland Competition Authority Act 1997*; or
- (b) the Gas Pipelines Access Law.

## **261 Availability of other remedies**

Subject to section 120ZR of the *Electricity Act 1994*, as applied by section 265,<sup>74</sup> this division does not prevent a party to the dispute exercising other rights before a court or tribunal or otherwise.

### *Division 2—Procedure*

## **262 Referral to regulator**

- (1) A party to the dispute may refer it to the regulator.
- (2) The referral must be in the approved form.

## **263 Further referral to energy mediator or arbitrator**

(1) The regulator must refer the dispute to an energy mediator if the customer requests the referral.

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73 See, for example, the *Gas Regulation 1989*, section 57 (Testing for correctness of registration).

74 *Electricity Act*, section 120ZR (Exclusion of other jurisdictions) and section 265 of this Act (Disputes referred to energy arbitrator)

- (2) The regulator must refer the dispute to an energy arbitrator if—
- (a) the customer requests the referral, whether or not the dispute has already been referred to an energy mediator; or<sup>75</sup>
  - (b) mediation of the dispute by an energy mediator has ended without a mediated agreement about the whole of the dispute being made.<sup>76</sup>
- (3) The referral or request must be written.
- (4) The regulator must not make a referral if—
- (a) the regulator considers the subject of the dispute, as referred to the regulator, is frivolous or vexatious; or
  - (b) the regulator knows a party to the dispute has started a proceeding concerning an issue in the dispute.
- (5) A dispute must not be referred to an energy arbitrator to whom the dispute, or part of the dispute, has been referred to as an energy mediator.
- (6) In this section—

**“energy arbitrator”** means an energy arbitrator under the Electricity Act.

**“energy mediator”** means an energy mediator under the Electricity Act.

## **264 Disputes referred to energy mediator**

If, under section 263, a dispute is referred to an energy mediator, the Electricity Act, chapter 5, part 1B<sup>77</sup> applies—

- (a) as if the dispute were a dispute referred to an energy mediator under section 119(5)<sup>78</sup> of that Act; and
- (b) as if a reference in the part to the regulator were a reference to the regulator under this Act; and

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75 See also the Electricity Act, section 120ZN(1)(c) (When mediation ends).

76 See also the Electricity Act, chapter 5, part 1C (Disputes referred to energy arbitrator).

77 Electricity Act, chapter 5, part 1B (Disputes referred to energy mediator)

78 Electricity Act, section 119 (Regulator’s role in disputes between electricity entity and customers or occupiers)



- (c) as if the reference in section 120ZJ(2)(b)<sup>79</sup> of that Act referred to this Act; and
- (d) as if the reference in section 120ZN(1)(c)<sup>80</sup> of that Act to section 119(6)(a) of that Act were a reference to section 263(2) of this Act.

### **265 Disputes referred to energy arbitrator**

If, under section 263, a dispute is referred to an energy arbitrator, the Electricity Act, chapter 5, part 1C<sup>81</sup> applies—

- (a) as if the dispute were a dispute referred to an energy arbitrator under section 119(6)<sup>82</sup> of that Act; and
- (b) as if a reference in the part to the regulator were a reference to the regulator under this Act; and
- (c) as if the reference in section 120ZJ(2)(b)<sup>83</sup> of that Act referred to this Act; and
- (d) as if the reference in section 120ZZE(2) of that Act to section 133(1) of that Act were a reference to—
  - (i) for a distributor—section 57 of this Act; or
  - (ii) for a retailer—section 181 of this Act.<sup>84</sup>

## **PART 3—GAS INFRASTRUCTURE WORK DISPUTES**

### **266 Application of pt 3**

This part applies to a dispute between a distributor and a public entity about gas infrastructure work or proposed gas infrastructure work.

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79 Electricity Act, section 120ZJ (Energy mediator to maintain secrecy)

80 Electricity Act, section 120ZN (When mediation ends)

81 Electricity Act, chapter 5, part 1C (Disputes referred to energy arbitrator)

82 Electricity Act, section 119 (Regulator's role in disputes between electricity entity and customers or occupiers)

83 Electricity Act, section 120ZJ (Energy mediator to maintain secrecy)

84 Sections 57 and 181 (Conditions for amendment, cancellation or suspension)

**267 Referral to regulator to mediate**

Either party to the dispute may refer it to the regulator to mediate.

**268 Regulator's powers**

The regulator may—

- (a) give instructions about procedures to be followed by the parties to the dispute to attempt to resolve it before the regulator mediates it;<sup>85</sup> or
- (b) engage someone else, other than a court, to help mediate the dispute; or
- (c) decide not to mediate the dispute and refer it to the Governor in Council to decide.

**269 Resolution by Governor in Council**

(1) This section applies if the regulator refers the dispute to the Governor in Council to decide.

(2) Before deciding the dispute, the Governor in Council must—

- (a) give the parties a reasonable opportunity to make written submissions about the dispute; and
- (b) have regard to any submissions made under paragraph (a).

(3) The submissions must be made to the regulator.

(4) The Governor in Council's decision binds the parties.

**270 Exclusion of other jurisdictions**

(1) If the dispute has been referred to the Governor in Council, the following matters are not justiciable by a court or tribunal at the instigation of a party to the dispute—

- (a) the issue in the dispute;
- (b) any issue that emerges in the course of the Governor in Council's deciding of the dispute.

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85 See also section 259 (Regulator's power to require information).

(2) However, subsection (1) does not apply if the proceeding before the court or tribunal was started before the dispute was referred to the Governor in Council.

## CHAPTER 6—MISCELLANEOUS PROVISIONS

### PART 1—REVIEWS AND APPEALS

#### *Division 1—Reviews*

#### **271 Who may apply for review**

(1) A person who has been given, or is entitled to be given, an information notice about a decision under this Act mentioned in schedule 2 (an “**original decision**”) may apply for a review of the decision (a “**review application**”).

(2) A review application may be made only to the following person (the “**reviewer**”)—

- (a) if the original decision to which the application relates was made by the regulator—the Minister;
- (b) otherwise—the regulator.

#### **272 Requirements for making review application**

(1) A review application must be—

- (a) made within 20 business days after—
  - (i) if the person has been given an information notice about the original decision to which the application relates—the day the person is given the notice; or
  - (ii) if subparagraph (i) does not apply—the day the person otherwise becomes aware of the original decision; and
- (b) made in the approved form; and

- (c) accompanied by a statement of the grounds on which the applicant seeks the review of the decision; and
- (d) supported by enough information to enable the decision to be reviewed.

(2) However, the reviewer may extend the period for making the application.

### **273 Stay of operation of original decision**

(1) The reviewer may grant a stay of the original decision to secure the effectiveness of the review.

(2) A stay—

- (a) may be given on the conditions the reviewer considers appropriate; and
- (b) operates for the period fixed by the reviewer; and
- (c) may be amended or cancelled by the reviewer.

(3) The period of a stay under this section must not extend past the time when the reviewer decides the review.

(4) The review affects the decision, or carrying out of the decision, only if it is stayed.

### **274 Review decision**

(1) The reviewer must, within 20 business days after the review application is made—

- (a) review the original decision; and
- (b) make a decision (the “**review decision**”) to—
  - (i) confirm the original decision; or
  - (ii) amend the original decision; or
  - (iii) substitute another decision for the original decision.

(2) If the review decision confirms the original decision, for the purpose of an appeal, the original decision is taken to be the review decision.

(3) If the review decision amends the original decision, for the purpose of an appeal, the original decision as amended is taken to be the review decision.

**275 Review procedure**

(1) A review application for an original decision, other than an original decision made by the reviewer personally, must not be dealt with by—

- (a) the person who made the decision; or
- (b) a person in a less senior office than the person who made the decision.

(2) Subsection (1) applies despite the *Acts Interpretation Act 1954*, section 27A(7).<sup>86</sup>

(3) The reviewer may, in making the review decision, seek and take into account advice or information from any other person, including, for example, a review panel established by the reviewer.

**276 Reviewer may seek advice or information**

(1) To help the reviewer make the review decision, the reviewer may seek advice or information from any other person.

(2) The matters the reviewer may take into account in making the review decision include any advice or information obtained under subsection (1) for the decision or another review decision the reviewer has been asked to make.

(3) If the reviewer obtains advice or information under subsection (1) for the review decision or, in making the decision, takes into account advice or information the reviewer obtained for another review decision, the reviewer must—

- (a) if the advice or information is written—give a copy to the parties to the review; or
- (b) if the advice or information is oral—disclose the substance of the advice to the parties.

**277 Offence about disclosure of advice or information**

(1) This section applies if, under section 276, the reviewer gives a copy of advice or information, or discloses the substance of advice or information, to a party to the review.

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<sup>86</sup> The *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

(2) The party must not disclose the advice or information to another person unless the party has a reasonable excuse.

Maximum penalty—20 penalty units.

(3) It is a reasonable excuse for the party to make the disclosure if the disclosure is for the review or an appeal against the review decision.

### **278 Notice of review decision**

(1) The reviewer must, within 10 business days after making a review decision, give the applicant notice (a “**review notice**”) of the decision.

(2) If the review decision is not the decision sought by the applicant, the review notice must also include, or be accompanied by, an information notice about the decision.

(3) If the reviewer does not give the review notice within the 10 business days, the reviewer is taken to have made a review decision confirming the original decision.

## *Division 2—Appeals*

### **279 Who may appeal**

(1) A person who has been given, or is entitled to be given, a review notice for a review decision may appeal against the decision to the District Court.

(2) A person who has been given, or is entitled to be given, an information notice about a decision under section 233<sup>87</sup> may appeal against the decision to the District Court.

### **280 Period to appeal**

(1) The appeal must be started within 20 business days after—

(a) for an appeal from a review decision—

(i) if the person has been given a review notice about the review decision to which the appeal relates—the day the person is given the notice; or

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87 Section 233 (Directions for prices notification)

- (ii) if subparagraph (i) does not apply—the day the person otherwise becomes aware of the review decision; or
  - (b) for an appeal from another decision—
    - (i) if the person has been given an information notice about the decision—the day the person is given the notice; or
    - (ii) if subparagraph (i) does not apply—the day the person otherwise becomes aware of the decision.
- (2) However, the District Court may, at any time, extend the period for making an appeal.

### **281 Starting appeal**

- (1) The appeal is started by filing a written notice of appeal with the District Court.
- (2) A copy of the notice must be served on the original decider.

### **282 Stay of operation of decision**

- (1) The District Court may grant a stay of the decision to secure the effectiveness of the appeal.
- (2) A stay—
- (a) may be given on the conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or cancelled by the court.
- (3) The period of a stay under this section must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or carrying out of the decision, only if it is stayed.

### **283 Hearing procedures**

- (1) In deciding an appeal, the District Court—
- (a) has the same powers as the original decider; and
  - (b) is not bound by the rules of evidence; and

- (c) must comply with natural justice; and
  - (d) may hear the appeal in court or in chambers.
- (2) An appeal is by way of rehearing, unaffected by the decision.
- (3) Subject to subsections (1) and (2), the procedure for the appeal is—
- (a) in accordance with the rules for the court; or
  - (b) in the absence of relevant rules, as directed by the court.
- (4) A power under an Act to make rules for the court includes power to make rules for appeals under this division.

### **284 District Court's powers on appeal**

- (1) In deciding an appeal, the District Court may—
- (a) confirm the decision; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the issue to the original decider with the directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is, for this Act, other than this part, taken to be the decision of the original decider.

### **285 Appeals from District Court's decision**

An appeal to the Supreme Court against a decision of the District Court may be made only on a question of law.

## **PART 2—GENERAL OFFENCES**

### **286 Unlawfully operating distribution pipeline**

- (1) A person must not unlawfully operate a distribution pipeline.
- Maximum penalty—500 penalty units.



(2) A person unlawfully operates a distribution pipeline if the person transports fuel gas through the pipeline or provides customer connection services to premises in relation to the pipeline, unless—

- (a) a distribution authority authorising the transportation or customer connection services is in force and the person holds, or is acting under, the authority; or
- (b) the pipeline is completely within a lot, or contiguous lots, owned by the same person; or

*Example—*

A pipeline in a shopping centre on a lot or lots owned by the same person.

- (c) the pipeline is completely within contiguous lots if the fuel gas is only transported to 1 other person; or
- (d) the person is, or is acting for, an on-supplier and the transport or customer connection services complies with chapter 3, part 3;<sup>88</sup> or
- (e) the transport or customer connection services is carried out under an insufficiency of supply direction.<sup>89</sup>

### **287 Unlawful tampering with gas infrastructure**

A person must not wilfully tamper with a distributor's gas infrastructure unless the person has a lawful excuse.

Maximum penalty—500 penalty units.<sup>90</sup>

### **288 Unlawfully selling reticulated fuel gas**

(1) A person must not unlawfully sell reticulated fuel gas.

Maximum penalty—500 penalty units.<sup>91</sup>

(2) A person unlawfully sells reticulated fuel gas if the person sells reticulated fuel gas to someone else, unless—

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88 Chapter 3, part 3 (On-supply)

89 See however section 339 (Deferred application of ss 286 and 288 for particular persons).

90 See also section 295 (Evidence of tampering with gas infrastructure).

91 See also section 302 (Additional consequences of unlawfully selling reticulated fuel gas).

- (a) a retail authority or point-to-point distribution authority authorising the sale is in force and the person holds, or is acting under, the authority; or
- (b) the relevant distribution pipeline is completely within a lot, or contiguous lots, owned by the same person; or

*Example—*

A pipeline in a shopping centre on a lot or lots owned by the same person.

- (c) the relevant distribution pipeline is completely within contiguous lots if the fuel gas is only transported to 1 other person; or
- (d) the person is, or is acting for, an on-supplier and the on-supplier has complied with chapter 3, part 3 in relation to the sale and any on-supply agreement that relates to the sale;<sup>92</sup> or
- (e) the sale is made under an insufficiency of supply direction.<sup>93</sup>

## **289 Unlawfully taking fuel gas**

(1) A person must not unlawfully take fuel gas.

Maximum penalty—500 penalty units.

(2) A person unlawfully takes fuel gas if the person takes fuel gas from any of the following, unless the person has a lawful excuse—

- (a) a distribution pipeline;
- (b) a pipeline connected from the exit point of a meter installed for a customer's premises.<sup>94</sup>

## **290 False or misleading information**

(1) A person must not make an entry in a document required to be kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—60 penalty units.

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92 Chapter 3, part 3 (On-supply)

93 See however sections 339 (Deferred application of ss 286 and 288 for particular persons) and 340 (Deferred application of ss 288 and 302 for particular persons).

94 See also section 297 (Evidence of unlawful taking of fuel gas).

(2) A person of whom a direction or requirement under this Act has been made must not state anything or give a document or thing in response to the direction or requirement that the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.<sup>95</sup>

### **291 Attempts to commit offences**

(1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty for an attempt—half the maximum penalty for the completed offence.

(2) The Criminal Code, section 4<sup>96</sup> applies to subsection (1).

## **PART 3—OFFENCE PROCEEDINGS**

### *Division 1—General provisions*

### **292 Offences under Act are summary**

(1) An offence against this Act is a summary offence.

(2) A proceeding for an offence against this Act must start within the later of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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<sup>95</sup> See also section 294 (Allegations of false or misleading matters).

<sup>96</sup> The Criminal Code, section 4 (Attempts to commit offences)

**293 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

**294 Allegations of false or misleading matters**

(1) This section applies to a proceeding for an offence against this Act described as involving—

- (a) false or misleading information; or
- (b) a false or misleading document or statement.<sup>97</sup>

(2) It is enough for the complaint starting the proceeding to state the document, information or statement was 'false or misleading' to the defendant's knowledge, without specifying which.

(3) In the proceeding, evidence that the document, information or statement was given or made recklessly is evidence that it was given or made so as to be false or misleading.

**295 Evidence of tampering with gas infrastructure**

If—

- (a) on, or in association with, a customer's fuel gas installation there exists a way to change or tamper with a distributor's gas infrastructure; and
- (b) the gas infrastructure is in the control or custody of the customer; and
- (c) there is a change to or tampering with the gas infrastructure;

evidence of the existence of the way is evidence that the change or tampering has been caused by the customer.<sup>98</sup>

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97 See section 290 (False or misleading information).

98 See section 287 (Unlawful tampering with gas infrastructure).

**296 Conduct of representatives**

(1) This section applies to a proceeding for an offence against this Act if it is relevant to prove a person's state of mind about particular conduct.

(2) It is enough to show—

- (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person unless the person proves—

- (a) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct; or
- (b) the person was not in a position to influence the representative in relation to the conduct.

(4) In this section—

**“engaging”** in conduct includes failing to engage in conduct.

**“representative”** means—

- (a) for a corporation—an agent, employee or executive officer of the corporation; or
- (b) for an individual—an agent or employee of the individual.

**“state of mind”** of a person includes the person's—

- (a) belief, intention, knowledge, opinion or purpose; and
- (b) reasons for the belief, intention, opinion or purpose.

***Division 2—Provisions for proceedings for unlawfully taking fuel gas*****297 Evidence of unlawful taking of fuel gas**

If—

- (a) on, or in association with, a customer's fuel gas installation there exists a way to unlawfully take fuel gas; and

(b) fuel gas is unlawfully taken from the fuel gas installation; evidence of the existence of the way is evidence that the customer has unlawfully taken the fuel gas.

### **298 Proceeding may be for a period**

If the day or days on which a person is alleged to have been unlawfully taking fuel gas can not be established, the person may—

- (a) be charged with 1 offence of unlawfully taking fuel gas over, or at some unknown time during, a stated period; and
- (b) be convicted and punished accordingly.

### **299 Ownership of fuel gas for proceeding**

In a proceeding for an offence against this or another Act in which it is claimed fuel gas has been unlawfully taken, the fuel gas is taken to belong to any person through whose distribution or other pipeline the fuel gas was being transported when it was unlawfully taken.

## **PART 4—GENERAL REMEDIES<sup>99</sup>**

### **300 Forfeiture and costs of remedial work**

- (1) If a court convicts a person for an offence against this Act, it may—
- (a) order the forfeiture to the State of—
    - (i) anything used to commit the offence; or
    - (ii) anything else the subject of the offence; and
  - (b) make any order to enforce the forfeiture it considers appropriate; and

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<sup>99</sup> See also sections 101 (Compensation), 124 (Compensation for failure to discontinue or recommence), 145 (Compensation from distributor to owner or occupier) and 221 (Additional consequences of not complying with div 3).

- (c) order the person to pay the State the amount of costs it incurred for remedial work that was necessary or desirable because of the commission of the offence.
- (2) Forfeiture of a thing may be ordered—
- (a) whether or not it has been seized under another Act; and
  - (b) if it has been seized, whether or not it has been returned to its owner.

### **301 Additional consequences of unlawfully operating distribution pipe**

(1) This section applies if, under section 286,<sup>100</sup> a person unlawfully transports fuel gas or provides customer connection services.

(2) The person can not recover from anyone else an amount for—

- (a) the fuel gas; or
- (b) the transportation; or
- (c) the services.

(3) Subsection (2) applies whether or not the person has been convicted for an offence against section 286.

(4) If a court convicts a person for an offence against section 286 relating to the transportation or services, the court, or another court of competent jurisdiction, may order the person to pay the State the amount of any profits the person made because of the transportation or services.

### **302 Additional consequences of unlawfully selling reticulated fuel gas**

(1) This section applies if, under section 288,<sup>101</sup> a person unlawfully sells reticulated fuel gas to someone else.<sup>102</sup>

(2) The person can not recover from the other person an amount for—

- (a) the supply of the fuel gas; or
- (b) other customer retail services provided in relation to the supply.

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100 Section 286 (Unlawfully operating distribution pipeline)

101 Section 288 (Unlawfully selling reticulated fuel gas)

102 See however section 340 (Deferred application of ss 288 and 302 for particular persons).

(3) Subsection (2) applies whether or not the person has been convicted for an offence against section 288.

(4) If a court convicts a person for an offence against section 288 relating to the supply, the court, or another court of competent jurisdiction, may order the person to pay the State the amount of any profits the person made because of the supply.

### **303 Recovery of unlawful profits**

If a court convicts a distributor or retailer for an offence against this Act, the court or another court of competent jurisdiction, may order the distributor or retailer to pay the State the amount of any profits the distributor or retailer made because of the commission of the offence.

## **PART 5—EVIDENTIARY PROVISIONS**

### **304 Application of pt 5**

This part applies to a proceeding under or in relation to this Act.

### **305 Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of a distribution officer;
- (b) the power of the Minister or the regulator to do anything under this Act.

### **306 Signatures**

A signature purporting to be the signature of the Minister or the regulator is evidence of the signature it purports to be.



**307 Other evidentiary aids**

A certificate purporting to be signed by the regulator stating any of the following matters is evidence of the matter—

- (a) a stated document is a thing as follows given, issued, kept or made under this Act—
  - (i) an appointment, approval or decision;
  - (ii) a declaration, direction, notice or requirement;
  - (iii) a distribution or retail authority;
  - (iv) the register;
  - (v) another record;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
- (d) that, on a stated day—
  - (i) a stated person was given a stated decision, direction or notice under this Act; or
  - (ii) a stated requirement under this Act was made of a stated person;
- (e) on a stated day, or during a stated period, a distribution or retail authority—
  - (i) was, or was not, in force; or
  - (ii) was, or was not, subject to a stated condition; or
  - (iii) was, or was not, cancelled;
- (f) a stated amount is payable under this Act by a stated person and has not been paid.

**PART 6—REGISTER OF AUTHORITIES****308 Register**

The regulator must keep a register of—

- (a) details about distribution and retail authorities; and
- (b) other documents relating to this Act the regulator considers appropriate.

### **309 Keeping of register**

**(1)** The regulator must include in the register information about—

- (a) for a distribution authority—the matters mentioned in section 28(a) to (e); and
- (b) for a retail authority—the matters mentioned in section 149(a) to (c).<sup>103</sup>

**(2)** If an authority is cancelled, suspended or surrendered, the regulator must record in the register—

- (a) the cancellation, surrender or suspension, and when it took effect; and
- (b) for a suspension—when the suspension started and, if it is for a period, when it is to end.

**(3)** The regulator may include in the register other details about distribution or retail authorities.

**(4)** If under this Act there is a change relating to information kept in the register the regulator must—

- (a) amend the register to reflect the change; and
- (b) record in the register when the information was amended.

**(5)** For subsection (4), the change is made on the later of the following—

- (a) if the change requires approval under this Act—when it was approved;
- (b) when it takes effect.

### **310 Access to register**

**(1)** The regulator must—

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<sup>103</sup> Sections 28 and 149 (Requirements for application)

- (a) keep the register open for inspection by the public during office hours on business days at—
  - (i) the department’s head office; and
  - (ii) other places the regulator considers appropriate; and
- (b) allow a person to take extracts, free of charge, from the register; and
- (c) if a person asks for a copy of the register, or a part of it—give the person the copy on payment of an appropriate fee for the copy.

(2) This section does not apply to any part of the register that is FOI exempt matter.

(3) In this section—

“**appropriate fee**”, for a copy of a register, or a part of it, means a fee that is no more than the reasonable costs incurred in making and giving the copy.

## **PART 7—ADDITIONAL PROVISIONS FOR APPLICATIONS**

### **311 Substantial compliance with application requirements may be accepted**

If—

- (a) a person has made, or purported to make, an application under this Act; and
- (b) the requirements under this Act for making the application have not been complied with; and
- (c) the person who must decide the application is reasonably satisfied the information provided in or with the application is enough to allow the person to decide the application in the way required under this Act;

the person may decide to allow the application to proceed as if it did comply with the requirements.

**312 Additional information may be required about application**

(1) If a person (the “**decision maker**”) is deciding, or is required to decide, an application under this Act, the decision maker may, by notice, require the applicant to give the decision maker within a stated reasonable period—

- (a) additional information about, or a document relevant to, the application; or
- (b) a statutory declaration verifying any information included in the application or any additional information required under paragraph (a).

(2) If the applicant does not give the decision maker the additional information or declaration by the stated day, the decision maker may refuse the application.

(3) The applicant must pay any costs incurred in complying with the notice.

**313 Power to refund application fee on withdrawal**

(1) If an application under this Act is withdrawn, the person who must decide the application may refund the whole or part of any fee paid for the application.

(2) In deciding whether to refund, the person must have regard to—

- (a) when the application was made; and
- (b) when it was withdrawn; and
- (c) the extent to which the application was decided before the withdrawal.

**PART 8—OTHER MISCELLANEOUS PROVISIONS****314 Replacement of authority**

(1) If an authority under this Act has been lost, stolen or destroyed, its holder may apply to the regulator who may issue the authority to replace it.

(2) The regulator must decide to grant or refuse the application.

(3) If the regulator is reasonably satisfied the authority or licence has been lost, stolen or destroyed, the regulator must grant the application and replace it.

(4) If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the holder an information notice about the decision.

### **315 Protection from civil liability for particular persons**

(1) This section applies to each of the following persons (a “**relevant person**”)—

- (a) the Minister;
- (b) the regulator;
- (c) a person to whom an insufficiency of supply direction has been given and who is complying with the direction;
- (d) an industry participant to whom a notice under section 245<sup>104</sup> has been given and who is complying with the notice.

(2) A relevant person is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to a relevant person, the liability attaches instead to the State.

(4) In this section—

“**civil liability**” includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

### **316 Limitation of liability of distributors and retailers**

(1) This section applies if a person incurs a cost, damage or loss because—

- (a) of a partial or total failure to supply fuel gas; or
- (b) defective reticulated fuel gas was supplied to the person.

(2) A distributor or retailer is not civilly liable for the cost, damage or loss if—

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104 Section 245 (Regulator’s power to require information from industry participant)

- (a) the failure or defect was caused by a circumstance beyond the distributor's or retailer's control; and
  - (b) in relation to the supply, the distributor or retailer—
    - (i) complied with this Act and the conditions of any relevant distribution or retail authority; and
    - (ii) acted in good faith and without negligence.
- (3) Subsection (2)—
- (a) is subject to any agreement between the person and the distributor or retailer; and
  - (b) does not limit section 6(3).<sup>105</sup>

### **317 Power to require additional information**

- (1) This section applies if—
- (a) a person is required under this Act to give the Minister or the regulator a notice or copy of a document or information (the “**advice**”); and
  - (b) the person gives the advice.
- (2) The Minister or the regulator may, by notice, require the person to give, within the reasonable time stated in the notice, written information about the matter for which the advice was given.
- (3) The person must comply with the notice.

Maximum penalty for subsection (3)—300 penalty units.

### **318 Confidentiality of particular information**

- (1) This section applies if—
- (a) a person gives information in response to—
    - (i) a direction under section 233; or
    - (ii) a requirement under section 245; or
    - (iii) a requirement under section 317 that relates to information given under section 233 or 245; and

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<sup>105</sup> Section 6 (Act does not affect other rights or remedies)

(b) the information is FOI exempt matter.<sup>106</sup>

(2) If an official acquires the information in the official's capacity as an official the official must not disclose the information to any one else, unless the disclosure is—

- (a) made with the person's consent; or
- (b) expressly permitted or required under another Act.

Maximum penalty—100 penalty units.

(3) In this section—

**“official”** means—

- (a) the Minister; or
- (b) the regulator; or
- (c) a person who is, or has been, a public service employee.

### **319 Application of provisions**

(1) This section applies if a provision of this Act applies any of the following (the **“applied law”**) for a purpose—

- (a) another provision of this Act;
- (b) another law;
- (c) a provision of another law.

(2) The applied law and any definition relevant to it apply with necessary changes.

(3) Subsection (2) is not limited merely because a provision states how the applied law is to apply.

### **320 Delegation by Minister**

(1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified public service officer or employee.

(2) However, the Minister can not delegate the power to make an insufficiency of supply declaration.

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<sup>106</sup> Sections 233 (Directions for prices notification) and 245 (Regulator's power to require information from industry participant).

(3) The Minister may delegate the Minister's powers under section 228 or 233 to QCA.<sup>107</sup>

### **321 Delegation by regulator**

The regulator may delegate the regulator's powers under this Act to an appropriately qualified public service officer or employee.

### **322 Approved forms**

The regulator may approve forms for use under this Act.

### **323 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following—

- (a) the fees payable under this Act, including late payment fees;
- (b) imposing a penalty of no more than 20 penalty units for a contravention of a provision of a regulation.

## **CHAPTER 7—TRANSITIONAL PROVISIONS**

### **PART 1—PRELIMINARY**

#### **324 Definitions for ch 7**

In this chapter—

“**commencement**” means the day section 354<sup>108</sup> commences.

“**consolidated authority**” see section 333(1)(a).

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107 Sections 228 (Fixing of prices for customer retail services or on-supply) and 233 (Directions for prices notification)

108 Section 354 (Replacement of pt 3 (Granting of franchises))



“**first anniversary**” means the day that is the first anniversary of the commencement.

“**new authority**” means—

- (a) a distribution or retail authority that, under part 3, division 1,<sup>109</sup> is taken to have been issued; or
- (b) a consolidated distribution or retail authority issued under section 335(1).

“**original authorities**” see section 333(1).

## **PART 2—FRANCHISES AND AUTHORISATIONS UNDER GAS (RESIDUAL PROVISIONS) ACT**

### **325 Franchises and authorisations cease to have effect**

To remove any doubt, it is declared that on the commencement, each of the following cease to have effect—

- (a) a franchise under the Gas (Residual Provisions) Act, former part 3;
- (b) an authorisation under the Gas (Residual Provisions) Act, former part 5 or former section 52C(1)(d).<sup>110</sup>

### **326 Franchise applications**

(1) On the commencement, an application for a franchise under the Gas (Residual Provisions) Act, former part 3, lapses.

(2) If, before the commencement, the application had been decided the decision ceases to have effect.

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109 Part 3, division 1 (Issue of new authorities)

110 Gas (Residual Provisions) Act, former part 3 (Granting of franchises) and part 5 (Provisions relating to contestability) and former section 52C (Restriction on constructing or maintaining pipe).

## **PART 3—NEW DISTRIBUTION AND RETAIL AUTHORITIES**

### *Division 1—Issue of new authorities*

#### **327 New area distribution authorities—sch 3, pt 1**

(1) Each entity named in schedule 3, part 1, is, on the commencement, taken to have been issued an area distribution authority for each distribution area stated in the part under the entity's name.

(2) The boundaries of the distribution areas are described in the departmental maps with the numbers stated opposite the name of the area.<sup>111</sup>

(3) However, if the schedule states an excluded area for a distribution area, the excluded area is not part of the distribution area.

(4) The area distribution authorities are not greenfield distribution authorities.

#### **328 New area retail authorities—sch 3, pt 2**

(1) Each entity named in schedule 3, part 2, is, on the commencement, taken to have been issued an area retail authority for each retail area stated in the part under the entity's name.

(2) The boundaries of the retail areas are described in the departmental maps with the numbers stated opposite the name of the area.<sup>112</sup>

(3) However, if the schedule states an excluded area for a retail area, the excluded area is not part of the retail area.

(4) The area retail authorities are not exclusive retail authorities.

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111 The maps may be inspected free of charge at the department's office during business hours on business days.

112 The maps may be inspected free of charge at the department's office during business hours on business days.

*Division 2—Term of new authorities***329 Expiry unless amendment or consolidation action taken**

(1) A new authority is taken to expire on the first anniversary.

(2) However, subsection (1) does not apply if before the first anniversary—

- (a) the holder of the new authority makes an application under division 3 relating to the authority; or
- (b) the regulator, under section 60 or 184, gives the holder notice of proposed amendments to the authority.<sup>113</sup>

(3) If subsection (1) does not apply, the new authority continues in force unless it is cancelled or surrendered under this Act.

*Division 3—Amendment and consolidation**Subdivision 1—Application to impose further conditions***330 Application**

(1) The holder of a new authority may apply to the regulator to amend the authority by imposing further conditions on it.<sup>114</sup>

(2) The application must—

- (a) be made in the approved form; and
- (b) state any further conditions the applicant proposes for the authority; and
- (c) be accompanied by the fee prescribed under a regulation.

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113 Sections 60 and 184 (Notice of proposed action)

114 For conditions of the new authority imposed under this Act, see chapter 2, part 1, division 2 (Distribution authority conditions) or chapter 3, part 1, division 2 (Retail authority conditions).

**331 Deciding application and steps after making decision**

(1) The regulator must decide whether to impose further conditions on the new authority.

(2) The regulator must, as soon as practicable, give the applicant an information notice about the decision.

(3) Subsection (2) does not apply for a condition decided to be imposed if it is the same, or to the same effect, as a condition agreed to or proposed by the applicant.

*Subdivision 2—Imposition by regulator of further conditions***332 Additional event for amendment by regulator**

(1) If the regulator forms the opinion that it is appropriate to amend a new authority to impose a condition on the authority the opinion is an event for section 57(1)(a) or 181(1)(a).<sup>115</sup>

(2) Subsection (1) ceases to apply on the first anniversary unless—

- (a) the regulator has, under section 60 or 184, given the holder notice of proposed amendments to the authority before the first anniversary;<sup>116</sup> and
- (b) the grounds stated in the notice include the opinion.

*Subdivision 3—Consolidation***333 Applying to consolidate**

(1) The holder of 2 or more new authorities of the same type (the “**original authorities**”) may apply to the regulator to—

- (a) consolidate the original authorities (the “**consolidated authority**”); and
- (b) impose further conditions on the consolidated authority.

(2) The application must—

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115 Sections 57 and 181 (Conditions for amendment, cancellation or suspension)

116 Sections 60 and 184 (Notice of proposed action)

- (a) be made in the approved form; and
- (b) state any further conditions the applicant proposes for the authority; and
- (c) be accompanied by the fee prescribed under a regulation.

### **334 Deciding application**

The regulator must decide—

- (a) whether to make the consolidation; and
- (b) if the regulator decides to make the consolidation—whether to impose further conditions on the consolidated authority.

### **335 Steps after making decision**

(1) If the regulator decides to grant the application, the regulator must issue the consolidated authority as soon as practicable.

(2) On the issuing of the consolidated authority, the original authorities are taken to have been cancelled.

(3) If the regulator decides to refuse the application or to impose a additional condition on the consolidated authority, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

(4) Subsection (3) does not apply for a condition decided to be imposed if it is the same, or to the same effect, as a condition agreed to or proposed by the applicant.

### *Subdivision 4—Miscellaneous provisions*

### **336 Additional provisions**

(1) This section applies if, under this division, the regulator is deciding whether to impose conditions on a new authority.

(2) The matters the regulator must have regard to in making the decision include any relevant franchise or authorisation under the Gas (Residual Provisions) Act held by or granted to the applicant immediately before the commencement.

(3) The regulator may decide to impose any condition the regulator considers appropriate, whether or not the condition was proposed by the applicant.

### **337 Other powers to amend unaffected**

This part does not limit or otherwise affect the regulator's power to amend the authority under another provision of this Act.

## **PART 4—MISCELLANEOUS PROVISIONS**

### **338 Maximum prices or tariffs approved under Gas (Residual Provisions) Act**

(1) This section applies to a person who is a distributor or retailer if immediately before the commencement—

- (a) the person was a gas supplier under the Gas (Residual Provisions) Act; and
- (b) an approval had been given under that Act for a maximum charge or tariff to be applied by the person for the supply of fuel gas to a customer's premises;<sup>117</sup> and
- (c) the approval was still in force.

(2) The approval is taken to be a notified price for the supply, under this Act, of fuel gas to the premises.

(3) The notified price is taken to have been gazetted and to have taken effect on the commencement.<sup>118</sup>

### **339 Deferred application of ss 286 and 288 for particular persons**

(1) This section applies if, immediately before the commencement a person was carrying out an activity as follows—

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117 See the *Gas Regulation 1989*, section 114A (Approval of charge or tariff for supply of fuel gas).

118 See section 228 (Fixing of prices for customer retail services or on-supply).

(a) operating a distribution pipeline;

(b) selling reticulated fuel gas.

(2) Sections 286 and 288<sup>119</sup> do not apply to the person in relation to the activity until the later of the following events to happen—

(a) the first anniversary;

(b) if before the first anniversary the person applies for a distribution or retail authority to carry out the existing activity—the deciding of the application.

(3) The regulator may, by notice, require the person to, within a stated period, apply for a distribution or retail authority to carry out the activity.

(4) The stated period must end at least 30 business days after the notice is given.

(5) If the person does not apply for the distribution or retail authority within the stated period, subsection (2) ceases to apply at the end of the period.

### **340 Deferred application of ss 288 and 302 for particular persons**

(1) This section applies if, immediately before the commencement—

(a) a contract was in force for a person (the “**supplier**”) to supply someone else with fuel gas at a premises in a franchise area under the Gas (Residual Provisions) Act; and

(b) the other person was a contestable consumer under that Act.<sup>120</sup>

(2) Sections 288 and 302<sup>121</sup> do not apply to the supplier in relation to the supply, under the provisions of the contract, of fuel gas to the premises.

(3) However, the sections start to apply if the contract ends in accordance with its provisions.

(4) In this section—

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119 Sections 286 (Unlawfully operating distribution pipeline) and 288 (Unlawfully selling reticulated fuel gas)

120 See the Gas (Residual Provisions) Act, former sections 33A (Meaning of “contestable consumer”) and 33D (Restriction on sale of gas in franchise area).

121 Sections 288 (Unlawfully selling reticulated fuel gas) and 302 (Additional consequences of unlawfully selling reticulated fuel gas)

**“provisions”**, of the contract, means its provisions in force immediately before the commencement.



## SCHEDULE 1

### CONTESTABLE CUSTOMERS

section 17(1)

#### PART 1—PRELIMINARY

##### 1 Operation of sch 1

(1) This schedule provides for who is a contestable customer for premises for section 17(1).<sup>122</sup>

(2) If a customer is, or becomes, a contestable customer for premises, the customer continues to be a contestable customer for the premises despite—

- (a) the actual consumption of reticulated fuel gas for the premises;  
or
- (b) the purpose for which the premises is used.<sup>123</sup>

##### 2 Definitions for sch 1

In this part—

**“registered owner”**, of a lot, means—

- (a) the person recorded in the freehold land register under the *Land Title Act 1994* as the person entitled to the fee simple interest in the lot; or
- (b) a lessee (other than a sublessee), licensee (other than a sublicencee) or permittee of the lot under the *Land Act 1994*.

**“same business or enterprise”** means a business or enterprise carried out under the same name, other than a business or enterprise made up of parts carried out under different names.

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122 Section 17 (“Contestable customers” and “non-contestable customers”)

123 See also part 4 (Extended effect of contestability).

SCHEDULE 1 (continued)

**“single premises”**, of a customer, means any of the following if owned or occupied by the customer and used by the customer for the same business or enterprise—

- (a) the whole of any single building or structure;
- (b) a part of any single building or structure;
- (c) 2 or more adjoining parts of any single building or structure;
- (d) the whole of 2 or more buildings or structures that are on—
  - (i) the same lot of land; or
  - (ii) 2 or more adjoining lots of land.

**PART 2—CONTESTABLE CONSUMERS UNDER  
GAS (RESIDUAL PROVISIONS) ACT**

**3 Contestable consumers under former s 33A**

If, before the repeal of former section 33A<sup>124</sup> of the Gas (Residual Provisions) Act, a person became a contestable consumer for a premises, the person is a contestable customer for the premises.

**PART 3—CONTESTABLE CUSTOMER  
CERTIFICATION**

**4 Applying for certification**

(1) A customer may, for any single premises of the customer, apply to the distributor to be certified as a contestable customer for the premises.

(2) The application must—

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<sup>124</sup> Gas (Residual Provisions) Act, former section 33A (Meaning of “contestable customer”)

## SCHEDULE 1 (continued)

- (a) be written; and
- (b) state the applicant's name; and
- (c) identify the premises; and
- (d) be supported by other relevant information, reasonably required by the distributor, to enable the distributor to consider the application.

**5 Deciding application**

(1) Within 1 month after receiving the information mentioned in section 4(2)(d) of this schedule, the distributor must decide to grant or refuse the application.

(2) The distributor must decide to grant the application if satisfied—

- (a) the consumption of reticulated fuel gas, as worked out by the distributor, for the premises during a consumption period was at least the threshold amount; or
- (b) the consumption of reticulated fuel gas, as estimated by the distributor, for the premises in a future consumption period is at least the threshold amount.

(3) If the distributor does not make a decision under subsection (1) within the relevant period, the distributor is taken to have decided to refuse the application.

(4) In this section—

**“consumption period”** means any period of 1 year beginning on or after 1 July 2001.

**“future consumption period”** means any period of 1 year, whether beginning before, on or after the commencement of this section, that has not ended.

**“relevant period”** means the first of the following periods to end—

- (a) 1 month after the distributor receives any information required by the distributor under section 4(2)(d) of this schedule;
- (b) 3 months after the application was made.

**“threshold amount”** means—

SCHEDULE 1 (continued)

- (a) the amount prescribed under a regulation; or
- (b) if no amount is prescribed—100 TJ.

**6 Issuing certification**

(1) As soon as practicable after deciding to grant the application, the distributor must give the applicant the certification.

(2) The certification must—

- (a) be written; and
- (b) state the customer's name; and
- (c) identify the single premises the subject of the certification; and
- (d) state the distributor was satisfied as required under section 5(2) of this schedule.

**7 Information notice about refusal**

If the distributor decides to refuse the application, the distributor must, as soon as practicable, give the applicant an information notice about the decision.

**PART 4—EXTENDED EFFECT OF CONTESTABILITY**

**8 New or replacement single premises of same registered owner**

(1) This section applies if—

- (a) a customer is a contestable customer for a single premises (the “**original premises**”) of the customer; and
- (b) the customer is the registered owner of the lot or lots on which the original premises is situated.

(2) The customer is also a contestable customer for—

- (a) a single premises of the customer on the lot or lots that replaces, or substantially replaces, the original premises; and

## SCHEDULE 1 (continued)

- (b) any other single premises of the customer on the lot or lots, other than a single premises—
  - (i) existing before the customer became a contestable customer for the original premises; and
  - (ii) for which the customer did not become a contestable customer when the customer became a contestable customer for the original premises.

**9 Subsequent registered owner**

(1) This section applies if—

- (a) a customer (the “**original customer**”) is a contestable customer for a single premises (the “**original premises**”); and
- (b) when the original customer became a contestable customer for the original premises, the original customer was the registered owner of the lot or lots on which the premises is situated; and
- (c) another person (the “**new customer**”) becomes the registered owner of the lot or lots.

(2) The new customer is a contestable customer for the supply of reticulated fuel gas to each single premises on the lot or lots, other than a single premises—

- (a) existing before the new customer became the registered owner of the lot or lots; and
- (b) for which the original customer did not become a contestable customer when the original customer became a contestable customer for the original premises.

## **SCHEDULE 2**

### **DECISIONS SUBJECT TO REVIEW**

section 271(1)

<b>Section reference</b>	<b>Description of decision</b>
31 or 36	Refusal of distribution authority application
56	Refusal of amendment application
58	Giving of suspension notice for immediate suspension of distribution authority
58	Fixing of period of suspension for distribution authority
62	Amendment, cancellation or suspension of distribution authority
65	Refusal of renewal application for distribution authority
69	Refusal of transfer application for distribution authority or to impose a condition on the transfer, other than a condition mentioned in section 69(5)
73	Refusal of surrender application for distribution authority or to impose a condition on the surrender, other than a condition mentioned in section 73(5)
87	Giving of work direction by public entity to distributor
151 or 156	Refusal of retail authority application
180	Refusal of amendment application
182	Giving of suspension notice for immediate suspension of retail authority
182	Fixing of period of suspension for retail authority
186	Amendment, cancellation or suspension of retail authority

SCHEDULE 2 (continued)

<b>Section reference</b>	<b>Description of decision</b>
189	Refusal of renewal application for retail authority
193	Refusal of transfer application for retail authority or to impose a condition on the transfer, other than a condition mentioned in section 193(5)
197	Refusal of surrender application for retail authority or to impose a condition on the surrender, other than a condition mentioned in section 197(5)
243	Amendment of contingency supply plan
245	Requirement of industry participant to give the regulator information
259	Requirement of distributor, retailer or public entity to give the regulator information
314	Refusal of application to replace authority
331	Imposition of further condition on new authority, other than a condition mentioned in section 331(3)
334	Refusal to consolidate new authorities
334	Imposition of condition on consolidated authority, other than a condition mentioned in section 335(4)
schedule 1, section 5	Refusal of contestable customer certification application

## **SCHEDULE 3**

### **NEW AUTHORITIES**

sections 327 and 328

#### **PART 1—NEW DISTRIBUTION AUTHORITIES**

##### *Division 1—Allgas Energy Ltd*

<b>Distribution area</b>	<b>Departmental maps</b>
Brisbane South	GAS 010A GAS 011A
South Coast	GAS 012
Toowoomba	GAS 015
Oakey	GAS 017
Sunshine Coast	GAS 060
Gympie	GAS 061



SCHEDULE 3 (continued)

*Division 2—Dalby Town Council*

<b>Distribution area</b>	<b>Departmental maps</b>
Town of Dalby	GAS 035A

*Division 3—Envestra Ltd*

<b>Distribution area</b>	<b>Departmental maps</b>
Pittsworth	GAS 356
Clifton	GAS 361
Warwick	GAS 370

*Division 4—Envestra (Qld) Ltd*

<b>Distribution area</b>	<b>Departmental maps</b>	<b>Excluded areas</b>
Brisbane North	GAS 001C GAS 004	Each area described in departmental maps GAS 104 to GAS 110 inclusive
Ipswich	GAS 002A	The area described in departmental map GAS 111
Gladstone	GAS 003 GAS 003/1	
Rockhampton	GAS 050A GAS 051	

## SCHEDULE 3 (continued)

Bundaberg	GAS 020	The area described in departmental map GAS 112
Maryborough	GAS 650 GAS 650A	
Hervey Bay	GAS 655	

*Division 5—Origin Energy LPG Ltd*

<b>Distribution area</b>	<b>Departmental maps</b>
Maleny	GAS 016
Douglas Estate, Townsville	GAS 018
Paradise Lake Estate, Townsville	GAS 019
Greenwood Estate, Townsville	GAS 021
St Lucia Estate, Townsville	GAS 022
Willows Estate, Townsville	GAS 023
Port Douglas	GAS 024
Cairns (Central)	GAS 025
Hambleton Gardens, Cairns	GAS 026 GAS 027
Bella Vista and Park Ridge Estate, Cairns	GAS 028
Canecutter Park, Cairns	GAS 101
Carinya Estate, Townsville	GAS 102
Excelsior Park Estate, Townsville	GAS 103 GAS 115
Forest Ridge Estate, Burpengary	GAS 104

## SCHEDULE 3 (continued)

Norfolk Downs Estate, Burpengary	GAS 105
Kippa Ring Estate, Rothwell	GAS 106
Flora Hills Estate, Margate	GAS 107
Kirrilee Estate, Ferny Grove	GAS 108
Glenfern Estate, Arana Hills	GAS 109
Arlington Estate, Arana Hills	GAS 110
Millwood Village Estate, Goodna	GAS 111
Tropicana Estate, Bundaberg	GAS 112
Cottesloe Chase Estate, Kewarra, Cairns	GAS 113
Annandale Estate, Murray, Townsville	GAS 114
Earl Hill North Estate, Trinity Beach, Cairns	GAS 116
Earl Hill South Estate, Trinity Beach, Cairns	GAS 116
Premier Gardens Estate, Nindaroo, Mackay	GAS 117
Fairfield Waters Estate, Townsville	GAS 118
Ocean View Estate, Yeppoon	GAS 119
Red Peak Forest Estate, Caravonica, Cairns	GAS 120
Mackay Harbour Village Mackay	GAS 121
Great Barrier Reef International Resort, Zilzie, Emu Park	GAS 122

*Division 6—Roma Town Council***Distribution area**

Town of Roma

**Departmental maps**

GAS 030

SCHEDULE 3 (continued)

*Division 7—Wesfarmers Kleenheat Gas Pty Ltd*

<b>Distribution area</b>	<b>Departmental maps</b>
Sanctuary Cove	GAS 040
Paradise Lakes Estate	GAS 040

**PART 2—NEW RETAIL AUTHORITIES**

*Division 1—Dalby Town Council*

<b>Retail area</b>	<b>Departmental maps</b>
Town of Dalby	GAS 035A

*Division 2—ENERGEX Retail Pty Ltd*

<b>Retail area</b>	<b>Departmental maps</b>
Brisbane South	GAS 010A GAS 011A
South Coast	GAS 012
Toowoomba	GAS 015
Oakey	GAS 017
Sunshine Coast	GAS 060
Gympie	GAS 061

## SCHEDULE 3 (continued)

*Division 3—Origin Energy LPG Ltd*

<b>Retail area</b>	<b>Departmental maps</b>
Maleny	GAS 016
Douglas Estate, Townsville	GAS 018
Paradise Lake Estate, Townsville	GAS 019
Greenwood Estate, Townsville	GAS 021
St Lucia Estate, Townsville	GAS 022
Willows Estate, Townsville	GAS 023
Port Douglas	GAS 024
Cairns (Central)	GAS 025
Hambledon Gardens, Cairns	GAS 026 GAS 027
Bella Vista and Park Ridge Estate, Cairns	GAS 028
Canecutter Park, Cairns	GAS 101
Carinya Estate, Townsville	GAS 102
Excelsior Park Estate, Townsville	GAS 103 GAS 115
Forest Ridge Estate, Burpengary	GAS 104
Norfolk Downs Estate, Burpengary	GAS 105
Kippa Ring Estate, Rothwell	GAS 106
Flora Hills Estate, Margate	GAS 107
Kirrilee Estate, Ferny Grove	GAS 108
Glenfern Estate, Arana Hills	GAS 109

## SCHEDULE 3 (continued)

Arlington Estate, Arana Hills	GAS 110
Millwood Village Estate, Goodna	GAS 111
Tropicana Estate, Bundaberg	GAS 112
Cottesloe Chase Estate, Kewarra, Cairns	GAS 113
Annandale Estate, Murray, Townsville	GAS 114
Earl Hill North Estate, Trinity Beach, Cairns	GAS 116
Earl Hill South Estate, Trinity Beach, Cairns	GAS 116
Premier Gardens Estate, Nindaroo, Mackay	GAS 117
Fairfield Waters Estate, Townsville	GAS 118
Ocean View Estate, Yeppoon	GAS 119
Red Peak Forest Estate, Caravonica, Cairns	GAS 120
Mackay Harbour Village Mackay	GAS 121
Great Barrier Reef International Resort, Zilzie, Emu Park	GAS 122

*Division 4—Origin Energy Retail Ltd*

<b>Retail area</b>	<b>Departmental maps</b>	<b>Excluded areas</b>
Brisbane North	GAS 001C GAS 004	Each area described in departmental maps GAS 104 to GAS 110 inclusive

## SCHEDULE 3 (continued)

Ipswich	GAS 002A	The area described in departmental map GAS 111
Gladstone	GAS 003 GAS 003/1	
Rockhampton	GAS 050A GAS 051	
Bundaberg	GAS 020	The area described in departmental map GAS 112
Maryborough	GAS 650 GAS 650A	
Hervey Bay	GAS 655	
Warwick	GAS 370	
Clifton	GAS 361	
Pittsworth	GAS 356	

*Division 5—Roma Town Council*

<b>Retail area</b>	<b>Departmental maps</b>
Town of Roma	GAS 030

*Division 6—Wesfarmers Kleenheat Gas Pty Ltd*

<b>Retail area</b>	<b>Departmental maps</b>
Sanctuary Cove	GAS 040
Paradise Lakes Estate	GAS040

## **SCHEDULE 4**

### **DICTIONARY**

section 7

**“acceptance notice”** for—

- (a) chapter 2—see section 35(1)(d); or
- (b) chapter 3—see section 155(1)(d).

**“accounting period”**, for an on-supply agreement, see section 215(1).

**“appropriately qualified”**, for the performance of a function or exercise of a power, includes having the qualifications, experience and competence to perform the function or exercise the power.

**“approved access arrangement”** means an access arrangement approved by the relevant regulator under the Gas Pipelines Access Law.

**“approved form”** means the form approved by the regulator under section 322.

**“area distribution authority”** see section 23(2).

**“area distributor”** see section 23(3).

**“area retail authority”** see section 26(1).

**“area retailer”** see section 26(2).

**“body corporate Act”** means any Act as follows—

- (a) *Body Corporate and Community Management Act 1997*;
- (b) *Building Units and Group Titles Act 1980*;
- (c) *Integrated Resort Development Act 1987*;
- (d) *Mixed Use Development Act 1993*;
- (e) *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;
- (f) *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*.

**“common area”**, of an on-supplier’s premises, see section 214(1).



SCHEDULE 4 (continued)

“**common area consumption**”, for an on-supplier’s premises, see section 214(2).

“**consequential work**” see section 92(1)(b).

“**consequential work requirement**” see section 92(2).

“**consumption**”, of a substance, includes using it to produce heat, light or power or for air-conditioning or refrigeration.

“**content requirements**”, for a contingency supply plan, see section 239(1).

“**contestable customer**” see section 17(1) and schedule 1.

“**contingency supply plan**”, of an industry participant, means the industry participant’s contingency supply plan made under section 237, as amended from time to time under section 243.

“**corresponding authority**”, for a distribution or retail authority, means an authority or licence, however called, issued under any of the following that is similar to the distribution or retail authority—

- (a) *Gas Supply Act 1996* (NSW);
- (b) *Gas Act 1997* (SA);
- (c) *Gas Industry Act 2001* (Vic);
- (d) *Gas Act 2000* (Tas);
- (e) *Energy Coordination Act 1994* (WA);
- (f) *Energy Operators (Powers) Act 1979* (WA);
- (g) *Gas Supply Act 1998* (ACT);
- (h) another law of a State relating to the transport or supply of fuel gas.

“**covered pipeline**” means a pipeline that, under the Gas Pipelines Access Law, is a covered pipeline.<sup>125</sup>

“**criminal history**” means history of convictions other than a spent conviction, for offences committed in the State or elsewhere.

“**customer**” see section 16.

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125 See the Gas Pipelines Access (Queensland) Law, schedule 2, part 1 (Coverage) and section 10.8, definition “covered pipeline”.

SCHEDULE 4 (continued)

**“customer connection contract”** see section 106(1).

**“customer connection services”** see section 19.

**“customer retail contract”** see section 201(1).

**“customer retail services”** see section 20.

**“decision notice”** for—

(a) chapter 2—see section 35(1); or

(b) chapter 3—see section 155(1).

**“defaulting retailer”**, for the retailer of last resort scheme, see section 249(a).

**“discontinuance request”** see section 121(1).

**“discontinue”**, for customer connection services, includes—

(a) cessation, curtailment and interruption; and

(b) a refusal to connect or reconnect.

**“distribution area”** see section 23(4).

**“distribution authority”** see section 21.

**“distribution officer”**, for a distributor, means a person appointed, under section 132, as a distribution officer for the distributor, whose appointment is still in force.

**“distribution pipeline”** see section 13.

**“distribution system”** see section 14.

**“distributor”** see section 22.

**“Electricity Act”** means the *Electricity Act 1994*.

**“exclusive retail authority”** see section 26(4).

**“exclusive retailer”** see section 26(5).

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“first accounting period”**, for an on-supply agreement, see section 215(2).

SCHEDULE 4 (continued)

**“FOI exempt matter”** means exempt matter under the *Freedom of Information Act 1992*.

**“fuel gas”** see section 9.

**“gas infrastructure”** see section 75(1).

**“gas infrastructure work”** see section 75(2).

**“Gas Pipelines Access Law”** means all of the following—

- (a) the Gas Pipelines Access (Queensland) Law;
- (b) the Gas Pipelines Access (Queensland) Regulations;
- (c) the *Gas Pipelines Access (Queensland) Act 1998*.

**“Gas (Residual Provisions) Act”** means the *Gas (Residual Provisions) Act 1965*.

**“general retail authority”** see section 26(6).

**“general retailer”** see section 26(7).

**“greenfield distribution authority”** see section 23(5).

**“holder”**, of an authority under this Act, means each person recorded in the register as its holder.<sup>126</sup>

**“industry participant”** see section 236.

**“information notice”**, for a decision, means a notice stating each of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may appeal against, or seek a review of, the decision within 20 business days after the person receives the notice;
- (d) how to appeal, or seek a review.

**“insufficiency of supply declaration”** see section 251.

**“insufficiency of supply direction”** see section 254(1).

**“LPG”**, also called ‘LP gas’ and ‘liquefied petroleum gas’, see section 10.

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<sup>126</sup> See however chapter 7, part 3 (New distribution and retail authorities).

SCHEDULE 4 (continued)

**“lot”** includes a parcel of land.

**“meter”** means a device used to work out, by direct measurement, the energy, mass or volume of fuel gas transferred from one place to another.

**“national gas agreement”** means the ‘Natural Gas Pipelines Access Agreement’ relating to third party access to natural gas pipeline systems entered into by the Commonwealth and all of the States on 7 November 1997, or the agreement as amended.<sup>127</sup>

**“non-contestable customer”** see section 17(2).

**“notice”** means a written notice.

**“notified prices”** see section 228(4).

**“on”** a publicly controlled or other place includes over or under the place.

**“on-supplier”** see section 213.

**“on-supplier’s premises”** see section 213(3).

**“on-supply agreement”** see section 217(4).

**“original decision”** see section 271(1).

**“point-to-point distribution authority”** see section 23(1).

**“prevent”** includes each of the following—

- (a) hinder;
- (b) obstruct.

**“processed natural gas”** see section 11.

**“proposed action”** for—

- (a) chapter 2—see section 60(1)(a); or
- (b) chapter 3—see section 184(1)(a).

**“prospective on-supplier”** see section 218(a).

**“prospective receiver”** see section 218(b).

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<sup>127</sup> A copy of the agreement is available for inspection free of charge at the department’s office at 100 George Street, Brisbane during office hours on business days.

SCHEDULE 4 (continued)

**“protected customer”** see section 18.

**“public entity”**—

(a) generally—see section 76; and

(b) for a publicly controlled place—see also section 77(3).

**“public entity work”** see section 90.

**“publicly controlled place”** see section 77.

**“QCA”** means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*.

**“reasonably believes”** means to believe on grounds that are reasonable in the circumstances.

**“receiver”**, for an on-supplier, see section 213(4).

**“register”**, when used as a noun, means the register the regulator keeps under section 308.

**“regulator”** see section 8.

**“remedial action”** see section 96.

**“remedial action requirement”** see section 97.

**“retail area”**, for a retail authority, see section 26(3).

**“retail authority”** see section 24.

**“retailer”** see section 25.

**“retailer of last resort scheme”** means any retailer of last resort scheme made under chapter 4, part 4.

**“reticulated”**, for fuel gas, see section 15.

**“review application”** see section 271(1).

**“review decision”** see section 274(1)(b).

**“reviewer”** see section 271(2).

**“review notice”** see section 278(1).

**“sell”** includes each of the following—

(a) give or sell;

(b) agree, attempt or offer to give or sell;

## SCHEDULE 4 (continued)

- (c) advertise to give or sell;
- (d) cause or permit to be given or sold;
- (e) give away for swap.

**“spent conviction”** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**“standard temperature and pressure”** means an absolute pressure of 101.325 kPa at a temperature of 15°C.

**“Statewide newspaper”** means a newspaper or other publication generally circulating in the State.

**“substantial shareholder”**, in a corporation, means a person who under the Corporations Act, has a substantial shareholding in the corporation.

**“suitability criteria”** for—

- (a) chapter 2—see section 32(2); or
- (b) chapter 3—see section 152(2).

**“supply”**, for fuel gas, includes the transportation or sale of fuel gas.

**“transmission pipeline”** see section 12.

**“transmission pipeline licence”** means a licence under the *Petroleum Act 1923* for a transmission pipeline.

**“work direction”** see section 87(2).

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Gas Supply Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## **4 Table of reprints**

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2003	

## **5 List of legislation**

### **Gas Supply Act 2003 No. 29**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 121)

## **6 List of annotations**

### **CHAPTER 8—AMENDMENT OF OTHER ACTS**

**ch 8 (ss 341–387) om R1 (see RA s 40)**