



Tasmania



PREMIER

13 OCT 2004

Mr John Feil
Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001

Dear Mr Feil

I am pleased to formally lodge Tasmania's application to the National Competition Council for a recommendation on Tasmania's gas access regime, in accordance with section 44M(2) of the *Trade Practices Act 1974* and Regulation 6B of the *Trade Practices Regulations 1974*.

It was initially anticipated that Tasmania would submit its access regime application in 2002, following the conclusion of a retail and distribution tender process conducted in accordance with the National Gas Code. This tender process was launched in September 2001. However, in September 2002 it was terminated, as the bids received were not acceptable to the Government. The process leading to the current situation is now a matter of public record.

Following the termination of the original tender process, the Government conducted a subsequent competitive selection process to secure a preferred distributor. Some additional changes were also made to the State's legislative and regulatory framework to accommodate a different regulatory regime, including full retail contestability from the outset, and a geographically limited (site specific) distribution franchise.

In December 2002, the Government selected Powerco Ltd as its preferred distribution developer. Subsequently, the Government and Powerco Ltd have signed two legally binding Development Agreements (DAs) for the project to be progressed in two stages. The first DA, signed on 30 April 2003, covers Stage 1 of the project, which involves a network rollout to a maximum of 23 major industrial and commercial customers. The second DA, signed on 30 September 2003, covers Stage 2A, which involves an extensive network rollout past 38,500 industrial, commercial and residential customers.

Construction of Stage 1 is now well underway, and a number of customers have been connected and are being supplied with gas. It is worth noting that this includes some customers other than the initial 23 customer premises included in the site-specific distribution franchise arrangements.

I understand that there has been consultation at officer level with the NCC during the preparation of this submission, so I am hopeful that it will adequately address all relevant issues. In the event that there are any matters on which the NCC requires further clarification, please contact Mr Richard Sulikowski, Director, Energy Markets Branch at the Department of Treasury and Finance on (03) 6233 2600 or via e-mail: Richard.Sulikowski@treasury.tas.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Lennon', written in a cursive style.

Paul Lennon
Premier

State of Tasmania

Application to the National
Competition Council for a
Recommendation on the
Effectiveness of Tasmania's
Third Party Access Regime for
Natural Gas Pipelines

Trade Practices Act 1974
Section 44M(2)

In accordance with Regulation 6B
Trade Practices Regulations



September 2004

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Application to the National Competition Council for a Recommendation on the effectiveness of Tasmania's Third Party Access Regime for Natural Gas Pipelines

This application is made under section 44M(2) of the *Trade Practices Act 1974* (TPA) and the following supporting information is submitted for the National Competition Council's consideration in accordance with Regulation 6B of the Trade Practices Regulations.

It seeks a recommendation from the National Competition Council (NCC) to the Commonwealth Minister that the State of Tasmania's Third Party Access Regime for Natural Gas Pipelines (the Access Regime) is an effective access regime in relation to services provided by means of natural gas transmission and distribution pipelines, within Tasmania.

1 Application and contacts

1.1 Applicant Jurisdiction

This application is made on behalf of the State of Tasmania.

1.2 Responsible Minister

The responsible Minister for Tasmania concerning this application is the Hon Paul Lennon MHA, Premier of Tasmania.

1.3 Contact Officer

The contact officer for Tasmania concerning this application is:

Mr Richard Sulikowski
Director, Energy Markets Branch
Department of Treasury and Finance
GPO Box 147B
Hobart, Tasmania, 7001
Tel: 03 6233 2600
Fax: 03 6233 5646
E-mail: richard.sulikowski@treasury.tas.gov.au

1.4 Address of Responsible Minister

The responsible Minister's address for delivery of documents, including the notification of any decision of the Commonwealth Minister and recommendation of the NCC, relating to this application is:

The Hon Paul Lennon, MHA
Premier of Tasmania
Parliament House
Hobart, Tasmania, 7000

2 Background

This section provides brief background information in relation to the Tasmanian gas industry.

2.1 Key Features

The key elements of the policy framework developed for the transmission, distribution and retailing of natural gas in Tasmania include:

- the possibility of coverage under the Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code) acting as a deterrent to inappropriate distribution and transmission pricing;
- the development of industry self-regulation consistent with the Code in respect of other relevant matters like ring-fencing and use-of-system agreements;
- no additional regulation of gas distribution prices, with such prices constrained by competition from competing fuel sources within the Tasmanian energy market;
- the granting of a non-renewable exclusive distribution franchise, limited to a maximum of the 23 customer premises covered by Stage 1 of the Powerco project until 30 April 2010 or five years after the completion of the Stage 1 network, whichever is sooner;
- full retail contestability from the commencement of gas market operations;
- no regulation of retail gas prices, with such prices to be determined by competitive market outcomes;
- no regulation on whether retail prices are bundled or unbundled between distribution and retail elements;
- no retailer of last resort;
- all customers permitted to contract out of the Retail and Distribution Codes (as issued under the *Gas Act 2000*) requirements;
- market determination of appropriate contractual relationships;
- arrangements for the provision and reading of meters to be determined by the market;
- initial Retail and Distribution Codes have been issued by the Government and licences have been issued by the Director of Gas;
- a Gas Customer Transfer and Reconciliation Code that was issued by the Director of Gas on 20 July 2004; and
- the extension of the current Electricity Ombudsman scheme to an energy ombudsman scheme to also cover natural gas.

2.2 Introduction

The Tasmanian Government has been actively facilitating the introduction of natural gas to the State in accordance with the Natural Gas Pipelines Access Agreement (NGPAA). Under clause 10.1 of the NGPAA, the State is required to submit an access regime to the National Competition Council (NCC) for certification as an effective access regime as soon

as practicable after its access legislation has been passed. The NCC then recommends to the Commonwealth Minister for Industry, Tourism and Resources, on whether the regime is to be approved.

It was initially expected that the State would submit its access regime application in 2002. This was delayed due to the termination of the tender process under the National Gas Code. There was a subsequent competitive process to select a preferred distribution developer. Further, it was apparent that additional amendments were required to the Tasmanian legislative and regulatory framework for natural gas.

The introduction of natural gas in Tasmania is being undertaken at a time of major structural change in the Tasmanian energy market. As well as the introduction of natural gas, the State's electricity grid will be linked to the mainland via Basslink, an undersea cable to be completed and in operation by the end of 2005. With Basslink a committed project, the State will become a participating jurisdiction within the National Electricity Market (NEM). As part of NEM entry, the Government intends to phase in competition in the Tasmanian electricity retail market. Retail competition will be introduced in tranches over a four year period, with the first tranche of contestability due to commence on 1 July 2006, approximately six months after the planned commissioning date for Basslink.¹

Basslink and NEM entry will provide for increased competition in Tasmania's wholesale and retail electricity markets and will provide opportunities for trading electricity across the link. Basslink also provides opportunities for the State to exploit some of its significant wind resource for power generation. A number of wind farms are currently under construction or planned and further wind testing is occurring in a number of sites around the State.

While the Tasmanian electricity market is undergoing a period of significant reform, the introduction of natural gas to the State will provide a major new source of energy and will increase modal competition within the wider energy market in Tasmania.

The introduction of natural gas to Tasmania has been challenging due to the commercial issues raised by it being a "greenfield" development. The commercial risks have been magnified by the small size and decentralisation of the market, relative to other jurisdictions. Overcoming the commercial issues created by these factors has required a mix of regulatory solutions specifically tailored to the Tasmanian environment.

2.2.1 Tasmanian Natural Gas Project

The Tasmanian Natural Gas Project (TNGP) includes a number of distinct elements, namely:

- the construction of a 305 km undersea gas transmission pipe between Victoria and Tasmania and the development of 430 km of onshore gas transmission pipelines to supply gas to the north, north-west and south of the State;
- the conversion of the oil-fired Bell Bay Power Station (BBPS) to natural gas and the sale of gas-generated electricity through the Tasmanian network; and
- the distribution and retailing of natural gas to smaller commercial, industrial and residential customers.

¹ Noting that the Government has reserved its decision in respect of the final tranche of customers (below 150 MWh) subject to a cost benefit review.

Wholesale and Transmission

On 6 April 2001, Duke Energy entered into a Development Agreement with the State to bring natural gas to Tasmania. Duke Energy's involvement in the Tasmanian Natural Gas Project entailed:

- constructing, operating and maintaining a 305km undersea natural gas transmission pipe between Victoria (Longford) and Tasmania (Bell Bay);
- developing onshore natural gas transmission pipelines comprising two transmission pipeline spurs. The first spur runs from Bell Bay to Port Latta in the State's North West (the Northern Spur). The second spur runs from Rosevale to Bridgewater near Hobart (the Southern Spur). These transmission pipelines form the backbone of Tasmania's gas pipeline network and will connect to the natural gas distribution system;
- purchasing processed gas from Esso/BHP under a long-term contract at the outlet of the Longford natural gas processing plant (however, gas retailers will need to secure their own gas supply); and
- supplying natural gas via lateral transmission pipelines to certain industrial customers in Tasmania.

Duke Energy also negotiated an arrangement with Hydro Tasmania to convert the Bell Bay Power Station (BBPS), in the State's north, from an oil-fired to a gas-fired plant. This has involved the conversion of the BBPS's two existing generation units to natural gas. Each unit has a maximum capacity of 120MW, with Unit 1 commencing operation in March 2003 and Unit 2 commencing operation in October 2003.

Duke Energy operated its pipeline as an 'uncovered' transmission pipeline in relation to the National Gas Code. The pipeline was fully commissioned in December 2002 and gas is currently being supplied to three foundation customers namely: the Hydro-Electric Corporation; Comalco; and Goldamere Pty Ltd. With commissioning achieved, Duke Energy met the conditions of its Agreement with the State.

In April 2004, Alinta Limited acquired Duke Energy's portfolio of gas infrastructure and power generation assets in Australia and New Zealand. Alinta Limited indicated on 23 April 2004 on its website that despite the change in ownership it intends to operate its pipeline business on a business as usual basis.²

Distribution and Retailing

Tasmania was the only Australian jurisdiction not to have a reticulated natural gas system and the Tasmanian Government is actively facilitating the development of gas distribution and retailing in Tasmania. A Code-compliant tender process was launched in September 2001. However in September 2002, the Government terminated the tender process conducted under the National Gas Code as the competing bidders failed to meet the mandatory requirements of the tender and did not meet the Government's stated aims in relation to coverage, speed of roll-out and risk allocation.

² Transmission operations licence issued to DEI Tasmania Holdings Pty Ltd on 14 August 2002 is now in the name of Alinta DTH Pty Ltd

Throughout the tender process, potential developers consistently expressed concern with the gas regulatory framework and these concerns have been cited as the major reason why the Code-compliant gas tender process was unable to deliver an acceptable outcome.

Following termination of that tender process, the Government conducted a subsequent competitive selection process (not under the tender provisions of the National Gas Code) for a preferred distributor.

In December 2002, the Government selected Powerco Ltd (Powerco) as its preferred distribution developer and signed a Memorandum of Understanding (MOU) in relation to the development of the project. The MOU also included the negotiation of legally binding Development Agreements (DAs), with the project to be progressed in two stages. The Government and Powerco signed a binding DA for Stage 1 of the project on 30 April 2003.

Stage 1 involves a network rollout up to a maximum of 23 major industrial and commercial customers in up to ten areas around the State. The Stage 1 network has been designed with sufficient capacity to service the future development of the network. Construction of the Stage 1 network commenced in October 2003 and is expected to be completed by January 2005.

The Government and Powerco signed a binding DA for Stage 2A on 30 September 2003. Stage 2A of the project involves an extensive gas network rollout past 38 500 industrial, commercial and residential premises. Stage 2A construction is due to commence by February 2005 and be completed by April 2007. Negotiation of further rollout stages may occur prior to April 2007.

Non-renewable exclusive distribution franchise and compliance with NGPAA

Given the importance of large foundation customers to the viability of the network rollout, the Government has provided Powerco with a non-renewable exclusive distribution franchise for Stage 1 of the project. The franchise is limited to the maximum of 23 customer premises identified for Stage 1, as listed in the Franchise Order (Appendix E).

There are no franchise arrangements in relation to the Stage 2A rollout.

The proposed franchise arrangements for distribution of natural gas raised three issues for Tasmania under the provisions of the NGPAA, namely:

- the process for the selection of the franchise distributor;
- bypass arrangements; and
- duration of the franchise.

Clause 3(c) of Annexe E of the NGPAA requires that a franchise distributor be selected through a competitive public tender process. Powerco was selected through a competitive process overseen by a probity auditor. The parties invited to bid in the competitive selection process were pre-qualified through the unsuccessful National Gas Code-compliant tender process, which was a fully open and public process.

Clause 1 of Annexe E of the NGPAA requires that bypass be permitted to contestable customers under any franchise arrangements. Bypass has not been permitted to those customers identified as Stage 1 franchise customers. Given the intention to introduce full retail contestability from the commencement of gas market operations, all gas customers in Tasmania will be contestable. Therefore, permitting bypass to contestable customers would

totally erode the value of the Stage 1 distribution franchise, which was vital to achieving the significant investment required to develop a distribution network in Tasmania.

Clause 3(d) of Annex E of the NGPAA requires that all distribution franchises be limited to a period of five years. The Stage 1 unconditional distribution franchise for up to 17 Stage 1 customers has been granted until 30 April 2010 or for five years from the completion of Stage 1, whichever is the earlier. The conditional franchise, which applies to the six remaining Stage 1 customers expires on 30 April 2010, or on 30 October 2004 if a gas distribution system capable of supplying the specified customers in the conditional franchise has not been commissioned by that date.

As the Stage 1 network will take 18 months to two years to complete, the duration of these franchises is designed to give Powerco franchise protection during the construction period, which is vital in terms of contracting with potential customers. It then offers up to five years of franchise protection on the completed network. These arrangements have been necessary to ensure that the project would be undertaken and are, therefore, in the public interest.

These measures are arguably inconsistent with Clause 1 and Clause 3(d) of Annex E of the NGPAA, as they alter the scope and length of the Tasmanian franchise arrangement for gas distribution (depending on how Clause 3(d) is interpreted). Tasmania raised these issues with the other parties to the NGPAA. In June 2003, Tasmania received a positive response from all jurisdictions, including the Commonwealth, in regard to the proposed franchise arrangements, agreeing to any departure from the principles in Clause 1 and Clause 3(d).

Issues arising from Tasmania's unique distribution arrangements

Although Tasmania's distribution arrangements for Stage 1 may not be within strict literal compliance with the NGPAA, the Franchising Principles in Annex E are considered to be principles, and should be treated as guidelines, rather than binding rules. Tasmania is in a different position to the other jurisdictions which had existing gas industries at the time of entering the NGPAA and the Franchising Principles should be applied with some flexibility where the State is establishing a new industry. Clause 1 of Annex E really assumes an existing retail franchise and contestability timetable. Tasmania successfully sought agreement from all other jurisdictions for a derogation from Clause 1 of Annex E of the NGPAA until 30 April 2010.

The distribution of natural gas in Tasmania is fully contestable, except to those 23 customer premises that have been identified in the exclusive franchise order. From 2010, the supply of gas to those 23 customer premises will be wholly contestable.

In relation to clause 3(a) of Annex E, the Powerco gas distribution network will be an integrated pipeline network and will require systematic development over a significant period. The Stage 1 distribution network involves several offtake stations at the Alinta transmission pipeline and approximately 100 km of pipeline network making gas available to between 17 and 23 major customer premises to which the franchise applies. Completion is scheduled by February 2005. In reaching these major customer premises, Stage 1 will extend gas distribution infrastructure into the major urban areas of Tasmania. Stage 1 is therefore the key to widespread reticulation of natural gas in the State. Stage 2A, the first phase of Stage 2 which will commence construction after Stage 1 is complete, will extend networks by approximately 600 km making gas available to 38,500 industrial, commercial and residential premises throughout certain suburbs of Hobart, Launceston, Devonport and Burnie. There is no franchise for Stage 2. The Government and Powerco have undertaken

to negotiate the next phase of Stage 2 prior to April 2007 when Stage 2A is due for completion.

In relation to clause 3(b) of Annex E, the development of a gas distribution network and retail market in Tasmania has proved to be quite problematic, and considerable effort has been expended by the State in securing gas infrastructure investment, whilst meeting the vast majority of gas-related NCP obligations. The differentiation in Powerco's exclusive franchise arrangements between an 'unconditional franchise' and a 'conditional franchise' for the 23 customers, is an example of where the State has signed an agreement that reflects the very minimum necessary to secure investment. Powerco has been awarded an unconditional franchise arrangement for 17 of the 23 customers. Of the remaining six customers a conditional arrangement applies where if, following the expiration of 18 months from 30 April 2003, Powerco has not commissioned a distribution system which is capable of supplying gas to those customers, the exclusive franchise for those 6 customers will cease.

In relation to clause 3(c) of Annex E, the initial Code compliant tender process commenced with a pre-qualification phase. Initial tender marketing was undertaken through direct marketing to energy distributors and retailers with significant operations in Australia, the tender was advertised in major national and Tasmanian newspapers and *Project Finance International*. A significant number of overseas energy companies were contacted by direct mail. The Expressions of Interest received were assessed against qualification criteria to produce a set of qualified bidders that advanced to the tender process. Immediately following the failure of the initial Code compliant tender, the Government commenced a subsequent competitive selection process which involved all the pre-qualified bidders from the initial tender that remained interested in progressing the opportunity. These parties were invited to submit proposals for gas distribution in Tasmania that were assessed against selection criteria. As a result of this process, Powerco Limited was selected as the preferred distributor. Both processes were overseen by an independent probity auditor who reported that they complied with accepted probity principles.

The initial Code compliant tender involved the offering of State-wide distribution and retail franchises. The details of the franchises were contained in the Tender Approval Request which was made available for public comment. The franchise which was eventually granted to Powerco is much more limited in that it applies only to the premises of the 17 to 23 major customers in Stage 1.

In relation to clause 3(d) of Annex E, the franchise expires on the earlier of 30 April 2010 or 5 years after the completion of Stage 1 (completion is scheduled to occur by February 2005). The franchise is non-renewable.

The five year limitation on Powerco's exclusive franchise forms part of the Development Agreement between the State and Powerco. This arrangement is effectively a five year operational franchise, where a further two year construction period has been negotiated as part of that franchise agreement. Given Tasmania's greenfield gas environment, the franchise needed to include the construction period to guarantee Powerco a limited market share following construction of the distribution pipeline.

Services covered by the access regime

At the time of signing the NGPAA, Tasmania was the only Australian state without access to natural gas. Therefore, unlike other states where access regimes apply to spare and developable capacity in natural gas pipelines, the Tasmanian access regime applies to new pipelines to which the National Gas Code applies.

Tasmania's access regime features no derogations on coverage and there are no transmission or distribution pipelines that are exempt from the Code's coverage provisions.

Specific information on the services covered is discussed in 4.1.1.

Operation of Tasmania's access regime

The framework for Tasmania's access regime is the National Gas Code, under which parties are free to negotiate access within an independent regulatory framework. Disputes may be referred to the relevant regulator.

Specific information on the operation of Tasmania's access regime is discussed in 4.2.

2.3 Regulatory Framework

The facilitation of the natural gas industry in Tasmania has required the development of a legislative and regulatory framework that:

- provides sufficient incentives and certainty to developers;
- promotes the development of competitive market outcomes;
- provides appropriate consumer protection; and
- ensures the development, maintenance and operation of safe gas infrastructure and services.

The legislative and regulatory framework for the Tasmanian natural gas industry is outlined in Diagram 1.

There are three main pieces of legislation supporting the Tasmanian gas industry.

The *Gas Pipelines Act 2000* regulates the construction and operation of gas transmission pipeline facilities in Tasmania. Gas Pipeline Regulations made under the Gas Pipelines Act deal with, amongst other things, applications for transmission licences and the contents of gas safety cases.

The *Gas Pipelines Access (Tasmania) Act 2000* regulates access to gas pipelines in Tasmania by, amongst other things, adopting the Gas Pipelines Access Law, including the National Third Party Access Code for Natural Gas Pipelines Systems.

The *Gas Act 2000* regulates the distribution and retailing of gas in Tasmania. It includes provisions for the appointment of the Director of Gas, the Director of Gas Safety and for the Director of Gas to issue industry codes and licences for gas distributors and retailers. The *Gas (Safety) Regulations 2002* were made under the Gas Act in June 2002. Distribution and retail codes and licences have been issued. Amendments were made during 2001 to address a number of issues that arose through the implementation of these significant new legislative arrangements. Amendments were effected through the *Gas Amendment Act 2001* and the *Gas Legislation (Miscellaneous Amendments) Act 2001*.

In 2002, a number of amendments were made to address planning issues that had arisen in relation to both gas transmission and distribution developments. In relation to transmission issues, amendments to the Gas Pipelines Act were made by the *Gas Pipelines Planning and Safety (Miscellaneous Amendments) Act 2002*. The Gas Pipelines Planning and Safety (Miscellaneous Amendments) Act also amended the *Land Acquisition Act 1993*, the *Land Use Planning and Approvals Act 1993* and the *Water Management Act 1999* to deal with planning and safety issues that had arisen in respect to pipeline planning corridors.

A number of amendments in relation to gas distribution were also contained in the *Gas Infrastructure (Miscellaneous Amendments) Act 2002*. This Act passed both Houses of Parliament in December 2002 and was proclaimed in 2003. This Act amended the *Local Government (Highways) Act 1982* to require developers to seek a permit from councils for installing gas infrastructure underneath local (council-owned) roads. The Act also allowed for the development of regulations containing standard conditions to apply to all councils in granting permits for installing gas infrastructure underneath local roads.

The *Gas Infrastructure (Miscellaneous Amendments) Act 2003* was passed in July 2003. This Act also amends the *Gas Act 2000* and the *Gas Infrastructure (Miscellaneous Amendments) Act 2002* to:

- provide for a fully contestable gas retail market;
- allow for the declaration of a Pipeline Planning Corridor (PPC) to limit potential impacts on the risk profile of a proposed or existing pipeline; and
- to enable the introduction of regulations to establish standard conditions to govern the opening and reinstatement of council-owned roads for the purpose of constructing a gas distribution system.

The *Gas Legislation Amendment (Land Acquisition Act) 2003* was passed in June 2003. This Act amends both the Gas Act and the Gas Pipelines Act to make a licensed pipeline operator an acquiring authority under the *Land Acquisition Act 1993*. This enables, subject to Ministerial approval, a pipeline operator to compulsorily acquire land or an easement over land for the purposes of undertaking the regulated activities the operator is licensed to engage in.

In line with its obligations under the third tranche assessment to remove regulatory barriers to competition in natural gas markets, Tasmania has also repealed the *Gas Franchises Act 1973*, the *Hobart Town Gas Company's Act 1854* and the *Hobart Town Gas Company's Act 1857*. The *Launceston Gas Company Act 1982* has been substantially repealed.

Other consequential amendments include the *Launceston Gas Company Loan Guarantee and Subsidy Act 1982* which was repealed by the *Gas Act 2000*. The Gas Act also amended the *Petroleum (Submerged Lands) Act 1982*.

In terms of gas distribution and retailing, the Gas Act is the primary piece of legislation, although the Gas Pipelines Access Act will also apply to gas distribution if a distribution pipeline becomes “covered”. Codes issued under the Gas Act outline the detailed regulatory framework for gas distribution and retailing to small consumers.

The Government Prices Oversight Commission (GPOC) has been appointed as the regulator for the purposes of regulating third party access to natural gas distribution pipelines under the provisions of the *Gas Pipelines Access (Tasmania) Act 1999*.

The Commissioner of GPOC has been appointed to the position of Director of Gas under the *Gas Act 2000*. In the administration of the Gas Act and Gas Pipelines Act, the Code and other related regulatory instruments, a number of functions are vested with Director of Gas including the:

- administration of the licensing system for gas entities established by the Gas Act and the Gas Pipelines Act;
- establishment, monitoring and publication of standards and codes in respect of services provided by gas entities; and
- granting of pipeline licences.

In carrying out these functions, GPOC must have regard to the objectives of the legislation, which include to:

- facilitate the development of a gas supply industry in Tasmania;
- promote efficiency and competition in the gas supply industry;
- promote the establishment and maintenance of a safe and efficient system of gas distribution and supply;
- establish and enforce proper standards of safety, reliability and quality in the gas supply industry;
- protect the interests of consumers of gas;
- create an effective, efficient and flexible regulatory system for the construction and operation of pipeline facilities and of pipelines for transporting natural gas and other substances to which the Act applies;
- ensure as far as reasonably practicable security of supply for users of gas; and
- protect the public from risks inherent in regulated activities.

While the Director of Gas has certain statutory responsibilities, a major share of the responsibility for implementation and further development of the regulatory scheme rests with the entities. The approach taken by the Director of Gas in all licences has been “light handed” and it has not sought to intervene in the day-to-day management of the entities. Rather, it seeks to ensure that all stakeholders are provided with sufficient information to properly assess the performance of the entities in meeting their regulatory obligations. The primary emphasis is on transparency and disclosure, with investigation and sanction reserved for use when and if appropriate.

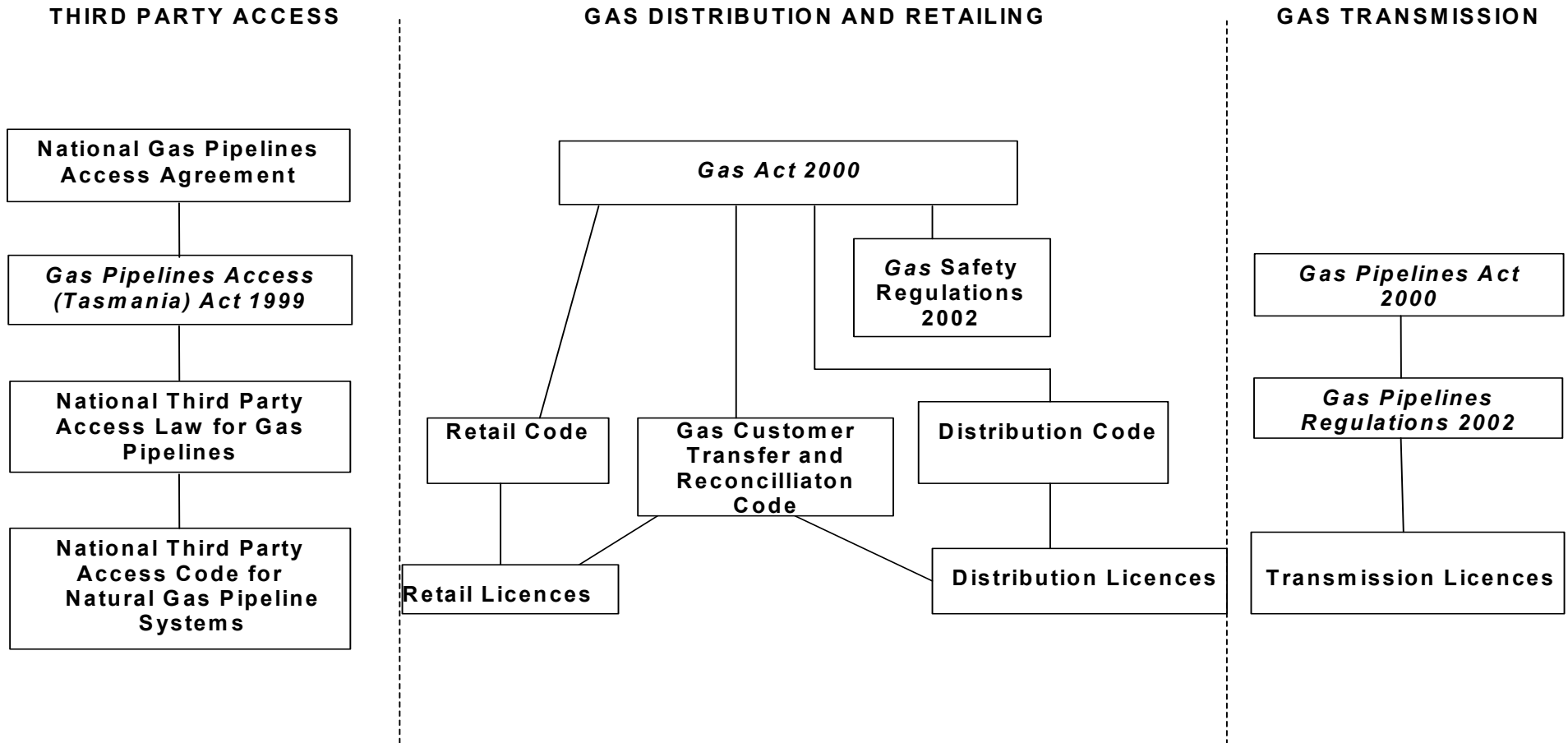
This package of legislation, regulations and regulatory arrangements creates a regulatory framework designed to facilitate the development of a natural gas industry in Tasmania that guarantees third party access and a competitive market structure, while ensuring appropriate community outcomes in terms of safety, customer protection and recognising the challenges faced in a greenfield gas development.

2.3.1 Licensing

As at August 2004, the following licences were held:

<i>Gas Pipelines Act 2000</i>	Licences to construct transmission pipelines issued to DEI Tasmania Holdings Pty Ltd on 9 November 2001, 20 December 2001 and 25 January 2002
	transmission operations licence issued to DEI Tasmania Holdings Pty Ltd (now Alinta DTH Pty Ltd) on 14 August 2002
<i>Gas Act 2000</i>	licence to construct a distribution system issued to Powerco Tasmania Pty Ltd on 13 May 2003
	licence to operate a distribution system issued to Powerco Tasmania Pty Ltd on 14 July 2003
	licence to sell gas by retail issued to Powerco Energy Services Pty Ltd on 21 August 2003
	licence to sell gas by retail issued to Aurora Energy Pty Ltd on 12 February 2004.

TASMANIAN NATURAL GAS REGULATORY REGIME



2.4 Policy Framework

The legislative and regulatory arrangements described in the previous section are the mechanisms for the delivery of the Government's policy framework in relation to gas transmission, distribution and retailing. This policy framework has evolved considerably since the Government began examining the development of gas distribution and retailing in Tasmania.

The initial policy approach involved regulated market outcomes, based on the intention at that time to issue comprehensive exclusive distribution and retail franchises for the initial period of market development. However, based on the Government's experience with the unsuccessful Code-compliant tender process, and following discussions with interested industry parties, a more competitively structured policy framework has been developed to facilitate gas distribution and retailing in Tasmania.

2.4.1 Gas Transmission

The key elements of the Government's policy framework in relation to gas transmission include:

- the facilitation of the development of the Tasmanian Natural Gas Pipeline; and
- the declaration of a number of small wholesale customers to be supplied directly from the transmission pipeline.

A key issue in the design of the regulatory regime was to ensure a sufficient wholesale load. To this end, nine potential wholesale customers were declared to be 'foundation' customers to be supplied directly from the transmission pipeline. This classification had significance prior to and during the conduct of the gas tender process.

The foundation customers were excluded from the distribution franchise proposed as part of the gas tender process, and the pipelines supplying such customers were declared to be transmission pipelines if constructed by a transmission licensee. No further 'foundation customers' will be declared, as the relevant provision in the Gas Pipelines Act has since been repealed.

2.4.2 Gas Distribution

The key elements of the Government's policy framework in relation to gas distribution include:

- apart from the possibility of National Gas Code-coverage acting as a deterrent to inappropriate distribution pricing, there is no State-based regulation of gas distribution prices. However, such prices are limited by strong competition from well established competing fuel sources within the Tasmanian energy market; and
- the granting of a non-renewable exclusive distribution franchise, limited to a maximum of the 23 customer premises covered by Stage 1 of the Powerco project and expiring on 30 April 2010 or five years after the completion of the Stage 1 network, whichever is sooner.

The key principle underlying Government policy in relation to gas distribution is that the distribution of natural gas is dependent on the successful sale of gas to consumers. In this regard, natural gas is simply one energy source within the Tasmanian energy market, competing against other long-established forms of energy such as electricity, coal, fuel oil, LPG and wood. Therefore, it will be necessary for gas distribution access charges to be very competitive within this energy market. In this environment, Powerco does not have market power within the overall energy market, even where it has an exclusive right to distribute natural gas within the limited terms of its franchise, due to competitive pressure from other energy sources.

In addition to competitive market forces, the threat of regulation is a further constraint on distribution prices. Powerco intends to operate its distribution system as an “uncovered” pipeline in relation to the National Third Party Access Code for Natural Gas Pipeline Systems (the National Gas Code).

Other than the 23 franchise customer premises, any other entity with a transmission or distribution licence is able to build gas pipelines anywhere in the State, including within areas already reticulated. This is a further source of competition.

In summary, while a limited franchise arrangement will be in place, the gas distribution market in Tasmania will largely be competitive, with market outcomes determined by competition across the State’s energy sector. This arrangement contrasts with most other Australian jurisdictions where gas distribution is a regulated activity. In the Tasmanian environment it is considered that a competitive market will ensure appropriate investment in the development of a gas distribution network while ensuring appropriate market-based outcomes for consumers.

2.4.3 Gas Retailing

The key elements of the Government’s policy framework in relation to gas retailing include:

- full retail contestability from the commencement of gas market operations;
- no regulation of retail gas prices, with such prices to be determined via competitive market outcomes;
- no regulation on whether retail prices are bundled or unbundled between distribution and retail elements; and
- no retailer of last resort.

2.4.4 Full Retail Contestability

No retail gas franchise arrangements are proposed in Tasmania, with full retail contestability being available once gas market operations commence at the commissioning of Stage 1 of the gas distribution network. In this environment, customers are free to choose their gas supplier, with retailers competing on both service and price. In this way, full retail contestability and the exclusive distribution franchises are able to coexist. Under the exclusive franchise arrangement, another distributor cannot supply the franchise customer premises but the customer may enter into a retail contract with any retailer willing to supply through the distribution network. Therefore, the exclusive franchise arrangement operates as a triangular relationship between the distributor, the retailer and the customer.

Two retail licences have already been issued in Tasmania, to Powerco (trading as “Option One”)³ and Aurora Energy, which is a significant achievement at this stage of the gas market development.

Having retail gas prices determined through competitive forces is the source of the majority of likely benefits to customers associated with full retail competition. If customers are unhappy with the price offered by a particular retailer, they would be free to switch to a competing retailer at relatively low cost. Further, the avoidance of costs associated with retail market regulation is likely to result in more competitive prices for consumers. The introduction of full retail contestability from the commencement of retail gas market operations in Tasmania has avoided issues associated with the transition from a partial or full monopoly arrangement to a fully competitive environment in the future.

The Tasmanian retail gas market will be relatively small compared to other Australian jurisdictions. This will be particularly the case during the early years of network rollout when only limited numbers of customers will be connected. However, it is considered that two key factors will ensure that the gas retail market delivers appropriate market outcomes regardless of its relative size. First, there will be low barriers to entry for potential new entrant retailers. This is particularly the case for retailers operating in other jurisdictions, where the variable costs of extending operations to Tasmania would be minimal. Secondly, the retail gas market will be competing with other established fuel sources within the wider Tasmanian energy market. The competing fuels place a further, critical, competitive pressure upon retailers participating in the gas retail market.

2.4.5 No Regulation of Retail Prices

A competitive gas retail market free of price regulation will provide the greatest opportunity for the benefits of competition to flow through to consumers. A potential benefit is its potential impact on market behaviour in relation to other energy sources. For example, there is already substantial anecdotal evidence of reduced LPG prices being offered for customers that are in the vicinity of the natural gas pipelines.

2.4.6 No Retailer of Last Resort

The final key aspect of retail gas market regulation in Tasmania relates to the potential introduction of retailer of last resort (RoLR) arrangements. The purpose of a RoLR scheme would be to ensure that customers of a defaulting retailer are able to continue to be supplied with gas. Under a RoLR scheme, if a retailer ceases operations, customers of the defaulting retailer are automatically transferred to a RoLR so that they can continue to be supplied with gas. This does not involve the RoLR being obliged to “pick-up” defaulting customers. Rather, its obligation extends to providing gas for a specific period of time to customers whose retailer has defaulted on its obligations. Further, a RoLR scheme does not address issues associated with interruptions to physical gas supply.

While RoLR arrangements are generally adopted in the electricity sector, and provide increased confidence to consumers, they are often complex and costly to administer. This will be particularly critical in Tasmania, where the initial retail market will be very small

³ Powerco Energy Services Pty Ltd, trading as Option One, is a wholly owned subsidiary of Powerco Ltd. Powerco Tasmania Pty Ltd, the licensed distributor, has developed ring-fencing arrangements to separate its activities from those of Option One.

and unlikely to support significant additional cost imposts. Also the cost of a potential RoLR scheme needs to be weighed against the potential benefits. A RoLR scheme is only considered to provide significant benefits where the likelihood of an unplanned retailer default is high and that the potential costs of such an occurrence are also assessed as being high.

A significant consideration in whether to implement a RoLR scheme is the nature of the service provided. In Tasmania all businesses and households have electricity connections. Thus, electricity is an 'essential' service for which supply must be maintained. In markets with long established gas connections, gas may have a similar 'essential service' characteristic, but that is not the case at this stage of the development of the Tasmanian gas industry. Also, the Gas Act provides that certain requirements, relating to the suitability of an applicant, must be satisfied before a retail licence may be granted. This will militate against the entry of retailers with a high probability of default.

On this basis, there will be no RoLR arrangement in the Tasmanian gas market due to:

- the expected low probability of retailer default;
- the relatively low costs expected from retailer default due to the physical nature of the gas commodity, the ability of customers to quickly contract with a non-defaulting retailer and the "non-essential" status of natural gas as a fuel source in Tasmania;
- the ability of larger customers to mitigate the risk of retailer default through commercially negotiated contractual arrangements; and
- the avoidance of potentially significant costs on industry, consumers and the Government in relation to the implementation and administration of any RoLR scheme (particularly given the expected small size of the Tasmanian retail gas market).

2.4.7 General Market Arrangements

In addition to issues specific to each sector of the market, a number of elements of the overall policy framework impact upon both distribution and retail sectors. Such issues include:

- contracting-out provisions in respect of Distribution and Retail Code requirements;
- Gas Customer Transfer and Reconciliation Code
- customer service and contractual arrangements;
- gas safety and technical standards; and
- the initial retail and distribution code development process.

2.4.8 Contracting Out

The distribution and retail codes include a number of requirements or obligations. The distribution code applies to all customers and is largely concerned with disconnection arrangements, reliability of supply, complaint handling and various information provision requirements.

The purpose of the retail code is to establish the minimum terms and conditions upon which retailers must offer to sell gas and is, therefore, largely concerned with customer protection.

On this basis, and with consideration to the ability of larger customers to adequately protect their own interests through commercial negotiations, the retail gas code only applies to customers consuming up to 10 TJ per annum.

While the requirements under the codes exist as minimum default positions, customers have the power to vary these provisions where they consider it appropriate or beneficial to do so. Minimum standards relating to connection and disconnection are maintained, but customers have the flexibility to adopt alternative arrangements for other aspects of their gas supply where they elect to do so.

2.4.9 Customer Service and Contractual Arrangements

It is considered that contractual relationships within the gas distribution and retail markets are best determined by the market, rather than the Government stipulating a particular model. However, for the purposes of simplicity, customers with a projected annual consumption of less than 1 TJ will have only one initial point of contact, operated by the retailer, with respect to gas supply arrangements, faults, queries and billing (ie the arrangement will appear linear). It should be noted that this is only a default position and such customers may elect to adopt a different contractual arrangement if they wish to do so.

2.4.10 Market Settlements and Customer Transfers

Underpinning the physical operation of the market is the financial flows that relate to physical supply. Market settlement involves the metering of gas flowing into and out of the system to determine who has consumed the gas. This allows for the allocation of gas commodity, transmission and distribution costs across retailers and customers. This process is also used to determine unaccounted for losses of gas from the relevant network and the allocation of the cost of these losses across market participants.

It is vital that an efficient and robust market settlement mechanism is put in place that market participants have confidence in and will accurately and fairly deliver financial outcomes that reflect physical supply outcomes. In addition to the rules governing market settlements, a party needs to be nominated to perform this role.

As well as, and related to, the market settlement process is the need to define rules governing transfers of customers between retailers. These rules need to provide an efficient, fair and simple system to facilitate the transfer of customers between retailers and account for the associated financial impacts.

The resolution of market settlement and customer transfer arrangements is a detailed process that requires close consultation with industry due to the financial impacts such a process may have on market participants. In this regard, the Director of Gas has developed a code, under the provisions of the *Gas Act 2000*, covering both market settlements and customer transfer rules as well as detailed technical requirements in relation to metering (See Appendix H).

2.4.11 Gas Safety and Technical Standards

Prior to the operation of a gas distribution network, the facility is subject to regulatory approval by the Director of Gas Safety including:

- independent design certification and approval;

- construction, testing and commissioning in accordance with relevant national standards; and
- regular operational auditing and independent systems certification of the approved safety and operating plan.

In addition, prior to commissioning and connection to the gas distribution network, gas appliances and gas installations are subject to:

- auditing of all submissions from commercial consumers in relation to major gas appliance installations;
- construction testing and commissioning in accordance with relevant national standards; and
- final acceptance standards.

This framework of standard setting for appliances enables qualified gas fitters to self-certify the majority of gas appliances for small retail consumers.

2.4.12 Code Development Process

The Government has issued the initial gas Distribution and Retail Codes that will apply in Tasmania from the commencement of gas market operations. Both codes will be administered by the Director of Gas who has responsibility for maintaining and amending the Codes over time to ensure their consistency with the objectives of the legislation. This will allow the codes to evolve to match industry and market developments. However, some aspects of the distribution and retail codes are particularly important for effective market development at the outset of operations. These critical provisions have been classified by the Government as being “protected”, meaning that these provisions are not subject to amendment through the specified code change process without the appropriate Government consent.

As discussed under section 4 of this paper, the Director of Gas may also issue codes under the provisions of the Gas Act. As also noted above, the Director of Gas has, in conjunction with key stakeholders, developed a Customer Transfer and Settlements Code, which was issued on 20 July 2004. Further codes may be developed by the Director of Gas should the need arise. Any further codes will be developed by the Director of Gas in close consultation with key stakeholders.

The Director of Gas has encouraged industry self-regulation as an alternative to Codes and this is reflected in the distributor exposing ring-fencing procedures and use-of-system agreements for public and industry comment. The Director of Gas has appropriate reserve powers in the event that self-regulation is not effective.

It is considered that the above code development process, and consultation with potential market participants and key stakeholders, will provide the most appropriate environment to promote the development of gas distribution and retailing in Tasmania.

2.5 National Reform Background

In February 1994 the Council of Australian Governments (COAG) agreed to progress a number of reforms to promote free and fair trade in natural gas in Australia. Significantly,

the Agreement requires the development of a uniform framework for the regulation of third party access to natural gas transmission pipelines.

On 7 November 1997, COAG endorsed a national regulatory regime for natural gas transmission and distribution pipelines in Australia. This occurred following the signing by the Commonwealth, State and Territory Heads of Government of the NGPAA.

The Agreement, amongst other things, records each jurisdiction's commitment in relation to implementing the national regime and maintaining its integrity. It also records each jurisdiction's obligations to carry out a range of other actions to promote free and fair trade in natural gas. Key commitments under the NGPAA include:

- implementation of the national regime through an application of laws model (with the exception of WA which will give effect to the regime through complementary legislation) with all reasonable measures to be taken to have the necessary legislation in place by 30 June 1998 (a date later amended);
- approval of Government legislation by all other Governments prior to its enactment;
- for South Australia to be lead legislator;
- that Governments would not amend legislation without the approval of all other Governments;
- that Governments will repeal, amend or modify any other legislation inconsistent with the operation of the national regime;
- that transitional arrangements and derogations in relation to the national regime will only be allowed if they have been approved by all Governments and are specifically identified in the relevant Government's legislation; and
- that franchising and licensing arrangements would be reformed in line with principles set out in the NGPAA.

Two specific provisions were agreed in the NGPAA for Tasmania:

- section 4.3 provides that "In relation to the State of Tasmania, the Parties acknowledge the State of Tasmania's commitment to participate as a Party to this agreement and comply with all obligations under this agreement from a time sufficiently before the first natural gas pipeline in that State is approved or any competitive tendering process for a new natural gas pipeline in that State is commenced"; and
- section 10.1 includes a provisions that "Tasmania agrees to submit the access regime embodied in its Access Legislation (including the Code) to the National Competition Council for certification as an effective access regime under Part IIIA of the Trade Practices Act as soon after enactment of its Access Legislation as is possible".

The Access Regime, which is the subject of this application for certification, represents Tasmania's enactment of the national regime pursuant to the NGPAA.

3 Overview of Tasmanian Access Regime

The Tasmanian Access Regime comprises:

- the *Gas Pipelines Access (Tasmania) Act 2000*;
- the Gas Pipelines Access Law; and
- the regulations to the Gas Pipelines Access (Tasmania) Act.
- The Access Regime in Tasmania is established by the *Gas Pipelines Access (Tasmania) Act 2000*, which applies the “Gas Pipelines Access Law” as a law in Tasmania. The “Gas Pipelines Access Law” is defined in the Gas Pipelines Access (Tasmania) Act as:
 - Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997*;
 - as enacted; or
 - if amended as amended and in force for the time being; and
- the National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the Gas Pipelines Access (South Australia) Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being.

It is noted that the *Gas Pipelines Access (Commonwealth) Act 1998 (Cth)* also applies in Tasmania, but, not being legislation of the State, is not part of the State’s access regime, which is the subject of this application.

3.1 Gas Pipelines Access (Tasmania) Act

The Gas Pipelines Access (Tasmania) Act commenced on 14 November 2000. The Act includes provisions that:

- apply the Gas Pipelines Access Law, as a law of Tasmania, and the regulations in force under Part 3 of the Gas Pipelines Access (South Australia) Act; and
- define various bodies that are to exercise functions and powers in Tasmania.

3.2 Gas Pipelines Access Law

The Gas Pipelines Access (Tasmania) Act incorporates the Gas Pipelines Access Law as enacted by South Australia. This comprises the legal framework for the operation of the Access Regime (“the Law”) and the Code containing the detailed access principles that apply under the access regime.

The Law contains the provisions necessary to give the Code legal effect including provisions that:

- define the Code and provide a means for its possible amendment, pursuant to sections 5 and 6 (when read in conjunction with the definition of scheme participants in section 3 and other definitions in section 2);
- establish a procedure for classifying pipelines as transmission or distribution pipelines and for determining with which jurisdiction a cross-border distribution pipeline is most

closely connected, pursuant to sections 9 to 11. This is for the purposes of allocating which of the various Code bodies will be used for the purposes of the Code (see the definitions of relevant appeals body, relevant Minister and relevant Regulator in section 2);

- prohibit certain persons from preventing or hindering access to Code pipelines, pursuant to section 13;
- establish procedures for arbitrating access disputes under the Code, pursuant to sections 14 to 31;
- provide for legal proceedings to be brought in the Supreme Court or Federal Court in relation to breaches of certain provisions of the Law and the Code, pursuant to sections 32 to 37;
- establish a right of administrative review of certain decisions made under the Code, pursuant to sections 38 to 39;
- place an obligation on producers of natural gas who are also prepared to offer to supply delivered gas that they also offer to supply gas at the exit flange of the producer's processing plant, pursuant to section 40; and
- general provisions relating to the Regulator's ability to obtain information and documents, pursuant to sections 41 to 43.

The Law is applied as a law in Tasmania and has also been applied as a law in each of the other states and territories (subject to certain modifications in Western Australia to facilitate the enactment of complementary legislation).

3.3 The Code

The Code includes ten sections, which address the following matters:

- section 1: This section describes the kinds of gas infrastructure which are subject to the Code and sets out four ways by which particular infrastructure is, or may become, subject to the Code;
- section 2: This section provides that where a pipeline is “covered”, it is a requirement for the service provider (i.e. owner/operator) to establish with the relevant Regulator an up-front Access Arrangement. This section sets out the process for the submission and approval of an access arrangement;
- section 3: This section sets out the minimum content of an Access Arrangement and the process for determining reference tariffs through a competitive tender process;
- section 4: This section places obligations on service providers of Covered Pipelines to ring fence their operations;
- section 5: This section states the obligations on service providers and users to disclose market information that is relevant to obtaining access;
- section 6: This section deals with dispute resolution. There is a right to arbitration where a service provider of a Covered Pipeline and a prospective user cannot agree on the terms of access to a service. The arbitrator is obliged in any such arbitration to apply the terms of the Access Arrangement established with the relevant Regulator;

- section 7: This section contains a series of general regulatory and miscellaneous provisions, including in relation to the approval of associate contracts, decisions made by regulatory bodies and the treatment of confidential information;
- section 8: This section sets out the principles with which Reference Tariffs and a Reference Tariffs Policy included in an Access Arrangement must comply;
- section 9: This section sets out the process for approving the Code; and
- section 10: This section sets out the basis for interpreting the Code.

The Code is applied as a law in Tasmania and has also been applied as a law in other States and Territories (subject possibly to certain modifications in Western Australia).

Tasmania has no need for derogations from, or savings and transitional provisions under, the Code.

3.4 Gas Pipelines Access (Tasmania) Regulations

Section 8 of the Gas Pipelines Access (Tasmania) Act applies the regulations in force under part 3 of the Gas Pipelines Access (South Australia) Act, being the Gas Pipelines Access (South Australia) Regulations.

4 **Tasmania's Access Regime and the Competition Principles Agreement (CPA)**

This section addresses the consistency of the Access Regime with each of the principles in clause 6 of the CPA which are relevant to an assessment of the 'effectiveness' of the Access Regime under Part IIIA of the TPA. It is submitted that the Access Regime should be certified as effective because it:

- complies with clauses 6(2) and 6(3) of the CPA; and
- incorporates the principles set out in clause 6(4) of the CPA.

On 13 June 2003, the Federal Treasurer announced that the Productivity Commission was to undertake a review of the National Third Party Access Code for Natural Gas Pipelines Systems, and to provide a report within 12 months. The draft report of the public inquiry, *Review of the Gas Access Regime*, was released on 15 December 2003 and was critical of several elements of the national gas access regime and the current Code. The final report has since been completed and was sent to the Commonwealth Government for its consideration on 11 June 2004. The Commonwealth Government is required to table the report in each House of Parliament within 25 sitting days of receipt. The Report was released on 10 August 2004.

Obviously the Code is an evolving document, and Tasmania welcomes the improvements to the regime that are likely to emerge from the Ministerial Council on Energy's consideration of the recommendations.

4.1 **Compliance with clause 6(3) of the CPA**

Clause 6(3) *For a State or Territory access regime to conform to the principles set out in this clause, it should:*

- (a) apply to services provided by means of significant infrastructure facilities where:*
 - (i) it would not be economically feasible to duplicate the facility;*
 - (ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and*
 - (iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist; and*
- (b) incorporate the principles that are referred to in subclause (4).*

It is understood that clause 6(3) essentially sets out the types of infrastructure services which, if covered by a State or Territory access regime that incorporates the principles in clause 6(4), cannot be declared under Part IIIA of the TPA. In particular, it is understood that pursuant to clause 6(3)(a) an effective access regime should primarily cover services provided by infrastructure facilities which it would not be commercially viable to duplicate.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criteria set out in clause 6(3) of the CPA.

4.1.1 The Access Regime

Services and Pipelines

The **Access Regime** applies to the 'Services' of transmission and distribution 'Pipelines' used for the haulage of natural gas. It does not apply to upstream facilities or services of upstream facilities such as processing facilities or gathering lines.

Specifically, 'Service' and 'Pipeline' are defined terms in the Access Regime. The definitions are set out in the Code and the Gas Pipelines Access Law (Law) respectively.

Section 10 of the Code defines 'Service' to mean:

"A service provided by means of a Covered Pipeline (or when used in section 1, a service provided by means of a Pipeline) including (without limitation):

- *haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul);*
- *the right to interconnect with the Covered Pipeline; and*
- *services ancillary to the provision of such services,*

but does not include the production, sale or purchasing of Natural Gas."

Section 2 of the Law defines 'Pipeline' to mean:

"A pipe, or system of pipes, or part of a pipe, or system of pipes, for transporting natural gas, and any tanks, reservoirs, machinery or equipment directly attached to the pipe, or system of pipes, but does not include:

- (a) unless paragraph (b) applies anything upstream of a prescribed exit flange on a pipeline conveying natural gas from a prescribed processing plant; or*
- (b) if a connection point upstream of an exit flange on such a pipeline is prescribed, anything upstream of that point; or*
- (c) a gathering system operated as part of an upstream producing operation; or*
- (d) any tanks, reservoirs, machinery or equipment used to remove or add components to or change natural gas (other than odourisation facilities) such as a gas processing plant; or*
- (e) anything downstream of the connection point to a consumer."*

Under the Law "natural gas" has the following meaning:

- a substance which is in a gaseous state at standard temperature and pressure and which consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and
- which has been processed to be suitable for consumption.

Covered Pipelines

There are four ways a Pipeline may become 'Covered' and as a consequence subject to all of the obligations set out in the Access Regime. The ways are:

- (a) Schedule A to the Code - this is a list of the transmission and distribution Pipelines that will be Covered from the time the Access Regime comes into operation in each State and Territory. There are no "scheduled" pipelines in Tasmania.
- (b) Section 1 of the Code includes a case-by-case coverage process, which can be applied to Pipelines not listed in Schedule A (eg. existing Pipelines, which are not listed, or Pipelines, which come into existence in the future). Under this process, the NCC makes a recommendation to the relevant Minister (in the State or Territory that has the greatest association with the particular Pipeline) as to whether the Pipeline should be covered. The Minister then makes a decision on coverage based on the recommendation. Section 1.9 of the Code sets out the criteria which must be satisfied for the NCC to recommend that a Pipeline be covered (and for the Minister to decide that a Pipeline should be covered):
 - that access would promote competition in at least one other market (whether or not in Australia);
 - that it would be uneconomical for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;
 - that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and
 - that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.
- (c) The owner/operator of a Pipeline can volunteer that the Pipeline be subject to the provisions of the Code by proposing an Access Arrangement to the relevant Regulator for approval.
- (d) A Pipeline is automatically covered if it is subject to a competitive tendering process approved by the Regulator under section 3 of the Code.

The Access Regime also includes a process for administrative appeals and judicial review in relation to a coverage decision (see Part 6 of the Law). In addition, it includes a process for any person to apply for revocation of coverage (see section 1 of the Code) on the basis that the coverage criteria are no longer satisfied. This will ensure that only the owner/operator of those Pipelines that satisfy the coverage criteria are obliged to comply with the full requirements of the Access Regime.

Classification of Pipelines as Transmission or Distribution

Part 3 of the Law sets out a process whereby relevant Ministers will decide whether a Pipeline is to be classified as a transmission or distribution Pipeline, applying the criteria specified in Part 3. If the Ministers fail to reach agreement, the NCC can be requested to make a recommendation on the matter. The Pipeline can be classified in accordance with the NCC recommendation if the Ministers are still unable to agree following a recommendation from the NCC.

The State has powers under the *Gas Act 2000* and the *Gas Pipelines Act 2000* to declare that a pipeline be treated as a transmission or distribution pipeline for the purposes of the Acts. These powers were necessary to give effect to the franchise arrangements, given that Tasmania had a proposed mixture of transmission and distribution pipelines and a provision that provided for the declaration of the status of each. It also enabled the application of the Government's agreement with Duke Energy to supply certain customers through the transmission pipeline with gas. These powers have no bearing on classification of pipeline status under the Law.

4.2 Compliance with clause 6(4)(a)-(c) of the CPA

Clause 6(4)(a)-(c) *A State or Territory access regime should incorporate the following principles:*

- (a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access;*
- (b) Where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility; and*
- (c) Any right to negotiate access should provide for an enforcement process.*

It is understood that the NCC considers that these three clauses should be considered together because it is of the view that they establish the framework under which access negotiations should be handled in an effective access regime. In addition, it is understood that the NCC considers that these clauses require that access seekers should have recourse to an enforceable dispute resolution process where negotiations fail to result in agreement.

It is also understood that the NCC:

- recognises that limiting commercial negotiation can sometimes promote better policy outcomes by constraining market power, reducing uncertainty and producing more 'workable' outcomes;
- considers that bodies responsible for imposing any limits on commercial negotiation should be independent from all affected parties and have resources sufficient for their task. In this context, it is understood that the NCC is concerned to ensure that regulatory bodies are independent from service providers, users, potential users and Governments; and
- is of the view that any constraints on commercial negotiation and dispute resolution (such as the imposition of Reference Tariffs or regulated transitional arrangements) should be imposed through transparent or robust competitive processes.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criteria set out in the clause 6(4)(a)-(c) of the CPA.

4.2.1 The Access Regime

Commercial Negotiation and Access Arrangements

The Access Regime is primarily intended to apply in circumstances where commercial negotiations between third party access seekers and the owners/operators of Covered Pipelines are not successful. In this context it is emphasised that the Access Regime in no way precludes parties from negotiating commercial arrangements that suit their particular needs and circumstances.

To facilitate negotiations and to provide some degree of certainty for both access seekers and owners/operators of Covered Pipelines in the event that commercial negotiations fail, the Code requires the owners/operators of Covered Pipelines to submit an Access Arrangement to the appropriate Regulator for approval.

Section 9 of the Gas Pipelines Access (Tasmania) Act provides that the Local Regulator in Tasmania for:

- transmission pipelines is the Australian Competition and Consumer Commission (ACCC), which is an independent statutory authority established by the Commonwealth under the TPA; and
- distribution pipelines is the person prescribed by the *Gas Pipelines Access (Tasmania) Regulations 2001*, being the Government Prices Oversight Commission.

The Access Arrangement must include at least the following elements as set out in section 3 of the Code:

- Services Policy - a description of the Services that are provided by the Pipeline;
- Reference Tariffs and Reference Tariff Policy - a tariff (as defined in the Code) for one or more of the Services that are likely to be sought by a significant part of the market (Reference Services), and the principles used to derive the tariff;
- Terms and Conditions - terms and conditions on which Reference Services will be provided;
- Trading Policy - details of the rights of a user with certain capacity on a Covered Pipeline to trade their unused capacity. In this context it should be noted that (where commercially and technically feasible) the Code provides that users should have a right to obtain tradeable capacity which is intended to facilitate a secondary market in capacity;
- Capacity Management Policy - the Access Arrangement must identify whether the Pipeline is a Contract Carriage Pipeline or a Market Carriage Pipeline (as defined in section 10 of the Code);
- Queuing Policy - rules for defining the priority that access seekers have in negotiating for capacity;
- Extensions/Expansions Policy - the approach that will be adopted to determine whether an extension or an expansion to a Covered Pipeline will be treated as part of the Covered Pipeline for the purposes of the Code; and

- Review Date - a date on, or by which, revisions to the Access Arrangement must be submitted to the relevant Regulator and a date on which the revised Access Arrangement is intended to take effect.

An Access Arrangement submitted to the Regulator for approval must be accompanied by an Access Arrangement Information package. This document should enable users and prospective users to understand the derivation of the elements of the proposed Access Arrangement and must include the categories of information set out in Attachment A to the Code.

The requirement for the Regulator to approve an Access Arrangement (and particularly Reference Tariffs) up-front is intended to provide both access seekers and owners/operators of Covered Pipelines with some certainty in relation to the likely terms and conditions of access. In particular, it is intended that this will assist in redressing the imbalance in negotiating power between owners/operators of Covered Pipelines and access seekers. It is also intended that this will encourage negotiated access to non-standard services and reduce the likelihood of dispute resolution under the Access Regime.

Approval of Access Arrangements

The regulatory process for approval of an Access Arrangement depends on the circumstances in which the Access Arrangement is submitted.

Access Arrangements are required to be established under the Code:

- when a Pipeline becomes Covered as a result of being listed on Schedule A to the Code; or
- due to the case by case coverage process; or
- as a result of an approved competitive tendering process (under section 3 of the Code).

The Regulator must go through a transparent process involving public consultation as set out in section 2 of the Code.

Ultimately the Regulator is given the power to draft and approve its own Access Arrangement if:

- an Access Arrangement or its subsequent Access Arrangement review is not submitted within the required timeframe in the Code (90 days unless the Regulator otherwise agrees); or
- a revised Access Arrangement or its subsequent revised Access Arrangement review incorporating amendments required by the Regulator is not submitted within the timeframe specified by the Regulator; or
- the Regulator is not satisfied that a revised Access Arrangement or its subsequent revised Access Arrangement review incorporated the amendments specified by the Regulator in his/her final decision.

A similar process applies in relation to voluntary Access Arrangements except that the service provider may withdraw the application at any time prior to approval and the Regulator may not impose its own Access Arrangement.

The Regulator's draft and final decisions on the Access Arrangement must include reasons. Final decisions must be placed on the Public Register.

Under section 2 of the Code, the Regulator must issue a final decision on an Access Arrangement within six months of receiving the proposed arrangement. However, regulators do have the option to increase this period by two-month intervals provided notice of the extension is published in a national newspaper.

In assessing a proposed Access Arrangement, the Regulator must be satisfied that the arrangement contains the elements and satisfies the principles set out in section 3 of the Code and section 8 (Reference Tariff Principles) of the Code. In doing so, the Regulator is also required to take into account the following principles set out in section 2 of the Code:

- the service provider's legitimate business interests and investment in the pipeline;
- firm and binding contractual obligations of the service provider or other persons (or both) already using the pipeline;
- the operational and technical requirements necessary for the safe and reliable operation of the pipeline;
- the economically efficient operation of the pipeline;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of users and prospective users; and
- any other matters that the Regulator thinks are relevant.

Third parties acquire an enforceable right to negotiate access to a pipeline on a date specified by the Regulator, which must be not less than 14 days after the Regulator's decision to approve the Access Arrangement (unless the decision is subject to judicial or administrative review).

Dispute Resolution

Parties are free to negotiate access on the basis of information (including Reference Tariffs) contained in the Access Arrangement and Access Arrangement information package. In particular, and as noted above, parties are free to negotiate tariffs that are different to the Reference Tariffs. Moreover, the parties are free to negotiate a tariff for a non-Reference Service.

However, to the extent that commercial arrangements cannot be reached in relation to any aspect of access to a service provided by a Covered Pipeline (section 6 of the Code and Part 4) of the Law contains a dispute resolution mechanism.

Either party may invoke the dispute resolution process by referring the dispute to the relevant Regulator. If the Regulator judges that a dispute exists, the Regulator (or an independent agent appointed by the Regulator) may then arbitrate and set the terms and conditions of access.

In making a decision, the arbitrator must apply the provisions of the Access Arrangement (including the Reference Tariffs) and take account of the matters set out in section 6 of the Code (see section 6.15). The matters to be considered by the arbitrator are consistent with those listed in clause 6(4)(i) of the CPA.

The rationale for making Reference Tariffs binding in a dispute resolution process is to arrive at timely and efficient access outcomes, thus promoting the economic and competitive benefits that all Governments are seeking from the gas reform process.

For example, in the absence of binding Reference Tariffs, there would be a risk that parties with substantial market power may seek to have decisions reopened through the dispute resolution process. This would be done for a variety of reasons such as to get higher returns, or to get a better deal at the expense of other users. This could undermine the ability for approved Reference Tariffs to provide a degree of certainty.

In terms of the process, any arbitration is to be conducted in private and generally would be limited to the parties involved in any given dispute. The arbitrator does, however, have the ability to involve parties that it considers have an interest in the arbitration. The procedures to be followed in conducting arbitration are contained in Part 4 of the Law.

The final decision of the arbitrator takes effect 14 days after the decision is made. The owner/operator of the Covered Pipeline is bound by the decision. The access seeker is also bound by the decision unless it notifies the arbitrator within 14 days of the decision that it does not intend to be bound by the decision.

Appeal Rights

Appeal rights have been developed with a view to striking a balance between the right of aggrieved parties to procedural fairness and ensuring the timeliness of regulatory outcomes.

All decisions made by the relevant regulators and arbitrators are subject to judicial review.

For Commonwealth bodies, judicial review is to be carried out by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*.

An administrative appeal right is also provided for in circumstances where the Regulator imposes its own Access Arrangement. Appeals from a decision the local regulator (GPOC) or the ACCC can be made to the Australian Competition Tribunal.

Enforcement of Decisions

The Law provides for the enforcement of obligations created by the Access Regime. Under Part 5 of the Law, a range of possible sanctions and remedies are available including injunctions and damages depending on the provision that is breached. The various sanctions and remedies are to be imposed by either the Federal Court or the Supreme Court of Tasmania.

4.3 Compliance with clause 6(4)(d) of the CPA

Clause 6(4)(d) *Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.*

It is understood that the NCC considers that the intent of clause 6(4)(d) is to provide for a periodic review of the need for access regulation to apply to a particular service. In this sense, it is understood that the requirements of clause 6(4)(d) could be satisfied, for

example, by providing for a review of coverage decisions. Further, it is understood that this process should not automatically revoke any existing contractual rights.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(d) of the CPA.

4.3.1 The Access Regime

The Law gives the Code legal effect. It makes the obligations it creates in relation to Pipelines enforceable including the mechanisms in relation to coverage. It is as a result of a Pipeline becoming Covered and an Access Arrangement being approved by the relevant Regulator that an enforceable right to negotiate third party access to its Services then arises.

Review of Coverage Decisions

The Code does not include an automatic sunset/review provision in relation to decisions on coverage (ie there is no requirement for a decision on coverage to specify a date at which time the decision will lapse or be reviewed). However, as noted above, section 1 of the Code contains a process for the revocation of coverage decisions.

Under the process for revocation of coverage, any person may apply to the NCC requesting that coverage of a particular Pipeline be revoked. The Council is then required to go through an open and transparent public process and make a recommendation to the relevant Minister as to whether coverage should be revoked. The Council cannot recommend that coverage is revoked and the Minister cannot decide to revoke coverage unless they are satisfied that the coverage criteria specified in the Code are no longer satisfied.

A decision to revoke coverage would effectively mean that there would no longer be an enforceable right to negotiate access to the Services of the Pipeline concerned under the Access Regime. It would, however, not result in any contractual (or other) rights or obligations in existence at the time being automatically revoked as a result of the operation of the Access Regime.

Approval and Review of Access Arrangements

While a Pipeline remains Covered under the Access Regime, an obligation exists to have an Access Arrangement approved by the relevant Regulator. As noted above, under section 3 of the Code an Access Arrangement must include, as one of its elements, a date for review. The period between reviews is to be determined by the relevant Regulator. However, if the period is longer than five years, the Regulator must give consideration to including mechanisms to address the risk of forecast errors. An Access Arrangement may also include specific major events that may trigger a review prior to the planned date.

In addition, the Code (see section 2) provides that the Regulator may not approve an Access Arrangement or a revision that contains provisions which would have the effect of depriving a person of a contractual right that was in existence prior to the proposed Access Arrangement being submitted.

4.4 Compliance with clause 6(4)(e) of the CPA

Clause 6(4)(e) *The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.*

It is understood that the NCC considers that an access regime may either incorporate the principles in this clause explicitly, or contain general provisions, which have the same effect.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(e) of the CPA.

4.4.1 The Access Regime

The Access Regime contains a number of elements that ensure that principle in clause 6(4)(e) of the CPA is satisfied.

Information Package

Under section 5 of the Code, the owner/operator of a Covered Pipeline must establish an information package in relation to the Pipeline. The information package must contain at least the following information:

- the Access Arrangement and Access Arrangement Information for the relevant Pipeline;
- a summary of the contents of a public register which the owner/operator of the Covered Pipeline is required to establish (under section 5.9 of the Code) containing information on both spare and developable capacity (to the extent that it is commercially and technically possible);
- information relating to all major trunks and mains pipes which comprise the relevant pipeline;
- a description of procedures relating to specific access requests (including a detailed description of the information required in order to assess an access request); and
- any other information the relevant Regulator reasonably requires to be included to assist access seekers to decide whether or not to seek Services or to determine how to go about seeking Services.

The information package must be made available to an access seeker within 14 days of the owner/operator of a Covered Pipeline receiving a request. No fee (other than one approved by the relevant Regulator for copying the Access Arrangement Information) may be charged for the information package.

In addition, section 5 of the Code provides that the owner/operator of a Covered Pipeline must:

- respond to a specific request for access within 30 days of its receipt;
- where the request for access can only be properly considered after further investigations, provide details of the nature of the investigations; and

- if it advises that capacity does not exist to satisfy an access request, provide an explanation outlining those aspects of the access request that cannot be satisfied, and indicate when the access request may be able to be satisfied.

Access Arrangement Information

Access Arrangements submitted to Regulators for approval must be accompanied by an Access Arrangement Information (see section 2.2 of the Code) which must be made publicly available. Section 2.6 of the Code provides that the Access Arrangement Information must include sufficient information to enable access seekers to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the Code. Section 2.7 of the Code provides that this must include at least the categories of information described in Attachment A to the Code.

The Code also provides that prior to a decision being made to approve an Access Arrangement, the relevant Regulator may require changes to be made to the Access Arrangement Information in order to satisfy section 2.7 of the Code. In addition, the Regulator must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of section 2.6 and 2.7 of the Code and can require that changes be made accordingly.

The Access Arrangement Information may be aggregated to the extent considered necessary by the Regulator, to protect the legitimate business interests of the owner/operator of the Covered Pipeline, an existing user of Services provided by the Pipeline or an access seeker.

Taken together these provisions ensure that an appropriate balance is struck in each case between providing adequate information to access seekers so that they are in a position to make informed decisions and ensuring that the legitimate business interests of all parties are protected.

Access Arrangements

Each Covered Pipeline must have an Access Arrangement approved by the relevant Regulator. The Access Arrangement must include the elements described above (eg Services policy, Reference Tariffs and Reference Tariff policy, Queuing policy, Capacity Trading policy etc) and the approval process (contained in section 2 of the Code) requires that the relevant regulators follow an open and transparent process (including extensive public consultation). The Queuing Policy in particular will make sure that all persons seeking access are treated fairly.

As discussed above, the up-front approval of Access Arrangements will assist in redressing any imbalances in negotiating power between owners/operators of Covered Pipelines and access seekers. It will also encourage negotiated access to non-standard Services and reduce the likelihood of dispute resolution under the Access Regime.

4.5 Compliance with clause 6(4)(f) of the CPA

Clause 6(4)(f) *Access to a service for persons seeking access need not be on exactly the same terms and conditions.*

It is understood that this clause is an acknowledgment that an effective access regime may have different terms and conditions of access for different users. Access regimes, which allow for such an outcome, can be assessed as being 'effective' under the CPA.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(f) of the CPA.

4.5.1 The Access Regime

The Access Regime provides the flexibility for parties to negotiate their own arrangements for access. At the same time it establishes certain 'stakes in the ground' to facilitate those negotiations and to provide some certainty in relation to likely terms and conditions of access in the event that commercial negotiations fail.

As discussed above, each Covered Pipeline must have an Access Arrangement approved by the relevant Regulator. The Access Arrangement must, as a minimum, contain a number of elements (as specified in section 3 of the Code) including Reference Tariffs and the terms and conditions on which Reference Services will be provided. Approval of an Access Arrangement, however, does not limit the flexibility of parties to negotiate terms and conditions of access (including tariffs) to suit their particular circumstances. In this context it is pointed out that section 2.50 of the Code specifically provides that nothing in an Access Arrangement (except for the Queuing policy) limits the terms and conditions that the owner/operator of a Covered Pipeline can agree with an access seeker.

However, to the extent that parties are unable to reach commercial agreements for access to Services provided by Covered Pipelines, the approved Access Arrangements would be applied in any arbitration conducted under the Access Regime. In these circumstances, the arbitrator is bound (under section 6 of the Code) to apply the approved Access Arrangement if the dispute resolution process in the Access Regime is invoked. To the extent that a dispute concerns access to a Service for which the Reference Tariffs and terms and conditions in the Access Arrangement are not applicable, the arbitrator is required to determine appropriate arrangements for the circumstances of the particular case.

4.6 Compliance with clause 6(4)(g) of the CPA

Clause 6(4)(g) *Where the owner and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.*

It is understood that the NCC considers the fundamental requirement for consistency with this clause is that an access regime should provide for disputes to be referred to an independent body for arbitration. It is also understood that the NCC is of the view that an

'independent' dispute resolution process should be independent from both the parties to a dispute and from Government.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(g) of the CPA.

4.6.1 The Access Regime

Independent Dispute Resolution

Parties are free to seek resolution of their disputes through any avenues, which they can agree upon (eg. such as mediation), or through the dispute resolution process contained in section 6 of the Code and Part 4 of the Law.

Under the dispute resolution process contained in the Access Regime, where parties are unable to agree on any aspect of access to a Service provided by a Covered Pipeline, either party may refer the dispute to the Regulator. The Regulator (or an independent agent appointed by the Regulator) may arbitrate the dispute.

In reaching a decision, the arbitrator must apply the provisions of the Access Arrangement and take account of the factors listed in section 6.15 of the Code. The matters to be considered by the arbitrator are consistent with those listed in clause 6(4)(i) of the CPA.

The arbitrator must issue a draft decision and consider submissions received from the parties before reaching a final decision. However, if the arbitrator decides that a dispute is solely over the tariff to be applied to a Reference Service, it may expedite the dispute resolution process and make a decision that the Reference Tariff be applied.

The procedures to be followed in conducting arbitration are contained in Part 4 of the Gas Pipelines Law. In summary, where arbitration is conducted it must be done so in private and generally limited to the parties involved in any given dispute. The arbitrator does, however, have the ability to involve parties that it considers have an interest in the arbitration.

The allocation of costs in relation to arbitration under the Access Regime is at the discretion of the arbitrator. The arbitrator's decisions are subject to appeal on a question of law under Part 4 of the Gas Pipeline Access Law. In addition these decisions are also subject to judicial review.

Independence of Arbitration and Regulatory Functions

As set out in section 11 of the Agreement, Tasmania will take the necessary steps to ensure that the Local Regulator (GPOC) develops arbitration guidelines. This will occur prior to any local distribution system becoming Covered by the Code, at some future time. The guidelines shall include practices and procedures to be carried out independently of regulatory functions under the Access Regime. These practices and procedures will include provisions to the effect that if a party to a dispute so requires, the Regulator will appoint as arbitrator a person who has not been substantially involved in regulatory decision making in relation to the pipeline subject to the dispute.

The Commonwealth, as a party to the Agreement, is also required to take such actions as are available to ensure that the ACCC (as the regulator of transmission pipelines) develops

guidelines to ensure sufficient independence between arbitration decision making and regulatory decision made under the Code.

The ACCC released an “Outline of Arbitration guidelines for Gas Access Disputes” consultation paper in November 2003. The outline has been developed based on the Law and the Code. The outline also draws upon arbitration guidelines developed in other sectors, particularly communications.

The dispute resolution procedure developed in the consultation paper divides into three stages:

- notification;
- conference, duration and ADR; and
- arbitration/decision.

The consultation paper notes that the ACCC will either appoint an independent arbitrator or fulfil the arbitrator role itself.

The cut off date for submissions was 19 December 2003.

4.7 Compliance with clause 6(4)(h) of the CPA

Clause 6(4)(h) *The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.*

It is understood that the NCC considers that an access regime should contain credible enforcement arrangements to ensure an arbitrator’s decision is binding. In addition, it is understood that the regime should preserve existing legislative rights of appeal.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(h) of the CPA.

4.7.1 The Access Regime

Binding Dispute Resolution

The final decision of the arbitrator made under the dispute resolution process contained in the Access Regime takes effect 14 days after the decision is made. Pursuant to section 6 of the Code, the owner/operator of a Covered Pipeline is bound by the decision of the arbitrator. The access seeker is also bound by the decision unless it notifies the arbitrator within 14 days of the decision that it does not intend to be bound by the decision. As part of its decision, the arbitrator may also require the parties to represent the decision in the form of a contract within 14 days. The arbitrator may resolve any terms and conditions that have not been agreed within that time.

The decisions of the arbitrator are enforceable under Part 5 of the Law. The Regulator or any other person may, in accordance with the provisions of Part 5, bring civil proceedings seeking compliance with the outcome of a dispute resolution process under the Access Regime. The sanctions and remedies, which are provided for in relation to breaches of the Access Regime (including non-compliance with the outcome of an arbitration process), are exclusive. That is, in so far as the action is based on a breach of the Access Regime, the

sanctions and remedies provided for in the Access Regime are the only sanctions and remedies available. However, this does not limit the remedies that are available under other laws (eg the TPA) if the conduct concerned in any given situation is both a breach of the Access Regime and another law.

Appeals from the Arbitrator's Decisions

As noted earlier, the Access Regime has been designed with the intention of striking a balance between the right of aggrieved parties to procedural fairness and the timeliness of regulatory outcomes.

In order to meet this objective, the Access Regime provides that the arbitrator's decisions are subject to an appeal on the question of law under Part 4 of the Gas Pipeline Access Law. In addition, the arbitrator's decisions involving Commonwealth bodies are also subject to judicial review pursuant to Part 4 of the Gas Pipeline Access Law.

A right of administrative review of an arbitrator's decision is not provided for in the Access Regime. As noted above, the arbitrator is required to apply the Access Arrangement (including Reference Tariffs on the terms and conditions for supply of a Reference Service) that has been approved by the Regulator (under section 2 of the Code). The right of administrative review does exist in relation to that approval process in certain circumstances.

Appeal rights under existing legislation

Third party access to transmission pipelines within Tasmania is possible under the Gas Pipelines Access Act. A person may apply to the relevant Tasmanian Minister for a direction where a licensee and the applicant fail to reach an agreement on access after three months. No applications or directions remain current at the time of the commencement on the Access Regime.

Taking all of this together, it is submitted that the Access Regime meets the policy intent of clause 6(4) (h).

4.8 Compliance with clause 6(4)(i) of the CPA

Clause 6(4)(i) *In deciding on the terms and conditions for access, the dispute resolution body should take into account:*

- (i) the owner's legitimate business interests and investment in the facility;*
- (ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;*
- (iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;*
- (iv) the interests of all persons holding contracts for use of the facility;*

- (v) *firm and binding contractual obligations of the owner or other persons (or both) already using the facility;*
- (vi) *the operational and technical requirements necessary for the safe and reliable operation of the facility;*
- (vii) *the economically efficient operation of the facility; and*
- (viii) *the benefit to the public from having competitive markets.*

It is understood that the NCC considers that an effective access regime should require the dispute resolution body to take account of each matter set out in clause 6(4)(i) of the CPA. It is also understood that the Council is of the view that an access regime may require a dispute resolution body to take account of other matters so long as they are not inconsistent with the matters listed in this clause.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criteria set out in the clause 6(4)(i) of the CPA.

The Access Regime

Section 6 of the Code sets out, amongst other things, certain guidelines and restrictions that must be observed by the arbitrator in making a decision regarding a dispute over access to Services provided by a Covered Pipeline.

In summary, section 6 provides that if an arbitrator decides that the sole issue in a dispute is what tariff should apply to a Reference Service, the arbitrator may streamline the process and make an immediate decision requiring that the Service to be provided at the Reference Tariff. In other cases, the arbitrator must (among other things) take into account the matters listed in section 6.15 of the Code. Section 6.15 of the Code is derived from the wording of clause 6(4)(i) except for some minor wording changes to reflect the terminology used throughout the Access Regime. As such, it is submitted that it is consistent with clause 6(4)(i).

4.9 Compliance with clause 6(4)(j) of the CPA

Clause 6(4)(j) *The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:*

- (i) *such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;*
- (ii) *the owner's legitimate business interests in the facility being protected; and*
- (iii) *the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.*

It is understood that the NCC considers that this clause requires that the dispute resolution body should have the power to require a pipeline to be extended or expanded to satisfy the

needs of an access seeker. It is also understood that the NCC is of the view that the term 'extension' in clause 6(4)(j) includes:

- expansion of capacity; and
- extension of geographical range of a facility or allowing the construction of mechanisms to interconnect with another pipeline.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criteria set out in the clause 6(4)(j) of the CPA.

4.9.1 The Access Regime

Capacity Expansions

Section 6 of the Code provides that the arbitrator may require the owner/operator of a Covered Pipeline to expand its Capacity to meet the requirements of an access seeker, provided that:

- the owner/operator is not required to extend the geographical range of a Covered Pipeline;
- the expansion is technically and economically feasible and consistent with the safe and reliable provision of the Service;
- the owner/operator's legitimate business interests are protected;
- the access seeker does not become the owner of a Covered Pipeline or part of a Covered Pipeline without the agreement of the owner/operator; and
- the owner/operator is not required to fund part or all of the expansion (except where the Extensions/Expansions Policy in the Access Arrangement for the Covered Pipeline states that the owner/operator will fund the New Facility and the conditions specified in the Extensions/Expansions Policy have been met).

'Capacity' is defined in section 10 of the Code to mean "*the measure of the potential of a Covered Pipeline as currently configured to deliver a particular Service between a Receipt Point and a Delivery Point at a point in time*".

Section 10 of the Code also defines 'New Facility' to mean "*any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline and any expansion of the Capacity of a Covered Pipeline required to be installed under section 6.22*".

Interconnection

As outlined earlier, the definition of 'Service' includes 'the right to interconnect' with a Covered Pipeline. A key consequence of this is that an access seeker (and/or the owner/operator of a Covered Pipeline) is able to invoke the dispute resolution process contained in section 6 of the Code and Part 4 of the Law in the event of a dispute arising in relation to the terms and conditions for interconnection to a Covered Pipeline.

As such, both capacity expansion and interconnection permission may be required of the Covered pipeline owner/operator by the dispute resolution body. As such, it is submitted that this is consistent with clause 6 (4)(j).

4.10 Compliance with clause 6(4)(k) of the CPA

Clause 6(4)(k) *If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the Access Arrangement which was made at the conclusion of the dispute resolution process.*

It is understood that the NCC is of the view that this clause should be interpreted in conjunction with clause 6(4)(a). Consequently, it is understood that the Council considers that an access regime could satisfy clause 6(4)(k) where:

- the parties can define for themselves, during the course of commercial negotiations, what the threshold is for a 'material change in circumstances' and can insert in their agreed arrangements those events that would trigger a re-opening of negotiations; or
- an access regime makes provision for parties to refer disputes concerning what constitutes a material change in circumstances to the dispute resolution body or some other independent body.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(k) of the CPA.

4.10.1 The Access Regime

The Access Regime does not explicitly allow a party to seek revocation or modification of a contract or arrangement for access due to a material change in circumstances. However, the Access Regime does not preclude parties from determining what may constitute a material change in circumstances in their particular circumstances and incorporating provisions to this effect into their contracts/arrangements for access. In addition, where the parties cannot agree on terms in this regard, the dispute resolution process contained in section 6 of the Code and Part 4 of the Law could be used to resolve the issues.

Further, the Access Regime does not preclude the application of common law principles (for example, the doctrine of frustration) to matters of this nature once access contracts/arrangements have been entered into.

4.11 Compliance with clause 6(4)(l) of the CPA

Clause 6(4)(l) *The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.*

It is understood that the NCC is of the view that if an access regime allows the dispute resolution body to impede the existing rights of a person to use a facility it must also be empowered to consider and, if appropriate, determine compensation.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(l) of the CPA.

4.11.1 The Access Regime

One of the fundamental principles underpinning the Access Regime is sanctity of contracts. To this end, section 6 of the Code provides that the arbitrator must not make a decision that:

- would impede the existing rights of a user to obtain Services provided by a Covered Pipeline; and
- would deprive any person of a contractual right that existed prior to the notification of the dispute.

In addition, section 2.25 of the Code precludes a Regulator from approving an Access Arrangement (or any revision to an Access Arrangement) if any provision, if applied, would deprive any person of a contractual right in existence prior to the date the Access Arrangement was submitted.

4.12 Compliance with clause 6(4)(m) of the CPA

Clause 6(4)(m) *The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.*

It is understood that the NCC considers that an access regime may comply with this clause by explicitly incorporating the principle or if it contains general provisions which have the same effect.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(m) of the CPA.

4.12.1 The Access Regime

Prohibition - Preventing or Hindering of Access

Part 3 of the Law contains a number of provisions dealing with the issue of preventing or hindering access to a Covered Pipeline. In summary, it provides that:

- the owner/operator of a Covered Pipeline; or
- a person who is a party to an agreement with the owner/operator of a Covered Pipeline in relation to a Service provided by the Covered Pipeline; or
- a person who, as the result of an arbitration, is entitled to a Service provided by the Covered Pipeline; or
- an associate of the owner/operator of a Covered Pipeline or a person (as referred to above),

must not engage in conduct for the purpose of preventing or hindering the access of another person to a Service provided by means of a Covered Pipeline.

‘Associate’ is defined to have the meaning it would have under Division 2 of Part 1.2 of the Corporations Law if section 13, 14, 16(2) and 17 of that Law were repealed.

Part 3 of the Law also provides that:

- the purpose of preventing or hindering access need not be the only purpose, provided it is or was a substantial purpose; and
- purpose may be ascertained by inference from conduct or from other relevant circumstances.

Enforcement

Under Part 5 of the Law, the Regulator may apply to the relevant Court seeking a pecuniary penalty in the event that a breach of the preventing/hindering access provisions is established.

Other Provisions in the Access Regime

In addition to the matters discussed above, other provisions in the Code should assist the arbitrator and Regulator to deal with situations where issues surrounding the availability of Capacity on a Covered Pipeline arise. In particular, it is pointed out in this regard that under the dispute resolution provisions in section 6 of the Code, where a dispute arises over whether the provision of a Service would be consistent with the safe operation of a Covered Pipeline and prudent pipeline practices accepted in the industry that:

- the owner/operator of the Covered Pipeline must have a 'reasonable' belief that the safe operation of the Pipeline and prudent pipeline practices accepted in the industry would be compromised and must disclose the assumptions it has used in reaching its decision on these matters; and
- the arbitrator may require access be provided on an interruptible basis for the corresponding interruptible price, where that would be consistent with the safe operation of the Pipeline and prudent pipeline practices accepted in the industry.

4.13 Compliance with clause 6(4)(n) of the CPA

Clause 6(4)(n) *Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.*

It is understood that the NCC takes the view that for an access regime to be consistent with this clause it must provide for financial information to be disaggregated:

- to the elements of a business that are subject to the access regime; and
- for each service that is potentially subject to access.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(n) of the CPA.

4.13.1 The Access Regime

The **Access Regime** contains a number of provisions dealing with accounting arrangements.

Ring Fencing Requirements

Section 4 of the Code requires the owners/operators of Covered Pipelines to put in place a number of arrangements to ring fence their business of providing Services using a Covered Pipeline. As a minimum, the owners/operators must:

- not carry on a Related Business (which is defined in section 10 of the Code and essentially means produce, purchase or sell natural gas) within 6 months of a Pipeline becoming Covered;
- establish and maintain a separate set of accounts in respect of each activity that is the subject of an Access Arrangement;
- establish and maintain a separate consolidated set of accounts in respect of all of the activities undertaken by the owner/operator; and
- allocate any costs that are shared between a ring fenced activity and any other activity according to a methodology that is well accepted, fair and reasonable.

The Regulator may require that additional ring fencing obligations be put in place. The Regulator may also dispense with some of the minimum obligations (including the requirement not to carry on a related business). In either case the Regulator must comply with the procedure contained in section 4 of the Code (including a public consultation process) and must be satisfied that the criteria specified in section 4 of the Code are met.

Section 4 of the Code also provides that the owners/operators of Covered Pipelines must:

- comply with general accounting guidelines that are published by the Regulator, approved by the Regulator or which the Regulator advises will apply; and
- establish and maintain procedures to ensure compliance with the ring fencing obligations and report to the Regulator on compliance.

Other provisions

In addition to the ring fencing obligations described above, Part 7 of the Law confers power on the Regulator to require any person to provide to it information or documents which the Regulator has reason to believe will assist it in:

- deciding whether to approve an Access Arrangement or changes to an Access Arrangement (see section 2 of the Code);
- deciding whether to approve a contract, arrangement or understanding between the owner/operator of a Covered Pipeline and an associate (see section 7 of the Code); and
- monitoring compliance with the Code (including the ring fencing requirements).

4.14 Compliance with clause 6(4)(o) of the CPA

Clause 6(4)(o) *The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.*

For an access regime to incorporate this principle it is understood that the NCC expects that it would provide the dispute resolution body and any other relevant body (for example, the Regulator) with the right to inspect all financial documents pertaining to the services concerned.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criterion set out in the clause 6(4)(o) of the CPA.

4.14.1 The Access Regime

Regulator Powers

As described above in relation to clause 6(4)(n), Part 7 of the Law confers power on the Regulator to require any person to provide to it information or documents which the Regulator has reason to believe will assist it in carrying out certain functions under the Access Regime (including the approval of Access Arrangements). In addition, Part 7 provides that the Regulator may specify in what format the information or documents is to be produced.

Part 7 also contains provisions dealing with the handling of confidential or commercially sensitive information or documents. In summary, the Regulator is generally obliged not to disclose such information/documents to the public unless it is of the opinion that no detriment would be caused to the person who supplied it (or the person from whom that person received it) or the public benefit in disclosing it outweighs the detriment. A right of administrative appeal is provided for (under Part 7) in situations where the Regulator decides to release confidential or commercially sensitive information.

Failure to comply (without a lawful excuse) with the requirements of the Regulator in this context can attract a fine or imprisonment.

Arbitrator Powers

The procedural powers of the arbitrator under the Access Regime are contained in Part 4 of the Law. Under Part 4, the arbitrator is empowered to:

- gather information about any matter relevant to the access dispute in any way the arbitrator thinks appropriate;
- require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument; and
- summons a person to appear before it to give evidence and to produce such documents as are referred to in the summons.

Part 4 also contains provisions dealing with the handling of confidential information. The arbitrator can only provide a copy of confidential information to another party if the party

gives an undertaking not to disclose the information to another person except to the extent specified by the arbitrator and subject to any other conditions specified by the arbitrator.

Failure to comply (without a reasonable excuse) with the requirements of the arbitrator in this context can attract a penalty of imprisonment.

4.15 Compliance with clause 6(4)(p) and 6(2) of the CPA

Clause 6(4)(p) *Where more than one State or Territory access regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other co-operative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of Access Arrangements.*

Clause 6(2) *The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:*

- (a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or*
- (b) substantial difficulties arise from the facility being situated in more than one jurisdiction.*

It is understood that clauses 6(4)(p) and 6(2) contain principles that are applicable in situations where an access regime applies to services of facilities extending beyond (or having an influence beyond) the jurisdictional boundary of the State or Territory seeking certification.

To incorporate the requirements of these clauses it is understood that the NCC's primary expectation is that where a service is subject to access regimes in more than one State or Territory, those regimes should be consistent and should provide for a single process, a single dispute resolution body and a single enforcement forum.

For the reasons detailed below, it is submitted that the Access Regime satisfies the criteria set out in the clause 6(4)(p) and 6(2) of the CPA.

4.15.1 The Access Regime

The Access Regime only applies to "Services" provided by "Pipelines" that are located within Tasmania.

Tasmania's Access Regime includes a number of processes to streamline regulation of cross-border Pipelines.

These processes are:

- Part 3 of the Law sets out a process under which Ministers can determine whether a Pipeline (including a cross-border Pipeline) is to be classified as a transmission or distribution Pipeline (and hence who the Regulator for that Pipeline will be). If the

Ministers fail to reach agreement, they may request that the NCC make a recommendation on the matter. The Pipeline can be classified in accordance with the NCC recommendation if Ministers are still unable to agree following a recommendation from the NCC;

- there is a single process for coverage of cross-border transmission Pipelines. The NCC will make a recommendation on coverage to the Commonwealth Minister. The Commonwealth Minister then makes a decision on coverage based on the recommendation;
- the ACCC is the single national Regulator for all interstate transmission Pipelines;
- the administrative appeal body in relation to decisions made by the ACCC is the Australian Competition Tribunal;
- Part 3 of the Gas Pipelines Access Law also sets out a process for determining the jurisdictional Regulator of a cross-border distribution Pipeline. In summary, Ministers will seek to reach agreement on which jurisdiction has the 'greatest association' with the Pipeline. Where agreement cannot be reached, the NCC can be asked to make a recommendation as to which jurisdiction has greatest association with the Pipeline. The Regulator of the Pipeline would then be the body specified in the legislation of the State or Territory with which the Pipeline concerned has the greatest association;
- there is a single process for coverage of cross-border distribution Pipelines. The NCC will make a recommendation on coverage to the relevant Minister of the jurisdiction deemed to have the greatest association with a Pipeline. The Minister then makes a decision on coverage based on the recommendation;
- the Regulator of distribution Pipelines in each jurisdiction is the independent body to be specified in that State or Territory's legislation (eg. in Tasmania it is GPOC);
- the administrative appeals body for decisions made by jurisdictional regulators and State/Territory Ministers, is the body specified in the legislation under which the Regulator or designated Minister was acting; and
- an access regime with identical effect will be in place in all jurisdictions.

So for a Covered Pipeline which lies in more than one jurisdiction, processes are to be put in place whereby each component (eg dispute resolution) of the Access Regime is only subject to one jurisdiction's law.

5 Duration of Certification

This application seeks a recommendation from the National Competition Council under section 44M of the Trade Practices Act that the Access Regime that has been established in Tasmania is an effective access regime in relation to services provided by means of natural gas transmission and distribution pipelines, for a minimum duration of fifteen (15) years.

6 Appendices

- A *Gas Act 2000*
- B *Gas Pipelines Act 2000*
- C *Gas Pipelines Regulations 2002*
- D *Gas Pipelines Access (Tasmania) Act 2000*
- E *Gas (Exclusive Distribution Franchise) Order 2003*
- F *Gas (Foundation Customers) Order 2002*
- G Tasmanian Gas Distribution Code
- H Tasmanian Gas Retail Code
- I Tasmanian Gas Customer Transfer and Reconciliation Code
- J Correspondence on Tasmania's Transitional Derogation under the Natural Gas Pipelines Access Agreement
- K List of relevant websites

Appendix A



Gas Act 2000

An Act to regulate the distribution and retailing of gas, to provide for safety and technical standards for gas installations and gas appliances and for related purposes

[Royal Assent 20 DECEMBER 2000]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

Short title

1. This Act may be cited as the *Gas Act 2000*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears –

"**appliance**" means a gas appliance;

"**authorised officer**" means a person appointed under Part 6 as an authorised officer;

"**code**" means a gas code issued under section 38A;

"**Commission**" means the Resource Planning and Development Commission;

"**complex gas installation**" means a gas installation that is not a standard gas installation;

"**condition**" includes a limitation or restriction;

"**contravene**" includes fail to comply with;

"**convey**", in respect of gas, means to transmit, distribute or otherwise convey by pipeline;

"**council**" means a council within the meaning of the *Local Government Act 1993*;

"customer" means a person who has a supply of gas available from a distribution system for consumption in a place, and includes –

- (a) the occupier for the time being of a place to which gas is supplied by a distribution system for consumption in the place; and
- (b) a person seeking a supply of gas from a distribution system for consumption in a place; and
- (c) a person whose supply of gas has been disconnected;

"disconnect" a gas supply includes interrupt or discontinue the gas supply to a customer;

"distribution" means the provision of pipeline services through a distribution system;

"distribution system" means the whole or a part of a pipe or a system of pipes and equipment for use for, or in connection with, the distribution and supply of gas to persons for consumption, and includes a pipeline, or class of pipelines, declared under section 3(3) of the *Gas Pipelines Act 2000* to be treated as not being a transmission pipeline for the purposes of that Act, but does not include –

- (a) a pipeline in respect of which a licence has been granted or is required under the *Gas Pipelines Act 2000*;
or
- (b) a system of pipes and equipment –
 - (i) installed in a place for the conveyance and use of gas from a pressurised vessel situated in the place; and
 - (ii) not extending to, or connected to pipes in, some other place in separate occupation; or
- (c) pipes or equipment declared by the regulations not to be, or not to form part of, a distribution system; or
- (d) a pipeline or class of pipelines which, under subsection (3), is to be treated as not forming part of a distribution system for the purposes of this Act;

"facility" means –

- (a) a distribution system; or

(b) a facility or service for the control of the conveyance of gas; or

(c) a facility for the measurement of gas where the facility is connected to a distribution system; or

(d) a service for the sale by retail of gas;

"**function**" includes duty;

"**gas**" means natural gas or any other gaseous fuel but does not include –

(a) liquefied petroleum gas, except in Parts 3 and 4; or

(b) a gaseous fuel declared by the regulations to be excluded from the operation of this Act;

"**gas appliance**" means an appliance that uses gas as a fuel, but does not include anything declared by the regulations not to be a gas appliance;

"**gas distributor**" means a gas entity licensed under section 24 to operate a distribution system;

"**gas entity**" means a person licensed under Part 3, and includes a person who has been licensed under that Part and whose licence has been suspended or cancelled or has expired;

"**gas infrastructure**" means any part of a distribution system owned or operated by a gas entity;

"**gas installation**" means, in respect of the use or intended use of gas, a combination of –

(a) any pipe or system of pipes for, or incidental to, the conveyance of gas and components or fittings associated with the pipe or pipes which are downstream from the gas supply point; and

(b) any one or more of the following:

(i) any appliance and associated components or fittings which are downstream from the gas supply point;

(ii) any meter which is downstream from the gas supply point;

(iii) any means of ventilation or system for the removal of combustion products which is downstream from the gas supply point;

"gas officer" means a person appointed under Part 5 as a gas officer;

"gas retailer" means a gas entity licensed under section 24 to retail gas;

"gas supply industry" means the operation of a distribution system, the retailing of gas and any other operation for which a licence is required under Part 3;

"gas supply point" means –

- (a) the outlet of a gas entity's meter assembly used to measure a customer's gas use; or
- (b) if paragraph (a) does not apply, the point of supply of gas between the gas entity and the customer;

"incident" means any incident or event relating to the conveyance, supply or use of gas or another regulated substance which causes or has the potential to cause –

- (a) death or injury to a person; or
- (b) significant damage to property; or
- (c) an uncontrolled explosion, fire or discharge of gas or another regulated substance; or
- (d) an impact on the security of supply;

"label" includes a stamp or mark;

"land" includes –

- (a) an estate or interest in land (including an easement);
or
- (b) a right or power over, or in respect of, land;

"licence" means a licence granted and in force under this Act for one or more of the following:

- (a) to sell gas by retail;
- (b) to construct a distribution system;
- (c) to operate a distribution system;
- (d) any other operations for which a licence is required by the regulations;

"natural gas" means a substance –

(a) which is in a gaseous state at standard temperature and pressure and which consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and

(b) which has been processed to be suitable for consumption –

but does not include anything declared by the regulations not to be natural gas;

"occupier" of land or a place means a person who has, or is entitled to, possession or control of the land or place;

"operations" includes activities;

"public land" means land owned by –

- (a) the Crown; or
- (b) an instrumentality or agent of the Crown; or
- (c) a council or other local government body;

"quality", in respect of gas, includes odourisation, purity, temperature, pressure and composition;

"regulated substance" means –

- (a) gas, other than liquid petroleum gas; or
- (b) natural gas; or
- (c) any other substance declared by the regulations to be a substance to which this Act applies;

"regulations" means regulations made and in force under this Act;

"reviewable decision" means any direction, decision or determination under this Act other than a direction, decision or determination declared by this Act not to be reviewable;

"sell" includes –

- (a) to barter or exchange; and
- (b) to let on hire; and
- (c) to advertise for sale or hire; and

(d) to offer or expose for sale or hire;

"standard gas installation" means –

(a) a gas installation –

(i) which contains only Type A appliances; and

(ii) which is located in residential premises of a prescribed class or on land associated with such premises; or

(b) a gas installation –

(i) which contains only Type A appliances; and

(ii) which is located in commercial premises of a prescribed class or on land associated with such premises; and

(iii) in which the total gas consumption of the appliances does not exceed the relevant prescribed amount an hour; and

(iv) in which the length of pipe from the gas supply point to the furthest appliance does not exceed the relevant prescribed length;

"supply" means the delivery of gas by means of a distribution system to a customer's gas supply point;

"tariff" means a schedule of prices and conditions for the sale of gas to customers generally, or to various classes of customers, as amended from time to time;

"trader" means a person who sells gas appliances in the course of a trade or business;

"Tribunal" means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

"Type A appliance" means an appliance (including a second-hand appliance) that has been approved by the Director of Gas Safety in accordance with section 70;

"Type B appliance" means an appliance (including a second-hand appliance) that –

(a) is not a Type A appliance; and

(b) has a gas consumption rating in excess of 10 megajoules an hour –

and includes any components and fittings of an appliance complying with paragraphs (a) and (b) that are downstream from, and including, the appliance's manual shut-off valve.

(2) In this Act, a reference to retailing or to retail is to be read as a reference to the sale of gas by a gas entity to a person for consumption where the gas is to be conveyed (whether or not by the seller) to the person by a distribution system, but as not including an activity declared by the regulations not to be retailing of gas.

(3) The Governor may, by order published in the *Gazette*, declare that a pipeline or class of pipelines is to be treated as –

(a) forming part of a distribution system for the purposes of this Act;
or

(b) not forming part of a distribution system for the purposes of this Act.

Application of Act

3A. (1) Subject to subsection (2), this Act does not apply to a gas installation or gas appliance, or class of gas installations or gas appliances, used or installed before the day on which the *Gas Legislation (Miscellaneous Amendments) Act 2001* received the Royal Assent.

(2) The regulations may provide that a provision of this Act applies to a gas installation or gas appliance, or class of gas installations or gas appliances, used or installed before the day on which the *Gas Legislation (Miscellaneous Amendments) Act 2001* received the Royal Assent if the gas installation or gas appliance, or class of gas installations or gas appliances, is modified after that day.

Objects

4. The objects of this Act are –

(a) to facilitate the development of a gas supply industry in Tasmania;
and

(b) to promote efficiency and competition in the gas supply industry;
and

(c) to promote the establishment and maintenance of a safe and efficient system of gas distribution and supply; and

(d) to establish and enforce proper standards of safety, reliability and quality in the gas supply industry; and

(e) to establish and enforce proper safety and technical standards for gas installations and appliances; and

(f) to protect the interests of consumers of gas.

Crown bound

5. This Act binds the Crown not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Act does not derogate from certain Acts

6. This Act is in addition to, and does not derogate from, the *Workplace Health and Safety Act 1995* or the *Dangerous Goods Act 1998*.

6A.

PART 2 - Administration

Division 1 - Director of Gas

Director of Gas

7. (1) The Minister is to appoint a person to be the Director of Gas.

(2) The Director is to perform the functions imposed, and may exercise the powers conferred, on the Director under this Act.

(3) Except with the written permission of the Minister, the Director may not hold any other appointment, office or position in respect of which he or she receives remuneration.

(4) Despite subsection (3), the Director may hold that office in conjunction with State Service employment.

(5) Except as provided by subsection (4), the *State Service Act 2000* does not apply in respect of the Director.

Functions of Director of Gas

8. (1) The Director of Gas has the following functions:

(a) the administration of the licensing system for gas entities established by this Act;

(b) the establishment, monitoring and publication of standards and codes in respect of services provided by gas entities or arising from any functions performed for the purposes of this Act;

(c) any other functions assigned to the Director under this Act.

(2) The Director must, in performing any functions of a discretionary nature, endeavour to act in a fair and equitable manner taking proper account of the interests of participants in the gas supply industry and the interests of consumers of gas.

(2A) The Minister may give directions to the Director with respect to the carrying out of his or her functions and powers under this Act, except functions and powers under section 24, and, in carrying out those functions and powers, the Director must comply with any directions so given.

(3) Nothing in subsection (2) gives rise to, or can be taken into account in, any civil cause of action.

Division 2 - Director of Gas Safety

Director of Gas Safety

9. (1) The Minister is to appoint a State Service officer or State Service employee to be Director of Gas Safety and that officer or employee holds that office in conjunction with State Service employment.

(2) The Director is to perform the functions imposed, and may exercise the powers conferred, on the Director under this Act.

Functions of Director of Gas Safety

10. The Director of Gas Safety has the following functions:

- (a) the monitoring and regulation of safety and technical standards in the gas supply industry;
- (b) the monitoring and regulation of safety and technical standards with respect to gas installations and gas appliances.

Division 3 - Provisions applicable to Director of Gas and Director of Gas Safety **Delegation**

11. (1) The Director of Gas or the Director of Gas Safety may, by instrument in writing, delegate the exercise of such of his or her powers under this Act (other than this power of delegation) as are specified in the instrument of delegation to any person who, in the relevant Director's opinion, is competent and suitable.

(2) The relevant Director may, by instrument in writing, revoke wholly or in part any such delegation.

(3) A power, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions as to the exercise of any of the powers delegated, or as to time or circumstance, as are specified in the instrument.

(5) Notwithstanding any delegation under this section, the relevant Director may continue to exercise all or any of the powers delegated.

(6) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by or to the relevant Director and is taken to have been done by or to the relevant Director.

(7) An instrument purporting to be signed by a delegate of the relevant Director in his or her capacity as such a delegate may in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the relevant Director and, until the contrary is proved, is taken to be an instrument signed by a delegate of the relevant Director under this section.

Director's power to require information

12. (1) The Director of Gas or the Director of Gas Safety may, by written notice, require a person to give the relevant Director, within a time stated in the notice (which must be reasonable), information in the person's possession that the relevant Director reasonably requires for the administration of this Act.

(2) A person required to give information under this section must provide the information within the time stated in the notice.

Penalty:

Fine not exceeding 100 penalty units.

(3) A person may not be compelled to give information under this section if the information might tend to incriminate the person of an offence.

(4) A requirement under this section is not a reviewable decision under Part 7.

Obligation to preserve confidentiality

13. (1) The Director of Gas or the Director of Gas Safety must preserve the confidentiality of information gained in the course of administering this Act (including information gained by an authorised officer under Part 6) that –

(a) could affect the competitive position of a gas entity or other person;
or

(b) is commercially sensitive for some other reason.

(2) Subsection (1) does not apply to the disclosure of information between persons engaged in the administration of this Act.

(3) Information classified by the Director of Gas or the Director of Gas Safety as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

14.

Advisory committees

15. (1) The Minister, the Director of Gas or the Director of Gas Safety may establish an advisory committee to advise the Minister or the relevant Director on specified aspects of the administration of this Act.

(2) The members of an advisory committee are appointed and hold office on terms and conditions determined by the Minister.

Annual report

16. (1) The Director of Gas and the Director of Gas Safety must, within 4 months after the end of each financial year, deliver to the Minister a report on the relevant Director's operations during that financial year.

(1A) An annual report must include any information required by the Minister.

(2) The Minister must cause a copy of each report to be laid before both Houses of Parliament as soon as practicable after receiving it.

Division 4 -

17.

18.

19.

20.

Division 5 -

20A.

20B.

PART 3 - Gas supply industry
Division 1 - Licensing of gas entities

Requirement for licence

21. A person must not –

(a) construct a distribution system; or

(b) operate a distribution system; or

(c) sell gas by retail; or

(d) carry on any other activity for which a licence is required by the regulations –

unless the person holds a licence under this Part or the Gas Pipelines Act 2000 authorising the relevant activity.

Penalty:

Fine not exceeding 500 penalty units.

22.

Application for licence

23. (1) An application for the issue or renewal of a licence must –

(a) be made to the Director of Gas in a form approved by the Director; and

(b) be supported by such information or evidence as the Director may require.

(2) The applicant must pay to the Director an application fee fixed by the Director of an amount that the Director considers appropriate to meet the reasonable costs of determining the application.

(3) The Director may, as he or she considers appropriate, accept a single application from an applicant in respect of different operations of the applicant or operations of the applicant at different locations or may require separate applications.

(4) The applicant must give the Director any further relevant information that the Director reasonably requests.

Consideration of application for issue of licence

24. (1) The Director of Gas must consider an application for the issue of a licence and may, subject to this Division, issue or refuse to issue the licence within 60 days after receiving the application.

(2) Subject to this section, the Director may issue a licence only if satisfied that –

(a) the applicant is a body corporate or a partnership of 2 or more bodies corporate; and

(b) the applicant is suitable to hold the licence; and

(c) in the case of a licence authorising the operation of a distribution system, the Director of Gas Safety has provided a certificate that, in his or her opinion, the system has (or the proposed system will have) the necessary capacity for distributing gas safely; and

(d)

(e) in the case of a licence authorising other operations for which a licence is required under the regulations, the applicant meets any special requirements imposed by the regulations for the holding of the licence; and

(f) in the case of a licence of any class, the grant of the licence would be consistent with criteria (if any) prescribed by the regulations for a licence of the relevant class.

(3) In deciding whether an applicant is a suitable person to hold a licence, the Director may consider –

(a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and

(b) the financial, technical and human resources available to the applicant; and

(c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and

(d) any other matters prescribed by the regulations.

Authority conferred by licence

25. (1) A licence authorises the person named in the licence to carry on operations in accordance with the terms and conditions of the licence.

(2) The operations authorised by a licence need not be all of the same character or at the same location but may consist of a combination of different operations or operations at different locations.

Licence term and renewal

26. (1) A retail licence is to be for a term not exceeding 10 years stated in the licence.

(2) A distribution licence is granted for a term not exceeding 25 years stated in the licence.

(3) Subject to this Division and the conditions of the licence, the Director of Gas must, on receipt of an application in accordance with this section, renew a licence unless satisfied that the applicant –

(a) has been guilty of a material contravention of a requirement imposed by or under this Act or any other Act in connection with the operations authorised by the licence such that the licence should not be renewed; or

(b) is no longer for any reason entitled to the issue of the licence.

(4) An application for renewal of a licence must be made, in writing, to the Director at least 3 months, but not more than 6 months, before the end of the term of the licence.

(5) The Director may extend the period of 6 months referred to in subsection (4) as he or she thinks fit.

Licence fees and returns

27. (1) A person is not entitled to the issue or renewal of a licence unless the person first pays to the Director of Gas the relevant annual licence fee, or the first instalment of the relevant annual licence fee, as the case may require.

(2) The holder of a licence issued for a term of 2 years or more must –

(a) in each year lodge with the Director, before the date prescribed for that purpose, an annual return containing the information required by the Director as a condition of the licence or by written notice; and

(b) in each year (other than a year in which the licence is due to expire) pay to the Director, before the date prescribed for that purpose, the relevant annual licence fee, or the first instalment of the relevant annual licence fee, as the case may require.

Penalty:

Fine not exceeding 10 penalty units.

(3) Subject to subsection (4), the annual licence fee for the distribution and retailing of gas is to be a fee fixed by the Director of an amount that the Director considers appropriate as a reasonable contribution towards the costs of administration of this Act having regard to the nature and scale of the operations that are authorised by the licence.

(4) The regulations may, for the purposes of subsection (3), exclude gas retailed to certain customers or certain classes of customers from the calculation of licence fees.

(5) The Director may determine that the annual fee in respect of any licence be paid in equal instalments at intervals fixed by the Director.

(6) If the holder of a licence fails to pay the annual licence fee (or an instalment of the annual licence fee) in accordance with this section, interest is to be charged on the amount of the fee outstanding at the prescribed rate.

(7) An annual licence fee (including any instalment of an annual licence fee or any penalty for default) payable under this section is recoverable in any court of competent jurisdiction as a debt due to the Crown.

(8) In this section,

"holder" of a licence includes the holder of a licence that has been suspended.

Information to be included in licence

28. A licence is to include the following information:

- (a) the name of the licence holder;
- (b) the activities that the licence authorises, including the geographical location of any operations, where relevant;
- (c) the term of the licence;
- (d) any conditions to which the licence is subject.

Licence conditions

29. (1) A licence held by a gas entity is subject to –

- (a) conditions determined by the Director of Gas requiring compliance with –
 - (i) standards or codes specified in the licence; and
 - (ii) a safety and operating plan or safety case, in accordance with Part 4; and

(b) conditions determined by the Director of Gas relating to the financial or other capacity of the gas entity to continue operations under the licence for the term of the licence; and

(c) any other conditions determined by the Director of Gas for the purposes of this Act.

(2) Without limiting the effect of subsection (1) –

(a) if a person holds a licence or licences authorising both the operation of a distribution system and the retailing of gas, the Director of Gas may impose conditions on the licence or licences requiring that the person's affairs in respect of the operation of the distribution system be kept separate from the person's affairs in respect of the retailing of gas in the manner and to the extent specified in the conditions; and

(b) the Director of Gas may make a licence subject to a condition requiring a specified process to be followed to resolve disputes between the licence holder and customers as to the distribution or sale of gas.

Licences conferring exclusive franchise

30. (1) The Minister may, by order published in the *Gazette*, determine that a person should have an exclusive franchise to undertake or carry on an activity for which a licence is required under section 21.

(2) The franchise may be expressed to be exclusive to such extent as is specified in the order.

(3) The order –

(a) is to specify the person to whom the exclusive franchise is to be granted; and

(b) is to specify the area within which the exclusive franchise applies; and

(c) is to specify the period of the exclusive franchise; and

(d) is to contain any other conditions which the Minister requires the Director of Gas to include in the licence under which the exclusive franchise is to be granted.

(4) The Director of Gas must exercise his or her powers under this Act so as to give effect to the order.

(5) The Minister may require the payment of a fee for the grant of an exclusive franchise and may direct the Director of Gas not to grant the proposed licence until the fee is paid.

(6) The period of an exclusive franchise need not be the same as the period of the licence under which the exclusive franchise is granted.

(7) An exclusive franchise may be subject to conditions –

(a) requiring or relating to standard contractual terms and conditions to apply to the retailing of gas to customers or customers of a prescribed class; or

(b) requiring the gas entity to comply with specified minimum standards of service in respect of the entity's customers or customers of a prescribed class, and requiring monitoring and reporting of levels of compliance with those standards.

(8) The Minister may, by order published in the *Gazette*, revoke or amend an order made under subsection (1).

(9) If the Minister revokes an order made under subsection (1), a licence issued under section 24 in accordance with the order remains in force, but is no longer to be taken as granting an exclusive franchise.

31.

Offence to contravene licence conditions

32. (1) A gas entity must comply with any conditions to which its licence is subject.

Penalty:

Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

(2) If a court finds a gas entity guilty of an offence against subsection (1), it may in addition to, or instead of, imposing a penalty under that subsection make one or more of the following orders:

(a) an order requiring the gas entity to comply with any conditions to which its licence is subject;

(b) an order directing the gas entity to do, or refrain from doing, anything;

(c) such other order as the court considers desirable to protect the interests of consumers of gas.

Directions to comply with licence conditions

32A. (1) The Director of Gas, if satisfied on reasonable grounds that a gas entity has been or is failing to comply with the conditions of its licence, may give the gas entity a direction requiring it to take such action as the Director considers necessary to secure compliance with those conditions.

(2) A direction must be given by written notice or, if the Director is of the opinion that immediate action is required, it may be given orally.

(3) If a direction is given orally, it must be confirmed in writing as soon as practicable after being given.

(4) A direction must state the action required to be taken by the gas entity and the time within which the action is required to be taken.

(5) A gas entity that is given a direction under this section must comply with the direction.

Penalty:

Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

(6) If a gas entity fails to comply with a direction given to it under this section –

(a) the Director of Gas, or a person authorised in writing by the Director, may take any action that is reasonable and necessary to give effect to the direction; and

(b) the costs incurred in giving effect to the direction under paragraph (a) are recoverable from the gas entity in any court of competent jurisdiction as a debt due to the Crown from the gas entity; and

(c) for the purposes of giving effect to the direction, neither the Director of Gas nor a person authorised by the Director under paragraph (a) is required to hold a licence.

Notice of licence decisions

33. The Director of Gas must –

(a) give an applicant for the issue or renewal of a licence –

(i) written notice of the Director's decision on the application; and

(ii) if the decision is to refuse to issue or renew a licence, the reasons for the decision; and

(b) give public notification of the Director's decision.

Variation of licence

34. (1) The Director of Gas may vary the terms or conditions of a gas entity's licence by written notice to the entity.

(2) A variation may only be made –

(a) on application by the gas entity or with the gas entity's agreement; or

(b) after giving the gas entity reasonable notice of the proposed variation and allowing the entity a reasonable opportunity to make representations about the proposed variation.

(3) The Director must give the holder of a licence written notice of any decision by the Director affecting the terms or conditions of the licence.

Transfer of licence

35. (1) A licence may be transferred with the agreement of the Director of Gas.

(2) It is a condition of the transfer of a licence that the person to whom the licence is transferred must –

(a) provide the Director of Gas Safety with a written commitment to comply with the existing safety case for the relevant facility; or

(b) submit a new safety case to the Director of Gas Safety for approval.

(3) The Director of Gas may impose conditions on the transfer of a licence, or vary the terms and conditions of the licence on its transfer.

Surrender of licence

36. (1) A gas entity may, by written notice given to the Director of Gas, surrender its licence.

(2) The notice must be given to the Director at least 6 months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.

(3) The Director may, by agreement with the gas entity, shorten the required period of notice.

Register of licences

37. (1) The Director of Gas is to keep a register of the licences issued to gas entities under this Act.

(2) A register kept under this section –

(a) is to include the terms and conditions of each licence; and

(b) is to include other information required under the regulations.

(3) A person may, on payment of a fee fixed by the Director, inspect the register.

Division 2 - Standard terms and conditions

38.

Division 2A - Gas codes

Gas codes

38A. (1) Either of the following persons may issue gas codes:

(a) the Minister;

(b) the Director of Gas.

(2) A code may provide for any matter relating or incidental to the distribution or retailing of gas.

(3) A code must be consistent with this Act and the public interest.

(4) If there is an inconsistency between a code and this Act, the code is invalid to the extent of the inconsistency.

(5) A code may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the code.

(6) A code may authorise any matter to be from time to time determined, applied or regulated by –

- (a) the Director of Gas; or
- (b) the Tribunal; or
- (c) a tribunal established under the code.

(7) The Minister is to notify the Director of Gas whenever the Minister issues a code and provide the Director with a copy of the code.

(8) The Director of Gas is to notify the Minister whenever the Director issues a code and provide the Minister with a copy of the code.

Publication and availability of gas codes

38B. (1) As soon as practicable after the Minister or the Director of Gas issues a code, the Director of Gas is to cause it to be published in the *Gazette*.

(2) The Director must provide a person with a copy of a code or part of a code if the person –

- (a) requests it; and
- (b) pays to the Director a reasonable fee determined by the Director.

(3) The Director must allow a person to peruse a code, free of charge, at the office of the Director at any time within the hours during which that office is normally open.

Review, amendment and replacement of gas codes

38C. (1) In this section –

"issuing authority" means the Minister or the Director of Gas;

"protected provision" means a code provision that is identified, in the code, as a provision that is not to be omitted from the code, or amended, without the Minister's written approval.

(2) An issuing authority may, on its own initiative or at the request of any person, review a code issued by that authority.

(3) The Director of Gas is to review a code issued by the Director when required to do so by the Minister.

(4) An issuing authority may amend, rescind or substitute a code issued by that authority as specified in, and in accordance with, the code.

(5) Despite subsection (4), the Director of Gas must not do any of the following without first obtaining the written approval of the Minister:

- (a) amend a protected provision of a code;
- (b) amend a code by omitting a protected provision;
- (c) rescind or substitute a code containing a protected provision.

Division 3 -

39.

40.

Division 4 - Failure to supply or convey gas

Gas retailer not liable for failure to supply gas

41. (1) A gas retailer is not liable to a penalty or damages for failing to supply gas if the failure arises out of any accident or cause beyond the control of the gas retailer.

(2) A gas retailer may enter into an agreement with a person varying or excluding the operation of subsection (1).

(3) Nothing in subsection (1) or (2) affects the liability of a gas retailer under Part 4.

Gas entity not liable for failure to convey gas

42. (1) A gas entity is not liable to a penalty or damages for failing to convey gas through its distribution pipelines if the failure arises out of any accident or cause beyond the control of the gas entity.

(2) A gas entity may enter into an agreement with a person varying or excluding the operation of subsection (1).

(3) Nothing in subsection (1) or (2) affects the liability of a gas entity under Part 4.

Division 5 - Protection of property in gas infrastructure

Gas infrastructure does not merge with land

43. In the absence of an agreement in writing to the contrary, the ownership of a pipe or equipment is not affected by the fact it has been laid or installed as gas infrastructure in or under land.

Seizure and dismantling of gas infrastructure

44. (1) Gas infrastructure may not be seized or dismantled in execution of a judgment.

(2) This section does not prevent the sale of a distribution system as a going concern in execution of a judgment.

Division 6 - Temporary gas rationing

Temporary gas rationing

45. (1) If for any reason the volume of gas available for supply through a distribution system is insufficient to meet the requirements of all customers who draw gas from that system –

(a) the Minister may, by notice in writing to the gas entity by which the system is operated, give directions to ensure the most efficient and appropriate use of the available gas; and

(b) the Minister may, by notice published in such manner as may be appropriate in the circumstances, direct customers not to draw gas from the system except for the purposes (if any) allowed by the directions.

(2) A direction under this section operates for a period (not exceeding 30 days) specified in the notice.

(3) No civil liability arises from a failure to supply gas as a result of compliance with a direction under this section.

(4) A person must not contravene a direction under this section.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 500 penalty units; or

(b) a natural person, a fine not exceeding 25 penalty units.

Division 7 - Suspension or cancellation of licences

Suspension or cancellation of licences

46. (1) The Director of Gas may suspend or cancel a licence with effect from a specified date, if satisfied that –

(a) the holder of the licence obtained the licence improperly; or

(b) the holder of the licence has been guilty of a material contravention of a requirement imposed by or under this Act or any other Act in connection with the operations authorised by the licence; or

(c) the holder of the licence has ceased to carry on operations authorised by the licence; or

(ca) the holder of the licence has failed to commence operations as authorised by the licence; or

(d) there has been any act or default such that the holder of the licence would no longer be entitled to the issue of such a licence.

(2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Director.

(3) Before the Director acts under this section, the Director must –

(a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and

(b) allow the holder of the licence a reasonable period within which to make submissions to the Director in respect of the proposed action.

Division 8 - Power of Director of Gas to take over operations

Power to take over operations

47. (1) The Governor may, on receipt of a report from the Director of Gas, make an order under this section if –

(a) a gas entity contravenes this Act and the contravention is, in the opinion of the Governor, of a sufficiently serious nature, or a gas entity's licence ceases, or is to cease, to be in force; and

(b) it is necessary, in the Governor's opinion, to take over the entity's operations (or some of them) to ensure that the entity's customers receive an adequate supply of gas.

(2) Before the Governor makes an order under this section, the Director must give the gas entity a reasonable opportunity to make written representations giving reasons why the order should not be made.

(3) An order under this section –

(a) authorises the Director to take over the gas entity's operations or a specified part of the gas entity's operations; and

(b) may contain ancillary directions including, without limitation, directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with.

(4) A direction under subsection (3)(b) operates to the exclusion of rights that are inconsistent with it.

Appointment of operator

48. (1) If an order is made under section 47, the Director of Gas must appoint a suitable person (who may, but need not, be a gas entity) to take over the relevant operations on agreed terms and conditions.

(2) A person appointed to take over a gas entity's operations is referred to in this section as the "operator".

(3) The gas entity must facilitate the takeover of the relevant operations by the operator.

Penalty:

Fine not exceeding 500 penalty units.

(4) The operator may have access to the distribution system and other property of the gas entity for the purposes of carrying on the relevant operations.

(5) A person must not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Part.

Penalty:

Fine not exceeding 500 penalty units.

(6) A person must comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.

Penalty:

Fine not exceeding 500 penalty units.

Division 9 - Disputes

Disputes

49. (1) If a dispute arises as to the activities of a gas entity, a party to the dispute may request the Director of Gas or the Director of Gas Safety to mediate in the dispute.

(2) The relevant Director may mediate or decline to mediate in a dispute and may impose conditions that must be satisfied if the mediation is to proceed.

(3) If the relevant Director proceeds with the mediation –

(a) the relevant Director may give directions to the parties to assist in the resolution of the matters in issue; and

(b) the relevant Director must make a reasonable attempt to assist the parties to agree to a negotiated settlement of the dispute.

(4) If a dispute is resolved, the parties to the dispute and the relevant Director must sign a document setting out the terms of the settlement and the agreement is binding on the parties.

(5) This section is not intended to provide an exclusive method of dispute resolution.

PART 4 - Safety of infrastructure, installations and appliances

Division 1AA - Interpretation

Interpretation

49A. In this Part,

"gas" includes liquefied petroleum gas.

Division 1 - General requirements for safe operation

General requirements for safe operation

50. (1) A person who owns or operates gas infrastructure or a gas installation must take reasonable steps to ensure that –

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

(b) the infrastructure or installation is safe and safely operated.

Penalty:

Fine not exceeding 1 000 penalty units.

(2) For the purpose of ensuring under this section that a gas installation complies with the technical and safety requirements, a person may rely on a certificate of compliance referred to in [section 66](#) in respect of the installation.

Gas quality

51. (1) A gas entity must ensure that, as far as practicable, the gas which it conveys –

(a) meets the prescribed standards of quality; and

(b) complies with any other prescribed requirements.

Penalty:

Fine not exceeding 1 500 penalty units.

(2) A gas entity that supplies or sells gas to a customer for use in a gas installation must ensure that, as far as practicable, the gas supplied or sold –

(a) meets the prescribed standards of quality; and

(b) complies with any other prescribed requirements.

Penalty:

Fine not exceeding 1 500 penalty units.

Offence to supply or sell gas for unsafe gas installation

52. (1) A person must not knowingly supply or sell gas for use in a gas installation which is unsafe.

Penalty:

Fine not exceeding 1 500 penalty units.

(2) A gas entity must not knowingly supply or sell gas for use in a gas installation which does not comply with this Act otherwise than with the approval of the Director of Gas Safety.

Penalty:

Fine not exceeding 1 500 penalty units.

Mandatory reporting of gas incidents

53. (1) A gas entity must report to the Director of Gas Safety in accordance with the regulations any incident which occurs in respect of a facility of that gas entity.

Penalty:

Fine not exceeding 500 penalty units.

(2) A gas entity must report to the Director of Gas Safety, as soon as practicable, any incident of which it is aware and which occurs in respect of a gas installation to which it supplies or sells gas.

Penalty:

Fine not exceeding 500 penalty units.

(3) The Chief Officer of the Tasmania Fire Service must report to the Director of Gas Safety any fire or explosion in which he or she suspects gas was a cause or contributing factor.

(4) If an incident occurs that is caused by the operation or condition of gas infrastructure or a gas installation, the gas infrastructure or gas

installation must not be altered or interfered with unnecessarily by any person so as to prevent a proper investigation of the incident.

Penalty for breach
of this subsection:
Fine not exceeding
1 000 penalty units.

Division 2 - Safety and operating plan for facilities

Safety and operating plan

54. (1) A gas entity must submit to the Director of Gas Safety a safety and operating plan for each of its facilities that demonstrates compliance with the standards and codes prescribed by the regulations.

(2) Before submitting a safety and operating plan to the Director of Gas Safety, the gas entity must ensure that the plan is independently certified by a person approved by the Director as conforming to any relevant standard.

(3) A safety and operating plan for a facility –

(a) must be in writing; and

(b) in accordance with the regulations, must specify the safety management system being followed or to be followed by the gas entity –

(i) to comply with the gas entity's duties under Division 1; and

(ii) in respect of any other matters relating to the safe conveyance, supply, sale, measurement or control of gas that are prescribed.

(4) A gas entity must not commission or commence to operate a facility of the gas entity unless a certified safety and operating plan for that facility has been accepted or provisionally accepted by the Director of Gas Safety.

Penalty:

Fine not exceeding 1 500 penalty units.

(5) A safety and operating plan may be submitted in stages.

(6) A safety and operating plan may apply to more than one facility.

(7) A gas entity must thoroughly review and revise its safety and operating plan in accordance with the review schedule contained in the plan.

Penalty:

Fine not exceeding 500 penalty units.

Auditing of safety and operating plan for facility

55. (1) A gas entity must have the implementation of its safety and operating plan audited as required by the Director of Gas Safety.

Penalty:

Fine not exceeding 500 penalty units.

(2) Within 14 days of receiving an audit report, the gas entity must submit a copy of it to the Director of Gas Safety.

Penalty:

Fine not exceeding 500 penalty units.

Additional information

56. (1) The Director of Gas Safety may require a gas entity to provide any additional information that the Director thinks fit in respect of a safety and operating plan submitted by the gas entity under this Division.

(2) The Director of Gas Safety is not required to proceed with the consideration of a safety and operating plan until the additional information is provided.

Acceptance of safety and operating plan

57. The Director of Gas Safety must accept a certified safety and operating plan submitted under this Division if satisfied that it has been prepared in accordance with this Act.

Provisional acceptance of safety and operating plan

58. (1) The Director of Gas Safety may provisionally accept a certified safety and operating plan if satisfied that –

(a) it has not been prepared in accordance with the Director's directions in only a minor respect; and

(b) despite that failure, it will provide for the safe operation of the pipeline.

(2) The Director of Gas Safety must notify a gas entity in writing of his or her decision to provisionally accept its safety and operating plan.

(3) The notice of acceptance must state –

(a) the period during which the provisional acceptance will be in force; and

(b) the extent to which the safety and operating plan has been accepted; and

(c) any limitations or conditions which will apply in respect of the use or operation of the facility while the provisional acceptance is in force.

Non-acceptance of safety and operating plan

59. (1) If the Director of Gas Safety does not accept or provisionally accept a safety and operating plan, he or she must –

(a) notify the gas entity in writing of the non-acceptance; and

(b) give the gas entity an opportunity to modify and resubmit the safety and operating plan.

(2) A modified safety and operating plan must be submitted to the Director within 28 days after the notice is given under subsection (1).

(3) If, after considering any modified safety and operating plan submitted under this section, the Director decides not to accept it, the Director must give notice in writing of that decision to the gas entity.

(4) A notice under this section must be accompanied by a statement of the reasons for the decision.

Director of Gas Safety may determine safety and operating plan

60. (1) The Director of Gas Safety may determine the safety and operating plan which is to apply in respect of a facility which is in operation at the time of the determination if –

(a) the gas entity fails to submit a safety and operating plan for the facility in accordance with this Act; or

(b) the Director has decided not to accept a safety and operating plan for the facility.

(2) If the Director determines the safety and operating plan to apply to a facility under this section –

(a) the Director must give notice in writing to the gas entity of that determination; and

(b) the gas entity must pay the costs associated with determining the safety and operating plan.

(3) On notice being given to the gas entity under subsection (2), the safety and operating plan determined by the Director is taken for the purposes of this Act to be the accepted safety and operating plan for the facility to which it applies.

(4) Nothing in subsection (3) prevents a gas entity from submitting a safety and operating plan or a revised safety and operating plan for a facility to the Director for acceptance under this Division.

Compliance with safety and operating plan

61. (1) A gas entity must comply with the accepted safety and operating plan for a facility in respect of the management and operation of the facility.

Penalty:

Fine not exceeding 1 500 penalty units.

(2) A gas entity must not –

(a) undertake or permit a modification of a facility that has the potential to significantly increase the overall levels of risk in respect of the facility; or

(b) undertake or permit a modification of a facility that has the potential to significantly influence the level of a particular risk or the ranking of risk contributing factors; or

(c) make or permit a significant change to the safety management system in respect of a facility –

unless the Director of Gas Safety has accepted a revision of the safety and operating plan in respect of that matter for that facility.

Penalty:

Fine not exceeding 1 500 penalty units.

Revision of safety and operating plan

62. A gas entity must submit a revised safety and operating plan for a facility to the Director of Gas Safety if –

- (a) developments in technical knowledge or the assessment of hazards relevant to the facility make it appropriate to revise the safety and operating plan; or
- (b) proposed modifications of the facility will result in a significant increase in the overall levels of risk in respect of the facility; or
- (c) a proposed modification of the facility may significantly influence the level of a particular risk or the ranking of risk contributing factors; or
- (d) the gas entity proposes to make a significant change to the safety management system in respect of the facility.

Director of Gas Safety may require submission of revised safety and operating plan

63. (1) The Director of Gas Safety may at any time require a gas entity to submit a revised safety and operating plan for a facility of the gas entity.

(2) The requirement must –

- (a) be in writing; and
- (b) set out –
 - (i) the matters to be dealt with by the required revision; and
 - (ii) the proposed date of effect of the revision; and
 - (iii) the grounds for the requirement.

(3) The gas entity of which the requirement is made may make a submission to the Director on all or any of the following grounds:

- (a) that the revision should not occur;

(b) that the revision should be in terms different from the terms proposed in the requirement;

(c) that the revision should take effect on a later date than the proposed date of effect.

(4) The submission must –

(a) be in writing; and

(b) state the gas entity's reasons for the submission; and

(c) be made within 21 days, or such later period as the Director allows in writing, after the request is received.

(5) If a gas entity makes a submission under this section, the Director must –

(a) accept the submission or part of the submission and vary or withdraw the requirement accordingly; or

(b) reject the submission.

(6) The Director must give the gas entity notice in writing of his or her acceptance or rejection of the submission and the reasons for it.

Offence to fail to submit revised safety and operating plan when required

64. If the Director of Gas Safety requires the revision of a safety and operating plan under section 63, the gas entity must submit a revised safety and operating plan for the facility to the Director –

(a) within a time that is not less than 60 days specified by the Director in the requirement, if the gas entity does not make a submission under that section; or

(b) if the gas entity has made a submission under that section and the Director has not withdrawn the requirement, within a time that is not less than 60 days specified by the Director in his or her decision on the submission.

Penalty:

Fine not exceeding 400 penalty units.

Application of provision to revised safety and operating plan

65. Sections 55, 56, 57, 58, 59, 60 and 61 apply to the revision of a safety and operating plan in the same manner as they apply to a safety and operating plan.

Division 3 - Gas infrastructure, gas installations and gas fitting work

Certain gas fitting work

66. A person who carries out work on a gas installation or proposed gas installation must ensure that –

- (a) the work is carried out as required under the regulations; and
- (b) examinations and tests are carried out as required under the regulations; and
- (c) the requirements of the regulations as to notification and certificates of compliance are complied with.

Penalty:

Fine not exceeding 100 penalty units.

Power to require rectification, &c., in respect of gas infrastructure or gas installations

67. (1) If gas infrastructure or a gas installation is unsafe, or does not comply with this Act, the Director of Gas Safety may give a direction requiring –

- (a) rectification of the infrastructure or installation to the satisfaction of the Director; and
- (b) if appropriate, the temporary disconnection of the gas supply while the rectification work is carried out; and
- (c) the disconnection and removal of the infrastructure or installation.

(2) Subject to this section, a direction under this section must be given –

- (a) in respect of gas infrastructure, to the gas entity in charge of the infrastructure; or
- (b) in respect of an installation, to the person in charge of the installation or the occupier of the place in which the installation is situated.

(3) A direction must be given by written notice or, if the Director of Gas Safety is of the opinion that immediate action is required, it may be given orally.

(4) If a direction is given orally, it must be confirmed in writing as soon as practicable after being given.

(5) A person to whom a direction is given under this section must not contravene the direction.

Penalty:

Fine not exceeding 100 penalty units.

(6) If a person contravenes a direction, the Director of Gas Safety, or a person authorised in writing by the Director, may take any action that is reasonable and necessary to give effect to the direction.

(7) The costs incurred in carrying out the direction are recoverable from the relevant gas entity or person in any court of competent jurisdiction as a debt due to the Crown from the person who contravened the direction.

Division 4 - Gas appliances

Gas appliances to which this Division applies

68. (1) This Division applies to –

(a) gas appliances of a class specified in the relevant standard prescribed in the regulations, or in a relevant appendix to that standard; and

(b) gas appliances of a class declared by the Director of Gas Safety, by notice in the *Gazette*, to be gas appliances to which this Division applies.

(2) The Director of Gas Safety may, by notice in the *Gazette* –

(a) declare gas appliances of a specified class to be gas appliances to which this Division applies; or

(b) vary or revoke a previous declaration under this section.

Relevant standard

69. (1) A standard is a relevant standard for a gas appliance to which this Division applies, if –

(a) it is stated in the relevant Australian Standard or the relevant Australian Gas Association Standard to be –

(i) a standard applicable to the gas appliance or the relevant class of gas appliances; or

(ii) a standard accepted by the Director of Gas Safety instead of such a standard; or

(b) where there is no standard applicable under paragraph (a), the Director of Gas Safety declares it to be a relevant standard for the gas appliance or appliances of the relevant class.

(2) The Director of Gas Safety may, by notice in the *Gazette* –

(a) declare that a particular standard is the relevant standard for gas appliances of a specified type; or

(b) vary or revoke a previous declaration under this section.

Approval of gas appliances

70. (1) In this section,

"external authority" means –

(a) an authority of another State or a Territory that has the power to approve, register or certify gas appliances; or

(b) an authority or any other person approved by the Director of Gas Safety as an external authority for the purposes of this section.

(2) A gas appliance to which this Division applies is taken to be approved if –

(a) it is approved by the Director of Gas Safety under this Division; or

(b) it is approved, registered or certified by an external authority.

(3) The Director of Gas Safety may, by notice in the *Gazette*–

- (a) approve an authority or any other person as an external authority for the purposes of this section; or
- (b) vary or revoke a previous approval under this section.

Labelling of gas appliances

71. (1) A gas appliance to which this Division applies is labelled as required under this Division if –

- (a) in the case of an appliance approved by the Director of Gas Safety under this Division, it is labelled as required under the conditions of its approval; or
- (b) in the case of an article approved by an external authority –
 - (i) it displays a regulatory compliance label in accordance with the relevant Australian Standard or the relevant Australian Gas Association Standard for gas appliances; or
 - (ii) it is labelled as required by the law in force in the jurisdiction of the external authority.

(2) A person must not –

- (a) label a gas appliance in a way that suggests it is approved by the Director of Gas Safety or an external authority if it is not in fact so approved; or
- (b) make any form of representation to the effect that a gas appliance is approved by the Director of Gas Safety or an external authority, or from which it might reasonably be inferred that an appliance is approved by the Director of Gas Safety or an external authority, if it is not in fact so approved; or
- (c) misuse a label for indicating approval of a gas appliance.

Penalty:

Fine not exceeding 100 penalty units.

Application for approval of gas appliances

72. An application for approval of gas appliances of a certain class –

(a) must be made to the Director of Gas Safety in an approved form; and

(b) must be accompanied by –

(i) a declaration by the applicant that a representative sample of the appliances has been tested and examined by a specified testing laboratory approved by the Director of Gas Safety; and

(ii) a report from a suitably qualified person from the relevant laboratory stating that the appliance has been tested and examined by reference to the relevant standard and stating the results of the tests and examination; and

(iii) if the Director of Gas Safety so requires, a sample of the appliance; and

(iv) any other relevant information that the Director of Gas Safety requires about the construction, operation or safety of the appliance.

Penalty:

Fine not exceeding 100 penalty units.

Approval of appliances by Director of Gas Safety

73. (1) The Director of Gas Safety may approve gas appliances of a particular class if satisfied that the articles comply with the requirements of the relevant standard.

(2) When the Director approves gas appliances of a certain class, he or she must –

(a) assign an identification number indicating approval of appliances of the relevant class; and

(b) issue a certificate of approval in respect of appliances of the relevant class to the applicant.

(3) If the Director decides not to approve gas appliances of a certain class, he or she must give the applicant written notice of the decision not to approve the appliances –

- (a) setting out the reasons for the decision; and
- (b) stating the applicant's right of appeal under Part 7.

Term of approval

74. (1) Unless cancelled earlier, an approval of gas appliances of a certain class remains in force for 5 years.

(2) An approval may be renewed by the Director of Gas Safety for a further 5 years but may not be again renewed so that the aggregate period of approval exceeds 10 years.

Offence to install Type A appliances unless approved

75. A person must not knowingly install a Type A appliance unless the appliance has been approved as required under this Division by the Director of Gas Safety or an external authority.

Offence to use Type B appliances

76. A person must not use a Type B appliance –

- (a) unless the gas installation of which the appliance forms a part has been accepted by the Director of Gas Safety in accordance with this Division; or
- (b) otherwise than in prescribed circumstances.

Penalty:

In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) a natural person, a fine not exceeding 50 penalty units.

Division 5 - Acceptance of gas installations

Acceptance of gas installations

77. (1) This section does not apply to any repair or maintenance work on a gas installation.

(2) A person who carries out work on a complex gas installation or on a standard gas installation of a prescribed class must apply to the Director of Gas Safety for acceptance of the gas installation before the gas installation is commissioned.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units.

(3) An application –

(a) is to be in writing; and

(b) is to include the prescribed information; and

(c) is to include a statement of compliance in the prescribed form; and

(d) is to be made in accordance with the regulations; and

(e) is to be accompanied by the prescribed fee.

(4) The Director of Gas Safety must accept a gas installation if he or she is satisfied that the relevant standards have been met and the statement of compliance is satisfactory.

(5) The Director must notify the applicant in writing of his or her decision –

(a) to accept a gas installation; or

(b) to accept a gas installation subject to conditions specified by the Director; or

(c) not to accept a gas installation.

(6) The conditions specified by the Director may include –

(a) requirements for the testing of the gas installation in accordance with the regulations by a person or body approved by the Director; and

(b) requirements for modifications to be made to the gas installation; and

(c) requirements for the affixing of compliance plates to the gas installation or to any appliance forming part of the gas installation in accordance with the regulations.

(7) If the Director decides not to accept a gas installation under this section, he or she must notify the applicant of the reasons for that decision.

(8) If the Director accepts a gas installation subject to certain conditions, the acceptance takes effect when the conditions are met.

Sale of gas appliances

78. (1) A person must not sell a gas appliance of a prescribed class unless –

(a) the appliance is approved as required under this Division; and

(b) the appliance is labelled as required under this Division; and

(c) the appliance complies with the relevant standard for the appliance.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units.

(2) This section does not apply to –

(a) a sale that takes place within 6 months after the relevant class of appliances is approved; or

(b) the sale of second-hand goods.

Offence to alter approved gas appliance

79. A person must not modify an approved gas appliance, unless the Director of Gas has given written approval to the modification.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding
50 penalty units.

Prohibition of supply of appliances or components

79A. (1) The Director of Gas, by notice published in the *Gazette* and in a newspaper circulating generally in the State, may prohibit the supply or sale of an appliance or component, or appliances or components of a specified class.

(2) A prohibition under subsection (1) takes effect from the date of publication of the notice or from such later date as is specified in that notice.

(3) The Director of Gas, by notice in writing given to a person, may prohibit that person from supplying or selling an appliance or component or appliances or components of a specified class.

(4) A notice under subsection (3) takes effect from the date of the notice or such later date as is specified in the notice.

(5) The Director of Gas may exercise a power of prohibition under this section only if it appears to the Director that –

(a) the appliance or component or an appliance or component of the specified class is, or is likely to become, by reason of its design or construction, unsafe to use; and

(b) prohibition of the supply or sale of the appliance or component or of all appliances or components of the specified class is warranted by reason of the risk of death or injury to any person or damage to any property arising out of the use of that appliance or component, or appliances or components of that class.

(6) The Director of Gas may withdraw a prohibition made under subsection (1) by notice published in the *Gazette* and in a newspaper circulating generally in the State.

(7) The Director of Gas may withdraw a prohibition made under subsection (3) by notice given to the person to whom the notice of prohibition was given.

(8) This section applies whether or not the appliance or component or class of appliances or components was accepted by the Director of Gas Safety.

Offence to disobey prohibition

79B. (1) A person must not, while a prohibition under section 79A(1) remains in force, contravene that prohibition.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units.

(2) A person must not, while a prohibition under section 79A(3) remains in force, contravene that prohibition.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units.

Recall of appliances or components

79C. (1) The Director of Gas, by notice in writing served on a person –

(a) whose business is, or includes, the supply or sale of appliances or components; and

(b) who has supplied or sold an appliance or component, or an appliance or component of a specified class –

may require the person to take, within a period specified in the notice, any action specified in the notice.

(2) The Director may make a requirement under this section only if it appears to the Director that –

(a) an appliance or component, or an appliance or component of a specified class, is, or is likely to become, by reason of its design or construction, unsafe to use; or

(b) specific action is necessary –

(i) to make an appliance or a component or appliances or components of a specified class safe to use; or

(ii) to render safe the use of an appliance or a component or appliances or components of a specified class.

(3) The action specified in the notice may consist of or include –

(a) sending a written request to the person to whom the appliance or component, or an appliance or component of the specified class, was supplied or sold to return the appliance or component to the place at which it was supplied or sold; and

(b) placing an advertisement in a form approved by the Director in a newspaper or newspapers specified by the Director, for a period or periods specified by the Director, requesting all persons to whom an appliance or component of the specified class was supplied or sold to return the appliance or component to the place at which it was supplied or sold; and

(c) making the appliance or component, or appliances or components of the specified class, safe to use or rendering safe the use of that appliance or component, or appliances or components, in the manner specified in the notice; and

(d) refunding the purchase price on return of the appliance or component, if it is not practicable to render the appliance or component safe or if the supplier elects not to do so.

(4) The Director may alter or revoke a requirement under this section by notice given to the person of whom the requirement was made.

(5) This section applies whether or not the Director of Gas Safety accepts the appliance or component or class of appliances or components.

Division 6 - Pipeline planning corridors

Interpretation

79D. (1) In this Division –

"affected pipeline" means the pipeline in respect of which a pipeline planning corridor has been declared under this Division;

"appeal" means an appeal to the Tribunal under Division 3 of Part 4 of the *Land Use Planning and Approvals Act 1993*;

"AS 2885" means AS 2885 Pipelines - Gas and liquid petroleum published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard);

"condition" includes restriction;

"discretionary development" means a development or use to which section 57 of the *Land Use Planning and Approvals Act 1993* applies;

"permitted development" means a development or use to which section 58 of the *Land Use Planning and Approvals Act 1993* applies;

"pipeline" means a pipe or system of pipes for use for, or in connection with, the distribution and supply of gas to persons for consumption, but does not include –

(a) a pipeline in respect of which a licence has been granted or is required under the *Gas Pipelines Act 2000*; or

(b) a system of pipes and equipment –

(i) installed in a place for the conveyance and use of gas from a pressurised vessel situated in the place; and

(ii) not extending to, or connected to pipes in, some other place in separate occupation; or

(c) pipes or equipment declared by the regulations not to be, or not to form part of, a distribution system; or

(d) a pipeline or class of pipelines which, under section 3(3), is to be treated as not forming part of a distribution system for the purposes of this Act;

"**pipeline licensee**", for a pipeline planning corridor, means

—

(a) if the affected pipeline is a proposed pipeline, the gas entity licensed to construct the pipeline; or

(b) if the affected pipeline is an existing pipeline, the gas entity licensed to operate the pipeline;

"**pipeline planning corridor**" means a planning corridor declared by an order in force under section 79E(1);

"**planning authority**" means a planning authority within the meaning of the *Land Use Planning and Approvals Act 1993*;

"**safety condition**" means a condition imposed on a permit for a permitted or discretionary development in order to apply, adopt or otherwise give effect to a safety requirement contained in AS 2885.

(2) For the purposes of the definition of "pipeline licensee" in subsection (1), a pipeline ceases to be a proposed pipeline once it is capable of being used by a gas entity to deliver gas to persons for consumption.

Declaration of pipeline planning corridors

79E. (1) To limit potential impacts on the risk profile of a proposed or existing pipeline the Minister may, by order, declare a planning corridor in respect of that pipeline.

(2) In determining the width of the pipeline planning corridor the Minister may have regard to AS 2885.

(3) The Minister may revoke an order under subsection (1) at any time and must do so without delay if he or she becomes aware that —

(a) in the case of an order for a proposed pipeline, the pipeline will never be constructed or made operational;
or

(b) in the case of an order for an existing pipeline, the pipeline has been dismantled or has ceased permanently to be operational.

(4) The Minister is to cause notice of the declaration of a pipeline planning corridor to be given to the Assessment Committee for Dam Construction constituted under section 138 of the *Water Management Act 1999*.

Effect of declarations: permitted development applications

79F. (1) If application is made for a permit for a permitted development wholly or partly within a pipeline planning corridor –

(a) the relevant planning authority must give the pipeline licensee notice of the application and, subject to the time constraints of section 58(2) of the *Land Use Planning and Approvals Act 1993*, at least 14 days in which to advise the authority on the proposed development; and

(b) the pipeline licensee may, within that period, give the planning authority such advice on the application as the pipeline licensee thinks fit and in so doing may recommend that the permit be granted subject to safety conditions specified in the advice.

(2) If the pipeline licensee gives such advice, the planning authority –

(a) may have regard to the advice in determining the application; and

(b) may, without limiting its discretion but subject to paragraph (c), grant the permit subject to any safety condition recommended by the pipeline licensee (with or without modification); and

(c) must not grant the permit subject to a condition that conflicts with any condition contained in the safety and operating plan applying to the affected pipeline under Division 2.

(3) If the planning authority decides to grant the permit subject to a safety condition and the applicant lodges an appeal against that decision –

(a) the planning authority must give the pipeline licensee notice of the appeal; and

(b) the pipeline licensee is, for the purposes of section 14 of the *Resource Management and Planning Appeal Tribunal Act 1993*, taken to be a person whose interests are affected by the decision and who has a proper interest in the subject matter of the appeal.

(4) If the Tribunal is satisfied on hearing the appeal that the safety condition –

- (a) was recommended to the planning authority by the pipeline licensee; and
- (b) is in the same or essentially the same terms as the pipeline licensee recommended; and
- (c) exceeds the requirements of AS 2885 as in force when the affected pipeline was constructed; and
- (d) has added to the cost of the development –

the Tribunal is (if it is appropriate to do so having regard to its decision on the appeal) to order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Tribunal determines is fair in the circumstances.

Effect of declarations: discretionary development applications

79G. (1) If application is made for a permit for a discretionary development wholly or partly within a pipeline planning corridor –

- (a) the relevant planning authority must, when notice of the application is given under section 57 of the *Land Use Planning and Approvals Act 1993*, refer the application to the pipeline licensee; and
- (b) the pipeline licensee may, within the 14 day or further representation period allowed under section 57(5) of the *Land Use Planning and Approvals Act 1993*, give the planning authority such advice on the application as it thinks fit and in so doing may recommend that, if granted, the permit should be made subject to safety conditions specified in the advice.

(2) If the pipeline licensee fails to give any such advice, the planning authority may determine the application without further reference to the pipeline licensee.

(3) If the pipeline licensee gives any such advice –

- (a) the planning authority is to have regard to the advice in determining the application; and
- (b) the advice is taken to be a representation made under section 57(5) of the *Land Use Planning and Approvals Act 1993* in relation to the application; and
- (c) the planning authority may, without limiting its discretion in the event it approves the application but subject to paragraph (d), grant the permit subject to any

safety condition recommended by the pipeline licensee (with or without modification); and

(d) the planning authority must not grant the permit subject to a condition that conflicts with any condition contained in the safety and operating plan applying to the affected pipeline under Division 2.

(4) If the permit is granted subject to a safety condition and the Tribunal is satisfied on an appeal against that safety condition that it –

(a) was recommended to the planning authority by the pipeline licensee; and

(b) is in the same or essentially the same terms as the pipeline licensee recommended; and

(c) exceeds the requirements of AS 2885 as in force when the affected pipeline was constructed; and

(d) has added to the cost of the development –

the Tribunal may (if it is appropriate to do so having regard to its decision on the appeal) order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Tribunal determines is fair in the circumstances.

(5) Section 57(2) of the Land Use Planning and Approvals Act 1993 does not apply to an application referred to in subsection (1).

(6) When a planning authority complies with section 57(7) of the Land Use Planning and Approvals Act 1993 for an application referred to in subsection (1), it must also serve notice of its decision on the pipeline licensee whether or not the pipeline licensee has given it advice on the application.

(7) The failure of a planning authority to comply with subsection (1) for a development application does not invalidate a permit for the development but, in any such case, the pipeline licensee has the same right of appeal against the grant of the permit as a person who made representations in relation to the application.

Orders of Tribunal

79H. (1) In making an order under section 79F(4), or in determining whether to make an order under section 79G(4) and in making any such order, the Tribunal is to have regard to –

(a) whether or not the future land use and development considerations applicable to pipeline design and

construction under AS 2885, as in force when the affected pipeline was designed, were taken into account in the design and construction of the affected pipeline;
and

(b) whether any compensation has been paid or awarded under the Land Acquisition Act 1993 or Major Infrastructure Development Approvals Act 1999 to the owners or former owners of land affected by the proposed development and, if so, the amount paid or awarded.

(2) An order of the Tribunal under section 79F(4) or section 79G(4) is enforceable in the same manner as a judgment of a court of competent jurisdiction.

(3) The power of the Tribunal to make an order under section 79F(4) or section 79G(4) on an appeal under the Land Use Planning and Approvals Act 1993 is in addition to any other power that it may exercise on the appeal.

Effect of declarations: minor amendments of permits

79I. A planning authority must, in making any determination under section 56(2)(b) of the Land Use Planning and Approvals Act 1993, have regard to the safety of any affected pipeline.

Effect of declarations: compensation and land acquisition

79J. (1) Except for any costs or compensation that may be ordered to be paid pursuant to –

(a) section 79F(4) or section 79G(4); or

(b) section 279A(2) or (3) of the Water Management Act 1999 –

the declaration of a pipeline planning corridor does not entitle a person to claim or recover compensation under this or any other Act for any loss or detriment that the person may suffer in consequence of the declaration.

(2) The declaration of a pipeline planning corridor over any land does not constitute injurious affection of that land or any other land for the purposes of the Land Acquisition Act 1993, Major Infrastructure Development Approvals Act 1999 or any other Act.

PART 5 - Gas entities' powers and duties

Division 1 - Gas officers

Appointment of gas officers

80. (1) A gas entity may, subject to the conditions of the entity's licence, appoint a person to be a gas officer for the entity.

(2) A gas officer may exercise powers under this Act only subject to the conditions of appointment and any directions given to the gas officer by the gas entity.

Conditions of appointment

81. (1) A gas officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) A gas officer may be removed from office by the gas entity.

Gas officer's identity card

82. (1) A gas entity must give each gas officer for the entity an identity card.

(2) The identity card –

(a) must contain a photograph of the gas officer taken for the purpose; and

(b) must be signed by the gas officer; and

(c) must identify the gas officer as a gas officer for the relevant gas entity.

(3) A person must, within 21 days after ceasing to be a gas officer, return the identity card to the gas entity.

Penalty:

Fine not exceeding 2.5 penalty units.

Production of identity card

83. A gas officer must, before exercising a power in respect of another person, produce the officer's identity card for inspection by the other person.

Penalty:

Fine not exceeding 2.5 penalty units.

Division 2 - Powers and duties relating to gas infrastructure

Interpretation of Division

83A. In this Division –

"**operational work**", on gas infrastructure, means –

(a) locating, inspecting, testing, operating, maintaining, repairing, altering, adding to, upgrading, replacing or removing the gas infrastructure; or

(b) excavating land in order to carry out work of a kind referred to in paragraph (a);

"**protective work**", on gas infrastructure, means –

(a) work that is necessary or expedient for the protection of the infrastructure or public safety; or

(b) excavating land in order to carry out work of the kind referred to in paragraph (a);

"**upgrading**", of gas infrastructure, includes the insertion of a new pipe inside any existing pipe that forms part of the infrastructure.

Power to carry out work on public land

84. (1) Subject to this section, a gas entity may –

(a) install gas infrastructure on public land; and

(b) carry out operational work or protective work on gas infrastructure on public land; and

(c) carry out other work on public land for the distribution or supply of gas.

(2) Subject to this section, the gas entity must –

(a) give the authority responsible for the management of the public land not less than 7 days' notice of the entity's intention to carry out work on the land; and

(b) before commencing the work, secure the authority's agreement as to how the work is to be carried out.

(3) The agreement under subsection (2)(b) may include conditions that the responsible authority considers appropriate in the public interest.

(4) Prior notice is not required under subsection (2) for work of a kind prescribed by the regulations for the purposes of this section.

(5) Agreement is not required under subsection (2) for work of a kind prescribed by the regulations for the purposes of this section.

(6) If the responsible authority, on being given notice under subsection (2), decides to –

(a) include, in the agreement under that subsection, conditions that the gas entity considers unreasonable; or

(b) dispute that the gas entity is entitled to carry out the proposed work –

the gas entity may appeal to the Tribunal.

(7) Subsection (6) does not apply if the responsible authority is a Minister or a person or body to whom directions may be given by a Minister in respect of the matter in dispute.

(8) Except as provided by subsection (9), the Tribunal is to hear and determine the appeal in accordance with the Resource Management and Planning Appeal Tribunal Act 1993.

(9) Notwithstanding section 14(2) of the Resource Management and Planning Appeal Tribunal Act 1993, the Tribunal must not, under that section, allow any person other than the gas entity and the responsible authority to be a party to the appeal.

(10)

(11)

(12) A gas entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

(13) If the responsible authority and the gas entity do not agree as to the extent of compensation, the claim for compensation is to be determined –

(a) if it is a small claim within the meaning of the Magistrates Court (Small Claims Division) Act 1989, by the small claims division of the Magistrates Court; or

(b) in any other case, as if it were a disputed claim under the *Land Acquisition Act 1993*.

(14) This section does not derogate from an obligation to comply with any other Act.

Acquisition of land, &c.

84A. (1) In this section –

"telecommunications carrier" means the holder of a carrier licence under the *Telecommunications Act 1997* of the Commonwealth;

"telecommunications infrastructure" means infrastructure that is necessary or convenient for the purposes of a telecommunications network within the meaning of the *Telecommunications Act 1997* of the Commonwealth.

(2) A gas entity is an acquiring authority under the *Land Acquisition Act 1993* and may acquire land under that Act for the purposes of the operations that the gas entity is authorised to carry on under its licence.

(3) Without limiting subsection (2), a gas entity is taken to be a public authority for the purposes of section 90A(1) of the *Conveyancing and Law of Property Act 1884* and, accordingly, may acquire by compulsory process an easement in gross within the meaning of that section of that Act.

(4) Notwithstanding subsections (2) and (3) –

(a) a gas entity may acquire land by compulsory process only if the acquisition is authorised in writing by the Minister; and

(b) a gas entity may install and maintain telecommunications infrastructure on land that it has acquired under the *Land Acquisition Act 1993* or allow a telecommunications carrier to install and maintain such infrastructure on such land.

(5) Regulations may be made under section 137 modifying the *Land Acquisition Act 1993* in its application to the acquisition of land by gas entities under that Act, but not so as to affect the monetary entitlements of persons from whom land is acquired.

Power to enter land for purposes related to gas infrastructure

85. (1) A gas officer for a gas entity may, at any reasonable time –

(a) enter and remain on land to carry out preliminary investigations in connection with the installation of gas infrastructure; or

(b) enter and remain on land where the gas infrastructure of the entity is situated to carry out operational work or protective work on the infrastructure.

(2) Subject to this section, if a gas officer seeks to enter on land under this section, the officer must give prior written notice to the occupier of the land stating the reason and the date and time of the proposed entry.

(3) The period of notice of entry must be reasonable.

(4) If the proposed entry is refused or obstructed, a gas officer may obtain a warrant under Part 8 to enter the land.

(5) In an emergency, a gas officer may exercise a power of entry under this section –

(a) at any time and without prior notice if it is not practicable to give such notice; and

(b) if necessary in the circumstances, by the use of reasonable force.

(6) When a gas officer enters on land under this section, the gas officer –

(a) may be accompanied by such assistants as the gas officer considers necessary or appropriate; and

(b) may take any vehicles or equipment that the gas officer considers necessary or appropriate for the work which the gas officer is to carry out on the land.

(7) A gas officer must be accompanied by a member of the police force –

(a) when entering a place with the authority of a warrant; and

(b) if it is practicable to do so, when entering a place by force in an emergency.

(8) Subject to this section, a gas entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

(9) If the occupier of the land and the gas entity do not agree as to the extent of compensation, the claim for compensation is to be determined –

- (a) if it is a small claim within the meaning of the Magistrates Court (Small Claims Division) Act 1989, by the small claims division of the Magistrates Court; or
- (b) in any other case, as if it were a disputed claim for compensation under the Land Acquisition Act 1993.

Certain gas infrastructure developments exempt from planning approval

86. (1) In this section,

"development", of new gas infrastructure, includes –

- (a) the installation, construction, inspection and commissioning of that new gas infrastructure; and
- (b) if the new gas infrastructure makes use of an existing distribution system, the upgrading of that system for the purposes of the new infrastructure.

(2) Where –

- (a) a gas entity proposes to carry out work on the development of new gas infrastructure, including any necessary excavation of land; and
- (b) the work is of a prescribed kind and meets prescribed criteria –

the work does not require a planning permit under the Land Use Planning and Approvals Act 1993.

(3) Any new gas infrastructure development work to which subsection (2) does not apply is taken to be a development which a planning authority has a discretion to refuse or permit in accordance with section 57 of the Land Use Planning and Approvals Act 1993.

Division 3 - Powers relating to gas installations

Entry to inspect, &c., gas installations

87. (1) A gas officer for a gas entity may, at any reasonable time, enter and remain in a place to which gas is, is to be, or has been, supplied by the entity –

(a) to inspect gas installations in the place to ensure that it is safe to connect or reconnect the gas supply; or

(b) to take action to prevent or minimise the risk of an incident occurring; or

(c) to investigate suspected theft of gas.

(2) In an emergency, a gas officer may exercise a power of entry under this section at any time and, if necessary in the circumstances, by the use of reasonable force.

(3) When a gas officer enters a place under this section, the gas officer –

(a) may be accompanied by such assistants as the gas officer considers necessary or appropriate; and

(b) may take any vehicles or equipment the gas officer considers necessary or appropriate for the functions which the gas officer is to carry out in the place.

(4) A gas officer must, if it is practicable to do so, be accompanied by a police officer when entering a place by force in an emergency.

(5) If in the opinion of a gas officer a gas installation is unsafe, the gas officer may disconnect the gas supply to the place in which the installation is situated until the installation is made safe to the satisfaction of the gas officer.

Entry to read meters, &c.

88. A gas officer for a gas entity may, at any reasonable time, enter and remain in a place to which gas is, or is to be, supplied by the entity –

(a) to read, or check the accuracy of, a meter for recording consumption of gas; or

(b) to install, repair or replace meters or control apparatus or any part of a gas installation.

Entry to disconnect supply

89. If a gas officer proposes to disconnect a gas supply to a place under this Act, the gas officer may, at any reasonable time, enter and remain in the place to disconnect the gas supply to the place.

Disconnection of supply if entry refused

90. (1) If a gas officer seeks to enter a place under this Division and entry is refused or obstructed, the gas entity may, by written notice to the occupier of the place, ask for consent to entry by a gas officer.

(2) The notice must state the reason for, and the date and time of, the proposed entry.

(3) If entry is again refused or obstructed, the gas entity may –

(a) if it is possible to do so, disconnect the gas supply to the place without entering the place; or

(b) if it is not possible to disconnect the gas supply to the place without entering the place, obtain a warrant under Part 8 to enter the place for the purpose of disconnecting the gas supply, enter the place as authorised and disconnect the gas supply.

Division 4 - Powers and duties in emergencies

Gas entity may cut off gas supply to avert danger

91. A gas entity may, without incurring any liability for failure to supply gas, cut off the supply of gas to any region, area, land or place if it is, in the entity's opinion, necessary to do so to avert danger to any person or property.

Emergency legislation not affected

92. Nothing in this Act affects the exercise of any power, or the obligation of a gas entity to comply with any direction, order or requirement, under the *Emergency Services Act 1976* or any other law relating to emergencies.

PART 6 - Enforcement

Division 1 - Appointment of authorised officers

Appointment of authorised officers

93. (1) The Director of Gas or the Director of Gas Safety may appoint suitable persons as authorised officers.

(2) An authorised officer may, but need not, be a State Service officer or State Service employee.

(3) In the exercise of the authorised officer's powers, the authorised officer is subject to control and direction by the relevant Director.

Conditions of appointment

94. (1) An authorised officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) An authorised officer holds office on the conditions stated in the instrument of appointment.

(3) An authorised officer may resign by written notice given to the relevant Director.

(4) An authorised officer may be removed from office by the relevant Director for any reason that the Director considers sufficient.

Authorised officer's identity card

95. (1) The Director of Gas or the Director of Gas Safety must provide each authorised officer with an identity card.

(2) The identity card must –

(a) contain a photograph of the authorised officer taken for the purpose; and

(b) be signed by the authorised officer.

Production of identity card

96. An authorised officer must, before exercising a power that may affect another person, produce the officer's identity card for inspection on demand by the other person.

Return of identity card

97. On ceasing to be an authorised officer, a person must return his or her identity card to the relevant Director.

Penalty:

Fine not exceeding 2.5 penalty units.

Division 2 - Authorised officer's powers

Power of entry

98. (1) An authorised officer may, as may be reasonably required for the purposes of the enforcement of this Act, the audit of a safety and operating plan or the inspection of any document relating to a safety and operating plan, enter and remain in any place.

(2) When an authorised officer enters a place under this section, the authorised officer –

(a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and

(b) may take any vehicles or equipment the authorised officer considers necessary or appropriate for the functions that the authorised officer is to carry out in the place.

(3) An authorised officer may use reasonable force to enter a place under this Part if –

(a) the entry is authorised by a warrant under Part 8; or

(b) the entry is necessary in an emergency.

(4) A person must not obstruct, hinder, delay, threaten or assault a person who is –

(a) authorised to enter on land under this section; and

(b) acting in accordance with this section.

Penalty:

Fine not exceeding 10 penalty units.

General investigative powers of authorised officers

99. (1) An authorised officer who enters a place under this Part may exercise any one or more of the following powers:

(a) investigate whether the provisions of this Act are being, or have been, complied with;

(b) examine and test any gas infrastructure, gas installation or gas appliance in the place to ascertain whether the infrastructure, installation or appliance is safe and complies with the requirements of this Act;

(c) investigate an accident suspected to involve gas;

(d) investigate a suspected interference with gas infrastructure or a gas installation;

(e) investigate a suspected theft or diversion of gas;

(f) search for, examine and copy, or take an extract from, a document or record of any kind as reasonably required for the purposes of the enforcement of this Act;

(g) take photographs or make films or other records of activities in the place and of any gas infrastructure, gas installation or gas appliance in the place;

(h) take possession of any thing that may be evidence of an offence against this Act.

(2) If an authorised officer takes possession of an object that may be evidence of an offence –

(a) the authorised officer must give the occupier of the place a receipt for the thing; and

(b) the thing must be returned to its owner –

(i) if proceedings for an offence are not commenced within 6 months after the authorised officer takes possession of the thing, at the end of that period; or

(ii) if such proceedings are commenced within that period, on completion of the proceedings, unless the court, on application by the Director of Gas or the Director of Gas Safety, orders confiscation of the thing.

(3) A court may order the confiscation of a thing of which an authorised officer has taken possession under subsection (1) if of the opinion that the thing has been used for the purpose of committing an offence or that there is some other proper reason for ordering its confiscation.

(4) If the court orders the confiscation of a thing –

(a) the Director of Gas or the Director of Gas Safety may dispose of the thing; and

(b) the person from whom the thing is confiscated is not entitled to be compensated for its loss.

Disconnection of gas supply

100. (1) If an authorised officer finds that gas is being supplied or consumed in contravention of this Act, the authorised officer may disconnect the gas supply.

(2) If an authorised officer disconnects a gas supply under this section, the officer must give written notice to the occupier of the relevant place –

(a) informing the occupier that the gas supply has been disconnected under this section; and

(b) directing that the gas supply must not be reconnected until arrangements have been made to the satisfaction of an authorised officer to ensure against any future contravention of this Act.

(3) If a gas supply has been disconnected under this section, a person must not reconnect the gas supply, or have it reconnected, without the approval of an authorised officer.

Penalty:

Fine not exceeding 500 penalty units.

Power to make gas infrastructure or gas installation safe

101. (1) If an authorised officer finds that any gas infrastructure or gas installation is unsafe, the officer may –

(a) disconnect the gas supply or give a direction requiring the disconnection of the gas supply; or

(b) give a direction requiring the carrying out of the work necessary to make the infrastructure or installation safe before the gas supply is reconnected.

(2) Subject to this section, a direction under this section must be given –

(a) in respect of gas infrastructure, to the gas entity in charge of the infrastructure; or

(b) in respect of a gas installation, to the person in charge of the installation or the occupier of the place in which the installation is situated.

(3) A direction under this section may be given by written notice or, if the authorised officer is of the opinion that immediate action is required, orally.

(4) If a direction is given orally it must be confirmed in writing as soon as practicable after being given.

(5) A person to whom a direction is given under this section –

(a) must not contravene the direction; and

(b) must not reconnect or permit the reconnection of the gas supply unless the work required by the direction under this section has been carried out, or an authorised officer approves of the reconnection of the gas supply.

Penalty:

Fine not exceeding 500 penalty units.

Power to require information

102. (1) An authorised officer may require a person to provide information in the person's possession relevant to the enforcement of this Act.

(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to the enforcement of this Act for inspection by the authorised officer.

(3) A person must not, without reasonable excuse, contravene a requirement under this section.

Penalty:

Fine not exceeding 100 penalty units.

(4) A person is not required to give information or produce a document under this section if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

PART 7 - Administrative review and appeal

Division 1 - Administrative review

Interpretation

102A. In this Division,

"appropriate authority" means the Director of Gas or Director of Gas Safety, whichever is appropriate.

Interested person

103. (1) For the purposes of this Part, an interested person is a person whose interests are affected by a decision of the appropriate authority or an authorised officer.

(2) A person is not to be regarded as a person whose interests are affected by a decision to grant or refuse to grant an application for a licence unless the person was the applicant for the licence.

Statement of reasons for decision

104. (1) An interested person may apply, in writing, to the appropriate authority or authorised officer for a statement of the reasons for a decision.

(2) An application under this section must be made within 28 days after the date on which the applicant received notice of the decision.

(3) The appropriate authority or authorised officer must grant an application under this section as soon as practicable and, in any case, not later than 60 days after receiving the application.

Application for administrative review

105. (1) An interested person may, subject to this Act, apply to the appropriate authority for an administrative review of a decision.

(2) An application for an administrative review must be in writing and must set out in detail the grounds on which the person seeks review of the decision.

(3) An application for an administrative review of a decision must be made within 28 days after the date when notice of the decision was given to the person.

(4) An application under this section does not postpone the effect of the decision unless the operation of the decision is stayed under section 106.

Stay of operation

106. (1) The appropriate authority, as the case may require, may stay the operation of a decision that is subject to administrative review or appeal under this Part.

(2) A stay may not be granted if, in the opinion of the appropriate authority, the effect of the stay would be to create a risk to public safety or to allow a risk to public safety to continue.

Reference of application for mediation

107. (1) The appropriate authority may refer an application for administrative review to a mediator.

(2) If a mediator achieves an agreed settlement of the matter to which the application relates, the appropriate authority must determine the application in accordance with the agreed settlement.

Administrative review by Director

108. (1) After considering an application for administrative review, and taking any advice that the appropriate authority considers appropriate, the relevant Director may –

- (a) confirm the disputed decision; or
- (b) amend the disputed decision; or
- (c) substitute another decision for the disputed decision.

(2) The appropriate authority must, by notice served on the applicant, notify the applicant of –

- (a) the determination made; and
- (b) the findings on material questions of fact; and
- (c) the evidence or other material on which the findings are based; and
- (d) the reasons for the determination.

Reference of application for review for mediation or advice

109. The appropriate authority may delegate his or her power to review decisions, or decisions of a particular class, to –

- (a) a review panel appointed under the regulations; or
- (b) a mediator.

110.

Division 2 - Appeals

Appeal against decisions

111. (1) An interested person who is dissatisfied with a decision made by the Director of Gas, the Director of Gas Safety or an authorised officer on administrative review may, subject to this Act, appeal against the decision to the Minister.

(2)

Procedure on appeal

112. An appeal is to be commenced, heard and determined in accordance with the regulations.

Stay of operation

113. (1) The Minister may stay the operation of a decision that is subject to administrative review or appeal under this Part.

(2) A stay may not be granted if, in the Minister's opinion, the effect of the stay would be to create a risk to public safety or to allow a risk to public safety to continue.

Powers of Minister on appeal

114. (1) On an appeal, the Minister may –

(a) confirm the decision under appeal; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and remit the issue to the primary decision-maker with any directions that the Minister considers appropriate.

(2) The Minister may make ancillary directions to deal with incidental matters.

(3) No appeal lies from the decision of the Minister on an appeal.

Reference to Tribunal

115. (1) The Minister may refer an appeal from a decision on a technical or complex matter to the Tribunal if the Minister considers it appropriate to do so.

(2) The Tribunal must hear and determine the matter in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

Constitution of Tribunal

116. (1) For the purpose of hearing an appeal referred under section 115, the Tribunal is to include one or more members whose appointment was on the ground that he or she has, in the opinion of the Minister, wide practical knowledge and experience relevant to the gas industry.

(2) A member referred to in subsection (1) is to be designated as such by the Minister, by instrument in writing, for the purposes of the Tribunal's jurisdiction under this Act.

PART 8 - Miscellaneous

Exemptions

117. (1) The Governor, by order, may declare that the provisions of this Act, or such of the provisions of this Act as are specified in the order, do not have effect in respect of –

- (a) a specified person or class of persons, or do not have effect to such extent as is specified; or
- (b) a specified facility or class of facilities, or do not have effect to such extent as is specified; or
- (c) a specified appliance or class of appliances, or do not have effect to such extent as is specified; or
- (d) a specified gas installation or class of gas installations, or do not have effect to such extent as is specified; or
- (e) specified gas fitting work or a class of gas fitting work, or work relating to a gas installation or class of gas installations, or do not have effect to such extent as is specified.

(2) An order under subsection (1) –

- (a) may specify the period during which the order is to remain in force; and
- (b) may provide that its operation is subject to such terms and conditions as are specified in the order.

(3) A person to whom an order under this section applies must comply with any terms and conditions to which the operation of the order is subject.

Penalty:

In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or

(b) a natural person, a fine not exceeding
25 penalty units.

Obligation to comply with conditions of exemption

118. A person in whose favour an exemption is granted must not contravene any condition of the exemption.

Penalty:

Fine not exceeding 100 penalty units.

Application and issue of warrant

119. (1) An authorised officer or a gas officer may apply to a justice of the peace for a warrant to enter a place specified in the application for the purposes of performing his or her functions, or exercising his or her powers, under this Act.

(2) A justice of the peace may issue a warrant to assist the officer in the exercise of his or her powers under this Act.

(3) A warrant authorises the authorised officer or gas officer, with any assistants and by any force reasonably necessary –

(a) to enter the place specified in the warrant; and

(b) to do anything authorised by this Act, at any time, or within any period, specified in the warrant.

(4) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

Urgent situations

120. (1) An authorised officer or a gas officer may apply to a justice of the peace for a warrant by telephone, facsimile or other prescribed means if the officer considers the urgency of the situation requires it.

(2) The justice of the peace may complete and sign the warrant in the same way as for a warrant applied for in person if satisfied that there are reasonable grounds for issuing the warrant urgently.

(3) The justice of the peace must –

(a) inform the relevant officer of –

(i) the terms of the warrant; and

(ii) the date on which, and the time at which, the warrant was signed; and

(iii) the date on which, and the time at which, the warrant ceases to have effect; and

(b) record on the warrant the reasons for granting it.

(4) The relevant officer must –

(a) complete a form of warrant in the same terms as the warrant signed by the justice of the peace; and

(b) write on the form –

(i) the name of the justice of the peace; and

(ii) the date on which, and the time at which, the warrant was signed; and

(c) send the completed form of warrant to the justice of the peace not later than the day after the warrant is executed or ceases to have effect.

(5) On receipt of the form of warrant, the justice of the peace must attach it to the warrant that the justice of the peace signed.

(6) A form of warrant completed by an authorised officer or a gas officer under subsection (4) has the same force as a warrant signed by the justice of the peace under subsection (2).

Extension of time limits

121. (1) The Director of Gas or the Director of Gas Safety may extend time limits fixed by or under this Act.

(2) A time limit may be extended under this section even though it has, at the time of the extension, already expired.

Confidentiality

122. (1) A person who is, or has been, employed in carrying out duties related to the administration of this Act must not disclose confidential information acquired in the course, or as a result, of carrying out those duties except –

(a) in the course of carrying out official duties; or

- (b) as authorised by the person to whom the duty of confidentiality is owed; or
- (c) as authorised by the regulations; or
- (d) as required by a court or other lawfully constituted authority; or
- (e) as authorised by the Director of Gas or the Director of Gas Safety after consultation, where practicable, with the person to whom the duty of confidentiality is owed.

Penalty:

Fine not exceeding 200 penalty units.

(2) No civil liability attaches to any person for a disclosure of confidential information made as authorised under subsection (1).

Unlawful interference with distribution system or gas installation

123. A person must not, without proper authority –

- (a) attach a gas installation or other thing, or make any connection, to a distribution system; or
- (b) disconnect or interfere with a supply of gas from a distribution system; or
- (c) damage or interfere with gas infrastructure or a gas installation in any other way.

Penalty:

Fine not exceeding 100 penalty units.

Unlawful abstraction or diversion of gas

124. (1) A person must not, without proper authority –

- (a) abstract or divert gas from a distribution system; or
- (b) interfere with a meter or other device for measuring the consumption of gas supplied by a gas entity.

Penalty:

Fine not exceeding 100 penalty units.

(2) Subject to subsection (2A), a person must not construct or operate a pipe that extends beyond the boundaries of property occupied by the person if the pipe conveys gas or the pipe's main purpose is to convey gas.

Penalty:

Fine not exceeding 100 penalty units.

(2A) A person is not guilty of an offence under subsection (2) if –

(a) the person is a gas entity; or

(b) the person is a person licensed under Division 3 of Part 2 of the *Gas Pipelines Act 2000*; or

(c) the pipe is authorised under the regulations.

(3) If, in proceedings for an offence against this section, it is proved that a device has been installed, or any other act done, without proper authority, the apparent purpose of which is –

(a) to abstract or divert gas to any particular land or place; or

(b) to affect the proper measurement of gas supplied to any particular land or place –

it will be presumed, in the absence of proof to the contrary, that the occupier of the land or place installed the device or did the other act with that purpose.

(4) If a gas entity suffers loss or damage as a result of a contravention of this section, the entity may recover compensation for the loss or damage from a person guilty of the contravention –

(a) on application to a court convicting the person of an offence against this section; or

(b) by action in a court of competent jurisdiction.

Notice of work that may affect gas infrastructure

125. (1) A person must not, without authority from the operator of a distribution system, carry out any boring or excavation or open any ground so as to uncover or expose any pipelines or equipment upstream from a gas meter.

Penalty:

Fine not exceeding 25 penalty units.

(2) It is a defence to a charge for an offence against subsection (1) if, in the circumstances of an emergency –

(a) it was not practicable to obtain the authority required by that subsection; and

(b) the operator of the distribution system was notified as soon as practicable after the work was commenced.

(3) A person who carries out work as mentioned in subsection (1) in the vicinity of gas infrastructure must not contravene –

(a) requirements prescribed by the regulations that are applicable to the work; and

(b) reasonable requirements made by the operator for the protection of the infrastructure or the safety of the persons carrying out the work.

Penalty:

Fine not exceeding 25 penalty units.

Impersonation of officials, &c.

126. A person must not impersonate an authorised officer, a gas officer or any other person exercising powers under this Act.

Penalty:

Fine not exceeding 50 penalty units.

Obstruction

127. (1) A person must not, without reasonable excuse, obstruct an authorised officer, a gas officer or any other person acting in the administration of this Act or exercising powers under it.

Penalty:

Fine not exceeding 50 penalty units.

(2) A person must not use abusive or intimidatory language to, or engage in offensive or intimidatory behaviour towards, an authorised officer, a gas officer or any other person engaged in the administration of this Act or the exercise of powers under this Act.

Penalty:

Fine not exceeding 50 penalty units.

False or misleading information

128. A person must not make a statement or representation that the person knows or believes to be false or misleading in a material particular, whether by reason of the inclusion or omission of any particular, in any information provided under this Act.

Penalty:

Fine not exceeding 50 penalty units.

Statutory declarations

129. If a person is required by or under this Act to furnish information to the Director of Gas or Director of Gas Safety, the relevant Director may require that the information be verified by statutory declaration and, in that event, the person is taken not to have furnished the information as required unless it has been so verified.

Director of Gas may take court action on behalf of customers

129A. Where a customer or a class of customers could take any action in a court or tribunal to enforce a right under, or to enforce compliance with, this Act or a code, the Director of Gas may take that action on behalf of the customer or class of customers.

General defence

130. (1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

(2) It is a defence to a charge of an offence against this Act if the defendant proves that the act or omission constituting the offence was reasonably necessary in the circumstances in order to avert, eliminate or minimise danger to any person or property.

Offences by bodies corporate

131. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defences under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

132. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission –

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the first-mentioned offence.

(2) If an offence consists of an omission to do an act that is required to be done, the omission is taken to continue for as long as the relevant person fails to do that act after the end of the period for compliance with the requirement.

Recovery of profits from contravention

133. If a gas entity profits from a contravention of this Act, the Director of Gas may recover an amount equal to the profit from the entity –

(a) on application to a court convicting the entity of an offence in respect of the contravention; or

(b) by action in a court of competent jurisdiction.

Immunity from personal liability for Director, authorised officer, &c.

134. (1) No personal liability attaches to the Director of Gas, the Director of Gas Safety, a delegate of either Director, an authorised officer or any officer or employee of the Crown engaged in the administration or enforcement of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Evidence

135. (1) In any legal proceedings, an apparently genuine document signed by the Secretary of the Department stating that a person held a specified appointment under this Act at a specified time is admissible as evidence of that fact.

(2) In any legal proceedings, an apparently genuine document signed by the Director of Gas or the Director of Gas Safety certifying –

(a) that a person was or was not the holder of a licence at a specified date or as to the particulars or conditions of a licence; or

(b) as to the giving and contents of a delegation, exemption, approval or authorisation under this Act –

is admissible as evidence of the matters so certified.

Service of notices, &c.

136. If a notice or other document is required or authorised to be given to or served on the holder of a licence and the licence is held by 2 or more persons, it is sufficient for the purposes of this Act if the notice or other document is given to or served on any one of those persons.

Regulations

137. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting subsection (1), the regulations may provide for the following matters:

(a) the distribution and retailing of gas;

(b) the construction and installation of gas infrastructure and gas installations;

(c) technical, operational and safety requirements and standards and monitoring and enforcing compliance with the prescribed requirements and standards;

(d) the quality of gas;

(e) testing, approving and installation of meters;

(f) examination and testing of gas appliances;

(g) labelling of gas appliances of a class specified in the regulations;

(h) the exemption (conditionally or unconditionally) of classes of persons, things or operations from the application of this Act or specified provisions of this Act;

(i) fees to be paid in respect of any matter under this Act and the waiver or refund of those fees;

(j) penalties not exceeding 500 penalty units for contravention of a regulation.

(3) The regulations may –

(a) be of general application or limited in application according to the persons, areas, times or circumstances to which they are expressed to apply; or

(b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister, the Director of Gas or the Director of Gas Safety; or

(c) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulations as in force from time to time or as in force at a particular time.

Administration

138. Until provision is made in respect of this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Infrastructure, Energy and Resources; and

(b) the department responsible to the Minister for Infrastructure, Energy and Resources in respect of the administration of this Act is the Department of Infrastructure, Energy and Resources.

PART 9 - Miscellaneous amendments

139. The amendments effected by this Part have been incorporated into authorised versions of the following Acts:

(a) *Launceston Gas Company Act 1982*;

(b) *Petroleum (Submerged Lands) Act 1982*.

140. The amendments effected by this Part have been incorporated into authorised versions of the following Acts:

(a) *Launceston Gas Company Act 1982*;

(b) Petroleum (Submerged Lands) Act 1982.

PART 10 - Miscellaneous repeals

Hobart Gas Company Act 1977 repealed

141. The Hobart Gas Company Act 1977 is repealed.

Hobart Town Gas Company's Act 1854 repealed

142. The Hobart Town Gas Company's Act 1854 is repealed.

Hobart Town Gas Company's Act 1857 repealed

143. The Hobart Town Gas Company's Act 1857 is repealed.

Launceston Gas Company Loan Guarantee and Subsidy Act 1976 repealed

144. The Launceston Gas Company Loan Guarantee and Subsidy Act 1976 is repealed.

Table Of Amendments

Provision affected	How affected
Section 3	Amended by No. 46 of 2001, s. 4, No. 111 of 2001, s. 4 and No. 36 of 2003, s. 4
Section 3A	Inserted by No. 111 of 2001, s. 5
Section 6A	Inserted by No. 111 of 2001, s. 6 Repealed by No. 36 of 2003, s. 5
Section 7	Substituted by No. 46 of 2001, s. 5
Section 8	Amended by No. 46 of 2001, s. 6, No. 111 of 2001, s. 7 and No. 36 of 2003, s. 6
Section 9	Substituted by No. 46 of 2001, s. 7
Section 13	Amended by No. 46 of 2001, Sched. 1 and No. 36 of 2003, s. 7
Section 14	Repealed by No. 36 of 2003, s. 8
Section 16	Amended by No. 111 of 2001, s. 8 and No. 42 of 2003, Sched. 1
Division 4 of Part 2	Repealed by No. 36 of 2003, s. 9
Section 17	Repealed by No. 46 of 2001, s. 9 and No. 36 of 2003, s. 9
Section 18	Substituted by No. 46 of 2001, s. 10 Repealed by No. 36 of 2003, s. 9
Section 19	Amended by No. 46 of 2001, Sched. 1 Repealed by No. 36 of 2003, s. 9
Section 20	Amended by No. 46 of 2001, Sched. 1 Repealed by No. 36 of 2003, s. 9

Division 5 of Part 2	Repealed by No. 36 of 2003, s. 9
Section 20A of Part 2	Inserted by No. 46 of 2001, s. 11
Section 20A	Repealed by No. 36 of 2003, s. 9
Section 20B of Part 2	Inserted by No. 46 of 2001, s. 11
Section 20B	Repealed by No. 36 of 2003, s. 9
Section 22	Repealed by No. 111 of 2001, s. 9
Section 23	Amended by No. 36 of 2003, s. 10
Section 24	Amended by No. 111 of 2001, s. 10 and No. 36 of 2003, s. 11
Section 29	Amended by No. 111 of 2001, s. 11
Section 30	Substituted by No. 46 of 2001, s. 12 Amended by No. 111 of 2001, s. 12 and No. 36 of 2003, s. 12
Section 31	Amended by No. 46 of 2001, s. 13 Substituted by No. 111 of 2001, s. 13 Repealed by No. 36 of 2003, s. 13
Section 32	Substituted by No. 111 of 2001, s. 13
Section 32A	Inserted by No. 36 of 2003, s. 14
Section 33	Substituted by No. 111 of 2001, s. 13
Section 38	Amended by No. 46 of 2001, s. 14 Subsection (1A) inserted by No. 111 of 2001, s. 14 Repealed by No. 36 of 2003, s. 15
Section 38A of Part 3	Inserted by No. 111 of 2001, s. 15
Section 38A	Amended by No. 36 of 2003, s. 16
Section 38B of Part 3	Inserted by No. 111 of 2001, s. 15
Section 38B	Amended by No. 36 of 2003, s. 17
Section 38C of Part 3	Inserted by No. 111 of 2001, s. 15
Section 38C	Substituted by No. 36 of 2003, s. 18
Division 3 of Part 3	Repealed by No. 36 of 2003, s. 19
Section 39	Repealed by No. 36 of 2003, s. 19
Section 40	Repealed by No. 36 of 2003, s. 19
Section 46	Amended by No. 46 of 2001, s. 15
Section 49A of Part 4	Inserted by No. 111 of 2001, s. 17
Section 50	Amended by No. 111 of 2001, s. 18
Section 53	Amended by No. 36 of 2003, s. 20
Section 54	Amended by No. 111 of 2001, s. 19 and No. 36 of 2003, s. 21
Section 55	Amended by No. 36 of 2003, s. 22
Section 69	Amended by No. 36 of 2003, s. 23
Section 70	Amended by No. 36 of 2003, s. 24
Section 71	Amended by No. 36 of 2003, s. 25
Section 72	Amended by No. 36 of 2003, s. 26
Section 76	Amended by No. 111 of 2001, s. 20
Section 77	Amended by No. 111 of 2001, s. 22

Section 79	Substituted by No. 111 of 2001, s. 23
Section 79A	Inserted by No. 111 of 2001, s. 23 Amended by No. 36 of 2003, s. 27
Section 79B	Inserted by No. 111 of 2001, s. 23
Section 79C	Inserted by No. 111 of 2001, s. 23 Amended by No. 36 of 2003, s. 28
Section 79D of Part 4	Inserted by No. 36 of 2003, s. 29
Section 79E of Part 4	Inserted by No. 36 of 2003, s. 29
Section 79F of Part 4	Inserted by No. 36 of 2003, s. 29
Section 79G of Part 4	Inserted by No. 36 of 2003, s. 29
Section 79H of Part 4	Inserted by No. 36 of 2003, s. 29
Section 79I of Part 4	Inserted by No. 36 of 2003, s. 29
Section 79J of Part 4	Inserted by No. 36 of 2003, s. 29
Section 82	Amended by No. 36 of 2003, s. 30
Section 83A	Inserted by No. 44 of 2002, s. 4
Section 84	Amended by No. 111 of 2001, s. 24 and No. 44 of 2002, s. 5
Section 84A	Inserted by No. 32 of 2003, s. 4
Section 85	Amended by No. 44 of 2002, s. 6
Section 86	Substituted by No. 46 of 2001, s. 16 and No. 44 of 2002, s. 7
Section 87	Amended by No. 76 of 2003, Sched. 1
Section 93	Amended by No. 9 of 2003, Sched. 1
Section 98	Amended by No. 111 of 2001, s. 25
Section 102A	Inserted by No. 46 of 2001, s. 17 Substituted by No. 36 of 2003, s. 31
Section 103	Amended by No. 46 of 2001, s. 18
Section 104	Amended by No. 46 of 2001, s. 19
Section 105	Amended by No. 46 of 2001, Sched. 2
Section 106	Amended by No. 46 of 2001, s. 20
Section 107	Amended by No. 46 of 2001, s. 21
Section 108	Amended by No. 46 of 2001, s. 22
Section 109	Amended by No. 46 of 2001, Sched. 2
Section 110	Repealed by No. 36 of 2003, s. 32
Section 111	Substituted by No. 46 of 2001, s. 23 Amended by No. 36 of 2003, s. 33
Section 115	Amended by No. 46 of 2001, s. 24 and No. 36 of 2003, s. 34
Section 117	Substituted by No. 111 of 2001, s. 26
Section 124	Amended by No. 36 of 2003, s. 35
Section 129	Amended by No. 46 of 2001, Sched. 1 and No. 36 of 2003, s. 36

Section 129A

Inserted by No. 111 of 2001, s. 27

Appendix B



Gas Pipelines Act 2000

An Act to facilitate the development of a natural gas supply industry and to ensure that pipelines and pipeline facilities in Tasmania are constructed, maintained and operated to a high standard of safety and in a manner that protects persons and property and for other purposes

[Royal Assent 20 DECEMBER 2000]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

Short title

1. This Act may be cited as the *Gas Pipelines Act 2000*.

Commencement

2. This Act commences on a day to be proclaimed.

Interpretation

3. (1) In this Act, unless the contrary intention appears –

"accepted safety case" means –

(a) a certified safety case that has been accepted or provisionally accepted under Part 3; or

(b) if a revised safety case has been certified and accepted or provisionally accepted under that Part, that revised safety case;

"access" to a pipeline means a right to connect to the pipeline and to contribute gas to, or to take gas from, the pipeline;

"approved form" means a form approved by the Director of Gas;

"authorised activity" means a regulated activity authorised by a pipeline licence;

"authorised officer" means a person appointed as an authorised officer by the Director of Gas or the Director of Gas Safety for the purposes of the *Gas Act 2000*;

"business day" means any day except a Saturday, Sunday or public holiday;

"**contravene**" includes fail to comply with;

"**Director of Gas**" means the Director of Gas appointed under the *Gas Act 2000*;

"**Director of Gas Safety**" means the Director of Gas Safety appointed under the *Gas Act 2000*;

"**gas**" means any gaseous fuel including petrochemical feed stock but not including any gaseous fuel that is declared under the regulations not to be gas for the purposes of this Act or any provision of this Act;

"**gas installation**" means, in respect of the use or intended use of gas, a combination of –

(a) any pipe or system of pipes for, or incidental to, the conveyance of gas and components or fittings associated with the pipe or pipes which are connected directly to a licensee's pipeline or pipeline facility; and

(b) any one or more of the following:

(i) any appliance and associated components or fittings which are so connected;

(ii) any meter which is so connected;

(iii) any means of ventilation or system for the removal of combustion products which is so connected;

"**incident**" means any incident or event relating to the conveyance, supply or use of gas or another regulated substance which causes or has the potential to cause –

(a) death or injury to a person; or

(b) significant damage to property; or

(c) an uncontrolled explosion, fire or discharge of gas or another regulated substance; or

(d) an impact on the security of supply;

"**natural gas**" means a substance which is in a gaseous state at standard temperature and pressure and which consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane but does not include anything declared by the regulations not to be natural gas;

"occupier" of land or a place means a person who has, or is entitled to, possession or control of the land or place;

"owner" of land means –

- (a) if the land has been alienated from the Crown by the grant of an estate in fee simple or another estate or interest conferring a right to possession of the land, the person who holds the relevant estate or interest; or
- (b) in any other case, the Director of Gas or an authority or other person responsible for the management of the land;

"petroleum" means –

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide;

"pipeline" means the whole or any part of a pipeline for conveying natural gas, petroleum or another regulated substance from a point at or near the place of its production to another place or other places, or the whole or any part of a pipeline that forms part of a system of pipelines for that purpose, and includes –

- (a) tanks, machinery and equipment necessary for, or associated with, its operation; and
- (b) a pipeline or class of pipelines which under subsection (3) is to be treated as a transmission pipeline for the purposes of this Act –

but does not include the following:

- (c) a pipeline located wholly within the site of an industrial plant;
- (d) a pipeline that forms part of a gas distribution system within a city, town or other centre of population or industry;

(e) any part of a pipeline referred to in paragraph (c) or (d) for which a licence is required under the *Petroleum (Submerged Lands) Act 1982* of Tasmania or the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

(f) a pipeline or class of pipelines which under subsection (3) is to be treated as not being a transmission pipeline for the purposes of this Act;

"pipeline facility" means a works used, or intended to be used to extract, treat or store gas including, without limitation –

- (a) a gas treatment facility; and
- (b) a plant for liquid petroleum separation, treatment or storage; and
- (c) a plant for liquid petroleum gas extraction or storage; and
- (d) a storage tank, pressurised vessel bunker; and
- (e) a refinery –

but does not include a pipeline;

"pipeline land" means an interest in land, including an easement, acquired for the construction, maintenance or operation of a pipeline;

"pipeline licence" means a licence to construct or operate, or construct and operate, a pipeline or a pipeline facility granted under section 12;

"private land" means land alienated from the Crown by the grant of an estate in fee simple or a possessory interest conferring a right to exclusive possession of the land;

"public land" means land owned by –

- (a) the Crown; or
- (b) an instrumentality or agent of the Crown; or
- (c) a council or other local government body;

"record" includes –

- (a) a record in the form of a book or document, or in the form of a map; and
- (b) a record in the form of electronic data;

"**regulated activity**" has a meaning given by section 8;

"**regulated substance**" means –

- (a) gas; or
- (b) natural gas; or
- (c) petroleum; or
- (d) any other substance declared by the regulations to be a substance to which this Act applies;

"**regulations**" means regulations made and in force under this Act;

"**supply pipeline**" means a pipeline, or proposed pipeline, that delivers or is capable of delivering, natural gas directly to a customer;

"**transmission pipeline**" means a pipeline, or class of pipelines, declared under subsection (3) to be treated as a transmission pipeline for the purposes of this Act;

"**Tribunal**" means the Resource Management and Planning Appeal Tribunal.

(2) A reference in this Act to gas or another regulated substance extends to a mixture of substances of which gas or another regulated substance is a constituent part.

(3) The Governor may, by order published in the *Gazette*, declare that a pipeline or class of pipelines is to be treated as –

- (a) a transmission pipeline for the purposes of this Act; or
- (b) not being a transmission pipeline for the purposes of this Act.

Objects of Act

4. The objects of this Act are –

- (a) to create an effective, efficient and flexible regulatory system for the construction and operation of pipeline facilities and of pipelines for transporting natural gas and other substances to which this Act applies; and
- (b) to ensure as far as reasonably practicable security of supply for users of gas; and
- (c) to protect the public from risks inherent in regulated activities.

Crown to be bound

5. This Act binds the Crown, not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Workplace safety and other statutory requirements not affected

6. This Act is in addition to and does not derogate from the *Workplace Health and Safety Act 1995* or the *Dangerous Goods Act 1998*.

PART 2 - Licensing Regulated Activities
Division 1 - Interpretation

Interpretation

7. In this Part –

"Director" means the Director of Gas.

Division 2 - Requirement for pipeline licence

Regulated activities

8. (1) For the purposes of this Act, the following are regulated activities:

- (a) construction of, or alteration to, a pipeline for carrying natural gas, petroleum or another regulated substance;
- (b) operating and maintaining a pipeline for carrying natural gas, petroleum or another regulated substance;
- (c) construction of, or alteration to, a pipeline facility for processing gas or another regulated substance;
- (d) operating and maintaining a pipeline facility used for processing gas or another regulated substance;
- (e) any other activities for which a licence is required under the regulations.

(2) In this Act, a reference to a regulated activity includes all operations and activities reasonably necessary for, or incidental to, that activity.

Requirement for pipeline licence

9. A person must not engage in a regulated activity for which a pipeline licence is required under this Act unless –

- (a) that person holds a pipeline licence authorising the relevant activity; or
- (b) the activity is authorised under this Act or required under section 36.

Penalty:

Fine not exceeding 1 200 penalty units.

Division 3 - Grant of pipeline licence

General authority to grant pipeline licence

10. The Director may, subject to this Act, grant a pipeline licence.

Application for pipeline licence

11. (1) An application for a pipeline licence –

- (a) is to be made in writing to the Director; and
- (b) is to be made by a body corporate or a partnership of bodies corporate and state the directors, secretary, public officer and any other person who is able to control the affairs of the body corporate or, as the case may require, of each of the bodies corporate; and
- (c) is to be accompanied by a statement showing to the satisfaction of the Director the financial and technical resources available to the applicant; and
- (d) if authority to construct or operate a pipeline is sought, is to contain details of the proposed pipeline network; and
- (e) if authority to construct or operate a pipeline facility is sought, is to contain details of the proposed pipeline facility; and
- (f) is to be accompanied by the application fee prescribed by the regulations.

(2) An application for the renewal of a pipeline licence –

- (a) is to be made in writing to the Director at least 3 months, but not more than 6 months, before the end of the licence term preceding the proposed renewal; and
- (b) is to be accompanied by the fee prescribed by the regulations.

(3) The Director may require an applicant for the grant or renewal of a pipeline licence to provide any further relevant information, documents or materials to assist in assessing and determining the application.

(4) If an applicant fails to comply with a requirement under subsection (3) within 30 days or such longer period as the Director may allow, the application lapses.

(5) If an application for the renewal of a pipeline licence is made before the end of the term of the pipeline licence, that term is extended until the application is determined.

(6) Notice of an application for the grant or renewal of a pipeline licence is to be published, at least 30 days before the application is determined, in the *Gazette* and in 3 newspapers circulating generally in Tasmania.

(7) The Director must determine an application for the grant or renewal of a pipeline licence within 60 days after receiving the application.

Consideration of application

12. (1) The Director must consider an application for the grant of a pipeline licence and may grant, or refuse to grant, the licence.

(2) The Director may grant a pipeline licence only if he or she is satisfied that –

- (a) the applicant has adequate technical and financial resources to undertake the proposed activities; and

(b) the applicant is a body corporate (or a partnership of 2 or more bodies corporate); and

(c) a permit or other authority for the construction of the pipeline or pipeline facility has been granted under any other relevant law; and

(d)

(e) the applicant can demonstrate compliance with, or an intention to comply with, the requirements of this Act.

(3) The Director of Gas must not grant a pipeline licence which authorises the construction or operation of a supply pipeline unless an order has been made under section 3(3) declaring the supply pipeline to be treated as a transmission pipeline for the purposes of this Act.

(4) The Director of Gas must not grant a pipeline licence unless the Director of Gas Safety has provided a certificate that, in his or her opinion, the pipeline or pipeline facility has, or will have, the necessary ability to convey or process gas, petroleum or another regulated substance safely.

Information to be included in licence

13. A pipeline licence must state –

(a) the name of the licence holder; and

(b) the activities authorised by the licence including, where relevant, the geographical locations of the activities; and

(c) the term of the licence and any conditions determined by the Director.

Annual fee

14. (1) A licensee must pay to the Director annually and in advance a fee determined by the Director that represents the reasonable cost of the administration of this Act with respect to the relevant pipeline licence.

(2) If a licensee fails to pay a fee in accordance with subsection (1) –

(a) the amount in arrears, unless the Director determines otherwise, is to be increased by penalty interest at the prescribed rate; and

(b) the Director may impose on the licensee a fine of an amount fixed by the Director up to a limit of 10 penalty units or 10% of the outstanding fee, whichever is the greater.

(3) The Director may for any proper reason remit penalty interest or a fine imposed under subsection (2) wholly or in part.

(4) A fee and any penalty interest or fine imposed by the Director under this section may be recovered from the licensee by the Director as a debt due to the Crown in any court of competent jurisdiction.

Division 4 - Terms and conditions of licence

Rights conferred by pipeline licence

15. (1) A pipeline licence authorises the licensee to construct or to complete the construction of, or to operate, the pipeline or pipeline facility to which it relates.

(2) A pipeline licence may be granted for the whole or part of a pipeline.

(3) A pipeline licence may be held only by a body corporate or partnership of 2 or more bodies corporate.

Term and renewal of pipeline licence

16. The term of a pipeline licence is 25 years or a lesser period agreed by the licensee and the Director but may be renewed on any terms and conditions as agreed by the licensee and the Director.

Preconditions of grant or renewal of pipeline licence

17. As a condition of granting or renewing a pipeline licence, the Director may require the applicant to give security, of a kind and amount acceptable to the Director, for the due performance of obligations arising under this Act or the pipeline licence.

Condition as to use of information, &c.

18. It is a condition of a pipeline licence that the licensee authorises the Director –

(a) to use for the purposes of this Act any information and records provided by the licensee under this Act; and

(b) to disclose information and records provided by the licensee under this Act as authorised by the regulations.

Alteration, extension or re-routing of pipeline

19. (1) A licensee must not alter or modify in a material particular, or permit the alteration or any such modification of, the pipeline except as follows:

(a) as authorised in the pipeline licence;

(b) as may be necessary for the repair or maintenance of the pipeline;

(c) as may be necessary for the preservation of life or property in an emergency;

(d) as may be authorised by the Director.

Penalty:

Fine not exceeding 1 200 penalty units.

(2) A licensee must not extend or re-route a pipeline without the written approval of the Director which approval may be granted only if the licensee can show that all permits and other approvals required by law have been granted.

Other conditions

20. (1) A pipeline licence may be granted on any other reasonable conditions that the Director considers appropriate including, without limitation, a condition requiring the licensee to maintain insurance on terms and conditions approved by the Director insuring the licensee against liabilities arising from regulated activities under the pipeline licence.

(2) The Director may add a condition to a pipeline licence, or vary or revoke a condition of a pipeline licence –

(a) on the renewal of the pipeline licence; or

(b) at any other time with the agreement of the licensee.

Contravention of pipeline licence conditions

21. A licensee which contravenes a condition of a pipeline licence is guilty of an offence.

Penalty:

Fine not exceeding 1 200 penalty units.

Licensee not liable for failure to supply

22. (1) A licensee is not liable to a penalty or damages for failing to convey gas through its pipeline if the failure arises out of any accident or cause beyond the control of the licensee.

(2) A licensee may enter into an agreement with a person varying or excluding the operation of subsection (1).

(3) Nothing in subsection (1) or (2) affects the liability of a licensee under Part 3.

Division 5 - Miscellaneous

Amendment of licence

23. The Director may amend the terms and conditions of a pipeline licence –

(a) with the licensee's agreement; or

(b) after giving the licensee reasonable notice of the proposed amendment and allowing the licensee a reasonable opportunity to make representations about it.

Transfer of licence

24. (1) A pipeline licence may be transferred with the Director's agreement.

(2) The Director may impose conditions on the transfer of a licence or amend the terms and conditions of a licence on its transfer.

Surrender

25. (1) A licensee may apply to the Director to surrender the pipeline licence or to surrender part of the area specified in the pipeline licence.

(2) The Director may accept the surrender as from a date specified by the Director in a notice of acceptance of the surrender given to the applicant.

(3) If the licensee surrenders part of the pipeline licence area, the pipeline licence continues in respect of the remainder of the pipeline licence area subject to any modification of its conditions that the Director considers appropriate in view of the surrender.

(4) The Director may accept a surrender on any condition including, without limitation, a condition –

(a) that the applicant pay any monetary obligations incurred before the surrender; or

(b) that the applicant provide the Director with information that should have been, but has not been, provided before the surrender.

(5) The application –

(a) is to be in writing; and

(b) is to be submitted at least 6 months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.

Pipeline to be chattel

26. A pipeline is a chattel and, subject to section 27, capable of being acquired, owned, dealt with and disposed of as such.

Inseparability of dealings with pipeline and pipeline land

27. Unless the Director gives written consent, a pipeline cannot be transferred, mortgaged or otherwise dealt with separately from the pipeline land related to the pipeline, nor can pipeline land be transferred, mortgaged or dealt with separately from the pipeline to which it relates.

Acquisition of land, &c.

27A. (1) In this section –

"telecommunications carrier" means the holder of a carrier licence under the Telecommunications Act 1997 of the Commonwealth;

"telecommunications infrastructure" means infrastructure that is necessary or convenient for the purposes of a telecommunications network within the meaning of the Telecommunications Act 1997 of the Commonwealth.

(2) A licensee is an acquiring authority under the Land Acquisition Act 1993 and may acquire land under that Act for the purposes of the regulated activities that the licensee is authorised to engage in under its pipeline licence.

(3) Without limiting subsection (2), a licensee is taken to be a public authority for the purposes of section 90A(1) of the Conveyancing and Law of Property Act 1884 and, accordingly, may acquire by compulsory process an easement in gross within the meaning of that section of that Act.

(4) Notwithstanding subsections (2) and (3) –

(a) a licensee may acquire land by compulsory process only if the acquisition is authorised in writing by the Minister; and

(b) a licensee may install and maintain telecommunications infrastructure on land that it has acquired under the Land Acquisition Act 1993 or allow a telecommunications carrier to install and maintain such infrastructure on such land.

(5) Regulations may be made under section 99 modifying the Land Acquisition Act 1993 in its application to the acquisition of land by licensees under that Act, but not so as to affect the monetary entitlements of persons from whom land is acquired.

Division 6 - Entry on and use of land

Application of Division

28. This Division applies to –

(a) a licensee; or

(b) a body corporate which the Director is satisfied proposes to apply for a licence and which has demonstrated to the satisfaction of the Director its capacity to comply with the requirements of this Act; or

(c) any agent of a licensee who is authorised in writing for the purpose of this Division; or

(d) any agent of a body corporate referred to in paragraph (b) who is so authorised.

Right of entry on land

29. (1) A person to whom this Division applies may, subject to this Part, enter on land with the agreement of the landowner or as authorised under subsection (2) –

(a) to conduct surveys or to assess the suitability of the land for the construction or installation of a pipeline or pipeline facility; or

(b) for the purpose of gaining access to pipeline land to carry out regulated activities on the land.

(2) The Director may authorise a person to whom this Division applies to enter and remain on land under this section on such conditions as the Director considers appropriate and, if that person enters on land under that authority, that person must –

(a) comply with any conditions to which that authority is subject; and

(b) do as little damage as possible and act so as to minimise the impact of work carried out by the licensee on the activities of other persons on the land; and

(c) make good any damage caused to the land as a result of carrying out activities on the land.

(3) A person to whom this Division applies may, in a case where he or she believes on reasonable grounds that an emergency exists, enter and remain on land –

(a) without prior notice if it is not practicable to give notice; and

(b) if necessary in the circumstances, by the use of reasonable force.

(4) A person authorised to enter on land to ascertain whether that land is suitable for the construction or installation of a pipeline or pipeline facility or to obtain information in relation to that land may –

(a) enter and remain on that land with such assistants, vehicles, machinery and equipment as the person thinks fit; and

(b) make surveys, take levels, sink pits, examine the soil and do any other thing in relation to the land.

(5) A person authorised to enter on land to ascertain whether other land is suitable for the construction or installation of a pipeline or pipeline facility or to obtain information in respect of other land may enter and remain on the first-mentioned land with such assistants, vehicles, machinery and equipment as the person thinks fit.

(6) A person to whom this Division applies may use reasonable force to enter on land –

(a) with the authority of a warrant issued by a justice of the peace; or

(b) if the person believes, on reasonable grounds, that the circumstances require immediate action to be taken.

Notice of entry on land

30. (1) A licensee must give written notice to the owner or occupier of the land –

(a) of the licensee's intention to enter on the land; and

(b) if the licensee proposes to carry out regulated activities on the land, of the nature of the activities to be carried out on the land.

Penalty:

Fine not exceeding 50 penalty units.

(2) For the purposes of subsection (1) –

(a) not less than 7 days' notice is to be given to the owner or occupier; and

(b) the notice may authorise entry on such days as are specified in the notice during a period that is so specified; and

(c) a period specified in a notice under paragraph (b) may be extended by giving a further such notice to the owner or occupier not less than 2 days before the expiration of that period.

Offences

31. A person must not obstruct, hinder, delay, threaten or assault a person who is –

(a) authorised to enter on land under section 29; and

(b) acting in accordance with that section.

Penalty:

Fine not exceeding 10 penalty units.

Landowner's right to compensation

32. (1) If an owner of land suffers loss or damage as a result of a licensee entering on land and carrying out regulated activities, the owner is entitled to compensation from the licensee.

(2) The compensation must take into account –

(a) deprivation or impairment of the use and enjoyment of the land;
and

(b) damage to the land (not including damage that has been made good by the licensee); and

(c) damage to, or disturbance of, any business or other activity lawfully conducted on the land.

(3) If an owner and a licensee do not agree as to the amount of compensation payable under this section, the claim for compensation is to be determined –

(a) if it is a small claim within the meaning of the *Magistrates Court (Small Claims Division) Act 1989*, by the small claims division of the Magistrates Court; or

(b) in any other case, as if it were a disputed claim under the *Land Acquisition Act 1993*.

Division 7 - Record-keeping and reporting requirements

Records to be kept by licensee

33. (1) A licensee must maintain –

(a) a record of all regulated activities carried out under the licence including, where appropriate, maps and plans; and

(b) a record of compliance audits by internal or external auditors required under the regulations; and

(c) any other records required by the regulations.

Penalty:

Fine not exceeding 100 penalty units.

(2) The licensee must provide the Director of Gas or the Director of Gas Safety with a copy of the records maintained under this section at the times required –

(a) by the relevant Director by written notice given to the licensee; or

(b) by the regulations.

Penalty:

Fine not exceeding 100 penalty units.

Mandatory reporting of incidents

34. (1) A licensee must report to the Director of Gas Safety, as soon as practicable, any incident which occurs in respect of a pipeline or pipeline facility of that licensee.
Penalty:

Fine not exceeding 1 500 penalty units.

(2) A licensee must report to the Director of Gas Safety, as soon as practicable, any incident of which it is aware and which occurs in respect of a gas installation to which it supplies gas.

Penalty:

Fine not exceeding 500 penalty units.

(3) The Chief Officer of the Tasmania Fire Service must report to the Director of Gas Safety any fire or explosion in which he or she suspects gas was a cause or contributing factor.

(4) If an incident occurs and is caused by the operation or condition of a pipeline or pipeline facility, the pipeline or pipeline facility must not be altered or interfered with unnecessarily by any person so as to prevent a proper investigation of the incident.

Penalty:

Fine not exceeding 1 000 penalty units.

Information to be provided by licensee

35. (1) A licensee must provide the Director of Gas or the Director of Gas Safety with any information required by the regulations.

Penalty:

Fine not exceeding 250 penalty units.

(2) A licensee must, within the time specified in a written request by the relevant Director, provide that Director with any other information that that Director may reasonably require relating to the safe construction, operation or maintenance of the pipeline.

Penalty:

Fine not exceeding 250 penalty units.

(3) If the relevant Director considers the provision of any information requested under subsection (2) to be essential in the public interest, and so states in the request, failure by the licensee to comply with the request is an offence punishable on summary conviction by a fine not exceeding 1 000 penalty units.

(4) A licensee must, if requested to do so by the relevant Director, provide that Director with an expert report, within the time specified in the request, verifying information provided to that Director by the licensee.

Penalty:

Fine not exceeding 100 penalty units.

(5) A request under subsection (4) must either nominate the person by whom the expert report is to be prepared or state the nature of the qualifications and experience that the person who prepares the report must possess.

Division 8 - Powers of Director

Power of Director to give directions

36. (1) The Director of Gas or the Director of Gas Safety may, by notice in writing given to a licensee, direct the licensee –

(a) to carry out specified obligations under this Act or the pipeline licence within a specified period; or

(b) to cease specified activities that constitute, or are likely to constitute, a contravention of this Act or the pipeline licence.

(2) The licensee must comply with a direction under subsection (1) within the period, if any, specified in the notice.

Penalty:

Fine not exceeding 1 000 penalty units.

(3) If the licensee fails to comply with a direction under subsection (1) within the period, if any, specified in the notice, the relevant Director may take the action required or arrange for the required action to be taken and recover the cost from the licensee in any court of competent jurisdiction as a debt due to the Crown.

Powers of Director as to surveys, &c.

37. For the purpose of ensuring the due compliance with the terms and conditions of a pipeline licence, the Director of Gas or the Director of Gas Safety may –

(a) undertake surveys and inspections; and

(b) enter on land for any such purpose.

Power to take over operations

38. (1) If –

(a) a licensee contravenes this Act and the contravention is in the opinion of the Governor of a sufficiently serious nature, or a licence is cancelled or expires without renewal; and

(b) it is necessary, in the Governor's opinion, to take over the licensee's operations, or some of them, to ensure that the licensee's customers receive an adequate supply of gas, petroleum or another regulated substance –

the Governor may make an order under this section.

(2) Before an order is made under this section, the Director must give the licensee a reasonable opportunity to make written representations giving reasons why the order should not be made.

(3) An order under this section –

(a) authorises the Director to take over the licensee's operations or a specified part of the licensee's operations; and

(b) may contain ancillary directions including, without limitation, directions about how the costs of carrying on the operations and revenue generated from the operations are to be dealt with.

(4) A licensee must comply with an order under subsection (3)(a) notwithstanding any rights conferred under this Act or any other law.

Appointment of operator

39. (1) When an order is made under this Part, the Director must appoint a suitable person (who may, but need not, be a licensee) to take over the relevant operations on agreed terms and conditions.

(2) A person appointed to take over a licensee's operations is referred to in this section as the "operator".

(3) The licensee must facilitate the takeover of the relevant operations by the operator.

(4) The operator may have access to the pipeline or pipeline facility and any other property of the licensee for the purposes of carrying on the relevant operations.

(5) A person must not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Part.

Penalty:

Fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(6) A person must comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.

Penalty:

Fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

Division 9 - Suspension or revocation of pipeline licence

Suspension of pipeline licence by agreement

40. The Director may, by agreement with the licensee, suspend a pipeline licence for a specified period.

Revocation of pipeline licence

41. (1) Where a licensee –

(a) fails to comply with a reasonable requirement to provide the Director with any information relating to any activity arising from, or for the purpose of, the construction or operation of a pipeline or pipeline facility; or

(b) in doing or omitting to do any act, commits a material contravention of a condition to which the pipeline licence is subject; or

(c) has contravened this Act and in the Director's opinion the contravention is so serious as to warrant action under this section –

the Director may, in accordance with this section –

(d) suspend the pipeline licence for a specified period or until the Director terminates the suspension; or

(e) revoke the pipeline licence.

(2) Before the Director suspends or revokes the pipeline licence, the Director must give the licensee a notice of default –

(a) specifying the default; and

(b) stating the action that the Director proposes to take; and

(c) if the default is capable of being remedied, allowing the licensee a reasonable opportunity to remedy the default; and

(d) whether or not the default is capable of being remedied, giving the licensee a reasonable opportunity to show cause why the proposed action should not be taken.

(3) If the notice allows the licensee an opportunity to remedy a default and the licensee remedies the default to the Director's satisfaction, the Director must not suspend or revoke the licence by reason of that default.

(4) The licensee, within the period allowed by the notice, may arrange with the Director for the making of submissions to the Director as to why any such action should not be taken and the Director must consider any submissions so made.

(5) The Director may, after that period, take action against the licensee as the Director sees fit by giving written notice to the licensee –

(a) of the revocation of the pipeline licence for the construction or operation of a pipeline or a pipeline facility or the variation of its terms; or

(b) in the form of a letter of censure.

(6) A revocation of a pipeline licence under this section takes effect when the notice is given or on a later date specified in the notice.

(7) A letter of censure may censure the licensee in respect of any matter arising from the construction or operation of the pipeline facility and may include a direction to the licensee to rectify within a specified time any matter giving rise to the letter of censure.

(8) If the direction is contravened, the Director may revoke the pipeline licence without affording the licensee a further opportunity to be heard.

Division 10 - Public notification of grant, &c., of pipeline licence

Public notification to be given in *Gazette*, &c.

42. (1) Notice of the grant, suspension or revocation of a pipeline licence is to be published in the *Gazette*.

(2) Notice of the surrender of a pipeline licence or of the surrender of a pipeline licence or part of a pipeline licence is to be published in the *Gazette* and in a newspaper circulating generally in Tasmania.

PART 3 - Safe operation of regulated activities

Division 1 - Preliminary

Interpretation

43. In this Part –

"Director" means the Director of Gas Safety.

Functions of Director

44. The Director has the functions of the monitoring and regulation of safety and technical standards with respect to –

(a) regulated activities; and

(b) pipelines, pipeline facilities and associated works.

Regulated activities to be carried out with due care

45. A licensee must carry out regulated activities with due care having particular regard to –

(a) the health and safety of persons who may be affected by those activities; and

(b) the need to ensure that pipelines or pipeline facilities for transporting and processing gas are designed, constructed, managed and operated prudentially so as to provide a reliable and adequate supply of gas.

Penalty:

Fine not exceeding 1 200 penalty units.

Safety requirements

46. A licensee must carry out regulated activities in accordance with good industry practice by compliance with the whole or parts of the standards and codes stated in the licence or prescribed by the regulations.

Penalty:

Fine not exceeding 1 200 penalty units.

Division 2 - Requirement for safety and operating plan for pipelines

Requirement for safety and operating plan for pipelines

47. (1) A licensee must demonstrate compliance with the standards and codes prescribed by the regulations in the form of a safety and operating plan submitted to the Director.

(2) The safety and operating plan must be in writing and, in accordance with the regulations, must identify the safety system in place, or intended to be in place, and state the risk management activities undertaken, or intended to be undertaken –

(a) to comply with the licensee's duties under sections 45 and 46; and

(b) to ensure the safe operation of a pipeline and the safe conveyance, supply, measurement or control of gas, petroleum or other regulated substance.

(3) A licensee must not commission or commence to operate a pipeline unless a safety and operating plan for that pipeline has been independently certified by a person approved by the Director as conforming to any standard or code prescribed by the regulations.

Penalty:

Fine not exceeding 1 500 penalty units.

(4) A licensee must thoroughly review and revise a safety and operating plan in accordance with the review schedule as provided in the plan.

Penalty:

For a breach of this subsection, a fine not exceeding 500 penalty units.

Additional safety plan

48. If a safety and operating plan does not, in the opinion of the Director, provide for the safe construction of a pipeline, the Director may require the licensee to provide an additional safety plan for the construction.

Additional information

49. (1) The Director may require a licensee to provide additional information that the Director believes is necessary to adequately demonstrate compliance with the prescribed safety standards and codes.

(2) The Director is not required to further consider the safety and operating plan until the licensee provides the additional information.

Audit of safety and operating plan for pipeline

50. (1) A licensee must ensure that the implementation of its safety and operating plan is audited as required by the Director.

(2) A licensee must, within 14 days after receipt of a report on the audit, forward a copy of the report to the Director.

Penalty:

Fine not exceeding 50 penalty units.

Acceptance of safety and operating plan

51. The Director must accept a safety and operating plan if satisfied that it has been prepared in accordance with the Director's directions.

Provisional acceptance of safety and operating plan

52. (1) The Director may provisionally accept a safety and operating plan if satisfied that –

(a) it has not been prepared in accordance with the Director's directions in only a minor respect; and

(b) despite that failure, it will provide for the safe operation of the pipeline.

(2) The Director must notify the licensee in writing of his or her decision to accept provisionally a safety and operating plan.

(3) The notice of acceptance must state –

(a) the period when the provisional acceptance will be in force; and

(b) the extent to which the safety and operating plan has been accepted; and

(c) any limitations or conditions which will apply in respect of the use or operation of the pipeline while the provisional acceptance is in force.

Non-acceptance of safety and operating plan

53. (1) If the Director does not accept a safety and operating plan, the Director must –

(a) notify the licensee in writing of the non-acceptance; and

(b) give the licensee an opportunity to modify and resubmit the safety and operating plan.

(2) A modified safety and operating plan must be submitted to the Director within 28 days after a notice is given under subsection (1).

(3) After considering a modified safety and operating plan, the Director must give notice in writing of his or her decision to the licensee, including the reasons for that decision.

Compliance with safety and operating plan

54. (1) A licensee must comply with the accepted safety and operating plan for a pipeline in respect of the management and operation of the pipeline.

Penalty:

Fine not exceeding 1 500 penalty units.

(2) A licensee must not –

(a) undertake or permit a modification of a pipeline that has the potential to increase significantly the overall levels of risk in respect of the pipeline; or

(b) undertake or permit a modification that has the potential to influence significantly the level of a specific risk or the ranking of risk-contributing factors; or

(c) make or permit a significant change to the safety management system in respect of the pipeline –

unless the Director has accepted the safety and operating plan in respect of that matter for the pipeline.

Penalty:

Fine not exceeding 1 500 penalty units.

Revision of safety and operating plan

55. A licensee must submit a revised safety and operating plan to the Director if –

(a) a significant modification to the pipeline is proposed that could increase any risks or danger to persons or property; or

(b) any other significant change in operation or management is proposed that will require any act to reduce risks and maintain compliance with this Act.

Director may require submission of revised safety and operating plan

56. (1) The Director may at any time require a licensee to submit a revised safety and operating plan.

(2) The requirement –

(a) is to be in writing; and

(b) is to set out –

(i) the matters to be dealt with in the required revision; and

(ii) the proposed date of effect of the revision; and

(iii) the grounds for the requirement.

(3) The licensee of which the requirement is made may make a submission to the Director on all or any of the following grounds:

- (a) that the revision should not occur;
- (b) that the revision should be in different terms from the proposed terms;
- (c) that the revision should take effect on a later date than the proposed date of effect.

(4) The submission –

- (a) is to be in writing; and
- (b) is to state the licensee's reasons for the submission; and
- (c) is to be made within 28 days, or such later period as the Director in writing allows, after the requirement is received.

(5) If a licensee makes a submission under this section, the Director must decide –

- (a) to accept the submission or part of the submission and vary or withdraw the requirement accordingly; or
- (b) to reject the submission.

(6) The Director must give the licensee notice in writing of his or her decision on the submission and the reasons for that decision.

Offence to fail to submit required safety and operating plan revision

57. On a requirement for a revision of a safety and operating plan under [section 56](#), the licensee must submit a revised safety and operating plan for a pipeline to the Director –

- (a) if the licensee does not make a submission under that section, within a period of not less than 60 days specified by the Director in the requirement; or
- (b) if the licensee has made a submission under that section and the Director has not withdrawn the requirement, within a period of not less than 60 days specified by the Director in the decision on the submission.

Penalty:

Fine not exceeding 400 penalty units.

Provisions applicable to revised safety and operating plan

58. Sections 49, 50, 51, 52 and 53 apply to the revision of a safety and operating plan in the same manner as they apply to a safety and operating plan.

Division 3 - Requirement for safety case for pipeline facility

Requirement for safety case for pipeline facility

59. (1) A licensee must demonstrate compliance with the standards and codes prescribed by the regulations in the form of a safety case submitted to the Director.

(2) The safety case must be in writing and, in accordance with the regulations, must identify the safety system in place, or intended to be in place, and state the risk management activities undertaken, or intended to be undertaken –

(a) to comply with the licensee's duties under sections 45 and 46; and

(b) to ensure the safe operation of a pipeline facility and the safe conveyance, supply, measurement or control of gas, petroleum or other regulated substance.

(3) A licensee must not commission or commence to operate a pipeline facility unless a safety case for that facility has been independently certified and accepted or provisionally accepted under this Part.

Penalty:

Fine not exceeding 1 500 penalty units.

(4) A licensee must thoroughly review a safety case and submit it to the Director every 5 years for his or her approval.

Additional information

60. (1) The Director may require a licensee to provide additional information that the Director believes is necessary to adequately demonstrate compliance with the prescribed safety standards and codes.

(2) The Director is not required to further consider the safety case until the licensee provides the additional information.

Certification of safety case for pipeline facility

61. (1) A licensee must obtain an independent certification of a safety case before submitting that safety case to the Director.

(2) The certification of a safety case must assess the design, construction, commissioning or operation of a pipeline facility to which the safety case relates and any other matters relating to the fitness of the pipeline facility.

(3) The licensee must establish to the satisfaction of the Director that each person undertaking the certification of a safety case or part of a safety case has the necessary competence and ability, and access to information, to form an independent opinion on the validity of a safety case or part of a safety case.

(4) The Director is not required to consider a safety case until the independent certification is provided.

Acceptance of safety case

62. The Director must accept a safety case if satisfied that the certification adequately demonstrates compliance with the regulations for the safe construction and operation of a pipeline facility.

Provisional acceptance of safety case

63. (1) The Director may provisionally accept a certified safety case if satisfied that –

(a) it fails to comply with the regulations mentioned in section 62 only in a minor respect; and

(b) despite that failure, it will provide for the safe operation of the pipeline facility.

(2) The Director must notify the licensee in writing of his or her decision to provisionally accept a safety case.

(3) The notice of acceptance must state –

(a) the period when the provisional acceptance will be in force; and

(b) the extent to which the safety case has been accepted; and

(c) any limitations or conditions which will apply in respect of the use or operation of the pipeline facility while the provisional acceptance is in force.

Non-acceptance of safety case

64. (1) If the Director does not accept a safety case as an adequate demonstration of the licensee's compliance with its duties under this Part, the Director must –

(a) notify the licensee in writing of the non-acceptance;
and

(b) give the licensee an opportunity to modify and resubmit the safety case.

(2) A modified safety case must be submitted to the Director within 28 days after a notice is given under subsection (1).

(3) After considering a modified safety case, the Director must give notice in writing of his or her decision to the licensee, including the reasons for that decision.

Director may determine safety cases

65. (1) The Director may determine the safety case that is to apply in respect of a pipeline facility which is in operation at the time of determination if –

(a) the licensee fails to submit a safety case for the pipeline facility in accordance with this Division; or

(b) the Director has decided not to accept a safety case for the pipeline facility.

(2) If the Director determines the safety case that is to apply to a pipeline facility, the costs of that determination are to be borne by the licensee.

(3) If the Director determines the safety case to apply to a pipeline facility, the Director must give notice in writing to the licensee of that determination.

(4) On notice being given to the licensee under subsection (3), the safety case determined by the Director is taken, for the purposes of this Act, to be the accepted safety case for the pipeline facility to which it applies.

(5) Nothing in subsection (4) prevents a licensee from submitting a certified safety case or a revised safety case for a pipeline facility to the Director for acceptance under this Division.

Compliance with safety case

66. (1) A licensee must comply with an accepted safety case for a pipeline facility in respect of the management and operation of the pipeline facility.

Penalty:

Fine not exceeding 1 500 penalty units.

(2) A licensee must comply with an accepted safety case for a pipeline facility in respect of the removal, dismantling or decommissioning of the pipeline facility.

Penalty:

Fine not exceeding 500 penalty units.

(3) A licensee must not –

(a) undertake or permit a modification of a pipeline facility that has the potential to increase significantly the overall levels of risk in respect of the pipeline facility; or

(b) undertake or permit a modification that has the potential to influence significantly the level of a specific risk or the ranking of risk-contributing factors; or

(c) make or permit a significant change to the safety management system in respect of the pipeline facility –

unless the Director has accepted a certified revision of the safety case in respect of that matter for the pipeline facility.

Penalty:

Fine not exceeding 1 500 penalty units.

Revision of safety case

67. A licensee must submit a revised safety case to the Director if –

(a) a significant modification is proposed that could increase any risks or danger to persons or property; or

(b) the licensee proposes to dismantle, decommission or remove any part of the pipeline facility in a manner different from the procedures set out in the safety case;
or

(c) any other significant change in operation or management is proposed that will require any act to reduce risks and maintain compliance with this Act.

Director may require submission of revised safety case

68. (1) The Director may at any time require a licensee to submit a revised safety case.

(2) The requirement –

(a) is to be in writing; and

(b) is to set out –

(i) the matters to be dealt with in the required revision; and

(ii) the proposed date of effect of the revision; and

(iii) the grounds for the requirement.

(3) The licensee of which the requirement is made may make a submission to the Director on all or any of the following grounds:

(a) that the revision should not occur;

(b) that the revision should be in different terms from the proposed terms;

(c) that the revision should take effect on a later date than the proposed date of effect.

(4) The submission –

(a) is to be in writing; and

(b) is to state the licensee's reasons for the submission; and

(c) is to be made within 21 days, or such later period as the Director in writing allows, after the requirement is received.

(5) If a licensee makes a submission under this section, the Director must decide –

(a) to accept the submission or part of the submission and vary or withdraw the requirement accordingly; or

(b) to reject the submission.

(6) The Director must give the licensee notice in writing of his or her decision on the submission and the reasons for that decision.

Offence to fail to submit required safety case revision

69. On a requirement for a revision of a safety case under section 68, the licensee must submit a revised safety case for a pipeline facility to the Director –

(a) if the licensee does not make a submission under that section, within a period of not less than 60 days specified by the Director in the requirement; or

(b) if the licensee has made a submission under that section and the Director has not withdrawn the requirement, within a period of not less than 60 days specified by the Director in the decision on the submission.

Penalty:

Fine not exceeding 400 penalty units.

Provisions applicable to revised safety case

70. Sections 60, 61, 62, 63 and 64 apply to the revision of a safety case in the same manner as they apply to a safety case.

Division 4 - Pipeline planning corridors

Interpretation

70A. In this Division –

"affected pipeline" means the pipeline in respect of which a pipeline planning corridor has been declared under this Division;

"appeal" means an appeal to the Tribunal under Division 3 of Part 4 of the *Land Use Planning and Approvals Act 1993*;

"AS 2885" means AS 2885 Pipelines - Gas and liquid petroleum published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard);

"condition" includes restriction;

"discretionary development" means a development or use to which section 57 of the *Land Use Planning and Approvals Act 1993* applies;

"permitted development" means a development or use to which section 58 of the *Land Use Planning and Approvals Act 1993* applies;

"pipeline licensee", for a pipeline planning corridor, means the holder of a pipeline licence for the affected pipeline;

"pipeline planning corridor" means a planning corridor declared by an order in force under section 70B(1);

"planning authority" means a planning authority within the meaning of the *Land Use Planning and Approvals Act 1993*;

"safety condition" means a condition imposed on a permit for a permitted or discretionary development in order to apply, adopt or otherwise give effect to a safety requirement contained in AS 2885.

Declaration of pipeline planning corridors

70B. (1) To limit potential impacts on the risk profile of a proposed or existing pipeline the Minister may, by order, declare a planning corridor in respect of that pipeline.

(2) In determining the width of the pipeline planning corridor the Minister may have regard to AS 2885.

(3) The Minister may revoke an order under subsection (1) at any time and must do so without delay if he or she becomes aware that –

(a) in the case of an order for a proposed pipeline, the pipeline will never be constructed or made operational;
or

(b) in the case of an order for an existing pipeline, the pipeline has been dismantled or has ceased permanently to be operational.

(4) The Minister is to cause notice of the declaration of a pipeline planning corridor to be given to the Assessment Committee for Dam Construction constituted under section 138 of the *Water Management Act 1999*.

Effect of declarations: permitted development applications

70C. (1) If application is made for a permit for a permitted development wholly or partly within a pipeline planning corridor –

(a) the relevant planning authority must give the pipeline licensee notice of the application and, subject to the time constraints of section 58(2) of the *Land Use Planning and Approvals Act 1993*, at least 14 days in which to advise the authority on the proposed development; and

(b) the pipeline licensee may, within that period, give the planning authority such advice on the application as the pipeline licensee thinks fit and in so doing may recommend that the permit be granted subject to safety conditions specified in the advice.

(2) If the pipeline licensee gives such advice, the planning authority –

(a) may have regard to the advice in determining the application; and

(b) may, without limiting its discretion but subject to paragraph (c), grant the permit subject to any safety condition recommended by the pipeline licensee (with or without modification); and

(c) must not grant the permit subject to a condition that conflicts with any condition contained in the safety and operating plan certified under section 47(3) for the affected pipeline.

(3) If the planning authority decides to grant the permit subject to a safety condition and the applicant lodges an appeal against that decision –

(a) the planning authority must give the pipeline licensee notice of the appeal; and

(b) the pipeline licensee is, for the purposes of section 14 of the *Resource Management and Planning Appeal Tribunal Act 1993*, taken to be a person whose interests are affected by the decision and who has a proper interest in the subject matter of the appeal.

(4) If the Tribunal is satisfied on hearing the appeal that the safety condition –

(a) was recommended to the planning authority by the pipeline licensee; and

(b) is in the same or essentially the same terms as the pipeline licensee recommended; and

(c) exceeds the requirements of AS 2885 as in force when the affected pipeline was constructed; and

(d) has added to the cost of the development –

the Tribunal is (if it is appropriate to do so having regard to its decision on the appeal) to order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Tribunal determines is fair in the circumstances.

Effect of declarations: discretionary development applications

70D. (1) If application is made for a permit for a discretionary development wholly or partly within a pipeline planning corridor –

(a) the relevant planning authority must, when notice of the application is given under section 57 of the *Land Use Planning and Approvals Act 1993*, refer the application to the pipeline licensee; and

(b) the pipeline licensee may, within the 14 day or further representation period allowed under section 57(5) of the *Land Use Planning and Approvals Act 1993*, give the planning authority such advice on the application as it thinks fit and in so doing may recommend that, if granted, the permit should be made subject to safety conditions specified in the advice.

(2) If the pipeline licensee fails to give any such advice, the planning authority may determine the application without further reference to the pipeline licensee.

(3) If the pipeline licensee gives any such advice –

(a) the planning authority is to have regard to the advice in determining the application; and

(b) the advice is taken to be a representation made under section 57(5) of the *Land Use Planning and Approvals Act 1993* in relation to the application; and

(c) the planning authority may, without limiting its discretion in the event it approves the application but subject to paragraph (d), grant the permit subject to any safety condition recommended by the pipeline licensee (with or without modification); and

(d) the planning authority must not grant the permit subject to a condition that conflicts with any condition

contained in the safety and operating plan certified under section 47(3) for the affected pipeline.

(4) If the permit is granted subject to a safety condition and the Tribunal is satisfied on an appeal against that safety condition that it –

(a) was recommended to the planning authority by the pipeline licensee; and

(b) is in the same or essentially the same terms as the pipeline licensee recommended; and

(c) exceeds the requirements of AS 2885 as in force when the affected pipeline was constructed; and

(d) has added to the cost of the development –

the Tribunal may (if it is appropriate to do so having regard to its decision on the appeal) order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Tribunal determines is fair in the circumstances.

(5) Section 57(2) of the *Land Use Planning and Approvals Act 1993* does not apply to an application referred to in subsection (1).

(6) When a planning authority complies with section 57(7) of the *Land Use Planning and Approvals Act 1993* for an application referred to in subsection (1), it must also serve notice of its decision on the pipeline licensee whether or not the pipeline licensee has given it advice on the application.

(7) The failure of a planning authority to comply with subsection (1) for a development application does not invalidate a permit for the development but, in any such case, the pipeline licensee has the same right of appeal against the grant of the permit as a person who made representations in relation to the application.

Orders of Tribunal

70E. (1) In making an order under section 70C(4), or in determining whether to make an order under section 70D(4) and in making any such order, the Tribunal is to have regard to –

(a) whether or not the future land use and development considerations applicable to pipeline design and construction under AS 2885, as in force when the affected pipeline was designed, were taken into account in the design and construction of the affected pipeline; and

(b) whether any compensation has been paid or awarded under the Land Acquisition Act 1993 or Major Infrastructure Development Approvals Act 1999 to the owners or former owners of land affected by the proposed development and, if so, the amount paid or awarded.

(2) An order of the Tribunal under section 70C(4) or section 70D(4) is enforceable in the same manner as a judgment of a court of competent jurisdiction.

(3) The power of the Tribunal to make an order under section 70C(4) or section 70D(4) on an appeal under the Land Use Planning and Approvals Act 1993 is in addition to any other power that it may exercise on the appeal.

Effect of declarations: minor amendments of permits

70F. A planning authority must, in making any determination under section 56(2)(b) of the Land Use Planning and Approvals Act 1993, have regard to the safety of any affected pipeline.

Effect of declarations: compensation and land acquisition

70G. (1) Except for any costs or compensation that may be ordered to be paid pursuant to –

(a) section 70C(4) or section 70D(4); or

(b) section 279A(2) or (3) of the Water Management Act 1999 –

the declaration of a pipeline planning corridor does not entitle a person to claim or recover compensation under this or any other Act for any loss or detriment that the person may suffer in consequence of the declaration.

(2) The declaration of a pipeline planning corridor over any land does not constitute injurious affection of that land or any other land for the purposes of the Land Acquisition Act 1993, Major Infrastructure Development Approvals Act 1999 or any other Act.

PART 4 - Safety net

Safety net

71. (1) The Director of Gas may enter into an agreement with a licensee –

(a) that, if the pipeline licence is at some future time found to be wholly or partially invalid due to

circumstances beyond the control of the licensee, the licensee will have a preferential right to the grant of a new pipeline licence; and

(b) stating the terms and conditions on which the new pipeline licence will be granted.

(2) The Director must consider any proposal by a licensee for an agreement under this section.

PART 5 - Investigation and enforcement

Authorised investigations

72. An investigation by an authorised officer is an authorised investigation for the purposes of this Part if the purpose of the investigation is –

(a) to monitor compliance with this Act; or

(b) to gather information about a suspected offence against this Act; or

(c) to gather information about personal injury or damage to, or loss of, property related to authorised activities.

Power of entry

73. (1) An authorised officer may, as may reasonably be required for an authorised investigation, enter and remain on any land.

(2) Where an authorised officer enters on land under this section, the authorised officer –

(a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and

(b) may take on the land any vehicles or equipment the authorised officer considers necessary or appropriate for the functions that the authorised officer is to carry out on the land.

(3) An authorised officer may use reasonable force to enter on land under this Part if –

(a) the entry is authorised by a warrant issued by a justice of the peace; or

(b) the entry is necessary in an emergency.

(4) A justice of the peace must not issue the warrant unless satisfied, on information given on oath, that the warrant is reasonably required in the circumstances.

(5) An authorised officer must be accompanied by a member of the police force –

(a) when entering a place under warrant; or

(b) if it is practicable to do so, when entering on land by force in an emergency.

General investigative powers of authorised officers

74. (1) An authorised officer who enters on land under this Act may exercise any one or more of the following powers:

(a) to investigate whether the provisions of this Act are being, or have been, complied with;

(b) to examine and test any pipeline or pipeline facility on the land to ascertain whether the pipeline or pipeline facility is safe and complies with the requirements of this Act;

(c) to investigate an accident suspected to involve gas or another regulated substance;

(d) to investigate a suspected interference with a pipeline or pipeline facility;

(e) to investigate a suspected theft or diversion of gas or another regulated substance;

(f) to search for, examine and copy, or take an extract from, a document or record of any kind as reasonably required for the purposes of the enforcement of this Act;

(g) to take photographs or make films or other records of activities on the land or any pipeline or pipeline facility on the land;

(h) to take possession of any thing that may be evidence of an offence against this Act.

(2) A person must not, without reasonable excuse, obstruct an authorised officer in the exercise of powers under this section.

Penalty:

Fine not exceeding 50 penalty units.

(3) If an authorised officer takes possession of a thing that may be evidence of an offence –

(a) the authorised officer must give to the occupier of the place a receipt for the thing; and

(b) the thing must be returned to its owner –

(i) if proceedings for an offence are not commenced within 6 months after the authorised officer takes possession of the thing, at the end of that period; or

(ii) if any such proceedings are commenced within that period, on completion of the proceedings, unless the court, on application by the Director of Gas or the Director of Gas Safety, orders confiscation of the thing.

(4) A court may order the confiscation of any thing of which an authorised officer has taken possession under subsection (1) if of the opinion that the thing has been used for the purpose of committing an offence or that there is some other proper reason for ordering its confiscation.

(5) If the court orders the confiscation of any thing, the relevant Director may dispose of the thing.

Power to require information

75. (1) An authorised officer may require a person to provide information in the person's possession relevant to an authorised investigation.

(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to an authorised investigation for inspection by the authorised officer.

(3) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Penalty:

Fine not exceeding 100 penalty units.

(4) A person is not required to give information or produce a document under this section if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

Production of records

76. (1) A person who has possession or control of a record relating to regulated activities must, at the request of an authorised officer –

(a) produce the record for inspection by the authorised officer; and

(b) answer any questions that the authorised officer reasonably asks about the record.

Penalty:

Fine not exceeding 100 penalty units.

(2) An authorised officer may retain records produced under this section for the purpose of making copies of them.

Publication of result of investigation

77. (1) The Director of Gas or the Director of Gas Safety may publish a report setting out the results of an authorised investigation.

(2) A report published under this section is protected by absolute privilege.

PART 6 - Administrative review and appeals

Division 1 - Application of Part

Interpretation

78. In this Part –

"**Director**" means the Director of Gas or the Director of Gas Safety, as may be appropriate.

Decisions, &c., subject to review and appeal

79. Any decision made under this Act, other than a decision for the purposes of entry on land, is a reviewable administrative decision.

Division 2 - Administrative review

Application for administrative review

80. (1) A person directly affected by a reviewable administrative decision may, within 28 days after receiving notice of the decision, apply to the Director for administrative review in accordance with this Division.

(2) A person is not to be regarded as directly affected by a decision to grant or refuse an application for a pipeline licence unless the person was the applicant for the pipeline licence.

(3) An application under this section –

(a) is to be made in writing; and

(b) is to set out in detail the grounds on which the applicant asks for administrative review of the decision.

(4) An application under this section does not postpone the effect of the reviewable administrative decision unless the Director acts under section 81.

Stay of operation

81. (1) The Director may stay the operation of a decision that is subject to an application under section 80.

(2) A stay may not be granted if, in the Director's opinion, its effect would be to create a risk to public safety or to allow a risk to public safety to continue.

Administrative review by Director

82. (1) The Director may, after taking such expert advice as he or she thinks appropriate, decide the application for administrative review and, in doing so, may confirm, vary or revoke the relevant administrative decision.

(2) The Director must give the applicant written notice of the Director's decision on the application as soon as practicable and, in any case, no later than 45 days after receiving the application.

(3) The Director must, by notice served on the applicant, notify the applicant of –

(a) the determination made; and

(b) the findings on material questions of fact; and

(c) the evidence or other material on which the findings are based; and

(d) the reasons for the decision.

Division 3 - Appeals

Right of appeal

83. A person who is affected by an administrative review under Division 2 and who is dissatisfied with the decision on that review may, subject to this Act, appeal against the decision to the Minister and the appeal is to be commenced, heard and determined in accordance with the regulations.

Stay of operation

84. (1) The Minister to whom an appeal is made or is intended may stay the operation of a decision that is subject to appeal under this Part.

(2) A stay may not be granted if, in the Minister's opinion, its effect would be to create a risk to public safety or to allow a risk to public safety to continue.

Powers of Minister on appeal

85. (1) On an appeal, the Minister may –

(a) confirm the decision under appeal; or

(b) set aside the decision and substitute another decision.

(2) The Minister may give ancillary directions to deal with incidental matters.

(3) No appeal lies from the decision of the Minister on an appeal.

Reference of decision to Tribunal

86. (1) The Minister may refer a decision on a technical or complex matter to the Tribunal if the Minister considers it appropriate to do so.

(2) The Tribunal must hear and determine the matter in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

Constitution of Tribunal

87. (1) For the purpose of an appeal to the Tribunal under this Act, the Tribunal is to include one or more members whose appointment was on the ground that he or she has, in the opinion of the Minister, wide

practical knowledge of, and experience in, the maintenance and operation of pipelines.

(2) The member referred to in subsection (1) is to be designated as such by the Minister, by instrument in writing, for the purposes of the Tribunal's jurisdiction under this Act.

PART 7 - Miscellaneous and Supplemental

Interpretation

88. In this Part –

"Director" means the Director of Gas or the Director of Gas Safety, as may be appropriate.

Delegation

89. (1) The Director may, by instrument in writing, delegate the exercise of such of his or her powers under this Act (other than this power of delegation) as are specified in the instrument of delegation to any person who, in the Director's opinion, is competent and suitable.

(2) The Director may, by instrument in writing, revoke wholly or in part any such delegation.

(3) A power, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstance, as are specified in the instrument.

(5) Notwithstanding any delegation under this section, the Director may continue to exercise all or any of the powers delegated.

(6) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section is to have the same force and effect as if the act or thing had been done by, or to, the Director and is taken to have been done by, or to, the Director.

(7) An instrument purporting to be signed by a delegate of the Director in his or her capacity as such a delegate may in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Director and, until the contrary is proved, is taken to be an instrument signed by a delegate of the Director under this section.

Undertaking work near pipelines

90. (1) A person must not without authority from the pipeline operator carry out any boring or excavation in, or on, any ground that is subject to an easement granted to a pipeline licensee for the purposes of a pipeline.

Penalty:

Fine not exceeding 50 penalty units or, if the pipeline has been uncovered, fine not exceeding 200 penalty units.

(2) Subsection (1) does not apply to hand excavation, ploughing or cultivation down to a prescribed depth by owners or occupiers of land on which a pipeline is situated.

(3) It is a defence to a charge for an offence against subsection (1) if –

(a) the defendant can show that the authority sought from the pipeline operator was unreasonably refused; or

(b) in case of an emergency, it was not practicable to obtain the authority of the pipeline operator as required by that subsection and the pipeline operator was notified as soon as practicable after the work was carried out.

(4) A person who carries out work as mentioned in subsection (1) must comply with –

(a) any requirements prescribed by the regulations that are applicable to the work; and

(b) any reasonable requirements made by the pipeline operator for the protection of the pipeline or the safety of persons or property.

Penalty:

Fine not exceeding 50 penalty units.

Obligation not to interfere with regulated activities

91. A person must not, except as authorised under this Act, interfere with regulated activities carried out under a pipeline licence.

Penalty:

Fine not exceeding 500 penalty units.

92.

Giving of notices

93. (1) A notice under this Act may be given to the appropriate person –

- (a) personally or by post; or
- (b) by transmitting a copy of the notice by facsimile transmission; or
- (c) by transmitting a copy of the notice to that person's e-mail address.

(2) If a copy of a notice is transmitted by fax or e-mail, the notice is taken to have been given on the next business day after transmission.

Verification of information

94. (1) Any information given to the Director under this Act must, if the Director so requires, be verified by a signed declaration.

(2) A person who makes a declaration verifying information given to the Director under this Act knowing the information to be false or misleading in a material particular is guilty of an offence.

Penalty:

Fine not exceeding 1 000 penalty units.

Obligation to preserve confidentiality

95. (1) The Director must preserve the confidentiality of information obtained in the course of administering this Act, including information obtained by an authorised officer under section 75, that –

- (a) could affect the competitive position of a licensee or other person; or
- (b) is commercially sensitive for some other reason.

(2) Subsection (1) does not apply to the disclosure of information between persons engaged in the administration of this Act.

(3) Information classified by the Director as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

Immunity from liability

96. (1) No liability attaches to the Director or an authorised officer for an act or omission done or made in good faith and in the exercise, or purported exercise, of powers or functions under this Act.

(2) A liability that would, but for subsection (1), attach to the Director or an authorised officer attaches instead to the Crown.

Extension of time limits

97. (1) The Director may extend time limits fixed by, or under, this Act.

(2) A time limit may be extended under this section even though it has, at the time of the extension, already expired.

Confidentiality

98. (1) A person who is, or has been, employed in carrying out duties related to the administration of this Act must not disclose confidential information acquired in the course, or as a result, of carrying out those duties except –

(a) in the course of carrying out official duties; or

(b) as authorised by the person to whom the duty of confidentiality is owed; or

(c) as authorised by the regulations; or

(d) as required by a court or other lawfully constituted authority; or

(e) as authorised by the Director after consultation, where practicable, with the person to whom the duty of confidentiality is owed.

Penalty:

Fine not exceeding 200 penalty units.

(2) No civil liability attaches to any person for a disclosure of confidential information made as authorised under subsection (1).

Regulations

99. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may –

- (a)** provide for the construction, installation and positioning of a pipeline or a pipeline facility; and
- (b)** provide for any technical, operational or safety requirement relating to the construction, maintenance or operation of a pipeline or a pipeline facility; and
- (ba)** specify standards of quality that are to apply to gas; and
- (c)** require licensees generally to provide periodic returns of prescribed information certified, if the regulations so require, by declaration under this Act; and
- (d)** provide for the procedure for administrative reviews and appeals; and
- (e)** provide for the procedure for the reporting of incidents; and
- (f)** prescribe and provide for the recovery of fees and charges in respect of the administration or operation of this Act; and
- (g)** apply, adopt or incorporate all or any of the provisions of a standard, code, guideline or rule relating to pipelines or pipeline facilities –

and those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations or as amended from time to time.

(3) A regulation may provide that a contravention of the regulation is an offence punishable by a fine not exceeding 100 penalty units.

(4) The regulations may –

- (a)** be of general application or limited in application according to the persons, areas, times or circumstances to which they are expressed to apply; or
- (b)** provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister, the Director of Gas or the Director of Gas Safety; or
- (c)** refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in

the regulations, as in force from time to time or as in force at a particular time.

Administration of Act

100. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Infrastructure, Energy and Resources; and

(b) the department responsible to the Minister for Infrastructure, Energy and Resources in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

Table Of Amendments

Provision affected	How affected
Section 3	Amended by No. 111 of 2001, s. 29
Section 12	Amended by No. 111 of 2001, s. 31
Section 27A	Inserted by No. 32 of 2003, s. 6
Section 32	Amended by No. 44 of 2002, s. 9
Section 47	Amended by No. 57 of 2002, s. 4
Section 59	Amended by No. 111 of 2001, Sched. 1
Section 61	Amended by No. 111 of 2001, Sched. 2
Section 62	Amended by No. 111 of 2001, Sched. 2
Section 63	Amended by No. 111 of 2001, Sched. 1
Section 65	Amended by No. 111 of 2001, Sched. 1
Section 66	Amended by No. 111 of 2001, Sched. 1
Division 4 of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70A of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70B of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70C of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70D of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70E of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70F of Part 3	Inserted by No. 57 of 2002, s. 5
Section 70G of Part 3	Inserted by No. 57 of 2002, s. 5
Section 90	Amended by No. 111 of 2001, s. 32
Section 92	Substituted by No. 111 of 2001, s. 33 Repealed by No. 57 of 2002, s. 6
Section 99	Amended by No. 111 of 2001, s. 34

Appendix C

Gas Pipelines Regulations 2002

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Gas Pipelines Act 2000*.

28 OCTOBER 2002

G. S. M. GREEN
Governor

By His Excellency's Command,

P. A. LENNON
Minister for Economic Development, Energy and Resources

PART 1 - Preliminary

Short title

1. These regulations may be cited as the *Gas Pipelines Regulations 2002*.

Commencement

2. These regulations take effect on the day on which their making is notified in the *Gazette*.

Interpretation

3. In these regulations, unless the contrary intention appears –

"Act" means the *Gas Pipelines Act 2000*;

"AS 2885" means AS 2885, Pipelines – Gas and liquid petroleum published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard);

"AS 4360" means AS 4360, Risk management published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard);

"AS 4801" means AS 4801, Occupational health and safety management systems – Specification with guidance for use published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard);

"licensee" means the holder of a pipeline licence;

"safety and operating plan" means a safety and operating plan for a pipeline accepted or provisionally accepted under Division 2 of Part 3 of the Act;

"safety case" means a safety case or revised safety case for a pipeline facility that is accepted or provisionally accepted under Division 3 of Part 3 of the Act.

PART 2 - Application for pipeline licence

Application for licence to construct or operate pipeline

4. (1) For the purposes of section 11(1)(d) of the Act, an application for a pipeline licence to construct a pipeline must specify –

(a) the anticipated date of commencement of the construction of the pipeline; and

(b) the expected date of completion of that construction; and

(c) the anticipated date of commissioning the pipeline; and

(d) a description of the route of the proposed pipeline with a map showing the proposed route of the pipeline and any significant landmarks drawn to a scale of 1:25 000 or such other scale as the Director of Gas may approve; and

(e) a full description of the proposed pipeline, stating its length, pipe specifications, types and diameter with particulars of any pumping stations and ancillary works.

(2) For the purposes of section 11(1)(d) of the Act, an application for a pipeline licence to operate a pipeline must specify –

(a) the anticipated date of commencement of the operation of the pipeline; and

(b) a full description of the proposed pipeline, stating its length, pipe specifications, types and diameter with particulars of any pumping stations and ancillary works.

(3) For the purposes of section 11(1)(f) and section 11(2)(b) of the Act in so far as that section applies to a pipeline licence to construct or operate a pipeline, the prescribed fee is 5 000 fee units in each case.

(4) Before the transmission of gas for the purposes of sale may be undertaken, the applicant for the relevant pipeline licence and the Director of Gas Safety must both comply with the requirements specified in Schedule 3 relevant to the construction, commissioning and operation of the pipeline.

Application for licence to construct or operate pipeline facility

5. (1) For the purposes of section 11(1)(e) of the Act, an application for a pipeline licence to construct or operate a pipeline facility must specify –

(a) the anticipated dates for the commencement and completion of construction and for the commissioning and the commencement of operation of the pipeline facility; and

(b) a full description of the proposed pipeline facility and of the purposes for which it will be used.

(2) For the purposes of section 11(1)(f) and section 11(2)(b) of the Act in so far as that section applies to a pipeline licence to construct or operate a pipeline facility, the prescribed fee is 5 000 fee units in each case.

PART 3 - Safe operation of regulated activities

Records of compliance audits

6. (1) In this regulation –

"prescribed records" means records maintained by the licensee for the purposes of section 33 of the Gas Pipelines Act 2000 of the Act (including, in the case of a record kept by means of a computer, a print-out of the record).

(2) A licensee must make available, in accordance with subregulation (3), copies of prescribed records, on written or oral request, to the Director of Gas Safety or an authorised officer.

Penalty:

Fine not exceeding 30 penalty units.

(3) The licensee must make the copies of records available –

(a) as soon as practicable during the following times:

(i) in the case of emergency on, or in respect of, the pipeline or pipeline facility, at any time (including night-time) on any day;

(ii) in any other case, during normal business hours on any day, other than a Saturday, a Sunday or a statutory holiday; and

(b) either at the place where the records are maintained or, by agreement with the person making the request, at any other place or by means of electronic transmission.

(4) For the purpose of enabling documents to be made available in accordance with this regulation, the licensee must –

(a) notify the Director of Gas Safety, in writing, of a telephone number within Australia at which a request may be made in accordance with this regulation and notify the Director, in writing, as soon as practicable of any change in that telephone number; and

(b) ensure that arrangements are in place for calls made for the purpose of this regulation to be received and acted on at that number, at any time (including night-time) on any day.

Penalty:

Fine not exceeding 30 penalty units.

PART 4 - Safety requirements for pipelines

Prescribed standards for pipeline

7. For the purposes of sections 47(1), (3) and 49(1) of the Act, the prescribed standards and codes are as specified in Schedule 1.

PART 5 - Contents of Safety Case

Core matters affecting safety of pipeline facility

8. (1) The safety case in respect of a pipeline facility must include –

(a) a description of the pipeline facility as mentioned in subregulation (2); and

(b) a formal safety assessment as mentioned in subregulation (3); and

(c) a safety management system as mentioned in subregulation (4) –

each of which –

(d) is in place, or is to be put in place, for the pipeline facility; and

(e) complies with the relevant provisions of this regulation.

(2) A facility description in respect of a pipeline facility must –

(a) contain a description of the pipeline facility (including the method of operation and the layout and design features that are complementary to the control measures identified as a result of a formal safety assessment); and

(b) provide for all control measures to be used for the pipeline facility; and

(c) be consistent with the formal safety assessment in respect of the pipeline facility.

(3) A formal safety assessment in respect of a pipeline facility must contain –

(a) an identification of all hazards having the potential to cause an incident; and

(b) a detailed and systematic assessment of risk, in accordance with AS 4360, including the likelihood and consequences of an incident; and

(c) a description of technical and other measures undertaken, or to be undertaken, to reduce the level of risk to as low as reasonably practicable; and

(d) a description of technical and other measures implemented, or to be implemented, to assess and minimise the likelihood and consequences of an incident; and

(e) a description of the design and layout of equipment and hardware, including the use of protective devices, so as to ensure that the risks to persons involved with the pipeline facility are reduced to a level as low as reasonably practicable.

(4) A safety management system in accordance with AS 4801 in respect of a pipeline facility must make provision for –

- (a)** activities that will, or are likely to, take place at, or in connection with, the pipeline facility; and
- (b)** the regular and systematic identification of hazards related to the pipeline facility; and
- (c)** the regular and systematic assessment of –
 - (i)** the likelihood of the occurrence, during normal or emergency situations, of injury or damage associated with those hazards; and
 - (ii)** the likely nature of such injury or damage; and
- (d)** as far as reasonably practicable, the elimination or reduction of risks to any person which may arise from the pipeline facility and, in particular –
 - (i)** risks arising during evacuation, escape and rescue in case of emergency; and
 - (ii)** risks to persons involved with the pipeline facility; and
- (e)** where the safety case identifies inspection and maintenance of, and testing programs for, equipment and hardware as integral to the control of those risks, the requisite inspection, maintenance and testing programs; and
- (f)** criteria and information demonstrating that other risks to the safety of the pipeline facility and to persons at it have been reduced to a level as low as reasonably practicable; and
- (g)** communications systems that, in the event of an emergency, are adequate for communication –
 - (i)** within a facility; and
 - (ii)** with any other facility which may be affected by the emergency; and
 - (iii)** with the relevant fire authorities and emergency service authorities; and
 - (iv)** any remote or isolated persons who may be affected by, or exposed to, conditions existing at the facility; and
- (h)** any other information that is reasonably necessary to demonstrate that the safety management system meets the requirements of these regulations and AS 4801; and

- (i) performance standards applicable to the safety management system.

Additional matters affecting safety of pipeline facility

9. (1) A safety case must specify the systems of monitoring, auditing and reviewing the implementation of the safety policies, procedures and performance standards specified in the safety case, so as to demonstrate the methods of –

- (a) ensuring the ongoing effectiveness of those systems by –

(i) continual and systematic identification of deficiencies in those systems; and

(ii) continual and systematic improvement of those systems; and

- (b) implementing the safety management system specified in the safety case.

(2) The safety case in respect of a pipeline facility must adequately specify all relevant standards to be applied in the design, construction, installation, commissioning and operation of the pipeline facility or plant, equipment and hardware used on, or in connection with, the pipeline facility.

(3) The safety case in respect of a pipeline facility must specify an office or position at the pipeline facility, the occupant of which, while on duty –

- (a) is in charge of the pipeline facility; and

(b) is responsible for the safe operation of the pipeline facility.

(4) The safety case in respect of a pipeline facility must describe the means of ensuring, as far as reasonably practicable, that –

(a) the office or position referred to in subregulation (3) is continuously occupied while the pipeline facility is in operation; and

(b) the person for the time being in occupation of that office or position is competent, by reason of having the necessary skills, training and ability, to perform the functions of a person in charge of the pipeline facility; and

(c) the identity (by reference to office or position) of the person in charge of the pipeline facility can at all times be readily ascertained, by means of a notice displayed in accordance with subregulation (6), by any person actually at the pipeline facility; and

(d) the identity (by reference to office or position) of the person responsible for giving effect to the safety case, and for any revision of the safety case which may be necessary or expedient from time to time, can at all times be readily ascertained.

(5) The safety case in respect of a pipeline facility must describe the means of ensuring that, at all times –

(a) there is in place a command structure that applies in the event of any emergency; and

(b) the command structure and identity of all persons involved are clearly set out in a notice displayed in accordance with subregulation (6).

(6) For the purposes of subregulation (4)(c) and subregulation (5)(b), a notice must be –

(a) prominently displayed at the pipeline facility; and

(b) easily legible.

(7) The safety case in respect of a pipeline facility must provide for the communications systems of the facility to be –

(a) adequate to handle a likely emergency at, or relating to, the facility and the operation requirements of the facility; and

(b) protected so as to be capable of operation in an emergency to the extent specified by the risk assessment relating to the facility.

(8) The safety case in respect of a pipeline facility must provide that each employer or employee working at, or in connection with, the pipeline facility is to be competent, by reason of having the necessary skills, training and ability –

(a) to undertake –

(i) in normal operating conditions; and

(ii) in abnormal or emergency conditions; and

(iii) during any changes to or modifications of the pipeline facility –

the tasks, both routine and non-routine, that may reasonably be allocated to him or her; and

(b) to respond and react appropriately, and at the level reasonably required of him or her, during an emergency.

(9) The licensee of a pipeline facility must keep, in the manner and for the period specified in the safety case in force for the pipeline facility, documents required by the safety case to be kept, including in particular the following documents:

(a) the safety case in force for the pipeline facility;

- (b) any revisions of the safety case;
- (c) any written audit reports of the safety case;
- (d) a copy of all information given by the operator of the pipeline facility to the Director of Gas Safety for the purposes of the Act.

Permit to work system for safe performance of various activities

10. (1) The safety case in respect of a pipeline facility must provide for the licensee of the facility to establish and maintain, in accordance with subregulation (2), a documented system of coordinating and controlling the safe performance of all work activities of persons at the facility, including in particular –

- (a) welding and other hot-work; and
- (b) cold-work (including physical isolation); and
- (c) electrical work (including electrical isolation); and
- (d) entry into, and working in, a confined space; and
- (e) procedures for working over water.

(2) The system must –

- (a) form part of the safety management system specified in the safety case in force for the pipeline facility; and
- (b) identify the persons having responsibility to authorise and supervise work; and
- (c) ensure that all persons carrying out work at the facility are competent in the application of the system of work provided by subregulation (1).

Involvement of employees

11. (1) The licensee of a pipeline facility must demonstrate to the reasonable satisfaction of the Director of Gas Safety that –

- (a) in the development or revision of the safety case in respect of the pipeline facility, there has been effective consultation with, and participation by, each class of persons involved with the pipeline facility, including in particular relevant employees; and
- (b) the safety case in respect of the pipeline facility provides adequately for effective consultation with, and effective participation by, those classes of persons so that they are able to arrive at informed opinions about the risks and hazards to which they may be exposed at the facility.

(2) A demonstration for the purposes of subregulation (1) must be supported by adequate documentation.

(3) In this regulation, a reference to relevant employees is taken to be a reference to employees who are –

(a) identifiable before the safety case in respect of the pipeline facility is developed; and

(b) working, or likely to be working, at the relevant pipeline facility.

Design, construction, installation, maintenance and modification

12. (1) The safety case in respect of a pipeline facility must specify an effective means of ensuring the adequacy of design, construction, installation, maintenance and modification of the pipeline facility, including its structural integrity.

(2) In particular, the design, construction, installation, maintenance and modification of the pipeline facility must provide for –

(a) adequate means of inventory isolation and pressure relief in the event of an emergency; and

(b) adequate means of gaining access for servicing and maintenance of the pipeline facility and machinery and other equipment at the pipeline facility; and

(c) adequate means of maintaining the structural integrity of the pipeline facility; and

(d) taking into account the results of the formal safety assessment relating to the pipeline facility as mentioned in regulation 8(1)(b).

Medical and pharmaceutical supplies and services

13. The safety case in respect of a pipeline facility must specify the medical and pharmaceutical supplies and services, sufficient for an emergency situation, that must be maintained at, or in respect of, the pipeline facility.

Machinery and equipment

14. (1) The safety case in respect of a pipeline facility must specify the equipment required at the facility (including processing equipment, machinery and electrical and instrumentation systems) that relates to, or may affect, the safety of the facility.

(2) The equipment must be fit for its function or use –

(a) in normal operating conditions; and

(b) to the extent that it is intended to function, or be used, in an emergency.

Evacuation, escape and rescue

15. (1) The safety case in respect of a pipeline facility must contain, or refer to, an evacuation and escape analysis in relation to the facility that specifies adequate routes for evacuation and escape in the event of an emergency.

(2) For the purposes of subregulation (1), the safety case must specify –

(a) appropriate evacuation and escape analyses, and strategies for the control of evacuation and escape procedures; and

(b) the position or office of the person responsible for implementing and supervising procedures in the event of an emergency.

(3) The safety case must provide, in its evacuation and escape analysis, for the pipeline facility to have or contain amenities of the following kinds for the evacuation and escape of persons at the facility in the event of an emergency:

(a) suitable evacuation and escape routes that are, as far as reasonably practicable, to be kept freely passable at all times;

(b) in respect of any route that is not freely passable, suitable alternative arrangements;

(c) suitable equipment for evacuation and escape;

(d) suitable means of escape for use in the event of an emergency.

Measures concerning fire and explosion hazards

16. (1) A safety case in respect of a pipeline facility must contain a fire risk analysis specifying –

(a) likely fire or explosion hazards to the facility; and

(b) measures for detecting those hazards; and

(c) measures for eliminating or reducing those hazards.

(2) In particular, the analysis must consider –

(a) the incorporation into the facility of both automatic and manual systems for the detection, control and extinguishment of –

(i) outbreaks of fire; and

(ii) leaks or escapes of gas; and

(b) the means of isolating and safely storing hazardous substances, such as fuel, explosives and chemicals, that are used or stored at the facility; and

(c) an analysis of evacuation and escape measures for use in the event of fire or explosion on the facility.

(3) The design of the pipeline facility must take into account the results of the analysis.

(4) The safety case must provide for each person who is at a pipeline facility when an escape drill or a fire drill is held in respect of the pipeline facility to take part in the drill.

Control systems

17. The safety case in respect of a pipeline facility must specify adequate provision for the facility, in the event of an emergency, in respect of –

- (a) back-up power supply; and
- (b) lighting; and
- (c) alarm systems; and
- (d) emergency shut-down systems.

Emergency preparedness

18. (1) The safety case in respect of a pipeline facility must specify a response plan designed to provide for possible emergencies, the risk of which has been identified by a formal safety assessment as mentioned in regulation 8(3) or a safety management system as mentioned in regulation 8(4).

(2) The plan must –

- (a) ensure the safety of persons likely to be at the facility at the time of the emergency; and
- (b) specify the performance standards that it applies.

(3) The safety case must specify adequate provision for escape drill exercises and fire drill exercises by persons at the facility.

(4) In particular, those exercises must ensure that those persons will be trained to function in the event of emergency with an adequate degree of knowledge, preparedness and confidence concerning the relevant emergency procedures.

(5) The safety case must provide for the licensee of the pipeline facility to ensure, as far as reasonably practicable, that escape drill exercises and fire drill exercises are held in accordance with the safety case relating to the facility.

(6) The safety case in respect of a mobile pipeline facility must also specify systems that are adequate to –

- (a) shut down or disconnect, in the event of emergency, all operations at the facility that could adversely affect the safety of the facility; and
- (b) give appropriate audible and visible warnings of the shutting down or disconnecting of those operations.

Compliance with standards and codes

19. For the purposes of section 59 of the Act, the prescribed standards and codes with which the licensee must demonstrate compliance are specified in Schedule 2.

PART 6 - Miscellaneous

Transmission of gas for commissioning

20. For the purpose of commissioning a pipeline, an applicant for a pipeline licence may transmit gas through the pipeline in accordance with any directions given by the Director of Gas or the Director of Gas Safety.

Rate for penalty interest

21. For the purposes of section 14(2)(a) of the Act, the prescribed rate for penalty interest is a rate equal to the Commonwealth official ten-year long-term bond rate as published by the Reserve Bank of Australia on the last business day of the months of March, June, September and December of each year plus 50% of that rate.

Appeal from decision on administrative review

22. (1) An appeal to the Minister under section 83 of the Act –

(a) is to be made in writing within 14 days after the day on which the applicant is notified of the decision on the relevant administrative review; and

(b) is to specify the reasons for the appeal.

(2) The Minister may extend the period referred to in subregulation (1) for making an appeal.

(3) The Minister must, by notice served on the appellant, notify the appellant of –

(a) the decision made on the appeal; and

(b) the findings on material questions of fact; and

(c) the evidence or other material on which the findings are based; and

(d) the reasons for the decision.

Prescribed depth

23. For the purposes of section 90(2) of the Act, the prescribed depth is 30 centimetres.

Information as to location of pipeline

24. (1) A licensee must provide a means whereby members of the public may readily obtain information as to the exact location of the pipeline.

Penalty:

Fine not exceeding 50 penalty units.

(2) It is sufficient compliance with this regulation if the required information is available from the telephone number 1100 or from the following website:

<http://www.dialbeforeyoudig.com.au>

SCHEDULE 1 - Standards and Codes applicable to pipelines

Regulation 7

Purpose	Standard
Structures	AS 1170, SAA loading code;

	AS 4100, Steel structures code
Pressure vessels	AS 1210, Unfired pressure vessels; AS 4343, Pressure equipment – Hazard levels; AS 3788, Pressure equipment – In-service inspection
Pressure piping	AS 4041, Pressure piping; AS 1697, Gas transmission and distribution systems; AS 1978, Pipelines – Gas and liquid petroleum – Field pressure testing; AS 2885, Pipelines – Gas and liquid petroleum; ASME B31.3, Process piping; CSA Z662, Oil and gas pipeline systems
Hazardous areas	AS 2430, Classification of hazardous areas; AS 2865, Safe working in a confined space
Cathodic protection	AS 2832, Guide to the cathodic protection of metals
Electrical	AS 3000, Electrical installations; AS 1020, The control of undesirable static electricity; AS 4853, Electrical safety on metallic pipelines
Risk management	AS 3931, Risk analysis of technological systems – Application guide; AS 4360, Risk management; AS 4801, Occupational health and safety management systems – Specification with guidance for use

SCHEDULE 2 - Standards and Codes applicable to pipeline facilities

Regulation 19

Facility safety case consideration	Standard or code
Pipelines	AS 2885, Pipelines – Gas and liquid petroleum; AS 1697, Gas transmission and distribution systems; ASME B31.8, Gas transmission and distribution piping systems
Pressure piping	AS 4041, Pressure piping; ASME B31.1, Power piping; ASME B31.3, Process piping
Pressure systems	API 521, Guide for pressure-relieving and depressurising systems

Pressure vessels	AS 1210, Unfired pressure vessels; AS 1271, Safety valves, other valves, liquid level gauges, and other fittings for boilers and unfired pressure vessels; AS 2971, Serially produced pressure vessels
Electrical	AS 3000, Electrical installations; AS 1076, Code of practice for selection, installation and maintenance of electrical apparatus and associated equipment for use in explosive atmospheres (other than mining applications)
Risk management	AS 3931, Risk analysis of technological systems – Application guide; AS 4360, Risk management; AS 4801, Occupational health and safety management systems – Specification with guidance for use

SCHEDULE 3 - Procedure before construction, commissioning or operation of pipeline

Regulation 4(4)

1. In the following table –

"Director" means the Director of Gas Safety;

"rehabilitate", in respect of land in or on which a pipeline is constructed, means recontour and profile the land to its condition existing before the construction of the pipeline but does not include revegetate.

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Displayed and numbered in accordance with the [Rules Publication Act 1953](#).

Notified in the *Gazette* on 6 NOVEMBER 2002.

These regulations are administered in the Department of Infrastructure, Energy and Resources.

Appendix D



Gas Pipelines Access (Tasmania) Act 2000

An Act to make provision for the regulation of third party access to natural gas pipeline systems and for other purposes

[Royal Assent 14 NOVEMBER 2000]

Preamble

The Council of Australian Governments agreed, in February 1994, to general principles of competition policy reform to enable third parties, in particular circumstances, to gain access to essential facilities. The Council of Australian Governments, as part of that commitment to reform, agreed to more specific proposals for the development of free and fair trade in natural gas. The Commonwealth, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the Northern Territory and the Australian Capital Territory agreed in November 1997 to the enactment of legislation in the Commonwealth and those States and Territories so that a uniform national framework applies for third party access to all gas pipelines that –

- (a) facilitates the development and operation of a national market for natural gas; and
- (b) prevents abuse of monopoly power; and
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines and persons wishing to use the services of those pipelines; and
- (e) provides for resolution of disputes.

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

Short title

1. This Act may be cited as the *Gas Pipelines Access (Tasmania) Act 2000*.

Commencement

2. The provisions of this Act commence on a day or days to be proclaimed.

Interpretation

3. (1) In this Act –

"Gas Pipelines Access Law" means –

(a) Schedule 1 to the South Australian Act –

(i) as enacted; or

(ii) if amended, as amended and in force for the time being; and

(b) the National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being;

"Gas Pipelines Access (Tasmania) Law" means the provisions applying because of section 7;

"Gas Pipelines Access (Tasmania) Regulations" means the provisions applying because of section 8;

"South Australian Act" means the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

(2) Words and expressions used in the Gas Pipelines Access Law, as applying because of section 7, and in this Act have the same respective meanings in this Act as they have in that Law as so applying.

(3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

Crown to be bound

4. This Act, the Gas Pipelines Access (Tasmania) Law and the Gas Pipelines Access (Tasmania) Regulations bind the Crown, not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Application to coastal waters

5. (1) This Act, the Gas Pipelines Access (Tasmania) Law and the Gas Pipelines Access (Tasmania) Regulations apply in the coastal waters of this State.

(2) In subsection (1) –

"coastal waters", in relation to this State, means any sea that is on the landward side of the adjacent area of this State but is not within the limits of this State.

Extraterritorial operation

6. (1) It is the intention of Parliament that the operation of this Act, the Gas Pipelines Access (Tasmania) Law and the Gas Pipelines Access (Tasmania) Regulations should, as far as possible, include operation in relation to the following:

(a) things situated in or outside this State;

(b) acts, transactions and matters done, entered into or occurring in or outside this State;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.

(2) Nothing in subsection (1) has effect in relation to a pipeline to the extent that the pipeline is situated, or partly situated, beyond the jurisdictional areas of all the scheme participants.

PART 2 - Gas Pipelines Access (Tasmania) Law and Gas Pipelines Access (Tasmania) Regulations

Application in Tasmania of Gas Pipelines Access Law

7. The Gas Pipelines Access Law –

(a) applies as a law of Tasmania; and

(b) as so applying, may be referred to as the Gas Pipelines Access (Tasmania) Law.

Application in Tasmania of regulations under Gas Pipelines Access Law

8. The regulations in force for the time being under Part 3 of the South Australian Act –

(a) apply as regulations in force for the purposes of the Gas Pipelines Access (Tasmania) Law; and

(b) as so applying, may be referred to as the Gas Pipelines Access (Tasmania) Regulations.

Interpretation of some expressions in Gas Pipelines Access (Tasmania) Law and Gas Pipelines Access (Tasmania) Regulations

9. (1) In the Gas Pipelines Access (Tasmania) Law and the Gas Pipelines Access (Tasmania) Regulations –

"Code" means the National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 NOVEMBER 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being, as it applies because of section 7 of this Act as a law of Tasmania;

"Court" means the Supreme Court;

"designated appeals body" means the Australian Competition Tribunal;

"designated Minister" means –

(a) in relation to a transmission pipeline, the Commonwealth Minister; and

(b) in relation to a distribution pipeline, the Minister responsible for the administration of this Act;

"Gas Pipelines Access Law" means the Gas Pipelines Access (Tasmania) Law;

"Legislature" means the Parliament of Tasmania;

"local appeals body" means the Australian Competition Tribunal;

"local Minister" means the Minister responsible for the administration of this Act;

"local Regulator" means –

(a) in relation to a transmission pipeline, the ACCC; and

(b) in relation to a distribution pipeline, such person as is prescribed;

"this Law" means the Gas Pipelines Access (Tasmania) Law;

"this scheme participant" means the State of Tasmania;

"Supreme Court" means the Supreme Court of Tasmania.

(2) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to –

(a) the Gas Pipelines Access Law in its application as a law of Tasmania; or

(b) the regulations in force for the time being under Part 3 of the South Australian Act in their application as regulations in force for the purposes of the Gas Pipelines Access (Tasmania) Law.

PART 3 - National administration and enforcement

Conferral of functions on Commonwealth Minister and Commonwealth bodies

10. (1) The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have the functions and powers conferred or expressed to be conferred on them respectively under the Gas Pipelines Access (Tasmania) Law.

(2) In addition to the powers mentioned in subsection (1), the Commonwealth Minister and the bodies referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

Conferral of power on Commonwealth Minister and Commonwealth bodies to do acts in this State

11. The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of another scheme participant.

Conferral of power on Ministers, Regulators and appeals bodies of other scheme participants to do acts in this State

12. The local Minister, the local Regulator and the local appeals body within the meaning of the gas pipelines access legislation of another scheme participant have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of that other scheme participant.

Conferral of functions on Code Registrar

13. (1) The Code Registrar –

(a) has the functions and powers conferred or expressed to be conferred on the Code Registrar under the Gas Pipelines Access (Tasmania) Law or under the National Gas Agreement; and

(b) has any other functions and powers conferred on the Code Registrar by unanimous resolution of the relevant Ministers of the scheme participants.

(2) In addition to the powers mentioned in subsection (1), the Code Registrar has power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

(3) The Code Registrar may delegate to any person any of the functions and powers conferred on the Code Registrar by this section, other than this power of delegation.

Functions and powers conferred by other scheme participants on local Minister, Regulator and appeals body

14. If the gas pipelines access legislation of another scheme participant confers a function or power on the local Minister, local Regulator or local appeals body (each within the meaning of the Gas Pipelines Access (Tasmania) Law), that Minister, Regulator or appeals body –

(a) may perform that function or exercise that power; and

(b) may do all things necessary or convenient to be done in connection with the performance or exercise of that function or power.

Functions of prescribed person as local Regulator

15. (1) If a person is prescribed as the local Regulator, that person in the capacity as local Regulator within the meaning of the Gas Pipelines Access (Tasmania) Law –

(a) may perform and exercise only such functions and powers as are conferred on that person by that Law or by the gas pipelines access legislation of another scheme participant; and

(b) is not subject to the control or direction of any Minister or officer of the Crown in the performance or exercise of any such function or power.

(2) If a person is prescribed as the local Regulator, that person may hold that office in conjunction with any other position or office held by that person.

PART 4 - Miscellaneous

Exemption from taxes

16. (1) Any stamp duty or other tax imposed by or under a law of this State is not payable in relation to –

(a) an exempt matter; or

(b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, an exempt matter.

(2) In this section –

"exempt matter" means a transfer of assets or liabilities that the Minister and the Treasurer are satisfied is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of the Code or for the purpose of the separation of certain activities from other activities of a person as required by the Code, and for no other purpose.

Actions in relation to cross-boundary pipelines

17. (1) If a pipeline is a cross-boundary pipeline, any action taken under the gas pipelines access legislation of a scheme participant in whose jurisdictional area a part of the pipeline is situated –

(a) by, or in relation to, a relevant Minister, or a relevant Regulator, within the meaning of that legislation; or

(b) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that legislation; or

(c) by the Supreme Court or the relevant appeals body, within the meaning of that legislation, in relation to the action taken by, or in relation to, a person or body referred to in paragraph (a) or (b) –

is taken also to be action taken under the gas pipelines access legislation of each other scheme participant in whose jurisdictional area a part of the pipeline is situated ("that other legislation") –

(d) by, or in relation to, a relevant Minister, or a relevant Regulator, within the meaning of that other legislation; or

(e) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that other legislation; or

(f) by the Supreme Court or the relevant appeals body, within the meaning of that other legislation –

as the case requires.

(2) In this section –

"**cross-boundary pipeline**" means a transmission pipeline, or a distribution pipeline, that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants.

(3) A reference in this section to an action that is taken includes a reference to a decision that is made.

Regulations

18. The Governor may make regulations prescribing a person to be the local Regulator in relation to a distribution pipeline.

Administration of Act

19. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Infrastructure, Energy and Resources; and

(b) the department responsible to the Minister for Infrastructure, Energy and Resources in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

Repeal

20. The *Gas Franchises Act 1973* is repealed.

Appendix E

Gas (Exclusive Distribution Franchise) Order 2003

I make the following order under section 30(1) of the *Gas Act 2000*.

10 JULY 2003

P. A. LENNON

Minister for Economic Development, Energy and Resources

Short title

1. This order may be cited as the *Gas (Exclusive Distribution Franchise) Order 2003*.

Commencement

2. This order takes effect on the day on which its making is notified in the *Gazette*.

Interpretation

3. In this order –

"Act" means *Gas Act 2000*;

"franchisee" means Powerco Tasmania Pty Ltd (ACN 104 499 569);

"related body corporate" has the same meaning as in the Corporations Act.

Determination of exclusive franchisee

4. (1) It is determined that Powerco Tasmania Pty Ltd (ACN 104 499 569) should have an exclusive franchise to construct and operate a distribution system or systems in Tasmania, the extent of the franchise being as specified below.

(2) The exclusive franchise extends to the construction and operation of a distribution system or systems to supply natural gas to or for consumption at (in either case whether directly or indirectly) the land described in the titles listed in column 1 (or any immediately adjoining land if that land is owned, used, leased or occupied by the occupier of the first-mentioned land or a related body corporate of that occupier) of –

(a) the table in Part 1 of Schedule 1 (the "**Unconditional Franchise**");
and

(b) the table in Part 2 of Schedule 1 (with the franchise in respect of each such customer being referred to as a "**Conditional Franchise**").

(3) The Unconditional Franchise continues until the first of the following things happens:

(a) the expiration of 7 years from 30 APRIL 2003;

(b) the surrender or cancellation under the Act of any licence issued to the franchisee under the Act which gives effect to the franchise;

(c) the revocation of this order.

(4) Each Conditional Franchise continues until the first of the following things happens:

- (a) the expiration of 7 years from 30 APRIL 2003;
- (b) the surrender or cancellation under the Act of any licence issued to the franchisee under the Act which gives effect to the franchise;
- (c) the revocation of this order;
- (d) the expiration of 18 months from 30 APRIL 2003 if by that time the franchisee has not commissioned a distribution system which is capable of supplying gas in accordance with the Act to the land to which the Conditional Franchise applies.

SCHEDULE 1 - Particulars of title

Clause 4

PART 1

Column 1	Column 2
Folio of the register	Registered owner or leaseholder on making of this order
Volume 42961, Folio 3	ACL Properties Pty Ltd
Volume 110411, Folio 1	Australian Hospital Care (MSH) Pty Ltd
Volume 40214, Folio 1	Australian National Hotels Ltd
Volume 40214, Folio 2	Australian National Hotels Ltd
Volume 40214, Folio 3	Australian National Hotels Ltd
Volume 40215, Folio 2	Australian National Hotels Ltd
Volume 40216, Folio 1	Australian National Hotels Ltd
Volume 252493, Folio 1	Australian National Hotels Ltd
Volume 126524, Folio 1	Tasmania Development and Resources
Volume 131181, Folio 1	Betta Milk Co-operative Society Limited
Volume 42854, Folio 1	J Boag & Son Brewing Ltd
Volume 37771, Folio 1	J Boag & Son Brewing Ltd
Volume 37768, Folio 1	J Boag & Son Brewing Ltd
Volume 37768, Folio 2	J Boag & Son Brewing Ltd
Volume 37768, Folio 3	J Boag & Son Brewing Ltd
Volume 37768, Folio 4	J Boag & Son Brewing Ltd
Volume 37768, Folio 5	J Boag & Son Brewing Ltd
Volume 37768, Folio 6	J Boag & Son Brewing Ltd
Volume 37768, Folio 7	J Boag & Son Brewing Ltd
Volume 37768, Folio 8	J Boag & Son Brewing Ltd
Volume 247789, Folio 1	J Boag & Son Brewing Ltd
Volume 37773, Folio 1	J Boag & Son Brewing Ltd
Volume 37773, Folio 2	J Boag & Son Brewing Ltd
Volume 42186, Folio 1	J Boag & Son Brewing Ltd
Volume 42186, Folio 2	J Boag & Son Brewing Ltd
Volume 63667, Folio 4	J Boag & Son Brewing Ltd
Volume 37772, Folio 1	J Boag & Son Brewing Ltd
Volume 37772, Folio 2	J Boag & Son Brewing Ltd
Volume 37772, Folio 3	J Boag & Son Brewing Ltd
Volume 37772, Folio 4	J Boag & Son Brewing Ltd
Volume 37772, Folio 5	J Boag & Son Brewing Ltd
Volume 122164, Folio 1	Carter Holt Harvey Wood Products Australia Pty Ltd
Volume 131068, Folio 1	The Corporation of the Little Company of Mary
Volume 65649, Folio 1	Cripps Nubake Pty Ltd
Volume 32456, Folio 1	Cripps Nubake Pty Ltd

Volume 32456, Folio 2	Cripps Nubake Pty Ltd
Volume 32456, Folio 3	Cripps Nubake Pty Ltd
Volume 32456, Folio 4	Cripps Nubake Pty Ltd
Volume 32456, Folio 11	Cripps Nubake Pty Ltd
Volume 32456, Folio 35	Cripps Nubake Pty Ltd
Volume 197054, Folio 1	The Crown
Volume 197340, Folio 1	The Crown
Volume 210462, Folio 1	The Crown
Volume 136566, Folio 1	The Crown
Volume 131391, Folio 1	The Crown
UPI 2110544	The Crown
UPI 2110546	The Crown
Volume 12592, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 245094, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 226629, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 249939, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 249939, Folio 2	Electrolytic Zinc Company of Australasia Ltd
Volume 249939, Folio 3	Electrolytic Zinc Company of Australasia Ltd
Volume 198336, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 118433, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 198280, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 209032, Folio 1	Electrolytic Zinc Company of Australasia Ltd
Volume 26351, Folio 1	Hotel Grand Chancellor (Hobart) Pty Ltd
Volume 43489, Folio 1	Lactos Pty Ltd
Volume 66023, Folio 1	Lactos Pty Ltd
Volume 101009, Folio 1	Lactos Pty Ltd
Volume 101013, Folio 1	Lactos Pty Ltd
Volume 101013, Folio 3	Lactos Pty Ltd
Volume 22026, Folio 1	Lactos Pty Ltd
Volume 22026, Folio 2	Lactos Pty Ltd
Volume 22026, Folio 4	Lactos Pty Ltd
Volume 22026, Folio 5	Lactos Pty Ltd
Volume 22026, Folio 8	Lactos Pty Ltd
Volume 38098, Folio 1	Lactos Pty Ltd
Volume 43451, Folio 1	Lactos Pty Ltd
Volume 249938, Folio 1	Pasminco Australia Limited
Volume 249938, Folio 2	Pasminco Australia Limited
Volume 117774, Folio 1	Pasminco Australia Limited
Volume 128861, Folio 1	Pasminco Australia Limited
Volume 128862, Folio 1	Pasminco Australia Limited
Volume 130554, Folio 1	Pasminco Australia Limited
Volume 118892, Folio 1	Pasminco Australia Limited
Volume 123532, Folio 1	Pasminco Australia Limited
Volume 123531, Folio 1	Pasminco Australia Limited
Volume 123530, Folio 1	Pasminco Australia Limited
Volume 136323, Folio 1	Pasminco Australia Limited
Volume 122291, Folio 1	Pasminco Australia Limited
Volume 122291, Folio 3	Pasminco Australia Limited
Volume 122291, Folio 4	Pasminco Australia Limited
Volume 122291, Folio 5	Pasminco Australia Limited
Volume 122291, Folio 6	Pasminco Australia Limited
Volume 122291, Folio 7	Pasminco Australia Limited
Volume 122291, Folio 8	Pasminco Australia Limited

Volume 122291, Folio 9	Pasminco Australia Limited
Volume 127085, Folio 1	Tascot Templeton Carpets Pty Ltd
Volume 20213, Folio 4	Tasmanian Country Club-Casino Pty Ltd
Volume 119422, Folio 1	Tasmanian Country Club-Casino Pty Ltd
Volume 33678, Folio 1	Tasmanian Country Club-Casino Pty Ltd
Volume 111142, Folio 1	Tasmanian Electro Metallurgical Co Pty Ltd

PART 2

Column 1	Column 2
Folio of the register	Registered owner or leaseholder on making of this order
Volume 197160, Folio 1	Koppers Timber Preservation Pty Limited
Volume 197160, Folio 2	Koppers Timber Preservation Pty Limited
Volume 196864, Folio 1	Koppers Timber Preservation Pty Limited
Volume 53873, Folio 4	Koppers Timber Preservation Pty Limited
Volume 86345, Folio 1	Paper Australia Pty Ltd
Volume 230667, Folio 1	SBA Foods Pty Ltd
Volume 54242, Folio 1	SBA Foods Pty Ltd
Volume 128346, Folio 1	SBA Foods Pty Ltd
Volume 127128, Folio 1	SBA Foods Pty Ltd
Volume 127128, Folio 2	SBA Foods Pty Ltd
Volume 127128, Folio 3	SBA Foods Pty Ltd
Volume 127128, Folio 4	SBA Foods Pty Ltd
Volume 127130, Folio 1	SBA Foods Pty Ltd
Volume 120679, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 9433, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 212498, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 214305, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 122466, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 122466, Folio 2	Simplot Australia (Properties) Pty Ltd
Volume 203417, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 214225, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 121065, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 47482, Folio 1	Simplot Australia (Properties) Pty Ltd
Volume 135150, Folio 1	Tasmanian Alkaloids Pty Ltd
Volume 108788, Folio 1	United Milk Tasmania Ltd
Volume 233547, Folio 1	United Milk Tasmania Ltd
Volume 208452, Folio 1	United Milk Tasmania Ltd
Volume 62914, Folio 1	United Milk Tasmania Ltd
Volume 246976, Folio 1	United Milk Tasmania Ltd
Volume 42257, Folio 2	United Milk Tasmania Ltd

Displayed and numbered in accordance with the [*Rules Publication Act 1953*](#).

Notified in the *Gazette* on 15 JULY 2003.

This order is administered in the Department of Infrastructure, Energy and Resources

Appendix F

Gas (Foundation Customers) Order 2002

I, being satisfied that it is in the interests of the gas supply industry in Tasmania to make this order, make the following order under section 6A of the *Gas Act 2000*.

14 MARCH 2002

P. A. LENNON

Minister for Infrastructure, Energy and Resources

Short title

1. This order may be cited as the *Gas (Foundation Customers) Order 2002*.

Commencement

2. This order takes effect on the day on which its making is notified in the *Gazette*.

Foundation customers

3. A person is a foundation customer if that person is a consumer of gas on land comprised in the particulars of title specified in Column 2 of the Table in Schedule 1 to this order.

SCHEDULE 1 - Foundation customers

Clause 3

Column 1 – Registered owner or holder of lease on commencement of this order	Column 2 – Particulars of title
1. Comalco Aluminium (Bell Bay) Limited	CT 129806/1 CT 9210/2 CT 9210/3 CT 9210/4 CT 9210/5 CT 16810/1 CT 11371/17 CT 11371/18 CT 34369/1 CT 234748/1
2. Comalco Aluminium Limited	CT 129437/1
3. Starwood Australia Pty Ltd	CT 122164/1
4. Hydro-Electric Corporation	CT 131620/1
5. United Milk Tasmania Limited	CT 125960/5 CT 125960/6
	CT 125958/1 CT 125958/2
	CT 125958/3 CT 125959/4
6. Paper Australia Pty Ltd	CT 113548/64 CT 113548/65
	CT 205427/1
7. Fletcher Challenge Paper Mills (Australia) Ltd	CT 86345/1
8. Australian Newsprint Mills Limited	CT 113287/1
	CT 126803/1 CT 248600/1
	CT 63364/2 CT 250281/1
	CT 248603/1 CT 225074/1
	CT 21786/5 CT 63364/1
9. Goldamere Pty Ltd	CT 228432/1 CT 63351/1
	CT 215654/1 CT 73199/1
	CT 239565/1 Conveyance No. 30/8656
	Crown Land, UPI 4400254 Part of Mining Lease M/2001

Displayed and numbered in accordance with the [Rules Publication Act 1953](#).

Notified in the *Gazette* on 18 MARCH 2002.

This order is administered in the Department of Infrastructure, Energy and Resources.

Appendix K

List of Relevant websites

- | | |
|--|--|
| ■ Department of Treasury and Finance | www.treasury.tas.gov.au |
| ■ Department of Infrastructure, Energy and Resources (<i>Office of Energy Planning and Conservation</i>) | www.dier.tas.gov.au |
| ■ List of Tasmanian Statutes | www.thelaw.tas.gov.au |
| ■ Office of the Tasmanian Energy Regulator | www.energyregulator.com.au |
| ■ Government Prices Oversight Commission | www.gpoc.tas.gov.au |
| ■ Duke Energy International | www.duke-energy.com.au |
| ■ Alinta Limited | www.alinta.net.au |
| ■ Powerco | www.powerco.co.nz |

July 2003

Tasmanian Gas Distribution Code

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1. THIS CODE

1.1 Purpose of this Code

The purpose of this Code is to set out:

- (a) the minimum standards for the operation and maintenance of a ***distribution system***; and
- (b) the minimum obligations with which a ***distributor*** must comply in providing the ***distribution services***.

1.2 Date of effect

This Code takes effect on 15 July 2003.

1.3 Director of Gas bound

This Code binds the ***Director of Gas***.

1.4 Variation of Terms and Conditions

- (a) A ***distributor*** may agree with a ***user*** to vary the application of this Code in part or in full, in respect of that ***user***.
- (b) Notwithstanding clause 1.4(a), an agreement between a ***distributor*** and a ***user*** must not purport to limit their respective obligations to any person, other than the other party to the agreement.

1.5 Definitions

In this Code, words and phrases in italics have the meaning given to them in clause 8.1.

1.6 Interpretation

This Code must be interpreted according to the principles of interpretation set out in clause 8.2.

1.7 Amendment to this Code

- (a) The terms and conditions of this Code may be amended by the ***Director of Gas*** if the ***Director of Gas*** reasonably determines that the proposed amendment will better achieve the objects of the ***Gas Act***. In making such a determination, the ***Director of Gas*** must consider:
 - (1) any proposal received from a ***distributor***; and
 - (2) any proposal received from an ***interested party***.
- (b) Unless the proposed amendment is of a purely administrative nature, the ***Director of Gas*** must, prior to making a determination in relation to the

proposal, consult **distributors** and **interested parties**. The **Director of Gas** must allow a reasonable time for the making of representations in relation to a proposal and must consider any representations made.

- (c) The **Director of Gas** will within 20 **business days** of making a determination to amend or not to amend this Code, notify all **distributors** and **interested parties** of the determination.
- (d) Notwithstanding the preceding provisions of this clause 1.7, the **Director of Gas** may not, without the express written approval of the **Minister**, amend the provisions of this Code which are listed in schedule 1 of this Code as **protected provisions** under section 38C of the **Act**.

2. OPERATION OF THE DISTRIBUTION SYSTEM

2.1 Distributor obligations

In operating the **distribution system**, the **distributor** must:

- (a) establish operational and system security standards for the **distribution system** and for all **connections** and proposed **connections** to the **distribution system**; and
- (b) use reasonable endeavours to ensure that the quantity of **unaccounted for gas** in the **distribution system** for a **financial year**, as a percentage of the aggregate quantity of **gas** received by the **distributor** at **transfer points** into the **distribution system** in that **financial year**, is less than the benchmark for the flow rates of **gas** set out in schedule 2, Part A.

2.2 Maintenance

A **distributor** must:

- (a) maintain its **distribution system** in accordance with **good gas industry practice**; and
- (b) provide the **Director of Gas** with copies of all **safety and operating plans** and any associated documents concerning the planning of maintenance of the **distributor's distribution system**.

3. DISCONNECTION AND RECONNECTION

3.1 Disconnection

Unless a proposed disconnection is requested by the relevant **retailer**, **customer** or the **Director of Gas Safety**, a **distributor** must not disconnect a **customer** unless it has given the **customer**, or the **customer's retailer**, at least 10 **business days** written notice of the proposed disconnection.

3.2 Disconnection at Restricted Time

A **distributor** may not disconnect a **customer** at a **restricted time**.

3.3 Reconnection

- (a) If requested by the **retailer** which had an agreement to sell **gas** to a **customer** immediately before that **customer** was disconnected, and the **retailer** is a **user**, a **distributor** must, on payment by the **retailer** of any applicable reconnection charge, **reconnect** that **customer** provided:
- (1) the **retailer** has remedied any default which led to the disconnection;
 - (2) the **customer** has remedied any default which led to the disconnection; and
 - (3) the **customer** otherwise satisfies the requirements for **connection** to the **distributor's distribution system**.
- (b) Where a customer's retailer has ceased trading due to an event including, but not limited to, insolvency, a **distributor** must, if requested by a **retailer**, other than the **customer's** most recent **retailer**, reconnect the **customer** (provided the customer satisfies the requirements for **connection** to its **distribution system**) on payment by that **retailer** of any applicable reconnection charge.
- (c) Where, under clause 3.3(a), a **distributor** is under an obligation to reconnect a **customer** who has been disconnected as a result of the **customer's** failure to pay an amount due in respect of a **gas account** and the **retailer** requests **reconnection**:
- (1) before 4 pm on a **business day**, the **distributor** shall use reasonable endeavours to make the **reconnection** on the day of the request. If the **reconnection** is not able to be made on the day of the request, the **distributor** shall make the **reconnection** as soon as possible on the next **business day**;
 - (2) after 4 pm on a **business day**, the **distributor** shall make the **reconnection** as soon as possible on the next **business day**; or
 - (3) after 4 pm on a **business day** and pays the **distributor's** after hours reconnection charge, the **distributor** shall make the **reconnection** on that day.
- (d) Failure to perform these obligations may result in the invocation of penalties under section 32A of **the Act**.
-

4. RELIABILITY OF SUPPLY

4.1 Curtailment

A **distributor** may curtail or interrupt the delivery of **gas** to a **gas supply point** at any time to the extent, and for such period of time, as the **distributor** considers is necessary:

- (a) if there is material damage to that part of the **distribution system** used to deliver **gas** at the **gas supply point** or other necessity for repair;
- (b) if a **force majeure** event occurs which affects the **distributor's** ability to deliver **gas** at the **gas supply point**;
- (c) in the event of an **emergency** or for health or safety reason;
- (d) if work under a planned maintenance or **augmentation** program is undertaken, **notice** of which has been given to the **user** either by:
 - (1) giving the **user** direct **notice** of the intended curtailment or interruption at least 4 **business days** before the date of the curtailment or interruption; or
 - (2) causing a general **notice** to **users** to be published in a daily newspaper circulating in the region of Tasmania in which the **gas supply point** is located, at least 5 **business days** before the date of the curtailment or interruption.
- (e) where the **distributor** has the right to curtail or interrupt the delivery of **gas** under contractual arrangements.

4.2 Interruption Telephone Service

A **distributor** must provide a dedicated 24 hour telephone service to enable a **customer** to:

- (a) report interruptions to, and emergencies regarding, **supply**; and
- (b) ascertain details, and the expected duration, of interruptions.

4.3 Minimisation of interruption

A **distributor** must use reasonable endeavours to minimise the duration of an interruption to **supply** referred to in clause 4.1 and must restore **supply** as soon as practicable.

5. COMPLAINT HANDLING AND DISPUTE RESOLUTION

5.1 Dealing with user complaints

A **distributor** must deal with **users'** complaints in accordance with **Australian Standard (AS 4269)**.

6. ANNUAL RETURN

6.1 Information to be included in annual return

Each annual return lodged by the **distributor** under section 27(2)(a) of the **Gas Act** must contain the information described in schedule 3.

6.2 Additional report

Every second year, to be counted from the year 2004/05, the annual report is to be accompanied by a report prepared by a **reporter**.

7. MANAGEMENT PLANS

7.1 Management plans

The **distributor** must develop and submit to the **Director of Gas**:

- (a) a **compliance plan**; and
- (b) a **service plan**;

initially within three months of the date of issue of the **retailer's** licence or such other date as is notified by the **Director of Gas**, subsequently by the first anniversary of that date, and after that, every two years.

7.2 Consistency with standards and codes

The **management plans** are to be made in accordance with and take account of any **standards** and **codes** issued by the **Director of Gas** under the **Gas Act**.

7.3 Review by Director of Gas

A **distributor** must consider any comments made by the **Director of Gas** on the **management plans** and, if required by the **Director of Gas**, amend provisions of a **management plan** related to reporting to the **Director of Gas**, including processes for capturing and analysing data that is to be reported.

8. DEFINITIONS AND INTERPRETATION

8.1 Definitions

In this Code, unless the context otherwise requires:

“augmentation” means works to enlarge or increase the capability of a **distribution system**.

“Australian Standard (AS 4269)” means AS 4269 Complaints Handling published by the Standards Association of Australia, as in force from time to time (including any **code** or standard having effect under that standard).

“Australian Standard (AS 3806)” means AS 3806 Compliance Programs published by the Standards Association of Australia, as in force from time to time (including any **code** or standard having effect under that standard).

“business day” means:

- (a) in relation to interaction between the **distributor** and a **customer** a day on which banks are open for general banking business in the region of Tasmania in which the **customer’s supply address** is located, excluding a Saturday or Sunday; and
- (b) in all other cases a day on which banks are open for general banking business in Hobart, excluding a Saturday or Sunday.

“code” means a code issued by the **Director of Gas** under the **Gas Act**.

“compliance plan” means a written plan developed by a **distributor** outlining the **distributor’s** procedures, practices and strategies for managing and auditing the **distributor’s** compliance under the **Gas Act**, its **distribution licence**, this Code, relevant Australian Standards and any **standards** and **codes** which must include (among other things) details of **standards**, indicators and targets for measuring the **distributor’s** compliance performance and which must be in accordance with **Australian Standard (AS 3806)**.

“connection” means the forming of a physical link to the **distribution system** to allow the flow of **gas**.

“customer” has the meaning given to that term in the **Gas Act**.

“Director of Gas” means the **Director of Gas** appointed under the **Gas Act**.

“distribution licence” means a licence to construct and/or operate **distribution systems** issued under the **Gas Act**.

“distribution pipeline” means a pipeline licensed under the **Gas Act**.

“distribution services” means the service of receipt of **gas** at **transfer points**, haulage of the **gas** through the **distribution system** and delivery of the **gas** at **gas supply points**, including any service related to such services.

“distribution system” has the meaning given to that term under the **Gas Act**.

“distributor” means:

- (a) a person who holds a **distribution licence**; or
- (b) a person who is exempt from the requirement to obtain a **distribution licence** by section 117 of the **Gas Act**.

“emergency” means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages, or threatens to destroy or damage, any property including a **distribution system**.

“financial year” means a period commencing on 1 July in a calendar year and terminating on 30 June in the following calendar year.

“force majeure” means any event or circumstance not within a party's control and which the party, by applying the standard of a reasonable and prudent person, is not able to prevent or overcome. It includes but is not limited to:

- (1) acts of God, including, without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
- (2) strikes, lockouts, bans, slowdowns or other industrial disturbances;
- (3) acts of enemy, wars, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
- (4) fire or explosion;
- (5) epidemic or quarantine;
- (6) order of any court or the order, act, or omission or failure to act of any government authority having jurisdiction;
- (7) any **distribution pipeline** shutdown, curtailment or interruption which:
 - (A) is validly required under relevant **Laws**;
 - (B) which occurs upon the instruction of the **transmission system operator** or as a result of an action by the **transmission system operator**; or
 - (C) any load shedding which is required to manage an **emergency**; or
- (8) equipment breakdown, breakages or accident to machinery or pipelines, the necessity for making repairs and/or alterations in machinery or pipelines (other than routine maintenance or where the cause of such breakdown or breakage is a lack of proper maintenance).

“gas” has the meaning given to that term in the **Gas Act**.

“**Gas Act**” means the **Gas Act 2000 (Tas)**.

“**gas installation**” means any **gas** equipment located at a **customer’s** premises that is not part of a **distribution system**.

“**Gas Pipelines Act**” means the **Gas Pipelines Act 2000 (Tas)**.

“**gas supply point**” has the meaning given to that term in the **Gas Act**.

“**good gas industry practice**” means practices, methods and systems which accord with the exercise of the degree of skill, diligence, prudence and foresight that would be reasonably expected of a significant proportion of **distributors** in the **gas** industry including compliance with:

- (a) relevant quality assurance schemes; and
- (b) all applicable state, national and international **codes** and **standards**.

“**interested party**” means a person whose interests are affected by a decision of the relevant authority or an authorised officer of the appropriate authority.

“**Laws**” means any applicable Commonwealth, Tasmanian or local law, subordinate legislation, legislative instrument or mandatory regulatory requirement.

“**management plan**” means a **compliance plan** or **service plan**;

“**Minister**” means the Minister administering the **Gas Act**.

“**notice**” means notice in writing.

“**protected provision**” means a code provision, that is identified, in the code, as a provision that is not to be omitted from the code, or amended, without the Minister’s written approval.

“**reconnection**” means the re-establishment of **supply** to a **customer** at the same **supply address** at which that **customer** had previously been receiving **supply**.

“**reporter**” means an appropriately qualified person engaged by the **Licensee** with the approval of the **Director of Gas** to report to the **Director of Gas** on compliance with and adequacy of **management plans** in accordance with terms of reference approved by the **Director of Gas**;

“**restricted time**” means:

- (a) any time after 2 pm on a **business day**;
- (b) any time on Friday, Saturday, Sunday or public holiday; and
- (c) any time on a day immediately preceding a public holiday.

“retailer” means a person licensed to sell gas by retail under a **retail licence** or a person who is exempt from the requirement to obtain a **retail licence** under section 117 of the **Gas Act**.

“retail licence” means a licence to sell **gas** by retail issued under the **Gas Act**.

“safety and operating plan” means a plan required to be submitted by a **distributor** under section 54 of the **Gas Act**,

“service plan” means a written plan developed by a **distributor** outlining the procedures, practices and strategies for managing and auditing the reliability and performance of the **distributor’s distribution system**, and the quality of supply;

“standard” means a standard issued, or approved, by the **Director of Gas** under the **Gas Act**.

“storage facility” means a facility for the storage of large quantities of **gas** including LNG storage services and underground storage facilities.

“supply” means the delivery of **gas** by means of a **distribution system** to a **customer’s gas supply point**.

“supply address” means the address at which the **distributor** has **supplied**, **supplies** or may supply **gas** to a **customer**.

“transfer point” means a point at which **gas** passes from a **transmission system** into a **distribution system** or from a **distribution system** into a **distribution system**.

“transmission system” means a pipeline or a system of pipelines, for the high pressure transmission of **gas** and all related facilities, together with:

- (a) all structures for protecting or supporting the pipeline or system of pipelines; and
- (b) facilities for the compression of **gas**, the maintenance of the pipeline or system of pipelines and the injection or withdrawal of **gas**; and
- (c) all fittings, appurtenances, appliances, compressor stations, odourisation plants, scraper stations, valves, telemetry systems (including communications towers); and
- (d) works and buildings used in connection with the pipeline or system of pipelines;

but excluding all **storage facilities** and **distribution systems**.

“unaccounted for gas” means the difference between the amount of **gas** passing into the **distribution system** at all **transfer points** and the amount of **gas** withdrawn from the **distribution system** at all **distribution supply points**

including but not limited to leakage or other actual losses, discrepancies due to metering inaccuracies and variations of temperature, pressure and other parameters.

“user” means a **retailer** or a **customer** who has a contract (including contracts in writing or implied by conduct) for **distribution services** with the **distributor**.

8.2 Interpretation

In this Code, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Code; and
- (b) words importing the singular include the plural and vice versa; and
- (c) words importing a gender include any gender; and
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency; and
- (e) a reference to a condition, clause, schedule or part is to a condition, clause, schedule or part of this Code; and
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement; and
- (g) a reference to any statute, regulation, proclamation, order in council, ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute; and
- (h) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document; and
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns; and
- (j) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this Code have a corresponding meaning; and
- (k) a period of time:
 - (1) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or

- (2) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (l) an event which is required under this Code to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**.

Schedule 1 – Protected Provisions

Protected Provisions

The following provisions in this Code have been declared as ***protected provisions*** by the provisions of section 38C of the ***Act***:

Clause 1.3 – Director of Gas Bound

Clause 1.4 - Variation of Terms and Conditions

Clause 1.7 – Amendment to this Code

Clause 2.2(a) - Maintenance

Clause 3.1 – Disconnection

Clause 3.2 – Disconnection at a Restricted Time

Clause 4.1(e) – Curtailment

Schedule 2 –Unaccounted For Gas

Part A Unaccounted for Gas

The benchmark quantity of ***unaccounted for gas*** for the rates of flow which a ***distributor*** must use its reasonable endeavours to ensure in its ***distribution system*** in a ***financial year*** is 2.5%.

Schedule 3 - Annual Return

1. Technical

Information in relation to:

- 1.1. the quantity of each type of gas entering the ***distribution system*** from each source;
- 1.2. the specifications of each type of gas entering the ***distribution system***;
- 1.3. a summary of the results of testing of metering accuracy;
- 1.4. reliable information in respect of:
 - 1.4.1. the total estimated amount of ***unaccounted for gas*** lost from the ***distribution system***;
 - 1.4.2. the condition of the ***distribution system***;
 - 1.4.3. the number of certificates of compliance received on ***connection*** of a ***gas installation*** to the ***distribution system***; and
 - 1.4.4. the quantity of gas distributed to ***customers***.

2. Customers

- 2.1. the number of ***customers*** connected to the ***distribution system*** as at the last day of the return period; and
- 2.2. the number of ***connections*** and ***disconnections*** of ***customers*** to or from the ***distribution system***.

3. Complaints

A summary of:

- 3.1. the number and type of complaints made to the ***distributor*** in respect of:
 - 3.1.1. detectability of gas by odour;
 - 3.1.2. inadequate gas supply pressure; or
 - 3.1.3. any other relevant matter;
- 3.2. the action taken in response to each complaint; and
- 3.3. the duration of, and reason for, the circumstance giving rise to each complaint.

4. Regulatory

- 4.1. details of any material failure by the **distributor** to comply with the **Gas Act** which is known to the **distributor** and details of any steps taken, or proposed to be taken, to address such failure;
- 4.2. details of the **distributor's** actual performance for the previous **financial year** against the **standards**, indicators and targets included in the **management plans**;
- 4.3. if the **distributor's** actual performance is below the targets included in a **management plan**, the reasons for the failure to meet the targets and strategies for achieving the targets in the future;
- 4.4. projections of the **distributor's** future performance against the **standards**, indicators and targets included in the **management plans**; and
- 4.5. a description of the strategies adopted or to be adopted by the **distributor** to achieve or exceed the performance targets included in the **management plans**.

5. Reliability of Supply

- 5.1. Unplanned interruptions to supply – for each incident:
 - 5.1.1. reason for the interruption;
 - 5.1.2. duration;
 - 5.1.3. number of **customers** affected.
- 5.2. Planned interruptions to supply – for each incident:
 - 5.2.1. reason for the interruption;
 - 5.2.2. duration;
 - 5.2.3. number of **customers** affected.

July 2003

Tasmanian Gas Retail Code

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1 THIS CODE

1.1 Purpose of this Code

The purpose of this Code is to establish the minimum terms and conditions under which a **retailer** must sell **gas** to **small retail customers**.

Explanatory note

This Code does not apply to **gas appliances**.

1.2 Date of effect

This Code takes effect on 15 of July 2003.

1.3 Director of Gas bound

This Code binds the **Director of Gas**.

1.4 Definitions

In this Code, words and phrases in italics have the meaning given to them in clause 15.1.

1.5 Interpretation

This Code must be interpreted according to the principles of interpretation set out in clause 15.2.

1.6 Amendment to the Code

(a) The terms and conditions of this Code may be amended by the **Director of Gas** if the **Director of Gas** reasonably determines that the proposed amendment will better achieve the objects of the **Gas Act**. In making such a determination, the **Director of Gas** must consider:

- (i) any proposal received from a **retailer**; and
- (ii) any proposal received from an **interested party**.

(b) Unless the proposed amendment is of a purely administrative nature, the **Director of Gas** must, prior to making a determination in relation to the proposal, consult **retailers** and **interested parties**. The **Director of Gas** must allow a

reasonable time for the making of representations in relation to a proposal and must consider any representations made.

- (c) The **Director of Gas** will within 20 **business days** of making a determination to amend or not to amend this Code, notify all **retailers** and **interested parties** of the determination.
- (d) Notwithstanding the preceding provisions of this clause 1.6, the **Director of Gas** may not, without the express written approval of the **Minister**, amend the provisions of this Code which are listed in schedule 1 of this Code as **protected provisions** under section 38C of the **Act**.

2 VARIATION OF TERMS AND CONDITIONS

- (a) A **retailer** may agree with a **small retail customer** to vary the application of this Code in respect of that **small retail customer**.
- (b) Notwithstanding clause 2(a), an agreement between a **retailer** and a **small retail customer** must not purport to limit their respective obligations to any person other than the other party to the agreement.

3 RETAILER'S ROLE

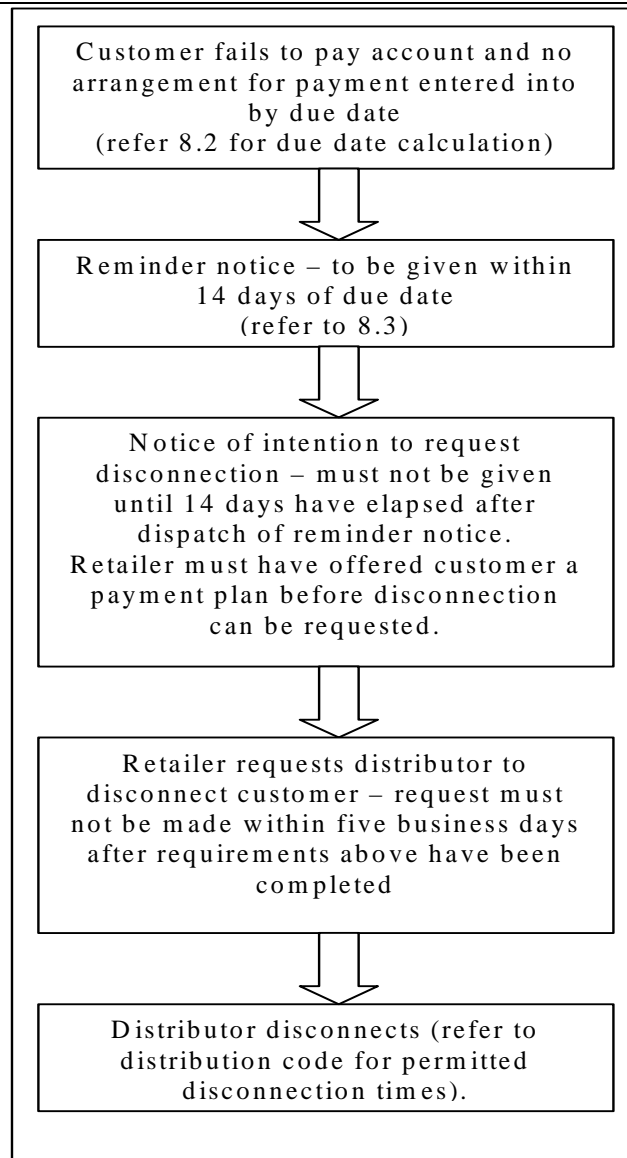
- (a) In respect of each **customer** whose **gas** consumption or anticipated **gas** consumption is less than 1 TJ per annum, the **customer's retailer** must, subject to the **customer** notifying the **retailer** otherwise, liaise with the **customer's distributor** so that the **customer** need not deal directly with the **distributor**.
- (b) By procuring, on behalf of a **customer**, **connection** or **reconnection**, a **retailer** is not to be taken to be providing **distribution services**.

4 DISCONNECTION OF SUPPLY FOR NON-PAYMENT

4.1 Disconnection

Subject to the **retailer** complying with the requirements of this clause 4, a **retailer** may request a **customer's distributor** to **disconnect** the supply of **gas** to the **customer** if the **customer** fails to pay the amount due in respect of a **gas account** by the due date for payment, as provided in clause 8.2.

The steps leading to **disconnection** are shown in the diagram below.



4.2 Notice of Disconnection

A **retailer** must not request a **customer's distributor** to **disconnect** the supply to a **customer's supply address** until:

- (a) the **customer** has been given a reminder **notice** as required by clause 8.3;
- (b) the **customer** has been given **notice** of the **retailer's** intention to request the **distributor to disconnect supply** (which **notice** must not be given to a **customer** until a period of 14 days has elapsed since the date of dispatch of the reminder **notice**); and
- (c) the **customer** has been offered a **payment plan**.

4.3 Restriction on Disconnection

- (a) A **retailer** who has complied with clause 4.2 must not request the **distributor** to **disconnect supply** to the **customer's supply address**:
- (i) within 5 **business days** after the date on which the **retailer** complied with all of its obligations under clause 4.2; or
 - (ii) if the **customer** has paid the **gas account**; or
 - (iii) if the **customer** has entered into a **payment plan** with the **retailer** or has made some other arrangement with the **retailer** to pay the **gas account**.
- (b) If the **retailer** has already requested the **distributor** to **disconnect supply** to a **customer's supply address**, and the **customer**:
- (i) pays the **gas account**; or
 - (ii) enters into a **payment plan** with the **retailer** or makes some other arrangement with the **retailer** to pay the **gas account**,
- the **retailer** must use reasonable endeavours to prevent **disconnection** occurring.
- (c) A **retailer** must not unreasonably refuse to offer a **payment plan** to a **customer**.

5 OTHER GROUNDS FOR DISCONNECTION OF SUPPLY

- (a) In addition to the **retailer's** rights under clause 4, the **retailer** may request a **customer's distributor** to **disconnect supply** to the **customer's supply address** if:
- (i) the **retailer** suspects on reasonable grounds that the **customer** has committed an offence relating to the illegal use of **gas** or has obtained supply otherwise contrary to this Code; or
 - (ii) the **customer** has requested or given prior agreement to the **disconnection**.
- (b) To **disconnect supply** in a case to which clause 5(a)(i) applies, the **retailer** must give the **customer notice** of its intention to

request the **distributor** to **disconnect supply** and also detailing the reason/s for the **disconnection**, prior to the **disconnection** occurring. The **retailer** must report any **disconnections** undertaken pursuant to clause 5(a)(i) to the **Director of Gas Safety** within five **business days**.

Explanatory Note

The **Gas Distribution Code** sets out the circumstances in which a **customer's distributor** is entitled to **disconnect**, curtail or interrupt **supply**.

- (c) If, in accordance with clause 3.1 of the **Gas Distribution Code**, a **distributor** gives a **retailer notice** of the **distributor's** intention to disconnect any of the **retailer's customers**, the **retailer** must give all affected **customers notice** of the **distributor's** intention within five **business days** of receipt by the **retailer** of the **distributor's** notice.

6 RECONNECTION OF SUPPLY

6.1 Reconnection after disconnection for non-payment

A **retailer** that has requested the **disconnection** of **supply** to a **customer** for non-payment of a **gas account** must as soon as practicable request the **customer's distributor** to **reconnect supply** if:

- (a) the **customer** pays the **gas account**, interest that has accrued on the **gas account** and, if applicable, a reconnection fee of the **retailer**; and
- (b) the **customer** gives the **retailer** any **security** requested by the **retailer**, in accordance with clause 12 of this Code, for the payment of future **gas accounts**; or
- (c) the **customer** enters into a **payment plan** or makes some other arrangement with the **retailer** to pay the amount of the **gas account**, interest and, if applicable, a reconnection fee to the **retailer**.

6.2 Timing Requirements

Where a **retailer** is under an obligation to request a **customer's distributor** to **reconnect** the **customer** in accordance with clause 6.1 and the **customer** makes a request for **reconnection**:

- (a) before 3 pm on a **business day**, the **retailer** shall use reasonable endeavours to procure the **reconnection** by the **distributor** on the day of the request;
- (b) after 3 pm on a **business day**, the **retailer** shall procure the **reconnection** by the **distributor** as soon as possible on the next **business day**; or
- (c) after 3 pm on a **business day** and before the close of normal business and pays the **retailer's** after hours reconnection charge, the **retailer** shall procure the **reconnection** by the **distributor** on that day.

7 COMPLAINT HANDLING AND DISPUTE RESOLUTION

A **retailer** must deal with customers' complaints in accordance with **Australian Standard (AS 4269)**.

8 ACCOUNTS

8.1 Account Cycle

A **retailer** must provide a **customer** with a **gas account** at least once in each 3 month period.

8.2 Due Date for Payment

The due date for payment of the **gas account** is to be at least 12 **business days** after the date of dispatch of the **gas account** to the **customer**.

8.3 Due Date Reminder

If payment is not made nor an arrangement for payment entered into by the due date the **retailer** must give the **customer** a reminder **notice** of the **gas account** within 14 days after that date.

8.4 Gas Accounts

A **gas account** issued by a **retailer** to a **customer** must:

- (a) include:
 - (i) a telephone number at which inquiries may be made relating to **gas accounts**;
 - (ii) a telephone number at which the **retailer** may be contacted in an emergency;

- (iii) a telephone number specifically identified as a telephone number at which the **retailer** may be contacted when a **customer** is experiencing difficulty paying a **gas account**; and
- (iv) information showing:
 - (A) the **customer's** consumption for the period covered by the **gas account**; andto the extent that the data is available:
 - (B) the **customer's** consumption for each **gas account** period over the past 12 months; and
 - (C) a comparison of the **customer's** consumption for the period covered by the **gas account** with the **customer's** consumption for the same period the previous year.
- (b) be based on consumption of **gas** as indicated by **meter** readings, subject to the following exceptions:
 - (i) where the relevant tariff is not based on consumption, the **gas account** is to be prepared on the basis contemplated in the tariff; and
 - (ii) where a reliable **meter** reading cannot be obtained for any reason, including inability to access the **meter**, the **gas account** may be based on a reasonable estimate of consumption and, if a reliable **meter** reading becomes available later, the next **gas account** must be adjusted to reflect actual consumption.
- (c) Notwithstanding clause 8.4(b)(ii), a **retailer** must obtain a reading of a **customer's meter** at least once in each 12 month period.
- (d) The **retailer** must notify the **customer** of a **gas account** estimated under clause 8.4(b), the reason for the **gas account** being estimated, how the **gas account** has been estimated and that if a reliable **meter** reading becomes available later, the next **gas account** will be adjusted to reflect actual consumption.

8.5 Charges

If in addition to the supply or sale of **gas**, a **retailer** supplies other goods or services to a **customer**, the **retailer** may bill for those other

goods and services separately. If the **retailer** chooses not to bill separately, the **retailer** must:

- (i) include the charge for the other goods and services as a separate item on the **gas account**, together with a description of the other goods and services provided; and
- (ii) apply payments received from the **customer** as directed by the **customer** or, if the **customer** gives no direction, apply the payment: to the charges for the supply of **gas** before applying any part of it to other goods and services.

9 RECOVERY OF UNDERCHARGES CAUSED BY ILLEGAL USE

A **retailer** that lawfully obtains the **disconnection** of **supply** to a **customer** that has been undercharged as a result of illegal use of **gas** by the **customer** may, despite the **disconnection**;

- (a) estimate, in accordance with the tariff under which **supply** was provided, the **gas** usage that the **customer** has not paid for; and
- (b) recover the amount that would have been payable for that **gas** usage under the tariff, together with interest calculated on a basis approved by the **Director of Gas**.

10 RECOVERY OF UNPAID ACCOUNTS

A **retailer** may recover in a court of competent jurisdiction as a debt due to the **retailer**:

- (a) an amount that remains outstanding after **disconnection** of supply to the **customer** for failure to pay a **gas account**; and
- (b) an amount that remains outstanding for failure to pay a **gas account**, notwithstanding that the **retailer** continues to supply **gas** to the **customer**; and
- (c) an amount estimated in accordance with clause 9 for any illegal use of supply; and
- (d) any connection or reconnection fee; and
- (e) any interest that it may charge in respect of the **customer**.

11 CUSTOMER CHARTER

- (a) A **retailer** must prepare a **customer charter** that:

- (i) states the services and the level and standard of such services that a **customer** is entitled to receive from the **retailer**;
 - (ii) states the basis on which **gas accounts** are to be prepared, the method of delivery of accounts and the frequency of issue;
 - (iii) states the time period allowed for payment and the payment options available to the **customer** including information concerning **security** and **payment plans**;
 - (iv) includes a sample **gas account**;
 - (v) includes the retailer's fees for services, including connection, reconnection etc;
 - (vi) includes the telephone number established by the **customer's distributor** pursuant to clause 4.2 of the **Gas Distribution Code** and states that the telephone number can be used at any time to report, or obtain information regarding, an emergency or interruption to **supply**;
 - (vii) sets out the **retailer's** position in relation to the review and adjustment of **gas accounts**, including interest on amounts unpaid or overpaid, and the processes for the recovery of unpaid monies;
 - (viii) summarises **customers'** rights, entitlements and obligations relating to the supply and sale of **gas** to **customers**;
 - (ix) sets out the steps in the process leading to **disconnection** of a **customer** for non-payment of a **gas account**, and
 - (x) describes fully in detail how a **customer** may make an enquiry or complaint relating to the supply and sale of **gas**.
- (b) The **retailer** must make available a copy of the **customer charter** to a **customer** at, or before, the time **supply** to the **customer** is **connected** and upon request by the **customer**.
 - (c) The **retailer** must review and, if necessary, update the **customer charter** annually.
 - (d) The **retailer** must advise a **customer** of any changes to the **customer charter**.

- (e) The **retailer** must lodge a copy of the **customer charter**, and each update of it, with the **Director of Gas**.

12 SECURITY

12.1 Security

Subject to this clause 12, a **retailer** may require a **customer** to provide **security** against the **customer** defaulting on payment of a **gas account**.

12.2 Security Amount

The amount of **security** is not to exceed:

- (a) if **gas accounts** are to be issued quarterly, 1.5 times the bill amount of the average quarterly consumption of **gas** by a **customer** with a similar **gas** consumption profile to the person required to provide the **security**; or
- (b) if **gas accounts** are to be issued more frequently than quarterly, twice the bill amount of the average monthly consumption of **gas** by a **customer** with a similar **gas** consumption profile to the person required to provide the **security**.

12.3 Security Accounts

- (a) A **retailer** must maintain an interest bearing account with a bank, building society or credit union expressly for the purpose of holding **security** deposits and refundable advances required by the **retailer** under clause 12.1.
- (b) A **retailer** that receives **security** for payment of **gas accounts** in the form of a deposit or refundable advance must;
 - (i) immediately give the person who provided the **security** a receipt for the amount of the **security**; and
 - (ii) pay the amount of the **security** into an account maintained in accordance with clause 12.3(a).
- (c) A **retailer** must not withdraw the amount of the **security** from the account maintained in accordance with clause 12.3(a) or any of the accrued interest except:
 - (i) to use or return the **security** in accordance with clause 12.4; or

- (ii) as authorised by the **Director of Gas**.

12.4 Use and Return of Security Deposits

- (a) A **retailer** may use a **customer's security** deposit or refundable advance, including accrued interest to offset an amount owed by the **customer** for **supply** in any of the following circumstances:
 - (i) where the **gas supply** has been **disconnected** because of the **customer's** failure to pay a **gas account** for **supply**; and
 - (ii) where the **customer** has failed to pay the amount due in respect of a final **gas account** for **supply**; or
 - (iii) at the request of the **customer** where the **customer** has requested **disconnection** of **supply** or has informed the **retailer** of a change in the occupation of the **supply address**.
- (b) A **retailer** that uses a **customer's security** deposit or refundable advance to offset a **gas account** must, within 14 days of doing so, give the **customer** an accounting of its use of the **security** deposit or refundable advance and pay any balance remaining, including accrued interest, to the **customer**.
- (c) A **retailer** must return a **customer's security** deposit or refundable advance to the **customer**, together with accrued interest, within 10 **business days** of any of the following events occurring;
 - (i) the **customer** completes 1 year of satisfactory payment of **gas accounts**; or
 - (ii) the **retailer** ceases to supply the **customer** with **gas** and the **customer** pays any amount owed to the **retailer** for the supply.

13 ANNUAL RETURN

13.1 Information to be Included in Annual Return

Each annual return lodged by a **retailer** under section 27(2) of the **Gas Act** must contain the information described in schedule 2.

13.2 Additional Report

Every second year, to be counted from year [2004/05], the annual return is to be accompanied by a report prepared by a **reporter**, unless **Director of Gas** advises that the report is required less frequently.

14 COMPLIANCE PLANS AND REPORTS

14.1 Compliance Plan

A **retailer** must develop and submit to the **Director of Gas** a **compliance plan**, initially within three months of the date of issue of the **retailer's** licence or such other date as is notified by the **Director of Gas** and, subsequently, by the first anniversary of that date, and, after that, every two years.

14.2 Consistency with Standards and Codes

The **compliance plan** is to be developed in accordance with and take account of any **standards** and **codes**.

14.3 Review by Director of Gas

A **retailer** must consider any comments made by the **Director of Gas** on the **compliance plan** and, if required by the **Director of Gas**, amend provisions of a **compliance plan** related to reporting to the **Director of Gas** including processes for capturing and analysing data that is to be reported.

15 DEFINITIONS AND INTERPRETATION

15.1 Definitions

In this Code, unless the context otherwise reflects:-

“**Australian Standard (3806)**” means AS3806 Compliance Programs, published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard).

“**Australian Standard (4269)**” means AS4269 Complaints Handling published by the Standards Association of Australia as in force from time to time (including any standard or code having effect under that standard).

“**business day**” means:

- (a) in relation to interaction between the **retailer** and a **customer** means a day on which banks are open for general banking business in the region of Tasmania in which the **customer's**

supply address is located, excluding a Saturday or Sunday;
and

- (b) in all other cases means a day on which banks are open for general banking business in Hobart, excluding a Saturday or Sunday.

“code” means any code issued by the **Director of Gas** under the **Gas Act**.

“compliance plan” means a written plan developed by a **retailer** outlining the **retailer’s** procedures, practices and strategies for managing and auditing the **retailer’s** compliance under the **Gas Act**, its retail licence, the **Gas Distribution Code**, this Code, the **customer charter**, relevant Australian Standards and any **standards** and **codes** which must include (among other things) details of standards, indicators and targets for measuring the **retailer’s** compliance performance and which must be in accordance with **Australian Standard (AS 3806)**;

“connect” means join a **gas installation** to a **gas supply point** to allow the flow of **gas** from the **distribution system** to a **gas installation**.

“connection” means the joining of a **gas installation** to a **gas supply point** to allow the flow of **gas** from the **distribution system** to a **gas installation**.

“customer” has the same meaning as in the **Gas Act**.

“customer charter” means the charter prepared by a **retailer** in accordance with the requirements of clause 11 of this Code;

“Director of Gas” means the **Director of Gas** under the **Gas Act**.

“Director of Gas Safety” means the **Director of Gas Safety** under the **Gas Act**.

“disconnection” means:

- (a) the permanent suspension of the supply of **gas** to a **customer**, or
- (b) the indefinite suspension of the supply of **gas** to a **customer** in circumstances where some action by the **customer**, the **retailer** or both is required before the supply of **gas** can be re-established.

“distribution services” means the service of receipt of **gas** at **transfer points**, haulage of the **gas** through the **distribution system** and delivery of the **gas** at **gas supply points**.

“distribution system” has the meaning given to that term in the **Gas Act**.

“distributor” means a person who holds a distribution licence issued under the **Gas Act** or a person who is exempt from the requirement to obtain a distribution licence by section 117 of the **Gas Act**.

“gas” has the meaning given to that term in the **Gas Act**.

“gas account” means a statement issued by the **retailer** setting out the details of a **customer’s gas** consumption and the associated charges, as described in clause 8.

“Gas Act” means the *Gas Act 2000* (Tas).

“gas appliance” has the meaning given to that term in the **Gas Act**.

“Gas Distribution Code” means the code of that name issued under the **Gas Act**.

“gas installation” means any **gas** equipment located at the **customer’s** premises that is not part of a **distribution system**.

(a) **“gas supply point”** has the meaning given to that term in the **Gas Act**.

“interested party” means a person whose interests are affected by a decision of the relevant authority or an authorised officer.

“Laws” means any applicable Commonwealth, Tasmanian or local law, subordinate legislation, legislative instrument or mandatory regulatory requirement.

“meter” means a device which measures and records the volume of **gas** passing through it and includes associated equipment attached to the instrument to filter, control or regulate the flow of **gas**.

“Minister” means the Minister who is responsible for the administration of the **Gas Act**.

“notice” means notice in writing.

“payment plan” means an arrangement for a **customer** to pay, by instalments, amounts due to a **retailer**.

“protected provision” means a code provision, that is identified, in the code, as a provision that is not to be omitted from the code, or amended, without the Minister’s written approval.

“reconnection” means the re-establishment of **supply** to a **customer** at the same **supply address** at which that **customer** had previously been receiving **supply**.

“reporter” means an appropriately qualified person engaged by a **retailer** with the approval of the **Director of Gas** to report, in accordance with terms of reference approved by the **Director of Gas**, to the **Director of Gas** on;

- (a) the completeness and accuracy of the **retailer’s** annual report referred to in clause 13 of this Code; and
- (b) compliance with and adequacy of the retailer’s **compliance plan**;

“retailer” means a person who holds a retail licence issued under the **Gas Act** or is exempt from the requirement to obtain a retail licence by section 117 of the **Gas Act**.

“security” has the meaning given to that term under clause 12.

“small retail customer” means a **customer** whose **gas** consumption or anticipated **gas** consumption is less than 10 TJ per annum.

“standard” means a standard issued, or approved, by the **Director of Gas** under the **Gas Act**.

“storage facility” means a facility for the storage of large quantities of **gas** including underground storage facilities.

“supply address” means the address to which **gas** is, may be or has been supplied by the **distributor**.

“transfer point” means a point at which **gas** passes from a **transmission system** into a **distribution system** or from a **distribution system** into another **distribution system**.

“transmission system” means a pipeline or a system of pipelines, for the high pressure transmission of **gas** and all related facilities, together with:

- (a) all structures for protecting or supporting the pipeline or system of pipelines; and

- (b) facilities for the compression of **gas**, the maintenance of the pipeline or system of pipelines and the injection or withdrawal of **gas**; and
- (c) all fittings, appurtenances, appliances, compressor stations, odourisation plants, scraper stations, valves, telemetry systems (including communications towers); and
- (d) works and buildings used in connection with the pipeline or system of pipelines

but excluding all **storage facilities** and **distribution systems**.

15.2 Interpretation

In this Code, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Code; and
- (b) words importing the singular include the plural and vice versa; and
- (c) words importing a gender include any gender; and
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency; and
- (e) a reference to a condition, clause, schedule or part is to a condition, clause, schedule or part of this code; and
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement; and
- (g) a reference to any statute, regulation, proclamation, order in council, ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute; and
- (h) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document; and

- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns; and
- (j) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this Code have a corresponding meaning; and
- (k) a period of time:
 - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (l) an event which is required under this code to occur on or by a stipulated day which is not a ***business day*** may occur on or by the next ***business day***.

Schedule 1 – Protected Provisions

The following provisions in this Code have been declared as ***protected provisions*** by the provisions of section 38C of the **Act**:

Clause 1.3 - Director of Gas Bound

Clause 1.6 - Amendment to the Code

Clause 5(c) – Other Grounds for Disconnection of Supply

Schedule 2 - Annual Returns

Information required to be included in Annual Returns

Customer Numbers

- Total number of **customers**
- Number of
 - residential **customers**
 - business **customers** with annual **gas** consumption of:
 1. less than 1 TJ
 2. between 1 TJ and 10 TJ
- Numbers of **customers** on each tariff

Disconnections/reconnections for non-payment

- Number of original accounts issued - residential/business
- Number of reminder notices despatched - residential/business
- Number of disconnection notices despatched - residential/business
- Number of actual disconnections - residential/business
- Number of reconnections in the same name - residential/business.

Disconnections/reconnections under clause 4.1 and clause 5(a)(i) of the Gas Retail Code

- Number of disconnection notices issued in relation to clause 4.1 - residential/business
- Number of disconnection notices issued in relation to clause 5(a)(i) - residential/business
- Number of actual disconnections carried out in relation to clause 4.1 - residential/business
- Number of actual disconnections carried out in relation to clause 5(a)(i) - residential/business
- Number of reconnections in the same name after disconnection under clause 4.1)
- Number of reconnections in the same name after disconnection under clause 5(a)(i)

Payment Plans

- Number of **customers** on payment plans - residential/business
- Average amount of **gas accounts** subject to payment plans: residential/business
- Number of payment plans that **customers** default on - residential/business

Late payment fees

- number of fees imposed - residential/business
- amount of fee revenue collected - residential/business
- number of fees waived - residential/business

Security Deposits

- Number provided by **customers** - residential/business
- Total value of **security** deposits provided by **customers** - residential/business
- Average amount of **security** deposits - residential/business
- Number refunded to **customers** - residential/business
- Total value of **security** deposits refunded to **customers** - residential/business

Customer Complaints

- Total number - residential/business
- Number of complaints within categories advised by the **Director of Gas**

Compliance Plan

- details of the **retailer's** actual performance for the previous financial year against the standards, indicators and targets included in the **compliance plan**;
- if the **retailer's** actual performance is below the targets included in the **compliance plan**, the reasons for the failure to meet the targets and strategies for achieving the targets in the future;
- projections of the **retailer's** future performance against the standards, indicators and targets included in the **compliance plan**;

- a description of the strategies adopted or to be adopted by the **retailer** to achieve or exceed the performance targets included in the **compliance plan**; and
- details of the **retailer's** adherence to applicable Australian Standards.

Gas Act 2000

Gas Customer Transfer and
Reconciliation Code

Issued by the

Director of Gas

20 July 2004

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1 This Code

1.1 Purpose of this Code

The purpose of this *Code* is to set out:

- (a) the obligations concerning the provision of information relating to *delivery points* to enable a *customer* to transfer to a different *retailer*;
- (b) the process by which a *customer* can be transferred to a different *retailer*;
- (c) the standards for *meters* and *metering installations* at *customer delivery points*; and
- (d) the *allocation* and *reconciliation* of *gas* quantities between *retailers* at *receipt points*.

1.2 Date of effect

This *Code* takes effect on 21 July 2004.

1.3 Core principles

The following principles underpin this *Code* as they are essential to ensure efficient *customer* transfer, information exchange, *allocation* and *reconciliation* processes:

- (a) *receipt points* are to be shared in a fair and equitable manner;
- (b) transaction costs are to be kept to a minimum;
- (c) consistency in *customer* transfer and information exchange processes are essential to achieve low cost and efficiency;
- (d) all persons involved in *customer* transfers, provision of data to *allocation agents*, and provision of *allocation* and *reconciliation* services, must co-operate to ensure fairness and equity, and that information is processed in a complete, accurate and timely manner;
- (e) *retailers* are to specify the *NMI* for a *customer's delivery point* on invoices issued to *customers*;
- (f) commercially sensitive information is to be kept confidential;

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- (g) any person wishing to share a *receipt point* must become a party to a contract with the relevant *distributor* and *allocation agent* before trading any *gas* on the downstream *distribution system*;
- (h) all persons bound by this *Code* and who are required to provide data to the *allocation agent* must do so in a full and complete manner and by the specified deadlines; and
- (i) where information is not available in time to perform an *allocation*, the *allocation agent* is to use the best available information to complete an *allocation* on time.

1.4 Application of this Code

This *Code* applies to and binds:

- (a) the *Director of Gas*;
- (b) *distributors*;
- (c) *retailers*;
- (d) *metering providers*;
- (e) *metering data providers*; and
- (f) *allocation agents*,

insofar as they are involved, whether directly or indirectly, in the *gas* supply industry in Tasmania.

1.5 Definitions

In this *Code*, words and phrases in italics have the meaning given to them in clause 9.1.

1.6 Interpretation

This *Code* must be interpreted according to the principles of interpretation set out in clause 9.2.

1.7 Amendments to this Code

1.7.1 The terms and conditions of this *Code* may be amended by the *Director of Gas* if the *Director of Gas* reasonably determines that the proposed amendment will better

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achieve the objects of the *Gas Act* or give effect to the *core principles*. In making such a determination, the *Director of Gas* must consider:

- (a) any proposal received from a *pipeline operator, distributor, retailer, metering provider, metering data provider* or *allocation agent*; and
- (b) any proposal received from an *interested party*.

1.7.2 Unless the proposed amendment is of a purely administrative nature, the *Director of Gas* must, prior to making a determination in relation to the proposal, consult *pipeline operators, distributors, retailers, metering providers, metering data providers, allocation agents* and *interested parties*. The *Director of Gas* must allow a reasonable time for the making of representations in relation to a proposal and must consider any representations made.

1.7.3 The *Director of Gas* will within 20 *business days* of making a determination to amend or not to amend this *Code*, notify all *pipeline operators, distributors, retailers, metering providers, metering data providers, allocation agents* and *interested parties* of the determination.

1.8 Review of the operation of this Code

1.8.1 Any *pipeline operator, distributor, retailer, metering provider, metering data provider, allocation agent* or *interested party* may request, in writing, that the *Director of Gas* review the operation of this *Code*, or any part of it.

1.8.2 Upon receipt of a request under clause 1.8.1, the *Director of Gas* will conduct, in a manner and to the extent the *Director of Gas* considers appropriate, a review of the operation of this *Code* or the part of it specified in the request.

1.8.3 Upon completion of the review referred to in clause 1.8.2, the *Director of Gas* will, within 20 *business days*, notify all *pipeline operators, distributors, retailers, metering providers, metering data providers, allocation agents* and *interested parties* of the outcome of the review and of any amendments to the *Code* flowing from the review.

2 National Metering Identifiers (NMIs)

2.1 Allocation of NMIs

2.1.1 The *distributor* must obtain a range of numbers from *OTTER* which are available for use as *national metering identifiers (NMIs)* for *metering installations* installed at *delivery points* which are supplied by that *distributor*.

2.1.2 The *distributor* must assign a *NMI* to each *metering installation* prior to connection to the *distributor's distribution system*. The assignment referred to in this clause must be effected by the relevant *distributor* recording that number in its *NMI* database as the *NMI* for the relevant *metering installation*.

2.1.3 Each number assigned to a *metering installation* by a *distributor* pursuant to clause 2.1.2 must be unique and must not be allocated by that *distributor* to any other *metering installation*.

2.1.4 The *distributor* must notify the *NMI* and *NMI checksum* to the relevant *retailer*.

2.1.5 The *retailer* must print the *NMI* on each *customer's* bill.

2.2 NMI database

2.2.1 Creation, maintenance and administration of NMI database by distributors

Each *distributor* must create, maintain and administer a database in relation to *metering installations* installed at all of the *delivery points* supplied by that *distributor*, such database to include the following information in respect of each *NMI*:

- (a) the address of the premises (street number, street name, street identifier, suburb and city/town, or their equivalents) to which *gas* is supplied;
- (b) the *NMI* and *NMI checksum*;
- (c) the *retailer*;
- (d) the *metering provider*;
- (e) the *metering data provider*;

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- (f) the *receipt point*;
- (g) the *distribution system ID*;
- (h) whether the *meter* that relates to that *NMI* has been locked or disconnected;
- (i) the *allocation group* number;
- (j) applicable *static deemed profile* or sample *dynamic deemed profile*; and
- (k) the *NSRD* or cycle of *scheduled meter reading* dates.

2.2.2 Updating NMI database

- (a) The *distributor* must use its *best endeavours* to ensure that the information required to be included in its *NMI* database is included in the *NMI* database by midnight on the first *business day* following the day on which that information is obtained by the *distributor*.
- (b) Where the *distributor* is not the *metering provider* for a *NMI*, the *retailer* must advise the *distributor* as soon as reasonably practicable if:
 - (i) there is a change in the *metering provider*; or
 - (ii) the *meter* that relates to the *NMI* is locked or disconnected.
- (c) Where the *distributor* is not the *metering data provider* for a *NMI*, the *retailer* must advise the *distributor* as soon as reasonably practicable if there is a change in:
 - (i) the *metering data provider*;
 - (ii) the *allocation group* number;
 - (iii) the applicable *static deemed profile* or sample *dynamic deemed profile*; or
 - (iv) the *NSRD* or the cycle of *scheduled meter reading* dates.

2.2.3 Storage of data in the NMI database

A *distributor* must maintain the information contained in the *NMI* database:

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- (a) in an accessible format for a period of 2 years; and
- (b) in archive for an additional period of 5 years.

2.3 NMI discovery request

Any *retailer* may deliver to a *distributor* a *NMI* discovery request in relation to a *NMI*. A *NMI* discovery request must include at least the *NMI* and *NMI checksum* or the address for the *delivery point* to which the *NMI* discovery request relates.

2.4 Response to NMI discovery request

2.4.1 The *distributor* must use its *best endeavours* to provide to the *retailer* the current information, as set out in clauses 2.2.1(a) to (k), in respect of the *NMI*, by midnight on the second *business day* following the day on which the *retailer* delivers the *NMI* discovery request to the *distributor*.

2.4.2 If more than one *NMI* is identified in relation to the *delivery point* to which the address relates, the *distributor* may return up to 99 *NMIs* to the *retailer*.

2.4.3 If a *retailer* is notified that the *NMI* or the address relating to the *delivery point* in respect of which a *NMI* discovery request has been made cannot be found in the *NMI* database of the *distributor*, the *distributor* must use its *best endeavours* to assist the *retailer* to obtain the *NMI* or the address relating to the relevant *delivery point*, for the purposes of enabling the *retailer* to make a further *NMI* discovery request in relation to that *delivery point*.

3 Customer transfer

3.1 Principles

The principles underlying this clause 3 are as follows:

- (a) All parties must co-operate with each other to ensure that all transfers are handled efficiently and in a fair and equitable manner, and in particular to agree the most efficient approach to notification and provision of information which accommodates the transfer of a single *customer* or multiple *customers* at the same time.
- (b) All parties must use *best endeavours* to meet the timelines outlined in this clause. If any party is unable to meet the timelines following receipt of a *customer* transfer notice, it must advise the affected parties accordingly, giving the reason for the same and providing an estimate of the date when it expects to meet the required action(s) and then use *best endeavours* to meet the estimate.
- (c) Once a *customer* transfer notice is received all affected parties must ensure that the interests of the *customer*, including the need to maintain a continuous supply, remain paramount.
- (d) It is the responsibility of the new *retailer* to manage the transfer process.
- (e) Each party must nominate a person to be the main point of contact for transfers. It is the responsibility of that person to manage the work to be done within their organisation, and in doing so that person must ensure all confidentiality in the information provided is maintained.

3.2 Consent

3.2.1 A *retailer* must not initiate or effect the transfer of a *customer* without obtaining the *explicit informed consent* of that *customer*.

3.2.2 *Explicit informed consent* is the consent provided by a *customer* where:

- (a) the *customer* provides express conscious agreement;

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- (b) the relevant **retailer** has fully and adequately disclosed all matters relevant to that **customer**, including each specific purpose for which the consent will be used; and
- (c) all disclosures referred to in clause 3.2.2(b) are truthful and have been provided in plain language appropriate to that **customer** before the agreement referred to in clause 3.2.2(a).

3.2.3 A **retailer** may obtain the **explicit informed consent** of a **customer**:

- (a) in writing signed by the **customer**; or
- (b) verbally; or
- (c) by electronic communication signed by the **customer**.

3.2.4 Specific consent must be obtained from the **customer** if the **retailer** requires the consumption history for the previous 12 month period, prior to transfer.

3.2.5 A **retailer** must retain records of any **explicit informed consent** obtained under this **Code** for at least two years.

3.2.6 Records retained under clause 3.2.5 must be retained by the **retailer** in a format which permits the **retailer** to answer any enquiries relating to a **customer's explicit informed consent** by that **customer**, the **Director of Gas** or any other entity permitted by an applicable law to access that information.

3.3 Initiation of transfer

3.3.1 Customer transfer notice

- (a) A **customer** transfer may only be initiated following the expiry of any cooling-off period applicable to the retail contract between the **customer** and the prospective new **retailer**.
- (b) To initiate a **customer** transfer, a prospective new **retailer** must deliver a **customer transfer notice** in relation to the relevant **NMI** to the current **retailer**, **distributor**, current **metering provider**, current **metering data provider** and the **allocation agent**.

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A **customer transfer notice** must include the following information in respect of the **NMI** to which that **customer transfer notice** relates:

- (i) date of notice;
- (ii) **NMI** and **NMI checksum**;
- (iii) **customer** name;
- (iv) the address of the premises (street number, street name, street identifier, suburb and city/town or their equivalents) to which **gas** is supplied;
- (v) new **retailer**;
- (vi) current **retailer**;
- (vii) new **distributor**;
- (viii) current **distributor**;
- (ix) new **metering provider**;
- (x) current **metering provider**;
- (xi) new **metering data provider**;
- (xii) current **metering data provider**;
- (xiii) **allocation agent**;
- (xiv) **receipt point**;
- (xv) **allocation group** number;
- (xvi) whether or not use of existing metering required;
- (xvii) in-situ transfer or move in;
- (xviii) whether or not a **special meter reading** is required for transfer;
- (xix) proposed transfer date (**NSRD** or **special meter reading** date); and

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- (xx) whether or not details of the *customer's* consumption history for the previous 12 *month* period are required.
- (c) The *customer transfer notice* must be given and stored electronically and the filename for the *customer transfer notice* must be in the format prescribed in Schedule 1.

3.3.2 Proposed transfer date

- (a) Where a *customer transfer notice* nominates a prospective date as the proposed transfer date, that proposed transfer date must be:
 - (i) a *business day* which is no later than 65 *business days* after the date of the *customer transfer notice*; or
 - (ii) where the annual *gas* consumption level for a *NMI* is, or is estimated to be, greater than 1 terajoule per annum, a *business day* which is no earlier than 20 *business days* after the date of the *customer transfer notice*.
- (b) Where a *customer transfer notice* nominates a retrospective date as the proposed transfer date, that proposed transfer date must be a *business day* which is no earlier than 130 *business days* prior to the date of the *customer transfer notice*, and to which a validated *meter* reading (either scheduled or special) pertains.

3.3.3 Retrospective transfers

A new *retailer* must not deliver a *customer transfer notice* in relation to a *NMI* where the proposed transfer date in relation to that *customer transfer notice* is a retrospective date unless it is required to correct an erroneous transfer.

3.4 Objections to transfer

3.4.1 Objection notice

- (a) A notice objecting to the *customer transfer notice* (an objection notice) may be lodged with the new *retailer* at any time before (but not after) midnight on the fifth *business day* after the day on which the *customer transfer notice* is delivered by the new *retailer* to the current *retailer*, *distributor*, current *metering provider*, current *metering data provider* or the *allocation agent*.

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- (b) An objection notice in relation to a **customer transfer notice** must include the following information:
 - (i) the **NMI** and **NMI checksum** to which the **customer transfer notice** relates;
 - (ii) the name of the party who delivered the objection notice to the new **retailer**; and
 - (iii) the basis for the objection notice.
- (c) If the proposed transfer date nominated in a **customer transfer notice** is a prospective transfer date, a party may only deliver an objection notice in relation to that **customer transfer notice** to the new **retailer** where:
 - (i) the **customer** is not supplied by the current **retailer** nominated on the **customer transfer notice** – nominated **retailer** must object;
 - (ii) the **customer transfer notice** is incomplete – any affected party may object;
 - (iii) more than one **customer transfer notice** has been received for the same **customer** and they conflict – any affected party may object; or
 - (iv) the new **retailer** has advised that it wishes to use the **distribution system** (or existing metering) but has not entered into the relevant agreement to use the **distribution system** (or metering) – **distributor** (or **metering provider**) may object.

3.4.2 Withdrawal of objection notice

- (a) A party who delivers to the new **retailer** an objection notice in relation to a **customer transfer notice** may withdraw that objection notice by delivering a notice of withdrawal (an objection withdrawal notice) at any time before midnight on the 20th **business day** after the day on which the party delivered that objection notice to the new **retailer**.
- (b) A party who delivers to the new **retailer** an objection notice in relation to a **customer transfer notice** must use **best endeavours** to resolve the objection and must, where the basis for lodging the objection has been resolved, withdraw that objection notice, within three **business days** of the resolution of the basis for lodging the objection or by midnight on the 20th **business day** after the day on which the party delivered that objection notice to the new **retailer**, whichever is the earlier.

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- (c) An objection withdrawal notice in relation to a **customer transfer notice** must include the following information:
 - (i) the **NMI** and **NMI checksum** to which the **customer transfer notice** relates;
 - (ii) the name of the party delivering the objection withdrawal notice; and
 - (iii) the basis for lodging the objection withdrawal notice.

3.4.3 Notification by the new retailer

- (a) The new **retailer** must, by midnight on the first **business day** after the day on which an objection notice, or an objection withdrawal notice, in relation to a **customer transfer notice** is delivered to it, deliver notice of the objection (an objection notification) or notice of withdrawal of the objection (an objection withdrawal notification), as the case may be, to:
 - (i) the current **retailer**;
 - (ii) the applicable **distributor**;
 - (iii) the current **metering provider**;
 - (iv) the current **metering data provider**; and
 - (v) the **allocation agent**.
- (b) An objection notification, or an objection withdrawal notification, in relation to an objection notice must include the following information:
 - (i) the **NMI** and **NMI checksum** to which the **customer transfer notice** relates;
 - (ii) the name of the party who delivered the objection notice to the new **retailer**; and
 - (iii) the basis for lodging the objection notice or the objection withdrawal notice.
- (c) The new **retailer** must also advise the **customer** where an objection notice, or an objection withdrawal notification, is lodged.

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3.4.4 Termination of transfer process

If an objection notice in relation to a *customer transfer notice* has been delivered to the new *retailer*, and by midnight on the 20th *business day* after the day on which that objection notice was delivered to the new *retailer*, an objection withdrawal notice in relation to that *customer transfer notice* has not been delivered pursuant to clause 3.4.2, then the new *retailer* must:

- (a) ensure all parties cease processing that *customer transfer notice*; and
- (b) by midnight on the 21st *business day* after the day on which that objection notice was delivered to the new *retailer*, deliver a notice that it will not further process that *customer transfer notice* to:
 - (i) the *customer*;
 - (ii) the current *retailer*;
 - (iii) the applicable *distributor*;
 - (iv) the current *metering provider*;
 - (v) the current *metering data provider*; and
 - (vi) the *allocation agent*.

3.5 Withdrawal of customer transfer notice

3.5.1 A new *retailer* may deliver a notice withdrawing a *customer transfer notice* (a transfer withdrawal notice) to the affected parties at any time before the prospective transfer date.

3.5.2 A transfer withdrawal notice in relation to a *customer transfer notice* must include the *NMI* and *NMI checksum* to which the *customer transfer notice* relates.

3.6 Customer Transfer Response

3.6.1 Provision of information by affected parties

Where:

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- (a) an objection notice has not been delivered; or
- (b) an objection withdrawal notice has been delivered in relation to every objection notice; and
- (c) a transfer withdrawal notice has not been delivered,

in relation to a *customer transfer notice*, then by midnight on the tenth *business day* after the *customer transfer notice* is delivered, if an objection notice has not been delivered, or the fifth *business day* after an objection withdrawal has been delivered, if an objection notice has been delivered:

- (a) the *distributor* for the *NMI* must deliver a Distributor Customer Transfer Response;
- (b) the current *metering provider* must deliver the Metering Provider Customer Transfer Response;
- (c) the current *metering data provider* must deliver the Metering Data Provider Customer Transfer Response; and
- (d) where the proposed transfer date is the *NSRD* the current *metering data provider* must advise the new *retailer*, the current *retailer*, the *distributor* and the current *metering provider* the *NSRD*.

3.6.2 Distributor Customer Transfer Response

- (a) The *distributor* must provide to the new *retailer* the following information which relates to the *customer transfer notice*:
 - (i) details of any non standard issues with regard to the transfer;
 - (ii) *distribution system* pressure regime applicable to the *delivery point* (IP, MP, LP);
 - (iii) network charge or charge category;
 - (iv) existing nominated annual quantity (if known – specify units);
 - (v) existing maximum hourly quantity (if known – in scmh); and
 - (vi) existing Load Shedding Category (A-G).

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- (b) The Distributor Customer Transfer Response must be given and stored electronically and the filename for the Distributor Customer Transfer Response must be in the format prescribed in Schedule 1.

3.6.3 Metering Provider Customer Transfer Response

- (a) The current *metering provider* must provide to the new *retailer* the following information which relates to the *customer transfer notice*:
 - (i) details of any non standard issues with regard to the transfer;
 - (ii) *metering provider* charge or charge category;
 - (iii) composite factor (instead of *meter* and *corrector* details where previously agreed);
 - (iv) *meter* number;
 - (v) *meter* make/model;
 - (vi) number of digits to be read;
 - (vii) read multiplier to m³ (ie 0.1, 1, 10, 100, 1000 etc);
 - (viii) whether or not the *meter* is temperature compensated;
 - (ix) *meter* pressure (kPa – also specify if other than gauge pressure, ie absolute);
 - (x) altitude and/or altitude *correction factor* (where currently applied);
 - (xi) *meter* location details (to assist the *metering data provider*); and
 - (xii) *corrector* and/or *data logger* details where either or both of the devices are installed.
- (b) The Metering Provider Customer Transfer Response must be given and stored electronically and the filename for the Metering Provider Customer Transfer Response must be in the format prescribed in Schedule 1.

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3.6.4 Metering Data Provider Customer Transfer Response

- (a) The *metering data provider* must provide to the new *retailer* the following information which relates to the *customer transfer notice*:
- (i) details of any non standard issues with regard to the transfer; and
 - (ii) last 12 months' total energy consumption (GJ); or
 - (iii) where requested, last 12 months' *meter* reading dates and associated energy consumption details. This is to include *interval metering data* where historical *interval metering data* exists.
- (b) The Metering Data Provider Customer Transfer Response must be given and stored electronically and the filename for the Metering Data Provider Customer Transfer Response must be in the format prescribed in Schedule 1.

3.7 New retailer to notify allocation agent

After receipt of the Customer Transfer Response forms from the affected parties, the new *retailer* must send the confirmed transfer details to the *allocation agent* prior to the transfer date, being either:

- (a) the Customer Transfer Form fully populated with confirmed details in both the notice and response sections and, if a *SDP* is proposed, the *SDP* and supporting details; or
- (b) the following details:
- (i) the name of the new *retailer*;
 - (ii) *NMI* and *NMI checksum*;
 - (iii) *customer* name;
 - (iv) the address of the premises (street number, street name, street identifier, suburb and city/town or their equivalents) to which *gas* is supplied;
 - (v) *receipt point*;
 - (vi) *allocation group* number;

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- (vii) transfer date; and
- (viii) **SDP** and supporting details (if a **SDP** is proposed).

3.8 Transfer meter reading

Where:

- (a) a new **retailer** has delivered a **customer transfer notice** and:
 - (i) an objection notice relating to that **customer transfer notice** has not been delivered to the new **retailer** by midnight on the fifth **business day** after the day the new **retailer** delivered the **customer transfer notice**; or
 - (ii) an objection withdrawal notice has been delivered to the new **retailer** in relation to every objection notice; and
 - (iii) a transfer withdrawal notice has not been delivered; and
- (b) the existing **metering installation** is to be retained, then:
 - (i) where the proposed transfer date is the **NSRD** then, unless otherwise agreed, the current **metering data provider** must use **best endeavours** to carry out a **scheduled meter reading** in accordance with clause 6; or
 - (ii) where the proposed transfer date specifies a special read date (ie does not specify **NSRD**) then, unless otherwise agreed, the new **retailer** is to arrange for a **special meter reading** in accordance with clause 6; or
- (c) the existing **metering installation** is not to be retained, then the new **retailer** must arrange with all affected parties for:
 - (i) the current **meter** to be removed on the proposed transfer date and for the **final meter reading** in accordance with clause 6; and
 - (ii) the new **meter** to be installed when the current **meter** has been removed and for the opening **meter** reading in accordance with clause 6.

4 Provision of metering installations

4.1 Metering Provider

4.1.1 There must be a *metering provider* for each *metering* installation.

4.1.2 The *retailer* or *customer* may elect to request an offer from the *distributor* to be the *metering provider* for a *metering installation*.

4.1.3 No later than 15 *business days* after a *distributor* receives from a *retailer* or *customer* a request in writing that the *distributor* be the *metering provider* for a *metering installation*, the *distributor* must offer to provide, install and maintain the *metering installation* and inform the *retailer* or *customer* who made the request of the terms and conditions on which the offer is made.

4.1.4 The terms and conditions of the offer made by the *distributor* under clause 4.1.3 must be fair and reasonable.

4.1.5 If the *retailer* or *customer* accepts the offer made under clause 4.1.3, the *distributor* will be the *metering provider* for that *metering installation*.

4.1.6 If:

(a) the *retailer* elects not to request an offer from the *distributor* or does not accept an offer from the *distributor*, and

(b) subject to clause 4.1.7, the *distributor* consents to the *retailer* being the *metering provider* for a *metering installation*,

the *retailer* will be the *metering provider* for that *metering installation*.

4.1.7 In deciding to withhold its consent to the *retailer* being the *metering provider* for a *metering installation*, the *distributor* must act reasonably and must only have regard to the following factors:

(a) the efficient and safe development and operation of the *distribution system*, and

(b) if the *distributor* is the *metering data provider* for the *metering installation*, the *distributor's* ability to comply with its obligations under clause 6 and any other relevant standards and procedures in respect of *metering data* provision.

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4.1.8 If the *distributor* withholds its consent in accordance with clause 4.1.7, the *distributor* will be the *metering provider* for that *metering installation*.

4.2 Obligation to install meters

4.2.1 A *metering installation* must be installed at each *delivery point*.

4.2.2 The *retailer* must ensure that an *interval metering installation* is installed where:

- (a) the consumption of *gas* at the *delivery point* has exceeded 10 TJ in the last 12 *month* period; and
- (b) the consumption of *gas* at the *delivery point* is not expected to be less than 10 TJ in the following 12 *month* period; or
- (c) in respect of a new *delivery point*, the consumption of *gas* at the *delivery point* is likely to be more than 10 TJ in the following 12 *month* period.

4.3 Provision of metering installations

4.3.1 From a date notified by the *Director of Gas*, where an *interval metering installation* is provided under clause 4.2.2, the *interval meter* must contain telemetry.

4.3.2 A *metering installation* must contain an index register that:

- (a) has a visible and accessible display of *metering data*; or
- (b) allows the *metering data* to be accessed and read at the same time by portable computer or other equipment of a type or specification reasonably acceptable to all persons who are entitled to have access to that *metering data*.

4.4 Installation

4.4.1 The *metering provider* must install *metering installations* as near as practicable to the *delivery point*.

4.4.2 The *metering provider* must use *best endeavours* to install *metering installations* in a position which allows safe and unimpeded access to any person whose obligation it is to test, adjust, maintain, repair or replace the *metering installation* or collect *metering data* from it.

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4.5 Installation database

4.5.1 A *metering provider* must maintain an *installation database* in respect of each *metering installation* for which it is responsible.

4.5.2 The *installation database* must contain at least the following information:

- (a) the *NMI* and *NMI checksum*;
- (b) the location of each installed *meter*, *corrector* and *data logger*;
- (c) the make, model and year of manufacture for each *meter*, *corrector* and *data logger*;
- (d) for each *meter*, *corrector* and *data logger* that is installed, the name and address of the *customer* and date of installation;
- (e) the next scheduled date for test or replacement of each *meter* and *corrector*;
- (f) data on performance of each *meter*, *corrector* and *data logger* (where relevant);
- (g) calibration records of all devices used to measure the quantity of *gas*;
- (h) testing records of all devices used to measure the quantity of *gas*;
- (i) date and details of all seals and labels applied to *meters* and *correctors*;
- (j) the date of, and details of, the most recent maintenance of all devices used to measure the quantity of *gas*; and
- (k) the next scheduled date for maintenance of all devices used to measure the quantity of *gas*.

4.5.3 A *metering provider* must maintain the information contained in the *installation database*:

- (a) in an accessible format for a minimum period of 2 years from the date of inclusion of the information in the database; and
- (b) in archive for an additional period of 5 years from the date of inclusion of the information in the database, or for the life of the relevant *metering installation*, whichever is the longer.

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4.5.4 Upon request in writing, the *metering provider* must provide, access to an *affected party* to information in the *installation database* relevant to that person:

- (a) within two *business days*, where the information is in an accessible format as required by clause 4.5.3(a); and
- (b) otherwise within thirty *business days*,

from the date of receipt of the request.

4.5.5 Where a *metering installation* is retained when a *NMI* transfers to a new *retailer*, the *metering provider* must provide the information in the *installation database* which pertains to that *NMI*, to the new *metering provider* within 10 *business days* of the transfer date.

4.6 Minimum standards of accuracy

4.6.1 The *minimum standards* of accuracy for *metering installations* are a margin of accuracy of plus or minus 2% of the net volume of *gas* delivered to that *delivery point*.

4.6.2 The *metering provider* must ensure that the operation of the *metering installation* does not show systematic bias within the allowable margin of accuracy.

4.6.3 The *metering provider* must ensure that each of its *metering installations* containing pressure regulators are able to provide sufficient flow at the minimum regulator inlet pressure, and where a fixed pressure factor is applied, are able to meet the pressure requirements of the *distribution system*.

4.6.4 A person bound by this *Code* must not tamper with or calibrate a *meter* with the purpose of introducing bias in the *meter*.

4.7 Security

4.7.1 The *metering provider* must use *best endeavours* to protect the *metering installation* from unauthorised interference or damage.

4.7.2 The *metering provider* must in respect of new *metering installations* provide seals or other appropriate devices to detect any interference.

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4.7.3 Following notification that a seal has been broken, the **metering provider** must replace a broken seal within 20 **business days**.

4.7.4 The costs of replacing seals which are broken are borne:

- (a) if the seal was broken by the **customer**, by the **customer**;
- (b) if the seal was broken by the **retailer**, by the **retailer**;
- (c) if the seal was broken by the **distributor**, by the **distributor**; or
- (d) otherwise by the **metering provider**.

4.7.5 If as a result of or in connection with the breaking of a seal, the relevant **metering installation** may no longer meet the relevant **minimum standards** of accuracy, the **metering provider** must:

- (a) within 15 **business days**, test the **metering installation** in accordance with clause 5.2.2; or
- (b) replace the **metering installation** in accordance with clause 5.3.

5 Metering installation testing

5.1 Accreditation and certification

5.1.1 The *distributor* must ensure that *meters* and *correctors* purchased have National Standards Commission pattern approval from an accredited laboratory recognised under the International Certification Scheme in accordance with specifications or guidelines specified by the National Standards Commission under the *National Measurement Act 1960*.

5.1.2 Where National Standards Commission pattern approval is not required to be provided by the National Standards Commission, the *metering provider* must conduct tests, or must cause tests to be conducted, in respect of the setting, scaling or certifying the accuracy of *meters* and *correctors*, by persons or in a facility, accredited by *NATA* to conduct such tests.

5.1.3 The *metering provider* must ensure that calibrating equipment used in connection with the calibration of its *metering installations* is certified by a verifying authority empowered to issue certificates under regulation 13 of the *National Measurement Regulations 1999 (Cth)*.

5.2 Meter testing

5.2.1 Acceptance testing and type testing of metering installations

(a) A *metering provider* must conduct, or cause to be conducted, *acceptance tests* on *meters*, *correctors* and *data loggers* that are components of *metering installations* in the following circumstances:

- (i) before a new *meter*, *corrector* or *data logger* is placed in service;
- (ii) before a *meter*, *corrector* or *data logger* that has been removed from service is placed back into service; and
- (iii) after any repairs, maintenance or recalibration performed on a *meter*, *corrector* or *data logger* have been completed.

(b) A *metering provider* must only adopt a new type of *metering installation* if that *metering installation* has been *type tested*.

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- (c) on request by a *retailer* or *distributor*, a *metering provider* must provide that *retailer* or *distributor* with copies of any relevant *type test* certificates in its possession in relation to a *meter*.
- (d) A *metering provider* must keep records of *type testing* under clause 5.2.1(b) for twelve months after *meters* of that type remain in service, or for 7 years, whichever is the longer.
- (e) A *metering provider* must ensure that any *metering installations* that have been modified are assessed to determine whether the modified design continues to meet the *minimum standards* prescribed by this *Code*.
- (f) If reasonable grounds exist for concluding that modifications to a *metering installation* affect its measuring capability, then the *metering provider* must ensure that the *metering installation* is submitted for *type testing*.

5.2.2 Obligation to test metering installations

- (a) A *metering provider* may at any time, and within 15 *business days* of a request from the *distributor*, a *retailer*, a *customer*, or an *allocation agent* must, test a *metering installation* to ascertain whether or not that *metering installation* is *defective*.
- (b) A *metering provider* must give the *person* who requests a test, at least 5 *business days* notice (or agree such other mutually convenient time) of when the requested test is proposed to be performed.
- (c) If, as a result of the test requested under clause 5.2.2(a), the *metering installation* is found to be:
 - (i) *defective*, the *metering provider* must bear the cost incurred in conducting the test; or
 - (ii) not *defective*, the *metering provider* may seek to recover the cost incurred in conducting the test.
- (d) A *metering provider* must upon request by the *distributor*, a *retailer*, a *customer* or an *allocation agent* provide the results of the test conducted under clause 5.2.2(a) within 5 *business days*.

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- (e) A **metering provider** must keep records of tests under clause 5.2.2 for a minimum period of 7 years.
- (f) If a test carried out under clause 5.2.2(a) requires the flow of **gas**, then the **metering provider** must inspect the records stored in the **meter** and forward the details to the **metering data provider** for the purpose of ensuring that the subsequent bill issued to the **customer** is adjusted so that no material amount is payable by the **customer** in respect of **gas** consumed during the test. If a test carried out under clause 5.2.2(a) is based on actual **customer** loads, then no adjustment is required under this clause.

5.2.3 Meter classes

- (a) The initial period of a **meter class** is a period approved by the **Director of Gas** commencing on the day a **meter** in that **meter class** was first used in the supply of **gas** to a **customer**.
- (b) If a **metering provider** intends to retain the **meters** in a **meter class** after the end of the initial period for that **meter class** the **metering provider** must, in addition to the other **meter** testing provisions in this Code, establish and maintain a sampling plan approved by the **Director of Gas**.
- (c) The sampling plan must provide that **meters** be tested at both 20% and 100% of the badge capacity of the **meters**.
- (d) If the test results do not:
 - (i) at 20% or at 100% of the badge capacity of the **meter** meet the **minimum standards** as set out in clause 4.6, with an uncertainty limit of no more than 1%;
or
 - (ii) satisfy such other requirements of the sampling plan approved by the **Director of Gas**,

then the **metering provider** must replace or recalibrate all **metering installations** in that **meter class**.

5.2.4 Provision of test results

The **metering provider** must, upon request by the **Director of Gas**, provide the **Director of Gas** with the results of any test conducted in accordance with this **Code**.

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5.3 Non-compliant meters

5.3.1 If the accuracy of a *metering installation* does not comply with the requirements of this *Code*, or if a *metering provider* becomes aware of any matter which could affect the integrity of the *metering data*, the *metering provider* must:

- (a) notify the *affected parties* as soon as practicable;
- (b) within:
 - (i) 10 *business days* where the consumption at the *delivery point* is less than 10 terajoules per annum; or
 - (ii) 5 *business days* where the consumption at the *delivery point* is 10 terajoules per annum or more; or
 - (iii) such longer period as may be approved by the *Director of Gas*,

arrange for the accuracy of the *metering installation* to be restored so that it meets the *minimum standards* of accuracy, or for the *metering installation* to be replaced; and
- (c) until the restoration or replacement of the *metering installation* in accordance with clause 5.3.1(b), use substitute readings.

5.3.2 Where a measurement error exists and the *distributor* proposes to substitute previous *meter* readings, the *distributor* must limit the substitution of *meter* readings to:

- (a) the period where the measurement error was greater than 1.5 times the *minimum standards* of accuracy; and
- (b) the period where the measurement error exists, but no earlier than:
 - (i) 12 months prior to when the measurement error was known if the measurement error resulted in the *customer* being undercharged; or
 - (ii) 3 years prior to when the measurement error was known if the measurement error resulted in the *customer* being overcharged.

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5.4 Correction

5.4.1 In undertaking a *meter* reading at a *metering installation* the *metering provider* must adjust the *meter* reading for pressure, temperature or supercompressibility, or a combination of these factors, through applying *correction factors* or using a *corrector* when:

- (a) the error arising from these effects results in the *metering installation* not meeting the requirements of the *minimum standards*; or
- (b) the operating condition varies during the course of the day affecting the pressure, temperature or supercompressibility; or
- (c) the *Director of Gas* so requires.

5.4.2 A *metering data provider* can only make adjustment for *meter* error using a *corrector* or a *correction factor* when:

- (a) the specified correction is uniquely identified for the *corrector* and *meter*;
- (b) the accuracy of the *metering installation* is within the *minimum standards*;
- (c) the method of adjustment by the *corrector* can be varied; and
- (d) the *affected parties* are advised of the compensation device and the settings used.

5.5 Sealing and labelling

5.5.1 A *metering provider* must place a label on any *meter* and *corrector* that has been subject to an *acceptance test* and found to pass the test. The label must include a distinguishing mark and the year of test to indicate that it has passed the test.

5.5.2 If a *meter* or *corrector* has not been tested or has been found not to pass an *acceptance test*, the *metering provider* must ensure that it is not labelled.

6 Meter reading and data

6.1 Metering data provider

- 6.1.1 There must be a *metering data provider* for each *metering installation*.
- 6.1.2 The *retailer* may elect to request an offer from the *distributor* to be the *metering data provider* for a *metering installation*.
- 6.1.3 No later than 15 *business days* after a *distributor* receives from a *retailer* a request in writing that the *distributor* be the *metering data provider* for a *metering installation*, the *distributor* must offer to collect and process *metering data* from the *metering installation* and inform the *retailer* of the terms and conditions on which the offer is made.
- 6.1.4 The terms and conditions of the offer made by the *distributor* under clause 6.1.3 must be fair and reasonable.
- 6.1.5 If the *retailer* accepts the offer made under clause 6.1.3, the *distributor* will be the *metering data provider* for that *metering installation*.
- 6.1.6 If the *retailer* elects not to request an offer from the *distributor* or does not accept an offer from the *distributor*, the *retailer* must either:
- (a) be the *metering data provider*; or
 - (b) engage another person to be the *metering data provider*.
- 6.1.7 The *retailer* may only be the *metering data provider* if the *retailer* is able to satisfy the *Director of Gas* that it is appropriate, in all the circumstances, for the *retailer* to be the *metering data provider*.

6.2 Obligation to collect metering data

- 6.2.1 The *metering data provider* must use *best endeavours* to collect *metering data*:
- (a) at least daily from *interval metering installations* with telemetry (*allocation group 1*);

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- (b) at least monthly from *interval metering installations* without telemetry (*allocation group 2*), by 5.00 pm on the second *business day* following the end of the *month*;
- (c) at least monthly from *basic metering installations (allocation groups 3 and 4)*, by 5.00 pm on the second *business day* following the end of the *month*;
- (d) at least once every two months from *basic metering installations (allocation groups 5 and 6)*; or
- (e) at a greater frequency as agreed by the *metering data provider*, the *distributor* and the *retailer*.

6.2.2 The *metering data provider* must ensure that the *metering data* is collected from each *metering installation* at least once in each 12 month period.

6.2.3 *The metering data provider* must ensure that where *metering data* is not collected from a *metering installation*:

- (a) at the agreed meter reading frequency; or
- (b) at the frequency required by the *allocation agent*,

there is an *estimated read*.

6.2.4 The *metering data provider* must perform a *special meter reading* or a *final meter reading* at the request of a *retailer*.

6.2.5 *Gas* is to be metered by quantity and converted to units of energy for billing purposes in accordance with a methodology approved by the *Director of Gas*.

6.3 Meter reading for customer transfer

6.3.1 On request by a *retailer*, the *metering data provider* must use *best endeavours* to carry out an *actual meter reading* to enable the transfer of a *customer* to that *retailer* within a reasonable time of the request.

6.3.2 Where a *basic metering installation* is installed, the *final meter reading* prior to a *customer* transferring to a new *retailer*, whether a *scheduled meter reading* or a *special meter reading*, must be forwarded to the current *retailer* and the new *retailer* in accordance with clause 6.8.4 or clause 6.8.5, as applicable.

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6.3.3 Where an *interval metering installation* is installed, the *final meter reading* prior to a *customer* transferring to a new *retailer*, whether a *scheduled meter reading* or a *special meter reading*, must be forwarded to the current *retailer* in accordance with clause 6.8.4 or clause 6.8.5, as applicable.

6.4 Collection of metering data

6.4.1 The *metering data provider* must collect the *metering data* stored in a *metering installation* by reading the *meter* at the *customer's supply address*.

6.4.2 Subject to clause 6.4.3, a *customer* may arrange with the *retailer* the manner in which the data stored in a *metering installation* is to be collected by the *metering data provider*.

6.4.3 A *customer* may request that the data stored in the *metering installations* provided to it be collected by the *metering data provider*:

- (a) by inspecting the *metering installation*; or
- (b) where the *metering installation* is capable of providing data by electronic means, by electronic means; or
- (c) where the *metering installation* is capable of providing data by any other means, by such means.

6.4.4 *Basic metering installations* are deemed to be read at the beginning of the *gas day*.

6.4.5 Where the *metering data* held in the *metering installation* is protected from direct or remote access by suitable password and security controls, such passwords and security controls must be used.

6.4.6 Passwords must be treated as confidential information in accordance with clause 6.10.

6.4.7 If there is any discrepancy between:

- (a) the data stored in a *metering installation*; and
- (b) *metering data* in respect of that *metering installation*,

the data stored in the *metering installation* is to be prima facie evidence of the quantity of *gas* or energy, if applicable, supplied to the relevant *customer*.

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6.5 Validation and substitution of metering data

6.5.1 The *metering data provider* must ensure that *metering data* collected from an *interval metering installation* under clause 6.1:

- (a) is validated in accordance with schedule 2, clause 1, of this *Code*; and
- (b) where necessary, is substituted in accordance with schedule 2, clauses 2 and 4 of this *Code*.

6.5.2 The *metering data provider* must ensure that *metering data* collected from a *basic metering installation* under clause 6.1:

- (a) is validated in accordance with schedule 3, clause 1, of this *Code*; and
- (b) where necessary, is substituted in accordance with schedule 3, clauses 2 and 4 of this *Code*.

6.5.3 Where tests under clause 6.5.1(a) or 6.5.2(a) demonstrate that there has been a failure of the *metering installation* or that a measurement error exists, the *metering data* must be substituted in accordance with clause 6.5.1(b) or 6.5.2(b) and the *metering data provider* must provide the substituted *metering data* to the *allocation agent*, the *distributor* and the *retailer*.

6.5.4 If a substitution is made to *metering data*, the *metering data provider* must inform the *retailer* accordingly to ensure that a bill issued to the relevant *customer* informs that *customer* that a substitution has been made.

6.5.5 The *metering data provider* must maintain a separate record of the substitution made under clauses 6.5.1(b) and 6.5.2(b) for 7 years and provide access to the record at reasonable times to the *allocation agent*, *distributor*, *retailer* or *customer*.

6.6 Estimation of metering data

Where *metering data* cannot be obtained in the time frame required for the *allocation agent*, the *metering data provider* must estimate the *metering data* in accordance with schedule 2, clauses 3 and 4 of this *Code* for an *interval metering installation* and schedule 3, clauses 3 and 4 of this *Code* for a *basic metering installation*.

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6.7 Storage of metering data

The *metering data provider* must store *metering data* in respect of separate *metering installations*, in the form in which it was collected under clause 6.4:

- (a) in an accessible format for a period of 2 years from the date of the *meter* reading; and
- (b) in archive for an additional period of 5 years from the date of the *meter* reading.

6.8 Access to metering data

6.8.1 A *metering data provider* must give a *customer* access to data stored in a *metering installation* used to measure and record the amount of *gas* supplied to its *delivery point*, either by inspecting the *metering installation* or, where available, by electronic access to the *metering installation*.

6.8.2 The *metering data provider* must, on written request from a *customer*, provide facilities to enable the *customer* to access by remote electronic means data stored in a *metering installation* provided by the *metering provider*.

6.8.3 Where the *metering data provider* has provided facilities to enable the *customer* to access by remote electronic means data stored in a *metering installation*, if remote electronic access to the *metering installation* is unavailable for a period of 5 consecutive *business days* due to actions within the control of the *metering data provider*, the *metering data provider* must, if requested by the *customer*, obtain data locally from the *metering installation* and provide that data to the *customer* at the *metering data provider's* cost.

6.8.4 The *metering data provider* must ensure that access is provided for the *distributor* and the *retailer to metering data* (whether actual, substituted under clause 6.4 or estimated under clause 6.5), at the frequency agreed under clause 6.2.1, by 5.00 pm on the first *business day* after that *metering data* has been collected.

6.8.5 The *metering data provider* must ensure that access is provided for the *distributor* and the *retailer to metering data* from *special meter readings* and *final meter readings*, by 5.00 pm on the first *business day* after that *metering data* has been collected.

6.8.6 Where access is provided for the *distributor* and the *retailer to metering data* under clauses 6.8.4 and 6.8.5, the *metering data provider* must ensure that any additional

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data required by the *distributor*, the *retailer* or both of them for billing purposes is also provided.

6.9 Transfer of metering data to the allocation agent

6.9.1 The *metering data provider* must enable the transfer to the *allocation agent* of *metering data* (whether actual, substituted under clause 6.5 or estimated under clause 6.6) and other data reasonably required by the *allocation agent* for settlement of the market.

6.9.2 The *metering data* from *interval metering installations* which are read daily, must be provided to the *allocation agent* by 2:00 pm on the first *business day* following each *gas day*.

6.9.3 The *metering data* from *interval metering installations* which are read monthly, must be provided to the *allocation agent* by 8:00 pm on the third *business day* following the last day of each *month*.

6.9.4 The *metering data* from *basic metering installations* which are read monthly, must be provided to the *allocation agent* by 8:00 pm on the third *business day* following the last day of each *month*.

6.9.5 The *metering data* from *basic metering installations* which are not read monthly, must be provided to the *allocation agent* by 8:00 pm on the third *business day* following the last day of each *month*.

(a) Where the *basic metering installation* has been read during the previous month, the *metering data* will be the *actual meter reading* and the estimated *metering data* for the period between the *meter* reading and the end of the *month*.

(b) Where the *basic metering installation* has not been read during the previous month, the *metering data* will be the estimated *metering data* for the *month*.

6.10 Confidentiality

6.10.1 The *metering data provider*, *allocation agent*, *distributor* and *retailer* must keep *metering data* confidential and use *best endeavours* to protect and preserve the confidential nature of the *metering data*.

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6.10.2 The *metering data provider, allocation agent, distributor* and *retailer*:

- (a) must not disclose *metering data* to any person except as permitted by this *Code* and any other *applicable regulatory instruments*;
- (b) must only use or reproduce *metering data* for the purposes for which it was collected under this *Code* or another purpose contemplated by any other *applicable regulatory instrument*;
- (c) must not permit unauthorised persons to have access to *metering data*;
- (d) must not disclose to any person *metering data* for a particular *customer* without the *explicit informed consent* of that *customer*; and
- (e) must ensure that the *metering data* and other information obtained from a *customer* is treated in accordance with the *explicit informed consent* of the *customer* and in accordance with any *applicable regulatory instrument*.

6.10.3 This clause 6.10 does not prevent:

- (a) the disclosure, use or reproduction of *metering data* if the *metering data* is at the time generally and publicly available otherwise than as a result of breach of confidence by the *metering data provider, allocation agent, distributor* or a *retailer* or its *disclosees*;
- (b) the disclosure of *metering data* by the *metering data provider, allocation agent, distributor* or a *retailer* or its *disclosees* to:
 - (i) its employees or the employees of its *related bodies corporate* subject to any *applicable regulatory instrument*; or
 - (ii) its legal or other professional advisor, auditor or other consultant, requiring the *metering data* for the purposes of this *Code* or any other *applicable regulatory instrument* or for the purpose of advising the *metering data provider, allocation agent, distributor* or the *retailer* or *disclosee* in relation to those purposes;
- (c) the disclosure, use or reproduction of *metering data* with the *explicit informed consent* of the relevant *customer*;

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- (d) the disclosure, use or reproduction of ***metering data*** to the extent required by law or by lawful requirement of:
 - (i) any government or governmental body, authority or agency having jurisdiction over the ***metering data provider, allocation agent, distributor*** or a ***retailer*** or its ***related bodies corporate***;
 - (ii) any stock exchange having jurisdiction over the ***metering data provider, allocation agent, distributor*** or a ***retailer*** or its ***related bodies corporate***; or
 - (iii) the ***Director of Gas***;
- (e) the disclosure, use or reproduction of ***metering data*** required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism under this ***Code*** or any other ***applicable regulatory instrument***;
- (f) the disclosure use or reproduction of ***metering data*** which is trivial in nature;
- (g) the disclosure, use or reproduction of ***metering data*** required to protect the safety of personnel or equipment; or
- (h) the disclosure, use or reproduction of ***metering data*** by or on behalf of the ***metering data provider, the allocation agent, the distributor*** or the ***retailer*** to the extent it is reasonably required in connection with the ***metering data provider's, the allocation agent's, the distributor's*** or the ***retailer's*** financing arrangements, investment in the ***allocation agent, distributor*** or the ***retailer*** or disposal of the ***metering data provider, the allocation agent, the distributor*** or the ***retailer***.

6.10.4 In the case of a disclosure under clauses 6.10.3(b) and 6.10.3(h), the ***metering data provider, the allocation agent, the distributor*** or the ***retailer*** making the disclosure must inform the relevant ***disclosee*** of the confidentiality of the ***metering data*** and use ***best endeavours*** to ensure that the ***disclosee*** keeps the ***metering data*** confidential.

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6.11 Profiling

The daily *metering data* for a *basic metering installation* may be determined by applying:

- (a) a *static deemed profile (SDP)* (*allocation group 3*);
- (b) a sample *dynamic deemed profile (DDP)* (*allocation group 5*); or
- (c) a *net system load profile (NSLP)* (*allocation groups 4 and 6*).

6.12 Static deemed profile

6.12.1 Preparation of a static deemed profile

- (a) A *static deemed profile* may be used to produce daily *metering data* where approved by the *allocation agent*. The following data must be provided to the *allocation agent* when approval is sought:
 - (i) any site specific *interval metering data* from the last 12 months;
 - (ii) a minimum of 12 *months' meter* reading data (*meter* reading dates, service days and energy usage each period);
 - (iii) actual daily *gas* usage profile through a typical week, collected by manual *meter* readings if necessary (provided that if such information is not available the *allocation agent* may (at the *allocation agent's* discretion) be prepared to accept good information derived from the business operation profile);
 - (iv) the *customer's* 4 digit Standard Industry Category code;
 - (v) details of any projected load growth or contraction; and
 - (vi) any external factors that may affect the predictability of the load.
- (b) Subject to clause 6.12.1(a), a *static deemed profile* must be prepared by:
 - (i) the *allocation agent*; or
 - (ii) the *metering data provider*, subject to approval by the *allocation agent*.
- (c) The *static deemed profile* must be prepared as the estimated *gas* quantity for each day of a 12 *month* period based on, in order of preference:

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- (i) full year of historical *interval metering data* and estimated future variations;
- (ii) sample historical *interval metering data*, site operating information, 12 *months'* historical actual monthly usage data and estimated future variations;
- (iii) estimated usage profile based on daily usage profile for a similar type of *customer* and historical actual monthly usage data; and
- (iv) estimated usage profile based on site operating or daily usage profile for a similar type of *customer*.

6.12.2 Application of a static deemed profile

- (a) The *basic metering installations* to which a *SDP* is to be applied must be read monthly.
- (b) The *allocation agent* must apply the *SDP* to the monthly *metering data* to obtain daily *metering data (allocation group 3)*. The *SDP* must be applied as follows:

Daily *metering data*_{*i*}

$$= \text{Monthly } \textit{metering data} \times \frac{\text{SDP}_i}{\sum_{i=m}^n \text{SDP}_i}$$

where $i = \textit{gas day } i$

$m = \textit{start date}$, determined in accordance with clause 6.15

$n = \textit{end date}$, determined in accordance with clause 6.15

6.13 Sample dynamic deemed profile

6.13.1 Preparation of a sample dynamic deemed profile

- (a) A sample *dynamic deemed profile* may be used to produce daily *metering data* if it is representative of the consumption at the *delivery point* and has been approved by the *allocation agent*.
- (b) Sample *interval metering installations* must be installed at *delivery points* that are representative of the *dynamic deemed profile*.

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- (c) The **metering data provider** must ensure that sample **interval metering installations** are installed:
- (i) at no less than 200 **NMIs**, or
 - (ii) at no less than 20% of the **NMIs** which are to be represented by the **dynamic deemed profile**,
- whichever is the lesser.
- (d) Subject to this clause 6.13.1, a sample **dynamic deemed profile** must be prepared by the **allocation agent**, as follows:

$$\text{Sample DDP}_i = \frac{1}{N} \sum_{n=1}^N (\text{metering data from sample meter for gas day } i) \times (\text{weighting factor})_n$$

where $i = \text{gas day } i$
 n represents the set of sample **meter(s)**

- (e) To contest a sample **dynamic deemed profile** that has been approved by an **allocation agent**, a party must request the **allocation agent** to reconsider the matter.
- (f) Upon receipt of such a request, the **allocation agent** must review the information used to establish the sample **dynamic deemed profile** and determine whether the sample **dynamic deemed profile** is acceptable or is to be amended.
- (g) The **allocation agent** must endeavour to make its determination and provide a report on the same to the **affected parties** within 20 **business days** of receipt of the request.
- (h) If any **affected party** remains unsatisfied after the **allocation agent** has concluded its review and made its determination, that party may request that the **allocation agent** appoint an independent **auditor** to review the matter.
- (i) Upon receipt of such request the **allocation agent** will appoint an independent **auditor** (unless the **allocation agent** reasonably considers the request to be vexatious or trivial). The **allocation agent** will consult with the affected parties regarding the identity of the **auditor**, but the **allocation agent's** decision as to the identity of the **auditor** will be final.

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- (j) The **allocation agent** will instruct the **auditor** to review the information used to establish the sample **dynamic deemed profile** and determine whether the sample **dynamic deemed profile** is acceptable or is to be amended. The **auditor's** report will be delivered as soon as reasonably possible and its determination will be final and binding on the parties.
- (k) If it is determined that the sample **dynamic deemed profile** is to be amended, the amended sample **dynamic deemed profile** is to be applied from the following **allocation**. There will be no retrospective application of an amended sample **dynamic deemed profile**.

6.13.2 Application of a sample dynamic deemed profile

The **allocation agent** must apply the sample **DDP** to the **metering data** to obtain daily **metering data**. The sample **DDP** must be applied as follows:

$$\text{Daily metering data}_i = \text{Metering data} \times \frac{\text{Sample DDP}_i}{\sum_{i=m}^n \text{Sample DDP}_i} \times (1 + \text{Residual UFG})$$

where $i = \text{gas day } i$

$m = \text{start date, determined in accordance with clause 6.15}$

$n = \text{end date, determined in accordance with clause 6.15}$

6.14 Net System Load Profile

6.14.1 Preparation of a Net System Load Profile

- (a) The **Net System Load Profile (NSLP)** must be used to produce daily **metering data** for all **basic metering installations** that have not had a **SDP** or a sample **DDP** applied.
- (b) A **NSLP** must be prepared by the **allocation agent** for each **receipt point**, as follows:

$$\text{NSLP}_i = \text{Energy inflow to receipt point } i - \sum_{j=i}^J \text{Daily metering data}_j \times (1 + \text{loss factor})$$

where $i = \text{gas day } i$

$j =$ daily *metering data*, including from:

- *interval metering installations* with telemetry;
- *interval metering installations* without telemetry;
- *basic metering installations* which have had a *SDP* applied;
- *basic metering installations* which have had a sample *DDP* applied.

6.14.2 Application of a Net System Load Profile

- (a) Where the *basic metering installation* is read monthly (*allocation group 4*), the *allocation agent* must apply the *NSLP* to the monthly *metering data* that has not had a *SDP* applied, to obtain daily *metering data*. The *NSLP* must be applied as follows:

$$\text{Daily } \textit{metering data}_i = \text{Monthly } \textit{metering data} \times \frac{\text{NSLP}_i}{\sum_{i=m}^n \text{NSLP}_i}$$

where $i = \text{gas day } i$

$m =$ start date, determined in accordance with clause 6.15

$n =$ end date, determined in accordance with clause 6.15

- (b) Where the *basic metering installation* is not read monthly (*allocation group 6*), the *allocation agent* must apply the *NSLP* to *metering data* that has not had a sample *DDP* applied, to obtain daily *metering data*. The *NSLP* must be applied as follows:

$$\text{Daily } \textit{metering data}_i = \text{Metering data} \times \frac{\text{NSLP}_i}{\sum_{i=m}^n \text{NSLP}_i} \times (1 + \text{Residual UFG})$$

where $i = \text{gas day } i$

$m =$ start date, determined in accordance with clause 6.15

$n =$ end date, determined in accordance with clause 6.15

6.15 Start dates and end dates for application of profiles

- 6.15.1 If the *metering data* is an *actual meter reading*:

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- (a) the start date is the start of the **gas day** of the previous **meter** reading; and
- (b) the end date is the end of the **gas day** prior to the current **meter** reading date.

6.15.2 If the **metering data** is an estimate:

- (a) the start date is the later of:
 - (i) the start of the first **gas day** of the **month**;
 - (ii) the start of the **gas day** of the previous **meter** reading (whether actual or estimate); and
 - (iii) the start of the first **gas day** on which the **delivery point** is transferred to a new **retailer**;
- (b) the end date is the earlier of:
 - (i) the end of the last **gas day** of the **month**; and
 - (ii) the end of the **gas day** of the estimate **meter** reading date.

6.16 Adjustment to monthly metering data to correct for estimated quantities

6.16.1 If the **metering data** for a **metering installation** has been estimated in a **month**, then in the **month** when the **actual meter reading** occurs, the **metering data** for that **month** must be adjusted by the **metering data provider** by the difference between the actual **metering data** and the estimated **metering data** in the previous **month(s)**.

6.16.2 The **metering data provider** must provide to the **allocation agent**, for each **allocation group**, the adjustments for prior months as a proportion of the **metering data** for that **month**. This data must be provided by 8:00 pm on the third **business day** of the **month**.

7 Allocation

7.1 Rights of an allocation agent

An *allocation agent* may:

- (a) when requested to approve a *static deemed profile*, accept or, subject to clause 6.12.1, reject it;
- (b) review an existing *static deemed profile*, whereupon the party which originally submitted the *static deemed profile* is, subject to clause 6.12.1, bound by the outcome of the review;
- (c) in exceptional circumstances, where adequate data is not otherwise available, require a *retailer* to have installed an *interval metering installation*, to check the validity of any *static deemed profile* whereupon that *retailer* must comply with such requirement;
- (d) request a party to provide whatever information is reasonably required to conduct an *allocation* and that party must comply promptly with the request, to the extent it is able to do so;
- (e) impose on parties any reasonable procedures which may be necessary to conduct an *allocation* and which are not inconsistent with the terms of this *Code*. Parties affected must follow any such procedures;
- (f) make reasonable assumptions which will allow an *allocation* to be completed if insufficient information is available when required or the information is of suspect accuracy;
- (g) correct any previous *allocation* if information comes to hand which proves it to be materially in error;
- (h) levy charges on any party who, through late provision of information, causes additional work in calculating and notifying allocated quantities, whereupon that party must pay the same; and

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- (i) contract to provide other services to parties (such as preparation of a **static deemed profile**, calculating corrections for metering errors, or preparation of data normally provided by parties to the **allocation agent** at month end).

7.2 Obligations of an allocation agent:

An **allocation agent** must:

- (a) use the **allocation** methodology and process provided for in, and otherwise comply with, this **Code**;
- (b) act in an impartial manner in its dealings with all parties;
- (c) except as otherwise required by law or for the proper purposes of carrying out its role as **allocation agent** in accordance with this **Code**, not disclose to any third party information relating to any party without that party's consent;
- (d) provide each party to an **allocation agreement** with that **allocation agent**, or persons nominated by such a party ("entitled parties"), with the quantities of **gas** allocated to that party in respect of the **receipt points** covered by the **allocation agreement**;
- (e) on request, provide an **auditor** with whatever information is necessary to enable that **auditor** to determine whether an **allocation** has been performed correctly;
- (f) reconcile over time previously allocated quantities based on estimates, and **actual meter readings**, ensuring an appropriate estimating methodology is used;
- (g) when requested to approve a **static deemed profile**, accept or, subject to clause 6.12.1, reject it;
- (h) ensure that any employees or agents of the **allocation agent** are bound by the same confidentiality obligations as the **allocation agent**;
- (i) maintain records of all data relating to every **allocation** in a tidy and accessible format; and
- (j) transfer a full set of **allocation** files to any new **allocation agent** appointed to take over **allocation** at any **receipt points** for which the **allocation agent** had responsibility.

7.3 Allocation agreement and allocation agent's charges

- 7.3.1 A person must become a party to an *allocation agreement* before trading any *gas* on the downstream *distribution system*. If there is an existing *allocation agreement* for the relevant *receipt point* that person shall become a party to that *allocation agreement*.
- 7.3.2 If there is no existing *allocation agreement* for a *receipt point*, all persons wishing to share that *receipt point* shall use *best endeavours* to agree upon an *allocation agent*. If the persons are unable to reach agreement within 20 *business days* of commencing discussions with each other, any of those persons may request the *Director of Gas* to nominate an *allocation agent*.
- 7.3.3 A *retailer* who shares in a *receipt point* and any other person who is fiscally affected by the *allocation* of quantities at a *receipt point* may not be the *allocation agent* for that *receipt point*.
- 7.3.4 An *allocation agreement* will set out the terms on which the *allocation agent* will provide *allocation* services to the parties to a shared *receipt point*. An *allocation agreement* must not contain provisions which conflict with, or are inconsistent with, the provisions of this *Code*. To the extent that an *allocation agreement* does contain provisions which conflict with or are inconsistent with the provisions of this *Code*, the provisions in this *Code* will prevail and the provisions of the *allocation agreement* will have no effect.
- 7.3.5 An *allocation agent* may only recover its costs for providing *allocation* services by way of charges to be payable under the *allocation agreement*.
- 7.3.6 As a guideline, the charges payable under an *allocation agreement* will generally cover the following:
- (i) setting up *allocation* files for a new party to an *allocation agreement*;
 - (ii) adding a new site;
 - (iii) approving a *static deemed profile*;
 - (iv) day end information service;
 - (v) month end allocation service; and

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- (vi) hourly rate to cover any irregular or non standard services (e.g. correction of errors, reconciliation, participation in audit).

7.3.7 The schedule of charges must provide for which party or parties are to be charged for the service provided, and the basis of apportionment where applicable.

7.3.8 Separate charges may be specified for any other services provided by the **allocation agent** to any particular party.

7.3.9 The **allocation agent's** charges payable under the **allocation agreement** must be reasonable, transparent, reflective of the cost of providing the services and separately specified.

7.4 Allocation services

7.4.1 The **allocation agent** may provide the following services:

- (a) **Day End Estimated Energy Information Service (“Day End Information Service”)**: Information provided under this service is to assist fulfilling obligations to **gas** suppliers (good faith nominations) and to manage capacity rights and obligations in respect of the **transmission system**. The day end information is not necessarily of “billing quality”.
- (b) **Month End Daily Energy Allocation Service (“Month End Allocation Service”)**: Month end daily **allocation** information is provided for billing **customers** and reconciling bills for transmission services. This information is of “billing quality”.
- (c) **Month End Monthly Energy Allocation Service**: Monthly information may be provided where daily information is not required.

7.4.2 The specific services provided by an **allocation agent** to any party will be specified in the **allocation agreement** between the **allocation agent** and that party.

7.5 Day End Information Service

7.5.1 The **allocation agent** must provide a **Day End Information Service** for each **gas day**.

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7.5.2 If the **metering data** required to provide the **Day End Information Service** has not been provided to the **allocation agent** as required under clause 6.9, the **allocation agent** must estimate the **metering data** in accordance with clause 6.6 of this **Code**.

7.5.3 The **allocation agent** must calculate the estimated residual daily quantity of **gas** for each **receipt point**, as follows:

<p>Residual receipt point quantity_{<i>i</i>} = Energy inflow to receipt point_{<i>i</i>} - (ΣIM_{<i>i</i>}) + SDP_{<i>i</i>}) x (1 + loss factor)</p> <p>where <i>i</i> = gas day i IM = metering data from interval metering installations with telemetry (allocation group 1) SDP = estimated daily quantity for the static deemed profile (allocation group 3)</p>

7.5.4 The **allocation agent** must allocate the estimated residual daily quantity of **gas** for each **receipt point** to each **retailer** as follows:

<p>Residual receipt point quantity for retailer $r_i = \chi_n$ Residual receipt point quantity_{<i>i</i>}</p> <p>where $\chi_m = \frac{(\text{Receipt point load}_{m-1} - \sum IM_{m-1} - SDP_{m-1})_r}{\text{Receipt point load}_{m-1} - \sum IM_{m-1} - SDP_{m-1}}$</p> <p><i>i</i> = gas day i <i>r</i> = retailer r <i>m</i> = month m IM = metering data from interval metering installations with telemetry (allocation group 1) SDP = estimated daily quantity for the static deemed profile (allocation group 3)</p>
--

7.5.5 The **allocation agent** must allocate the daily **receipt point** quantity to each **retailer** as follows:

<p>Daily quantity of gas for retailer r_i = ΣIM_{<i>ir</i>} + SDP_{<i>ir</i>} + Residual receipt point quantity for retailer r_i</p> <p>where <i>i</i> = gas day i</p>
--

$r = \text{retailer } r$

IM = *metering data* from *interval metering installations* with telemetry (*allocation group 1*)

SDP = estimated daily quantity for the *static deemed profile* (*allocation group 3*)

7.5.6 The *allocation agent* must provide the Day End Information to the parties that have contracted for that service by 5:00 pm on the first *business day* following the end of the *gas day*.

7.6 Month End Allocation Service

7.6.1 The *allocation agent* must provide a *Month End Allocation Service* at the end of each *month*.

7.6.2 If the *metering data* required to provide the *Month End Allocation Service* has not been provided to the *allocation agent* as required under clause 6.9, the *allocation agent* must estimate the *metering data* in clause 6.6 of this *Code*.

7.6.3 The *allocation agent* must calculate the *residual unaccounted for gas (UFG)* for the *month*, as follows:

$$\text{Residual UFG}_m = \frac{(\sum \text{IM}_m + \sum \text{MRBM}_m + \sum \text{EBM}_m) \times (1 + \text{loss factor})}{\sum \text{Energy inflows to all receipt points}_m} - 1$$

where $m =$ *month*

IM = *metering data* from *interval metering installations* (*allocation groups 1 and 2*)

MRBM = *metering data* from monthly read *basic metering installations* (*allocation groups 3 and 4*)

EBM = *metering data* (estimated) from *basic metering installations* not read on a monthly basis (*allocation groups 5 and 6*)

7.6.4 The *allocation agent* must provide the *residual unaccounted for gas* for each *month* to the *Director of Gas*, by the fifth *business day* following the end of the *month*.

7.6.5 The *allocation agent* must allocate the monthly *receipt point* quantity for each *receipt point* to each *retailer*, as follows:

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$$\text{Monthly quantity of gas for retailer } r_m \\ = (\sum_r \text{IM}_m + \sum_r \text{MRBM}_m + \sum_r \text{EBM}_m \times (1 + \text{Residual UFG}_m) \times (1 + \text{loss factor}))$$

where $m =$ **month**

IM = **metering data** from **interval metering installations (allocation groups 1 and 2)**

MRBM = **metering data** from monthly read **basic metering installations (allocation groups 3 and 4)**

EBM = **metering data** (estimated) from **basic metering installations** not read on a monthly basis (**allocation groups 5 and 6**)

7.6.6 The **allocation agent** must allocate the **receipt point** quantity for each **gas day** in the **month** for each **receipt point** to each **retailer**, as follows:

$$\text{Daily quantity of gas for retailer } i \\ = (\sum_i \text{IM} + \sum_i \text{Daily metering data calculated in accordance with clause 6.12.2 (allocation group 3)} \\ + \sum_i \text{Daily metering data calculated in accordance with clause 6.13.2 (allocation group 5)} \\ + \sum_i \text{Daily metering data calculated in accordance with clause 6.14.2(a) (allocation group 4)} \\ + \sum_i \text{Daily metering data calculated in accordance with clause 6.14.2(b) (allocation group 6)}) \\ \times (1 + \text{loss factor})$$

where $i =$ **gas day**

IM = **metering data** from **interval metering installations (allocation groups 1 and 2)**

7.6.7 The **allocation agent** must provide the Month End Monthly Information Service and Month End Daily Information Service to the parties that have contracted for the service by 8:00 am on the fourth **business day** following the end of the **month**.

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7.7 Adjustment to allocations to correct for estimated quantities

If the adjustments to the *metering data* for prior *months*, as a proportion of the *metering data* for that *month*, as advised to the *allocation agent* under clause 6.16.2, are material, then the *allocation agent* must, in consultation with the affected parties:

- (a) re-calculate the monthly *metering data* for the affected *months*;
- (b) re-calculate the *residual UFG* for the affected *months*;
- (c) re-calculate the daily *metering data* for the affected *months*;
- (d) re-calculate the monthly quantity of *gas* for each *retailer* for the affected *months*;
- (e) re-calculate the daily quantity of *gas* for each *retailer* for the affected *months*; and
- (f) provide the updated information service to the affected parties contracted for the relevant service.

7.8 Audit

7.8.1 Any party affected by an *allocation* may, by written notice to the *allocation agent*, request an audit of the *allocation*.

7.8.2 Unless the *allocation agent* reasonably considers an audit request to be vexatious or trivial, the *allocation agent* must:

- (a) upon receiving a notice referred to in paragraph 7.8.1, select an *auditor*. The *auditor* is to be a person who is independent of and acceptable to all of the parties affected by the relevant *allocation*. The *allocation agent* must consult with the requesting party regarding the identity of the *auditor*, but the *allocation agent's* decision as to the identity of the *auditor* will be final;
- (b) appoint the person selected as *auditor* on terms and conditions whereby the *auditor* agrees to comply with the provisions of this clause (insofar as they provide for rights and obligations on the part of the *auditor*);
- (c) upon appointment of the *auditor*, determine, in consultation with the requesting party and the *auditor*, the terms of reference for the audit;

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- (d) obtain from the **auditor** an estimate of its fees and expenses for the conduct of and preparation of reports in relation to, the audit (the “estimated cost of the audit”); and
- (e) notify the requesting party and each other party likely to be affected fiscally in the event of an **allocation** being amended as a result of an audit (an “affected party”) of:
 - (i) the name of the **auditor**;
 - (ii) the names of the requesting party and all affected parties;
 - (iii) the terms of reference; and
 - (iv) the estimated cost of the audit.

7.8.3 An **allocation** which was performed more than 18 months prior to the requesting party’s notice of request for an audit is not to be the subject of an audit unless the **auditor** determines that, on the information presented to the **auditor** (prior to conducting an audit of the **allocation**), there is prima facie evidence of a material breach of this **Code** or that the result of the **allocation** was unfair or inequitable.

7.8.4 The **auditor** is to conduct the audit in accordance with the terms of reference with due and proper diligence in order to determine (unless the terms of reference otherwise provide) whether the **allocation agent** has performed the **allocation** in accordance with this **Code** and whether or not the results of the **allocation** are fair and equitable as between the affected parties.

7.8.5 The **allocation agent**, the requesting party and each affected party is to provide to the **auditor** such information as the **auditor** may reasonably require for the conduct of the audit.

7.8.6 On completion of the audit, the **auditor** is to produce and deliver the following reports:

- (a) a full report (which may contain confidential information obtained in the conduct of the audit) to the **allocation agent**; and

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- (b) a report which summarises the full report (and excludes any confidential information obtained in the conduct of the audit), to the requesting party and the affected parties.

7.8.7 The reports are to:

- (a) set out the *auditor's* findings on the terms of reference; and
- (b) unless the terms of reference provide otherwise, make:
 - (i) findings as to whether or not the *allocation agent* has performed the *allocation* in accordance with this *Code* and the results of the *allocation* are fair and equitable;
 - (ii) recommendations as to how any identified deficiency should be remedied; and
 - (iii) recommendations as to who should pay the *auditor's* fees and expenses in respect of the conduct of the audit and production and delivery of the reports.

7.8.8 In formulating a recommendation as to which party should bear the cost of the conduct of an audit and the preparation and delivery of the reports, the *auditor* shall have regard to the following principles:

- (a) if the *allocation agent* has performed the *allocation* in accordance with this *Code* and all other parties have performed their respective obligations under this *Code*, the requesting party is to pay;
- (b) if the *allocation agent* has not performed the *allocation* in accordance with this *Code* and all other parties have performed their respective obligations under this *Code*, then the *allocation agent* is to pay;
- (c) if one of the affected parties has not performed its obligations under this *Code*, then that affected party is to pay; and
- (d) if more than one of the requesting party, the *allocation agent* and the affected parties have not performed their respective obligations under this *Code*, then those parties in default must pay in proportions which reflect the relative materiality of their defaults.

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7.8.9 The **allocation agent** must consider the **auditor's** recommendation as to who should pay the **auditor's** fees and expenses in respect of the conduct of the audit and production and delivery of reports and, unless there are compelling reasons to do otherwise, make a determination in accordance with the **auditor's** recommendation.

7.8.10 If the terms under which the **auditor** is engaged so require, the requesting party, prior to the commencement of the audit, is to:

- (a) provide an undertaking to the **auditor** to pay the **auditor's** fees and expenses;
- (b) pay a deposit to the **auditor** as security for such payment; or
- (c) provide to the **auditor** a bond in favour of the **auditor** from a bank registered in Australia (or other person approved by the **auditor**) in an amount equal to the estimated cost of the audit as security for payment on terms satisfactory to the **auditor**.

7.8.11 For the avoidance of doubt, the **auditor** may require the requesting party to pay in the first instance, and may use any deposit or exercise rights under any bond accordingly.

7.8.12 If the **allocation agent** determines that some other party must pay, or pay a portion, then that other party must, on the demand of the requesting party, immediately reimburse the requesting party accordingly together with interest on the amount to be reimbursed from the date of payment to the **auditor** by the requesting party to the date of reimbursement at a rate equal to the 90 day commercial bill rate applying on the date of payment to the **auditor**.

7.8.13 The **auditor** must keep any confidential information obtained by the **auditor** in conducting the audit confidential and must not disclose any such information to any person (other than pursuant to clause 7.8.7). Upon the completion of the audit, the **auditor** must return all copies of confidential information to the person from whom it was obtained.

7.8.14 If the **auditor's** reports recommend that an **allocation** should be amended in any way, the **allocation agent** is to implement the amendment as soon as is reasonably possible. Prior to doing so, the **allocation agent** will notify the affected parties of its intention to amend and must seek comment from those parties as to the best means of implementation. The **allocation agent** shall consider any such comments made within 10 **business days** of the date it gave notice to the requesting party and the affected

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parties. The ***allocation agent's*** decision on how best to implement the amendment will be final.

8 Reconciliation

8.1 Obligation to do reconciliations

The *allocation agent* must undertake:

- (a) a *reconciliation* for each *month*:
 - (i) by the tenth *business day* after the end of the *month*;
 - (ii) by the tenth *business day* two months after the end of the *month*; and
 - (iii) by the tenth *business day* one year after the end of the *month*;
- (b) an annual reconciliation pursuant to clause 8.2; and
- (c) any additional reconciliations that may be required, pursuant to clause 8.3.

8.2 Annual reconciliation

8.2.1 The *allocation agent* must undertake an annual reconciliation in October each year to:

- (a) verify the reasonableness of the estimating methodology and resulting estimates used in any *allocation* during the previous 12 months;
- (b) determine if an alternative estimating methodology needs to be used to provide more accurate estimates;
- (c) where there is a need to implement an alternative methodology, determine an implementation timeframe; and
- (d) provide any data that may be required by the *distributor* to determine the *loss factors* to be used in the following year.

8.2.2 The *distributor* must calculate the *loss factors* for each year and provide them to the *Director of Gas* by the end of November in the preceding year.

8.3 Additional reconciliations

The *allocation agent* may undertake additional reconciliations from time to time to verify the reasonableness of estimates produced using any new estimating methodology.

9 Definitions and interpretation

9.1 Definitions

In this *Code*, unless the context otherwise requires:

“acceptance testing” means the testing and setting by a manufacturer or installer on a *meter*, *corrector*, or *metering installation* to establish the initial calibration of the *meter*, *corrector*, or *metering installation*.

“actual meter reading” means the physical collection of *metering data* by way of a *scheduled meter reading*, a *special meter reading* or a *final meter reading*.

“affected party” means a party who may be affected by the possible inaccuracy of a *metering installation* or *metering data* from that *metering installation*, or by the possible inaccuracy of an *allocation*, as the context requires.

“allocation” means the process of attributing quantities of energy to persons with an interest in any *gas* at a shared *receipt point*.

“allocation agent” means the person responsible for *allocation* in respect of a particular *receipt point*. An *allocation agent* will be certified by the *Director of Gas*, and will operate subject to the terms of the certification.

“allocation agreement” means an agreement between the users of a shared *receipt point* and the *allocation agent* for that *receipt point*.

“allocation group” means the group of *metering installations* for which the daily *metering data* is determined using the same process.

“applicable regulatory instrument” means any Act or regulatory instrument made under an Act, or a regulatory instrument issued by the *Director of Gas*, which applies to a *distributor*, *retailer*, *metering provider* or *metering data provider*.

“associate” means a subordinate member of a party.

“auditor” means an auditor appointed under clause 6.13.1 or clause 7.8 of this *Code*, as the context requires.

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“basic metering installation” means a **metering installation** that does not include an **interval meter**.

“best endeavours” means to act in good faith and use all reasonable effort, skills and resources.

“business day” means:

- (a) in relation to interaction between the **distributor** or the **retailer** and a **customer** a day on which banks are open for general banking business in the region of Tasmania in which the **customer’s supply** address is located, excluding a Saturday or Sunday; and
- (b) in all other cases a day on which banks are open for general banking business in Hobart, excluding a Saturday or Sunday.

“Code” means this Gas Customer Transfer and Reconciliation Code.

“core principles” means the principles set out in clause 1.3 of this **Code**.

“correction factor” means a factor that is applied to a **meter** reading to convert the volume to the volume at standard conditions. Factors may be applied to correct for deviations of temperature, pressure, altitude and compressibility.

“corrector” means a device which adjusts uncorrected quantity of **gas** from actual to standard conditions for billing and other purposes.

“customer” has the meaning given to that term in the **Gas Act**.

“customer transfer notice” means a notice described in clause 3.3.1 of this **Code**.

“data logger” means a device that collects and stores data relating to the quantity, temperature and pressure of **gas** and is capable of either:

- (a) transferring recorded data to a portable reading device; or
- (b) being accessed electronically through a data collection system.

“Day End Information Service” means the service referred to in clause 7.5 of this **Code**.

“deemed profile” means the estimated daily usage profile of a **delivery point**.

“defective” means, in relation to a **metering installation**, that it is not meeting the **minimum standards**.

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“delivery point” means:

- (a) the outlet of a *meter* used to measure a *customer’s gas* use; or
- (b) if paragraph (a) does not apply, the point of supply of *gas* between the *distributor* and the *customer*.

“Director of Gas” means the Director of Gas appointed pursuant to the *Gas Act*.

“disclosee” means a person to whom a *metering data provider*, an *allocation agent*, a *distributor* or a *retailer* has disclosed or wishes to disclose *metering data*.

“distribution licence” means a licence to construct and/or operate *distribution systems* under the *Gas Act*.

“distribution system” has the meaning given to that term under the *Gas Act*.

“distributor” means:

- (a) a person who holds a *distribution licence*; or
- (b) a person who is, by virtue of section 117 of the *Gas Act*, exempt from the requirement to obtain a *distribution licence*.

“dynamic deemed profile” or **“DDP”** means a *deemed profile* which changes in accordance with information obtained from interval metering at one or several sample sites representative of the demand of one or more *delivery points*.

“EST” means Australian Eastern Standard Time.

“estimated read” means an estimate in lieu of a *meter* reading.

“explicit informed consent” means the consent gained from a *customer* in accordance with clause 3.2 of this *Code*.

“final meter reading” means the last *meter* reading that is taken for a *customer* before:

- (a) transferring to a new *retailer*; or
- (b) discontinuing its supply of *gas*.

“gas” has the meaning given to that term in the *Gas Act*.

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“**Gas Act**” means the *Gas Act 2000* (Tasmania).

“**gas day**” means a period of 24 consecutive hours, beginning at 6.30 a.m. *EST* on one day and ending at 6.30 am *EST* on the next day. When referring to a particular *gas day* the date of that day will be the date on which that *gas day* begins.

“**installation database**” means a database of calibration data which a *metering provider* is required, pursuant to this *Code*, to keep in respect of its *metering installations*.

“**interested party**” means a person who, in the opinion of the *Director of Gas*, has, or who identifies itself to the *Director of Gas* as having, an interest in changes to the *Code*.

“**interval meter**” means a *meter* which has associated *data logging* facilities to allow *meter* readings to be recorded at pre-determined intervals.

“**interval metering installation**” means a *metering installation* with an *interval meter*.

“**loss factor**” means the long term estimation of the losses applicable to a *distribution system* or part thereof as determined from time to time by a *distributor*, expressed as a percentage of the metered quantities of *gas* entering the *distribution system* at the *receipt point*.

“**meter**” means an instrument which measures the quantity of *gas* passing through it and includes associated equipment attached to the instrument to filter, control or regulate the flow of *gas* but does not include a meter which is part of a *transmission system*.

“**meter class**” means a group of *meters* in which:

- (a) all the *meters* have been made to the same specifications by the same manufacturer;
- (b) there are no significant differences in components or materials between the *meters*; and
- (c) all the *meters* have been sealed with the same date code.

“**metering data**” means the data obtained from a *metering installation*, the processed data or estimated data.

“**metering data provider**” means the person responsible for collecting and processing *metering data*.

“**metering installation**” means the *meter* and associated equipment and installations, which may include *correctors*, regulators, filters, *data loggers* and telemetry relating to a *delivery point*.

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“metering provider” means the person responsible for the provision, installation and maintenance of a **metering installation**.

“minimum standards” means the minimum standards referred to in clause 4.6 of this **Code**.

“month” means the period beginning at 6.30 a.m. on the first **gas day** of a calendar month and ending at 6.30 am on the first **gas day** of the following calendar month.

“Month End Allocation Service” means the service referred to in clause 7.6 of this **Code**.

“NATA” means the National Association of Testing Authorities, Australia.

“National Metering Identifier” or **“NMI”** means the unique 10 numeric digit identifier assigned to a **delivery point** by a **distributor**.

“Net System Load Profile” or **“NSLP”** means the net throughput of a **receipt point** after deducting **interval metering data**, **static deemed profile** and **dynamic deemed profile** quantities from total **receipt point** quantities.

“NMI checksum” means the single numeric digit identifier that is calculated as a check sum.

“NSRD” means the date of the next **scheduled meter reading**.

“OTTER” means the office of the **Director of Gas**.

“pipeline licence” means a licence to operate and maintain a pipeline for carrying **gas** under the *Gas Pipelines Act 2000* (Tasmania).

“pipeline operator” means a person who holds a **pipeline licence**.

“receipt point” means a point at which **gas** passes from a **transmission system** into a **distribution system** or from a **distribution system** into a **distribution system**.

“reconciliation” means the process performed by the **allocation agent** to compare actual metered quantities with estimated quantities for the same **metering installations** and, where the error is considered material, correcting previously allocated quantities and/or requiring an alternative estimation methodology to be adopted.

“related body corporate” means in relation to a body corporate, a body corporate that is related to the first mentioned body within the meaning of the *Corporations Act 2001*.

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“Residual UFG” means the **UFG** minus the **loss factor**, expressed as a percentage of the metered quantities of **gas** entering the **distribution system** at the **receipt point**.

“retailer” means:

- (a) a person who holds a **retail licence**; or
- (b) a person who is, by virtue of section 117 of the **Gas Act**, exempt from the requirement to obtain a **retail licence**.

“retail licence” means a licence to sell **gas** by retail issued under the **Gas Act**.

“scheduled meter reading” means an **actual meter reading** on a pre-determined cycle, usually monthly or two monthly.

“special meter reading” means an **actual meter reading** performed outside of the usual reading cycle for a **meter**.

“static deemed profile” or **“SDP”** means a pre-determined estimate of the quantity of **gas** a **customer** will take on each day, and which for the purposes of the **Month End Allocation Service** defines the daily profile through a particular **month**.

“storage facility” means a facility for the storage of large quantities of **gas** including liquefied natural gas storage services and underground storage facilities.

“supply” means the delivery of **gas** by means of a **distribution system** to a **customer’s delivery point**.

“transmission system” means a pipeline or a system of pipelines, for the high pressure transmission of **gas** and all related facilities, together with:

- (a) all structures for protecting or supporting the pipeline or system of pipelines; and
- (b) facilities for the compression of **gas**, the maintenance of the pipeline or system of pipelines and the injection or withdrawal of **gas**; and
- (c) all fittings, appurtenances, appliances, compressor stations, odourisation plants, scraper stations, valves, telemetry systems (including communications towers); and
- (d) works and buildings used in connection with the pipeline or system of pipelines,

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but excluding all *storage facilities* and *distribution systems*.

“*type testing*” means testing conducted to establish the fitness for purpose of a new *metering installation* type.

“*unaccounted for gas*” or “*UFG*” means the difference between the amount of *gas* entering the *distribution system* at all *receipt points* and the amount of *gas* withdrawn from the *distribution system* at all *delivery points* including but not limited to leakage or other losses, discrepancies due to metering inaccuracies and variations of temperature, pressure and other parameters.

9.2 Interpretation

In this *Code*, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this *Code*; and
- (b) words importing the singular include the plural and vice versa; and
- (c) words importing a gender include any gender; and
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency; and
- (e) a reference to a condition, clause, schedule or part is to a condition, clause, schedule or part of this *Code*; and
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement; and
- (g) a reference to any statute, regulation, proclamation, order in council, ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute; and

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- (h) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document; and
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns; and
- (j) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this **Code** have a corresponding meaning; and
- (k) a period of time:
 - (1) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (2) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (l) an event which is required under this **Code** to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**; and
- (m) unless otherwise specified, times are in local Tasmanian time.

Schedule 1 – Filename format for customer transfer notices

The filename format must be XXXXX RRRR DDDD yymmdd nnn.xls, where:

- (A) XXXXX identifies the data contained as follows:
- “NRCTN” for the new Retailer Customer Transfer Notice;
 - “DCTR” for the Distributor Customer Transfer Response;
 - “MPCTR” for the current Metering Provider Customer Transfer Response (separate file name only required where responded to separately from a *distributor*’s response);
 - “MDPCTR” for the current Metering Data Provider Customer Transfer Response (separate file name only required where responded to separately from a *distributor*’s or a *metering provider*’s response).
- (B) RRRR identifies the new *retailer* (maximum 4 alpha);
- (C) DDDD identifies the *distributor* (maximum 4 alpha);
- (D) yymmdd identifies the date of the Customer Transfer Notice established by the new *retailer*;
- (E) nnn identifies the batch number if more than one batch of transfers is issued on the same day (001, 002 etc); and
- (F) XXXXX is the only component of the file name format that is to be amended by each responding party.

Schedule 2 – Validation, Substitution and Estimation – Interval Metering Installation

1. Requirement to validate meter readings

Actual meter readings will be required to be validated in accordance with clause 6.5.1(a) of this *Code*. The validation rules that may be applied to the *metering data* from the *meter* of an *interval metering installation* are:

- Consumption *metering data* for the *meter* reading period = sum of *interval metering data* for the *meter* reading period;
- Accumulated *meter* reading value is numeric and > 0 ;
- Accumulated *meter* reading value is \geq previous accumulated *meter* reading value;
- Accumulated *meter* reading value passes high/low test;
- *Meter* reading date $>$ previous *meter* reading date;
- Maximum value (to ensure that no spikes are created);
- Null checks;
- Dial capacity and decimal point check; and
- *Metering data* is consistent with the correct *meter* type for that *delivery point*.

2. Requirement to produce substituted metering data

In accordance with clause 6.5.1(b) of this *Code*, *metering data* for an *interval metering installation* will be required to be substituted where:

- (a) the *actual meter reading* fails the validation tests;
- (b) there is a failure of the *metering installation*; or
- (c) an inspection or test of the *metering installation* establishes that a measurement error exists.

3. Requirement to produce estimated metering data

In accordance with clause 6.6 of this *Code*, *metering data* for an *interval metering installation* will be required to be estimated where the *metering data* cannot be obtained in the timeframe required for settlement of the market.

4. Metering data provider obligations

- (a) The *metering data provider* may use Types 1, 2, 3, 4, 5, 6, 7 or 8 in accordance with clause 5 of this schedule 2, when the *metering data* is required to be substituted.
- (b) The *metering data provider* may use Types 1, 2, or 3 in accordance with clause 5 of this schedule 2, when the *metering data* is required to be estimated.
- (c) The *metering data provider* may use Type 2 except where the first *actual meter reading* has not been undertaken.
- (d) The *metering data provider* may use Type 3, except where:
 - (1) the first *actual meter reading* has not been undertaken; or
 - (2) the *scheduled meter reading* frequency is less frequent than monthly and the data from the same, or similar, *meter* reading period in the previous year is available.
- (e) The *metering data provider* may use Types 4, 5, 6 and 7 in the circumstances described in clauses 5.4, 5.5, 5.6 and 5.7 of this schedule 1, respectively.
- (f) The *metering data provider* may use Type 7 prior to the first *actual meter reading* being undertaken.
- (a) The *metering data provider* may use Type 8 where there is an error in the *meter* pressure and/or *gas* temperature
- (h) The *metering data provider* must notify the *allocation agent*, the *distributor* and the *retailer* where substituted or estimated *metering data* is used.
- (i) The *metering data provider* must ensure that for all Types, except Type 5, substituted or estimated *metering data* is based on an *actual meter reading*, and is not based on *metering data* that has previously been estimated or substituted.

5. Substitution and Estimation Types

The techniques for substituting and estimating *metering data* for *interval metering installations* are provided in this clause.

5.1 Type 1

Where there is another *interval metering installation* at the same measurement point for the same interval data periods as that being substituted for, the *metering data provider* must substitute or estimate the *metering data* using *metering data* from that *interval metering installation*.

5.2 Type 2

The *metering data provider* may substitute or estimate the *metering data* using the data from the “Nearest Equivalent Day” or “Like Day” from the same, or similar, *meter* reading period in the previous year. The “Nearest Equivalent Day” or “Like Day” is determined from the table below.

Day	“Nearest Equivalent Day” or “Like Day” (in order of availability)
Monday	Monday❖❖ Monday❖
Tuesday	Tuesday❖❖ Wednesday❖❖ Tuesday❖ Wednesday❖
Wednesday	Wednesday❖❖ Tuesday❖❖ Thursday❖❖ Wednesday❖ Thursday❖ Tuesday❖
Thursday	Thursday❖❖ Wednesday❖❖ Tuesday❖❖ Thursday❖ Wednesday❖ Tuesday❖
Friday	Friday❖❖ Friday❖
Saturday	Saturday❖❖ Saturday❖
Sunday	Sunday❖❖ Sunday❖
Substitution or estimates for ‘Like Day’ to be as detailed above, unless: <ul style="list-style-type: none"> ◆ No readings are available on the first listed day, then the next listed preferred day is to be used. ◆ The day was a public holiday, in which case the most recent Sunday is to be used. ◆ The day was not a public holiday and the ‘Like Day’ is a public holiday, in which case the ‘Like Day’ to be used must be the most recent day that is not a public holiday, Saturday or Sunday. <ul style="list-style-type: none"> ❖❖ Occurring in the same week as the day in the previous year. ❖ Occurring in the week preceding that in which the substitution day occurs in the previous year. 	

5.3 Type 3

The *metering data provider* may substitute or estimate the *metering data* using the data from the “Nearest Equivalent Day” or “Like Day” from the previous *meter* reading period. The “Nearest Equivalent Day” or “Like Day” is determined from the table below.

Day	“Nearest Equivalent Day” or “Like Day” (in order of availability)
Monday	Monday ❖❖ Monday ❖
Tuesday	Tuesday ❖❖ Wednesday ❖❖ Tuesday ❖ Wednesday ❖
Wednesday	Wednesday ❖❖ Tuesday ❖❖ Thursday ❖❖ Wednesday ❖ Thursday ❖ Tuesday ❖
Thursday	Thursday ❖❖ Wednesday ❖❖ Tuesday ❖❖ Thursday ❖ Wednesday ❖ Tuesday ❖
Friday	Friday ❖❖ Friday ❖
Saturday	Saturday ❖❖ Saturday ❖
Sunday	Sunday ❖❖ Sunday ❖
Substitutions or estimations for ‘Like Day’ to be as detailed above, unless: <ul style="list-style-type: none"> ◆ No readings are available on the first listed day, then the next listed preferred day is to be used. ◆ The day was a public holiday, in which case the most recent Sunday is to be used. ◆ The day was not a public holiday and the ‘Like Day’ is a public holiday, in which case the ‘Like Day’ to be used must be the most recent day that is not a public holiday, Saturday or Sunday. <ul style="list-style-type: none"> ❖❖ Occurring in the last whole week of the previous <i>meter</i> reading period. ❖ Occurring in the week preceding the last whole week of the previous <i>meter</i> reading period 	

5.4 Type 4

Previously used substituted *metering data* can be changed, prior to the *actual meter reading*, where the *distributor* and the *retailer* have agreed, on the basis of site- or

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customer-specific information, that the original substituted **metering data** is in error and a correction is required.

5.5 Type 5

Where substituted **metering data** is to be created for periods up to, but not exceeding two (2) hours, it can be created using simple linear interpolation.

5.6 Type 6

- (a) The **distributor** and the **retailer** may agree to use another method of substitution (which may be a modification of an existing Type) where none of the existing Types is applicable.
- (b) The specifics of this Type may involve a globally applied method or a site-specific method.

5.7 Type 7

Prior to the first **actual meter reading**, the **metering data** may be substituted using a method agreed between the **distributor**, the **retailer** and the **metering data provider**.

5.8 Type 8

Where the measurement error has arisen from errors in the **gas** temperature and/or **meter** pressure, the **metering data** may be substituted using the **meter** reading and the estimates for the **gas** temperature and/or **meter** pressure.

Schedule 3 – Validation and Substitution – Basic Metering Installation

1. Requirement to validate meter readings

Actual meter readings will be required to be validated in accordance with clause 6.5.2(a) of this *Code*. The validation rules that may be applied to the *metering data* from the *meter* of a *basic metering installation* are:

- *Meter* reading value is numeric and > 0;
- *Meter* reading value is >= previous *meter* reading value;
- *Meter* reading value passes high/low test;
- *Meter* reading date > previous *meter* reading date;
- Null checks;
- Dial capacity and decimal point check; and
- *Metering data* is consistent with the correct *meter* type for that *delivery point*.

2. Requirement to produce substituted metering data

In accordance with clause 6.5.2(b) of this *Code*, *metering data* for a *basic metering installation* will be required to be substituted where:

- (a) the *actual meter reading* fails the validation tests;
- (b) there is a failure of the *metering installation*; or
- (c) an inspection or test of the *metering installation* establishes that a measurement error exists.

3. Requirement to produce estimated metering data

In accordance with clause 6.6 of this *Code*, *metering data* for a *basic metering installation* will be required to be estimated where the *metering data* cannot be obtained in the timeframe required for settlement of the market.

4. Metering data provider obligations

- (a) The *metering data provider* may use Types 1, 2, 3, 4, 5 or 6, in accordance with clause 5 of this schedule 3, when the *metering data* is required to be substituted.

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- (b) The **metering data provider** may use Types 1, 2, or 3 in accordance with clause 5 of this schedule 3, when the **metering data** is required to be estimated.
- (c) The **metering data provider** may use Type 6 where there is an error in the **meter** pressure and/or **gas** temperature.
- (d) The **metering data provider** must notify the **distributor** and the **retailer** where substituted or estimated **metering data** is used.
- (e) The **metering data provider** must ensure that for all Types, substituted or estimated **metering data** is based on an **actual meter reading**, and is not based on **metering data** that has previously been substituted or estimated.

5. Substitution Types

The techniques for substituting and estimating **metering data** for **basic metering installations** are provided in this clause.

5.1 Type 1

Substitution or estimation

= Average daily consumption from same, or similar, **meter** reading period
last year

* Number of *days* required to be *substituted*

5.2 Type 2

Substitution

= Average daily consumption from previous **meter** reading period

* Number of days required to be substituted or estimated

Note: Where the **scheduled meter reading** frequency is less frequent than monthly, Type 2 is to be used only when the consumption from the same, or similar, **meter** reading period last year is not available.

5.3 Type 3

Substitution or estimation

= Average daily consumption for this same **customer** class with the same
type of usage

* Number of *days* required to be substituted or estimated

Note: Type 3 is to be used only when the consumption from the same, or similar, *meter* reading period last year and the consumption from the previous *meter* reading period are not available.

5.4 Type 4

- (a) The *distributor*, the *retailer*, and the *metering data provider* may agree to use another method of substitution (which may be a modification of an existing Type) where none of the existing Types is applicable.
- (b) The specifics of this Type may involve a globally applied method or a site-specific method.

5.5 Type 5

Previously used substituted *metering data* can be changed, prior to the next *actual meter reading* where the *distributor*, the *retailer* and *metering data provider* have agreed, on the basis of site- or *customer*-specific information, that the original substituted *metering data* is in error and a correction is required.

5.6 Type 6

Where the measurement error has arisen from errors in the *gas* temperature and/or *meter* pressure, the *metering data* may be substituted using the *meter* reading and the estimates for the *gas* temperature and/or *meter* pressure.