

TASMANIA

**GAS INFRASTRUCTURE (MISCELLANEOUS
AMENDMENTS) BILL 2003**

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GAS INFRASTRUCTURE (MISCELLANEOUS AMENDMENTS) BILL 2003

*(Brought in by the Minister for Economic Development,
Energy and Resources, the Honourable Paul Anthony
Lennon)*

A BILL FOR

An Act to amend the *Gas Act 2000* and the *Gas Infrastructure (Miscellaneous Amendments) Act 2002*

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:

Short title

1. This Act may be cited as the *Gas Infrastructure
(Miscellaneous Amendments) Act 2003*.

Commencement

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

Principal Act

3. In this Act, the *Gas Act 2000** is referred to as the
Principal Act.

*No. 92 of 2000

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “contestable customer”;
- (b) by omitting the definition of “foundation customer”;
- (c) by omitting “except in Part 4” from paragraph (a) of the definition of “gas” and substituting “except in Parts 3 and 4”;
- (d) by omitting the definition of “gas-pricing order”;
- (e) by omitting the definition of “non-contestable customer”;
- (f) by omitting the definition of “Regulator”;
- (g) by omitting “Approval” from the definition of “Tribunal” and substituting “Appeal”.

Section 6A repealed

5. Section 6A of the Principal Act is repealed.

Section 8 amended (Functions of Director of Gas)

6. Section 8(2A) of the Principal Act is amended by omitting “of Gas”.

Section 13 amended (Obligation to preserve confidentiality)

7. Section 13(2) of the Principal Act is amended by omitting “, including the Regulator and persons assisting the Regulator”.

Section 14 repealed

8. Section 14 of the Principal Act is repealed.

Part 2, Divisions 4 and 5 repealed

9. Divisions 4 and 5 of Part 2 of the Principal Act are repealed.

Section 23 amended (Application for licence)

10. Section 23(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

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

Section 24 amended (Consideration of application for issue of licence)

11. Section 24(2) of the Principal Act is amended by omitting paragraph (d).

Section 30 amended (Licences conferring exclusive franchise)

12. Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “who has been selected by tender”;
- (b) by omitting from subsection (7)(a) “non-contestable”;
- (c) by omitting from subsection (7)(b) “non-contestable”.

Section 31 repealed

13. Section 31 of the Principal Act is repealed.

Section 32A inserted

14. After section 32 of the Principal Act, the following section is inserted in Division 1:

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.

Section 38 repealed

15. Section 38 of the Principal Act is repealed.

Section 38A amended (Gas codes)

16. Section 38A of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

(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.

- (b) by inserting the following subsections after subsection (6):

(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.

Section 38B amended (Publication and availability of gas codes)

17. Section 38B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(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*.

Section 38C substituted

18. Section 38C of the Principal Act is repealed and the following section is substituted:

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.

Part 3, Division 3 repealed

19. Division 3 of Part 3 of the Principal Act is repealed.

Section 53 amended (Mandatory reporting of gas incidents)

20. Section 53 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “of Gas Safety” after “Director”;
- (b) by inserting in subsection (3) “of Gas Safety” after “Director”.

Section 54 amended (Safety and operating plan)

21. Section 54 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “of Gas Safety” after “to the Director”;

- (b) by inserting in subsection (4) “of Gas Safety” after “Director”.

Section 55 amended (Auditing of safety and operating plan for facility)

22. Section 55(2) of the Principal Act is amended by inserting “of Gas Safety” after “Director”.

Section 69 amended (Relevant standard)

23. Section 69 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(b) “of Gas Safety” after “Director”;
- (b) by inserting in subsection (2) “of Gas Safety” after “Director”.

Section 70 amended (Approval of gas appliances)

24. Section 70(3) of the Principal Act is amended by inserting “of Gas Safety” after “Director”.

Section 71 amended (Labelling of gas appliances)

25. Section 71(2)(b) of the Principal Act is amended by inserting “of Gas Safety” after “an appliance is approved by the Director”.

Section 72 amended (Application for approval of gas appliances)

26. Section 72(b) of the Principal Act is amended as follows:

- (a) by inserting in subparagraph (i) “of Gas Safety” after “Director”;
- (b) by inserting in subparagraph (iii) “of Gas Safety” after “Director”;
- (c) by inserting in subparagraph (iv) “of Gas Safety” after “Director”.

Section 79A amended (Prohibition of supply of appliances or components)

27. Section 79A of the Principal Act is amended as follows:

- (a) by inserting in subsection (3) “of Gas” after “Director”;
- (b) by inserting in subsection (5) “of Gas” after “The Director”;
- (c) by inserting in subsection (6) “of Gas” after “Director”;
- (d) by inserting in subsection (7) “of Gas” after “Director”;
- (e) by inserting in subsection (8) “of Gas Safety” after “Director”.

Section 79C amended (Recall of appliances or components)

28. Section 79C(5) of the Principal Act is amended by inserting “of Gas Safety” after “Director”.

Part 4, Division 6 inserted

29. After section 79C of the Principal Act, the following Division is inserted in Part 4:

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.

Section 82 amended (Gas officer's identity card)

30. Section 82(2) of the Principal Act is amended by omitting "must be in a form approved by the Director of Gas and".

Section 102A substituted

31. Section 102A of the Principal Act is repealed and the following section is substituted:

Interpretation

102A. In this Division, "**appropriate authority**" means the Director of Gas or Director of Gas Safety, whichever is appropriate.

Section 110 repealed

32. Section 110 of the Principal Act is repealed.

Section 111 amended (Appeal against decisions)

33. Section 111 of the Principal Act is amended by omitting subsection (2).

Section 115 amended (Reference to Tribunal)

34. Section 115(1) of the Principal Act is amended by omitting ", other than a decision of the Regulator made for the purposes of a gas-pricing order,".

Section 124 amended (Unlawful abstraction or diversion of gas)

35. Section 124 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

(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.

Section 129 amended (Statutory declarations)

36. Section 129 of the Principal Act is amended as follows:

- (a) by omitting “, the Director of Gas Safety or the Regulator, the relevant Director or the Regulator” and substituting “or Director of Gas Safety, the relevant Director”;
- (b) by omitting “verified in accordance with the requirements of the relevant Director or Regulator.” and substituting “so verified.”.

***Gas Infrastructure (Miscellaneous Amendments) Act
2002 amended***

37. Section 11 of the *Gas Infrastructure (Miscellaneous Amendments) Act 2002* is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraph:

- (b) by inserting the following subsections after subsection (2):

(2A) The regulations may prescribe standard conditions that are taken to apply to every permission granted under subsection (1)(e) and, if such standard conditions are prescribed, the conditions that the corporation imposes on a permission granted by it under that subsection apply only in so far as they are not inconsistent with those standard conditions.

(2B) Without limiting the generality of subsection (2A), a standard condition may –

- (a) impose requirements that the gas installer must comply with before, during or after the carrying out of the gas installation work; or
- (b) require the gas installer to meet all or any part of the cost of the gas installation work; or
- (c) require the gas installer to meet all or any part of the costs incurred by the corporation by reason of the proposal to carry out the gas installation work or the carrying out of that work; or

- (d) impose a liability on the gas installer to pay monies to the corporation or any other person in relation to –
 - (i) loss or damage arising from or in connection with the gas installation work; or
 - (ii) costs incurred in making good any deficiency in the gas installation work; or
- (e) impose a liability on the gas installer to meet the cost of repairing any damage to the infrastructure installed by the gas installer resulting from a failure by the gas installer to –
 - (i) record or accurately record the location of the infrastructure; or
 - (ii) inform or accurately inform any person of the location of the infrastructure.

(2C) Monies that are payable to the corporation or any other person under a standard condition may be recovered in a court of competent jurisdiction as a debt due to the corporation or that person.

- (b) by inserting the following paragraph after paragraph (d):
 - (da) by omitting subsection (6) and substituting the following subsection:

(6) A person must not –

- (a) without permission under subsection (1), do any of the things specified in that subsection; or
- (b) contravene a condition subject to which a permission under subsection (1) is granted; or
- (c) contravene a standard condition that, by virtue of subsection (2A), is taken to apply to a permission granted under subsection (1)(e).

Penalty: Fine not exceeding 100 penalty units.

- (c) by omitting, from paragraph (e), new subsection (11) of section 46 of the *Local Government (Highways) Act 1982* and substituting the following subsection:

(11) In this section –

“gas installation work” means work carried out pursuant to a permission granted under subsection (1)(e), including any work required by –

- (a) a condition subject to which the permission is granted;
- (b) a standard condition that, by virtue of subsection (2A), is taken to apply to the permission;

“gas installer” means a person granted permission under subsection (1) to carry out gas installation work;

“Tribunal” means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*.