

TASMANIA

NATIONAL GAS (TASMANIA) BILL 2008

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NATIONAL GAS (TASMANIA) BILL 2008

*(Brought in by the Minister for Energy and Resources, the
Honourable David Edward Llewellyn)*

A BILL FOR

An Act to establish a framework to enable third parties to gain access to certain natural gas pipeline services, to repeal the *Gas Pipelines Access (Tasmania) Act 2000*, and for other purposes

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

1. Short title

This Act may be cited as the *National Gas (Tasmania) Act 2008*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

(1) In this Act –

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Part 1 – Preliminary

“National Gas (Tasmania) Law” means the provisions applying because of section 7;

“National Gas (Tasmania) Regulations” means the provisions applying because of section 8;

“South Australian Act” means the *National Gas (South Australia) Act 2008*.

- (2) Words and expressions used in the *National Gas (Tasmania) Law* and in this Act have the same respective meanings in this Act as they have in that Law.
- (3) This section does not apply to the extent that the context or subject matter otherwise indicates or requires.

4. Act binds Crown

This Act, the *National Gas (Tasmania) Law* and the *National Gas (Tasmania) Regulations* bind the Crown, in right of Tasmania and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. Application to coastal waters

- (1) This Act, the *National Gas (Tasmania) Law* and the *National Gas (Tasmania) Regulations* apply in the coastal waters of this State as if the coastal waters were within the limits of the State.

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(2) In this section –

“adjacent area in respect of the State”

means the adjacent area of this jurisdiction under the *National Gas (Tasmania) Law* (as defined in section 9(1) of this Act);

“coastal waters”, in relation to this State, means any sea that is on the landward side of the adjacent area in respect of the State but is not within the limits of the State.

6. Extra-territorial operation

It is the intention of Parliament that this Act, the *National Gas (Tasmania) Law* and the *National Gas (Tasmania) Regulations* should, so far as possible, operate to the full extent of the extra-territorial legislative power of the State.

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Part 2 – National Gas (Tasmania) Law and National Gas (Tasmania)
Regulations

**PART 2 – NATIONAL GAS (TASMANIA) LAW AND
NATIONAL GAS (TASMANIA) REGULATIONS**

7. Application of National Gas Law

The National Gas Law set out in the Schedule to the South Australian Act, as in force for the time being –

- (a) applies as a law of Tasmania; and
- (b) as so applying, may be referred to as the *National Gas (Tasmania) Law*.

8. Application of regulations under National Gas Law

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 *National Gas (Tasmania) Law*; and
- (b) as so applying, may be referred to as the *National Gas (Tasmania) Regulations*.

9. Interpretation of some expressions in *National Gas (Tasmania) Law* and *National Gas (Tasmania) Regulations*

- (1) In the *National Gas (Tasmania) Law* and the *National Gas (Tasmania) Regulations* –

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Regulations

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“adjacent area of another participating jurisdiction” means the area that is identified in section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth as being the adjacent area in respect of a State (other than this State) or in respect of the Northern Territory;

“adjacent area of this jurisdiction” means the area that is identified in section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth as being the adjacent area in respect of this State;

“Court” means the Supreme Court of Tasmania;

“designated Minister” means the Commonwealth Minister;

“Legislature of this jurisdiction” means the Parliament of Tasmania;

“National Gas Law” or **“this law”** means the *National Gas (Tasmania) Law*;

“this jurisdiction” means the State of Tasmania.

- (2) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to –
- (a) the National Gas Law set out in the Schedule to the South Australian Act in its application as a law of Tasmania; or

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- (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 *National Gas (Tasmania) Law*.

PART 3 – CROSS VESTING OF POWERS

10. Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State

(1) The Commonwealth Minister and the Commonwealth bodies 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 national gas legislation of another participating jurisdiction.

(2) In this section –

“**Commonwealth bodies**” means any of the following:

- (a) AER;
- (b) NCC;
- (c) the Tribunal.

11. Conferral of powers on Ministers of participating States and Territories to act in this State

The Minister of a participating jurisdiction has 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 the Minister by the national gas legislation of another participating jurisdiction.

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Part 3 – Cross Vesting of Powers

12. Conferral of functions or powers on State Minister

If the national gas legislation of another participating jurisdiction confers a function or power on the Minister, the Minister –

- (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.

PART 4 – MISCELLANEOUS

13. Exemption from taxes

(1) Any 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 –

- (a) that is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of the national gas legislation or for the purpose of the separation of certain businesses or business activities from other businesses or business activities of a person as required by an AER ring fencing determination; and

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- (b) that the Treasurer declares from time to time by notice in the *Gazette* to be an exempt matter for the purposes of this section.

14. Actions in relation to cross boundary pipelines

- (1) If a pipeline is a cross boundary pipeline, any action taken under the national gas legislation of a participating jurisdiction in whose jurisdictional area a part of the pipeline is situated –

- (a) by, or in relation to, a relevant Minister;
or
- (b) by the Court within the meaning of that legislation in relation to the action taken by, or in relation to, a relevant Minister –

is taken also to be taken under the national gas legislation of each participating jurisdiction in whose jurisdictional area a part of the pipeline is situated (“**that other legislation**”) –

- (c) by, or in relation to, a relevant Minister within the meaning of that other legislation; or
- (d) by the Court within the meaning of that other legislation –

as the case requires.

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- (2) Despite subsection (1), no proceeding for judicial review or for a declaration, injunction, writ, order or remedy may be brought before the Court to challenge or question any action, or purported action, of a relevant Minister taken, or purportedly taken, in relation to a cross boundary distribution pipeline unless this jurisdiction has been determined to be the participating jurisdiction with which the cross boundary distribution pipeline is most closely connected.
- (3) A reference in this section –
- (a) to an action that is taken includes a reference to –
 - (i) a decision or determination that is made; or
 - (ii) an omission that is made; and
 - (b) to a purported action that is purportedly taken includes a reference to a purported decision or determination that is purportedly made.
- (4) In this section –
- “cross boundary pipeline”** means –
- (a) a cross boundary transmission pipeline; or
 - (b) a cross boundary distribution pipeline.

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s. 15

Part 4 – Miscellaneous

15. Conferral of functions and powers on Commonwealth bodies

- (1) Clause 2 of Schedule 2 to the *National Gas (Tasmania) Law* has effect in relation to the operation of any provision of this Act, or any regulation forming part of the *National Gas (Tasmania) Regulations*, as if the provision or regulation formed part of the *National Gas (Tasmania) Law*.
- (2) Subsection (1) does not limit the effect that a provision or regulation would validly have apart from the subsection.

16. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of a provision of this Act.

17. Amendment of this Act when *Offshore Petroleum Act 2006* of Commonwealth commences

On the commencement of section 7 of the *Offshore Petroleum Act 2006* of the Commonwealth, the definitions of “adjacent area of another participating jurisdiction” and “adjacent area of this jurisdiction” are omitted

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from section 9(1) of this Act and the following definitions are inserted:

“adjacent area of another participating jurisdiction” means the offshore area of a State (other than this State) or the Northern Territory within the meaning of section 7 of the *Offshore Petroleum Act 2006* of the Commonwealth;

“adjacent area of this jurisdiction” means the offshore area of the State within the meaning of section 7 of the *Offshore Petroleum Act 2006* of the Commonwealth.

18. Administration of Act

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 Energy and Resources; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

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Part 4 – Miscellaneous

19. Legislation repealed

The legislation specified in Schedule 1 is repealed.

20. Legislation rescinded

The legislation specified in Schedule 2 is rescinded.

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sch. 1

SCHEDULE 1 – LEGISLATION REPEALED

Section 19

Gas Pipelines Access (Tasmania) Act 2000 (No. 61 of 2000)

National Gas (Tasmania) Act 2008
Act No. of

sch. 2

SCHEDULE 2 – LEGISLATION RESCINDED

Section 20

Gas Pipelines Access (Tasmania) Regulations 2001 (No. 61 of
2001)