

CLAUSE NOTES

Gas Industry Bill 2018

PART I PRELIMINARY

Clause 1 Provides the citation for the Act.

Clause 2 Provides that the provisions of the Act will commence on a day or days to be proclaimed.

Clause 3 Interpretation

3 (1) Provides, as drafted, the intended meaning of certain words and phrases for the purposes of the Act.

3 (2) Provides that the retailing of gas occurs when gas is provided by a licensee by way of gas infrastructure, where the customer uses less than one terajoule of gas per year.

3 (3) Provides that gas is available for supply to a person only if there is nearby appropriate gas infrastructure able to provide gas to that person. Put another way, gas is not available for supply if the relevant premises is located remotely from gas infrastructure such that connection is not reasonable or feasible.

3 (4) Provides for the meaning of a related person for the purposes of the Act. This meaning is important in terms of the ring-fencing provisions in subclause 30 (4) as it defines those to whom that provision applies.

Clause 4 Provides that the Act binds the Crown in all its capacities.

Clause 5 Provides that nothing in the Act inadvertently removes the need to comply with the *Gas Safety Act 2018*.

Clause 6 Gas activities

6 Provides for the activities which are regulated by the Act

6 (1) Provides the categories of activity regulated by the Act, which is for activities involving gas infrastructure and for the retailing of gas. The clause also provides for regulations to be able to prescribe additional activities to be regulated under the Act.

6 (2) Provides the intended meaning of “gas infrastructure activities” as contained in clause 6 (1)(a).

PART 2 ADMINISTRATION

Division 1 Functions and powers of Regulator

Clause 7 Functions of the Regulator

- 7 (1) Provides for the functions which the Regulator is to undertake for the purposes of the Act.
- 7 (2) Provides that the Regulator must act in a fair and equitable manner when performing any functions of a discretionary nature under the auspices of the Act.
- 7 (3) Provides that no actions taken by the Regulator under the auspices of 7(a) or 7(b) can be taken into account in any civil cause of action.

Clause 8 Provides that the Regulator may delegate the powers of the Regulator (except the power of delegation), provided for in the Act, to another suitably qualified person. This provision also requires that such a delegation be made by way of a written instrument of delegation to the person to whom the delegation applies. An intended implication of this clause is that the Regulator may revoke a delegation made under this clause.

Clause 9 Regulator may require information to be provided

- 9 (1) Provides that the Regulator may require of a person to provide any information which the regulator reasonably requires for undertaking functions under the auspices of the Act. Such a requirement must be communicated in writing, and allow a reasonable time for the requested person to provide the information.
- 9 (2) Provides that the person requested to provide information under subclause 9(1) must provide the information within the stated timeframe. There is a penalty for not meeting this requirement of a fine not exceeding 100 penalty units.
- 9 (3) Provides that a person cannot be compelled to provide any information requested under subclause 9(1) if that information might incriminate the person.
- 9 (4) Provides that a decision to require information from a person under subclause 9(4) is not a reviewable decision under Division 1 of Part 7 of the Act (which contains provisions for the administrative review of certain decisions made under the Act).

Clause 10 Regulator may give directions

- 10 (1)(a) Provides that the Regulator may direct a licensee to undertake obligations under the Act or the licensee's licence.

- 10 (1)(b) Provides that the Regulator may direct a licensee to stop activity which is, or is likely to, contravene provisions of the Act or the licensee's licence.
- 10 (2) Provides for a fine not exceeding 1 200 penalty units (with further provision for a fine of 500 penalty units per day while an offence continues) in contravention of subclause (1).
- 10 (3)
(a)&(b) Provides that if a licensee fails to comply with a direction under subclause (1), the Regulator may take the action under subclause, or arrange for action to be taken, needed to give effect to the direction, and may recover through court action the costs of taking action under this subclause.
- 10 (4) Provides that the Director of Gas Safety may ask the Regulator to review a licence other than selling of gas by retail.

Clause 11 Regulator may carry out surveys and inspections

- 11 (a)&(b) Provides that the Regulator may conduct surveys or inspections to ensure licence conditions are being complied with, and may enter land for conducting a survey or inspection in connection with such an inspection.

Clause 12 Mediation of disputes

- 12 (1) Provides that a party to a dispute involving the activities under a licence may request that the Regulator mediate the dispute between the licensee and the other party to the dispute.
- 12 (2)(a),
(b) & (c) Provides parameters for the Regulator when a request under subclause 12 (1) is made – namely, the Regulator may either agree to mediate or decline to mediate; may give direction to the parties in a dispute under consideration by virtue of subclause 12 (1) to assist in the resolution of that dispute; and must attempt to assist parties to agree to a settlement negotiated between the parties.
- 12 (3) Provides that parties and the Regulator must record and sign the terms of the settlement referred to under subclause 12(2).
- 12 (4) Provides that the terms of a settlement made under 12 (3) is binding on the parties to the dispute.
- 12 (5) Provides that this clause does not apply to a dispute between a retailer of gas and one of its customers.

- Clause 13 Provides that the Regulator may take action on behalf of customers in a court or tribunal provided that customers have a recourse to a court or tribunal in the circumstances.

Clause 14 Enforcement of Act by Regulator

- 14 (1)&(2) Provides that the Regulator may impose on a licensee, a monetary penalty described in subclauses (a) and (b), if the Regulator is satisfied the licensee has contravened either the Act or conditions of the licensee's licence. Also

provides that the Regulator can impose penalties for the same event on more than one licensee involved in the contravention of the Act. This subclause does not apply to contravention of licence conditions.

Clause 15 State of the industry report

- 15 (1) Provides that the Regulator may prepare a report on the state of the gas industries subject to the Act.
- 15 (2) Provides that the Regulator is to prepare a report under subclause (1) on the Regulator's own initiative, or if directed to do so by the Minister and the Minister administering the *Economic Regulator Act 2009*.
- 15 (3) A direction as described under subclause (2) may set terms of reference for the report, set by the Minister and the Minister administering the *Economic Regulator Act 2009*.
- 15 (4) Provides that the final report is to be provided to both houses of Parliament within seven days following its preparation, as well as to the public in a manner which the Regulator believes fit.

Division 2 Miscellaneous

Clause 16 Regulator to preserve confidentiality

- 16 (1) Provides that the Regulator must keep confidential any information obtained in administering the Act, if such information may provide a competitor of the licensee with a competitive advantage or is otherwise commercially sensitive.
- 16 (2) Provides that this clause does not apply to the disclosure of information between those administering the Act.
- 16 (3) Provides that information which the Regulator has classified as confidential is protected from release under the *Right to Information Act 2009*.
- 17 Provides that the annual report made by the Regulator under the *Economic Regulator Act 2009* is to include a report of the Regulator's activity under this Act

Clause 18 Advisory committees

- 18 (1) Provides that the Minister or the Regulator may establish an advisory committee, and provided terms of reference for such a committee, for the purpose of advising the Minister or the Regulator on the administration of this Act.
- 18 (2) Provides that if the Minister establishes a committee under this clause, the members of that committee are appointed and hold office on the basis of conditions set by the Minister.

- 18 (3) Provides that if the Regulator establishes a committee under this clause, the members of that committee are appointed and hold office on the basis of conditions set by the Regulator.

Clause 19 Exclusive franchise

- 19 (1) Provides that the Governor may determine that a person has an exclusive franchise for a gas activity or activities specified by an order published in the *Gazette*. For clarity, this means the Governor may determine that a gas infrastructure activity, the selling of gas by retail, or an activity prescribed by regulations for the purposes of clause 6 (or any combination of these activities) may be granted an exclusive franchise.
- 19 (2) Provides that an exclusive franchise order must apply to greenfield developments. That is to say, an exclusive franchise order can only apply if there is no other licence in respect of both the same gas infrastructure activity and the same area of land as the activity and areas to which the order relates.
- 19 (3) Provides that an order published under this clause may stipulate the extent of the exclusivity of the franchise.
- 19 (4) Provides that an order declaring a person has exclusive franchise over gas infrastructure may also stipulate that person also has exclusive franchise for gas retailing to the extent necessary to ensure the financial viability of the gas infrastructure activity to which the order relates.
- 19 (5) Provides that certain details must be included in an order made under this clause, namely – to whom the franchise is granted, the part of gas infrastructure to which the franchise applies, the length of time for which the franchise is to apply, information about the geographical area the exclusive franchise may cover, and any other conditions which the Minister requires the Regulator to include in the licence in relation to which the exclusive franchise is to be granted.
- 19 (6) Provides that the Regulator must give effect to an order made under this clause by using relevant powers under the Act. This explicitly includes the power to grant or renew a licence on the basis of the order made by the Minister. However, this direction is subject to the Regulator undertaking its functions under Division 2 of Part 3 of the Act.
- 19 (7) Provides that the Minister may require a fee be paid before the Regulator grants the licence under which the exclusive franchise is to be granted. If a fee is required, the Minister may require that the Regulator not issue the relevant licence until the fee is paid in full.
- 19 (8) Provides that the period of time an exclusive franchise is granted does not have to be the same as the period of time of the licence to which the exclusive franchise relates. For clarity, the length of time for the exclusive

franchise may be shorter or the same as the period of the licence to which it pertains, but not longer.

- 19 (9) Provides that if an exclusive franchisee's licence authorises the selling of gas by retail, then the terms and conditions of the exclusive franchise may stipulate the contractual conditions which are to pertain to the selling of gas by retail to customers or the class of customers to whom that gas is sold, and that the licensee must comply with specified minimum standards of service to these customers.
- 19 (10) Provides that the Governor may amend or revoke an order made under subclause (1).
- 19 (11) Provides that if the Governor revokes an order under subclause (1) a licence granted or renewed in accordance with the order remains in force, but will not be taken as granting exclusive franchise.

PART 3 LICENSING

Division 1 *Licences required for gas activities*

- Clause 20 (1)&(2) Provides for a fine not exceeding 1 200 penalty units for undertaking gas activities if not in accordance with a licence issued under clause 23 of this Act. Provides that such a penalty does not apply if the Regulator gives a direction under clause 10, or if activities are being undertaken by a person appointed to take over operations under Part 8 of this Act.

Division 2 *Application, grant and renewal of licences*

Clause 21 *Application for grant of licence*

- 21 (1) Provides that a body corporate or a partnership between bodies corporate may apply to the Regulator for a licence to undertake a gas activity.
- 21 (2) Provides for the details required in an application to the Regulator for the grant of a licence as stipulated in subclauses (a) through (e). For clarity, the Regulator may require whatever information is reasonably required in order for an application for a licence to be considered in light of all relevant facts.
- 21 (3) Provides that for the purposes of subclause (2)(d) the fee is to be determined by the Regulator in the amount the Regulator considers is required to meet the reasonable costs of the Regulator determining the application, so that the fee is set on a cost recovery basis.
- 21 (4) Provides that the Regulator may require separate applications for different gas activities, or activities at different locations from an applicant. This does not prevent the Regulator from accepting a single application. This subclause gives the Regulator discretion on this matter.

- 21 (5) Provides that after an application is received, the Regulator may require further information if the Regulator considers that the information is needed to make an assessment of the application.
- 21 (6) Provides that an application lapses unless the applicant provides information required under subclause (4) within 30 days, or a period allowed by the regulator. For clarity, this subclause removes the obligation for the Regulator to consider an application if an applicant is tardy (as quantified by this subclause) in fulfilling the reasonable requirements of the Regulator.
- 21 (7) Provides that the Regulator can only determine a licence application at least 30 days after the publication of a notice in the *Gazette* (or as otherwise determined by the Regulator) of the application for the grant of a licence.

Clause 22 Grant of Licence

- 22 (1) Provides that the Regulator must determine an application within 40 business days of receiving an application for the grant of a licence, or the receipt of further information required under 21 (5), by either granting the licence or refusing to grant the licence.
- 22 (2) Provides that the Regulator can only grant a licence if the Regulator is satisfied that certain conditions are met as stipulated in further subclauses – namely, that the applicant be a body corporate (or partnership of such), is suitable to hold a licence, has all the required permits under other Acts in relation to the gas infrastructure activity to be undertaken, and can demonstrate compliance and intention to comply with the Act.
- 22 (3) Provides that the Regulator may consider a range of matters when deciding whether an applicant is suitable to hold a licence for a gas activity. These matters cover an applicant's level of honesty and integrity, the resources available to the applicant, the corporate structure and compliance history of the applicant's business, as well as any other matters provided for in regulations.
- 22 (4) Provides that the Regulator must not grant a gas infrastructure licence until a certificate issued under the *Gas Safety Act 2018* is received to certify that the gas infrastructure related to the licence will be able to operate safely. This is to ensure that any licensee undertaking work on gas infrastructure has met all the requirements of the Gas Safety Act before being licensed.
- 22 (5) Provides that the Regulator may not grant a licence which authorises both the selling of gas by retail, and a gas infrastructure activity. For clarity, the Regulator may issue separate licences to the same person for the selling of gas by retail, and a gas infrastructure activity – just not on the same licence.
- 22 (6) Provides that the Regulator must make available to the person who applied for the licence the result of a determination about the application, and the reasons for a refusal to grant a licence. This provision requires the Regulator to provide this information at the earliest opportunity to the

applicant. The clause also requires that the Regulator publish notice of the determination.

Clause 23 Application for renewal of licence

- 23 (1)&(2) Provides that a person with a licence granted under the Act may apply to the Regulator for a renewal of that licence, or for part of the licence, and that a licensee may apply for the renewal of a licence with a reduced number of the gas activities previously authorised.
- 23 (3) Provides for what the licensee must provide to the regulator when applying for a licence renewal. This includes the application being made in a form approved by the Regulator, the application being submitted along with any fee required by regulations, and any information required by the Regulator for the purpose of assessing the application.
- 23 (4) Provides that an application for renewal must be made at least three months prior to the expiration of that licence. An application cannot be made more than six months from licence expiration.
- 23 (5) Provides that the Regulator may extend the 6 month period referred to in subclause (3) by written notification to the licensee.
- 23 (6) Provides that the Regulator has to publish in the *Gazette* notice that an application for renewal of a licence has been made, and must do so at least 30 days before the Regulator determines the application.
- 23 (7) Provides that the Regulator may ask a licensee for additional relevant information for the assessment and determination of the renewal application.
- 23 (8) Provides that if an applicant does not provide information required under subclause (6) within 30 days, that application lapses.
- 23 (9) Provides that if the renewal application is for only some of the previous activities authorised, the licence may be renewed with the unwanted activities omitted.

Clause 24 Renewal of licence

- 24 (1) Provides that the Regulator must determine whether or not to renew the licence - within 40 business days of receiving an application under subclause 23(1) or (2), or within 40 days from a request under subclause 23(7) in relation to the application (whichever is the latter).
- 24 (2) Provides that the Regulator must make a determination under subclause (1) in relation to an application under subclause 23(1) or (2) to renew the licence (or renew so many of the activities as applied for), unless satisfied that either of the two conditions in subclauses (a) and (b) pertain in respect of the applicant or application.

- 24 (2)(a)&(b) Provides that if the applicant has been guilty of contravening a provision of the Act to a level the Regulator considers serious enough, the Regulator may determine that the licence is not to be renewed. The effect of this provision is to place the application for renewal on an even footing with an application for a new licence for the same activity.
- 24 (3) Provides for what the Regulator must do as soon as possible after a determination under subclause (2) as provided for in subclauses (a) and (b).
- 24 (3)(a) Provides the first of two things that the Regulator must do once a determination has been made on a licence renewal application. This is to notify the applicant of the determination made, and if that determination is one of refusal, the reasons for that refusal.
- 24 (3)(b) Provides the second of two things that the Regulator must do once a determination has been made on a licence renewal application. That is to publish the determination in the Gazette or other place considered appropriate by the Regulator.

Clause 25 Precondition to grant or renewal of licences

- 25 (1) Provides that if the Regulator has determined to grant or renew a licence (or renew so many of the activities as applied for), the Regulator may issue a notice to the applicant to impose a security to be provided with respect to the licence.
- 25 (2) Provides that a notice referred to in subclause (1) is to specify the date, amount and form by which a security is to be provided to the Regulator in order that the licence be granted. Further provides for the security to be held against the licensee's compliance with the Act or licence conditions.
- 25 (3) Provides that unless the security is received by the Regulator by the required time, and in the right amount and form (for example, a bank guarantee), the Regulator may refuse to grant or renew (or renew so many of the activities as applied for) the licence until these requirements are fulfilled.

Clause 26 Licence fees and returns

- 26 (1) Provides that an applicant has no entitlement to the grant or renewal (or renewal of so much as does not authorise the carrying out of an activity) of a licence for a term of two or more years, until after the applicant has paid to the regulator the licence fee, or first instalment of that fee, by the date notified by the Regulator.
- 26 (2) Provides for 10 penalty units to apply to a licensee who does not fulfil requirements to returns and fees as provided for in subclauses (a) and (b).
- 26 (2)(a)&(b) Provides that a licensee must submit an annual return each year by the prescribed date, containing all the information required by the Regulator, and that a licensee must pay the fee or fee instalment to the Regulator by

the date notified by the Regulator. This provision does not apply to licensees whose licence is set to expire within a year.

- 26 (3) Provides that a licence fee is to reflect the reasonable cost of administering the Act in respect of the licence in question.
- 26 (4) Provides that the Regulator may determine a licence fee is to be paid in equal instalments. Further provides that the intervals of payment is to be fixed by the Regulator.
- 26 (5)
(a)&(b) Provides for penalties to apply to a licensee if the licensee fails to pay the licence fee due under subclause 2 (b) as provided for in subclauses (a) and (b) – namely, that penalty interest is to be applied to any outstanding licence fee amounts owing to the Regulator, and that the Regulator may impose a fine of either 10 penalty units, or ten per cent of the outstanding fee (whichever is greater).
- 26 (6)&(7) Provides that the Regulator may waive any penalty or interest that would otherwise be imposed under subclause (5), and for the recovery of any fine or penalty under this clause to be recovered by the Regulator from the licensee in a relevant court of law.

Division 3 Rights and obligations under licences

Clause 27 Authority conferred by licence

- 27 (1) Provides the authority to a licensee, and those acting on the licensee's behalf, to undertake gas activities as specified on the licence, subject to the terms and conditions of the licence.
- 27 (2) Provides flexibility for the Regulator to grant a licence authorising a combination of gas activities, at different locations on one licence (as opposed to having to grant multiple licences for those activities). For clarity, a licence may authorise just one, or many gas activities (subject to the other provisions of the Act). The same licence may also stipulate different locations where the authorised activities may take place.
- 27 (3) Provides that despite subclause (2), a licence may not authorise both the selling of gas by retail and a gas infrastructure activity.
- 27 (4) Provides flexibility for the Regulator to grant a licence which applies to the entirety of a system of gas infrastructure, or just to part of that system of gas infrastructure.

Division 4 Terms and conditions of licences

Clause 28 Information to be included on licence

- 28 (a) Provides that the name of the licensee is to be included on the licence.
- 28 (b) Provides that information about the authorised activities and the locations where these activities may take place, is to be included on the licence.

- 28 (c) Provides that terms the licence subjects the licensee to, are to be included on the licence.
- 28 (d) Provides that information about the period for which the licence remains in force is to be included on the licence.
- 28 (e) Provides that conditions the licence subjects the licensee to, are to be included on the licence.
- Clause 29 Provides that (subject to the Act) the period of a licence can be set for any length of time up to, but no more than, 25 years duration.

Clause 30 Conditions on licence

- 30 (1) Provides that the Regulator may, when granting or renewing a licence, specify conditions which are to apply to the licensee or the activity authorised.
- 30 (2) Provides clarification to subclause (1), that is – the Regulator may specify new conditions on the renewal or transfer of a licence which were not on the original licence.
- 30 (3) Provides what the regulator may specify on a licence as detailed in the following subclauses (a) through (f). This clause does not limit the generality of subclause (1).
- 30 (3)(a) Provides that a condition may be included on a licence that the licensee must comply with any standards or codes specified in the licence, or any safety plan approved under the *Gas Safety Act 2018*, or both of these things.
- 30 (3)(b) Provides that a condition may be included on a licence relating to the financial or other ability of the licensee to undertake the approved gas activities for the term of the licence.
- 30 (3)(c) Provides that a condition may be included on a licence to ensure the licensee maintains insurance to cover liability for any activity undertaken under the licence. The Regulator must approve the terms and conditions of such insurance.
- 30 (3)(d) Provides that a condition may be included on a licence for the licensee not to appoint gas officers, or alternatively may provide that gas officers may only be appointed by the licensee for the purposes stated in the licence condition.
- 30 (3)(e) Provides that a condition may be included on a licence for the licensee to follow a specified process for resolving disputes between the licensee and customers involving the supply of gas.
- 30 (3)(f) Provides that a condition may be included on a licence to limit a licensee's gas activity to either a distribution system, or to a transmission pipeline.

- 30 (4) Provides for the ring-fencing of business and operational activity between related parties who have both a gas infrastructure licence and a retail licence. This provision allows the regulator to set conditions on licences to prevent anti-competitive behaviour and unreasonable concentration of market power.

Clause 31 Variation of terms and conditions of licence

- 31 (1) Provides that a licensee may apply to the Regulator to vary a condition of a licence or to vary or revoke a term of a licence.
- 31 (2) Provides that the Regulator may, by written notice to the licensee, revoke a condition of a licence for the purposes of either subclause 35(5) or subclause 38(8) (these clauses provide for arrangements for the transfer of and alterations to licences).
- 31 (3)(a) Provides the first of five conditions under which the Regulator may add or vary a condition under this clause – namely, if the Regulator has given reasonable notice of its intention to add or vary a condition, and has provided a reasonable opportunity for the licensee to make representations in relation to the proposed changes.
- 31 (3)(b) Provides the second of five conditions under which the Regulator may add or vary a condition under this clause – namely, if the Regulator approves the transfer of a licence under clause 34 of the Act (which provides for the transfer of licences).
- 31 (3)(c) Provides the third of five conditions under which the Regulator may add or vary a condition under this clause – namely, of either subclause 35(5) or subclause 38(8) (these clauses provide for arrangements for the transfer of and alterations to licences).
- 31 (3)(d) Provides the fourth of five conditions under which the Regulator may add or vary a condition under this clause – namely, on application by the licensee under subclause (1).
- 31 (3)(e) Provides the fifth of five conditions under which the Regulator may add or vary a condition under this clause – namely, with the agreement of the licensee.
- 31 (4) Provides that the Regulator may revoke a licence condition. The revocation must be communicated to the licensee by notice in writing.
- 31(5)(a)-(e) Provides that the Regulator may vary or revoke a term (or terms) of the licence, subject to any one or more of the conditions provided for in subclauses (a) through (e) – namely if the Regulator has provided an opportunity for the licensee to make representations, if a transfer or alteration of the licence has been approved, on application by the licensee under subclause (1), or with agreement of the licensee.

Clause 32 Contravention of licence conditions

- 32 (1) Provides for a fine not exceeding 1 200 penalty units (with an additional daily fine of 100 penalty units while the offence continues) to apply to a licensee in circumstances where the licensee has not complied with any conditions which the licensee is subject to under the licence.
- 32 (2) Provides that a court finding the licensee guilty of an offence against subclause (1) may impose one or more of the penalties (in addition to or instead of the penalty under subclause (1)) as provided for in subclauses (a) through (c).
- 32 (2)(a) Provides the first of three penalties a court may impose on a licensee found guilty under subclause (1) in addition to or instead of the subclause (1) penalty – namely, an order requiring the licensee to comply with any conditions to which the licensee is subject by their licence.
- 32 (2)(b) Provides the second of three penalties a court may impose on a licensee found guilty under subclause (1) in addition to or instead of the subclause (1) penalty – namely, an order directing the licensee to either do something, or alternatively to refrain from doing something, or a combination of doing some things and refraining from others.
- 32 (2)(c) Provides the third of three penalties a court may impose on a licensee found guilty under subclause (1) in addition to or instead of the subclause (1) penalty – namely, any order the court considers desirable in the interests of gas customers.

Clause 33 Directions to comply with licence conditions

- 33 (1) Provides that the Regulator may direct a licensee, whom the Regulator is satisfied is in contravention of his or her licence conditions, to take action the Regulator believes is necessary for the licensee to return to compliance with the licence conditions.
- 33 (2) Provides that a direction under this clause is to be given by written notice, unless the Regulator believes that immediate action is required on the part of the licensee, in which case the regulator may give notice orally.
- 33 (3) Provides that if notice has been given orally (under subclause (2)), written confirmation is required to be provided to the licensee as soon as possible thereafter.
- 33 (4) Provides that a direction notice under this clause must state the action required of the licensee, and the time by which the action is to be taken.
- 33 (5) Provides for a fine not exceeding 1 200 penalty units (with an additional daily fine of 100 penalty units while the offence continues) for failing to comply with a direction under this clause.

- 33 (6) Provides that if a licensee fails to comply with a direction under this clause, certain provisions may apply to give effect to the direction, as provided for in subclauses (a) through (c).
- 33 (6)(a) Provides that the Regulator or a person authorised in writing by the Regulator may take action to give effect to the contravened direction.
- 33 (6)(b) Provides that any costs incurred in giving effect to the direction under subclause (a) are recoverable in a relevant court as a debt to the Crown from the licensee.
- 33 (6)(c) Provides that neither the regulator nor a person authorised under subclause (a) needs to hold a licence for the purposes of giving effect to the direction.

Division 5 ***Transfer***

Clause 34 **Transfer of licences**

- 34 (1) Provides that a licence may be transferred if the Regulator agrees to the transfer.
- 34 (2) Provides that the Regulator impose conditions that are to be fulfilled prior to a licence being transferred, and may vary under and according to clause 31 conditions and terms that are to be conditions and terms of the licence after renewal.
- 34 (3) Provides that the person to whom the licence is being transferred is to have an acceptable safety case in one of the two ways provided for in subclauses (a) and (b) – namely, to provide the Director of Gas Safety with a written commitment to comply with the existing safety case for any relevant infrastructure, and prepared under the *Gas Safety Act 2018*, or to submit a new safety case for any relevant gas infrastructure under the *Gas Safety Act 2018*.

Clause 35 **Transfer of certain activities under licences**

- 35 (1) Provides that a licensee may apply to the Regulator for approval to transfer to another person an activity specified on the licensee's licence.
- 35 (2) Provides that the regulator may approve an application under subclause (1) the transfer, as stipulated in subclauses (a) and (b).
- 35 (2)(a) Provides that the Regulator may approve under this clause:
- the transfer to another person who holds a gas retail licence the authority to carry out the gas retail activities as per the applicant's licence.
 - to a person who holds a gas infrastructure licence, the authority to carry out the gas infrastructure activities as per the applicant's licence.

– to another person who holds either a retail licence or the authority to carry out the activities referred to in clause 6(1)(c) specified on the applicant's licence as specified in the application.

- 35 (2)(b) Provides that the Regulator may approve a transfer under this clause to a person who does not hold a licence of the gas activities specified in the application.
- 35 (3) Provides that the Regulator may impose conditions on the transfer of an activity.
- 35 (4) Provides that anyone to whom a licence is transferred must either:
- provide the Director of Gas Safety with a written commitment to comply with the existing safety case in relation to the relevant gas infrastructure; or
 - submit a new safety case for that gas infrastructure under the *Gas Safety Act 2018*.
- 35 (5) Provides that if the Regulator approves a transfer under this clause to someone who holds a licence, the Regulator must (under clause 31):
- change the terms and conditions of the licence of the person from whom the authority to carry out the activity is transferred so that that activity is no longer authorised on that person's licence; and
 - change the terms and conditions of the licence of the person to whom the authority to carry out the activity is transferred so that that activity is subsequently authorised on that person's licence.
- The effect of this provision is that it allows a licensee to transfer authorisation for some of its activities to another licensee.
- 35 (6) Provides that if the Regulator approves a transfer under this clause to someone who does not hold a licence:
- the Regulator is to vary and revoke under clause 31 terms and conditions of the licence of the person from whom the authority to carry out the activity is transferred so that that activity is no longer authorised on that person's licence; and
 - that licence may be granted under clause 22 to the person to whom the authority to carry out the activity is to be transferred, including terms and conditions from the original licence as will enable the carrying out the activity under the new licence.
- The effect of this provision is that it allows a licensee to transfer authorisation for some of its activities to a new licensee.

Division 6 ***Surrender of licences or cessation of operations***

Clause 36 **Surrender of licence authorising selling of gas by retail**

- 36 (1) Provides that a gas retail may surrender its licence by written notice to the regulator.

- 36 (2) Provides that the surrender of a licence under this clause is to take effect from either:
- a date at least 6 months from the date of the notice; or
 - if there is a condition on the licence which requires that a date of surrender must be more than 6 months after notice is given – a date in the notice which is a date after that longer period specified in the licence;
 - a date before the expiry period referred to in either (a) or (b) if agreed with the Regulator.
- The effect of this provision is that any market disruption and disadvantage to customers is minimised when licensees surrender licences.

Clause 37 Surrender of licence authorising gas infrastructure activities

- 37 (1) Provides that a gas infrastructure licensee apply in writing to the Regulator to surrender the licence.
- 37 (2) Provides that an application under subclause (1) must be made to the Regulator at least 6 months prior to the surrender taking effect, or a period longer than that specified as the period required in any such condition on a licence.
- The effect of this provision is that any market disruption and disadvantage to customers is minimised when licensees surrender licences.
- 37 (3) Provides that the period of notice referred to in subclause (2) may be shortened by the Regulator in agreement with the licensee.
- 37 (4) Provides that the Regulator may agree to an application for surrender of a licence under subclause (1). Agreement is to be provided by the Regulator in a notice of agreement.
- 37 (5) Provides that the Regulator may agree to a surrender under subclause (1) subject to conditions, including, but not limited to:
- Payment by the licensee of any monetary obligations incurred before the surrender takes effect; or
 - Provision of any outstanding information due to the Regulator before the surrender takes effect.
- 37 (6) Provides that a surrender given a notice of acceptance under subclause (4) takes effect from the date specified by the Regulator in that notice as the date the notice is to take effect.
- 37 (7) Provides that notice of a surrender of a licence under this clause is to be published in the *Gazette* or other manner or a manner considered appropriate by the Regulator.

Clause 38 Alteration to permit the cessation of certain activities under licence

- 38 (1) Provides that a gas infrastructure licensee may apply to the Regulator for authority to cease a currently licensed gas infrastructure activity, or to cease to carry out in an area of land a gas infrastructure activity; as specified in such application to the Regulator.
- 38 (2) Provides that an application under subclause (1) must be made to the Regulator at least 6 months prior to the surrender taking effect, or a period longer than that specified as the period required in any such condition on a licence.
- 38 (3) Provides that the period of notice referred to in subclause (2) may be shortened by the Regulator in agreement with the licensee.
- 38 (4) Provides that the Regulator may, after receiving an application under subclause (1), authorise the licensee, by way of a cessation notice to cease a currently licensed gas infrastructure activity, or to cease to carry out in an area of land a gas infrastructure activity; as specified in application to the Regulator under subclause (1).
- 38 (5) Provides that the Regulator may issue a cessation notice based on an application under subclause (1) subject to conditions, including, but not limited to:
- Payment by the licensee of any monetary obligations incurred before the cessation notice was issued; or
 - Provision of any outstanding information due to the Regulator before the cessation notice was issued.
- 38 (6) Provides that a cessation notice under subclause (4) takes effect from the date specified by the Regulator in that notice as the date the notice is to take effect.
- 38 (7) Provides that a cessation notice under this clause is to be published in a in the Gazette or other manner considered appropriate by the Regulator.
- 38 (8) Provides that if the Regulator issues a cessation notice, the Regulator is then required, under clause 31 to vary, revoke or add to those terms and conditions of the relevant licence to ensure the carrying out of the activities to cease specified in the notice is no longer authorised under that licence.
- 38 (9) Provides that if a cessation notice authorises the cessation of an infrastructure activity on an area of land authorised by the licence, the licence continues in relation infrastructure activity on land to which the cessation notice does not apply. This may be subject to any variation of revocation of the licence's terms and conditions made by the Regulator under clause 31.

Division 7 Suspension and cancellation of licences or activities

Clause 39 Suspension and cancellation of licences

- 39 (1) Provides that the Regulator must, by notice to the licensee, suspend or cancel its licence with effect from a specified date:
- if satisfied that the licensee has not complied with this Act its requirements or regulations, or any other relevant Act, where non-compliance is so serious the licence ought to be suspended or cancelled; or
 - on the recommendation of the Director of Gas Safety under subclause (5).
- 39 (2) Provides that the regulator may, by notice to the licensee, suspend or cancel the licence with effect from a date specified in the notice, if satisfied of any one of the significant conditions specified in subclauses (a) through (e) as drafted.
- 39 (3) Provides that a suspension may be for a set period of time, or for a period until the completion of specified conditions, or until further order of the Regulator.
- 39 (4) Provides that before acting under this clause the Regulator must first notify the licensee of its reasons and intention to take the proposed action, and must allow the licensee a reasonable period of time to respond to the Regulator about its proposition.
- 39 (5) Provides that the Director of Gas Safety may recommend to the Regulator that the Regulator take action in accordance with that recommendation.
- 39 (6) Provides for when the Director of Gas Safety can make a recommendation under subclause (5) – namely, if the Director of Gas Safety's opinion is that the action is necessary or desirable to ensure the safety of people or property.
- 39 (7) Provides that the Regulator may suspend a licensee's licence with the agreement of the licensee and after consultation with the Director of Gas Safety.
- 39 (8) Provides that a suspension may be for a period set by the Regulator, or until certain conditions are met by the licensee, or until further order of the Regulator.
- 39 (9) Provides that a notice of suspension or cancellation of a licence must be published in the *Gazette* or as otherwise determined by the Regulator.

- Clause 40 Suspension and revocation of the authority to conduct certain activities under licence**
- 40 (1) Provides that under subclause (b) the Regulator must suspend or revoke any terms or conditions of a licence authorised under this Act on the recommendation of the Director of Gas Safety under subclause (5).
- 40 (2) Provides that the Regulator may, by notice to the licensee, suspend or revoke any terms or conditions on the licence with effect from a date specified in the notice, if satisfied of any one of the conditions specified in subclauses (a) through (c).
- 40 (3) Provides that a suspension under this clause may be for a set period of time, or for a period until the completion of specified conditions, or until further order of the Regulator.
- 40 (4) Provides that before acting under this clause the Regulator must first notify the licensee of its reasons and intention to take the proposed action, and must allow the licensee a reasonable period of time to respond to the Regulator about its proposition.
- 40 (5) Provides that the Director of Gas Safety may recommend to the Regulator that the Regulator take action in accordance with that recommendation.
- 40 (6) Provides for when the Director of Gas Safety can make a recommendation under subclause (5) – namely, if the Director of Gas Safety's opinion is that the action is necessary or desirable in relation to revoking or suspending certain terms and conditions of the authorised activities on a licence to ensure the safety of people or property.
- 40 (7) Provides that the Regulator may suspend or revoke a term or condition of a licensee's licence with the agreement of the licensee and after consultation with the Director of Gas Safety.
- 40 (8) Provides that a suspension under subclause (5) may be for a period set by the Regulator, or until certain conditions are met by the licensee, or until further order of the Regulator.
- 40 (9) Provides that notice of a suspension or revocation of any term or condition of a licence be published in the *Gazette* or other manner determined by the Regulator.
- Clause 41
(a)&(b) Provides that the Regulator may use for the purposes of the Act information provided by a licensee under the Act, and that the Regulator may disclose information provided by a licensee under the Act, if authorised by the regulations under the Act.**
- Clause 42 Register of licences**
- 42 (1) Provides that the regulator must keep a register of the licences granted under the Act.

- 42 (2) Provides that the form the register of licences takes may be determined by the Regulator, and includes provision that the Regulator may determine that the register to be in electronic form.
- 42 (3)(a)&(b) Provides that a register kept under this clause must include the terms and conditions of each of the licences on the register, and that other information as required by the regulations must be included on the register.
- 42 (4) Provides that on the payment of a fee fixed by the Regulator, a person may inspect the register kept under subclause (1).

PART 4 RIGHTS, POWERS AND DUTIES OF LICENSEES

Division 1 Entry on and use of land

Clause 43 Application of division

- 43 (1) Provides that this division applies to all gas activities except the selling of gas by retail.
- 43 (2) Provides that a licensee is authorised under this Division if its licence authorises to carry out an activity to which this Division applies.
- 43 (3) Provides that a licensee may authorise an agent for the purposes of this Division, in respect of an activity to which this Division applies.
For clarity, subclauses (1)-(3) provide for the way this Division applies to licensees.
- 43 (4) Provides that if a body corporate who is not a licensee applies under this division, the Regulator may authorise that body corporate for the purposes of this division subject to conditions provided for in subclauses (a) and (b) – namely, that the Regulator believes the body corporate will apply for a licence, and it has demonstrated compliance with, and intention to continue complying with, the Act.
- 43 (5) Provides that a body corporate authorised under subclause (4) may authorise an agent of that body corporate for the purposes of this Division.
For clarity, subclauses (4)&(5) provide the Regulator with discretion to allow bodies corporate to undertake due-diligence and scoping work for gas infrastructure development, prior to applying for a licence.

Clause 44 Right of entry on land

- 44 (1) Provides that, with the agreement of the land owner, a person authorised under this Division, enter onto the owner's land for either one of the purposes provided for in subclauses (a) and (b), subject to this Part of the Act.
- 44 (1) (a)&(b) Provides that, subject to this clause, a person may enter onto land to conduct surveys or to assess the land's suitability for the construction or

installation of gas infrastructure, and a person may have access to gas infrastructure land to undertake gas infrastructure activities on that land.

44 (2) Provides that the Regulator may authorise a person to whom this Division applies, under conditions set by the Regulator, to access and remain on land under this clause. For clarity, this allows for the Regulator to authorise a person who is not a licensee, but is likely to become one, to access and remain on land. Licensees do not need such authority from the Regulator in this regard as they have the ability to apply for warrants to enter land where necessary.

44(3)(a)-(c) Provides that a person authorised under subclause (2) must comply with all three conditions in subclauses (a) through (c) – namely, that a person authorised under subclause (2) must comply with any conditions to which the authority is subject, must minimise the impact on people and limit damage to land created by the work carried out on the land, and must make good any damage caused to the land due to work carried out on the land.

44 (4) Provides that a person authorised under this Division and who has a warrant issued under Division 3 of Part 6 for the purpose, the person may use reasonable force to enter on land. For clarity, only licensees may obtain a warrant, others so authorised under this Division must rely on their authority under subclause (2).

44
(5)(a)&(b) Provides that a person authorised under subsection (2) in order to ascertain whether the land is suitable for building or installing gas infrastructure, or to obtain information about the land may do both the things provided for in subclauses (a) and (b) – namely, that, subject to this subclause, a person may enter onto and remain on land along with other work assistants, vehicles, machinery and equipment, and may survey and measure, make sink pits, test soil for any reason associated with the reason for which the land was entered.

44
(6)(a)&(b) Provides that a person authorised under subclause (2) to enter on land may enter onto and remain on that land for either of or both the purposes provided for in subclauses (a) and (b) – namely, subject to this subclause a person may from the land entered, ascertain whether some other land is suitable for building or installing gas infrastructure, or a person may from the land entered, obtain information about other land.

Clause 45 Notice of proposed entry on land

45 (1)
(a)&(b) Provides for a fine not exceeding 50 penalty units in the event that a licensee fails to provide written notice to the land owner, prior to entering onto the owner's land, of those things provided in subclauses (a) and (b) – namely:

– of the licensee's intention, to enter the land. This subclause also provides that the licensee may give notice that another authorised person acting for the licensee will enter the land; and

– the gas infrastructure activities to be conducted on the land by the licensee or the licensee's agent.

- 45 (2) Provides additional conditions which may be advised on a notice given under subclause (1) as provided in subclauses (a) through (c).
- 45 (2)(a) Provides that a notice given under subclause (1) must be given to the land owner or occupier no fewer than seven days prior to entering on to the land – allows for a shorter period by agreement between land owner and person authorised under this Division.
- 45 (2)(b) Provides that the notice may authorise entry to land on days indicated in the notice, and over what broad timeframe entry onto land is to occur.
- 45 (2)(c) Provides that a period identified in a notice may be extended by such notice to the owner or occupier of the land no fewer than two days prior to the expiration of the previously notified period.
- Clause 46 (a)&(b) Provides for a fine not exceeding 10 penalty units for a person who obstructs, hinders, delays, threatens or assaults any person under in circumstances where that person satisfies the conditions of both subsections (a) and (b) – namely, a person authorised to enter on land under clause 44 and acting in accordance with it,
- Clause 47 Power to carry out work on public land**
- 47 (1) Provides that a licensee may, subject to this clause, carry out including the installation, modification and repair work on public land for the purpose of a gas infrastructure activity.
- 47 (2) Provides that, subject to this clause, a gas infrastructure licensee must undertake the things stipulated in subclauses (a) and (b).
- 47 (2) (a)&(b) Provides that no fewer than seven days' notice of the licensee's intention to carry out the work is to be provided to the authority responsible for the management of the public land, and that prior to starting work on the public land, the agreement of the authority's agreement must be obtained.
- 47 (3) Provides that an agreement under subclause (2)(b) is to contain any conditions that the responsible authority believes is appropriate in the public interest.
- 47 (4) Provides that work of a kind prescribed in the regulations for the purposes of work to be carried out on public land does not require prior notice under subclause (2).
- 47 (5) Provides that agreement is not required under subclause (2) for work of a kind prescribed in the regulations for the purposes of work to be carried out on public land.
- 47 (6) Provides that the holder of a licence authorising gas infrastructure activities must either repair any damage caused by authorised work done under this

clause, and must do so as soon as possible after the damage occurs, or pay reasonable compensation for the damage.

- 47 (7) Provides for a process of resolution in the event that the licensee and the responsible authority cannot agree on an amount of compensation for the purposes of subclause (6), as provided for in either subclause (a) or (b) – namely, compensation in relation to subclause (6) is to be determined, in the case of a minor civil claim, by the civil division of the Magistrates Court, or in other cases, as provided for under the *Land Acquisition Act 1993*.
- 47 (8) Provides that this clause does not take away any obligation to comply with any other Act.

Clause 48 **Appeal to Tribunal in relation to proposed work on public land**

- 48 (1) Provides grounds for a license to appeal to the Tribunal in circumstances where it gives notice under subclause 47 (2) (ie appropriate notice), but when the authority decides to do either of the two things described in subclause (a) or (b).
- 48 (1)(a) Provides the first of two decisions which if made by an authority allows the licensee to appeal to the Tribunal – namely, the authority including in the agreement under subclause 47 (2) (ie appropriate notice) a condition the licensee finds unreasonable.
- 48 (1)(b) Provides the second of two decisions which if made by an authority allows the licensee to appeal to the Tribunal – namely, the authority disputes that the licensee is entitled to carry out the proposed work.
- 48 (2) Provides that subclause (1) does not apply if the authority is a Minister, or a person or body to whom the Minister may give directions in respect of the matter in dispute.
- 48 (3) Provides that the Tribunal must hear and determine an appeal in accordance with the *Resource Management Planning Appeal Tribunal Act 1993* unless provided for in subclause (4).
- 48 (4) Provides that the Tribunal must not allow a person other than the responsible authority or the licensee to be a party to the appeal under section 14(2) of the *Resource Management Planning Appeal Tribunal Act 1993*.

Division 2 **Gas infrastructure planning corridors**

Clause 49 **Declaration of gas infrastructure planning corridors**

- 49 (1) Provides for the Minister to declare (by order) a planning corridor in respect of any existing or proposed gas infrastructure.

- 49 (2) Provides that the Minister must be satisfied that a planning corridor is necessary in order to provide certainty to those person who have, or intend to, invest in linear gas infrastructure.
- 49 (3) Provides that the Minister may revoke an order under subclause (1) at any time.
- 49 (4) The Minister must revoke under subclause (3) an order under subclause (1) that relates to proposed gas infrastructure which will never be built, or existing gas infrastructure which has permanently ceased operation.
- 49 (5) Provides that the Minister must give the Assessment Committee for Dam Construction notice of any declaration under subclause (1).
- Clause 50 Effect, on permitted development applications, of declaration**
- 50 (1) Provides conditions for applications made under the *Land Use Planning and Approvals Act 1993* for a permitted development permit within a gas infrastructure planning corridor, as provided in subclauses (a) and (b).
- 50 (1)(a) Provides that if a planning authority's council area is at all in a gas infrastructure planning corridor, it must provide the relevant licensee notice of the application, and at least 14 days for the licensee to advise it on the ramifications of the proposed development.
- 50 (1)(b) Provides that, within the 14 day period under subclause (a), the licensee may provide the planning authority advice in relation to the application, and subject the grant of the application to safety conditions based on that advice.
- 50 (2) Provides for what the planning authority may do on receipt of advice from a licensee under subclause (1). Namely, that the planning authority may have regard to the advice in considering its determination, may (subject to any safety conditions) grant a permit under the *Land Use Planning and Approvals Act 1993*, but must not grant a permit under *Land Use Planning and Approvals Act 1993* subject to any condition which conflicts with any safety case accepted under the *Gas Safety Act 2018* (relating to the relevant gas infrastructure).
- 50 (3) Provides that if a safety condition is to be imposed on the grant of a permit by the planning authority, and the applicant lodges an appeal against that decision, the planning authority must notify the relevant licensee of the appeal, and that licensee is taken to be a person whose interests are affected by the decision and therefore has a proper interest in the subject matter of the appeal. For clarity, this gives the licensee the right to have input on the substance of the appeal.
- 50 (4) Provides that the Tribunal (if it deems appropriate on hearing an appeal under subclause (3)) is to order the relevant licensee to reimburse the applicant the additional cost (as determined by the Tribunal) to the applicant caused by the appeal. All four of the subclause's specified

conditions (a) through (d) need to be satisfied in order for the Tribunal to so determine the appeal.

Clause 51 Effect on discretionary development applications, of declarations

- 51 (1) Provides that an application for a discretionary development permit which is at least partly within a gas infrastructure planning corridor must be communicated by the relevant planning authority to the relevant licensee, and that the licensee may make representations about the application to the planning authority in order to provide advice in relation to the application and to recommend any safety conditions within that advice.
- 51 (2) Provides that if the relevant licensee does not provide advice under subclause (1), the planning authority may make a determination on the application with no further reference to the licensee.
- 51 (3) Provides that if a gas infrastructure licensee provides advice under subclause (1) the planning authority is to have regard to that advice in its determination of the application for a permit, the advice is taken to be a formal representation in relation to the application, the planning authority may grant the permit subject to any safety condition, but must not grant the permit subject to any condition which is contrary to any safety case condition certified under the *Gas Safety Act 2018*.
- 51 (4) Provides that a permit granted under the *Land Use Planning and Approvals Act 1993* which is subject to any safety condition, where the Tribunal finds against a safety case applied to a permit is to order the relevant licensee to reimburse the applicant the additional cost (as determined by the Tribunal) to the applicant caused by the appeal. All four of the subclause's specified conditions (a) through (d) need to be satisfied in order for the Tribunal to so determine the appeal.
- 51 (5) Provides that section 57(2) of the *Land Use Planning and Approvals Act 1993* does not apply to an application referred to in subclause (1).
- 51 (6) Provides that in complying with section 57(7) of the *Land Use Planning and Approvals Act 1993* the planning authority must serve notice of its decision on the licensee, even when the licensee has not provided any advice on the application.
- 51 (7) Provides the relevant licensee the right to appeal against the grant of a permit in circumstances where the planning authority has not complied with subclause (1).

Clause 52 Orders of the Tribunal

- 52 (1) Provides for the Tribunal, in making or deciding to make an order under clauses 49 or 50, to have regard to whether standards for gas infrastructure design and construction were taken into account in the design and construction of the gas infrastructure, and also any amounts of compensation which has been paid to an affected landowner.

- 52 (2) Provides that an order made by the Tribunal under clauses 50(4) or 51(4) is enforceable in the same way as that of a judgement in a court of competent jurisdiction.
- 52 (3) Provides that an order made by the Tribunal making under clauses 50(4) or 51(4) on appeal under the *Land Use Planning and Approvals Act 1993* is additional to any other power that the Tribunal may exercise on appeal.
- Clause 53 Provides that in making any determination under the *Land Use Planning and Approvals Act 1993* to amend a permit or special permit, a planning authority must have regard to the safety of any affected gas infrastructure.

Division 3 Gas officers

Clause 54 Appointment of gas officers

- 54 (1) Provides that a licensee, subject to its licence conditions, may appoint a person as its gas officer, and specify conditions for the gas officer on an appointment instrument.
- 54 (2) Provides for the period of appointment of a gas officer – namely, that the instrument of appointment, specifies the period for which the officer will be a gas officer, or that the officer will remain a gas officer until the officer's position ends.
- 54 (3) Provides that the powers under this Act exercised by a gas officer must be in line with any conditions on the gas officer's instrument of appointment, and any directions given to that gas officer by the licensee.
- 54 (4) Provides that a licensee may revoke, by instrument in writing, the appointment of any of its gas officers.
- Clause 55 (1) Provides that every gas officer must be given an identity card by the licensee for whom they are to be a gas officer.
- 55 (2) Provides for what information is to be contained on an identity card under this clause – namely, the gas officer's photograph, signature, and identifying the gas officer as a gas officer for the licensee, also specified on the card.
- 55 (3) Provides that before exercising a power which may affect another person, the gas officer must produce for inspection the officer's own identity card, if so requested by the other person.
- 55 (4) Provides for a fine of 2.5 penalty units a person who has ceased to be a gas officer and has not, after 21 days, returned their identity card to the licensee.

Clause 56 Gas officers may enter land for certain purposes related to metering

- 56 (1) Provides for the conditions under which a gas officer may enter and remain in a place to which gas is supplied, as specified in subclauses (a) through (c).

- 56 (1)(a) Provides a condition, for the purposes of this subclause, under which a gas officer may enter and remain in a place to which gas is supplied – namely, to read or check a meter which records gas consumption.
- 56 (1)(b) Provides a condition, for the purposes of this subclause, under which a gas officer may enter and remain in a place to which gas is supplied, namely, to install, repair or replace meters or control apparatus or any part of gas infrastructure.
- 56 (1)(c) Provides a condition, for the purposes of this subclause, under which a gas officer may enter and remain in a place to which gas is supplied – namely, to disconnect supply either on the basis of a recommendation under clause 70(3), or in accordance with a code issued under clause 96, or as may be prescribed by the regulations.
- 56 (2) Provides that if a gas officer for a licensee is refused entry to a place under this clause, the licensee may write to the occupier to ask for consent for a gas officer to enter.
- 56 (3) Provides that a notice under 55 (2) must state the reason for and the date and time of the proposed entry.
- 56 (4) Provides that if entry is refused after notice is given under subclause (2) the licensee may either disconnect supply to the place without so entering, or, if this is not possible, obtain a warrant under Division 3 of Part 6 to enter and disconnect the gas supply, and then enter and disconnect the gas supply.

Clause 57 Entry on land for purposes related to gas infrastructure

- 57 (1) Provides that a gas officer may at any reasonable time enter and remain on land either
- to carry out preliminary investigations for proposed construction or installation of gas infrastructure: or
 - to carry out operational or protective work on the gas infrastructure of the licensee by whom they are authorised.
- 57 (2) Provides that, subject to this clause, a gas officer must provide written notice to the occupier of the land to which entry is proposed, stating the date and time of the proposed entry.
- 57 (3) Provides that the period of notice of entry (notified in subclause (2)) must be reasonable.
- 57 (4) Provides that if entry for purposes under this clause is refused or obstructed, a gas officer may obtain a warrant under Division 3 of Part 6 and then enter the land.

- Clause 58 Alteration, extension or re-routing of gas infrastructure**
- 58 (1) Provides for a fine not exceeding 1 200 penalty units for a licensee which alters or modifies, or permits such modification or alteration, unless authorised to do so by the licence, or by the Regulator under subclause (2), or as provided for by the *Gas Safety Act 2018*.
- 58 (2) Provides that the Regulator may authorise alteration or modification to gas infrastructure to which a licence relates.
- 58 (3) Provides that unless a licensee has received the written approval of the Regulator to do so, a licensee must not proceed to extend or re-route gas infrastructure.
- 58 (4) Provides that the Regulator may only grant an approval to extend or re-route gas infrastructure if the relevant licensee can demonstrate that all permits and approvals for such extension or re-routing have been granted.
- Clause 59**
- (1) Provides for circumstances in which a licensee is not civilly liable to supply gas – namely, if the failure to supply is the result of any accident or cause beyond the licensee’s control, or continuing to supply gas would, or would be likely to, pose a risk to a person’s safety or the operation or security of gas infrastructure.
- 59 (2) Provides that a licensee may enter into a formal agreement with a person to vary or exclude the operation of subclause (1). For clarity, such an agreement on which may be commercial in nature, and provide flexibility to the licensee in terms of managing gas supply, while providing consideration to the person in circumstances where this means gas supply is interrupted.
- Clause 60 Certain gas infrastructure developments exempt from requiring planning approval**
- 60 (1) Provides a meaning, for the purposes of this clause, of development of new gas infrastructure, which includes – installation, construction, inspection and commissioning of new gas infrastructure (and any co-located telecommunications infrastructure). Further provides that where such new gas infrastructure (and co-located telecommunications infrastructure) makes use of existing gas infrastructure, development includes the upgrading of that original gas infrastructure for the purpose of the new gas infrastructure and any co-located telecommunications infrastructure.
- 60 (2) Provides that certain work does not require a permit under the *Land Use Planning and Approvals Act 1993* – namely, if a licensee proposes to carry out work on the development of gas infrastructure, including any required excavation of land, and that work is of a prescribed kind and meets prescribed criteria.
- 60 (3) Provides that subclause (2) does not apply in respect of a transmission pipeline. For clarity, this is to mean that subclause (2) exclusively applies

only to development of gas infrastructure that is a distribution system as defined in the Act.

Clause 61 Gas infrastructure licensee may acquire land, etc

- 61 (1) Provides definitions of “telecommunications carrier” and “telecommunications infrastructure” for the purposes of this clause.
- 61 (2) Provides that a gas infrastructure licensee is an acquiring authority under the *Land Acquisition Act 1993*, and therefore may acquire land for the purposes of undertaking any activities authorised under its gas infrastructure licence.
- 61 (3) Provides (without limiting subclause (2)) that the gas infrastructure licensee is taken to be a public authority for the purposes of section 90(A)(1) of the *Conveyancing and Law of Property Act 1884*. The effect of this is that the licensee may acquire by compulsory process an easement in gross (with in the meaning of section 90(A)(1) of the *Conveyancing and Law of Property Act 1884*.
- 61 (4) Provides that, notwithstanding subclauses (2) and (3), a gas infrastructure licensee may only acquire land compulsorily if such acquisition is authorised under subclause (6), and may install or maintain telecommunications infrastructure (or allow a telecommunications carrier to do so) on land so acquired.
- 61 (5) Provides that regulations made under clause 110 may modify the way the *Land Acquisition Act 1993* treats the process of a licensee’s acquisition of land; but not in regards to monetary entitlements to people from whom land is acquired.
- 61 (6) Provides that the Minister may authorise, by notice in writing, the acquisition of land specified in the instrument.

Clause 62 Compensation and land acquisition

- 62 (1) Provides that, apart from the exceptions specified in this subclause, the declaration of a gas infrastructure planning corridor does not entitle a person to compensation under this or any other Act, even where there is loss or detriment suffered by the person as a result of the declaration. For clarity, a declaration of a gas infrastructure planning corridor is not a declaration to acquire land, and so compensation pertaining to land acquisition does not apply.
- 62 (2) Provides that the declaration of a gas infrastructure planning corridor over any land does not constitute injurious affection of that or any other land, under any Act.

PART 5 PROPERTY RIGHTS IN RELATION TO GAS-RELATED PROPERTY

- Clause 63 (1) Provides that (subject to subclause (2)) gas infrastructure is a chattel, and is therefore able to be acquired, owned, dealt with and disposed of as such.

63 (2) Provides that (unless the Regulator gives written consent) gas infrastructure cannot be dealt with separately from gas infrastructure land or the gas infrastructure land interest to which it relates, nor can gas infrastructure land or a gas infrastructure land interest be dealt with separately to the from the gas infrastructure to which it relates.

63 (3) Provides that the ownership of gas infrastructure is not affected if it is laid or installed underground, unless there is some agreement in writing to the contrary.

Clause 64 (1) Provides that gas infrastructure is not subject to seizure or dismantling as the result of a judgement.

64 (2) Provides that section does not prevent the sale of gas infrastructure as a whole as the result of a judgement.

PART 6 ENFORCEMENT

***Division 1* Appointment, etc, of authorised officers**

Clause 65 Appointment of authorised officers

65 (1) Provides that the Regulator may appoint authorised officers.

65 (2) Provides that an authorised officer may be a State Service officer or a State Service employee, but the Regulator may also appoint someone to be an authorised officer who is not a State Service officer or employee.

65 (3) Provides that the Regulator may control and direct an authorised officer.

65 (4) Provides for the period of appointment of authorised officer – namely, that the instrument of appointment, specifies the period for which the officer will be an authorised officer, or that the officer will remain a gas officer while the officer holds his or her position.

65 (5) Provides that the authorised officer holds office on the conditions specified their instrument of appointment.

Clause 66 (1) Provides that an authorised officer may resign by written notice to the Regulator.

66 (2) Provides that the Regulator may revoke the appointment of any authorised officer.

Clause 67 (1) Provides that the regulator must provide an authorised officer with an identity card.

67 (2) Provides for what information is to be contained on an identity card under this clause – namely, the gas officer's photograph and signature.

67 (3) Provides for a fine of 2.5 penalty for an authorised officer who, before exercising a power which may affect another person, does not produce for

inspection the authorised officer's own identity card, if so requested by the other person.

- 67 (4) Provides for a fine of 2.5 penalty units for a person who has ceased to be an authorised officer and has not returned their identity card to the Regulator.
- Clause 68 Provides that an investigation by an authorised officer is authorised if it is to monitor compliance with this Act, or to gather information about a suspected offence against this Act.
- Clause 69 Powers of entry**
- 69 (1) Provides that an authorised officer may enter and remain in any place, as is reasonably required for an investigation under this Part.
- 69 (2) Provides that an authorised officer may be accompanied by assistants, and may take vehicles or equipment necessary for the authorised officer's functions in relation to being in a place.
- 69 (3) Provides that an authorised officer may use reasonable force to enter a place under this Part provided such entry is authorised by a warrant under Division 3 of Part 6.
- 69 (4) Provides for a fine not exceeding 10 penalty units for a person who hinders, delays, threatens or assaults a person who is authorised under this section to enter land, and is acting in accordance with clause 70 of this Act.
- Clause 70 General investigative powers of authorised officer**
- 70 (1) Provides specificity about the powers of an authorised officer under this Part – namely as detailed in subclauses (a) through (g) which are to be read as drafted.
- 70 (2) Provides that if an authorised officer takes possession of a thing as evidence of an offence against this Act a receipt for the thing is to be given by the authorised officer to the occupier of the place from which the thing is taken. Further provides for the return of the thing to its owner if proceedings are not commenced within 6 months, or if a court does not order confiscation of the thing.
- 70 (3) Provides that a court may order confiscation of the thing taken possession of under subclause (1) if the court considers the thing was used for the committing of an offence, or for some other proper reason.
- 70 (4) Provides that if a court orders confiscation of a thing it may be disposed of by the Regulator, and the person from whom it was confiscated is not entitled to compensation for its loss.

Clause 71 Disconnection of gas supply

- 71 (1) Provides that an authorised officer may recommend to a licensee that gas supply should be disconnected where the authorised officer finds that gas is being consumed in contravention of the Act.
- 71 (2) Provides that a licensee may disconnect a gas supply on the recommendation of an authorised officer.
- 71 (3) Provides that if gas supply is disconnected under this clause, the licensee must give notice to the occupier of the relevant place that the gas supply has been disconnected, and directing that person that the gas supply must not be reconnected until an authorised officer is satisfied that further contravention of the Act has been mitigated.
- 71 (4) Provides for a fine not exceeding 500 penalty units for a person who reconnects a gas supply, which has been disconnected under this clause, without the approval of an authorised officer.

Clause 72 Power to require information

- 72 (1) Provides that an authorised officer may require information in the possession of a person if the information is relevant to an authorised investigation.
- 72 (2) Provides that an authorised officer may require for inspection, any documents in a person's possession which may be relevant to an authorised investigation.
- 72 (3) Provides for a fine not exceeding 100 penalty units for contravening requirement under this clause without a reasonable excuse.
- 72 (4) Provides that a person is not compelled by this clause if the relevant information or documentation may tend to incriminate the person.

Division 3 Warrants

- Clause 73 (1) Provides that an authorised officer may apply for a warrant to enter a place to enable the officer to perform the officer's functions or powers under this Act.
- 73 (2) Provides that a justice of the peace may issue a warrant to an authorised officer to enter a place for the officer to perform the officer's functions or powers under this Act.
- 73 (3) Provides that a warrant issued under subclause (2) authorises the relevant authorised officer and any assistants using any force reasonably necessary to enter the place specified in the warrant, and to do anything that the authorised officer is authorised to do under the Act.

73 (4) Provides that a warrant is to specify the dates and times within which it remains in force.

Division 4 *Provisions relating to offences*

Clause 74 **General defence**

74 (1) Provides that it is a defence in proceedings against a provision of the Act if the defendant proves that the offence was not because of any failure on the part of the person to take reasonable care to avoid the commission of the offence.

74 (2) Provides a defence for an act leading to an offence under this Act which was reasonably necessary to avert, eliminate or minimise physical danger to any person or property.

Clause 75 **Offences by bodies corporate**

75 Provides that if a body corporate commits an offence against the Act, each person involved in its management is guilty of an offence, and subject to the same penalty as may be imposed for the offence of body corporate on that occasion. However, such people have recourse to the general defences under clause 74.

Clause 76 Provides that profits gained during the commission of a contravention of the Act may be recovered from the licensee by the Regulator through a court of competent jurisdiction, or on application to a court which has convicted the licensee of an offence in respect to the contravention.

PART 7 **APPEALS AND ADMINISTRATIVE REVIEW OF DECISIONS**

Division 1 *Administrative review of decisions*

Clause 77 (1) Provides the meaning of “reviewable decision” – namely, a decision by the Regulator or an authorised officer other than a decision in relation to entry to land or one by the Regulator under this Division.

77 (2) Provides that only an applicant for a licence is someone whose interests are affected by a decision to grant or to refuse to grant that licence.

Clause 78 (1) Provides that if a person’s interests are affected by a decision, they may apply to the person who made that decision for a statement of the reasons for that decision.

78 (2) Provides that an application under subclause (1) must be made within 28 days after the person receives notification of the decision.

78 (3) Provides that a person who receives an application under subclause (1) in relation to a reviewable decision must as soon as practicable, and at least within 60 day from receipt of the application, provide to the applicant a statement in writing of the reasons for the decision.

Clause 79 Application for administrative review

- 79 (1) Provides that a person whose interests are affected by a reviewable decision may apply to the Regulator for a review of that decision.
- 79 (2) Provides that an application for an administrative review of a reviewable decision must set out the detail the grounds on which the person seeks the review.
- 79 (3) Provides that an application under subclause (1) must be made within 28 days after the notice of the decision, or if the person made a relevant request under clause 78, within 28 days of receipt of reasons for the decision.
- 79 (4) Provides that the operation of a reviewable decision is not affected by an application under subclause (1) just be virtue of that application.
- Clause 80
(1) Provides that the regulator may stay the effect of a reviewable decision – namely, with respect to an application for review under clause 79(1), or if a person appeals to the Minister under clause 82(1) in relation to a decision made under clause 81.
- 80 (2) Provides that the Regulator must not grant under subclause (1) the stay the effect of a decision in relation to an application made under subclause 79(1) if the Regulator considers, after seeking advice from the Director of Gas Safety, that doing so would create or maintain a risk to public safety.
- Clause 81
(1) Provides what the Regulator may do in terms of deciding an application under clause 79(1) for an administrative review of a reviewable decision – namely, confirming the decision, amending the decision , substituting the decision with another, or revoking the decision.
- 81 (2) Provides the Regulator with 45 days after receiving an application under 79(1) to serve on the applicant its decision under subclause (1).
- 81 (3) Provides for what the notice provided under subclause (2) must include – namely: –
– the decision made under subclause (1);
– any findings in relation to matters of fact;
– the evidence on which the decision is made; and
– the reasons for the decision made under subclause (1).

Division 2 Appeals

- Clause 82
(1) Provides that a person dissatisfied with a decision made under clause 81 may appeal to the Minister against the decision.
- 82 (2) Provides for an appeal under subclause (1) to be commenced, heard and determined in accordance with the regulations.

- 82 (3) Provides that the operation of a decision under clause 81 is not affected simply by virtue of an appeal under subclause (1).
- Clause 83 (1) Provides that the Minister may stay the effect of a decision in relation to an appeal under subclause 82(1).
- 83 (2) Provides that the Minister must not grant under subclause (1) the stay the effect of a decision in relation to an 82(1) if the Minister considers, after seeking advice from the Director of Gas Safety, that doing so would create or maintain a risk to public safety.

Clause 84 Powers of Minister on appeal

- 84 (1) Provides what the Minister may do in terms of deciding an application under clause 79(1) for an administrative review of a reviewable decision – namely, confirming the decision, substituting the decision with another, or revoking the decision, or set aside the decision and return the matter for consideration to the Regulator with any directions the Minister thinks fit.
- 84 (2) Provides for the Minister to make other directions about incidental matters which the Minister thinks fit in relation to clause 84.
- 84 (3) Provides that no further appeal is available to a person affected by a decision under clause 81.

Clause 85 Reference of decision to Tribunal

- 85 (1) Provides that the Minister may refer a decision under this Division to the Tribunal.
- 85 (2) Provides that the Tribunal must hear and determine a matter referred under subclause (1) in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.
- 85 (3) Provides that the Tribunal considering an appeal under subclause (1) must include one or more members whose appointment was because in the Minister's view, they had relevant expertise in the gas industry, or in relation to the maintenance, alteration and operation of gas infrastructure if the matter involves gas infrastructure.
- 85 (4) Provides that the Minister must notify the Tribunal in writing of who is to be appointed to the requirements of subclause (3).

PART 8 POWER OF THE REGULATOR TO TAKE OVER GAS ACTIVITIES

Clause 86 Reports by Regulator

- 86 (1) Provides that the Regulator may provide a report to the Minister in relation to the gas activities of a licensee, and if the Minister so directs, must do so.

- 86 (2) Provides that the Minister may from time to time, require of the Regulator a report on gas supply matters which are regulated under the Act or regulations.
- 86 (3) Provides that if the Director of Gas Safety requests the Regulator under clause 39(5) to provide a report to the Minister, the Regulator must provide such a report to the Minister.
- 86 (4) Provides that a report under subclause (1) or (2) is to be include consideration of matters as agreed between the Minister and Regulator.

Clause 87 Power to take over gas activities

- 87 (1) Provides that the Minister may recommend that the Governor make an order under this clause under circumstances specified in subclauses (a) through (d) – namely if:
- a licensee has contravened this Act to an extent the Minister considers sufficiently serious; or
 - a licensee's licence has ceased, or is to cease being in force; or
 - in the Minister's opinion it is necessary to take over the licensee's gas activities to ensure that the adequate supply of gas is maintained or restored to all customers.
 - the report was required under clause 39(5) and the Minister is of the opinion that it is necessary to take over the licensee's gas activities or some of them in order to ensure public safety or prevent damage to gas infrastructure.
- 87 (2) Provides that the Minister must provide a reasonable opportunity, in the circumstances, to the licensee to provide reasons why the order pertaining to them should not be made.
- 87 (3) Provides that the Governor may make an order based on a recommendation under this clause.
- 87 (4) Provides that an order under this clause:
- Authorises the Regulator to take over the licensees gas activities (or part thereof), or appoint an operator under clause 88; and
 - May contain ancillary directions about how the costs of carrying on the gas activities and revenue so generated, are to be dealt with.
- 87 (5) Provides that a direction under subclause (4)(b) operates to the exclusion of rights with which it is inconsistent.

Clause 88 Appointment of an operator

- 88 (1) Provides that if an order is made under clause 87, the Regulator must appoint an operator to take over the licensee's activities on terms and conditions agreed between the regulator and operator.

- 88 (2) Provides for a fine of 500 penalty units for a body corporate, and a fine of 25 penalty units for a natural person, where the licensee does not facilitate the takeover of the relevant gas activities by the operator.
- 88 (3) Provides that the operator may have access to gas infrastructure and other property of the licensee for the purposes of undertaking the relevant gas activities.
- 88 (4) Provides for:
- a fine of 500 penalty units for a body corporate; and also
 - a fine of 100 penalty units for a natural person, or a term of imprisonment not exceeding 3 months, or both;
- where a person obstructs the operator's access to property or the exercise of the operator of its responsibilities under this Part.
- 88 (5) Provides for
- a fine of 500 penalty units for a body corporate; and also
 - a fine of 100 penalty units for a natural person, or a term of imprisonment not exceeding 3 months, or both;
- where a person fails to comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Part.
- 88 (6) Provides that it must be a condition of the transfer of any relevant gas activities that the operator must either supply the Director of Gas Safety with the existing safety case for any relevant gas infrastructure in accordance with the Gas Safety act 2018, or submit a new safety case prepared under that Act.

Part 9 Ministerial Powers

Clause 89 Minister may direct licensees and customers

- 89 (1) Provides that if the Minister has a reasonable belief that the supply of gas being conveyed by gas infrastructure meets either or both of the two conditions specified in subclauses (a) and (b) – namely:
- that gas supply is, or is likely to become, disrupted; or
 - there will be insufficient gas supply to meet the requirements of all customers;
- the Minister may do either or both of the things provided for in subclauses (c) and (d).
- 89 (1)(c) Provides that the Minister, having a reasonable belief that either subclause (a) or (b) pertain, the Minister may by notice to the relevant gas infrastructure licensee, give directions to ensure the most efficient, safe and appropriate use of the available gas.

- 89 (1)(d) Provides that the Minister, having a reasonable belief that either subclause (a) or (b) pertain, the Minister may by notice in the manner the Minister thinks appropriate, direct customers not to draw (use) gas from the gas infrastructure other than in accordance with the notice.
- 89 (2) Provides that before a direction is given under subclause (1), an ordered sequence of things must have taken place as specified in subclauses (a) through (d).
- 89(2)(a)-(d) Provides for a sequence of things that must occur before a direction is given under subclause (1) – namely:
- the Minister must advise the Regulator of his or her intention to give the direction, and
 - the Regulator must, as soon as practicable, request the Director of Gas Safety to advise the Regulator if any safety issues are likely to occur if the direction is imposed; and
 - the Regulator must respond to the request as soon as practicable; and
 - the Regulator must then advise the Minister of the details of that advice as soon as practicable; and
 - the Minister must consider any advice so provided by the Director of Gas Safety.
- 89 (3) Provides that before giving a direction under subclause (1) to a licensee, the Minister must, if practical to do so, provide the licensee with an opportunity to provide advice about the proposed direction.
- 89 (4) Provides that a direction is not invalidated if the licensee does not provide advice under subclause (3).
- 89 (5) Provides that a notice under subclause (1)(c) may be given by written notice, or orally if the Minister is of the opinion that immediate action is required.
- 89 (6) Provides an oral notice given to a licensee under subclause (1)(c) must be confirmed as soon as practicable in writing.
- 89 (7) Provides that a direction under subclause (1) operates for not more than 30 consecutive days as otherwise specified in the notice.
- 89 (8) Provides that the Minister may revoke a direction under subclause (1)(c), before the end of the period specified in the notice.
- 89 (9) Provides that no civil liability arises from a failure by a licensee to supply gas as any result of complying with a direction under this clause.

Clause 90 Failure to comply with direction

- 90 (1) Provides for a penalty for a licensee who fails to comply with a direction given under subclause 89(1)(c) as stipulated in subclauses (a) and (b), unless the licensee has an excuse under subclause (3).
- 90 (1)(a) Provides for a fine not exceeding 5 000 penalty units, and in the case of a continuing offence, a further fine not exceeding 200 penalty units per day during which the offence continues, for a body corporate in contravention of this subclause.
- 90 (1)(b) Provides for a fine not exceeding 250 penalty units, and in the case of a continuing offence, a further fine not exceeding 20 penalty units per day during which the offence continues, for a natural person in contravention of this subclause.
- 90 (2) Provides for a penalty for a customer who fails to comply with a direction given under subclause (1)(d) as stipulated in subclauses (a) and (b), unless the customer.
- 90 (2)(a) Provides for a fine not exceeding 500 penalty units for a body corporate in contravention of this subclause.
- 90 (2)(b) Provides for a fine not exceeding 25 penalty units for a natural person in contravention of this subclause.
- 90 (3) Provides that it is a reasonable excuse for a licensee not to comply with a direction under clause 89(1)(c) if complying with the direction would, or would be reasonably likely to result in: m – m
- a risk to a person's safety; or
 - a risk to the operation or security of gas infrastructure; or
 - if there is physically not enough gas to allow for compliance with the direction.
- 90 (4) Provides that it is a reasonable excuse for a customer not to comply with a direction under clause 89(1)(d) if complying with the direction would, or would be reasonably likely to result in a risk to a person's safety.

Clause 91 Minister may require gas retailer to offer gas for sale

- 91 (1) Provides that in this clause “appliance” has the same meaning as in the *Gas Safety Act 2018*.
- 91 (2) Provides that the Minister may, by notice, require a gas retailer to offer to enter into a contract approved by the Minister (under subclause (5)), and to sell gas on the basis of such a contract:
- with anyone who is a member of a class of customer provided by an order under subclause (3)
 - who lives in a place where there is a gas appliance, and

– requests the gas retailer to sell natural gas to them at that place.

- 91 (3) Provides that the Minister may determine a class of customers for the purposes of this clause.
- 91 (4) Provides that the Minister may only specify a class of customer under subclause (3) where satisfied that a gas retailer will otherwise not agree to supply gas to people who belong to that class of person consistent with any code issued and enforced under the Act, where there may be significant hardship caused to members of that class if no retailer offers to sell gas by retail to those members under such terms and conditions.
- 91 (5) Provides that the Minister may approve a contract for sale of gas (after consultation with a licensee) with a class of customer determined under subclause (3), consistent with code issued and in force under the Act.
- 91 (6) Provides for a fine not exceeding 500 penalty units for a licensee who fails to comply with a requirement of a notice under subclause (2)
- 91 (7) Provides a defence for non-compliance under subclause (6) if the licensee can establish that the failure is due to causes beyond the licensee's control, or compliance might result in a risk to a person's safety or the security of gas infrastructure.

Clause 92 Minister may direct Regulator

- 92 (1) Provides that the Minister may direct the Regulator on all matters under the Act apart from those functions and powers under clause 22.
- 92 (2) Provides the Regulator must comply with any direction under subclause (1).
- 92 (3) Provides that no course of civil action may arise from anything done under subclauses (1) and (2).

PART 10 OFFENCES

- Clause 93 (1) Provides for a fine not exceeding 100 penalty units for a person, who without proper authority:
- attaches anything or connects with gas infrastructure; or
 - disconnects or interferes with a supply of gas from gas infrastructure; or
 - damage or interfere with gas infrastructure in any way.
- 93 (2) Provides a fine not exceeding 500 penalty units for any unauthorised interference with a licensed gas activity.
- Clause 94 (1) Provides for a fine not exceeding 100 penalty units for a person who takes or diverts gas from gas infrastructure, or interferes with a meter or other device for measuring gas consumption for gas supplied by a licensee, without proper authority.

- 94 (2) Provides for a not exceeding 100 penalty units for a person who constructs or operates gas infrastructure which extends beyond the property of that person, without proper authority.
- 94 (3) Provides for a defence against proceedings under subclause (2) – namely if the defendant establishes that they are a gas infrastructure licensee, or if the extension beyond the property boundaries is authorised by the regulations.
- 94 (4) Provides that if a person has done something under this clause without proper authority to abstract or divert gas, or to affect the proper measurement of gas to a place, it will be presumed that the person did that thing intending that purpose or purposes.
- 94 (5) Provides a licensee with options for the recovery of loss or damage as a result of a contravention of this clause – namely, by application to a court which convicts the person who has committed an offence against this clause, or by action in a court of competent jurisdiction.
- Clause 95 (1) Provides for a fine not exceeding 50 penalty units for a person who impersonates an authorised or gas officer, or other person with powers under the Act.
- 95 (2) Provides for a fine not exceeding 50 penalty units for a person who unreasonably obstructs authorised or gas officer, or other person with powers under the Act, or in the exercise of those powers.
- 95 (3) Provides for a fine not exceeding 50 penalty units for a person who uses abusive or intimidatory language to or engages in offensive or intimidatory behaviour against authorised or gas officer, or other person who is engaged in the administration of the Act.
- Clause 96 Provides for a fine not exceeding 50 penalty units for a person who knowingly provides false or misleading statement or representation about a material particular in any information provided under the Act.

PART 11 MISCELLANEOUS

Division 1 Gas codes

- Clause 97 (1) Provides that either the Minister or Regulator may issue codes.
- 97 (2) Provides that a code may relate to the selling of gas by retail.
- 97 (3) Provides a code must be consistent with the Act.
- 97 (4) Provides that a code must be in the public interest.
- 97 (5) Provides that a code is invalid to the extent of any inconsistency with the Act.

- 97 (6) Provides flexibility to the matters and periods to which a code may apply.
- 97 (7) Provides that a code may authorise application or regulation of matters by the Regulator, or the tribunal, or a tribunal established under the code.
- 97 (8) Provides that the Minister must provide the Regulator with a copy of any code issued by the Minister.
- 97 (9) Provides that the Regulator must provide the Minister with a copy of any code issued by the Regulator.
- Clause 98 (1) Provides that the Regulator must publish as soon as possible any code issued, in the *Gazette* or other manner the Regulator thinks appropriate.
- 98 (2) Provides that the Regulator must provide a person with a copy of a current code if a person so requests and pays whatever fee is set by the Regulator for its provision to the person.
- 98 (3) Provides that the Regulator must allow a person to peruse a copy of a code free of charge at the Regulator's office during normal opening hours.
- Clause 99 (1) Provides the meaning of "issuing authority" and "protected provision" as drafted.
- 99 (2) Provides that the issuing authority of a code may, if asked to, review that code, or do so under its own initiative.
- 99 (3) Provides that the Regulator must review a code issued by the Regulator, if asked to do so by the Minister.
- 99 (4) Provides that codes are to contain provisions for its amendment, rescission or substitution by the issuing authority.
- 9 (5) Provides that in spite of subclause (4) the Regulator must cause a protected provision from remaining in force without obtaining written permission from the Minister.

Division 2 Other matters

Clause 100 Statutory declarations

- 100 (1) Provides that the Regulator or Director of Gas Safety may require verification of information provided by any person for the purposes of the Act by way of a statutory declaration authored by that person.
- 100 (2) Provides that failure to comply with a request under subclause (1) will mean a person is taken not to have provided information required under the Act.

Clause 101 Immunity from personal liability

- 101 (1) Provides that the Minister and other officials as drafted are not personally liable for an act or omission in good faith in the exercise or discharge of a power function or duty under the Act.
- 101 (2) Provides that any liability that would otherwise lie against a person described in subclause (1), instead lies with the Crown.

Clause 102 Evidence

- 102 (1) Provides that in legal proceedings, documents signed by the Regulator in respect of people holding appointments under the Act are admissible as evidence of fact.
- 102 (2) Provides that in legal proceedings, documents signed by the Regulator certifying that a person was or was not a licensee at a point in time, or on particulars of the licence, are admissible as evidence; as are those relating to the giving and nature of delegations, exemptions, approvals or authorisations, under the Act.

Clause 103 Service of notices, etc

- 103 (1) Provides that a notice may be served under this Act as provided for in subclauses (a) and (b).
- 103 (1)(a) Provides that notice may be served in the case of a natural person if it is given to the person, left or posted to the person's address, faxed or emailed to the person.
- 103 (1)(b) Provides that notice may be served in the case of any other person if it is left or posted to the person's business address, faxed or emailed to the person.
- 103 (2) Provides that if a notice or other document is required to be given to a licensee, and the licence is held by more than one person, the serving of that document any one of those people is sufficient for the purposes of the Act.
- 103 (3) Provides that if a notice is transmitted by fax or email, the notice is taken to have been given on the next day after it was transmitted.
- 104 (1) Provides that the Regulator may extend a time limit fixed by the Act.
- 104 (2) Provides that the Regulator may extend a time limit even though it has already expired.

Clause 105 Confidentiality

- 105 (1) Provides for a fine not exceeding 200 penalty units for unauthorised disclosure by anyone who has been employed on the administration of the Act information which they acquired in the course of such employment.
- 105 (2) Provides a defence against proceedings for an offence under subclause (1) – namely, if the defendant can establish the release of information was authorised under this clause.
- 105 (3) Provides that disclosure of information by anyone who has been employed on the administration of the Act is authorised under conditions as drafted in subclauses (a) through (e).
- 105 (4) Provides that no civil liability attaches to any person for the disclosure of confidential information, if its release was authorised under this clause.
- 105 (5) Provides that if the regulator classifies information confidential, it is not subject to disclosure under the *Right to Information Act 2009*.

Clause 106 Emergency legislation not affected

- 106 Provides that nothing in the Act affects the obligations of any licensee to comply with a direction, order or requirement under the *Emergency Management Act 2006*, or any other law relating to emergencies.

Clause 107 (1) Provides that the Governor may, by order, exempt (either in full or to an extent) a person, class of person, or exempt specified gas infrastructure from provisions of the Act specified in the order.

107 (2) Provides for an order under subclause (1) to include timeframes and conditions.

107 (3) Provides a fine not exceeding, for a body corporate, 500 penalty units, or, for a natural person, 25 penalty units, for contravention of the terms and conditions applying to an order under subclause (1)

Clause 108 Provides that orders by the Governor or Minister under the Act are statutory rules.

Clause 109 Provides that a notice made under the Act is not a statutory rule.

Clause 110 Regulations

110 (1) Provides that the Governor may make regulations for the purposes of the Act.

110 (2) Provides, without limiting the generality of subclause (1), that the regulations may be made to do those things as drafted in subclauses (a) through (i).

- I 10 (3) Provides that a regulation may have penalties for contraventions by way of a fine not exceeding 500 penalty units.
- I 10 (4) Provides that regulations may:
- be general or limited to persons, times and circumstances; or
 - provide that matters within the regulations may be determined at the discretion of Minister and Regulator; or
 - include standards.
- Clause I 11 Provides that until provision is made under the *Administrative Arrangements Act 1990* the minister administering the Act is the Minister for Energy, and the department responsible to the Minister for Energy in relation to the Act is the Department of State Growth.
- Clause I 12 Savings and transitional provisions**
- I 12 (1) Provides for a commencement day.
- I 12 (2) Provides that any licence in force issued under the *Gas Act 2000* or the *Gas Pipelines Act 2000* immediately before commencement day continue as if issued under the Act.
- I 12 (3) Provides that any code in force issued under the *Gas Act 2000* or the *Gas Pipelines Act 2000* immediately before commencement day continue as if issued under the Act.
- I 12 (4) Provides that an exemption granted under the *Gas Act 2000* and in force immediately before commencement day, continues as if issued under the Act.
- I 12 (5) Provides that appointments of authorised officers or gas officers appointed under the *Gas Act 2000* or the *Gas Pipelines Act 2000* and in force immediately before commencement day continue as if appointed under the Act.
- I 12 (6) Provides for the continuity of legal matters on foot immediately prior to commencement day – namely in respect of proceedings by or against the Regulator or a licensee, or any judgement against the Regulator or a licensee not yet executed, or a document served on or by the Regulator or a licensee.
- I 12 (7) Provides that contracts made or entered into by the Regulator or a licensee under the *Gas Act 2000* or the *Gas Pipelines Act 2000* but not performed or discharged on commencement day, is taken to have been made or entered into on commencement day.
- I 12 (8) Provides that any non-contractual arrangement made or entered into by the Regulator or a licensee under the *Gas Act 2000* or the *Gas Pipelines Act*

2000 but not discharged, honoured or terminated on commencement day, is taken to have been made or given on commencement day.

112 (9) Provides that the statutory rules as referenced in subclauses (a) through (r) under the Act may be revoked, but remain in force until so revoked.

Clause 113 Provides for the repeal of the *Gas Act 2000* and the *Gas Pipelines Act 2000*.