

Version No. 027
Gas Industry Act 2001
Act No. 31/2001

Version incorporating amendments as at 1 July 2006

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The main purpose of this Act is to regulate the gas industry.

2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act (except section 69) come into operation on 1 September 2001.
- (3) Section 69 comes into operation on a day to be proclaimed.
- (4) If section 69 does not come into operation before 1 July 2002, it comes into operation on that day.

3. Definitions

In this Act—

"ACCC" means the Australian Competition and Consumer Commission established by section 6A of the Trade Practices Act and includes a member of the Commission or a Division of the Commission performing functions of the Commission;

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"Access Code" means the Code within the meaning of the Gas Pipelines Access (Victoria) Law;

"apparatus and works" means, in relation to a pipeline—

- (a) apparatus for inducing or facilitating the flow or movement of anything through the pipeline;
- (b) apparatus or structure for giving protection or support to the pipeline;
- (c) apparatus for transmitting information or instruction with regard to the operation of the pipeline;
- (d) valves, valve chambers, manholes, inspection pits and other similar works annexed to or incorporated in the course of the pipeline;
- (e) storage, loading and all ancillary facilities and installations required for the pipeline or used in connection with, or incidental to, the pipeline;
- (f) prime movers for the operation of any apparatus or works mentioned in paragraph (a), (d) or (e);

S. 3 def. of
"appeal
tribunal"
repealed by
No. 29/2006
s. 3(Sch. 1
item 13.1).

* * * * *

"civil penalty provision" means a provision of the MSO Rules that is prescribed as a civil penalty provision for the purposes of Division 1 of Part 4;

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s. 3

"Commission" means the Essential Services Commission established under the **Essential Services Commission Act 2001**;

S. 3 def. of
"Commis
sion"
inserted by
No. 62/2001
s. 77(a).

"conduct provision" means a provision of the MSO Rules that, under the MSO Rules, is a conduct provision for the purposes of Division 1 of Part 4;

"construction" includes, in relation to a pipeline, the placing or testing of the pipeline;

"customer" means a person to whom a gas company transmits, distributes or supplies gas or provides goods or services;

"distribute", in relation to gas, means convey gas through distribution pipelines;

"distribution pipeline" means a pipeline for the conveyance of gas but does not include—

(a) a transmission pipeline;

(b) a gathering line within the meaning of the **Petroleum Act 1998**;

"gas" means any gaseous fuel but does not include any gaseous fuel that is declared under section 8 not to be gas for the purposes of this Act or any provision of this Act;

"gas bill" means a bill or account issued by a licensee to a customer for the supply or sale of gas;

S. 3 def. of
"gas bill"
inserted by
No. 91/2004
s. 14.

"gaseous fuel" includes petrochemical feed stock;

"GASCOR" has the same meaning as it has in the **Gas Industry (Residual Provisions) Act 1994**;

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s. 3

"gas company" means a gas distribution company, a gas retailer or a gas transmission company;

"gas distribution company" means a person who holds a licence to provide services by means of a distribution pipeline;

"gas distribution system" means—

- (a) the primary distribution system; and
- (b) any distribution pipeline or system of distribution pipelines that, under section 13(1), is an approved distribution connection; and
- (c) any distribution pipeline or system of distribution pipelines that, under section 13(2), is an approved distribution adjunct;

"gas fitting" includes meter, pipeline, burner, fitting, appliance and apparatus used in connection with the consumption of gas;

"gas producer" means a person who carries on a business of producing natural gas;

"gas retailer" means a person who holds a licence to sell gas;

"gas transmission company" means—

- (a) VENC Corp; or
- (b) any other person who owns, operates or provides a service by means of a transmission pipeline;

"gas transmission system" means—

- (a) the primary transmission system; and
- (b) any transmission pipeline or system of transmission pipelines that, under section 14(1) is an approved transmission connection; and
- (c) any transmission pipeline or system of transmission pipelines that, under section 14(2), is an approved transmission adjunct;

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S. 3 def. of
"GFCV"
repealed by
No. 29/2006
s. 3(Sch. 1
item 13.2).

"GTC" has the same meaning as it has in the **Gas Industry (Residual Provisions) Act 1994**;

"inspector", except in Part 8, means a person appointed as an inspector under Part 5 of the **Gas Safety Act 1997**;

"licence" means a licence issued under Part 3;

"licensee" means the holder of a licence issued under Part 3;

"market participant" means a person who is registered by VENCORP under the MSO Rules as a participant;

"meter" means an instrument that measures the quantity of gas passing through it;

"MSO Rules" means the rules made on 2 February 1999 under section 48N of the **Gas Industry Act 1994** as those rules are amended and in force for the time being;

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s. 3

"natural gas" means a substance—

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

"operation", in relation to a pipeline, includes the maintenance, removal and alteration of the pipeline;

S. 3 def. of
"ORG"
repealed by
No. 62/2001
s. 77(b).

* * * * *

"pipeline" means a pipe or system of pipes for or incidental to the conveyance of gas and includes all apparatus and works associated with the pipe or system of pipes, and includes a part of such a pipe or system but does not include a pipeline or a pipeline in a class of pipelines declared under section 9 not to be a pipeline for the purposes of this Act;

"Port Campbell facility" means the underground storage facility or facilities adapted under petroleum leases PPL No. 1 and PPL No. 2 issued under the **Petroleum Act 1958**;

"primary distribution system" means the system of distribution pipelines operated by GASCOR immediately before 9 December 1997, other than any part of that system to which an Order under section 11 applies;

"primary transmission system" means the system of transmission pipelines operated by GTC immediately before 9 December 1997, other than any part of that system to which an Order under section 12 applies;

"regulatory provision" means a provision of the MSO Rules that, under the MSO Rules, is a regulatory provision for the purposes of Division 1 of Part 4;

"significant producer" means a body corporate that—

- (a) is the holder of, or of an interest in, a production licence for petroleum in the adjacent area in respect of Victoria within the meaning of the **Petroleum (Submerged Lands) Act 1982** or of the Petroleum (Submerged Lands) Act 1967 of the Commonwealth; and
- (b) has a substantial degree of power in one or more Victorian gas markets—

and, in Parts 3, 4 and 5, includes a body corporate that is related within the meaning of section 74 to such a holder;

"small retail customer" in section 43A, 48B, 48C or 48D means a person in a class of persons declared to be small retail customers for the purposes of that section by Order under section 7A;

S. 3 def. of
"small retail
customer"
inserted by
No. 91/2004
s. 14.

Gas Industry Act 2001
Act No. 31/2001

Part 1—Preliminary

s. 3

S. 3 def. of
"Tariff Order"
amended by
No. 25/2004
s. 10.

"Tariff Order" means—

- (a) an Order made under section 20A as that Order is amended and in force from time to time;
- (b) the Wimmera and Colac Gas Supply Tariff Order 1998 published in the Government Gazette on 17 December 1998 as that Order is amended and in force from time to time;

"Trade Practices Act" means the Trade Practices Act 1974 of the Commonwealth;

"transmission pipeline" means—

- (a) a pipeline for the conveyance of gas—
 - (i) in respect of which a person is, or is deemed to be, the licensee under the **Pipelines Act 1967**; and
 - (ii) that has a maximum design pressure exceeding 1050kPa—other than a gathering line within the meaning of the **Petroleum Act 1998**; or
- (b) a pipeline that is declared under section 10 to be a transmission pipeline—

but does not include a pipeline declared under section 10 not to be a transmission pipeline;

"transmit" means convey gas through a transmission pipeline;

"underground storage facility" means a naturally occurring underground reservoir adapted to enable it to be used for the purpose of storing natural gas;

"VENCorp" means the Victorian Energy Networks Corporation continued under Part 8;

"Victorian gas market" means a market in which gas—

(a) is supplied in Victoria to a gas retailer;
or

(b) is supplied to customers in Victoria—
whether or not the market extends beyond Victoria.

4. Crown to be bound

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

5. Extra-territorial operation

It is the intention of the Parliament that the operation of this Act should, so far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
- (d) things, acts, transactions and matters, (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

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Part 1—Preliminary

s. 6

6. Construction of Act

This Act must be read and construed as one with
the **Gas Industry (Residual Provisions) Act
1994**.

PART 2—APPLICATION OF ACT

Division 1—Provisions relating to Gas Companies

7. Application of Act and other Acts to certain gas companies

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that a reference in specified provisions in Part 7 of this Act or specified provisions in another Act to a gas company does not include a reference to a specified gas distribution company, gas retailer or gas transmission company.
- (2) A copy of an Order under sub-section (1) must be laid before each House of Parliament on or before the sixth sitting day after it is made.
- (3) An Order under sub-section (1) is subject to disallowance by a House of Parliament, and section 23 of the **Subordinate Legislation Act 1994** applies as if the Order were a statutory rule.

Division 1A—Declaration of Small Retail Customers and Retailers

Pt 2 Div. 1A
(Heading and
s. 7A)
inserted by
No. 91/2004
s. 15.

7A. Declaration of small retail customers and retailers

S. 7A
inserted by
No. 91/2004
s. 15.

- (1) The Governor in Council may by Order published in the Government Gazette—
 - (a) declare a class or classes of persons to be small retail customers for the purposes of section 43A, 48B, 48C or 48D;
 - (b) declare a licensee to be a specified gas retailer for the purposes of section 43A.

-
- (2) An Order under sub-section (1)(a) may declare a different class or classes of persons to be small retail customers for the purposes of each section specified in that paragraph.
- (3) An Order under this section may specify a class of persons by reference to all or any of the following—
- (a) the person authorised to sell the gas;
 - (b) the purpose for which the gas is used;
 - (c) the quantity of gas used;
 - (d) the period of use;
 - (e) the place of supply;
 - (f) the nature of the contract for supply of gas;
 - (g) financial circumstances;
 - (h) any other specified factor of any kind.
- (4) An Order under this section may confer powers and functions on, and leave any matter to be decided by, the Commission.

Division 2—Application Provisions relating to Gas and Pipelines

8. Declaration of gaseous fuel

The Governor in Council, by Order published in the Government Gazette, may declare any gaseous fuel not to be gas for the purposes of this Act or any provision of this Act.

9. Declaration of pipeline not to be pipeline

The Governor in Council, by Order published in the Government Gazette, may declare a pipeline or a pipeline in a class of pipelines not to be a pipeline for the purposes of this Act.

10. Declaration of pipeline to be, or not to be, a transmission pipeline

The Governor in Council, by Order published in the Government Gazette—

- (a) may declare a pipeline or class of pipelines to be a transmission pipeline for the purposes of this Act;
- (b) may declare a pipeline or class of pipelines not to be a transmission pipeline for the purposes of this Act.

11. Gas distribution system

The Governor in Council, by Order published in the Government Gazette, may declare that a part of the primary distribution system is deemed not to be part of that system for the purposes of this Act.

12. Gas transmission system

The Governor in Council, by Order published in the Government Gazette, may declare that a part of the primary transmission system is deemed not to be part of that system for the purposes of this Act.

13. Connections to and adjuncts of gas distribution system

- (1) VENCORP and a gas distribution company may agree in writing that a distribution pipeline or system of distribution pipelines owned or operated, or to be owned or operated, by the gas distribution company and connected, or to be connected, to the gas distribution system is, or is not, or will be, or will not be, an approved distribution connection for the purposes of this Act.

- (2) VENCORP and a gas distribution company may agree in writing that a distribution pipeline or system of distribution pipelines or any apparatus or works associated with such a pipeline or system owned or operated, or to be owned or operated, by the gas distribution company and used, or to be used, as an adjunct or enhancement of the gas distribution system is, or is not, or will be, or will not be, an approved distribution adjunct for the purposes of this Act.

14. Connections to and adjuncts of gas transmission system

- (1) VENCORP and another gas transmission company may agree in writing that a transmission pipeline or system of transmission pipelines owned or operated, or to be owned or operated, by the gas transmission company and connected, or to be connected, to the gas transmission system is, or is not, or will be, or will not be, an approved transmission connection for the purposes of this Act.
- (2) VENCORP and another gas transmission company may agree in writing that a transmission pipeline or system of transmission pipelines or any apparatus or works associated with such a pipeline or system owned or operated, or to be owned or operated, by the gas transmission company and used, or to be used, as an adjunct or enhancement of the gas transmission system is, or is not, or will be, or will not be, an approved transmission adjunct for the purposes of this Act.

Division 3—Gas Market Provisions

15. Substantial degree of power

(1) If—

- (a) a body corporate that is related within the meaning of section 74 to another body corporate ("the primary body corporate") has, or 2 or more bodies corporate each of which is related to the same body corporate ("the primary body corporate") together have, a substantial degree of power in a Victorian gas market; or
- (b) a body corporate ("the primary body corporate") and another body corporate that is, or a body corporate ("the primary body corporate") and 2 or more bodies corporate each of which is, related within the meaning of section 74 to the primary body corporate, together have a substantial degree of power in a Victorian gas market; or
- (c) a body corporate ("the primary body corporate") has more than a 20% interest in a joint venture within the meaning of section 75 the parties to which together in that capacity have a substantial degree of market power in a Victorian gas market—

the primary body corporate shall be taken for the purposes of this Act to have a substantial degree of power in that market.

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Part 2—Application of Act

s. 16

- (2) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a Victorian gas market, regard shall be had to the extent to which the conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of—
- (a) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or
 - (b) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires gas in that market.
- (3) In this section and in the definition of "significant producer" in section 3, a reference to power in relation to, or to conduct in, a Victorian gas market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of gas in that market.

16. Sale of gas under MSO Rules

In this Act, a reference to a sale of gas by retail does not include a reference to a sale of gas in the market operated by VENCORP under the MSO Rules.

Pt 2 Div. 4
(Heading)
amended by
No. 62/2001
s. 77(c)(ii).

Division 4—Role of the Commission and the ACCC under this Act

S. 17
(Heading)
amended by
No. 62/2001
s. 77(d).

17. Application of Essential Services Commission Act 2001

For the purposes of the **Essential Services Commission Act 2001**—

S. 17
amended by
No. 62/2001
s. 77(d).

- (a) this Act is relevant legislation; and
- (b) the gas industry is a regulated industry.

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Part 2—Application of Act

s. 18

18. Objectives of the Commission

The objectives of the Commission under this Act are—

- (a) to the extent that it is efficient and practicable to do so, to promote a consistent regulatory approach between the gas industry and the electricity industry; and
- (b) to promote the development of full retail competition.

S. 18
amended by
No. 62/2001
s. 77(c)(ii),
substituted by
No. 62/2001
s. 78.

19. Conferral of functions on ACCC

- (1) The ACCC has the functions and powers conferred or expressed to be conferred on it under this Act, a Tariff Order or the MSO Rules.
 - (2) In addition to the powers mentioned in sub-section (1), the ACCC has power to do all things necessary or convenient to be done in connection with the performance of the functions and powers referred to in that sub-section.
-

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Part 3—Regulation of Gas Industry

s. 20

PART 3—REGULATION OF GAS INDUSTRY

Division 1—Regulation of Tariffs and Charges

20. Wimmera and Colac Tariff Order

S. 20
(Heading)
substituted by
No. 25/2004
s. 11(1).

S. 20(1)
amended by
No. 25/2004
s. 11(2).

- (1) The Wimmera and Colac Tariff Order cannot be amended except as provided by this section.

S. 20(2)
amended by
No. 25/2004
s. 11(3).

- (2) The Governor in Council may, by Order, revoke the Wimmera and Colac Tariff Order.

S. 20(3)
amended by
No. 25/2004
s. 11(3).

- (3) The Governor in Council may, by Order, amend the Wimmera and Colac Tariff Order to insert specified metering and data collection and processing services as excluded services for the purposes of the Order.
- (4) The Governor in Council may, by Order, amend a Tariff Order from time to time so as to extend the application of the Order to additional retailers and additional gas distribution companies.

S. 20(5)
amended by
Nos 62/2001
s. 77(c)(ii),
25/2004
s. 11(2).

- (5) The Wimmera and Colac Tariff Order may confer functions and powers on the ACCC or the Commission relating to the regulation of tariffs and charges under the Order.

S. 20(6)
amended by
No. 25/2004
s. 11(3).

- (6) If the provisions of the Wimmera and Colac Tariff Order relating to charges for connection to, and the use of, any distribution pipeline or transmission pipeline are inconsistent with charges specified in access arrangements approved under the Access Code, the provisions do not apply to the extent of the inconsistency.

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- (7) An Order under sub-section (2), (3) or (4) must be published in the Government Gazette.
- (8) An Order under sub-section (1) has effect as from the date specified in the Order. S. 20(8) amended by No. 62/2001 s. 77(c)(ii), substituted by No. 75/2004 s. 33¹.
- (8A) Sections 53 and 54 of the **Essential Services Commission Act 2001** apply to a Tariff Order as if the Tariff Order were a determination made by the Commission under that Act. S. 20(8A) inserted by No. 75/2004 s. 33.
- (9) If a provision of the Wimmera and Colac Tariff Order ceases to have effect, the remaining provisions of that Order continue to have effect, subject to that Order and this Act, according to their tenor and so to have effect, subject to that Order and this Act, as if— S. 20(9) amended by No. 25/2004 s. 11(3).
- (a) references in those provisions to a provision that has ceased to have effect were a reference to that provision as in force immediately before it ceased to have effect; and
- (b) words and expressions used in those provisions that were defined by the provision that has ceased to have effect continue to have the same respective meanings as before the provision ceased to have effect.
- (10) In this section "**Wimmera and Colac Tariff Order**" means the Wimmera and Colac Gas Supply Tariff Order 1998 published in the Government Gazette on 17 December 1998 as that Order is amended and in force from time to time. S. 20(10) inserted by No. 25/2004 s. 11(4).
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S. 20A
inserted by
No. 25/2004
s. 12.

20A. New Tariff Order

- (1) The Governor in Council may, by Order published in the Government Gazette—
 - (a) determine or authorise the ACCC to determine services that are to be excluded services in relation to the transmission of gas;
 - (b) authorise the ACCC to regulate the terms and charges for the provision of excluded services in relation to the transmission of gas;
 - (c) specify pricing principles to apply to any determination of the ACCC relating to charges for connection to and use of a transmission pipeline;
 - (d) determine or authorise the Commission to determine services that are to be excluded services in relation to the distribution of gas;
 - (e) authorise the Commission to regulate the terms and charges for the provision of excluded services in relation to the distribution of gas;
 - (f) specify pricing principles to apply to any determination of the Commission relating to charges for connection to and use of any distribution pipeline;
 - (g) make provision for any matter ancillary to any matter referred to in paragraphs (a) to (f).
- (2) If the provisions of an Order under this section are inconsistent with the Access Code or any access arrangement approved under the Access Code, the provisions do not apply to the extent of the inconsistency.

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- (3) The Governor in Council may, by Order published in the Government Gazette, amend or revoke an Order under this section.

21. Regulation of tariffs for prescribed customers

- (1) The Governor in Council may, by Order published in the Government Gazette, regulate, in such manner and in relation to such period as the Governor in Council thinks fit, tariffs for the sale of gas to prescribed customers or a class of prescribed customers.
- (2) Without limiting the generality of sub-section (1), the manner may include—
- (a) fixing the tariff or the rate of increase or decrease in the tariff;
 - (b) fixing a maximum tariff or maximum rate of increase or minimum rate of decrease in the maximum tariff;
 - (c) fixing an average tariff or an average rate of increase or decrease in the average tariff;
 - (d) specifying policies and principles for fixing tariffs;
 - (e) specifying a tariff determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
 - (f) specifying a tariff determined by reference to any one or more of the following—
 - (i) a prescribed customer or class of prescribed customers;
 - (ii) a person or a class of persons authorised to sell gas;
 - (iii) the purpose for which the gas is used;
 - (iv) the quantity of gas used;

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- (v) the period of use;
- (vi) the place of supply;
- (vii) any other specified factor relevant to the sale of gas.

S. 21(3)
amended by
Nos 62/2001
s. 77(c)(ii)(d),
75/2004
s. 34(1).

- (3) An Order under sub-section (1) may direct the Commission to make a decision in respect of such factors and matters or in accordance with such procedures, matters or bases as are specified in the Order, or both.

S. 21(4)
amended by
No. 62/2001
s. 77(c)(ii),
substituted by
No. 75/2004
s. 34(2).

- (4) An Order under sub-section (1) has effect as from the date specified in the Order.

S. 21(4A)
inserted by
No. 75/2004
s. 34(2).

- (4A) Sections 53 and 54 of the **Essential Services Commission Act 2001** apply to an Order under sub-section (1) as if the Order were a determination made by the Commission under that Act.
- (5) The Governor in Council may, by Order published in the Government Gazette, declare that a person or class of persons specified in the Order is, for the purposes of this section, a prescribed customer or class of prescribed customers.
- (6) In this section—
"prescribed customer" means a person, or a member of a class of persons, to whom an Order under sub-section (5) applies.
- (7) This section, and any Order made under this section and in force immediately before 31 December 2007, expire on 31 December 2007.

S. 21(7)
amended by
No. 40/2003
s. 3,
substituted by
No. 91/2004
s. 16.

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Division 2—Licences

22. Offence to distribute or retail gas without licence

- (1) A person must not provide services (other than the sale of gas by retail) by means of a distribution pipeline, either as principal or agent, unless the person—

S. 22(1)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) is the holder of a licence authorising that person to provide those services; or
- (b) is exempt from the requirement to obtain a licence in respect of those services because of an Order under section 24.

Penalty: 1200 penalty units and 120 penalty units for each day after the day on which a notice of contravention of this sub-section is served on the person by the Commission.

- (2) A person must not engage in the sale of gas by retail, either as principal or agent, unless the person—

S. 22(2)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) is the holder of a licence authorising the sale of gas by retail; or
- (b) is exempt from the requirement to obtain a licence in respect of the sale of gas by retail because of an Order under section 24.

Penalty: 1200 penalty units and 120 penalty units for each day after the day on which a notice of contravention of this sub-section is served on the person by the Commission.

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S. 23
amended by
No. 62/2001
s. 77(c)(ii).

23. Offence to operate underground storage facility without licence

A person must not engage in providing services as a market participant by means of the Port Campbell facility, either as principal or agent, unless the person—

- (a) is the holder of a licence under this Part authorising that person to provide those services; or
- (b) is exempt from the requirement to obtain a licence in respect of those services because of an Order under section 24.

Penalty: 1200 penalty units and 120 penalty units for each day after the day on which a notice of contravention of this section is served on the person by the Commission.

24. Exemptions

- (1) The Governor in Council may, by Order published in the Government Gazette, exempt a person from the requirement to obtain a licence in respect of the activity specified in the Order.
- (2) An exemption may be of general or specific application.
- (3) An exemption is subject to such terms and conditions as are specified in the Order.
- (4) An Order under sub-section (1) may confer powers and functions on, and leave any matter to be decided by, the Commission.

S. 24(4)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 35.

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25. Application for licence

- (1) A person may apply to the Commission for the issue of a licence—
 - (a) authorising the person to provide services by means of a distribution pipeline; or
 - (b) authorising the person to sell gas by retail; or
 - (c) authorising the person to engage in providing services as a market participant by means of an underground storage facility.
- (2) An application must be in a form approved by the Commission and accompanied by such documents as may be required by the Commission.
- (3) An application must be accompanied by the application fee (if any) fixed by the Commission.

S. 25(1)
amended by
No. 62/2001
s. 77(c)(ii).

S. 25(2)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 36.

S. 25(3)
amended by
No. 62/2001
s. 77(c)(ii).

26. Grant or refusal of application

- (1) The Commission may grant or refuse an application for the issue of a licence for any reason it considers appropriate, having regard to the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**.
- (2) The Commission must publish a notice in a daily newspaper generally circulating in Victoria—
 - (a) specifying that an application for a licence in respect of the relevant activity has been lodged with the Commission by the person specified in the notice; and

S. 26
(Heading)
amended by
No. 75/2004
s. 37(1).

S. 26(1)
amended by
No. 62/2001
ss 77(c)(i),
79(1).

S. 26(2)
amended by
No. 62/2001
s. 77(c)(i).

S. 26(2)(a)
amended by
No. 62/2001
s. 77(c)(ii).

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S. 26(2)(b)
amended by
No. 62/2001
s. 77(c)(ii).

(b) inviting interested persons to make submissions to the Commission in respect of the application within the period and in the manner specified in the notice.

S. 26(3)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 37(2).

(3) Subject to this section and any requirements specified in regulations made for the purposes of this section under section 236, the Commission may decide the procedures that are to apply in respect of the issue of licences.

S. 26(4)
amended by
No. 62/2001
s. 77(c)(i).

(4) The Commission must notify an applicant in writing of its decision to grant or refuse to grant the application and, in the case of a decision to refuse to grant the application, of the reasons for its decision.

27. Grant of licence for exclusive franchise

S. 27(1)
amended by
No. 62/2001
s. 77(c)(i).

(1) The Commission, under section 26, may grant an application for a licence—

- (a) to provide services by means of a distribution pipeline in a particular area on an exclusive basis; or
- (b) to sell gas by retail in a particular area on an exclusive basis.

S. 27(2)
amended by
No. 62/2001
s. 77(c)(i).

(2) The Commission, under section 38, may vary a licence to permit the licensee—

- (a) to provide services by means of a distribution pipeline in a particular area on an exclusive basis; or
- (b) to sell gas by retail in a particular area on an exclusive basis.

S. 27(3)
amended by
No. 62/2001
s. 77(c)(i).

(3) The Commission may only grant an application for a licence of a kind referred to in sub-section (1) in accordance with the criteria determined by Order under this section for the grant of a licence.

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- (4) The Commission may only vary a licence for a purpose referred to in sub-section (2) in accordance with the criteria determined by Order under this section for the variation of a licence.

S. 27(4)
amended by
No. 62/2001
s. 77(c)(i).

- (5) If—

- (a) an application for a licence to provide services by means of a distribution pipeline is granted, in accordance with this section, in relation to a particular area; or
- (b) a licence is varied to permit the provision of services by means of a distribution pipeline in a particular area on an exclusive basis—

then for the period specified in the licence, no other licensee is authorised to provide those services in that area.

- (6) If—

- (a) an application for a licence to sell gas by retail is granted in accordance with this section in relation to a particular area; or
- (b) a licence is varied to permit the sale of gas by retail in a particular area on an exclusive basis—

then for the period specified in the licence no other licensee is authorised under this Act to sell gas by retail in that area.

- (7) Sub-sections (5) and (6) apply despite anything to the contrary in any licence granted before, on or after the commencement of this section and any such licence is deemed to be modified accordingly.

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- (8) The Governor in Council, by Order published in the Government Gazette, may determine the criteria for—
- (a) the grant of an application for a licence of a kind referred to in sub-section (1)(a) or (b); or
 - (b) the variation of a licence of a kind referred to in sub-section (2)(a) or (b).
- (9) The criteria specified in an Order under sub-section (8) must not be inconsistent with any relevant criteria contained in the Natural Gas Pipelines Access Agreement dated 7 November 1997 and made between the Commonwealth, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, and the Australian Capital Territory and the Northern Territory as that agreement is amended and in effect from time to time.

28. Provisions relating to licences

S. 28(1)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 38.

- (1) A licence is to be issued for such term (if any) as is decided by the Commission and is specified in the licence.

S. 28(2)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 38.

- (2) A licence is subject to such conditions as are decided by the Commission.
- (3) If a licence is issued to 2 or more persons for the purpose of the carrying on by those persons of activities authorised by the licence in partnership or as an unincorporated joint venture, the licence may include conditions relating to the carrying on of those activities in that manner.

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29. Specific licence conditions

Without limiting the generality of section 28, the conditions on a licence may include provisions—

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| (a) requiring the licensee to pay specified fees and charges in respect of the licence to the Commission; | S. 29(a)
amended by
No. 62/2001
s. 77(c)(ii). |
| (b) requiring the licensee to enter into agreements on specified terms or on terms of a specified type; | |
| (c) requiring the licensee to observe specified Orders in Council, industry codes, standards, rules and guidelines with such modifications or exemptions as may be specified by the Commission; | S. 29(c)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 39(a). |
| (d) in the case of a licence issued to a gas retailer, requiring the licensee to inform customers from time to time of the arrangements in place or proposed to be in place to allow them to elect to become a customer of another gas retailer; | |
| (e) in the case of a licence issued to a gas retailer, requiring the licensee to give notice to customers of the existence of deemed contracts under section 46 and the methods by which those contracts may be terminated and requiring the gas retailer to provide cooling-off periods approved by the Commission for the termination of those contracts; | S. 29(e)
amended by
Nos 62/2001
s. 77(c)(ii),
85/2001 s. 10. |
| (f) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles; | |
| (g) specifying requirements about the ownership of real or personal property used in or in connection with the carrying on of activities under the licence; | |
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S. 29(h)
repealed by
No. 75/2004
s. 39(b).

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- (i) preventing the licensee from engaging in or undertaking specified business activities;
- (j) requiring the licensee to establish and maintain separate accounts for specified business activities and to keep those activities separate from its other activities in any manner specified in the licence;
- (k) prohibiting the licensee from engaging in conduct of a particular kind, or for a particular purpose, or that has, or is likely to have, a particular effect;
- (l) restricting the classes of customers to whom the licensee may sell gas or provide services under the licence, as the case requires;
- (m) specifying methods or principles to be applied by the licensee in determining prices or charges;
- (ma) in the case of a licence issued to a gas retailer, specifying methods and principles to be applied by the licensee in determining prices and charges for the supply of gas to bulk hot water systems and requiring the licensee to publish those prices or charges;
- (n) specifying methods or principles to be applied in the conduct of gas retailing or the provision of services under the licence, as the case requires;
- (o) specifying procedures for variation or revocation of the licence;

S. 29(ma)
inserted by
No. 91/2004
s. 17.

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- (p) specifying the procedures to apply if an administrator is appointed under section 41;
- (q) requiring the licensee to provide, in the manner and form specified by the Commission, such information as the Commission may from time to time require;
- (r) subject to section 49, in the case of a licence issued to a gas retailer, requiring the licensee to enter into an agreement with the State for the provision of community services;
- (s) requiring the licensee to develop, issue and comply with customer-related standards, procedures, policies and practices (including with respect to the payment of compensation to customers).

S. 29(q)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 39(c).

30. Determination of fees and charges

The fees and charges to be specified in respect of a licence for the purposes of section 29(a) are to be determined by the Minister administering the **Essential Services Commission Act 2001**—

S. 30
substituted by
No. 62/2001
s. 80.

- (a) in consultation with the Minister administering this Act; and
- (b) having regard to the total amount of the costs and expenses of the Commission that are incurred or are likely to be incurred by the Commission in the exercise of its powers for or in connection with the performance of its functions and the achievement of its objectives in relation to the gas industry.

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Act No. 31/2001

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31. Condition specifying industry codes, standards, rules or guidelines

S. 31(1)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) If a licence is subject to a condition of a kind referred to in section 29(c), the Commission—

S. 31(1)(a)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) may, in accordance with procedures specified by the Commission, amend the specified industry codes, standards, rules or guidelines, or a document referred to in any of them, for the purposes of their application under the licence;
- (b) may resolve, or seek to resolve, disputes between the licensee and any other person relating to the specified industry codes, standards, rules or guidelines, or a document referred to in any of them, as they apply under the licence.

S. 31(2)
amended by
No. 62/2001
s. 77(c)(ii).

- (2) If the Commission amends an industry code, standard, rule or guideline or a document under sub-section (1), the Commission may at the same time, in accordance with procedures specified by the Commission, amend that code, standard, rule, guideline or document for the purposes of their application otherwise than under the licence.

32. Condition relating to customer-related standards, procedures, policies and practices

S. 32(1)(a)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) If a licence is subject to a condition of a kind referred to in section 29(s)—
- (a) the Commission must monitor the licensee's compliance with the customer-related standards, procedures, policies and practices developed by the licensee in accordance with the condition; and

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| <p>(b) if the Commission considers that any of the customer-related standards, procedures, policies and practices, or compliance by the licensee with any of them, disadvantages, or may disadvantage, any class of its customers, or all of its customers, the Commission may require the licensee to modify or revoke any part of the standards, procedures, policies or practices that causes the disadvantage or possible disadvantage.</p> | <p>S. 32(1)(b)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 40(a).</p> |
| <p>(2) The Commission, in making a requirement under sub-section (1)(b), must have regard to the prices, risks and costs associated with or resulting from the modification or revocation which is the subject of the requirement.</p> | <p>S. 32(2)
amended by
Nos 62/2001
s. 77(c)(i),
75/2004
s. 40(b).</p> |
| <p>(3) The Commission must not make a requirement under sub-section (1)(b) unless the Commission has given the licensee an opportunity to make representations on the matter.</p> | <p>S. 32(3)
amended by
Nos 62/2001
s. 77(c)(i)(ii),
75/2004
s. 40(b).</p> |
| <p>(4) Section 35 of the Essential Services Commission Act 2001 applies to the making of a requirement under sub-section (1) as if it were a determination made by the Commission under the Essential Services Commission Act 2001.</p> | <p>S. 32(4)
amended by
Nos 62/2001
s. 77(e),
75/2004
s. 40(b)(c).</p> |
| <p style="text-align: center;">* * * *</p> | <p>S. 33
amended by
No. 62/2001
s. 77(c)(i)(ii),
repealed by
No. 25/2004
s. 13.</p> |

34. Supplier of last resort

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| <p>(1) Without limiting the generality of section 28, the conditions to which a licence to provide services by means of a distribution pipeline or to sell gas by retail is subject may include a requirement that, in certain circumstances, the licensee, on tariffs, terms and conditions approved by the Commission, having regard to the matters referred</p> | <p>S. 34(1)
amended by
Nos 62/2001
s. 77(c)(ii),
31/2006
s. 5(1)(a).</p> |
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to in sub-section (2), supply or sell gas to relevant customers to whom gas is supplied or sold under another licence (whether held by that licensee or another licensee).

S. 34(2)
amended by
No. 62/2001
s. 77(c)(ii).

- (2) In approving the tariffs and terms and conditions of a requirement referred to in sub-section (1), the Commission must have regard to—

- (a) the risks and costs associated with the requirement; and
- (b) the extent to which the licensee or another licensee has developed systems to comply with such a requirement; and
- (c) any tariffs and terms and conditions proposed by the licensee whether or not at the request of the Commission.

S. 34(2)(c)
amended by
No. 62/2001
s. 77(c)(ii).

- (3) A requirement referred to in sub-section (1) does not apply so as to require the licensee to supply or sell gas—
- (a) if the licensee's licence provides for a distribution area, outside that area; or
 - (b) to a customer to whom gas is supplied or sold under another licence if the customer elects, in writing given to the holder of that other licence, not to be a customer of that other licensee for the purposes of sub-section (1); or
 - (c) if to do so would be inconsistent with the licensee's obligations under the Access Code.
- (4) If the conditions to which a licence of a licensee is subject include a requirement referred to in sub-section (1), the licensee is deemed to be authorised to supply or sell gas to the extent necessary to comply with the requirement.

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- (5) The obligation of a licensee ("the second licensee") to supply or sell gas to a relevant customer to whom gas is supplied or sold under another licence ("the first licensee") in accordance with the requirement referred to in sub-section (1) commences when—

S. 34(5)
amended by
No. 31/2006
s. 5(1)(b).

- (a) the first licensee's licence is revoked; or

S. 34(5)(a)
substituted by
No. 25/2004
s. 14.

- (b) the first licensee has been deregistered as a market participant in the category of retailer under the MSO Rules after a notice of suspension was issued to the licensee by VENCORP under those Rules—

S. 34(5)(b)
substituted by
No. 25/2004
s. 14.

whichever first occurs.

- (6) The obligation of the second licensee referred to in sub-section (5) ends—

- (a) 3 months after its commencement; or
(b) when the customer advises the second licensee that the supply or sale is no longer required; or
(c) when the customer transfers to become the customer of another licensee; or
(d) when the customer enters into a new contract with the second licensee for the supply or sale of gas—

whichever first occurs.

- (7) The Commission must notify the second licensee under sub-section (5), as soon as practicable, of the commencement of the second licensee's obligation under that sub-section.

S. 34(7)
amended by
No. 62/2001
s. 77(c)(i).

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S. 34(8)
amended by
No. 31/2006
s. 5(1)(a).

- (8) The tariffs and terms and conditions upon which, in the circumstances referred to in sub-section (6), a licensee will supply or sell gas to relevant customers of another licensee are—

S. 34(8)(a)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) the tariffs and terms and conditions approved by the Commission after proposed tariffs, terms and conditions have been submitted by the licensee for approval; or

S. 34(8)(b)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 41(1).

- (b) if—

S. 34(8)(b)(i)
amended by
No. 62/2001
s. 77(c)(ii).

- (i) the licensee has submitted tariffs, terms and conditions for approval and any changes proposed by the Commission are not adopted by the licensee within one month after being proposed; or

S. 34(8)(b)(ii)
amended by
Nos 85/2001
s. 17(1),
62/2001
s. 77(c)(ii).

- (ii) if the licensee, after being given at least one month's notice to submit proposed tariffs, terms and conditions to the Commission, fails to comply with the request—

the tariffs, terms and conditions specified by the Commission as the approved tariffs, terms and conditions.

S. 34(9)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 41(2).

- (9) The licensee, or if the Commission specifies the tariffs, terms and conditions, the Commission, must cause notice of the approved tariffs, terms and conditions to be published in the Government Gazette.

S. 34(10)
amended by
No. 31/2006
s. 5(1)(a).

- (10) The tariffs, terms and conditions of which notice has been published in accordance with sub-section (9) are binding on the licensee and the relevant customers to which they apply and, when the licensee is acting in accordance with those tariffs, terms and conditions, they have effect

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despite any agreement or instrument to the contrary relating to the distribution or supply, or sale of gas to those relevant customers.

- (11) A licensee and a customer to whom the licensee has an obligation under sub-section (5) to supply or sell gas are deemed to have entered into a contract on the relevant tariffs, terms and conditions published under sub-section (9).
- (11A) The terms and conditions of a requirement referred to in sub-section (1) may include a condition setting out circumstances in which a licensee must continue to supply or sell gas to a relevant customer to whom the licensee supplies or sells gas under an obligation under sub-section (5) after that obligation comes to an end in accordance with sub-section (6)(a). S. 34(11A)
inserted by
No. 85/2001
s. 11,
amended by
No. 31/2006
s. 5(1)(b).
- (11B) A condition referred to in sub-section (11A) must provide for the tariff or tariffs and the terms and conditions for the continued supply or sale of gas to be determined by the licensee. S. 34(11B)
inserted by
No. 85/2001
s. 11.
- (12) Terms and conditions approved or specified by the Commission under this section may be varied from time to time. S. 34(12)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 41(1).
- (13) This section applies to a variation under sub-section (12) in the same manner as it applies to the approval or specification of a term or condition. S. 34(13)
amended by
No. 75/2004
s. 41(3).
- (14) If a variation is approved or specified under this section, sub-sections (9) and (10) apply to the terms and conditions as so varied. S. 34(14)
amended by
No. 75/2004
s. 41(1).
- (15) The Governor in Council may, by Order published in the Government Gazette, declare that a person or a class of persons specified in the Order is, for the purposes of this section, a relevant customer or class of relevant customers. S. 34(15)
inserted by
No. 31/2006
s. 5(2).

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S. 34(16)
inserted by
No. 31/2006
s. 5(2).

- (16) An Order under sub-section (15) may specify a class of persons by reference to all or any of the following—
- (a) the person authorised to sell the gas;
 - (b) the purpose for which the gas is used;
 - (c) the quantity of gas used;
 - (d) the period of use;
 - (e) the place of supply;
 - (f) any other specified factor relevant to the sale of gas.

S. 34(17)
inserted by
No. 31/2006
s. 5(2).

- (17) An Order under sub-section (15) may confer powers and functions on, and leave any matter to be decided by, the Commission.

S. 34(18)
inserted by
No. 31/2006
s. 5(2).

- (18) In this section "**relevant customer**" means a person, or a member of a class of persons, to whom an Order under sub-section (15) applies.

S. 35
expired by
force of
No. 31/2001
s. 35(4).²

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36. Customer dispute resolution

S. 36(1)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) A licence to—
- (a) provide services by means of a distribution pipeline; or
 - (b) sell gas by retail—
- must be issued subject to a condition requiring the licensee to enter into a customer dispute resolution scheme approved by the Commission.

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(2) In approving a customer dispute resolution scheme, the Commission must have regard to—

S. 36(2)
amended by
No. 62/2001
s. 77(c)(ii).

(a) the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**; and

S. 36(2)(a)
amended by
No. 62/2001
s. 77(c)(ii),
substituted by
No. 62/2001
s. 79(2).

(b) the need to ensure that the scheme is accessible to the licensee's customers and that there are no cost barriers to those customers using the scheme; and

(c) the need to ensure that the scheme is independent of the members of the scheme; and

(d) the need for the scheme to be fair and be seen to be fair; and

(e) the need to ensure that the scheme will publish decisions and information about complaints received by the scheme so as to be accountable to the members of the scheme and the customers of the scheme members; and

(f) the need for the scheme to undertake regular reviews of its performance to ensure that its operation is efficient and effective.

(3) The Commission may, in accordance with this Part, vary any existing licence to—

S. 36(3)
amended by
No. 62/2001
s. 77(c)(i).

(a) provide services by means of a distribution pipeline; or

(b) sell gas by retail—

to include a condition of a kind referred to in subsection (1).

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S. 36(4)
amended by
No. 62/2001
s. 77(c)(i).

- (4) The Commission may in its discretion exempt a licence to sell gas by retail held by a significant producer from the requirements of sub-section (1).

S. 37
amended by
No. 62/2001
ss 77(c)(i)(ii),
79(1),
repealed by
No. 25/2004
s. 15.

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38. Variation or revocation of licence

S. 38(1)(b)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) A licence or the licence conditions may be varied—
- (a) in accordance with the procedures specified in the licence conditions; or
 - (b) by agreement between the Commission and the licensee; or
 - (c) by a notice in accordance with sub-section (2) served on the licensee.

S. 38(2)
amended by
No. 62/2001
s. 77(c)(i).

- (2) The Commission must not vary a licence or the licence conditions by a notice unless—

S. 38(2)(a)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) the Commission is satisfied that the variation is necessary—

S. 38(2)(a)(i)
amended by
No. 62/2001
s. 79(1).

- (i) having regard to the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**; or

- (ii) to give effect to Division 5; and

S. 38(2)(b)
amended by
No. 62/2001
s. 77(c)(ii).

- (b) the Commission has given the licensee an opportunity to make representations on the matter.

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- (3) The Commission may revoke a licence in accordance with the procedures specified in the licence conditions.

S. 38(3)
amended by
No. 62/2001
s. 77(c)(i).

39. Gazettal requirement

The Commission must ensure that—

- (a) notice of the grant of a licence including—
- (i) the name of the licensee;
 - (ii) the term of the licence;
 - (iii) the place where a copy of the licence may be inspected;
- (b) notice of a variation or revocation under section 38—

S. 39
amended by
No. 62/2001
s. 77(c)(i).

is published in the Government Gazette as soon as possible after the grant of a licence or the variation or revocation, as the case requires.

40. Transfer of licence

- (1) The holder of a licence may apply to the Commission for approval to transfer the licence.
- (2) An application must be in a form approved by the Commission and accompanied by such documents as may be required by the Commission.
- (3) An application must be accompanied by the application fee (if any) fixed by the Commission.
- (4) The Commission must publish in a daily newspaper generally circulating in Victoria a notice—

S. 40(1)
amended by
No. 62/2001
s. 77(c)(ii).

S. 40(2)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 42(1).

S. 40(3)
amended by
No. 62/2001
s. 77(c)(ii).

S. 40(4)
amended by
No. 62/2001
s. 77(c)(i).

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S. 40(4)(a)
amended by
No. 62/2001
s. 77(c)(ii).

(a) specifying that an application for the transfer of the licence has been lodged with the Commission for the transfer by the holder to a proposed transferee specified in the notice; and

S. 40(4)(b)
amended by
No. 62/2001
s. 77(c)(ii).

(b) inviting interested persons to make submissions to the Commission in respect of the application within the period and in the manner specified in the notice.

S. 40(5)
amended by
No. 62/2001
ss 77(c)(ii),
79(1).

(5) Subject to this section, the Commission may approve, or refuse to approve, the application for any reason it considers appropriate, having regard to the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**.

S. 40(6)
amended by
Nos 62/2001
s. 77(c)(i)(ii),
75/2004
s. 42(2)(3).

(6) The Commission may decide that, upon the transfer of the licence under this section, the conditions to which the licence is subject are varied as decided by the Commission.

S. 40(7)
amended by
No. 62/2001
s. 77(c)(ii),
75/2004
s. 42(2).

(7) Subject to this section and any requirements specified in regulations made for the purposes of this section under section 236, the Commission may decide the procedures that are to apply in respect of the transfer of a licence.

S. 40(8)
amended by
No. 62/2001
s. 77(c)(i).

(8) The Commission must notify an applicant in writing of its decision to approve or refuse to approve the application and, in the case of a decision to refuse to approve the application, of the reasons for its decision.

S. 40(9)
amended by
No. 62/2001
s. 77(c)(i).

(9) The Commission must ensure that notice of the approval for the transfer of a licence is published in the Government Gazette as soon as possible after the decision to approve the transfer is made.

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include a condition requiring the licensee to offer to supply and sell gas to domestic or small business customers, subject to this section and to any Order in force under section 21 and to the conditions of its licence—

- (a) at tariffs determined by the licensee and published by the licensee in the Government Gazette at least 2 months before they take effect; and
- (b) on terms and conditions determined by the licensee and approved by the Commission and published by the licensee in the Government Gazette at least 2 months before they take effect.

S. 42(1)(b)
amended by
No. 62/2001
s. 77(c)(ii).

- (2) The terms and conditions determined by the licensee for the purposes of sub-section (1) must not be inconsistent with the terms and conditions decided by the Commission under section 43(1).

S. 42(2)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 44,
substituted by
No. 39/2005
s. 56(1).

- (3) The tariffs determined by a licensee and published in the Government Gazette under sub-section (1) may be varied by notice published by the licensee in the Government Gazette not less than 2 months before the variation is to take effect.

S. 42(4)
amended by
No. 62/2001
s. 77(c)(ii).

- (4) The terms and conditions determined by a licensee and published in the Government Gazette under sub-section (1) may, with the approval of the Commission, be varied by notice published by the licensee in the Government Gazette not less than 2 months before the variation is to take effect.

S. 42(4A)
inserted by
No. 91/2004
s. 18(1).

- (4A) A person who is a domestic or small business customer may accept an offer by a licensee under this section even if the person was previously a party to a contract for the supply or sale of gas on different terms and conditions with the same licensee or another licensee.

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- (5) The Governor in Council may, by Order published in the Government Gazette, declare that a person or class of persons specified in the Order is, for the purposes of this section, a domestic or small business customer or class of domestic or small business customers.
- (6) An Order under sub-section (5) may specify a class of persons by reference to all or any of the following—
- (a) the person authorised to sell the gas;
 - (b) the purpose for which the gas is used;
 - (c) the quantity of gas used;
 - (d) the period of use;
 - (e) the place of supply;
 - (f) any other specified factor relevant to the sale of gas.
- (7) An Order under sub-section (5) may confer powers and functions on, and leave any matter to be decided by, the Commission.
- (7A) If an agreement for the sale and supply of gas is amended as a result of a variation under sub-section (3) or (4) and—
- (a) the agreement is a contact sales agreement within the meaning of the **Fair Trading Act 1999**, section 61(1)(g) of that Act does not apply to that amendment; or
 - (b) the agreement is a telephone marketing agreement within the meaning of the **Fair Trading Act 1999**, section 67E(3)(c) of that Act does not apply to that amendment.

S. 42(7)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 44.

S. 42(7A)
inserted by
No. 30/2003
s. 87,
substituted by
No. 106/2003
s. 26(1).

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S. 42(7B)
inserted by
No. 106/2003
s. 26(1).

(7B) Sections 67E(1) and 67I to 67M of the **Fair Trading Act 1999** do not apply to a contract for the supply or sale of gas to a domestic or small business customer.

S. 42(7C)
inserted by
No. 106/2003
s. 26(1).

(7C) Section 67H of the **Fair Trading Act 1999** does not apply to a contract for the supply or sale of gas to a domestic or small business customer unless the terms and conditions determined for the purpose of sub-section (1) (in compliance with sub-section (2)) require the inclusion of a cooling-off period in that contract.

S. 42(7D)
inserted by
No. 106/2003
s. 26(1).

(7D) If section 67H(1) of the **Fair Trading Act 1999** applies to a contract for the supply or sale of gas to a domestic or small business customer then, for the purposes of that sub-section, the domestic or small business customer is deemed to have received the document evidencing the contract and the notice on the day on which the licensee is taken under that contract to have given the document and notice to the customer.

(8) In this section—

S. 42(8) def. of
"cooling-off
period"
inserted by
No. 106/2003
s. 26(2).

"cooling-off period" means a period within which a person is entitled under a contract to cancel the contract;

"domestic or small business customer" means a person, or a member of a class of persons, to whom an Order under sub-section (5) applies.

S. 42(9)
amended by
Nos 40/2003
s. 4, 91/2004
s. 18(2).

(9) This section expires on 31 December 2007.

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43. Terms and conditions of contracts for sale of gas to certain customers

(1) A term or condition in a contract for the supply or sale of gas by a licensee to a relevant customer (whether entered into before, on or after 1 September 2001) is void to the extent that it is inconsistent with—

(a) terms and conditions decided by the Commission that—

S. 43(1)(a)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 45.

(i) specify the circumstances in which the supply of gas to premises may be disconnected; and

(ii) require the licensee to provide information specified by the Commission about the rights and entitlements of customers; and

S. 43(1)(a)(ii)
amended by
No. 62/2001
s. 77(c)(ii).

(iii) specify the circumstances in which the licensee requires access to premises of customers for the purpose of reading meters or otherwise; and

(iv) make provision for confidentiality of customer information; and

(b) any other terms and conditions decided by the Commission and provided for in the licence of the licensee.

S. 43(1)(b)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 45.

(1A) In deciding terms and conditions that specify the circumstances in which the supply of gas to premises may be disconnected, the Commission must have regard to—

S. 43(1A)
inserted by
No. 91/2004
s. 19(1).

(a) the essential nature of the gas supply; and

(b) community expectations that ongoing access to gas supply will be available; and

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- (c) the principle that the gas supply to premises should only be disconnected as a last resort.
- (2) If a term or condition of a contract is void pursuant to sub-section (1) because of an inconsistency with a term or condition referred to in sub-section (1)(a) or (b), that term or condition referred to in sub-section (1)(a) or (b) is deemed to form part of that contract in place of the void term or condition.
- (3) The Governor in Council may, by Order published in the Government Gazette, declare that a person or class of persons specified in the Order is, for the purposes of this section, a relevant customer or class of relevant customers.
- (4) An Order under sub-section (3) may specify a class of persons by reference to all or any of the following—
- (a) the person authorised to sell the gas;
 - (b) the purpose for which the gas is used;
 - (c) the quantity of gas used;
 - (d) the period of use;
 - (e) the place of supply;
 - (f) any other specified factor relevant to the sale of gas.
- (5) An Order under sub-section (3) may confer powers and functions on, and leave any matter to be decided by, the Commission.
- (5A) Sections 67E(1) and 67I to 67M of the **Fair Trading Act 1999** do not apply to a contract for the supply or sale of gas to a relevant customer.

S. 43(5)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 45.

S. 43(5A)
inserted by
No. 106/2003
s. 26(3).

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(5B) Section 67H of the **Fair Trading Act 1999** does not apply to a contract for the supply or sale of gas to a relevant customer unless the terms and conditions decided for the purpose of sub-section (1) require the inclusion of a cooling-off period in that contract.

S. 43(5B)
inserted by
Nos 106/2003
s. 26(3),
75/2004 s. 45.

(5C) If section 67H(1) of the **Fair Trading Act 1999** applies to a contract for the supply or sale of gas to a relevant customer then, for the purposes of that sub-section, the relevant customer is deemed to have received the document evidencing the contract and the notice on the day on which the licensee is taken under that contract to have given the document and notice to the customer.

S. 43(5C)
inserted by
No. 106/2003
s. 26(3).

(6) In this section—

"cooling-off period" means a period within which a person is entitled under a contract to cancel the contract;

S. 43(6) def. of
"cooling-off
period"
inserted by
No. 106/2003
s. 26(4).

"relevant customer" means a person, or a member of a class of persons, to whom an Order under sub-section (3) applies.

(7) This section expires on 31 December 2007.

S. 43(7)
amended by
Nos 40/2003
s. 5, 91/2004
s. 19(2).

43A. Publication of terms and conditions of sale of gas

S. 43A
inserted by
No. 91/2004
s. 20.

(1) Without limiting the generality of section 28, the conditions to which a licence to sell gas by retail issued to a specified gas retailer is subject include a condition requiring the specified gas retailer to publish on its Internet site, in accordance with this section, details of the tariffs and terms and conditions on which the specified gas retailer sells gas to small retail customers.

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- (2) The Commission must prepare and issue guidelines for the purposes of this section specifying—
 - (a) the manner of publication of the tariffs and terms and conditions; and
 - (b) the nature of the details to be published; and
 - (c) any other matters that the Commission considers relevant.
- (3) A specified gas retailer must comply with the guidelines issued under sub-section (2) when complying with the licence condition in sub-section (1).
- (4) This section does not apply to tariffs and terms and conditions published under section 42.
- (5) In this section "**specified gas retailer**" means a licensee declared to be a specified gas retailer by Order under section 7A.
- (6) This section expires on 31 December 2007.

44. Deemed contracts with former franchise customers

S. 44(1)
substituted by
No. 91/2004
s. 21(1).

- (1) If a person—
 - (a) was a franchise customer within the meaning of the **Gas Industry Act 1994** immediately before 1 September 2001; and
 - (b) has not entered into a new contract with a licensee which takes effect on or after that date—

there is deemed to be a contract between that person and the licensee of which the person was a customer immediately before that date for the supply and sale of gas at the tariffs and on the terms and conditions determined and published by that licensee under section 42.

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- (2) The deemed contract continues until—
- (a) the contract is terminated; or
 - (b) if the customer enters into a new contract for the purchase of gas from the licensee in respect of the same premises, the date of taking effect of that new contract—
- whichever first occurs.
- (3) This section expires on 31 December 2007.

S. 44(3)
amended by
Nos 40/2003
s. 6, 91/2004
s. 21(2).

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S. 45
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 46,
repealed by
No. 91/2004
s. 22.

46. Deemed contracts for supply and sale for relevant customers

S. 46
substituted by
No. 85/2001
s. 12.

- (1) If a relevant customer commences to take supply of gas at premises from the relevant licensee without having entered into a supply and sale contract with that licensee, there is deemed, on the commencement of that supply, to be a contract between that licensee and that person for the supply and sale of gas—
- (a) at the tariffs and on the terms and conditions determined and published by that licensee under section 42; and
 - (b) on the conditions decided and provided for by the Commission under sub-section (5).

S. 46(1)(a)
substituted by
No. 91/2004
s. 23(1).

S. 46(1)(b)
amended by
No. 75/2004
s. 47(1).

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(2) If a relevant customer—

- (a) commences to take supply of gas at premises under a supply and sale contract with the relevant licensee; and
- (b) that customer cancels the supply and sale contract within the cooling-off period relating to the contract; and
- (c) that customer continues to take gas from that licensee without entering into a further supply and sale contract with that licensee—

there is deemed, on the cancellation of the supply and sale contract, to be a contract between that licensee and that customer for the supply and sale of gas—

- (d) at the tariffs and on the terms and conditions determined and published by that licensee under section 42; and
- (e) on the conditions decided and provided for by the Commission under sub-section (5).

S. 46(2)(d)
substituted by
No. 91/2004
s. 23(2).

S. 46(2)(e)
amended by
No. 75/2004
s. 47(1).

(3) A deemed contract under sub-section (2) is deemed to commence on the commencement of supply referred to in sub-section (2)(a).

(4) If a supply and sale contract referred to in sub-section (2)(a) is—

- (a) a contact sales agreement within the meaning of the **Fair Trading Act 1999**, sections 65 to 67 of that Act do not apply on the cancellation of that contract;
- (b) a non-contact sales agreement within the meaning of the **Fair Trading Act 1999**, sections 73 to 75 of that Act do not apply on the cancellation of that contract.

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(5) Without limiting the generality of section 28, the Commission may decide, and provide for in the licence of a licensee, conditions setting out—

S. 46(5)
amended by
No. 75/2004
s. 47(2).

(a) circumstances in which a licensee must continue to supply or sell gas to a customer to whom the licensee supplies or sells gas under a deemed contract under this section after that contract comes to an end in accordance with sub-section (7)(d) or (e); and

(b) events on the happening of which a deemed contract under this section may come to an end.

(6) A condition referred to in sub-section (5)(a) must provide for the tariff or tariffs and the terms and conditions for the continued supply or sale of gas to be determined by the licensee.

(6A) A person who is a relevant customer may be a party to a deemed contract under this section even if the person has previously been a party to a contract for the supply or sale of gas to different premises on different terms and conditions with the same licensee or another licensee.

S. 46(6A)
inserted by
No. 91/2004
s. 23(3).

(7) A deemed contract under this section comes to an end—

(a) if the contract is terminated; or

(b) if the customer enters into a new contract for the purchase of gas from the licensee in respect of the same premises, on the date of taking effect of that new contract; or

(c) if the customer transfers to become the customer of another licensee; or

(d) at the end of 120 days after the day on which the deemed contract commences; or

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S. 46(7)(e)
amended by
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s. 47(1).

(e) on the happening of an event decided and provided for by the Commission under sub-section (5)(b)—

whichever occurs first.

(8) Sub-section (1) does not apply where the relevant customer referred to in that sub-section commences to take the supply of gas by fraudulent or illegal means.

(9) Sub-section (2) does not apply where the relevant customer referred to in that sub-section takes the supply of gas by fraudulent or illegal means after the cancellation of the supply and sale contract referred to in sub-section (2)(a).

(10) In this section—

S. 46(10) def.
of "cooling-off
period"
amended by
No. 106/2003
s. 26(5).

"cooling-off period" means the period within which a relevant customer is entitled under a supply and sale contract or section 63, 67H or 71 of the **Fair Trading Act 1999** to cancel the contract;

"relevant customer" has the same meaning as in section 43;

"relevant licensee", in relation to premises, means the licensee last responsible for the supply and sale of gas to those premises;

"supply and sale contract" means a contract for the supply or sale of gas, whether oral or in writing, or partly oral and partly in writing.

(11) This section expires on 31 December 2007.

S. 46(11)
amended by
Nos 40/2003
s. 7, 91/2004
s. 23(4).

S. 47
repealed by
No. 85/2001
s. 12.

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48. Deemed distribution contracts

- (1) A gas distribution company may from time to time, subject to the conditions of its licence, give notice of terms and conditions applying in respect of the distribution or supply of gas by the gas distribution company to retail customers or a class of retail customers.
- (2) The terms and conditions must be approved by the Commission before a notice is given under subsection (1).
- (3) Unless the Commission approves otherwise in a particular case, the terms and conditions must not be inconsistent with the Gas Distribution System Code published by the Office of the Regulator-General on 24 February 2000 as amended or remade from time to time.
- (4) The terms and conditions must not be inconsistent with any access arrangement applicable to the gas distribution company and approved under the Access Code.
- (5) The approved terms and conditions of which notice is given under this section—
 - (a) take effect on the day on which they are published in the Government Gazette; and
 - (b) are binding on the gas distribution company and the retail customers to which they are expressed to apply.
- (6) A gas distribution company and a retail customer are deemed to have entered into a contract on the terms and conditions published under subsection (5) on a date determined in accordance with those terms and conditions.
- (7) A gas distribution company may from time to time vary any terms and conditions of which notice is given under this section.

S. 48(2)
amended by
No. 62/2001
s. 77(c)(ii).

S. 48(3)
amended by
No. 62/2001
s. 77(f)(i)(ii).

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s. 48A

- (8) This section applies to a variation under sub-section (6) in the same manner as it applies to the making, approval and notification of the terms and conditions.
- (9) A gas distribution company, subject to the conditions of its licence, and a retail customer may by agreement in writing vary any of the terms and conditions of a deemed contract under sub-section (6).
- (10) A deemed contract under sub-section (6) may be terminated in accordance with its terms and conditions.
- (11) Nothing in this section affects any contract existing immediately before the commencement of this section between a gas distribution company and a retail customer.
- (12) In this section "**retail customer**" in relation to a gas distribution company means a customer of a gas retailer to which the gas distribution company distributes or supplies gas.

S. 48A
inserted by
No. 91/2004
s. 24.

48A. Compensation for wrongful disconnection

- (1) Without limiting the generality of section 28, the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee—
 - (a) disconnects the supply of gas to the premises of that customer; and
 - (b) fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.

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s. 48B

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- (2) A payment under sub-section (1) may be made directly to the customer or by way of rebate on the customer's gas bill.
 - (3) A payment under a condition under sub-section (1) must be made as soon as practicable after the supply of gas is reconnected to the premises of the relevant customer.
 - (4) Nothing in this section affects any other right any person or body may have to take action against a licensee in relation to a disconnection of a supply of gas.
 - (5) In this section—

"prescribed amount" means—

- (a) the amount prescribed by the regulations for the purposes of this section; or
- (b) if no amount is prescribed by the regulations, \$250 for each whole day that the supply of gas is disconnected and a pro rata amount for any part of a day that the supply of gas is disconnected;

"relevant customer" has the same meaning as in section 43.

48B. Prohibition on fees for late payment

- (1) A term or condition in a contract for the supply or sale of gas by retail by a licensee to a small retail customer (whether entered into before or after the commencement of this section) is void to the extent that it permits the licensee to charge the customer a fee or charge for late payment of a gas bill.

**S. 48B
inserted by
No. 91/2004
s. 24.**

Gas Industry Act 2001
Act No. 31/2001

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s. 48C

- (2) Nothing in this section prevents a licensee from offering an incentive or rebate to a small retail customer for paying a gas bill on or before the due date for payment.
- (3) This section applies despite anything to the contrary in any terms and conditions that form part or are deemed by this Act to form part of the contract between a licensee and a small business customer.

S. 48C
inserted by
No. 91/2004
s. 24.

48C. Regulation of exit fees

- (1) The Governor in Council may by Order published in the Government Gazette prohibit or regulate the imposition by a licensee under a contract for the supply or sale of gas by retail to a small retail customer of an exit fee on the termination of that contract.
- (2) An Order under sub-section (1) may specify terms and conditions applying to the imposition of exit fees.
- (3) An Order under sub-section (1) may also provide that a contract between a small retail customer and a licensee for the supply or sale of gas by retail is to include a condition providing that the small retail customer may terminate the contract—
 - (a) without notice, if the contract is a deemed contract under section 44 or 46; or
 - (b) in any other case, by giving the required period of notice to the licensee.
- (4) If an Order under sub-section (1) requires the inclusion of a condition referred to in sub-section (3) in a contract for the supply or sale of gas, that condition is deemed to form part of that contract.

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s. 48D

- (5) Nothing in this section or an Order under this section prevents a licensee from offering an incentive or rebate to a small retail customer to remain a customer of the licensee.
- (6) An Order under sub-section (1) has effect from the date specified in the Order.
- (7) Sections 53 and 54 of the **Essential Services Commission Act 2001** apply to an Order under sub-section (1) as if the Order were a determination made by the Commission under that Act.
- (8) This section applies despite anything to the contrary in any terms and conditions that form part or are deemed by this Act to form part of the contract between a licensee and a small retail customer.
- (9) In this section—
 - "exit fee"** means a fee or charge payable on the termination of a contract but does not include any fee or charge for gas supplied under the contract;
 - "required period"** means the longer of—
 - (a) the period of notice agreed between the licensee and the small retail customer; and
 - (b) the period of notice in an Order under sub-section (1).

48D. Regulation of pre-payment meters

- (1) The Governor in Council may by Order published in the Government Gazette prohibit or regulate the implementation by a licensee of a pre-payment meter scheme in respect of the licensee's small retail customers.

S. 48D
inserted by
No. 91/2004
s. 24.

Gas Industry Act 2001
Act No. 31/2001

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s. 48D

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- (2) An Order under sub-section (1) regulating the implementation of a pre-payment meter scheme may specify terms and conditions applying to that scheme.
 - (3) An Order under sub-section (1) has effect from the date specified in the Order.
 - (4) Sections 53 and 54 of the **Essential Services Commission Act 2001** apply to an Order under sub-section (1) as if the Order were a determination made by the Commission under that Act.
 - (5) This section applies despite anything to the contrary in any terms and conditions that form part or are deemed by this Act to form part of the contract between a licensee and a small retail customer.
 - (6) The Minister must cause a copy of each Variation Order to be laid before each House of Parliament within 6 sitting days of that House following the making of the Order.
 - (7) A Variation Order is subject to disallowance by a House of Parliament, and sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if the Variation Order were a statutory rule within the meaning of that Act.
 - (8) In this section—

 "pre-payment meter" means a meter that allows gas to be sold or supplied under an arrangement that allows the customers to make full payment for the gas before it is consumed;

 "Variation Order" means an Order made in substitution for or amending or revoking an Order made under sub-section (1).
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Division 5—Community Service Agreements

49. Community services

- (1) An agreement by a gas retailer with the State for the provision of community services is an agreement for a term of not less than 5 years for the provision by the gas retailer of gas to a class of domestic customers specified by the Secretary to the Department of Human Services—
 - (a) at such concessional rates and in such manner and at such times as are determined by the Secretary; and
 - (b) on such other terms and conditions as are agreed between the retailer and the State or, in default of agreement, as are determined by the Secretary.
- (2) In determining terms and conditions under subsection (1)(b), the Secretary must have regard to the risks and costs associated with the obligations imposed on the gas retailer under the agreement and must ensure that the terms and conditions are consistent with any relevant concession order made under the **State Concessions Act 2004**.

S. 49(2)
amended by
No. 82/2004
s. 13(Sch.
item 4).

50. Transitional provision relating to community services

- (1) An agreement to which this section applies that, but for section 48TAB of the **Gas Industry Act 1994**, would have ceased to have effect on 31 August 2001 continues in force until the expiration of the prescribed period or terminated upon the making of a new agreement by the gas retailer with the State for the provision of community services by way of the provision of gas to certain customers, whichever first occurs.

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- (2) The prescribed period is the period ending on 31 December 2001 or such other date, not later than 31 March 2002, as is agreed between the gas retailer and the Secretary to the Department of Human Services.
- (3) If a new agreement is not made between the gas retailer and the State before the expiration of the prescribed period, an agreement is deemed to have been entered into on terms and conditions determined by the Secretary in accordance with section 49.
- (4) This section applies to an agreement in force before 1 September 2001 under which a gas retailer agrees with the State to provide certain community services by way of the provision of gas to customers.

51. The Commission may decide certain matters

S. 51
(Heading)
amended by
Nos 62/2001
s. 77(c)(i),
75/2004
s. 48(1).

S. 51(1)
amended by
No. 62/2001
s. 77(c)(i).

S. 51(1)(a)
amended by
No. 75/2004
s. 48(2)(a)(i)(ii).

S. 51(1)(b)
amended by
No. 75/2004
s. 48(2)(b)(i)(ii).

- (1) The Commission, at the request of the Secretary to the Department of Human Services or a gas retailer, may—
 - (a) decide matters referred by the Secretary or gas retailer for decision for the purposes of making an agreement referred to in section 49 or 50; or
 - (b) if an agreement referred to in section 49 or 50 has been entered into or deemed to be entered into on terms and conditions determined by the Secretary under section 49, decide matters relating to those terms and conditions (including the variation of any of those terms and conditions) referred by the Secretary or gas retailer for decision.

Gas Industry Act 2001
Act No. 31/2001

Part 3—Regulation of Gas Industry

s. 51

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| (2) A request relating to a term or condition determined by the Secretary under section 49 must be made within one month after notice of the decision is given. | S. 51(2)
amended by
No. 75/2004
s. 48(2)(c). |
| (3) A decision by the Commission on matters referred under sub-section (1) is binding on the parties to the agreement. | S. 51(3)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 48(2)(c). |
| (4) If a decision of the Commission on matters referred under sub-section (1) varies a term or condition of an agreement, that agreement is deemed to be so varied on that decision being made. | S. 51(4)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 48(2)(c). |
| (5) The matters which may be referred to the Commission under this section do not include—
<div style="margin-left: 20px;">(a) any matters relating to the class of domestic customers specified by the Secretary under section 49; or

<div style="margin-left: 20px;">(b) any matters determined by the Secretary under section 49(1)(a).</div></div> | S. 51(5)
amended by
No. 62/2001
s. 77(c)(ii). |
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PART 4—GAS MARKET PROVISIONS

Division 1—Market and System Operation Rules

52. MSO Rules

- (1) The MSO Rules cannot be amended except as provided by this section.
- (2) The purpose of the MSO Rules is the regulation of—
 - (a) the operation of a market for gas;
 - (b) the activities of market participants in a market for gas;
 - (c) the operation of the gas transmission system for the purposes of—
 - (i) the security of the system;
 - (ii) the achievement of the market objectives referred to in sub-section (3).
- (3) The market objectives are to establish a competitive, reliable and efficient market for gas—
 - (a) in which market participants can choose with whom they trade;
 - (b) in which third parties are granted access to the gas transmission system;
 - (c) in which, to the extent practicable, the trading of gas from different sources is not differentiated;
 - (d) in which prices are governed as far as practicable by commercial and market forces rather than regulation;
 - (e) in which efficiency is encouraged.

- (4) The MSO Rules may confer functions and powers on the ACCC.
- (5) The Governor in Council, by Order published in the Government Gazette, may amend the MSO Rules.
- (6) VENCORP, after consultation in accordance with the MSO Rules, may amend the MSO Rules, by notice published in the Government Gazette.

53. Competition policy authorisation

- (1) For the purposes of Part IV of the Trade Practices Act and of the Competition Code, the following are specifically authorised—
 - (a) the making of the MSO Rules on 2 February 1999;
 - (b) the amendment of the MSO Rules, whether under those Rules, section 48N of the **Gas Industry Act 1994** or section 52 of this Act or otherwise;
 - (c) any thing done, or conduct engaged in, by VENCORP under or pursuant to, or by way of enforcement of, the MSO Rules;
 - (d) any thing done, or conduct engaged in by a participant or market participant required by the MSO Rules;
 - (e) the making of, or giving effect to, an agreement, arrangement or understanding made under or pursuant to the MSO Rules and made between VENCORP and a participant or market participant, between participants, between market participants or between participants and market participants.
- (2) This section does not apply to anything done, or conduct engaged in, on or after 1 January 2003.

(3) In this section—

- (a) **"market participant"** and **"participant"** have the same meanings as they have in the MSO Rules;
- (b) a reference to engaging in conduct has the same meaning as in section 4(2)(a) of the Trade Practices Act.

54. Proceedings

- (1) A person may not bring civil proceedings in respect of a matter arising under this Division, except in accordance with this Division.
- (2) The ACCC may, in accordance with this Division, bring civil proceedings in respect of a civil penalty provision or a regulatory provision.
- (3) The ACCC or any other person may, in accordance with this Division, bring civil proceedings in respect of a conduct provision.
- (4) Nothing in this section affects the right of a person to bring civil proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on this Division.

55. Criminal proceedings do not lie

- (1) Criminal proceedings do not lie against a person by reason only that the person—
 - (a) has contravened a provision of this Division;
 - (b) has attempted to contravene such a provision;
 - (c) has aided, abetted, counselled or procured a person to contravene such a provision;
 - (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision;

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- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) has conspired with others to contravene such a provision.
- (2) Sub-section (1) does not apply in respect of a provision of this Division for an offence against which a penalty is prescribed by this Division.

56. Civil penalty

- (1) The ACCC may apply to a court for an order under this Division in respect of a contravention by a person of a civil penalty provision or the doing by a person of any other thing mentioned in sub-section (2).
- (2) If the court is satisfied that a person—
- (a) has contravened a civil penalty provision; or
 - (b) has attempted to contravene such a provision; or
 - (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
 - (d) has induced, or attempted to induce, a person whether by threats or promises or otherwise, to contravene such a provision; or
 - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

S. 56(2)(b)
amended by
No. 39/2005
s. 56(2).

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- (f) has conspired with others to contravene such a provision—

the court may order the person to pay to the Minister for payment into the Consolidated Fund such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the court determines to be appropriate having regard to all relevant matters including—

- (g) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
 - (h) the circumstances in which the act or omission took place; and
 - (i) whether the person has previously been found by a court in proceedings under this Division to have contravened a civil penalty provision.
- (3) The pecuniary penalty payable under subsection (2) must not exceed the penalty prescribed by the regulations for the act or omission to which this section applies.

57. Injunctions

- (1) If, on an application in accordance with subsection (2), the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
- (a) a contravention of a provision that, under the MSO Rules, is a regulatory provision or conduct provision of the MSO Rules; or
 - (b) attempting to contravene such a regulatory provision or conduct provision—

the Court may grant an injunction in such terms as the Court determines to be appropriate.

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- (2) An application under sub-section (1) may be made—
- (a) in the case of a regulatory provision, by the ACCC;
 - (b) in the case of a conduct provision, by the ACCC or a market participant.
- (3) If an application for an injunction under sub-section (1) has been made the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in sub-section (1).
- (4) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under sub-section (1).
- (5) The Court may rescind or vary an injunction granted under sub-section (1) or (3).
- (6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person or to property if the person engages in conduct of that kind.
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- (7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person or to property if the person refuses or fails to do that act or thing.
- (8) If the ACCC makes an application to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

58. Actions for damages for contravention of conduct provision

- (1) A market participant who suffers loss or damage by conduct of another that was done in contravention of a conduct provision may, subject to and in accordance with the MSO Rules, recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.
- (2) An action under sub-section (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.

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- (3) A reference in sub-section (1) to a person involved in a contravention of a conduct provision is a reference to a person who—
- (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention.

59. Declaratory relief

- (1) The Supreme Court, on an application by a person may, by order, declare whether or not the person to which the application relates has contravened a regulatory provision or conduct provision.
- (2) An application under sub-section (1) may be made, subject to and in accordance with the MSO Rules—
 - (a) in the case of a regulatory provision, by the ACCC;
 - (b) in the case of a conduct provision, by the ACCC or any other person.
- (3) If the order declares the person to have contravened a regulatory provision or conduct provision, the order may include one or more of the following—
 - (a) a requirement that the person cease, within a specified period, the act, activity or practice constituting the contravention;

- (b) a requirement that the person take such action, or adopt such practice, as the Court requires for remedying the contravention or preventing a recurrence of the contravention;
- (c) a requirement that the person implement a specified program for compliance with the MSO Rules.

Division 2—Facilitation of Retail Competition

60. What are retail gas market rules?

- (1) For the purposes of this Division retail gas market rules are rules relating to the operation of the retail gas market.
- (2) Retail gas market rules may include rules relating to—
 - (a) the allocation of unique identifiers for gas metering installations;
 - (b) the registration of unique identifiers and gas metering installations;
 - (c) the provision of unique identifiers and other information contained in a register required by rules made under paragraph (b) in relation to unique identifiers and gas metering installations;
 - (d) the arrangements for the transfer of customers from one gas retailer to another gas retailer;
 - (e) the provision, installation and maintenance of metering installations for the purposes of—
 - (i) the retail gas market; or
 - (ii) the settlement of any relevant wholesale market for gas; or

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- (iii) any other financial settlement that is regularly required in respect of the wholesale sale of gas through a distribution pipeline;
- (f) the collection, creation, processing, storage and provision of access to data for the purposes of—
 - (i) the retail gas market; or
 - (ii) the settlement of any relevant wholesale market for gas; or
 - (iii) any other financial settlement that is regularly required in respect of the wholesale sale of gas through a distribution pipeline.
- (3) Retail gas market rules may apply, adopt or incorporate wholly or partially or as amended by the rules, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (a) as formulated, issued, prescribed or published at the time the rules are made or at any time before the rules are made; or
 - (b) as amended from time to time.

61. Principles for retail gas market rules

- (1) The Governor in Council may by Order published in the Government Gazette determine principles to be taken into account by the Commission for the approval under this Division of retail gas market rules.
- (2) An Order under this section has effect from the day specified in the Order.

S. 61(1)
amended by
No. 62/2001
s. 77(c)(ii).

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62. Retail gas market rules—VENCorp

S. 62(2)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) VENCorp must develop retail gas market rules in accordance with this Division for the gas transmission system and the gas distribution system.
- (2) VENCorp must comply with a scheme approved by the Commission for the development and implementation of the retail gas market rules.
- (3) VENCorp must submit the completed retail gas market rules to the Commission for approval.

S. 62(3)
amended by
No. 62/2001
s. 77(c)(ii).

63. Retail gas market rules—gas distribution company

S. 63(2)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) A gas distribution company must develop retail gas market rules in accordance with this Division for any part of a distribution pipeline in respect of which it is a licensee except any part of a pipeline to which the rules developed by VENCorp under section 62 apply.
- (2) A gas distribution company must comply with a scheme approved by the Commission for the development and implementation of the retail gas market rules.

S. 63(3)
amended by
No. 62/2001
s. 77(c)(ii).

- (3) The gas distribution company must submit the completed retail gas market rules to the Commission for approval.

64. Conditions of licence relating to retail gas market

A licence is deemed to include the following conditions—

S. 64(a)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) requiring the licensee to observe guidelines issued by, or other requirements of, the Commission in connection with the transition of customers to competition in the retail gas market; and

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- (b) requiring the licensee to participate in any scheme or schemes approved by the Commission under sections 62 and 63; and
- (c) in the case of a gas distribution company, requiring the licensee to comply with section 63 and any scheme approved by the Commission under that section.

S. 64(b)
amended by
No. 62/2001
s. 77(c)(ii).

S. 64(c)
amended by
No. 62/2001
s. 77(c)(ii).

65. Approval of rules by the Commission

S. 65
(Heading)
amended by
No. 62/2001
s. 77(c)(ii).

- (1) The Commission, in respect of any retail gas market rules submitted to it under this Division, may decide to—
 - (a) approve the rules; or
 - (b) approve the rules subject to changes; or
 - (c) not approve the rules.

S. 65(1)
substituted by
No. 85/2001
s. 13,
amended by
Nos 62/2001
s. 77(c)(i),
75/2004 s. 49.

- (2) The Commission must have regard to the principles determined under section 61 and the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001** in deciding whether or not to approve retail gas market rules under this Division.

S. 65(2)
amended by
Nos 62/2001
ss 77(c)(i),
79(1),
39/2005
s. 56(3).

66. Operation of approved rules

- (1) Approved retail gas market rules come into effect on the date that they are approved by the Commission or a later date specified in the approval.
- (2) Sections 53 and 54 of the **Essential Services Commission Act 2001** apply to approved retail gas market rules as if the approved rules were a determination made by the Commission under that Act.

S. 66(1)
amended by
No. 62/2001
s. 77(c)(ii).

S. 66(2)
amended by
No. 62/2001
s. 77(c)(ii)(g).

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67. Amendments to approved rules

- (1) Approved retail gas market rules may be amended in accordance with the procedures set out in the rules.
- (2) An amendment to an approved retail gas market rule does not take effect until it has been approved by the Commission.
- (3) Section 65 applies to the approval of an amendment to an approved retail gas market rule.

S. 67(2)
amended by
No. 62/2001
s. 77(c)(ii).

68. Cost recovery

- (1) The Governor in Council may by Order published in the Government Gazette—
 - (a) provide for the setting and regulation of the prices, fees and charges that a gas distribution company may charge for or in connection with the costs of, or in relation to, the implementation and operation of approved retail gas market rules;
 - (b) empower the recovery of those prices, fees and charges from all gas retailers or a class or classes of gas retailers supplied by the distribution company or all customers of a gas retailer or a class or classes of customers of a gas retailer so supplied.
- (2) An Order under sub-section (1) may—
 - (a) confer powers and functions on, and leave any matter to be determined by, the Commission; and

S. 68(1)(a)
amended by
No. 85/2001
s. 14(1).

S. 68(2)
substituted by
No. 85/2001
s. 14(2).

S. 68(2)(a)
amended by
No. 62/2001
s. 77(c)(ii).

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| <p>(b) without limiting paragraph (a), direct the Commission to make a determination in respect of such factors and matters, or in accordance with such procedures, matters or bases, as are specified in the Order, or both.</p> | <p>S. 68(2)(b) amended by No. 62/2001 s. 77(c)(ii).</p> |
| <p>(3) The Commission, under this section, has—</p> <p style="padding-left: 20px;">(a) the powers and functions conferred on it under an Order under sub-section (1); and</p> <p style="padding-left: 20px;">(b) the power to make any determination under the Essential Services Commission Act 2001 required or permitted under an Order under sub-section (1).</p> | <p>S. 68(3) inserted by No. 85/2001 s. 14(2), amended by No. 85/2001 s. 16(1).</p> <p>S. 68(3)(b) amended by No. 75/2004 s. 50(1).</p> |
| <p>* * * * *</p> | <p>S. 68(3A) inserted by No. 85/2001 s. 16(2), repealed by No. 75/2004 s. 50(2).</p> |
| <p>(4) An Order in effect under this section immediately before the commencement of section 14 of the Energy Legislation (Miscellaneous Amendments) Act 2001 is deemed to be an Order made under this section as amended by that Act, and sub-sections (2) and (3) apply accordingly.</p> | <p>S. 68(4) inserted by No. 85/2001 s. 14(2).</p> |
| <p>(5) A determination made by the Office of the Regulator-General before the commencement of section 14 of the Energy Legislation (Miscellaneous Amendments) Act 2001 pursuant to an Order under this section, is deemed to be a determination under sub-section (3).</p> | <p>S. 68(5) inserted by No. 85/2001 s. 14(2), amended by No. 11/2002 s. 3(Sch. 1 item 28.1).</p> |
| <p>(6) This section ceases to have effect on 31 December 2007.</p> | <p>S. 68(6) inserted by No. 25/2004 s. 16.</p> |
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Division 3—Costs of VENCORP for Retail Competition

69. Costs of VENCORP

- (1) A gas retailer must pay to VENCORP at such time or times as VENCORP determines, such amount or amounts (if any) as VENCORP determines to be payable by that gas retailer in respect of the costs incurred by VENCORP in relation to the implementation and operation of, and the provision of services in connection with, arrangements for competition in the retail gas market in Victoria.
- (2) A determination may be made under sub-section (1) in respect of costs incurred by VENCORP before, on or after the date of the determination.
- (3) VENCORP must not make a determination under sub-section (1) unless it has first been approved by the Commission.
- (4) Sections 53 and 54 of the **Essential Services Commission Act 2001** apply to a determination under sub-section (1) as if the determination were a determination made by the Commission under that Act.

S. 69(3)
amended by
No. 62/2001
s. 77(c)(ii).

S. 69(4)
inserted by
No. 75/2004
s. 51.

Pt 5
(Heading and
ss 70–113)
amended by
No. 62/2001
s. 77(c)(i)(ii)
(d)(h),
repealed by
No. 25/2004
s. 17.³

* * * * *

PART 6—PROHIBITED INTERESTS

Division 1—Interpretation

114. Definitions

In this Part—

"associate" has the meaning, in relation to a person, it would have under the Corporations Act if, in Division 2 of Part 1.2 of the Corporations Act—

S. 114 def. of "associate" amended by No. 44/2001 s. 3(Sch. item 57.1(a)(i)(ii)).

- (a) for paragraphs (b) and (c) of section 12(1) of that Act, there were substituted—

"or

- (b) the primary person's voting power in a body corporate or whether the primary person is in a position to exercise certain powers in relation to a body corporate;"; and

- (b) sections 13, 14, 16(2) and 17 of that Act were repealed;

"initial distributor" means—

- (a) a gas distribution company that, under a licence, provides services by means of a distribution pipeline—

- (i) to gas retailers who sell gas to persons; or

- (ii) to persons—

who were not non-franchise customers (within the meaning of the **Gas Industry Act 1994**) immediately before 1 September 2000; or

(b) a gas distribution company that, under a licence, provides services by means of a distribution pipeline—

(i) to gas retailers who sell gas to persons; or

(ii) to persons—

who—

(iii) were customers of a person referred to in paragraph (a) of the definition of "new retailer" immediately before the licence was issued or transferred to the gas distribution company; and

(iv) were not non-franchise customers (within the meaning of the **Gas Industry Act 1994**) immediately before that licence was issued or transferred or, if the licence was issued or transferred on or after 1 September 2001, immediately before that date;

"new retailer" means—

(a) a gas retailer that, under a licence, was entitled immediately before 1 September 2000 to sell gas by retail to persons who were not non-franchise customers (within the meaning of the **Gas Industry Act 1994**); or

(b) a gas retailer that, under a licence, sells gas by retail to persons who—

(i) were customers of a person referred to in paragraph (a) immediately before the licence was issued or transferred to the gas retailer; and

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- (ii) were not non-franchise customers (within the meaning of the **Gas Industry Act 1994**) immediately before that licence was issued or transferred or, if the licence was issued or transferred on or after 1 September 2001, immediately before that date;

"officer", in relation to a corporation, has the same meaning as in section 9 of the Corporations Act;

S. 114 def. of "officer" amended by No. 44/2001 s. 3(Sch. item 57.1(b)).

"related body corporate" has the same meaning as in section 50 of the Corporations Act;

S. 114 def. of "related body corporate" amended by No. 9/2002 s. 3(Sch. item 7).

"relevant agreement" means an agreement, arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

"relevant corporation" means gas distribution company, gas retailer, initial distributor, new retailer, owner or operator of the Port Campbell facility, owner or operator of a transmission pipeline, significant producer or TSO;

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S. 114 def. of
"share"
amended by
No. 44/2001
s. 3(Sch.
item 57.1(b)).

"share" has the same meaning as in the
Corporations Act;

"TSO" means—

- (a) a body corporate that owns or operates
the whole, or the majority of, the gas
transmission system;
- (b) a related body corporate of a body
corporate referred to in paragraph (a);

S. 114 def. of
"voting share"
amended by
No. 44/2001
s. 3(Sch.
item 57.1(b)).

"voting share", in relation to a corporation, has
the same meaning as in section 9 of the
Corporations Act.

S. 115
amended by
No. 44/2001
s. 3(Sch.
item 57.2).

115. Relevant interest in a share

For the purposes of this Part, a person has a
relevant interest in a share if, and only if, the
person would be taken to have a relevant interest
in the share because of sections 608 and 609 of
the Corporations Act but a person does not have a
relevant interest in a share in a corporation only
because the person has a right of pre-emption in
relation to that share if the corporation—

- (a) was formed by two or more persons for the
purpose of enabling those persons to carry on
an activity jointly by means of their joint
control of, or by means of their ownership of
shares in, that corporation; and
- (b) those persons, or persons who have acquired
some or all of the shares in that corporation,
continue to carry on that activity jointly by
either of those means.

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116. Voting power

For the purposes of this Part, the voting power a person has in a corporation is the person's voting power determined in accordance with section 610 of the Corporations Act as if a reference in that section of that Act to a relevant interest were a reference to a relevant interest to which section 115 applies.

S. 116
amended by
No. 44/2001
s. 3(Sch.
item 57.3
(a)(b)).

117. References to Corporations Act

A reference in this Part to the Corporations Act is a reference to that Act as it would apply if references in that Act to a body corporate, corporation or company included references to—

S. 117
(Heading)
amended by
No. 44/2001
s. 3(Sch.
item 57.3(a)).
S. 117
amended by
No. 44/2001
s. 3(Sch.
item 57.3
(a)(b)).

- (a) a body corporate of any kind wherever formed or incorporated and whether formed or incorporated under that Act or any other law; and
- (b) any unincorporated body, being a society, association, company of proprietors or other body, wherever formed, that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or some other officer of the society, association or body, or in the name of any trustee or trustees; and
- (c) any unincorporated body, being a society, association, company of proprietors or other body or undertaking to which is applied, under the laws of the place of its formation, with or without exceptions, a law in force in that place relating to companies or corporations as if it were a company or corporation within the meaning of that law.

S. 117(a)
amended by
No. 44/2001
s. 3(Sch.
item 57.3(b)).

118. Unit trusts

If assets used in, or liabilities of, the business carried on by a relevant corporation form part of the trust estate of a unit trust, then, for the purposes of this Part, units in the unit trust are deemed to be shares in a relevant corporation the business of which is the business of the trust estate of the unit trust.

119. Stock

If the whole or a portion of the share capital of a corporation consists of stock, a reference in this Part to a number of shares in the corporation as a percentage is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

120. Controlling interest in a corporation

For the purposes of this Part but subject to sections 123 and 124, a person has a controlling interest in a corporation if—

- (a) the person's voting power in the corporation is more than 20%; or
- (b) the person and the person's associates have relevant interests in shares in the corporation that confer or, if a dividend were declared or a distribution of profits were made by the corporation would confer, a right to receive the benefit of more than 20% of the dividend or distribution; or
- (c) the person and the person's associates have relevant interests in shares in the corporation that confer or, in the event of any other distribution of property or rights by the corporation (whether on dissolution or otherwise) would confer, a right to receive the benefit of more than 20% of the property and rights; or

-
- (d) the person is able, whether alone or in concert with another, and whether by any act or omission or otherwise, to dominate or control—
 - (i) the corporation; or
 - (ii) the financial and operating policies or management of the corporation; or
 - (iii) the activities of the corporation in the gas industry.

121. Substantial interest in a corporation

For the purpose of this Part but subject to sections 123 and 124, a person has a substantial interest in a corporation if—

- (a) the person's voting power in the corporation is more than 5%; or
- (b) the person and the person's associates have relevant interests in shares in the corporation that confer or, if a dividend were declared or a distribution of profits were made by the corporation would confer, a right to receive the benefit of more than 5% of the dividend or distribution; or
- (c) the person and the person's associates have relevant interests in shares in the corporation that confer or, in the event of any other distribution of property or rights by the corporation (whether on dissolution or otherwise) would confer, a right to receive the benefit of more than 5% of the property and rights.

122. Regulations relating to relevant interests

Without derogating from sections 123 and 124, the regulations may provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations.

S. 123
amended by
No. 62/2001
s. 77(c)(ii).

123. Certain shareholders agreements to be disregarded

For the purposes of determining under this Part whether a person has a controlling interest or a substantial interest in a relevant corporation, a relevant interest of an associate of the person must be disregarded if the Commission certifies in writing that the Commission is satisfied—

S. 123(a)
amended by
No. 44/2001
s. 3(Sch.
item 57.4).

- (a) that the association arises solely under section 12(1)(e) or section 15(1) of the Corporations Act by virtue of provisions of the constitution or other constituent documents of a corporation or other entity, a shareholders' agreement or other consortium arrangements and that the provisions are not unusual having regard to conventional or usual investment considerations; and
- (b) that the person or any related corporation does not have the power—
 - (i) to control or influence the composition of the board of directors of the relevant corporation otherwise than by control of the exercise at a general meeting of the relevant corporation of voting rights in respect of particular shares or a particular proportion of shares in the relevant corporation or the exercise of powers of appointment of a specified

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number of directors of the relevant corporation; or

- (ii) to control or influence the conduct of affairs of the relevant corporation otherwise than by control of the exercise at a general meeting of the relevant corporation of voting rights in respect of particular shares or a particular proportion of shares in the relevant corporation or by the actions of directors appointed by the person.

124. Certain "see-through" interests to be disregarded

For the purpose of determining under this Part whether a person has a controlling interest or a substantial interest in a relevant corporation, a relevant interest that the person has solely by virtue of section 608(3) of the Corporations Act must be disregarded if the Commission certifies in writing—

S. 124
amended by
Nos 44/2001
s. 3(Sch.
item 57.4),
62/2001
s. 77(c)(ii).

- (a) that the Commission is satisfied that the person or any related corporation of the person does not have the power—
 - (i) to control or influence the composition of the board of directors of the relevant corporation otherwise than by having voting power in the relevant corporation of not more than 20% or exercising powers of appointment of not more than one-fifth of the directors of the relevant corporation; or
 - (ii) to control or influence the conduct of affairs of the relevant corporation otherwise than by having voting power in the relevant corporation of not more than 20% or by the actions of directors appointed by it being not more than

S. 124(a)
amended by
No. 62/2001
s. 77(c)(ii).

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one-fifth of the directors of the relevant corporation; and

S. 124(b)
amended by
No. 62/2001
s. 77(c)(ii).

(b) in the case of determining whether the person has a controlling interest, that the Commission is satisfied that the person does not have—

(i) voting power of more than 20% in the relevant corporation or the power to control the disposal of more than 20% of the voting shares in the relevant corporation, not including a right of pre-emption whether direct or indirect in relation to those shares; or

(ii) the right to receive directly or indirectly the benefit of more than 20% of the dividends declared or distribution of profits made by the relevant corporation in respect of a financial year of the relevant corporation; or

(iii) the right to receive directly or indirectly the benefit of more than 20% of the property and rights of the relevant corporation on a dissolution or otherwise; or

S. 124(c)
amended by
No. 62/2001
s. 77(c)(ii).

(c) in the case of determining whether the person has a substantial interest, that the Commission is satisfied that the person does not have—

(i) voting power of more than 20% in the relevant corporation or the power to control the disposal of more than 5% of the voting shares in the relevant corporation, not including a right of pre-emption whether direct or indirect in relation to those shares; or

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- (ii) the right to receive directly or indirectly the benefit of more than 5% of the dividends declared or distribution of profits made by the relevant corporation in respect of a financial year of the relevant corporation; or
- (iii) the right to receive directly or indirectly the benefit of more than 5% of the property and rights of the relevant corporation on a dissolution or otherwise.

125. Effect of certificate under section 123 or 124

S. 125
amended by
No. 62/2001
s. 77(c)(ii).

A certificate of the Commission under section 123 or 124 continues to have effect unless the Commission determines that—

- (a) a change has occurred in respect of the matters to which the certificate relates; and
- (b) the certificate ceases to have effect.

Division 2—Application of Part

126. Application of Part

S. 126
amended by
No. 44/2001
s. 3(Sch.
item 57.5).

This Part applies in relation to any transaction, agreement, arrangement, understanding or undertaking—

- (a) whether the transaction, agreement, arrangement, understanding or undertaking is entered into, or made, in this State or elsewhere; and
- (b) whether the shares (if any) to which the transaction, agreement, arrangement, understanding or undertaking relates are registered in this State or elsewhere; and

- (c) whether the proper law of the transaction, agreement, arrangement, understanding or undertaking in the law of this State or not.

127. Application of Part to partnerships

- (1) In this section—

"partner" includes member of an unincorporated joint venture;

"partnership" includes unincorporated joint venture.

- (2) This Part applies to partnerships, and partners, as if a partnership were a corporation and a partner were a member of a corporation.

- (3) For the purposes of this Part—

- (a) a partnership is deemed to be a corporation and a person;

- (b) a partner is deemed—

(i) to be a member of the corporation; and

(ii) to hold shares bearing the same proportion to all the shares in the corporation as the partner's right to receive a distribution of profits of the partnership bears to the sum of the rights of partners to receive such distributions;

- (c) rights and powers of a partner in respect of the partnership, including voting rights and rights to dispose of interests in the partnership or the partnership property are deemed to be rights and powers of a member of a corporation attached to and conferred by that member's shares in the corporation;

- (d) the committee of management (by whatever named called) of a partnership is deemed to be the board of directors of the partnership;

- (e) a meeting of the partners of a partnership is deemed to be a general meeting of a corporation.
- (4) For the purposes of this Part and its application to a partnership, "**relevant corporation**" includes a partnership the members of which are persons who are gas distribution companies, gas retailers, initial distributors, new retailers, owners or operators of the Port Campbell facility, owners or operators of transmission pipelines, significant producers or TSO.

Division 3—Prohibited Interests

128. Prohibited interests

- (1) It is unlawful for a person to hold a prohibited interest.
- (2) A significant producer holds a prohibited interest—
 - (a) if—
 - (i) the significant producer has a controlling interest or a substantial interest in a gas retailer; and
 - (ii) the gas retailer is permitted by its licence or an Order under section 24 to sell gas to customers other than customers who purchase, or whom the Commission is satisfied on reasonable grounds will purchase, not less than 500 000 GJ of gas per annum from a supply point within the meaning of the **Gas Industry (Residual Provisions) Act 1994**;

S. 128(2)(a)
substituted by
Nos 25/2004
s. 18(1),
91/2004
s. 25(1).

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- (b) if the significant producer has a controlling interest or a substantial interest in an initial distributor that is a related body corporate of a new retailer and was such a related body corporate when it became a gas distribution company;
 - (c) if the significant producer has a controlling interest in a gas distribution company;
 - (d) if the significant producer has a substantial interest in more than one gas distribution company;
 - (e) if the significant producer—
 - (i) owns or operates, or controls the operation of, the Port Campbell facility; or
 - (ii) owns or operates, or controls the operation of, a transmission pipeline, other than a pipeline constructed by or on behalf of a person or persons that is or includes the significant producer or a body corporate that was a related body corporate when the pipeline was constructed; or
 - (iii) has a controlling interest or a substantial interest in a corporation that owns or operates, or controls the operation of, the Port Campbell facility or a transmission pipeline of the kind referred to in sub-paragraph (ii).
- (3) A person who has a controlling interest in a significant producer holds a prohibited interest—
- (a) if the person—
 - (i) owns or operates, or controls the operation of, the Port Campbell facility; or
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- (ii) owns or operates, or controls the operation of, a transmission pipeline, other than a pipeline constructed by or on behalf of a person or persons that is or includes the significant producer or a body corporate that was a related body corporate when the pipeline was constructed; or
 - (iii) has a controlling interest or a substantial interest in a corporation that owns or operates, or controls the operation of, the Port Campbell facility or a transmission pipeline of the kind referred to in sub-paragraph (ii);
- (b) if—
- (i) the person has a controlling interest or a substantial interest in a gas retailer; and
 - (ii) the gas retailer is permitted by its licence or an Order under section 24 to sell gas to customers other than customers who purchase, or whom the Commission is satisfied on reasonable grounds will purchase, not less than 500 000 GJ of gas per annum from a supply point within the meaning of the **Gas Industry (Residual Provisions) Act 1994**;
- (c) if the person has a controlling interest or a substantial interest in an initial distributor that is a related body corporate of a new retailer and was such a related body corporate when it became a gas distribution company;
- (d) if the person has a controlling interest in a gas distribution company;

S. 128(3)(b)
substituted by
Nos 25/2004
s. 18(2),
91/2004
s. 25(2).

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- (e) if the person has a substantial interest in more than one gas distribution company.
- (4) Subject to sub-section (14), a gas transmission company holds a prohibited interest if the gas transmission company has a controlling interest or a substantial interest in a significant producer.
- (5) Subject to sub-section (14), a person who has a controlling interest in a gas transmission company holds a prohibited interest if the person has a controlling interest or a substantial interest in a significant producer.
- (6) TSO holds a prohibited interest if—
- (a) TSO has a controlling interest in a new retailer or an initial distributor; or
 - (b) TSO has a substantial interest in more than one new retailer; or
 - (c) TSO has a substantial interest in more than one initial distributor.
- (7) A person who has a controlling interest in TSO holds a prohibited interest if—
- (a) the person has a controlling interest in a new retailer or an initial distributor; or
 - (b) the person has a substantial interest in more than one new retailer; or
 - (c) the person has a substantial interest in more than one initial distributor.
- (8) A new retailer holds a prohibited interest if—
- (a) the new retailer has a controlling interest in TSO; or
 - (b) the new retailer has—
 - (i) a controlling interest in more than one initial distributor; or
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- (ii) a controlling interest in one initial distributor and a substantial interest in more than one other initial distributor; or
 - (iii) a substantial interest in more than 2 initial distributors; or
 - (c) the new retailer has a controlling interest in another new retailer; or
 - (d) the new retailer has a substantial interest in more than one other new retailer.
- (9) An initial distributor holds a prohibited interest if—
- (a) the initial distributor has a controlling interest in TSO; or
 - (b) the initial distributor has—
 - (i) a controlling interest in more than one new retailer; or
 - (ii) a controlling interest in one new retailer and a substantial interest in more than one other new retailer; or
 - (iii) a substantial interest in more than 2 new retailers; or
 - (c) the initial distributor has a controlling interest in another initial distributor; or
 - (d) the initial distributor has a substantial interest in more than one other initial distributor.
- (10) A person who has a controlling interest in a new retailer holds a prohibited interest if the person has—
- (a) a controlling interest in TSO; or
 - (b) a controlling interest in more than one initial distributor; or
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S. 128(9)(b)(ii)
amended by
No. 40/2003
s. 8.

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- (c) a controlling interest in one initial distributor and a substantial interest in more than one other initial distributor; or
 - (d) a substantial interest in more than 2 initial distributors.
- (11) A person who has a controlling interest in an initial distributor holds a prohibited interest if the person has—
- (a) a controlling interest in TSO; or
 - (b) a controlling interest in more than one new retailer; or
 - (c) a controlling interest in one new retailer and a substantial interest in more than one other new retailer; or
 - (d) a substantial interest in more than 2 new retailers.
- (12) A person holds a prohibited interest if the person has—
- (a) a controlling interest in more than one new retailer; or
 - (b) a substantial interest in more than 2 new retailers; or
 - (c) a controlling interest in one new retailer and a substantial interest in more than one other new retailer; or
 - (d) a controlling interest in more than one initial distributor; or
 - (e) a substantial interest in more than 2 initial distributors; or
 - (f) a controlling interest in one initial distributor and a substantial interest in more than one other initial distributor.
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- (13) A person who owns or operates, or controls the operation of, the Port Campbell facility holds a prohibited interest if the person has a controlling interest or a substantial interest in a significant producer.
- (14) Sub-sections (4) and (5) do not apply, in relation to a significant producer, to a gas transmission company or person who has a controlling interest in a gas transmission company if the gas transmission company's pipeline was constructed by or on behalf of a person or persons that is, or includes, the significant producer or a body corporate that was a related body corporate when the pipeline was constructed.

129. Other provisions relating to prohibited interests

- (1) A person, not being a relevant corporation, does not hold a prohibited interest within the meaning of section 128 because the person has a controlling interest or a substantial interest in a relevant corporation if—
 - (a) the Commission is satisfied that each such interest is held only as a passive institutional investment; and
 - (b) the Commission determines in writing that the person does not hold a prohibited interest.
- (2) At any time after a determination is made under sub-section (1) in relation to a person, the Commission may, by notice in writing served on that person, determine that circumstances have changed so that it is no longer satisfied as to the matters set out in sub-section (1)(a) in relation to the person and that the person has a prohibited interest within the meaning of section 128.

S. 129(1)(a)
amended by
No. 62/2001
s. 77(c)(ii).

S. 129(1)(b)
amended by
No. 62/2001
s. 77(c)(ii).

S. 129(2)
amended by
No. 62/2001
s. 77(c)(ii).

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Act No. 31/2001

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(3) On and after 1 July 2002, a person does not hold a prohibited interest within the meaning of section 128 if—

(a) the prohibited interest arises as a result of an acquisition referred to in section 88(9)(a) or (b) of the Trade Practices Act; and

(b) either—

(i) the acquisition was authorised under the Trade Practices Act; or

(ii) the Commission has determined that it is satisfied that the ACCC has considered the acquisition and that the ACCC has notified the person that it does not intend to take action in relation to the acquisition under section 50 of that Act.

S. 129(3)(b)(ii)
amended by
No. 62/2001
s. 77(c)(ii).

(3A) Sub-section (3)(b)(ii) applies whether or not an application has been made under the Trade Practices Act for authorisation of the acquisition.

S. 129(3A)
inserted by
No. 24/2002
s. 22.

(4) For the purposes of this Part—

(a) a relevant corporation is not capable of having a prohibited interest in itself; and

(b) if 2 or more relevant corporations are carrying on activities in the same business undertaking, one of those relevant corporations is not capable of having a prohibited interest in another of those relevant corporations.

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130. Temporary exemption from prohibition

- (1) The Commission may, by notice published in the Government Gazette, declare that a specified person does not, by reason only of having a specified controlling interest or specified substantial interest, have a prohibited interest during a specified period ending not more than 6 months after the day on which the declaration is made.
- (2) A declaration under sub-section (1) may be made subject to such conditions as are specified in it.
- (3) A declaration under this section has effect according to its terms and ceases to have effect—
 - (a) at the end of the specified period; or
 - (b) upon a breach of a condition to which it is expressed to be subject.
- (4) Only one declaration may be made under this section in respect of a specified controlling interest or a specified substantial interest.

S. 130(1)
amended by
No. 62/2001
s. 77(c)(i).

131. Power to require information relating to interests

- (1) The Commission may, by notice in writing served on a person who is, or is suspected by the Commission of—
 - (a) having a relevant interest in shares in a relevant corporation; or
 - (b) being the holder of a controlling interest or substantial interest in a relevant corporation;
or

S. 131(1)
amended by
No. 62/2001
s. 77(c)(i)(ii).

Gas Industry Act 2001
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- (c) being an owner or operator of, or a controller of the operation of, the Port Campbell facility or a transmission pipeline—

require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited interest.

- (2) A notice under sub-section (1) may require the person on whom the notice is served or, if that person is a corporation, 2 directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice.

- (3) If—

- (a) a person on whom a notice under sub-section (1) has been served fails to furnish, within the time allowed in the notice, the information required by the notice, verified as required by the notice; or
- (b) information furnished by the person in response to the notice is, in the opinion of the Commission, by reason of anything included in it or omitted from it, false or misleading in a material particular—

the Commission may, by reason only of that fact, by notice in writing served on a person, do one or more of the following—

- (c) determine that the person is an associate of another, or that another is an associate of that person;
- (d) determine that the person, or another to whom a determination under paragraph (c) relates, has a relevant interest in specified shares in a relevant corporation;

S. 131(3)
amended by
No. 62/2001
s. 77(c)(ii).

S. 131(3)(b)
amended by
No. 62/2001
s. 77(c)(ii).

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- (e) determine that the voting rights attaching to all or any of the shares to which a determination under paragraph (d) relates are suspended;
 - (f) determine that a person is an owner or operator of, or a controller of the operation of, the Port Campbell facility or a transmission pipeline;
 - (g) determine that the person, or another person to whom a determination under paragraph (c) relates, has a prohibited interest.
- (4) The Commission must not make a determination under sub-section (3)(e) unless the Commission has given the person affected an opportunity to make representations on the matter.
- (5) The Commission must notify the person affected in writing of the reasons for its determination.

S. 131(4)
inserted by
No. 75/2004
s. 52.

S. 131(5)
inserted by
No. 75/2004
s. 52.

132. Disposal of interest

- (1) If the Commission—
- (a) makes a determination under 131; or
 - (b) forms the opinion—
- that a person (in this section referred to as "the offender") has a prohibited interest, the Commission may, by notice in writing served—
- (c) if the offender holds shares that cause the offender to have a prohibited interest (whether alone or together with shares held by any other person)—on the offender; or

S. 132(1)
amended by
No. 62/2001
s. 77(c)(ii).

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- (d) on any other person who holds shares that cause the offender to have a prohibited interest (whether alone or together with shares held by any other person)—

determine that the offender or that other person must dispose of the relevant shares otherwise than to an associate of the offender, within a period specified in the notice, being not less than 3 months after service of the notice, and that, until those shares are disposed of, the voting rights attaching to all or to specified shares in a relevant corporation to which the offender is entitled are suspended.

- (2) For the purposes of sub-section (1), the relevant shares that a person may be required by a notice under that sub-section to dispose of otherwise than to an associate of the offender are—
- (a) subject to paragraph (b), any shares held by the person that would need to be disposed of in order to cause the offender to cease to have a prohibited interest; or
- (b) if, after all the shares held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited interest, the total number of those shares.
- (3) For the purposes of this section a person is not to be taken to have disposed of shares in which the offender has a relevant interest unless and until the person ceases to hold the shares and the offender and the offender's associates cease to have a relevant interest in the shares.

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(4) If a person served with a notice of determination under sub-section (1) requiring the person to dispose of shares fails to comply with the notice within the period specified in the notice, the shares last registered in the name of that person that caused the person to have a prohibited interest and specified by the Commission by notice in writing served on the person are, by force of this sub-section, forfeited to the State.

S. 132(4)
amended by
No. 62/2001
s. 77(c)(ii).

(5) If—

S. 132(5)
amended by
No. 62/2001
s. 77(c)(ii).

- (a) a person served with a notice of a determination under sub-section (1) requiring the person to dispose of shares fails to comply with the notice within the period specified in the notice; and
- (b) the person is a member of a partnership and the shares are an interest in the partnership; and
- (c) the person is one of 2 or more persons constituting a relevant corporation—

the Commission may, by notice in writing given to the person, determine to revoke the licence (if any) held by the person under this Act.

(6) The Commission must cause written notice of—

S. 132(6)
amended by
No. 62/2001
s. 77(c)(i).

- (a) a determination under sub-section (1) requiring a person to dispose of shares in a relevant corporation; or
- (b) a determination under section 131(3)(e) that a person's voting rights are suspended—

to be served on the relevant person.

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S. 132(7)
amended by
No. 62/2001
s. 77(c)(ii).

(7) If the Commission—

(a) makes a determination under section 131(3);
or

(b) forms the opinion—

that a person (in this section referred to as "the offender") has a prohibited interest because of the circumstances referred to in section 120(d), the Commission may, by notice in writing served on the offender, determine that the offender—

(c) must desist from dominating or controlling the relevant corporation, the financial and operating policies or management of the corporation or the activities of the corporation as a relevant corporation; and

(d) must terminate a relevant agreement—

to the extent necessary to prevent it having a prohibited interest, within a period specified in the notice, not being less than 3 months after service of the notice.

S. 132(8)
inserted by
No. 75/2004
s. 53.

(8) The Commission must not make a determination under sub-section (1), (5) or (7) unless the Commission has given the person affected an opportunity to make representations on the matter.

S. 132(9)
inserted by
No. 75/2004
s. 53.

(9) The Commission must notify the person affected in writing of the reasons for its determination.

S. 133
amended by
No. 62/2001
s. 77(c)(ii).

133. Voting rights in respect of certain shares

If written notice is served on a relevant corporation of a determination of the Commission under this Part—

(a) that a person is an associate of another; or

(b) that a person has a prohibited interest in a relevant corporation; or

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(c) that voting rights are suspended—

the determination is binding and has effect for the purposes of the application of this Part in relation to any general meeting of the relevant corporation held after receipt by the relevant corporation of the notice.

134. Revocation of licence

(1) If the Commission makes a determination under section 131(3), or forms the opinion under section 132(1), that a person has a prohibited interest because of its ownership, operation or control of the Port Campbell facility or a transmission pipeline, the Commission may, by notice in writing served on the person, determine that the person dispose of an interest in land or other property or rights, or terminate a relevant agreement, to the extent necessary to prevent it having a prohibited interest within a period specified in the notice, not being less than 3 months after the service of the notice.

S. 134(1)
amended by
No. 62/2001
s. 77(c)(ii).

(2) If a person does not comply with a determination under sub-section (1), the Commission may by notice in writing given to the person, determine to revoke the licence (if any) held by the person under this Act.

S. 134(2)
amended by
No. 62/2001
s. 77(c)(ii).

(3) The Commission must not make a determination under sub-section (1) or (2) unless the Commission has given the person affected an opportunity to make representations on the matter.

S. 134(3)
inserted by
No. 75/2004
s. 54.

(4) The Commission must notify the person affected in writing of the reasons for its determination.

S. 134(4)
inserted by
No. 75/2004
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135. Annulment of certain resolutions of relevant corporation

S. 135(1)
amended by
No. 62/2001
s. 77(c)(ii).

(1) If the Commission is of the opinion that a resolution of a general meeting of the relevant corporation has been passed as a result of the admission of votes that should not, by virtue of a determination of the Commission under section 131(3) or 132(1) have been admitted, the Commission may, by notice in writing served on the relevant corporation, declare the resolution to have been (at all times) null and void.

S. 135(2)
amended by
No. 62/2001
s. 77(c)(ii).

(2) If notice of a declaration under sub-section (1) is served on a relevant corporation, the Commission must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on each person whose votes should not, in the opinion of the Commission, have been admitted.

(3) A notice under sub-section (1) does not have any effect unless it is served on the relevant corporation within one month after the date of the resolution to which it relates.

S. 135(4)
inserted by
No. 75/2004
s. 55.

(4) The Commission must not make a declaration under sub-section (1) unless the Commission has given the person affected an opportunity to make representations on the matter.

S. 135(5)
inserted by
No. 75/2004
s. 55.

(5) The Commission must notify the person affected in writing of the reasons for its decision to make the declaration.

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136. Making, revocation or variation of determination by the Commission

S. 136
(Heading)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 56(1).

(1) A determination may be made by the Commission under this Part on the basis of such information as the Commission considers sufficient in the circumstances.

S. 136(1)
amended by
No. 62/2001
s. 77(c)(ii).

(2) A determination of the Commission under this Part is effective when written notice is served on the relevant person.

S. 136(2)
amended by
No. 62/2001
s. 77(c)(ii).

(2A) A determination of the Commission under this Part is not a determination of the Commission for the purposes of the **Essential Services Commission Act 2001**.

S. 136(2A)
inserted by
No. 75/2004
s. 56(2).

* * * * *

S. 136(3)
amended by
No. 62/2001
s. 77(c)(ii)(i),
repealed by
No. 75/2004
s. 56(3).

(4) The Commission may, by notice in writing served on the person on whom notice of the determination was served, revoke or vary a determination of the Commission under this Part with effect from the date of the determination or some other date determined by the Commission.

S. 136(4)
amended by
No. 62/2001
s. 77(c)(i)(ii).

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S. 137
(Heading)
amended by
No. 62/2001
s. 77(c)(ii).

S. 137(1)
amended by
Nos 62/2001
s. 77(c)(ii)(d),
75/2004 s. 57.

137. Appeal against determination of the Commission

- (1) A person on whom notice of a determination of the Commission is served under this Part may appeal to the Supreme Court against the determination.
- (2) An appeal under this section must be instituted within 21 days after notice of the determination under appeal is served on the appellant and that period of limitation may not be extended.
- (3) The Supreme Court may, on an appeal under this section, if satisfied that proper grounds for making the determination did not exist, quash or vary the determination, either conditionally or unconditionally and with effect from the date of the determination or some other date, as the Court thinks fit, and make any consequential or ancillary orders that may be just.
- (4) Despite any appeal under this section, a determination other than—
 - (a) a determination under section 132(1) requiring a person to dispose of shares in the relevant corporation; or
 - (b) a determination under section 132(4) that shares in the relevant corporation are forfeited to the State; or
 - (c) a determination under section 132(5) or 134(2) to revoke a licence—continues to have effect pending determination of the appeal.
- (5) Except as provided in this Part, a determination of the Commission under this Part may not be challenged or called into question.

S. 137(5)
amended by
No. 62/2001
s. 77(c)(ii).

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138. Sale of forfeited shares

- (1) The Commission is to sell any shares forfeited to the State under this Part.
- (2) For the purposes of a sale of shares under subsection (1), the Commission is not bound by any restriction on the sale of shares whether contained in the constitution of the relevant corporation or in any other document.
- (3) Any money realised from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale be paid to the person from whom the shares were forfeited.

S. 138(1)
amended by
No. 62/2001
s. 77(c)(i).

S. 138(2)
amended by
No. 62/2001
s. 77(c)(ii).

139. Service

A notice required or authorised by this Part to be served on a person may—

- (a) in the case of a natural person—
 - (i) be served personally on the person; or
 - (ii) be sent by post to the person at his or her last known place of residence, business or employment; or
 - (b) in the case of a company or other body—be left at, or sent by post to, its registered office or a place of business of the company or body whether within the State or elsewhere.
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PART 7—GAS COMPANY PROPERTY AND WORKS

Division 1—Pipelines Generally

140. Certain pipelines are not part of land

A transmission pipeline or distribution pipeline—

- (a) is not part of the land through which it runs;
and
- (b) is personal property.

141. Agreement for operation of pipelines

- (1) A gas company may enter into an agreement with one or more other gas companies in relation to a pipeline owned by any one of those gas companies, being an agreement that relates to—
 - (a) the operation, use and construction of the pipeline; and
 - (b) the exercise of such rights, and compliance with such obligations, in respect of that operation, use or construction as the owner of the pipeline is entitled to exercise or required to comply with.
- (2) If an agreement under sub-section (1) is in force in respect of a pipeline owned by a gas company—
 - (a) any permits or licences held by the gas company under the **Pipelines Act 1967** for the pipeline are deemed to confer the same rights and obligations on the other gas company as on the gas company that is the owner of the pipeline; and
 - (b) subject to paragraph (a), nothing in this section affects the operation of the **Pipelines Act 1967** in relation to the pipeline.

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- (3) Nothing in sub-section (2) affects the rights of the parties to an agreement under sub-section (1).
- (4) If an agreement is entered into under sub-section (1), the parties to the agreement must ensure that a copy of the agreement is given to the Minister administering the **Pipelines Act 1967**.
- (5) For the purposes of the **Pipelines Act 1967**, a gas company on which rights and obligations are conferred under this section is deemed to be the holder of a permit or licence, as the case requires.

Division 2—Compulsory Acquisition of Land and Easements

142. Power of gas transmission company or gas distribution company to acquire land

- (1) A gas transmission company or gas distribution company may recommend to the Minister for compulsory acquisition any land required by the gas transmission company or gas distribution company for or in connection with the construction or operation of a transmission pipeline or distribution pipeline.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
 - (a) the **Gas Industry Act 2001** is the special Act; and
 - (b) the Minister is the Authority.
- (3) Land acquired by the Minister on a recommendation of a gas transmission company or gas distribution company under sub-section (1) vests in that gas transmission company or gas distribution company under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that Act.

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- (4) Despite anything to the contrary in the **Land Acquisition and Compensation Act 1986**, section 109(2) of that Act does not apply to land acquired in accordance with this section.

143. Power to acquire easements

- (1) A corporation to which this section applies may, with the approval of the Governor in Council, acquire compulsorily an easement for or in connection with the construction or operation of a transmission pipeline or a distribution pipeline.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this section and for that purpose—
- (a) the **Gas Industry Act 2001** is the special Act; and
 - (b) the corporation to which this section applies is the Authority.
- (3) In this section—
- "corporation to which this section applies"**
means a gas distribution company or a gas transmission company;
- "easement"** includes right, charge, power or privilege in, under, over, affecting or in connection with, land.

144. Application of other laws in relation to land vested in a gas company

- (1) Sections 26 and 28 of the **Land Acquisition and Compensation Act 1986** apply in relation to land that is vested in a gas transmission company or gas distribution company under section 142 as if—
- (a) any reference to land vested in the Authority were a reference to the land vested in the gas transmission company or gas distribution company (as the case requires); and

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- (b) any reference to the Authority entering into possession of the land were a reference to the Authority entering into possession of the land on behalf of the gas transmission company or gas distribution company in which the land is vested.
- (2) Section 53 of the **Transfer of Land Act 1958** applies in relation to land that is vested in a gas transmission company or gas distribution company under section 142 as if a reference in that section to an acquiring authority or authority were a reference to the gas transmission company or gas distribution company (as the case requires).
- (3) Section 54 of the **Transfer of Land Act 1958** applies in relation to land that is vested in a gas transmission company or gas distribution company under section 142 as if a reference in that section to an acquiring authority (except where secondly occurring) were a reference to the gas transmission company or gas distribution company (as the case requires).
- (4) The Minister may lodge a notification under section 88(2) of the **Transfer of Land Act 1958** in respect of an easement acquired under section 142 even though the easement is vested in a gas transmission company or gas distribution company.
- (5) Section 35(3) of the **Subdivision Act 1988** applies in relation to land that is vested in a gas transmission company or gas distribution company under section 142 as if after paragraph (d) there were inserted—
- "(e) if any land on the plan is vested in a gas transmission company or gas distribution company under section 142 of the **Gas Industry Act 2001**, must include the name of the company in whom the land is vested."
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- (6) Section 35(6) of the **Subdivision Act 1988** applies in relation to land that is vested in a gas transmission company or gas distribution company under section 142 as if paragraphs (k) and (l) provide for the creation of a folio in the name of the gas transmission company or gas distribution company in which the land is vested instead of in the name of the authority.

145. Rateability of property

Despite anything to the contrary in the **Local Government Act 1989**, land is not occupied land for the purposes of that Act merely because there is on or under that land any pipe or system of pipes for, or incidental to the conveyance of gas for sale by retail.

Division 3—Easements

146. Making of easements in sub-divisions

- (1) If a proposal for sub-division or consolidation of land is referred to a gas company under the **Planning and Environment Act 1987**, the gas company may require easements for the use of the company for any one or more of the purposes set out in the Schedule.
- (2) The creation of an easement for a purpose set out in the Schedule gives to the gas company the rights specified in relation to an easement created for that purpose, subject to any land access code applying in relation to the exercise of those rights issued by the Commission under the **Essential Services Commission Act 2001**.

S. 146(2)
amended by
No. 62/2001
s. 77(c)(ii)(d).

147. Easements over lands held by Crown licensees or lessees

- (1) If an easement acquired by a gas company for any of the purposes of this Act is an easement over land held or occupied by any licensee or lessee of the Crown, a description of the easement and a notification that it has been so acquired must be forwarded without delay by the gas company to the Secretary to the Department of Natural Resources and Environment.
- (2) If an easement referred to in sub-section (1) is over land held or occupied under licence, the description and notification must be endorsed on the licence by the Secretary to the Department of Natural Resources and Environment and be registered in that Department.
- (3) If a Crown grant is issued to a person of the land over which any such easement has been taken, the grant is subject to the easement.

Division 4—Powers as to Works

148. Powers as to works etc.

- (1) Subject to and for the purposes of this Act, a gas distribution company or gas transmission company may—
 - (a) after giving 7 days' notice in writing to the occupier, enter upon any lands and make surveys and do any other acts or things necessary for making surveys; and
 - (b) with any pipes, equipment or other devices, receive, store or convey gas over, or under, any land; and

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- (c) after giving 7 days' notice in writing to the occupier, enter on any land on either side of any pipes, equipment or other devices referred to in paragraph (b), and fell or remove any tree or part of a tree or any obstruction which in the opinion of the gas distribution company or gas transmission company it is necessary to fell or remove; and
 - (d) after giving 7 days' notice in writing to the occupier, enter upon any public or private land or roads and construct any works or place on under or over any land any pipeline, work, structure or equipment and may repair, alter or remove any such pipeline, work, structure or equipment or any works under its control; and
 - (e) do all other things necessary or convenient for constructing, maintaining, altering, or using any pipelines, works or undertakings of the gas distribution company or gas transmission company.
- (2) A notice need not be given under sub-section (1)(a), (c) or (d)—
- (a) if the occupier consents to the entry and the doing of the things for which the entry is made; or
 - (b) in an emergency.
- (3) Despite sub-section (1), a gas distribution company or gas transmission company must not enter land that is used primarily for residential purposes between 6.00 pm and 7.30 am unless the occupier consents.
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- (4) In the exercise of the powers under sub-section (1), a gas distribution company or gas transmission company—
- (a) must not stay on the land any longer than is reasonably necessary; and
 - (b) if the powers relate to the carrying out of works, must, on completing the works, remove from the land all materials brought on to the land for the purposes of those works other than anything that the owner or occupier of the land agrees may be left on the land; and
 - (c) must leave the land as nearly as possible in the same condition as it was in before the exercise of the powers; and
 - (d) must co-operate as much as possible with the owner and occupier of the land.
- (5) In the exercise of the powers under sub-section (1), a gas distribution company or gas transmission company must do as little damage as possible and must, if required within 2 years from the exercise of the powers, make full compensation to the owner of and all parties interested in any land for any damage sustained by them in consequence of the exercise of the powers.
- (6) Compensation under sub-section (5) shall be either a gross sum or a yearly rent as may be agreed and, in default of agreement, shall be determined in the manner provided in the **Land Acquisition and Compensation Act 1986**.
- (7) A gas distribution company or gas transmission company may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.
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S. 148(8)
amended by
No. 62/2001
s. 77(c)(ii)(d).

- (8) This section applies subject to any land access code applying in relation to the exercise of powers under this section issued by the Commission under the **Essential Services Commission Act 2001**.

149. Power to open and break up roads etc.

S. 149(1)
amended by
No. 12/2004
s. 172(1).

- (1) Subject to the **Road Management Act 2004** and subject to and for the purposes of this Act, a gas distribution company or gas transmission company may—

- (a) open and break up the soil and pavement of any public or private road or bridge; and
- (b) temporarily stop the traffic on a road or bridge referred to in paragraph (a).

S. 149(2)
repealed by
No. 12/2004
s. 172(2).

* * * * *

- (3) If a gas distribution company or gas transmission company has opened or broken up a road or bridge, the gas distribution company or gas transmission company must—

S. 149(3)(a)(b)
repealed by
No. 12/2004
s. 172(3).

* * * * *

- (c) bear or pay all reasonable expenses of the repair of the road or bridge for 6 months after it is restored, so far as those expenses have been incurred by opening or breaking up the road or bridge.

- (4) Nothing in this section affects the operation of the **Pipelines Act 1967**.

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- (5) If this section is inconsistent with a provision of the **Pipelines Act 1967**, the provision of that Act prevails.
- (6) A gas distribution company or gas transmission company may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.
- (7) This section applies subject to any land access code applying in relation to the exercise of powers under this section issued by the Commission under the **Essential Services Commission Act 2001**. S. 149(7) amended by No. 62/2001 s. 77(c)(ii)(d).
- (8) A land access code issued by the Commission under this section must not confer any right or power, or impose any obligation or duty, which is inconsistent with the **Road Management Act 2004**. S. 149(8) substituted by No. 12/2004 s. 172(4).
- (9) A land access code has no effect to the extent of any inconsistency under sub-section (8). S. 149(9) inserted by No. 12/2004 s. 172(4).

Division 5—Offences

150. Obstructing construction or operation of pipelines

A person must not—

- (a) wilfully obstruct a person acting under the authority of a gas company in the lawful exercise of its powers in relation to the construction or operation of a pipeline; or
- (b) without the authority of a gas company, interfere with any works relating to the construction or operation of a pipeline owned or operated by the gas company.

Penalty: 60 penalty units.

151. Offences relating to transmission pipelines

- (1) A person must not—
- (a) lay or cause to be laid a pipe that connects with a pipe belonging to a gas transmission company without its consent; or
 - (b) wilfully or by culpable negligence injure or allow to be injured any gas fitting belonging to a gas transmission company; or
 - (c) interfere in any way with a meter or prevent a meter from properly registering the quantity of gas conveyed; or
 - (d) fraudulently take gas from a transmission pipeline; or
 - (e) retain or use any property of a gas transmission company except in accordance with an authority of the gas transmission company.

Penalty: 60 penalty units.

- (2) In addition to any penalty under sub-section (1), a gas transmission company may recover the amount of any damages sustained by the gas transmission company as a result of the wrongful act.

152. Offences relating to gas supply

- (1) A person must not—
- (a) lay or cause to be laid a pipe that connects with a pipe belonging to a gas distribution company without its consent; or
 - (b) wilfully or by culpable negligence injure or allow to be injured any gas fitting belonging to a gas distribution company; or

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- (c) interfere in any way with a meter or prevent a meter from properly registering the quantity of gas supplied; or
- (d) fraudulently take gas of a gas company; or
- (e) if the gas supplied by a gas retailer is not ascertained by a meter—
 - (i) use a burner other than a burner provided or approved by a gas retailer; or
 - (ii) keep the gas burning for a longer time than that for which the person contracts; or
- (f) otherwise fraudulently burn or use gas supplied to the person by a gas company.

Penalty: 60 penalty units.

- (2) In addition to any penalty under sub-section (1), a gas company may recover the amount of any damages sustained by the gas company as a result of the wrongful act.
- (3) Despite any contract previously existing, the gas company may also discontinue the supply of gas to any person who has committed an offence under sub-section (1).
- (4) When a meter is under the custody or control of a customer, the existence of artificial means for—
 - (a) interfering with the meter; or
 - (b) preventing a meter from properly registering the quantity of gas supplied; or
 - (c) taking gas of a gas company—

is evidence and, in the absence of evidence to the contrary, proof, that the interference, prevention or taking has been fraudulently and wilfully caused by the customer using the meter.

Division 6—General

153. Definition

In this Division—

"officer or employee" includes an agent or contractor of a gas company authorised by the gas company to carry out certain duties.

154. Identity cards

- (1) A gas company must give an identity card to any of its officers or employees who, in the course of the officer's or employee's duties, may need to enter the premises of a customer.
- (2) The identity card must bear—
 - (a) the signature of the chief executive officer or a prescribed officer of the gas company; and
 - (b) the photograph and signature of the officer or employee.
- (3) The officer or employee must produce his or her identity card for inspection—
 - (a) before entering the premises of a customer or other person in the course of his or her duties; and
 - (b) at any time while on those premises, if asked to do so.

Penalty: 10 penalty units.

155. Power of entry

At any reasonable time, an officer or employee of a gas company may enter any premises to which the gas company supplies or transmits gas to inspect any gas fitting or to determine the quantity of gas consumed, supplied or transmitted.

156. Emergency powers

- (1) If an emergency occurs near any pipeline used by a gas company for the conveyance of gas which, in the opinion of an officer or employee of the gas company, might endanger life or property, the officer or employee may enter any land or premises for the purpose of ensuring the security or the safety of the pipeline.
- (2) If an officer or employee of the gas company considers that the security or safety of any pipeline used by the gas company can only be ensured by stopping the conveyance of gas through or to the pipeline, the officer or employee may take such steps as are necessary to stop the conveyance of gas.

157. Offence to obstruct officer or employee of gas company

A person must not obstruct, hinder or interfere with an officer or employee of a gas company in carrying out any function or duty under section 156.

Penalty: 60 penalty units.

**PART 8—VICTORIAN ENERGY NETWORKS
CORPORATION**

Division 1—VENCorp

158. Establishment

- (1) There continues to be established a body by the name Victorian Energy Networks Corporation.
- (2) VENCorp—
 - (a) is a body corporate with perpetual succession;
 - (b) has an official seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of VENCorp affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of VENCorp must be kept in such custody as VENCorp directs and must not be used except as authorised by VENCorp.

159. VENCorp not to represent the Crown

VENCorp is a public authority but does not represent the Crown.

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160. Functions and powers relating to gas industry

- (1) The functions of VENCorp in relation to the gas industry are—
- (a) to specify security standards for the gas transmission system;
 - (b) to control the security of the gas transmission system;
 - (c) to control the operation of the gas transmission system;
 - (d) to collect information about the gas transmission system;
 - (e) to monitor and review the capacity of the gas transmission system and the trends for demand for the injection of gas into, and the withdrawal of gas from, that system;
 - (f) to provide information and other services to facilitate decisions for economically efficient investment and use of resources in the gas industry;
 - (g) to co-ordinate the interaction of gas production, gas storage, transmission pipelines and gas distribution and supply facilities for the purpose of ensuring a secure and efficient gas transmission system;
 - (h) to operate and administer a market and facilitate trading arrangements for the operation of the gas transmission system;

* * * * *

S. 160(1)(i)
amended by
No. 62/2001
s. 77(c)(ii),
repealed by
No. 25/2004
s. 19.

Gas Industry Act 2001
Act No. 31/2001

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S. 160(1)(j)
amended by
No. 85/2001
s. 15.

(j) to facilitate the implementation and operation of, and to provide services in connection with, arrangements for competition—

S. 160(1)(j)(i)
inserted by
No. 85/2001
s. 15.

(i) in the retail gas market in Victoria; or

S. 160(1)(j)(ii)
inserted by
No. 85/2001
s. 15.

(ii) with the approval of the Minister, after consultation with the Treasurer, in a retail gas market elsewhere outside Victoria;

(k) to carry out directions given to VENCORP under section 171, whether or not for purposes connected with functions under this section; and

(l) to carry out any functions conferred on VENCORP in relation to the gas industry under this Act or any other Act.

(2) VENCORP may trade in gas—

(a) for the purpose of discharging its functions relating to the security or administration of the gas transmission system, to the extent it is permitted to do so under the MSO Rules; or

(b) in an emergency.

(3) VENCORP may in accordance with the MSO Rules suspend any market operated or administered by it under sub-section (1)(h).

161. Functions and powers relating to electricity

VENCORP has the functions and powers conferred on it under the **Electricity Industry Act 2000**.

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162. General powers

- (1) Without limiting the generality of the powers conferred on it under this Act, the **Electricity Industry Act 2000** or any other Act, VENCorp—
 - (a) may form, or participate in the formation of, or be a member of, companies;
 - (b) may form, or participate in the formation of, and may participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
 - (c) may act as trustee;
 - (d) may engage in any business, undertaking or activity incidental to the performance of its functions;
 - (e) may do all things necessary or convenient to be done for, or in connection with, carrying out its functions under this Act, the **Electricity Industry Act 2000** or any other Act.
- (2) VENCorp may carry out its functions and exercise its powers within or outside Victoria and outside Australia.
- (3) For the purposes of this Act, the question whether a body corporate is a subsidiary of VENCorp is to be determined in the same manner as the question would be determined under the Corporations Act.

S. 162(1)
amended by
No. 40/2003
s. 9.

S. 162(1)(e)
amended by
No. 40/2003
s. 9.

S. 162(3)
amended by
No. 44/2001
s. 3(Sch.
item 57.6).

163. Non-commercial functions

- (1) The Minister, with the approval of the Treasurer, may, in writing, direct the board of VENCorp—
 - (a) to perform certain functions that the Minister considers to be in the public interest but that may cause VENCorp to suffer financial detriment; or

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- (b) to cease to perform functions of a kind referred to in paragraph (a); or
 - (c) to cease to perform certain functions that the Minister considers not to be in the public interest.
- (2) The board of VENCorp must comply with a direction given under sub-section (1).
- (3) If VENCorp satisfies the Treasurer that it has suffered financial detriment as a result of complying with a direction under sub-section (1), VENCorp may be reimbursed by the State an amount determined by the Treasurer and the Consolidated Fund is thereby appropriated to the necessary extent accordingly.
- (4) The reference in this section to suffering financial detriment includes a reference to incurring net costs that are greater than would have been incurred if the direction were not complied with.
- (5) This section applies to VENCorp's functions under this Act, the **Electricity Industry Act 2000** or any other Act.

S. 163(5)
inserted by
No. 40/2003
s. 10.

S. 164
amended by
No. 40/2003
s. 11.

164. Delegation powers

VENCorp may, by instrument under its official seal, delegate to—

- (a) a director; or
- (b) an officer of VENCorp by name or the holder of an office with VENCorp; or
- (c) the members of a committee established by VENCorp; or

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(d) with the consent of the Minister, any other person—

any power of VENCorp under this Act, the **Electricity Industry Act 2000** or any other Act, other than—

(e) this power of delegation; and

(f) any other power that is prescribed for the purposes of this section.

Division 2—Board of Directors

165. Board of Directors

- (1) There shall be a board of directors of VENCorp consisting of a chairperson and not more than 9 other directors appointed in accordance with this Act.
- (2) The board of directors of VENCorp—
 - (a) is responsible for the management of the affairs of VENCorp; and
 - (b) may exercise the powers of VENCorp.

166. Directors

- (1) The directors shall be persons with expertise relevant to the functions of VENCorp nominated by the Minister.
- (2) At least 3 of the directors shall be persons—
 - (a) who are not officers or employees of VENCorp, a gas producer, a gas storage provider or a gas company; and
 - (b) none of whom has a material personal interest (within the meaning of section 195(1) of the Corporations Act) in VENCorp, a gas producer, a gas storage provider or a gas company; and

S. 166(2)(b)
amended by
No. 44/2001
s. 3(Sch.
item 57.7).

Gas Industry Act 2001
Act No. 31/2001

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S. 166(2)(d)
amended by
No. 44/2001
s. 3(Sch.
item 57.7).

- (c) who are not officers or employees of the holder of a licence under Part 2 of the **Electricity Industry Act 2000**; and
- (d) none of whom has a material personal interest (within the meaning of section 195(1) of the Corporations Act) in a person that holds a licence issued under Part 2 of the **Electricity Industry Act 2000**.

167. Appointment of directors

S. 167(2)
amended by
No. 11/2002
s. 3(Sch. 1
item 28.2),
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 87).

- (1) The chairperson and other directors of VENCORP shall be appointed by the Governor in Council.
- (2) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a director of VENCORP in respect of the office of director.

168. Terms and conditions of appointment

- (1) A director of VENCORP is to be appointed for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (2) A director of VENCORP holds office, subject to this Act, on terms and conditions determined by the Minister.

169. Duties of directors

- (1) A director of VENCORP must at all times act honestly in the performance of the functions of his or her office.
- (2) A director of VENCORP must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.

- (3) A director, or former director, of VENCorp must not make improper use of information acquired by virtue of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to VENCorp.
- (4) A director of VENCorp must not make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to VENCorp.

170. VENCorp or Minister may bring proceedings

If a person contravenes section 169 in relation to VENCorp, VENCorp or the Minister, in the name of VENCorp, may recover from the person as a debt due to VENCorp by action in a court of competent jurisdiction either or both of the following—

- (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit;
- (b) if VENCorp has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

171. Directions

- (1) The Minister, after consultation with the Treasurer, may, from time to time, by written notice to the board of VENCorp, give such directions to the board as the Minister thinks fit.
- (2) The board of VENCorp must comply with a direction given under this section but an act or decision of the board is not invalid merely because of a failure to comply with such a direction.

172. Vacancies, resignations, removal from office

- (1) The office of a director of VENCorp becomes vacant if the director—
 - (a) without the board's approval, fails to attend 3 consecutive meetings of the board of VENCorp; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (c) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.
- (2) A director of VENCorp may resign by writing delivered to the Minister.
- (3) The Governor in Council may remove a director, or all directors, of VENCorp from office.
- (4) The Governor in Council must remove a director of VENCorp from office if he or she—
 - (a) is convicted of an offence relating to his or her duties as a director; or
 - (b) fails, without reasonable excuse, to comply with section 175.

173. Proceedings of board

- (1) Subject to sub-section (2), meetings of the board of VENCorp shall be held at such times and places as the board determines.
- (2) The chairperson of VENCorp may at any time convene a meeting but must do so when requested by a director of VENCorp.

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- (3) A majority of the directors for the time being of VENCorp constitute a quorum of the board of VENCorp.
 - (4) A question arising at a meeting of the board of VENCorp shall be determined by a majority of votes of directors of VENCorp present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.
 - (5) The board of VENCorp must ensure that minutes are kept of each of its meetings.
 - (6) Subject to this Act, the board of VENCorp may regulate its own proceedings.

174. Resolutions without meetings

- (1) If the directors for the time being of VENCorp (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that those directors are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last director to sign signs the document.
- (2) If a resolution is, under sub-section (1), taken to have been passed at a meeting of the board, each director must be advised as soon as practicable and given a copy of the terms of the resolution.
- (3) For the purposes of sub-section (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, shall be taken to constitute one document.

- (4) In this section, "**director**" in relation to a resolution, does not include a director who, by reason of section 175, is not permitted to take part in the making of the resolution.

175. Disclosure of interests

- (1) If—
- (a) a director of VENCorp has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the board of VENCorp; and
 - (b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter—
- the director, as soon as practicable after the relevant facts come to the director's knowledge, must disclose the nature of the interest at a meeting of the board.
- (2) A disclosure under sub-section (1) must be recorded in the minutes of the meeting and, unless the Minister or the board otherwise determines, the director—
- (a) must not be present during any deliberation of the board in relation to the matter; and
 - (b) must not take part in any decision of the board in relation to the matter.
- (3) For the purpose of the making of a determination by the board of VENCorp under sub-section (2) in relation to a director who has made a disclosure under sub-section (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—
- (a) must not be present during any deliberation of the board for the purpose of making the determination; and

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- (b) must not take part in the making by the board of the determination.
- (4) Sub-sections (1) and (2) do not apply in relation to a matter relating to the supply of goods or services to the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.
- (5) Sub-sections (1) and (2) do not apply in respect of a matter relating to the business of another gas company or of a gas producer or a gas storage provider or of the holder of a licence under Part 2 of the **Electricity Industry Act 2000** by reason only that the director is an officer or employee of, or holds shares in, that other gas company or the gas producer or gas storage provider or the holder of that licence.

176. Validity of decisions

- (1) An act or decision of the board of VENCorp is not invalid merely because of—
 - (a) a defect or irregularity in, or in connection with, the appointment of a director of VENCorp; or
 - (b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director.
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a director is not invalid merely because—
 - (a) the occasion for the appointment has not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect; or

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- (d) the occasion for the person to act had not arisen or had ceased.

177. VENCorp not to make loans to directors

- (1) The powers of VENCorp do not include a power, whether directly or indirectly—
- (a) to make a loan to a director of VENCorp, a spouse of such a director, or a relative (as defined in the Corporations Act) of such a director or spouse; or
 - (b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a director, spouse or relative referred to in paragraph (a).
- (2) Nothing in sub-section (1) prohibits VENCorp from entering into an agreement or arrangement with a person referred to in sub-section (1) if similar agreements or arrangements are entered into by VENCorp with members of the public on the same terms and conditions.

S. 177(1)(a)
amended by
No. 44/2001
s. 3(Sch.
item 57.7).

178. Indemnity

The powers of VENCorp do not include a power to exempt, whether directly or indirectly, a director of VENCorp from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director of VENCorp against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to VENCorp.

179. Chief executive officer

- (1) The board of VENCORP may appoint a person approved by the Minister as the chief executive officer of VENCORP.
- (2) The chief executive officer of VENCORP holds office, subject to this Act, on a full-time basis and on the terms and conditions determined by the board of VENCORP and specified in the instrument of appointment.
- (3) The board of VENCORP may remove the chief executive officer of VENCORP from office.

Division 3—Planning, Finance and Reporting Provisions

180. Corporate plan

- (1) The board of VENCORP must prepare a corporate plan each year.
- (2) The board must give a copy of the proposed plan to the Minister and the Treasurer on or before 31 May in each year or such later date as is determined by the Treasurer.
- (3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and the Treasurer and must include—
 - (a) a statement of corporate intent in accordance with section 181;
 - (b) a business plan containing such information as the Treasurer or the Minister requires;
 - (c) financial statements containing such information as the Treasurer requires.
- (4) The board must consider any comments on the proposed plan that are made to it by the Treasurer or the Minister within 2 months after the plan was submitted to the Treasurer and Minister.

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- (5) The board must consult in good faith with the Treasurer and the Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Treasurer, the Minister and the board and must deliver the completed plan to the Treasurer and Minister within 2 months after the commencement of the financial year.
 - (6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the board, the Treasurer and the Minister.
 - (7) The plan may be modified at any time by the board with the agreement of the Treasurer and the Minister.
 - (8) If the board, by written notice to the Treasurer and Minister, proposes a modification of the plan, the board may, within 14 days, make the modification unless the Treasurer or Minister, by written notice to the board, directs the board not to make it.
 - (9) The Treasurer or Minister may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.
 - (10) Before giving a direction under this section, the Treasurer and Minister must consult with the board as to the matters to be referred to in the notice.
 - (11) The board must comply with a direction under this section.
 - (12) At any particular time, the statement of corporate intent, the business plan or the financial statements for VENCorp are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.
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181. Statement of corporate intent—contents

Each statement of corporate intent must specify for VENCorp and its subsidiaries (if any), in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

- (a) the objectives of VENCorp and of its subsidiaries;
- (b) the main undertakings of VENCorp and of its subsidiaries;
- (c) the nature and scope of the activities to be undertaken by VENCorp;
- (d) the accounting policies to be applied in the accounts;
- (e) the performance targets and other measures by which the performance of VENCorp and of its subsidiaries may be judged in relation to their stated objectives;
- (f) the kind of information to be provided to the Treasurer and the Minister by VENCorp during the course of those financial years, including the information to be included in each half-yearly report;
- (g) such other matters as may be agreed on by the Treasurer, the Minister and the board of VENCorp from time to time.

182. Borrowing and investment by VENCorp

VENCorp has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

183. Dividends

VENCorp must pay to the State such amounts, at such times and in such manner, as are determined by the Treasurer after consultation with the board of VENCorp and the Minister.

184. Reports to Treasurer

The Treasurer may, in writing, require the board of VENCorp to give the Treasurer such information as the Treasurer requires in relation to its duties and functions under this Division.

185. Annual report

VENCorp, in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, must include—

- (a) a copy of each direction given to it during that year under section 163 or 171 together with a statement of its response to the direction; and
- (b) a copy of the statement of corporate intent last completed.

Division 4—Directions by VENCorp

186. VENCorp may give directions

- (1) VENCorp may give directions in writing as to a matter referred to in sub-section (2) to a market participant for the purposes of any one or more of the following—
 - (a) facilitating the reliability of the supply of gas;
 - (b) facilitating the security of the gas transmission system or gas distribution system;
 - (c) subject to consistency with the **Gas Safety Act 1997**, the interests of public safety.

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- (2) The matters as to which a direction may be given under sub-section (1) are—
- (a) the operation or use of any equipment or installation;
 - (b) the control of the flow of gas;
 - (c) any other matter necessary to be done, or not to be done, for the security of the gas transmission system or the gas distribution system.
- (3) A direction under this section that is inconsistent with—
- (a) the **Gas Safety Act 1997** or regulations under that Act; or
 - (b) the **Pipelines Act 1967**, or with the conditions of a licence under that Act held by the person to whom the direction is given—
- is void to the extent of the inconsistency.
- (4) A direction given under this section to a market participant applies to the market participant and may also be expressed to apply to a specified class of persons, being a class constituted by or included in one or both of the following classes of persons—
- (a) servants or agents of or persons acting on behalf of, the market participant;
 - (b) persons performing work or services, whether directly or indirectly, for the market participant—

and, if a direction so expressed is given, the direction is deemed to apply to each person included in that specified class.

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- (5) If a direction under this section applies to a market participant and to a person referred to in sub-section (4) the market participant must cause a copy of the direction to be given to that other person.

Penalty: 10 penalty units.

- (6) A direction under this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modifications, a code of practice or standard contained in an instrument (including an instrument issued or made outside Australia), as in force or existing at the time when the direction takes effect or as in force or existing from time to time, being a code of practice or standard that is relevant to that matter.
- (7) A direction under this section may prohibit the doing of an act or thing either unconditionally or subject to conditions.
- (8) A direction under this section has effect and must be complied with despite any previous direction under this section.
- (9) A person must comply with a direction in force under sub-section (1) that applies to the person.

Penalty: In the case of a natural person,
240 penalty units.

In the case of a body corporate,
10,000 penalty units.

- (10) An offence by a body corporate under sub-section (9) is an indictable offence.

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(11) If—

- (a) a direction given under this section applies to a market participant and another person and that other person is prosecuted for an offence against sub-section (9) in relation to the direction; and
- (b) the person adduces evidence that the person did not know, and could not reasonably be expected to have known, of the existence of the direction—

the person shall not be convicted of the offence unless the prosecutor proves that the person knew, or could reasonably be expected to have known, of the existence of the direction.

187. Power of Minister

- (1) The Minister, at the request of VENCORP, may, at any time, make a direction in writing amending a direction made, or purportedly made, by VENCORP under this Division (in this section called "the VENCORP direction") for the purpose of correcting a defect, mistake or omission in the VENCORP direction.
- (2) If a direction of the Minister under sub-section (1) amending a VENCORP direction—
 - (a) includes a statement that the VENCORP direction is deemed to have been made as so amended; and
 - (b) is made not later than 3 months after the VENCORP direction was made—

the VENCORP direction is deemed to have been made as so amended.

188. Protection from liability

- (1) A person to whom this section applies is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained because of anything done or omitted to be done in good faith—
 - (a) in or in connection with or incidental to the exercise of a power to give or make a direction, prohibition or requisition under, or purportedly under, this Act; or
 - (b) in the reasonable belief that the act or omission was in or in connection with or incidental to the exercise of such a power.
- (2) This section applies to VENCORP and the directors and servants of VENCORP.

189. Protection of persons executing directions

A person is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained because of anything done, or omitted to be done in good faith—

- (a) in the execution of any direction under, or purportedly under, this Division; or
- (b) in the reasonable belief that the act or omission was in the execution of such a direction.

190. Continuing offences

- (1) If an offence is committed by a person by reason of a failure to comply, within the period specified in a direction given in a direction under section 186, with the requirements specified in the direction, the offence, for the purposes of subsection (2) is deemed to continue so long as any requirement specified in the direction remains undone, whether or not the period has elapsed.

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- (2) If, under sub-section (1), an offence is deemed to continue, the person who committed the offence commits an additional offence on each day during which the offence is deemed to continue and is liable, upon conviction for such an additional offence, to a fine not exceeding 100 penalty units.

**Division 5—Appointment and Powers of VENCorp
Inspectors**

191. Inspectors

- (1) The chief executive officer of VENCorp may appoint an officer or employee of VENCorp or an agent or contractor of VENCorp to be an inspector for the purpose of this Part.
- (2) The chief executive officer must give an identity card to each person who is appointed an inspector.
- (3) The identity card—
- (a) must be signed by the chief executive officer; and
 - (b) bear a photograph and the signature of the inspector.
- (4) An inspector must produce his or her identity card for inspection—
- (a) before performing a function under this Part; and
 - (b) at any time during the performance of a function under this Part, if asked to do so.
- Penalty: 10 penalty units.
- (5) The chief executive officer of VENCorp must not appoint an agent or contractor of VENCorp to be an inspector unless satisfied that the agent or contractor—

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- (a) is competent to exercise the functions of an inspector; and
- (b) is of good repute, having regard to character, honesty and integrity; and
- (c) agrees in writing to carry out the functions of an inspector in accordance with such criteria as are established from time to time by VENCorp.

192. Powers of entry—enforcement

- (1) If an inspector has reasonable grounds for suspecting that there is on any land or premises a particular thing that may be evidence of the commission of a contravention of a direction under section 186, the inspector may—
 - (a) enter the land or premises; and
 - (b) search for the thing.
- (2) An inspector must not enter land or premises except—
 - (a) with the written consent of the occupier of the land or premises; or
 - (b) under the authority of a search warrant.

193. Occupier to be given copy of consent

- (1) An occupier who consents in writing to entry of his or her land or premises under section 192 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

194. Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular land or premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the land or premises a particular thing that may be evidence of a contravention of a direction under section 186.
- (2) A magistrate may issue a search warrant under this section if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on land or premises a particular thing that may be evidence of a contravention of a direction under section 186.
- (3) The search warrant may authorise an inspector named in the warrant and any assistants the inspector considers necessary—
 - (a) to enter the land or premises, or part of the land or premises, named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the contravention suspected; and
 - (b) the land or premises to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and

- (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

195. Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector named in the warrant must—
 - (a) announce that he or she is authorised by the warrant to enter the land or premises; and
 - (b) give any person at the land or premises an opportunity to allow entry to the land or premises.
- (2) The inspector or a person assisting the inspector need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the land or premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

196. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at the land or premises when a search warrant is being executed, the inspector must—

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- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

197. Offence to obstruct inspector

A person must not without reasonable excuse obstruct or hinder an inspector exercising functions under this Part.

Penalty: In the case of a natural person,
120 penalty units.

In the case of a body corporate,
600 penalty units.

198. Police to assist inspectors

An inspector may request the assistance of a member of the police force and a member of the police force may assist an inspector to take any action authorised by this Part.

199. Impersonation of inspector

A person must not impersonate an inspector.

Penalty: 60 penalty units.

Division 6—General

200. Information to be provided to VENCORP

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that a person who—
 - (a) operates a pipeline that is connected to a gas transmission system; or
 - (b) operates an underground storage facility; or

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- (c) is a gas producer—
must give VENCorp such information, or
information of such class of information, as is
specified in the Order.
- (2) Sub-section (1) does not apply to a person to the
extent that the person and VENCorp otherwise
agree in writing.
- (3) A copy of an Order made under sub-section (1)
must be laid before each House of the Parliament
as soon as practicable after it is made.
- (4) An Order made under sub-section (3) is subject to
disallowance by a House of the Parliament and
sections 23, 24 and 25 of the **Subordinate
Legislation Act 1994** apply to such an Order as if
the Order were a statutory rule within the meaning
of that Act, notice of the making of which had
been published in the Government Gazette on the
day on which the Order was so published.
- (5) If an Order made under sub-section (1) is
disallowed by a House of the Parliament, the
Minister must do all such things as are necessary
to give effect to the disallowance.

201. Restriction on disclosure of confidential information

- (1) This section applies if information or a document
is given to VENCorp under section 200 and, at the
time it is given, the person giving it states that it is
of a confidential or commercially-sensitive nature.
- (2) VENCorp must not, without the consent of the
person who gave it, disclose the information or the
contents of the document to any person.
- (3) Sub-section (2) does not prevent VENCorp from
disclosing information or the contents of a
document to a member of the staff of VENCorp or
to a person engaged by VENCorp in connection
with the carrying out of its functions.

- (4) A member of the staff of VENCORP or a person engaged by VENCORP in connection with the carrying out of its functions must not disclose information or the contents of a document disclosed to the member or person by VENCORP to any person (not being another such member or person) without the consent of the person who gave the information or document to VENCORP.

202. Rateability of land vested in VENCORP

Land of the Crown and land vested in fee in VENCORP which is unoccupied or used for the purposes of this Act is not, and is deemed never to have been, rateable land within the meaning of the **Local Government Act 1989**.

203. Service of documents on VENCORP

A document required or authorised to be served on VENCORP may be served—

- (a) personally on—
- (i) the chief executive officer of VENCORP; or
 - (ii) a person apparently authorised to accept service of documents on behalf of VENCORP; or
- (b) by post to VENCORP at its principal office.

204. Evidence of documents issued by VENCORP

A document issued or purporting to have been issued by VENCORP and purporting to have been signed by the chief executive officer of VENCORP is evidence that the document was issued by VENCORP.

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205. Review of this Part

S. 205(1)
amended by
No. 33/2005
s. 5.

- (1) The Minister must cause a review of this Part to be undertaken by the ACCC or another person nominated by the Minister.
- (2) The person undertaking the review must report in writing to the Minister on the outcome of the review on or before 31 December 2007.
- (3) The matters to be addressed in the review are whether or not there is a continuing need for VENCorp, or a similar statutory authority, with particular regard to—
 - (a) the competitiveness of markets for and in relation to gas; and
 - (b) such other matters as the Minister determines.

PART 9—GAS SUPPLY EMERGENCY PROVISIONS

Division 1—Emergency Provisions

206. Proclamation that this Part applies

- (1) If it appears to the Governor in Council that the available supply of gas is or is likely to become less than is sufficient for the reasonable requirements of the community, the Governor in Council may, by proclamation, declare that this Part is to apply.
- (2) The proclamation must be published in the Government Gazette.
- (3) The proclamation takes effect on the date of its publication.
- (4) The Governor in Council may at any time revoke a proclamation.

207. Powers of Minister

- (1) While a proclamation is in force, the Minister may, having regard to the needs of the community, give any directions that the Minister thinks necessary to—
 - (a) ensure the safe and sure supply of gas; or
 - (b) to regulate the use of the available supply of gas.
- (2) Without limiting sub-section (1), the Minister may by notice in writing do all or any of the following—
 - (a) give any directions that are necessary to control, direct, authorise conduct in relation to, restrict or prohibit the extraction, production, supply, distribution, sale, use or consumption of gas;

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s. 207

- (b) direct a person or body who extracts, produces, transmits or distributes gas to extract it for, or produce it, transmit it or distribute it to a person specified in the direction;
- (c) direct a person or body to comply with any terms and conditions relating to the extraction, production, supply, distribution, sale, use or consumption of gas the Minister determines;
- (d) direct a person or body to whom gas is provided, or transmitted, to accept the gas so provided or transmitted;
- (e) direct a person or body to carry out any work required to ensure the extraction, production, supply, distribution or flow of gas;
- (f) direct what services must be maintained and upon what terms and conditions they must operate;
- (g) direct persons and bodies to operate and maintain services to the extent and upon the terms specified in the direction;
- (h) direct at what times and places and upon what terms and conditions and in what manner services may be used;
- (i) prohibit the operation or use of services except, if so specified in the prohibition, with the consent of the Minister;
- (j) requisition the use of property of any kind which is used or may be used, for or in connection with the operation or maintenance of any service;

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- (k) provide for or control, by direction, prohibition or requisition, the operation, use, disposal, distribution, storage, repair, upkeep and maintenance of any property or commodity used or which may be used for, or in connection with, any service;
 - (l) authorise a person specified in the notice to enter any land, building or structure used for or in connection with the provision of services;
 - (m) provide, by direction, prohibition or requisition, for any matter or thing incidental to the carrying into effect of the powers referred to in this section.
- (3) A direction, prohibition or requisition—
- (a) may be made so as to apply to or have operation throughout the whole or any part of Victoria; and
 - (b) may operate generally, or may be limited in its operation according to specified times, places, circumstances, conditions or restrictions; and
 - (c) may, if so specified in the direction, prohibition or requisition, allow the Minister to exempt a person or body from having to comply with the direction, prohibition or requisition; and
 - (d) may be addressed or directed to people and bodies generally or particularly; and
 - (e) subject to sub-section (7), takes effect when made or, if a later time is specified in the direction, prohibition or requisition, at that later time; and
 - (f) has effect as if enacted in this Act.
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- (4) A direction (including a direction under sub-section (6)), prohibition or requisition must be published in the Government Gazette as soon as possible after it is made.
 - (5) Notice of a requisition relating to a class of property must be published in the Government Gazette as soon as possible after it is made.
 - (6) The Minister may at any time by direction under this section amend or revoke a direction, prohibition or requisition made, or purportedly made, under this section or may return requisitioned property.
 - (7) If a direction of the Minister under sub-section (6) amending an earlier direction for the purpose of correcting a defect, mistake or omission—
 - (a) includes a statement that the earlier direction is deemed to have been made as so amended; and
 - (b) is made not later than 3 months after the earlier direction was made—the earlier direction is deemed to have been made as so amended.
 - (8) If the Minister requisitions the use of property under sub-section (2)(j), the reasonable costs of compensating the owner of that property for the requisition and making good any damage resulting from the requisition must be determined by the Minister.
 - (9) If there is a dispute as to the Minister's determination, the Minister must refer the matter for arbitration by a single arbitrator under the **Commercial Arbitration Act 1984**.
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- (10) Requisitioned property that has not been disposed of must be returned as soon as it is safe to do so after the Governor in Council revokes a proclamation.
- (11) The amendment, expiry or revocation of a direction, prohibition or requisition does not affect—
- (a) the previous operation of the direction, prohibition or requisition; or
 - (b) the validity of any action taken under the direction, prohibition or requisition; or
 - (c) any penalty or punishment incurred in respect of—
 - (i) any contravention of, or failure to comply with, the direction, prohibition or requisition before the amendment, expiry or revocation; or
 - (ii) any proceeding or remedy in respect of such a penalty or punishment.

208. Offence not to comply with direction etc.

- (1) A person or body who is aware of a direction, prohibition or requisition made under section 207 must comply with the direction, prohibition or requisition.
- (2) A person is deemed to be aware of a direction, prohibition or requisition if the Minister has caused—
- (a) the direction, prohibition or requisition to be published in a newspaper circulating in the area in which the direction, prohibition or requisition applies; or

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- (b) details of the direction, prohibition or requisition to be broadcast by means of radio or television transmission in the area in which the direction, prohibition or requisition applies.
- (3) In any proceedings for an offence against this section, a certificate purporting to be signed by the Minister to the effect that details of a direction, prohibition or requisition were broadcast by means of radio or television transmission in a particular area on a specified day is evidence of the facts set out in the certificate.
- (4) In any proceedings for an offence against this section, it is sufficient defence for the defendant to prove that at the time of the commission of the offence, the defendant—
- (a) did not know; and
 - (b) could not reasonably have known—
- of the direction, prohibition or requisition.
- (5) A person must not contravene sub-section (1).
- Penalty: In the case of a natural person,
240 penalty units.
- In the case of a body corporate,
10 000 penalty units.
- (6) An offence by a body corporate under sub-section (5) is an indictable offence.
- (7) If an offence is committed by a person by reason of a failure to comply, within the period specified in a direction, prohibition or requisition made under section 207, with the requirements specified in the direction, prohibition or requisition, the offence, for the purposes of sub-section (8) is deemed to continue so long as any requirement specified in the direction, prohibition or
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requisition, remains undone, whether or not the period has elapsed.

- (8) If, under sub-section (7), an offence is deemed to continue, the person who committed the offence commits an additional offence on each day during which the offence is deemed to continue and is liable, upon conviction for such an additional offence, to a penalty not exceeding one tenth of the penalty for the first-mentioned offence.

209. Offence to obstruct a person carrying out a direction etc.

A person must not obstruct another person—

- (a) exercising a power given to; or
- (b) complying with an obligation imposed on—

the other person under a direction, prohibition or requisition under section 207 if the person has been shown a copy of the direction, prohibition or requisition.

Penalty: In the case of a natural person,
240 penalty units.

In the case of a body corporate,
10 000 penalty units.

210. Offences by bodies corporate

- (1) If a body corporate commits an offence against section 208 or 209, any officer of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for it.
- (2) An offence under sub-section (1) is an indictable offence.

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- (3) A person may be proceeded against and convicted under a provision in accordance with sub-section (1) whether or not the body corporate has been proceeded against or convicted under that provision.
- (4) If in a proceeding for an offence against this section it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.
- (5) In sub-section (1), "**officer**", in relation to a body corporate, means—
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

211. Offences by partnerships or unincorporated associations

If this Part provides that a person is guilty of an offence, that reference to a person must—

- (a) in the case of a partnership, be read as a reference to each member of the partnership; and
- (b) in the case of an unincorporated body or association, be read as a reference to each member of the committee of management of the body or association.

212. Judicial notice

All courts and tribunals must take judicial notice of any proclamation, direction, prohibition or requisition made, given or imposed under this Part.

213. Immunity from suit

A person acting in good faith in the execution of this Part or any proclamation, direction, prohibition or requisition under this Part is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained because of the operation of this Part or of anything done or purporting to be done under this Part or any proclamation, direction, prohibition or requisition under this Part.

Division 2—Enforcement

214. Powers of entry—enforcement

- (1) If an inspector has reasonable grounds for suspecting that there is on any land or premises a particular thing that may be evidence of the commission of an offence against this Part, the inspector may—
 - (a) enter the land or premises; and
 - (b) search for the thing.
- (2) An inspector must not enter land or premises under this section except—
 - (a) with the written consent of the occupier of the land or premises; or
 - (b) under the authority of a search warrant.

215. Occupier to be given copy of consent

- (1) An occupier who consents in writing to entry of his or her land or premises under section 214 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

216. Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular land or premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the land or premises a particular thing that may be evidence of the commission of an offence against this Part.
- (2) A magistrate may issue a search warrant under this section if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on land or premises a particular thing that may be evidence of the commission of an offence against this Part.
- (3) The search warrant may authorise an inspector named in the warrant and any assistants the inspector considers necessary—
 - (a) to enter the land or premises, or part of the land or premises, named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.

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- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected; and
 - (b) the land or premises to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

217. Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector named in the warrant must—
- (a) announce that he or she is authorised by the warrant to enter the land or premises; and
 - (b) give any person at the land or premises an opportunity to allow entry to the land or premises.

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- (2) The inspector or a person assisting the inspector need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the land or premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

218. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at the land or premises when a search warrant is being executed, the inspector must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

Penalty: 10 penalty units.

Division 3—Infringement Notices

219. Definition

In this Division—

S. 219 def. of
"prescribed
offence"
amended by
No. 85/2001
s. 17(2).

"prescribed offence" means an offence against section 208(5) constituted by the use of gas by a person in contravention of a direction, prohibition or requisition under section 207—

- (a) of which the person is aware or is deemed under section 208 to be aware; and

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s. 220

(b) which applies to the person—
but does not include an offence by a body
corporate.

220. Power to serve a notice

- (1) An inspector may serve an infringement notice on any person that he or she has reason to believe has committed a prescribed offence.
- (2) An offence referred to in sub-section (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 220(2)
substituted by
No. 32/2006
s. 94(Sch.
item 23(1)).

* * * * *

S. 221
repealed by
No. 32/2006
s. 94(Sch.
item 23(2)).

222. Infringement penalties

The infringement penalty for an offence against a
prescribed offence is 5 penalty units.

S. 222
amended by
No. 10/2004
s. 15(Sch. 1
item 13.2).

* * * * *

Ss 223–228
repealed by
No. 32/2006
s. 94(Sch.
item 23(2)).

PART 10—GENERAL

229. Delegation by Minister

The Minister may, by instrument, delegate to any person any function or power of the Minister under this Act, other than this power of delegation.

230. Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, any officer of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for it.
- (2) A person may be proceeded against and convicted under a provision in accordance with sub-section (1) whether or not the body corporate has been proceeded against or convicted under that provision.
- (3) If in a proceeding for an offence against this section it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.
- (4) In sub-section (1), "**officer**", in relation to a body corporate, means—
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

231. Proceedings for offences

- | | |
|---|--|
| (1) A person authorised by Energy Safe Victoria or VENCorp either generally or in a particular case to bring proceedings for an offence against this Act or the regulations may bring those proceedings. | S. 231(1)
amended by
No. 39/2005
s. 56(4). |
| (2) If proceedings referred to in sub-section (1) are brought by a person authorised to do so, the proceedings may be conducted by any other person authorised by Energy Safe Victoria or VENCorp to bring proceedings of that kind. | S. 231(2)
amended by
No. 39/2005
s. 56(4). |
| (3) All courts must take judicial notice of the fact that a person is authorised by Energy Safe Victoria or VENCorp to bring proceedings referred to in sub-section (1) or conduct proceedings under sub-section (2), as the case requires. | S. 231(3)
amended by
No. 39/2005
s. 56(4). |
| (4) In this section " Energy Safe Victoria " means Energy Safe Victoria established under the Energy Safe Victoria Act 2005 . | S. 231(4)
amended by
11/2002
s. 3(Sch. 1
item 28.3),
substituted by
No. 39/2005
s. 56(5). |

232. Gas retailer not liable for failure to supply

- (1) Despite anything to the contrary in this or any other Act or in any contract, a gas retailer is not liable to any penalty or damages for failing to supply gas if the failure arises out of any accident or cause beyond the control of the gas retailer.
- (2) A gas retailer may enter into an agreement with a person varying or excluding the operation of sub-section (1) and, to the extent of that agreement, that sub-section does not apply.
- (3) Nothing in sub-section (1) or (2) affects the liability of a gas company under the **Gas Safety Act 1997**.
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233. Exemption from liability to transmit or convey gas

- (1) Despite anything to the contrary in this or any other Act but subject to sub-section (2) or in any contract—
 - (a) a gas transmission company is not liable to any penalty or damages for failing—
 - (i) to accept gas for injection into, or to make gas available for withdrawal from, a transmission pipeline; or
 - (ii) to make a transmission pipeline available to accept gas for injection into it or for the withdrawal of gas from it—if the failure arises out of any accident or cause beyond the control of the gas transmission company;
 - (b) a gas distribution company is not liable to any penalty or damages for failing to convey gas through distribution pipelines if the failure arises out of any accident or cause beyond the control of the gas distribution company.
- (2) A gas transmission company or a gas distribution company may enter into an agreement with a person varying or excluding the operation of sub-section (1) and, to the extent of that agreement, that sub-section does not apply.
- (3) Nothing in sub-section (1) or (2) affects the liability of a gas company under the **Gas Safety Act 1997**.

234. Evidence of ownership

In any legal proceedings by a gas distribution company or gas retailer, in addition to any other method of proof available—

- (a) evidence that the person proceeded against is shown in the books of the gas distribution company or gas retailer to be the owner or occupier of the premises in relation to which the proceedings are instituted; or
- (b) a certificate by the chief executive officer of the municipal council within the municipal district of which premises are situated to the effect that a party to the proceedings is rated in respect of those premises—

is evidence and, in the absence of evidence to the contrary, proof, that the party is the owner or occupier (as the case may be) of the premises and the consumer of any gas supplied to the premises.

235. Supreme Court—limitation of jurisdiction

It is the intention of sections 54, 84, 113, 188, 189 and 213 of this Act to alter or vary section 85 of the **Constitution Act 1975**.

236. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing the method for calculating any charge for the supply of gas;
 - (b) the protection of any gas undertakings, works, gas fittings or property of a gas company and the prevention of any interference with them and generally providing for the safety of persons and property;

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Part 10—General

s. 236

S. 236(1)(c)
repealed by
No. 29/2006
s. 3(Sch. 1
item 13.3).

* * * * *

- (d) prescribing penalties not exceeding 5 penalty units for breaches of the regulations;
- (e) prescribing any matter or thing authorised or required to be prescribed or necessary or convenient to be prescribed for carrying this Act into effect.

(2) The regulations may provide that—

- (a) a specified regulatory provision or a regulatory provision of a specified class; or
- (b) a specified conduct provision or a conduct provision of a specified class—

is, for the purposes of the MSO Rules, a civil penalty provision.

S. 236(3)
amended by
No. 10/2004
s. 15(Sch. 1
item 13.3).

(3) The regulations may prescribe, for a contravention of a civil penalty provision, an amount not exceeding an amount that is 1000 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004** that a court may determine is payable by a person who contravenes the provision.

(4) Regulations made under this Act may be made—

- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State;

-
- (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a prescribed person;
 - (c) so as to incorporate, adopt or apply, wholly or partially or as amended by the regulations, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; or
 - (ii) as amended from time to time;
 - (d) so as to confer a discretionary authority on a prescribed person;
 - (e) so as to provide, in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified.
- (5) The regulations are subject to disallowance by a House of Parliament.
-

Gas Industry Act 2001
Act No. 31/2001

Sch.

SCHEDULE

EASEMENTS FOR USE OF GAS COMPANY

The right of the gas company and its successors and transferees and its and their contractors, servants or agents—

- (a) to enter at any time the land to which the easement applies, with or without vehicles or equipment;
- (b) to use the land for the purposes of, or incidental to, the conveyance of gas, including the laying down or construction on the land of pipelines;
- (c) to keep the land free from buildings or obstructions (including trees);
- (d) to erect and maintain gates in any fences;
- (e) to inspect, maintain, alter, renew or remove pipelines or works on the land—

free from any interference to the surface of the land to a depth greater than 0.3 metres without the prior written consent of the gas company.

=====

Gas Industry Act 2001
Act No. 31/2001

Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 3 May 2001

Legislative Council: 5 June 2001

The long title for the Bill for this Act was "A to regulate the gas industry and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 3 May 2001

Legislative Council: 5 June 2001

Absolute majorities:

Legislative Assembly: 31 May 2001

Legislative Council: 7 June 2001

The **Gas Industry Act 2001** was assented to on 19 June 2001 and came into operation as follows:

Sections 1, 2 on 19 June 2001: section 2(1); rest of Act (*except* section 69) on 1 September 2001: section 2(2); section 69 on 1 July 2002: section 2(4).

Gas Industry Act 2001
Act No. 31/2001

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Gas Industry Act 2001** by Acts and subordinate instruments.

Where a provision has expired, the provision has been omitted and an explanatory sidenote included.

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 57) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Essential Services Commission Act 2001, No. 62/2001

Assent Date: 23.10.01
Commencement Date: Ss 77–80 on 1.1.02: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation (Miscellaneous Amendments) Act 2001, No. 85/2001

Assent Date: 11.12.01
Commencement Date: Ss 11, 13–15, 17 on 12.12.01 s. 2(1); s. 16 on 1.1.02: s. 2(2); ss 10, 12 on 2.7.02: Government Gazette 13.6.02 p. 1306
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 7) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 28) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation (Further Miscellaneous Amendments) Act 2002, No. 24/2002

Assent Date: 12.6.02
Commencement Date: S. 22 on 13.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: S. 87 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Gas Industry Act 2001
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Endnotes

Energy Legislation (Consumer Protection and Other Amendments) Act 2003, No. 40/2003

Assent Date: 11.6.03
Commencement Date: Ss 3–11 on 12.6.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Fair Trading (Further Amendment) Act 2003, No. 106/2003

Assent Date: 9.12.03
Commencement Date: S. 26 on 30.8.04: Government Gazette 13.5.04 p. 1218
Current State: This information relates only to provision/s amending the **Gas Industry Act 2001**

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 13) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Road Management Act 2004, No. 12/2004

Assent Date: 11.5.04
Commencement Date: S. 172 on 1.1.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation (Regulatory Reform) Act 2004, No. 25/2004

Assent Date: 25.5.04
Commencement Date: Ss 13–19 on 26.5.04: s. 2(1); ss 10–12 on 30.6.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Essential Services Commission (Amendment) Act 2004, No. 75/2004

Assent Date: 9.11.04
Commencement Date: Ss 33–57 on 10.11.04: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

State Concessions Act 2004, No. 82/2004

Assent Date: 16.11.04
Commencement Date: S. 13(Sch. item 4) on 1.3.05: s. 2(2)
Current State: This information relates only to provision/s amending the **Gas Industry Act 2001**

Energy Legislation (Amendment) Act 2004, No. 91/2004

Assent Date: 7.12.04
Commencement Date: Ss 14–19, 21–25 on 8.12.04: s. 2(1); s. 20 on 1.3.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Gas Industry Act 2001
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Endnotes

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 87) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation (Miscellaneous Amendments) Act 2005, No. 33/2005

Assent Date: 21.6.05
Commencement Date: S. 5 on 22.6.05: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Safe Victoria Act 2005, No. 39/2005

Assent Date: 27.7.05
Commencement Date: S. 56 on 10.8.05: Special Gazette (No. 147) 9.8.05 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 13) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation (Miscellaneous Amendments) Act 2006, No. 31/2006

Assent Date: 13.6.06
Commencement Date: S. 5 on 14.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 23) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

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Endnotes

3. Explanatory Details

¹ S. 20(8): The amendment proposed by s. 11(2) of the **Energy Legislation (Regulatory Reform) Act 2004**, No. 25/2004 is not included in this publication as the reference to "A Tariff Order" was omitted by an earlier amendment by s. 33 of the **Essential Services Commission (Amendment) Act 2004**, No. 75/2004.

² S. 35 (*expired*): Section 35 was in operation from 1 September 2001 until 31 August 2004.

³ S. 91(1): The amendment proposed by section 15(Sch. 1 item 13.1) of the **Monetary Units Act 2004**, No. 10/2004 is not included in this publication because section 91 was repealed by section 17 of the **Energy Legislation (Regulatory Reform) Act 2004**, No. 25/2004 with effect from 26 May 2004.