

Authorised Version No. 072

Gas Industry Act 2001

No. 31 of 2001

Authorised Version incorporating amendments as at
1 June 2022

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Gas Industry Act 2001

No. 31 of 2001

Authorised Version incorporating amendments as at
1 June 2022

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 Competition and Consumer Act 2010 and includes a member of the Commission or a Division of the Commission performing functions of the Commission;

S. 3 def. of
ACCC
amended by
No. 21/2012
s. 239(Sch. 6
item 20.1).

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S. 3 def. of
Access Code
repealed by
No. 30/2008
s. 41(1).

* * * * *

S. 3 def. of
AEMC
inserted by
No. 59/2008
s. 19.

AEMC means the Australian Energy Market Commission established by section 5 of the Australian Energy Market Commission Establishment Act 2004 of South Australia;

S. 3 def. of
AEMO
inserted by
No. 23/2009
s. 21(a).

AEMO means Australian Energy Market Operator Limited (ACN 072 010 327);

S. 3 def. of
AER
inserted by
No. 55/2007
s. 23,
repealed by
No. 23/2009
s. 21(c), new
def. of *AER*
inserted by
No. 33/2021
s. 13.

AER means the Australian Energy Regulator established by section 44AE of the Competition and Consumer Act 2010 of the Commonwealth;

S. 3 def. of
affected licensee
inserted by
No. 37/2020
s. 12.

affected licensee means—

- (a) a licensee whose licence in relation to which the Minister proposes to make an Order under section 40A(1) specifying a condition to which the licence is to be subject; or
- (b) a licensee whose licence is subject to a Ministerial licence condition which the Minister proposes to vary or revoke under an Order under section 40A(1);

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).

* * * * * S. 3 def. of *civil penalty provision* repealed by No. 23/2009 s. 21(c).

Code of Practice means a Code of Practice applying to the gas industry under Part 6 of the **Essential Services Commission Act 2001** or under this Act; S. 3 def. of *Code of Practice* inserted by No. 49/2015 s. 18.

Commission means the Essential Services Commission established under the **Essential Services Commission Act 2001**; S. 3 def. of *Commission* inserted by No. 62/2001 s. 77(a).

S. 3 def. of
*Competition
and
Consumer
Act 2010*
inserted by
No. 21/2012
s. 239(Sch. 6
item 20.3).

Competition and Consumer Act 2010 means the
Competition and Consumer Act 2010 of the
Commonwealth;

S. 3 def. of
*conduct
provision*
repealed by
No. 23/2009
s. 21(c).

* * * * *

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;

S. 3 def. of
*deemed
Ministerial
licence
condition*
inserted by
No. 37/2020
s. 12.

deemed Ministerial licence condition means a
Ministerial licence condition to which
section 40H(1) or (2) applies;

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**;

S. 3 def. of
*domestic or
small
business
customer*
inserted by
No. 59/2008
s. 19.

domestic or small business customer means a
person, or a member of a class of persons, to
whom an Order under section 42(5) applies;

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) in this Act (except Division 4AA of Part 3), a bill or account issued by a licensee to a customer for the supply or sale of gas; and
- (b) in Division 4AA of Part 3, a bill or account issued by a gas retailer or an exempt gas seller (within the meaning of that Division) to a relevant customer (within the meaning of that Division) for the supply or sale of gas;

S. 3 def. of *gas bill* inserted by No. 91/2004 s. 14, substituted by No. 28/2021 s. 20(a).

gaseous fuel includes petrochemical feed stock;

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

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;

* * * * *

S. 3 def. of *gas distribution system* repealed by No. 46/2014 s. 11.

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;

S. 3 def. of *gas transmission company* substituted by No. 23/2009 s. 21(b).

gas transmission company means any person, other than AEMO, who owns, operates or provides a service by means of a transmission pipeline;

S. 3 def. of *gas transmission system* repealed by No. 46/2014 s. 11.

* * * * *

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**;

S. 3 def. of *industry code* inserted by No. 41/2021 s. 55.

industry code does not include a Code of Practice;

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;

S. 3 def. of *licensee standing offer* inserted by No. 59/2008 s. 19, amended by No. 28/2021 s. 27.

licensee standing offer means—

- (a) the tariffs fixed under an Order in force under section 21 or determined under a price determination in force under such an Order or, if there are no such tariffs, the tariffs determined by a licensee

under section 42(1) and published in the Government Gazette in accordance with that subsection, as varied from time to time by the licensee as provided for under section 42(3); and

- (b) the terms and conditions determined by a licensee and approved by the Commission under section 42(1) and published in the Government Gazette in accordance with that subsection, as varied from time to time by the licensee and approved by the Commission as provided for under section 42(4);

*

*

*

*

*

S. 3 def. of *market participant* repealed by No. 23/2009 s. 21(c).

MCE means the group of Ministers, constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described) responsible for energy matters at a national level that is comprised of the following 9 Ministers—

S. 3 def. of *MCE* inserted by No. 59/2008 s. 19, substituted by No. 13/2022 s. 68.

- (a) one Minister from the Commonwealth;
(b) one Minister from each State;
(c) one Minister from each Territory—

which acts in accordance with its own procedures;

meter means—

- (a) an instrument that measures the quantity of gas passing through it; and

S. 3 def. of *meter* substituted by No. 28/2021 s. 20(b).

- (b) in Division 4AA of Part 3, includes an instrument that measures the quantity of hot water passing through it;

S. 3 def. of *Ministerial licence condition* inserted by No. 37/2020 s. 12.

Ministerial licence condition—

- (a) means a condition specified under an Order under section 40A(1) to which a licence, or a specified class of licence, is to be subject; and
- (b) includes a condition referred to in paragraph (a) as varied under an Order under section 40A(1);

S. 3 def. of *MSO Rules* repealed by No. 23/2009 s. 21(c).

* * * * *

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

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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;

* * * * * S. 3 def. of *Port Campbell facility* repealed by No. 55/2007 s. 29.

* * * * * S. 3 def. of *primary distribution system* repealed by No. 46/2014 s. 11.

* * * * * S. 3 def. of *primary transmission system* repealed by No. 46/2014 s. 11.

Registered participant has the same meaning as in the National Gas (Victoria) Law; S. 3 def. of *Registered participant* inserted by No. 23/2009 s. 21(a).

regulated tariff standing offer means a licensee standing offer that is subject to an Order under section 21 that is in force; S. 3 def. of *regulated tariff standing offer* inserted by No. 59/2008 s. 19.

* * * * * S. 3 def. of *regulatory provision* repealed by No. 23/2009 s. 21(c).

S. 3 def. of
*relevant
published
offer*
inserted by
No. 59/2008
s. 19.

relevant published offer means the tariffs and terms and conditions on which a specified retailer sells gas to small retail customers that are published in accordance with section 43A;

S. 3 def. of
*significant
producer*
amended by
No. 10/2010
s. 800(Sch. 6
item 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 **Offshore Petroleum and Greenhouse Gas Storage Act 2010** or of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 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;

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

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
*specified
circum-
stances*
inserted by
No. 59/2008
s. 19.

specified circumstances, in section 43A, means circumstances declared to be specified circumstances by Order under section 7A(1)(c);

S. 3 def. of
*specified
retailer*
inserted by
No. 59/2008
s. 19.

specified retailer means a licensee declared to be a specified gas retailer by Order under section 7A(1)(b);

standing offer means—

- (a) a licensee standing offer; or
- (b) a regulated tariff standing offer;

S. 3 def. of *standing offer* inserted by No. 59/2008 s. 19.

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

S. 3 def. of *supply and sale contract* inserted by No. 28/2021 s. 17.

Tariff Order means—

- * * * * *
- (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;

S. 3 def. of *Tariff Order* amended by Nos 25/2004 s. 10, 6/2019 s. 9.

* * * * *

S. 3 def. of *Trade Practices Act* repealed by No. 21/2012 s. 239(Sch. 6 item 20.2).

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 2005**; and
 - (ii) that has a maximum design pressure exceeding 1050kPa—other than a gathering line within the meaning of the **Petroleum Act 1998**; or

S. 3 def. of *transmission pipeline* amended by No. 61/2005 s. 217(1).

(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;

trial waiver—see section 55;

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

S. 3 def. of *trial waiver* inserted by No. 33/2021 s. 13.

S. 3 def. of *VENCorp* repealed by No. 23/2009 s. 21(c).

* * * * *

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.

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 subsection (1) must be laid before each House of Parliament on or before the sixth sitting day after it is made.
- (3) An Order under subsection (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.

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

Division 1A—Declaration of small retail customers and retailers

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

7A Declaration of small retail customers and retailers

- (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;

S. 7A(1)(b)
amended by
No. 59/2008
s. 20(1).

(c) declare circumstances to be specified circumstances for the purposes of section 43A.

S. 7A(1)(c)
inserted by
No. 59/2008
s. 20(2).

(2) An Order under subsection (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 subsection (1)(a) may specify a class of persons by reference to all or any of the following—

S. 7A(3)
amended by
No. 59/2008
s. 20(3).

- (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.

(3A) An Order under subsection (1)(b) may specify a licensee by reference to all or any of the following—

S. 7A(3A)
inserted by
No. 59/2008
s. 20(4).

- (a) the number of small retail customers of the licensee;
- (b) the tariffs at, and terms and conditions on, which the licensee sells gas to its small retail customers;
- (c) the distribution area of a gas distribution company provided for in the company's licence;
- (d) any other specified factor relevant to the sale of gas.

S. 7A(3B)
inserted by
No. 59/2008
s. 20(4).

- (3B) An Order under subsection (1)(c) may declare circumstances to be specified circumstances by reference to all or any of the following—
- (a) the number of small retail customers of a specified retailer;
 - (b) the tariffs at, and terms and conditions on, which a specified retailer sells gas to its small retail customers;
 - (c) the distribution area of a gas distribution company provided for in the company's licence;
 - (d) any other specified factor relevant to the sale of gas.
- (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.

| | | | | | |
|---|---|---|---|---|--|
| * | * | * | * | * | Ss 11, 12 repealed by No. 46/2014 s. 12. |
| * | * | * | * | * | S. 13 repealed by No. 23/2009 s. 22. |
| * | * | * | * | * | S. 14 repealed by No. 23/2009 s. 23. |
| * | * | * | * | * | Pt 2 Div. 3 (Heading and ss 15, 16) amended by No. 23/2009 s. 24, repealed by No. 3/2014 s. 15. |

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

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

17 Application of Essential Services Commission Act 2001

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

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.

18 Objectives of the Commission

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

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; and
- (c) to promote protections for customers,
including in relation to assisting customers
who are facing payment difficulties.

S. 18(b)
amended by
No. 49/2015
s. 19(a).

S. 18(c)
inserted by
No. 49/2015
s. 19(b).

S. 19
repealed by
No. 23/2009
s. 25.

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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). |
| (1) The Wimmera and Colac Tariff Order cannot be amended except as provided by this section. | S. 20(1) amended by No. 25/2004 s. 11(2). |
| (2) The Governor in Council may, by Order, revoke the Wimmera and Colac Tariff Order. | S. 20(2) 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. | S. 20(3) amended by No. 25/2004 s. 11(3). |
| (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. | |
| (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(5) amended by Nos 62/2001 s. 77(c)(ii), 25/2004 s. 11(2). |
| * * * * * | S. 20(6) amended by No. 25/2004 s. 11(3), repealed by No. 30/2008 s. 41(2). |

Gas Industry Act 2001
No. 31 of 2001
Part 3—Regulation of gas industry

S. 20(8)
amended by
No. 62/2001
s. 77(c)(ii),
substituted by
No. 75/2004
s. 33¹.

- (7) An Order under subsection (2), (3) or (4) must be published in the Government Gazette.
- (8) An Order under subsection (1) has effect as from the date specified in the Order.

S. 20(8A)
inserted by
No. 75/2004
s. 33,
repealed by
No. 41/2021
s. 56.

* * * * *

S. 20(9)
amended by
No. 25/2004
s. 11(3).

- (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—
- (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.

S. 20(10)
inserted by
No. 25/2004
s. 11(4).

- (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.

20A Powers in relation to price regulation

For the purposes of Part 3 of the **Essential Services Commission Act 2001**, the power to regulate prescribed prices in respect of prescribed goods and services is conferred on the Commission in respect of tariffs for the sale of gas regulated by Order under section 21, to the extent specified in such an Order.

S. 20A
inserted by
No. 25/2004
s. 12,
amended by
No. 30/2008
s. 41(3),
repealed by
No. 59/2008
s. 29,
new s. 20A
inserted by
No. 6/2019
s. 10.

21 Regulation of tariffs for prescribed customers

(1) The Governor in Council, on the recommendation of the Minister, 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.

S. 21(1)
amended by
No. 6/2019
s. 11(1).

(1A) The Minister may make a recommendation under subsection (1)—

S. 21(1A)
inserted by
No. 59/2008
s. 21(1),
substituted by
No. 6/2019
s. 11(2).

- (a) if, under an MCE directed retail competition review, the AEMC—
- (i) concludes that competition in a market for gas is not effective; and
 - (ii) recommends, in accordance with the MCE's written direction for that review, that price controls on prices for retail gas services be (as the case requires) retained or reintroduced; or
- (b) if the Commission makes a recommendation in a report under section 10AAB of the **Essential Services Commission Act 2001** that price controls on prices for retail gas services be (as the case requires) retained or reintroduced.

S. 21(1B)
inserted by
No. 6/2019
s. 11(2).

(1B) In addition, the Minister may make a recommendation under subsection (1) on the basis of any other information available to the Minister, including information made available to the Minister before the commencement of this subsection.

S. 21(1C)
inserted by
No. 6/2019
s. 11(2).

- (1C) Before making a recommendation under subsection (1), the Minister must consult the Premier and the Treasurer.
- (2) Without limiting the generality of subsection (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;
 - (v) the period of use;

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

(2AA) Without limiting the generality of subsection (1), an Order under that subsection may—

S. 21(2AA)
inserted by
No. 6/2019
s. 11(3).

- (a) prohibit or exclude any specified cost, matter or thing from being had regard to by the Commission in making a decision, including a price determination, in respect of any tariff for the sale of gas to prescribed customers or a class of prescribed customers; and
- (b) regulate the offer, or the giving, of a discount or other benefit to prescribed customers or a class of prescribed customers, including—
 - (i) the maximum amount or value of a discount or other benefit that may be offered or given to prescribed customers or a class of prescribed customers; and
 - (ii) the periods when a discount or other benefit may be offered or given to prescribed customers or a class of prescribed customers.

(2A) Without limiting the generality of subsection (1), in determining the manner tariffs for the sale of gas to prescribed customers or a class of prescribed customers are to be regulated, the Governor in Council may have regard to the tariffs paid or payable by the prescribed customers or a class of prescribed customers.

S. 21(2A)
inserted by
No. 59/2008
s. 21(2),
amended by
No. 6/2019
s. 11(4).

Gas Industry Act 2001
No. 31 of 2001
Part 3—Regulation of gas industry

S. 21(3)
amended by
Nos 62/2001
s. 77(c)(ii)(d),
75/2004
s. 34(1),
substituted by
No. 6/2019
s. 11(5).

- (3) An Order under subsection (1) may—
- (a) direct the Commission to make a decision, including a price determination, in respect of any factors and matters, or in accordance with any procedures, matters or bases, that are specified in the Order; and
 - (b) direct the Commission to make amendments to any instrument made by the Commission to give effect to any matter specified in the Order; and
 - (c) confer powers and functions on, and leave any matter to be decided by, the Commission; and
 - (d) include saving and transitional provisions.

S. 21(3A)
inserted by
No. 6/2019
s. 11(5).

- (3A) An Order under subsection (1) may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place and circumstances.

S. 21(3B)
inserted by
No. 6/2019
s. 11(5).

- (3B) An Order under subsection (1) has effect according to its tenor despite anything to the contrary in any agreement or contract.

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

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

S. 21(4A)
inserted by
No. 75/2004
s. 34(2),
amended by
No. 6/2019
s. 11(6),
repealed by
No. 41/2021
s. 57.

* * * * *

(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—

MCE directed retail competition review means an MCE directed review (within the meaning of the National Gas (Victoria) Law) under section 79(1)(e) of that Law;

S. 21(6) def. of *MCE directed retail competition review* inserted by No. 59/2008 s. 21(3)(b).

prescribed customer means a person, or a member of a class of persons, to whom an Order under subsection (5) applies;

S. 21(6) def. of *prescribed customer* amended by No. 59/2008 s. 21(3)(a).

price determination means a determination under section 33 of the **Essential Services Commission Act 2001**.

S. 21(6) def. of *price determination* inserted by No. 6/2019 s. 11(7)(a).

* * * * *

S. 21(6) def. of *review period* inserted by No. 59/2008 s. 21(3)(b), repealed by No. 6/2019 s. 11(7)(b).

* * * * *

S. 21(7) amended by No. 40/2003 s. 3, substituted by No. 91/2004 s. 16, amended by No. 55/2007 s. 16, repealed by No. 59/2008 s. 21(4).

Division 2—Licences

22 Offence to distribute or retail gas without licence

S. 22(1)
amended by
Nos 62/2001
s. 77(c)(ii),
41/2021
s. 58(1).

(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—

(a) is the holder of a licence authorising that person to provide those services; or

S. 22(1)(b)
amended by
No. 33/2021
s. 14(1)(a).

(b) is exempt from the requirement to obtain a licence in respect of those services because of an Order under section 24; or

S. 22(1)(c)
inserted by
No. 33/2021
s. 14(1)(b).

(c) is the holder of a trial waiver in respect of the provision of those services.

* * * * *

S. 22(2)
amended by
Nos 62/2001
s. 77(c)(ii),
41/2021
s. 58(1).

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

(a) is the holder of a licence authorising the sale of gas by retail; or

S. 22(2)(b)
amended by
No. 33/2021
s. 14(2)(a).

(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; or

S. 22(2)(c)
inserted by
No. 33/2021
s. 14(2)(b).

(c) is the holder of a trial waiver in respect of the sale of gas by retail.

* * * * *

S. 22(3)
inserted by
No. 41/2021
s. 58(2).

(3) A person who contravenes subsection (1) or (2) commits an offence against that subsection and is liable to a penalty not exceeding 1200 penalty units and 120 penalty units for each day after the day on which a notice of contravention of that subsection is served on the person by the Commission.

- (4) Subsections (1) and (2) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.

S. 22(4)
inserted by
No. 41/2021
s. 58(2).

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

Note to s. 22
inserted by
No. 41/2021
s. 58(2).

* * * * *

S. 23
amended by
No. 62/2001
s. 77(c)(ii),
repealed by
No. 55/2007
s. 30.

24 Exemptions

- (1) The Governor in Council, by Order published in the Government Gazette, may exempt—
- (a) a person from the requirement to obtain a licence in respect of the activity specified in the Order; or
 - (b) a person from the requirement to obtain registration under section 91BJ or 91LB of the National Gas (Victoria) Law.
- (2) An Order under subsection (1)(a) may—
- (a) be of general or specific application; and
 - (b) differ according to differences in time, place and circumstances; and
 - (c) apply, adopt or incorporate wholly or partially or as published or amended by the Order, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

S. 24(1)
substituted by
No. 23/2009
s. 26.

S. 24(2)
substituted by
No. 3/2014
s. 16.

- (i) as formulated, issued, prescribed or published at the time the Order is made or at any time before the Order is made; or
- (ii) as amended from time to time; and
- (d) include terms, conditions and limitations that are the same as some or all of the conditions that apply to a licence; and
- (e) be subject to such terms, conditions and limitations as are specified in the Order; and
- (f) direct the Commission to make amendments to any instrument made by the Commission to give effect to any matter specified in the Order; and
- (g) include saving and transitional provisions; and
- (h) have effect according to its tenor despite anything to the contrary in any agreement or contract; and
- (i) have effect despite anything to the contrary in section 21; and
- (j) confer powers and functions on, and leave any matter to be decided by, the Commission.

S. 24(3)
repealed by
No. 3/2014
s. 16.

* * * * *

S. 24(4)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 35,
repealed by
No. 3/2014
s. 16.

* * * * *

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. | S. 25(1) amended by No. 62/2001 s. 77(c)(ii). |
| (2) An application must be in a form approved by the Commission and accompanied by such documents as may be required by the Commission. | | | | S. 25(2) amended by Nos 62/2001 s. 77(c)(ii), 75/2004 s. 36. |
| (3) An application must be accompanied by the application fee (if any) fixed by the Commission. | | | | 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 . | | | | S. 26 (Heading) amended by No. 75/2004 s. 37(1). |
| (2) The Commission must publish a notice in a daily newspaper generally circulating in Victoria— | | | | S. 26(1) amended by No. 62/2001 ss 77(c)(i), 79(1). |
| (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(2)(a) amended by No. 62/2001 s. 77(c)(ii). |

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 subsection (1) in accordance with the criteria determined by Order under this section for the grant of a licence.

(4) The Commission may only vary a licence for a purpose referred to in subsection (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) Subsections (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.

(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 subsection (1)(a) or (b); or
 - (b) the variation of a licence of a kind referred to in subsection (2)(a) or (b).
- (9) The criteria specified in an Order under subsection (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.

Note to
s. 28(2)
inserted by
No. 37/2020
s. 13.

Note

A licence is also subject to conditions deemed under this Act to be licence conditions of the licence or to which the licence is subject, including conditions specified by the Minister by Order under section 40A(1).

- (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.

- (4) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a licence is declared not to be personal property.

S. 28(4)
inserted by
No. 74/2010
s. 26.

29 Specific licence conditions

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

- (a) requiring the licensee to pay specified fees and charges in respect of the licence to the Commission;
- (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;
- (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;
- (f) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;

S. 29(a)
amended by
No. 62/2001
s. 77(c)(ii).

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

S. 29(e)
amended by
Nos 62/2001
s. 77(c)(ii),
85/2001 s. 10.

- (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;

S. 29(h)
repealed by
No. 75/2004
s. 39(b).

* * * * *

- (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;

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

- (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;
- (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

- (1) For the purposes of section 29(a), the Minister, after consultation with the Minister administering the **Essential Services Commission Act 2001**, by notice published in the Government Gazette, may determine the fees and charges specified in respect of a licence.
- (2) A determination of fees and charges under this section may provide for any of the following matters—
 - (a) specific fees and charges;
 - (b) maximum fees and charges;
 - (c) minimum fees and charges;
 - (d) scales of fees and charges according to the value of the services provided for the fees and charges;

S. 30
substituted by
Nos 62/2001
s. 80, 41/2021
s. 59.

- (e) fees and charges that vary according to different persons or classes of persons;
 - (f) the manner of payment of fees and charges;
 - (g) the reduction, waiver or refund, in whole or part, of the fees and charges;
 - (h) the time or times at which fees and charges are to be paid.
- (3) If under subsection (2)(g) provision is made for a reduction, waiver or refund, in whole or in part, of a fee or charge, the reduction, waiver or refund may be expressed to apply—
- (a) either generally or specifically—
 - (i) in respect of certain matters or transactions or classes of matters or transactions; or
 - (ii) in respect of certain documents or classes of documents; or
 - (iii) when an event happens; or
 - (iv) in respect of certain persons or classes of persons; or
 - (v) in respect of any combination of matters, transactions, documents, events or persons; and
 - (b) subject to specified conditions or at the discretion of any specified person or body.
- (4) A determination under this section takes effect on the day that the notice is published in the Government Gazette under subsection (1) or on a later day specified in that notice.
- (5) A determination under this section ceases to have effect on whichever of the following days occurs first—
- (a) the day the determination is revoked;

- (b) the day (if any) that the notice published in the Government Gazette under subsection (1) specifies as the day on which the determination ceases to have effect;
- (c) the day that is 10 years after the day on which the determination took effect.

31 Condition specifying industry codes, standards, rules or guidelines

- (1) If a licence is subject to a condition of a kind referred to in section 29(c), the Commission—
 - (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;
S. 31(1)(a) amended by No. 62/2001 s. 77(c)(ii).
 - (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.
- (2) If the Commission amends an industry code, standard, rule or guideline or a document under subsection (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.
S. 31(2) amended by No. 62/2001 s. 77(c)(ii).

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

(1) If a licence is subject to a condition of a kind referred to in section 29(s)—

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

(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

S. 32(1)(b)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 40(a).

(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.

S. 32(2)
amended by
Nos 62/2001
s. 77(c)(i),
75/2004
s. 40(b).

(2) The Commission, in making a requirement under subsection (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.

S. 32(3)
amended by
Nos 62/2001
s. 77(c)(i)(ii),
75/2004
s. 40(b).

(3) The Commission must not make a requirement under subsection (1)(b) unless the Commission has given the licensee an opportunity to make representations on the matter.

S. 32(4)
amended by
Nos 62/2001
s. 77(e),
75/2004
s. 40(b)(c).

(4) Section 35 of the **Essential Services Commission Act 2001** applies to the making of a requirement under subsection (1) as if it were a determination made by the Commission under the **Essential Services Commission Act 2001**.

33 Condition to give information to Commission

(1) A licence to sell gas by retail is taken to include a condition requiring the licensee to comply with this section.

S. 33
amended by
No. 62/2001
s. 77(c)(i)(ii),
repealed by
No. 25/2004
s. 13,
new s. 33
inserted by
No. 49/2015
s. 20.

(2) The licensee must give to the Commission, for the purpose of enabling the Commission to perform its functions under Part 6A, the information specified by the Commission in the guidelines issued under subsection (4).

S. 33(2)
amended by
No. 41/2021
s. 60.

(3) The licensee must give to the Commission the information referred to in subsection (2) in the manner and form (including by the date or dates) specified in the guidelines issued under subsection (4).

(4) The Commission must prepare and issue guidelines for the purposes of this section.

Note

Section 229A contains offences in relation to licensees giving information or producing documents to the Commission that are misleading in any material particular.

Note to s. 33
inserted by
No. 28/2021
s. 25.

34 Condition relating to advertising of enforcement action taken against licensee

(1) A licence is taken to include a condition requiring the licensee, at the direction of the Commission, to publish a notice, approved by the Commission, containing the things set out in subsection (2) in a daily newspaper generally circulating in Victoria within the period specified by the Commission.

S. 34
amended by
Nos 62/2001
s. 77, 85/2001
ss 11, 17(1),
25/2004 s. 14,
75/2004 s. 41,
31/2006 s. 5,
repealed by
No. 55/2007
s. 15,
new s. 34
inserted by
No. 49/2015
s. 20.

- (2) A notice published under subsection (1) must contain the following things—
- (a) a statement that enforcement action has been taken in respect of the licensee;
 - (b) an explanation of the nature of the enforcement action;
 - (c) the reason for the enforcement action;
 - (d) the status of any proceeding commenced, or action taken, in relation to the enforcement action.
- (3) In this section—

S. 34(3) def. of *enforcement action* amended by No. 41/2021 s. 61.

enforcement action has the same meaning as in section 223(4).

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

* * * * *

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.

- (2) In approving a customer dispute resolution scheme, the Commission must have regard to—
- (a) the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**; and
 - (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—
- (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).

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

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

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

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 subsection (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)
amended by
No. 37/2020
s. 14(1)(a).

(1) A licence or the Commission licence conditions may be varied—

S. 38(1)(a)
amended by
No. 37/2020
s. 14(1)(b).

(a) in accordance with the procedures specified in the Commission licence conditions; or

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

(b) by agreement between the Commission and the licensee; or

(c) by a notice in accordance with subsection (2) served on the licensee.

S. 38(2)
amended by
Nos 62/2001
s. 77(c)(i),
37/2020
s. 14(2).

(2) The Commission must not vary a licence or the Commission 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

- (b) the Commission has given the licensee an opportunity to make representations on the matter. S. 38(2)(b) amended by No. 62/2001 s. 77(c)(ii).
- (2A) The Commission may vary a licence or a Commission licence condition so that the licence or condition is not inconsistent with a deemed Ministerial licence condition to which the licence is subject. S. 38(2A) inserted by No. 37/2020 s. 14(3).
- (2B) Subsections (1) and (2) do not apply to a variation of a licence or Commission licence condition under subsection (2A). S. 38(2B) inserted by No. 37/2020 s. 14(3).
- (3) The Commission may revoke a licence in accordance with the procedures specified in Commission licence conditions. S. 38(3) amended by Nos 62/2001 s. 77(c)(i), 37/2020 s. 14(4).
- (4) In deciding whether to revoke a licence the Commission must have regard to any direction of the Minister under section 207 that is in force. S. 38(4) inserted by No. 55/2010 s. 87.
- (5) Anything in the procedures specified in the licence's conditions for the revocation of the licence that is inconsistent with subsection (4) is of no effect. S. 38(5) inserted by No. 55/2010 s. 87.
- (6) In this section—
Commission licence condition means a condition which has been decided by the Commission under section 28 as a condition to which a licence is subject. S. 38(6) inserted by No. 37/2020 s. 14(5).
- 38A Variation to licence conditions—contravention of licence or Code of Practice** S. 38A inserted by No. 49/2015 s. 21.
- (1) The Commission, by written notice served on the licensee, may vary a licence or licence condition without the consent of the licensee if the licensee has contravened or is contravening a condition of the licence or a provision of a Code of Practice.

- (2) A licence or licence condition that is varied under subsection (1) must specify the action that the licensee is required to take—
- (a) to rectify the contravention; and
 - (b) to prevent any future contravention of the licence condition or provision of the Code of Practice.
- (3) The Commission must not vary a licence or the licence condition under this section unless the Commission has given the licensee an opportunity to make representations on the matter.

S. 39
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—

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.

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).

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| (3) An application must be accompanied by the application fee (if any) fixed by the Commission. | S. 40(3) amended by No. 62/2001 s. 77(c)(ii). |
| (4) The Commission must publish in a daily newspaper generally circulating in Victoria a notice— | S. 40(4) amended by No. 62/2001 s. 77(c)(i). |
| (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)(a) 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(4)(b) amended by No. 62/2001 s. 77(c)(ii). |
| (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(5) amended by No. 62/2001 ss 77(c)(ii), 79(1). |
| (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(6) amended by Nos 62/2001 s. 77(c)(i)(ii), 75/2004 s. 42(2)(3). |
| (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(7) amended by No. 62/2001 s. 77(c)(ii), 75/2004 s. 42(2). |
| (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(8) amended by No. 62/2001 s. 77(c)(i). |

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.

S. 40A
inserted by
No. 37/2020
s. 15.

40A Ministerial licence conditions

- (1) Despite anything to the contrary in this Division but subject to sections 40B to 40F, the Minister, by Order published in the Government Gazette, may do any one or more of the following—
- (a) specify, as the Minister thinks fit, a condition to which a particular licence, or a specified class of licence, is to be subject;
 - (b) vary, as the Minister thinks fit, a condition specified under paragraph (a);
 - (c) revoke, as the Minister thinks fit, a condition specified under paragraph (a), including a condition that has been varied under paragraph (b).
- (2) In making an Order under subsection (1), the Minister—
- (a) must have regard to—
 - (i) any significant costs and benefits for an affected licensee or any other person that the Minister considers are likely to arise out of the making of the Order; and
 - (ii) any written representations made to the Minister by an affected licensee in accordance with a notice given to the affected licensee under section 40D; and
 - (b) may have regard to any other matter that the Minister considers relevant.

40B Contents of Ministerial licence conditions

S. 40B
inserted by
No. 37/2020
s. 15.

- (1) Without limiting section 40A(1), a Ministerial licence condition may include provisions in relation to any matter for which a licence condition may include provisions under section 29 (except section 29(a), (o) and (p)) (the *applied provisions*).
- (2) For the purposes of subsection (1), a reference in the applied provisions to the Commission is to be read as a reference to the Commission or the Minister.
- (3) In addition, a Ministerial licence condition may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place and circumstances;
 - (c) apply, adopt or incorporate wholly or partially or as amended by the Ministerial licence condition, 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 Ministerial licence condition takes effect or at any time before the Ministerial licence condition takes effect; or
 - (ii) as amended from time to time;
 - (d) confer powers and functions on, and leave any matter to be decided by, the Commission.

S. 40C
inserted by
No. 37/2020
s. 15.

40C Consultation with Ministers

Before making an Order under section 40A(1), the Minister must consult—

- (a) the Premier; and
- (b) the Treasurer; and
- (c) the Minister administering the **Essential Services Commission Act 2001**, if the Minister is not the Premier or Treasurer.

S. 40D
inserted by
No. 37/2020
s. 15.

40D Consultation with affected licensees in certain cases

- (1) Before making an Order pursuant to section 40A(1)(a) or (b), the Minister must give an affected licensee notice of the Minister's intention to make the Order.
- (2) For the purposes of subsection (1), a notice under that subsection must, as the case requires—
 - (a) set out the condition which is proposed to be specified under the Order as the condition to which the licence held by the affected licensee is to be subject; or
 - (b) set out the variation proposed under the Order to the Ministerial licence condition to which the licence held by the affected licensee is subject.
- (3) In addition, a notice under subsection (1) must state that the affected licensee may make written representations on the matter within—
 - (a) the period specified in the notice (which must not be less than 14 days after the affected licensee is given notice in accordance with this section); or
 - (b) any other period that the Minister and the affected licensee agree on.

- (4) For the purposes of this section, notice is to be given to an affected licensee as follows—
- (a) by notice published in the Government Gazette or in writing to the affected licensee, if the Minister is proposing to make an Order under section 40A(1) that—
 - (i) specifies a condition to which a specified class of licence is to be subject and the affected licensee is a holder of a licence of that class; or
 - (ii) varies a Ministerial licence condition to which a specified class of licence is subject and the affected licensee is a holder of a licence of that class;
 - (b) in writing to the affected licensee, if the Minister is proposing to make an Order under section 40A(1) that—
 - (i) specifies a condition to which only the licence held by the affected licensee is to be subject; or
 - (ii) varies a Ministerial licence condition to which only the licence held by the affected licensee is subject.

40E Notification of the Commission

The Minister must give the Commission a copy of a notice under section 40D as soon as practicable after the notice is given to an affected licensee under that section.

S. 40E
inserted by
No. 37/2020
s. 15.

40F No consultation for proposed Order in certain cases

Sections 40C and 40D do not apply if the Order that the Minister proposes under section 40A(1) is an Order—

S. 40F
inserted by
No. 37/2020
s. 15.

- (a) to vary a Ministerial licence condition to correct a clerical mistake or an error arising from an accidental slip or omission; or
- (b) to revoke a Ministerial licence condition.

S. 40G
inserted by
No.37/2020
s. 15.

40G Minister to notify Commission of making of Order under section 40A(1)

The Minister, as soon as practicable after making an Order under section 40A(1), must notify the Commission of the making of the Order.

S. 40H
inserted by
No. 37/2020
s. 15.

40H Licences are taken to be subject to Ministerial licence conditions

- (1) A licence is taken to be subject to an applicable Ministerial licence condition on—
 - (a) the day on which the Order under which the applicable Ministerial licence condition is specified (the *applicable Order*) is published in the Government Gazette; or
 - (b) if the applicable Order specifies a day after the day on which the applicable Order is published in the Government Gazette as the day on which the licence is to be subject to the condition—that day.
- (2) A licence is taken to be subject to an applicable Ministerial licence condition as varied under an Order under section 40A(1) on—
 - (a) the day on which the Order under which the applicable Ministerial licence condition is varied (the *applicable Order*) is published in the Government Gazette; or
 - (b) if the applicable Order specifies a day after the day on which the Order is published in the Government Gazette as the day on which the applicable Ministerial licence condition is varied—that day.

40I Inconsistency between Ministerial licence conditions and Commission licence conditions

S. 40I
inserted by
No. 37/2020
s. 15.

A condition decided by the Commission under section 28 as a condition to which a licence is subject, or a provision of an instrument made by the Commission that applies to a licensee under a condition to which the licensee's licence is subject, is of no effect to the extent that the condition or instrument is inconsistent with a deemed Ministerial licence condition.

Division 3—Appointment of administrator

41 Appointment of administrator

(1) This section applies if the Commission considers that—

S. 41(1)
amended by
No. 62/2001
s. 77(c)(ii).

(a) a contravention by a licensee of the licence conditions threatens the security of the gas supply; and

(b) any other remedies to enforce compliance are not adequate.

(2) The Commission may appoint an administrator to the business in respect of which the licence is issued.

S. 41(2)
amended by
No. 62/2001
s. 77(c)(i).

(3) The administrator has such functions and powers in relation to the business in respect of which the licence is issued as are specified in the appointment of the administrator.

(4) Unless sooner revoked by the Commission, the appointment of an administrator has effect for a period of 28 days but the appointment may be renewed for a further period or periods, each period not exceeding 28 days.

S. 41(4)
amended by
No. 62/2001
s. 77(c)(ii).

(5) The terms and conditions (including remuneration) of appointment of the administrator are to be decided by the Commission.

S. 41(5)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 43.

S. 41A
inserted by
No. 51/2012
s. 6.

41A Corporations Act displacement

This Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 2D and Chapter 5 of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Division 4—Terms and conditions of sale and supply of gas

S. 42
(Heading)
amended by
No. 59/2008
s. 22(1).

42 Offer to domestic or small business customers (licensee standing offers)

S. 42(1)
amended by
No. 6/2019
s. 12(1).

(1) Without limiting the generality of section 28, the conditions to which a licence to sell gas by retail, being a licence under which gas may be sold to domestic or small business customers, is subject, 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 or a price determination in force under such an Order and to the conditions of its licence—

S. 42(1)(a)
amended by
No. 55/2007
s. 32,
substituted by
No. 28/2021
s. 28.

(a) at tariffs fixed under an Order in force under section 21 or determined under a price determination in force under such an Order or, if there are no such tariffs, at tariffs determined by the licensee and published by

the licensee in the Government Gazette at least one month 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 one month before they take effect. | S. 42(1)(b) amended by Nos 62/2001 s. 77(c)(ii), 55/2007 s. 32. |
| (2) The terms and conditions determined by the licensee for the purposes of subsection (1) must not be inconsistent with the terms and conditions decided by the Commission under section 43(1) or a provision of a Code of Practice. | S. 42(2) amended by Nos 62/2001 s. 77(c)(ii), 75/2004 s. 44, substituted by No. 39/2005 s. 56(1), amended by No. 41/2021 s. 62. |
| (3) Subject to subsections (3A) and (3E) to (3G) and to any Order in force under section 21 or a price determination in force under such an Order, the tariffs determined by a licensee and published in the Government Gazette under subsection (1) may be varied by notice published by the licensee in the Government Gazette not less than one month before the variation is to take effect. | S. 42(3) amended by Nos 55/2007 s. 32, 59/2008 s. 22(2), 49/2015 s. 22(1), 6/2019 s. 12(2). |
| (3A) Subject to subsection (3AB), a licensee must not vary tariffs under subsection (3) that have been in effect for less than— | S. 42(3A) inserted by No. 59/2008 s. 22(3), substituted by No. 6/2019 s. 12(3). |
| (a) the period (not exceeding 12 months) determined by the Commission; or | |
| (b) if no period is determined under paragraph (a)—6 months. | |
| (3AB) Subsection (3A) does not apply if— | S. 42(3AB) inserted by No. 6/2019 s. 12(3). |
| (a) the variation is necessary to comply with an Order in force under section 21 or a price determination in force under such an Order; or | |

Gas Industry Act 2001
No. 31 of 2001
Part 3—Regulation of gas industry

S. 42(3AB)(ab)
inserted by
No. 28/2020
s. 8(1).

(ab) the variation is necessary to comply with an Order in force under subsection (3AC); or

(b) the Commission, being satisfied that there are special circumstances, exempts the licensee from compliance with that subsection.

S. 42(3AC)
inserted by
No. 28/2020
s. 8(2).

(3AC) The Minister, by Order published in the Government Gazette, may, as a consequence of the enactment of Division 2 of Part 7 of the **National Gas (Victoria) Act 2008** and any variations made to an applicable 2018–2022 access arrangement under that Division—

(a) direct a licensee to vary tariffs under subsection (3) as specified under the Order; and

(b) specify the period within which the tariffs must be varied.

S. 42(3AD)
inserted by
No. 28/2020
s. 8(2).

(3AD) Without limiting subsection (3AC)(a), a direction under an Order under subsection (3AC) may specify principles, a formula or methodology in accordance with which tariffs must be varied.

S. 42(3B)
inserted by
No. 49/2015
s. 22(2).

(3B) The Minister, by Order published in the Government Gazette, may specify either or both of the following—

(a) a date on which, or period within which, licensees may publish a notice referred to in subsection (3);

(b) a date on which, or period within which, tariffs varied in accordance with subsection (3) must take effect.

S. 42(3C)
inserted by
No. 49/2015
s. 22(2).

(3C) A date specified in an Order made in the exercise of the power under subsection (3B)(b) may be a date that is less than one month before tariffs

varied in accordance with subsection (3) would otherwise take effect.

- | | |
|---|--|
| (3D) A period specified in an Order made in the exercise of the power under subsection (3B)(b) may end on a day that is less than one month before tariffs varied in accordance with subsection (3) would otherwise take effect. | S. 42(3D) inserted by No. 49/2015 s. 22(2). |
| (3E) If an Order made in the exercise of the power under subsection (3B)(a) is in effect, a licensee must not vary the tariffs under subsection (3) unless the notice referred to in subsection (3) is published on the date or within the period specified in the Order (as the case requires). | S. 42(3E) inserted by No. 49/2015 s. 22(2). |
| (3F) If an Order made in the exercise of the power under subsection (3B)(b) is in effect and the Order specifies a date on which tariffs varied in accordance with subsection (3) must take effect, the tariffs take effect on the date specified in the Order. | S. 42(3F) inserted by No. 49/2015 s. 22(2). |
| (3G) If an Order made in the exercise of the power under subsection (3B)(b) is in effect and the Order specifies a period within which tariffs varied in accordance with subsection (3) must take effect and the date specified in a notice under subsection (3) is within that period, the tariffs take effect on that date. | S. 42(3G) inserted by No. 49/2015 s. 22(2). |
| (4) The terms and conditions determined by a licensee and published in the Government Gazette under subsection (1) may, with the approval of the Commission, be varied by notice published by the licensee in the Government Gazette not less than one month before the variation is to take effect. | S. 42(4) amended by Nos 62/2001 s. 77(c)(ii), 59/2008 s. 22(4). |
| (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 | S. 42(4A) inserted by No. 91/2004 s. 18(1). |

different terms and conditions with the same licensee or another licensee.

- (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 subsection (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 subsection (5) may confer powers and functions on, and leave any matter to be decided by, the Commission.

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
Nos 106/2003
s. 26(1),
72/2010
s. 48(Sch.
item 12(1)).

- (7A) Section 81 of the Australian Consumer Law (Victoria) does not apply to the amendment of an agreement for the sale and supply of gas that is the result of a variation under subsection (3) or (4) if the agreement is an unsolicited consumer agreement.

- (7B) Sections 78(2), 83, 84 and 85 of the Australian Consumer Law (Victoria) do not apply to a contract for the supply or sale of gas to a domestic or small business customer.
- S. 42(7B) inserted by No. 106/2003 s. 26(1), amended by No. 72/2010 s. 48(Sch. item 12(3)).
- (7C) Section 82 of the Australian Consumer Law (Victoria) 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 subsection (1) (in compliance with subsection (2)) require the inclusion of a cooling-off period in that contract.
- S. 42(7C) inserted by No. 106/2003 s. 26(1), amended by No. 72/2010 s. 48(Sch. item 12(4)).
- (7D) If section 82(3)(b) of the Australian Consumer Law (Victoria) applies to a contract for the supply or sale of gas to a domestic or small business customer then, for the purposes of that subsection, 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.
- S. 42(7D) inserted by No. 106/2003 s. 26(1), amended by No. 72/2010 s. 48(Sch. item 12(5)).
- (8) In this section—
- applicable 2018–2022 access arrangement* has the same meaning as in section 61(1) of the **National Gas (Victoria) Act 2008**;
- S. 42(8) def. of *applicable 2018–2022 access arrangement* inserted by No. 28/2020 s. 8(3).

S. 42(8) def. of *cooling-off period* inserted by No. 106/2003 s. 26(2), amended by Nos 59/2008 s. 22(5)(a), 72/2010 s. 48(Sch. item 12(2)(a)).

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

S. 42(8) def. of *domestic or small business customer* repealed by No. 59/2008 s. 22(5)(b).

* * * * *

S. 42(8) def. of *price determination* inserted by No. 6/2019 s. 12(4).

price determination means a determination under section 33 of the **Essential Services Commission Act 2001**;

S. 42(8) def. of *unsolicited consumer agreement* inserted by No. 72/2010 s. 48(Sch. item 12(2)(b)).

unsolicited consumer agreement has the same meaning as in section 69 of the Australian Consumer Law (Victoria).

S. 42(9) amended by Nos 40/2003 s. 4, 91/2004 s. 18(2), 55/2007 s. 17, repealed by No. 59/2008 s. 22(6).

* * * * *

S. 42A inserted by No. 59/2008 s. 23, amended by No. 28/2015 s. 5(a).

42A Licensee standing offer tariffs to be given to Commission

Without limiting the generality of section 28, the conditions to which a licence to sell gas by retail, being a licence under which gas may be sold to

domestic or small business customers, is subject, include a condition requiring the licensee—

- (a) to, as soon as practicable after the licensee publishes tariffs in accordance with section 42, input those tariffs into an Internet site nominated by the Minister so that the tariffs are able to be published on the Internet; and
- (b) if an Internet site has not been nominated by the Minister for the purposes of paragraph (a), to, on the same day the licensee publishes tariffs in accordance with section 42—
- (i) give a copy of those tariffs to the Commission; and
- (ii) inform the Commission, in writing, of the day those tariffs take effect.

S. 42A(a)
substituted by
No. 28/2015
s. 5(b).

S. 42A(b)
substituted by
No. 28/2015
s. 5(b).

42B Commission must publish on Internet licensee standing offer tariffs

The Commission must publish on its Internet site tariffs it is given under section 42A(b) on the day those tariffs take effect.

S. 42B
inserted by
No. 59/2008
s. 23,
substituted by
No. 28/2015
s. 6.

42C Internet publication and bill notification of licensee standing offers

- (1) Without limiting the generality of section 28, the conditions to which a licence to sell gas by retail, being a licence under which gas may be sold to domestic or small business customers, is subject, include a condition requiring the licensee to—
- (a) publish, in accordance with guidelines issued under subsection (2), on the licensee's Internet site details of licensee standing offers that are in effect; and

S. 42C
inserted by
No. 59/2008
s. 23.

S. 42C(1)(b)
amended by
No. 57/2009
s. 17.

- (b) notify, in writing, a domestic or small business customer of the licensee standing offer that is in effect and that applies to gas sold to that customer at any time before or in or with the customer's first gas bill after that licensee standing offer has taken effect.
- (2) The Commission must prepare and issue guidelines for the purposes of this section specifying—
 - (a) the manner of publication of details of licensee standing offers that are in effect, including the accessibility of those licensee standing offers on a licensee's Internet site; and
 - (b) the nature of the details to be published; and
 - (c) any other matters that the Commission considers relevant.

42D Required tariff information and licensee contact information to be published in newspaper and Government Gazette

S. 42D
(Heading)
amended by
No. 49/2015
s. 23(1).

S. 42D
inserted by
No. 59/2008
s. 23.

- (1) Without limiting the generality of section 28, the conditions to which a licence to sell gas by retail, being a licence under which gas may be sold to domestic or small business customers, is subject, include a condition requiring the licensee to, on the required day, publish in a newspaper circulating generally throughout Victoria and in the Government Gazette—
 - (a) required tariff information; and
 - (b) the licensee's contact information.

S. 42D(1)
amended by
No. 49/2015
s. 23(2).

(2) In this section—

licensee's contact information means all of the following information—

- (a) the licensee's telephone number;
- (b) the licensee's fax number;
- (c) the licensee's postal address;
- (d) the Internet address of the licensee's Internet site;

required day means the day the licensee varies a tariff or tariffs for the supply and sale of gas by notice published in the Government Gazette in accordance with section 42(3);

required tariff variation information means—

- (a) tariff variation information; and
- (b) the date a tariff or tariffs varied in accordance with section 42(3) takes or take effect; and
- (c) a description of the tariff or tariffs referred to in paragraph (b); and
- (d) the main reasons for the variation of a tariff or tariffs referred to in paragraph (b);

tariff variation information means—

- (a) in the case of a single tariff for the supply and sale of gas determined by a licensee under section 42(1)(a) that is varied in accordance with section 42(3), the weighted tariff variation relating to that tariff determined in accordance with an Order under section 42E;
- (b) in the case where more than one tariff for the supply and sale of gas determined by a licensee under

S. 42D(2)
def. of
***tariff variation
information***
amended by
No. 28/2021
s. 29.

section 42(1)(a) is varied in accordance with section 42(3) at the same time in accordance with section 42, the weighted tariff variation relating to those tariffs determined in accordance with an Order under section 42E.

S. 42E
inserted by
No. 59/2008
s. 23.

42E Order specifying method and variables to be used to determine weighted tariff variation

The Governor in Council, by Order published in the Government Gazette, may specify the method and variables to be used to determine the weighted tariff variation for the purposes of paragraphs (a) and (b) of the definition of *tariff variation information* in section 42D(2).

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

S. 43(1)
amended by
No. 37/2020
s. 16(1).

(1) Subject to subsection (1B), 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—

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

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

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

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

- (iia) specify the circumstances in which the licensee may, or must not, offer or give a discount or other benefit to a relevant customer, including—
- (A) the maximum amount or value of a discount or other benefit that may be offered or given to a relevant customer; and
- (B) the periods when a discount or other benefit may be offered or given to a relevant customer; and
- (iiib) specify a period during which the licensee must not vary the tariffs applying under the contract unless exempted to do so by the Commission; 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; and
- (c) a provision of a Code of Practice.
- (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—
- (a) the essential nature of the gas supply; and
- (b) community expectations that ongoing access to gas supply will be available; and

S. 43(1)(a)(iia)
inserted by
No. 6/2019
s. 13.

S. 43(1)(a)(iiib)
inserted by
No. 6/2019
s. 13.

S. 43(1)(b)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 45,
41/2021
s. 63(1)(a).

S. 43(1)(c)
inserted by
No. 41/2021
s. 63(1)(b).

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

S. 43(1AB)
inserted by
No. 41/2021
s. 63(2).

- (c) the principle that the gas supply to premises should only be disconnected as a last resort.
- (1AB) The Commission must not decide a term or condition under subsection (1)(a) or (b) that is inconsistent with—

- (a) a deemed Ministerial licence condition to which the licence held by the licensee is subject; or
- (b) a provision of a Code of Practice.

S. 43(1B)
inserted by
No. 37/2020
s. 16(2),
substituted by
No. 41/2021
s. 63(3).

- (1B) A term or condition referred to in subsection (1)(a) or (b) is of no effect to the extent that it is inconsistent with—

- (a) a deemed Ministerial licence condition to which the licence held by the licensee is subject; or
- (b) a provision of a Code of Practice.

- (2) If a term or condition of a contract is void pursuant to subsection (1) because of an inconsistency with a term or condition referred to in subsection (1)(a) or (b), that term or condition referred to in subsection (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 subsection (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 subsection (3) may confer powers and functions on, and leave any matter to be decided by, the Commission. S. 43(5)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004 s. 45.
- (5A) Sections 78(2), 83, 84 and 85 of the Australian Consumer Law (Victoria) do not apply to a contract for the supply or sale of gas to a relevant customer. S. 43(5A)
inserted by
No. 106/2003
s. 26(3),
amended by
No. 72/2010
s. 48(Sch.
item 12(6)).
- (5B) Section 82 of the Australian Consumer Law (Victoria) 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 subsection (1) require the inclusion of a cooling-off period in that contract. S. 43(5B)
inserted by
No. 106/2003
s. 26(3),
amended by
Nos 75/2004
s. 45, 72/2010
s. 48(Sch.
item 12(7)).
- (5C) If section 82(3)(b) of the Australian Consumer Law (Victoria) applies to a contract for the supply or sale of gas to a relevant customer then, for the purposes of that subsection, 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),
amended by
No. 72/2010
s. 48(Sch.
item 12(8)).
- (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 subsection (3) applies.

S. 43(7)
amended by
Nos 40/2003
s. 5, 91/2004
s. 19(2),
55/2007 s. 18,
repealed by
No. 59/2008
s. 24.

* * * * *

S. 43A
(Heading)
amended by
No. 59/2008
s. 25(1).

43A Publication of tariffs, terms and conditions of sale of gas (relevant published offers)

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

S. 43A(1)
substituted by
No. 59/2008
s. 25(2).

(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 in specified circumstances—

(a) to publish on its Internet site, in accordance with this section, details of the tariffs and terms and conditions on which that retailer sells gas to small retail customers; and

S. 43A(1)(b)
substituted by
No. 28/2015
s. 7(1).

(b) to, as soon as practicable after details of the tariffs, terms and conditions are published in accordance with paragraph (a), input those details into an Internet site nominated by the Minister so that the tariffs are able to be published on the Internet; and

S. 43A(1)(c)
inserted by
No. 28/2015
s. 7(1).

(c) if an Internet site has not been nominated by the Minister for the purposes of paragraph (b), to, on the same day the retailer publishes the details of the tariffs, terms and conditions in accordance with

paragraph (a), give a copy of those details to the Commission.

(1A) The Commission must publish on its Internet site the details of the tariffs, terms and conditions it receives under subsection (1)(c) as soon as practicable after receiving those details.

S. 43A(1A)
inserted by
No. 59/2008
s. 25(2),
amended by
No. 28/2015
s. 7(2).

(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, including the accessibility of the details of those tariffs and terms and conditions on a specified gas retailer's Internet site; and

S. 43A(2)(a)
amended by
No. 59/2008
s. 25(3).

(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 subsection (2) when complying with the licence condition in subsection (1).

(4) This section does not apply to tariffs and terms and conditions published under section 42.

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S. 43A(5)
repealed by
No. 59/2008
s. 25(4).

* * * * *

S. 43A(6)
amended by
No. 55/2007
s. 19,
repealed by
No. 59/2008
s. 25(4).

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.

- (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.

S. 44(3)
amended by
Nos 40/2003
s. 6, 91/2004
s. 21(2),
55/2007 s. 20,
repealed by
No. 59/2008
s. 26.

* * * * *

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

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

(b) on the conditions decided and provided for by the Commission under subsection (5).

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

(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

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

(e) on the conditions decided and provided for by the Commission under subsection (5).

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

S. 46(4)
substituted by
No. 72/2010
s. 48(Sch.
item 12(9)).

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

(4) If a supply and sale contract referred to in subsection (2)(a) is an unsolicited consumer agreement, sections 84 and 85 of the Australian Consumer Law (Victoria) do not apply on the cancellation of that contract.

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

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

(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 subsection (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 subsection (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.

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

(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.

(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
- (da) if the supply of gas at the premises is disconnected in accordance with section 48DS; or
- (e) on the happening of an event decided and provided for by the Commission under subsection (5)(b)—
- whichever occurs first.
- (8) Subsection (1) does not apply where the relevant customer referred to in that subsection commences to take the supply of gas by fraudulent or illegal means.
- (9) Subsection (2) does not apply where the relevant customer referred to in that subsection takes the supply of gas by fraudulent or illegal means after the cancellation of the supply and sale contract referred to in subsection (2)(a).
- (10) In this section—
- cooling-off period*** means the period within which a relevant customer is entitled under a supply and sale contract or section 82 of the Australian Consumer Law (Victoria) to cancel the contract;
- relevant customer*** has the same meaning as in section 43;

S. 46(7)(da)
inserted by
No. 28/2021
s. 21.

S. 46(7)(e)
amended by
No. 75/2004
s. 47(1).

S. 46(10)
def. of
***cooling-off
period***
amended by
Nos 106/2003
s. 26(5),
72/2010
s. 48(Sch.
item 12
(10)(a)).

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

S. 46(10)
def. of
*supply and
sale contract*
amended by
No. 72/2010
s. 48(Sch.
item 12
(10)(b)),
repealed by
No. 28/2021
s. 18.

* * * * *

S. 46(10)
def. of
*unsolicited
consumer
agreement*
inserted by
No. 72/2010
s. 48(Sch.
item 12
(10)(b)).

unsolicited consumer agreement has the same meaning as in section 69 of the Australian Consumer Law (Victoria).

S. 46(11)
amended by
Nos 40/2003
s. 7, 91/2004
s. 23(4),
55/2007 s. 21,
repealed by
No. 59/2008
s. 27.

* * * * *

S. 47
repealed by
No. 85/2001
s. 12,
new s. 47
inserted by
No. 59/2008
s. 28.

47 Commission must report to Minister on gas supply offers

- (1) The Commission must by the end of every calendar year, and at other times the Minister directs in writing, prepare and give to the Minister a report that, for the reporting period, compares and assesses—
- (a) licensee standing offers, deemed standing offers in effect during the reporting period, and relevant published offers and other

- offers to supply and sell gas by retail that were available during the reporting period;
- (b) variations to licensee standing offers, deemed standing offers, relevant published offers and other offers to supply and sell gas by retail during the reporting period.
- (2) A report under subsection (1)—
- (a) may include information about any trends in relation to variations to licensee standing offers, deemed standing offers, relevant published offers and other offers to supply and sell gas by retail over a period; and
- (b) must also include any other information that the Minister, in writing, requires to be included.
- (3) A period referred to in subsection (2)(a) may be greater than the reporting period.
- (4) The Commission must publish a report under subsection (1) on its Internet site as soon as practicable after giving it to the Minister.
- (5) In this section—

deemed standing offer means the tariffs and terms and conditions constituting a deemed contract for the supply and sale of gas under section 44 or section 46;

reporting period means the financial year ending in the calendar year in which the Commission must give its report to the Minister.

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.

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

(2) The terms and conditions must be approved by the Commission before a notice is given under subsection (1).

S. 48(3)
amended by
No. 62/2001
s. 77(f)(i)(ii),
substituted by
No. 37/2020
s. 17(1),
amended by
No. 41/2021
s. 64(1).

(3) Subject to subsection (3A), unless the Commission approves otherwise in a particular case, the terms and conditions must not be inconsistent with the applicable Code of Practice.

S. 48(3A)
inserted by
No. 37/2020
s. 17(1),
amended by
No. 41/2021
s. 64(2).

(3A) If the applicable Code of Practice is inconsistent with a deemed Ministerial licence condition to which the licence held by the distribution company is subject, that Code of Practice is of no effect to the extent of the inconsistency, and unless the Commission approves otherwise in a particular case, the terms and conditions must not be inconsistent with that deemed Ministerial licence condition.

S. 48(4)
amended by
No. 30/2008
s. 41(4).

(4) The terms and conditions must not be inconsistent with any access arrangement applicable to the gas distribution company and approved under the National Gas (Victoria) Law.

(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.
- (8) This section applies to a variation under subsection (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 subsection (6).
- (10) A deemed contract under subsection (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—

S. 48(12)
substituted by
No. 37/2020
s. 17(2).

applicable Code of Practice means—

S. 48(12)
def. of
*applicable
Code of
Practice*
inserted by
No. 41/2021
s. 64(3)(a).

- (a) the document entitled "Gas Distribution System Code" that is taken under section 76(1) of the **Essential Services Commission Act 2001**, to be a Code of Practice made under section 47(1) of that Act; or

(b) if the Code of Practice referred to in paragraph (a) is revoked, another Code of Practice that applies for the purposes of subsections (3) and (3A);

S. 48(12)
def. of Gas
Distribution
System Code
repealed by
No. 41/2021
s. 64(3)(b).

* * * * *

retail customer, in relation to a gas distribution company, means a customer of a 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

S. 48A(1)
amended by
No. 28/2021
s. 22(1)(a)(b).

(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 gas retailer to make a payment of a prescribed amount to a relevant customer in accordance with this section if the gas retailer arranges for the supply of gas at the premises of that customer to be disconnected and—

S. 48A(1)(a)
substituted by
No. 28/2021
s. 22(1)(c).

(a) the gas retailer does so otherwise than in accordance with Subdivision 3 of Division 4AA; or

S. 48A(1)(b)
substituted by
No. 28/2021
s. 22(1)(c).

(b) the gas retailer fails to comply with the terms and conditions of the supply and sale contract specifying the circumstances in which the supply of gas at those premises may be disconnected.

S. 48A(1A)
inserted by
No. 59/2011
s. 41(1),
amended by
No. 28/2021
s. 22(2).

(1A) Despite subsection (1), if the relevant customer does not notify the gas retailer of the disconnection within 14 days after the disconnection, the maximum payment under a

condition under subsection (1) is the prescribed capped amount.

- (2) A payment under subsection (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 subsection (1) must be made as soon as practicable after—
 - (a) the reconnection of the supply of gas at the premises of the relevant customer is arranged by a gas retailer under this Act; or
 - (b) a relevant event occurs.
- (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—
 - (i) if a relevant event occurs—\$500 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, ending on the occurrence of the relevant event; or
 - (ii) in any other case—\$500 for each whole day that the supply of gas is disconnected and a pro rata

S. 48A(3)
substituted by
No. 28/2021
s. 22(3).

S. 48A(5)
def. of
*prescribed
amount*
amended by
No. 49/2015
s. 24,
substituted by
No. 28/2021
s. 22(4)(a).

amount for any part of a day that
the supply of gas is disconnected;

S. 48A(5)
def. of
*prescribed
capped
amount*
inserted by
No. 59/2011
s. 41(2).

prescribed capped amount means—

- (a) the amount prescribed by the regulations for the purposes of subsection (1A); or
- (b) if no amount is prescribed, \$3,500.00;

S. 48A(5)
def. of
*relevant
customer*
amended by
No. 28/2021
s. 22(4)(b).

relevant customer has the same meaning as in section 43;

S. 48A(5)
def. of
relevant event
inserted by
No. 28/2021
s. 22(4)(c).

relevant event means—

- (a) a relevant customer's refusal of an offer from a gas retailer to arrange for the reconnection of the supply of gas at the relevant customer's premises; or
- (b) an event the result of which means it is not reasonably practicable for the gas retailer to arrange for the reconnection of the supply of gas at the relevant customer's premises; or
- (c) a prescribed event.

S. 48A(6)
inserted by
No. 28/2021
s. 22(5).

- (6) For the purposes of the definition of *relevant event* in subsection (5), an offer from a gas retailer must not include any condition or requirement for reconnection other than any condition or requirement permitted under the supply and sale contract or any Act or law.

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

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.

- (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.

48C Regulation of exit fees

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

- (1AA) Without limiting the generality of sections 28(2) or (3) or 29, the conditions to which a licence to sell gas by retail is subject include a condition prohibiting, on and after the commencement of section 25 of the **Energy Legislation Amendment (Consumer Protection) Act 2015**, the licensee from entering into a contract for the supply or sale of gas by retail between the licensee and a small retail customer that imposes an exit fee on the termination of the contract unless—
 - (a) the contract is a fixed-term retail contract; and
 - (b) the following will not change during the term of the contract—
 - (i) any tariffs, charges and fees for gas supplied under that contract;
 - (ii) any discount which applies to tariffs, charges and fees for gas supplied under that contract;

S. 48C(1AA)
inserted by
No. 49/2015
s. 25(1).

(iii) any terms and conditions that apply to gas supplied under that contract.

S. 48C(1)
amended by
No. 49/2015
s. 25(2).

(1) The Governor in Council may by Order published in the Government Gazette regulate the imposition by a licensee under a fixed-term retail contract of an exit fee that is not otherwise prohibited under subsection (1AA) on the termination of that contract.

(2) An Order under subsection (1) may specify terms and conditions applying to the imposition of exit fees.

S. 48C(3)
substituted by
No. 49/2015
s. 25(3).

(3) An Order under subsection (1) may also provide that a fixed-term retail contract is to include a condition providing that the small retail customer may terminate the contract by giving the required period of notice to the licensee.

S. 48C(4)
amended by
No. 49/2015
s. 25(4).

(4) If an Order under subsection (1) requires the inclusion of a condition referred to in subsection (3) in a fixed-term retail contract, that condition is deemed to form part of that contract.

(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 subsection (1) has effect from the date specified in the Order.

S. 48C(7)
repealed by
No. 41/2021
s. 65.

* * * * *

(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;

fixed-term retail contract means a contract for the supply or sale of gas by retail between a licensee and a small retail customer that contains a term or condition that specifies—

S. 48C(9) def. of *fixed-term retail contract* inserted by No. 49/2015 s. 25(5).

- (a) the date on which the contract will end; or
- (b) a method for calculating the date on which the contract will end and which is ascertainable at the time the contract is entered;

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 subsection (1).

48D Regulation of pre-payment meters

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

- (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.
- (2) An Order under subsection (1) regulating the implementation of a pre-payment meter scheme may specify terms and conditions applying to that scheme.
- (3) An Order under subsection (1) has effect from the date specified in the Order.

Gas Industry Act 2001
No. 31 of 2001
Part 3—Regulation of gas industry

S. 48D(4)
repealed by
No. 41/2021
s. 66.

* * * * *

- (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 subsection (1).

S. 48DA
inserted by
No. 28/2021
s. 19 (as
amended by
No. 41/2021
s. 106).

48DA Prohibition on save and win-back offers

- (1) This section applies if a gas retailer (a *losing retailer*) is aware that the customer transfer process has commenced or has been completed in respect of a domestic customer of the losing retailer.

Note

When a domestic customer has a supply and sale contract with a gas retailer and enters into a supply and sale contract with another gas retailer, the new retailer initiates the customer transfer process and at the end of that process the supply and sale contract with the losing retailer ends.

- (2) Without limiting the generality of section 28(2) or (3) or 29, but subject to this section, the conditions to which a licence to sell gas by retail held by a losing retailer is subject include a condition prohibiting the losing retailer from—
- (a) contacting the domestic customer during the prohibited period—
 - (i) to make an offer to the domestic customer to renegotiate a supply and sale contract with the losing retailer and to terminate the supply and sale contract with another gas retailer; or
 - (ii) to offer, or arrange the offer of, a benefit, privilege or service, including a bundled gas and electricity service, to the domestic customer for that customer to remain a customer of the losing retailer and to terminate the supply and sale contract with another gas retailer; or
 - (iii) to make an offer to the domestic customer to enter into a new supply and sale contract with the losing retailer; or
 - (iv) to offer, or arrange the offer of, a benefit, privilege or service, including a bundled gas and electricity service, to the domestic customer for that customer to enter into a new supply and sale contract with the losing retailer; or

- (b) requiring or permitting an employee or agent of the losing retailer to do a thing referred to in paragraph (a).
- (3) The losing retailer is not prohibited from contacting the domestic customer during the prohibited period for any other purpose, including—
- (a) in respect of any administrative or other matter resulting from or incidental to the customer transfer process; or
 - (b) in respect of any fees or charges which are owed to the losing retailer by the domestic customer under the supply and sale contract with the losing retailer; or
 - (c) responding to any query or question asked by the domestic customer; or
 - (d) if the domestic customer has asked the losing retailer to do a thing described in subsection (2)(a), doing so or requiring or permitting an employee or agent of the losing retailer to do so; or
 - (e) contacting the domestic customer as part of a general marketing campaign for the supply or sale of gas, or the sale of a bundled gas and electricity service, other than by—
 - (i) calling on the domestic customer at that customer's ordinary place of residence; or
 - (ii) telephoning the domestic customer, irrespective of whether that customer is at their ordinary place of residence at the time of the telephone call.
- (4) For the purposes of subsection (3)(e), a general marketing campaign does not include a marketing campaign directed at only domestic customers

who have entered into a supply and sale contract with another gas retailer.

(5) A supply and sale contract continued or entered into as a result of any conduct prohibited under this section is of no effect.

(6) In this section—

bundled gas and electricity service means the service of supplying gas and electricity to a domestic customer with a financial discount on one or both services or some other benefit given to the customer for contracting with the gas retailer for both gas and electricity, whether or not under the same contract;

customer transfer process means the process under the National Gas Rules of transferring, between gas retailers, a domestic customer's details, billing information and relevant supply details for the purpose of facilitating the operation of a supply and sale contract between the domestic customer and gas retailer;

domestic customer has the same meaning as in section 48E;

prohibited period means the period—

(a) starting from when the losing retailer becomes aware that the customer transfer process has commenced or is commencing in respect of a domestic customer of the losing retailer; and

(b) ending—

(i) at the end of the period after the customer transfer process is complete that is prescribed for the purposes of this subparagraph; or

- (ii) if there is no prescribed period, after a period of 6 months after the customer transfer process is complete.

S. 48DB
inserted by
No. 28/2021
s. 19 (as
amended by
No. 41/2021
s. 106).

48DB Prohibition relating to door-to-door sales and cold-calling

- (1) Without limiting the generality of section 28(2) or (3) or 29, but subject to this section, the conditions to which a licence to sell gas by retail held by a gas retailer is subject include a condition prohibiting the gas retailer from—
 - (a) calling on a domestic customer at the customer's ordinary place of residence for the purpose of negotiating a supply and sale contract or another contract of a kind that is prescribed; or
 - (b) telephoning a domestic customer for the purpose of negotiating a supply and sale contract or another contract of a kind that is prescribed, irrespective of whether the customer is at their ordinary place of residence at the time of the telephone call; or
 - (c) requiring or permitting an employee or agent of the gas retailer to do a thing referred to in paragraph (a) or (b).
- (2) A gas retailer is not prohibited from doing a thing referred to in subsection (1)(a), (b) or (c) if the domestic customer has given, to a person specified in subsection (4), express consent to being contacted by a gas retailer at the customer's ordinary place of residence or by telephone for the purpose of negotiating—
 - (a) a supply and sale contract; or
 - (b) another contract of a kind that is prescribed.

- (3) Without limiting subsection (2), the domestic customer has not given their express consent only because the customer has contacted the gas retailer, or an employee or agent of the gas retailer, in connection with an unsuccessful attempt by that retailer, employee or agent to contact the domestic customer.
- (4) The following persons are specified for the purposes of subsection (2)—
- (a) the gas retailer;
 - (b) an employee or agent of the gas retailer;
 - (c) a person who—
 - (i) collects a domestic customer's contact details, irrespective of any relationship between that person and the gas retailer at the time that person collects those details; and
 - (ii) gives those details to the gas retailer for the predominant purpose of enabling the gas retailer, or an employee or agent of the gas retailer, to negotiate a supply and sale contract or another contract of a kind that is prescribed.
- (5) A gas retailer is not prohibited from doing a thing referred to in subsection (1)(a), (b) or (c) if—
- (a) at the time the domestic customer is called on at their ordinary place of residence or is telephoned, the domestic customer has a supply and sale contract with the gas retailer; and
 - (b) that conduct would not otherwise be prohibited under section 48DA.
- (6) A contract entered into as a result of any conduct prohibited under subsection (1) is of no effect.

- (7) For the purposes of section 53 of the **Essential Services Commission Act 2001**, a gas retailer does not contravene a civil penalty requirement that is the condition under subsection (1)(b) or (c) if—
- (a) the contravention by the gas retailer was by mistake; or
 - (b) the gas retailer took reasonable precautions, and exercised due diligence, to avoid the contravention.
- (8) This section does not apply to a supply and sale contract of a kind that is prescribed.
- (9) In this section—
- contact details* means a domestic customer's residential address or telephone number;
- domestic customer* has the same meaning as in section 48E.

Pt 3 Div. 4AA
(Headings
and ss 48DC–
48DY)
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

Division 4AA—Disconnection of supply of gas

Subdivision 1—Preliminary

S. 48DC
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DC Definitions

In this Division—

acceptable identification means—

- (a) a document specified under an applicable Code for the purposes of this paragraph which contains information identifying a relevant customer; or

- (b) information specified under an applicable Code for the purposes of this paragraph identifying a relevant customer;

applicable Code means a Code of Practice which specifies that it applies for the purposes of this Division;

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday;

carry-over customer means a person described in section 48DD(2)(a);

disconnection related complaint means a complaint made by a relevant customer that is directly related to the grounds for a gas retailer's or an exempt gas seller's proposed disconnection of the supply of gas at the relevant customer's premises under—

- (a) the gas retailer's or exempt gas seller's standard complaints and dispute resolution procedures; or
- (b) a customer dispute resolution scheme approved by the Commission under section 36;

disconnection warning notice means a notice, specifying the matters required to be specified under an applicable Code, warning a relevant customer that the supply of gas at the customer's premises will be or may be disconnected;

electricity distribution company has the same meaning as ***distribution company*** has in the **Electricity Industry Act 2000**;

electricity retailer has the same meaning as *retailer* has in the **Electricity Industry Act 2000**;

exempt distributor means a person who, by Order under section 24, has been exempted from the requirement to obtain a licence to distribute or supply gas;

exempt gas seller means a person who, by Order made under section 24, is exempt from the requirement—

- (a) to obtain a licence to sell gas; or
- (b) to obtain registration under section 91BJ or 91LB of the National Gas (Victoria) Law;

gas payment assistance application means an application to an entity responsible for a rebate, concession or relief scheme available under any government funded gas charge rebate, concession or relief scheme;

intention to disconnect notice means a notice, specifying the matters required to be specified under an applicable Code, notifying a relevant customer of a gas retailer's or an exempt gas seller's intention to arrange for the supply of gas at the customer's premises to be disconnected;

life support customer means—

- (a) a relevant customer who is a life support resident; or
- (b) a relevant customer at whose premises a life support resident (who is not the relevant customer) resides or intends to reside;

life support customer details, in relation to a relevant customer, means—

- (a) the information that evidences that the relevant customer is a life support customer; and
- (b) the personal details of each life support resident residing or intending to reside at the premises of the life support customer; and
- (c) the date from which life support equipment is required at the premises of the life support customer by each life support resident;

life support equipment means any of the following—

- (a) an oxygen concentrator;
- (b) an intermittent peritoneal dialysis machine;
- (c) a kidney dialysis machine;
- (d) a chronic positive airways pressure respirator;
- (e) crigler najjar syndrome phototherapy equipment;
- (f) a ventilator for life support;
- (g) any other equipment requiring gas that a registered medical practitioner certifies is required for a life support resident;
- (h) equipment (other than equipment referred to in paragraphs (a) to (g)) specified under an applicable Code for the purposes of this definition;

life support resident means a person who requires life support equipment;

move-in customer means a person described in section 48DD(2)(b);

protected period means—

- (a) the period of a business day—
 - (i) for a residential customer—before 8 a.m. or after 2 p.m.; or
 - (ii) for a small business customer—before 8 a.m. or after 3 p.m.; or
- (b) a Friday; or
- (c) a weekend or a public holiday; or
- (d) the day before a public holiday; or
- (e) the days starting on 20 December and ending at midnight on 31 December in any year; or
- (f) a period specified under an applicable Code for the purposes of this definition;

public holiday means a day appointed under the **Public Holidays Act 1993**;

register of life support customers and residents means a register established and maintained under section 48DX;

registered life support customer, in relation to a gas retailer or an exempt gas seller, means a life support customer who is registered in the register of life support customers and residents established and maintained by that gas retailer or exempt gas seller, as the case requires;

relevant assistance means assistance—

- (a) in accordance with a financial hardship policy within the meaning of section 48G(3); or
- (b) specified under an applicable Code for the purposes of this definition;

relevant customer has the meaning given by section 48DD;

reminder notice means a notice, specifying the matters required to be specified under an applicable Code, reminding a relevant customer that payment of a gas bill is required;

residential customer means a relevant customer who purchases gas principally for personal, household or domestic use;

security deposit means an amount of money paid or payable under a supply and sale contract as a security against non-payment of a gas bill;

small business customer means a relevant customer who is not a residential customer.

48DD Meaning of *relevant customer*

- (1) In this Division, a ***relevant customer*** is—
 - (a) in relation to a gas retailer, a relevant customer within the meaning of section 43(6); or

Note

A relevant customer of a gas retailer includes a person who has a deemed contract with the gas retailer under section 46(1) or (2).

S. 48DD
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (b) in relation to an exempt gas seller, a person—
 - (i) to whom the exempt gas seller supplies or sells gas under a supply and sale contract; and
 - (ii) whose total consumption of gas supplied or sold by the exempt gas seller does not exceed more than 1000 gigajoules in any given year.
- (2) In addition, for the purposes of this Division, a **relevant customer**, in relation to an exempt gas seller, includes either of the following—
 - (a) a person—
 - (i) who continues to take gas supplied by the exempt gas seller at the person's premises after the person's supply and sale contract with the exempt gas seller has ended or been terminated and that contract does not provide for the gas to be consumed after the contract's end or termination; and
 - (ii) who was a relevant customer as set out under subsection (1)(b);
 - (b) a person who takes gas supplied by the exempt gas seller without having entered into a supply and sale contract with the exempt gas seller.

S. 48DE
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DE Objects

Without limiting section 18(c), the objects of this Division are—

- (a) to recognise the essential nature of the supply of gas; and

- (b) to have regard to community expectations that ongoing access to gas will be available; and
- (c) to have regard to community expectations that the supply of gas to premises will not be disconnected solely because of a customer's inability to pay for the gas supply; and
- (d) to promote the principle that the supply of gas to premises should only be disconnected as a last resort.

Subdivision 2—Offences

48DF Knowingly or recklessly disconnecting supply of gas at premises

S. 48DF
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (1) A gas retailer or an exempt gas seller who arranges for the supply of gas at a relevant customer's premises to be disconnected other than in accordance with Subdivision 3, and knows, or is reckless as to whether, the disconnection is not in accordance with that Subdivision, is guilty of an offence and liable to a fine not exceeding—
 - (a) in the case of a natural person, 1200 penalty units or 10 years imprisonment; or
 - (b) in the case of a body corporate, 6000 penalty units.
- (2) An offence against subsection (1) is an indictable offence.

48DG Disconnection of supply of gas at premises

S. 48DG
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (1) A gas retailer or an exempt gas seller must not arrange for the supply of gas at a relevant customer's premises to be disconnected except in accordance with Subdivision 3.

- (2) A gas retailer or an exempt gas seller who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (3) Subsection (1) is a civil penalty requirement for the purposes of the **Essential Services Commission Act 2001**.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

S. 48DH
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DH Knowingly or recklessly disconnecting supply of gas at premises of life support customer

- (1) A gas retailer or an exempt gas seller commits an offence if the gas retailer or exempt gas seller—
- (a) knows the relevant customer is a life support customer; and
 - (b) does not add the life support customer details for that customer to the gas retailer's or exempt gas seller's register of life support customers and residents within one business day after being advised that the relevant customer is a life support customer; and
 - (c) arranges for the supply of gas at that customer's premises to be disconnected.
- (2) A gas retailer or an exempt gas seller commits an offence if—
- (a) the gas retailer or exempt gas seller is reckless as to whether the relevant customer is a life support customer; and

- (b) as a result of that recklessness the gas retailer or exempt gas seller does not add the life support customer details for that customer to the gas retailer's or exempt gas seller's register of life support customers and residents; and
 - (c) the gas retailer or exempt gas seller arranges for the supply of gas at that customer's premises to be disconnected.
- (3) A gas retailer or an exempt gas seller commits an offence if the retailer or exempt gas seller—
 - (a) knowingly or recklessly removes any life support customer details relating to a registered life support customer from the gas retailer's or exempt gas seller's register of life support customers and residents; and
 - (b) arranges for the supply of gas at that customer's premises to be disconnected.
- (4) A gas retailer or an exempt gas seller who commits an offence against subsection (1), (2) or (3) is liable to a penalty not exceeding—
 - (a) in the case of a natural person, 1200 penalty units or 10 years imprisonment; or
 - (b) in the case of a body corporate, 6000 penalty units.
- (5) A gas retailer or an exempt gas seller does not commit an offence against subsection (3) if any life support customer details are removed from the gas retailer's or exempt gas seller's register of life support customers and residents, as the case requires—
 - (a) at the request of the registered life support customer in accordance with an applicable Code; or
 - (b) as provided under an applicable Code.

- (6) An offence against subsection (1), (2) or (3) is an indictable offence.

S. 48DI
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DI Life support customers and residents—gas retailer obligations when advised by relevant customer

- (1) Within one business day after being advised by a relevant customer that a life support resident resides, or is intending to reside, at the relevant customer's premises, a gas retailer must record in a register of life support customers and residents the life support customer details.
- (2) A gas retailer who is advised by a relevant customer that a life support resident resides, or is intending to reside at the relevant customer's premises, must, if the life support equipment at the premises is or will be powered by gas and electricity and the gas retailer is not also an electricity retailer supplying electricity at the relevant customer's premises, inform the customer, within one business day after being advised, that the customer should inform the electricity retailer supplying electricity at the relevant customer's premises that a life support resident resides, or is intending to reside, at the relevant customer's premises.
- (3) Within 5 business days after being advised by a relevant customer that a life support resident resides, or is intending to reside, at the relevant customer's premises, a gas retailer must give to the customer, in accordance with an applicable Code, the information specified under an applicable Code for the purposes of this subsection.
- (4) Within one business day after being advised by a relevant customer that a life support resident resides, or is intending to reside, at the relevant customer's premises, a gas retailer must, in accordance with an applicable Code—

- (a) if the life support equipment required by the life support resident is powered only by gas, give the details specified under an applicable Code for the purposes of this paragraph to the gas distribution company that distributes gas to those premises; or
 - (b) if the life support equipment required by the life support resident is powered by gas and electricity and the gas retailer is also an electricity retailer supplying electricity at the relevant customer's premises, give the details specified under an applicable Code for the purposes of this paragraph—
 - (i) to the gas distribution company that distributes gas to those premises; and
 - (ii) to the electricity distribution company that distributes electricity to those premises.
- (4A) A gas retailer who contravenes subsection (1), (2), (3) or (4) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (4B) Subsections (1), (2), (3) and (4) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.

- (5) Subsection (4)(a) does not apply to a gas retailer in the circumstances specified under an applicable Code.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

S. 48DJ
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DJ Life support customers and residents—gas retailer obligations when advised by gas distribution company or electricity distribution company

- (1) Within one business day after a gas retailer is advised by a gas distribution company or an electricity distribution company that a life support resident resides, or is intending to reside, at the premises of a relevant customer of the gas retailer, the gas retailer must record in a register of life support customers and residents the life support customer details.
- (2) Within 5 business days after a gas retailer is advised by a gas distribution company or an electricity distribution company that a life support resident resides, or is intending to reside, at the premises of a relevant customer of the gas retailer, the gas retailer must give the relevant customer, in accordance with an applicable Code, the information specified under an applicable Code for the purposes of this subsection.
- (3) A gas retailer who contravenes subsection (1) or (2) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.

- (4) Subsections (1) and (2) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

48DK Life support customers and residents—gas retailer obligations when advised by exempt gas sellers

S. 48DK
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (1) Within one business day after being advised by an exempt gas seller to whom section 48DL(4) applies that a life support resident resides, or is intending to reside at the premises of a relevant customer of the exempt gas seller, a gas retailer must record in a register of life support customers and residents the life support customer details.
- (2) Within one business day after being advised by an exempt gas seller to whom section 48DL(4) applies that a life support resident resides, or is intending to reside at the premises of a relevant customer of the exempt gas seller, a gas retailer must give the gas distribution company that distributes gas at those premises the details specified under an applicable Code for the purposes of this subsection.
- (3) A gas retailer who contravenes subsection (1) or (2) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (4) Subsections (1) and (2) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

S. 48DL
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DL Life support customers and residents—exempt gas seller obligations when advised by relevant customer

- (1) Within one business day after being advised by a relevant customer that a life support resident resides, or is intending to reside, at the relevant customer's premises, an exempt gas seller must record in a register of life support customers and residents the life support customer details.
- (2) An exempt gas seller who is advised by a relevant customer that a life support resident resides, or is intending to reside, at the relevant customer's premises must, if the life support equipment required by the life support resident is powered by gas and electricity, inform the customer within one business day after being advised, that the customer should inform the electricity retailer supplying electricity at the relevant customer's premises that the customer is a life support customer.
- (3) Within 5 business days after being advised by a relevant customer that a life support resident resides, or is intending to reside, at the relevant customer's premises, an exempt gas seller must give the relevant customer, in accordance with an applicable Code, the information specified under an applicable Code for the purposes of this subsection.
- (4) If—
 - (a) a relevant customer advises an exempt gas seller that a life support resident resides, or is intending to reside, at the relevant customer's premises; and

(b) the exempt gas seller purchases gas from a gas retailer to sell to the relevant customer—

the exempt gas seller must, within one business day after being advised, give the gas retailer the details specified under an applicable Code for the purposes of this subsection.

(5) If—

(a) a relevant customer advises an exempt gas seller that a life support resident resides, or is intending to reside, at the relevant customer's premises; and

(b) the exempt gas seller purchases gas from a gas retailer to sell to the relevant customer; and

(c) that gas is distributed by an exempt distributor—

the exempt gas seller must, within one business day after that advice, give the exempt distributor the details specified under an applicable Code for the purposes of this subsection.

(5A) An exempt gas seller who contravenes subsection (1), (2), (3), (4) or (5) commits an offence against that subsection and is liable to a penalty not exceeding—

(a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or

(b) in the case of a body corporate, 600 penalty units.

(5B) Subsections (1), (2), (3), (4) and (5) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.

(6) Subsection (5) does not apply to an exempt gas seller in the circumstances specified under an applicable Code.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

S. 48DM
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DM Life support customers and residents—exempt gas seller obligations when advised by exempt distributor

- (1) Within one business day after an exempt gas seller is advised by an exempt distributor that a life support resident resides, or is intending to reside, at the premises of a relevant customer of the exempt gas seller, the exempt gas seller must record in a register of life support customers and residents the life support customer details.
- (2) Within 5 business days after being advised by an exempt distributor that a life support resident resides, or is intending to reside, at the premises of a relevant customer of the exempt gas seller, the exempt gas seller must give the relevant customer, in accordance with an applicable Code, the information specified under an applicable Code for the purposes of this subsection.
- (3) If—
 - (a) an exempt distributor advises an exempt gas seller that a life support resident resides, or is intending to reside, at the premises of a relevant customer of the exempt gas seller; and
 - (b) the exempt gas seller purchases gas from a gas retailer to sell to the relevant customer—the exempt gas seller must give, within one business day after that advice, the gas retailer the details specified under an applicable Code for the purposes of this subsection.

- (4) An exempt gas seller who contravenes subsection (1), (2) or (3) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (5) Subsections (1), (2) and (3) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

Subdivision 3—Permitted grounds for disconnection

48DN Supply of gas may be disconnected by agreement or on notice from relevant customer

A gas retailer, or an exempt gas seller specified under an applicable Code for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected if—

- (a) the gas retailer or exempt gas seller and the relevant customer agree; or
- (b) the relevant customer gives notice to the gas retailer or exempt gas seller in accordance with the supply and sale contract with the gas retailer or exempt gas seller that the customer wishes to end the contract.

S. 48DN
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

S. 48DO
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DO Supply of gas may be disconnected for non-payment of bill or failure to comply with terms of relevant assistance

- (1) Subject to section 48DU, a gas retailer, or an exempt gas seller specified under an applicable Code for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected if—
 - (a) the relevant customer—
 - (i) has not paid the total amount specified in a gas bill by the date specified for that payment; or
 - (ii) is receiving relevant assistance from the gas retailer or exempt gas seller and has not complied with the terms and conditions of that assistance; and
 - (b) the total amount owing to the gas retailer or exempt gas seller under the gas bill—
 - (i) is not less than \$300 or, if an applicable Code specifies a higher amount for the purposes of this subparagraph, not less than the specified amount; and
 - (ii) is only for the supply or sale of gas; and
 - (c) the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer a reminder notice; and
 - (d) after the expiry of the period specified in the reminder notice, the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer a disconnection warning notice; and

- (e) after the expiry of the period specified in the disconnection warning notice, the gas retailer or exempt gas seller takes all reasonable steps to contact the relevant customer, in relation to the customer's failure to pay the total amount owing under the gas bill or to comply with the terms and conditions of the relevant assistance, in one or more of the following ways—
 - (i) in person;
 - (ii) by telephone;
 - (iii) by electronic communication; and
 - (f) the gas retailer or exempt gas seller has complied with any requirements relating to the disconnection of the supply of gas at a relevant customer's premises specified under an applicable Code for the purposes of this section; and
 - (g) the relevant customer does not take any reasonable action towards settling the debt owed to the gas retailer or exempt gas seller.
- (2) The period specified in a reminder notice and a disconnection warning notice must be not less than the period specified under an applicable Code.

48DP Supply of gas may be disconnected for failure to pay security deposit

- (1) Subject to section 48DU, a gas retailer, or an exempt gas seller specified under an applicable Code for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected if—

S. 48DP
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (a) the relevant customer does not give a security deposit in accordance with a supply and sale contract with the gas retailer or exempt gas seller; and
 - (b) the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer an intention to disconnect notice; and
 - (c) after the expiry of the period specified in the intention to disconnect notice, the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer a disconnection warning notice; and
 - (d) after the expiry of the period specified in the disconnection warning notice, the relevant customer does not give the security deposit.
- (2) The period specified in an intention to disconnect notice and a disconnection warning notice must be not less than the period specified under an applicable Code.

S. 48DQ
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DQ Supply of gas may be disconnected for refusal to provide acceptable identification

- (1) Subject to section 48DU, a gas retailer, or an exempt gas seller specified under an applicable Code for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected if—
- (a) the relevant customer does not provide acceptable identification on the request of the gas retailer or exempt gas seller; and
 - (b) the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer an intention to disconnect notice; and

- (c) after the expiry of the period specified in the intention to disconnect notice, the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer a disconnection warning notice; and
 - (d) after the expiry of the period specified in the disconnection warning notice, the relevant customer does not provide acceptable identification.
- (2) The period specified in an intention to disconnect notice and a disconnection warning notice must be not less than the period specified under an applicable Code.

48DR Supply of gas may be disconnected if access to meter denied

- (1) Subject to section 48DU, a gas retailer, or an exempt gas seller specified under an applicable Code for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected if—
- (a) the relevant customer does not allow access to the customer's premises for the reading of the meter at the premises for 3 consecutive scheduled meter readings; and
 - (b) at the time of each of those scheduled meter readings, the gas retailer or exempt gas seller took all reasonable steps to contact the relevant customer in one or more of the following ways to make alternative arrangements to access the customer's premises—
 - (i) in person;
 - (ii) by telephone;
 - (iii) by electronic communication; and

S. 48DR
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (c) the gas retailer or exempt gas seller, on each of the occasions access is denied, arranges for the relevant customer to be given a notice in accordance with any requirements under an applicable Code (an *access request notice*)—
 - (i) requesting access to the meter; and
 - (ii) advising of the gas retailer's or exempt gas seller' ability to arrange for disconnection of the supply of gas at the customer's premises; and
 - (d) no earlier than 5 business days after the third access request notice is given to the relevant customer, the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer an intention to disconnect notice; and
 - (e) after the expiry of the period specified in the intention to disconnect notice, the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer a disconnection warning notice; and
 - (f) after the expiry of the period specified in the disconnection warning notice, the relevant customer does not give the gas retailer or exempt gas seller access to the customer's premises to read the meter.
- (2) The period specified in an intention to disconnect notice and a disconnection warning notice must be not less than the period specified under an applicable Code.

48DS Supply of gas may be disconnected if there is taking of gas without notification by customer

S. 48DS
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (1) Subject to section 48DU, a gas retailer, or an exempt gas seller specified under an applicable Code for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected if—
- (a) the relevant customer—
 - (i) has a deemed contract with the gas retailer under section 46(1) or (2); or
 - (ii) is a carry-over customer; or
 - (iii) is a move-in customer; and
 - (b) the relevant customer refuses or fails to take appropriate steps to enter into a supply and sale contract with the gas retailer or exempt gas seller; and
 - (c) the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer an intention to disconnect notice; and
 - (d) after the expiry of the period specified in the intention to disconnect notice, the gas retailer or exempt gas seller, in accordance with any requirements under an applicable Code, gives the relevant customer a disconnection warning notice; and
 - (e) after the expiry of the period specified in the disconnection warning notice, the relevant customer does not take appropriate steps to enter into a supply and sale contract with the gas retailer or exempt gas seller.
- (2) The period specified in an intention to disconnect notice and a disconnection warning notice must be not less than the period specified under an applicable Code.

- (3) For the purposes of this section, the gas retailer or exempt gas seller is not required to find out the name or particulars of the relevant customer consuming gas supplied at the premises before disconnecting the supply of gas.

S. 48DT
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DT Supply of gas may be disconnected if it occurs in the prescribed circumstances

Subject to section 48DU, a gas retailer or an exempt gas seller who is prescribed for the purposes of this section, may arrange for the supply of gas at a relevant customer's premises to be disconnected—

- (a) in the prescribed circumstances (if any); and
- (b) in accordance with the prescribed requirements (if any).

S. 48DU
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DU Restrictions on gas retailer or exempt gas seller disconnecting supply of gas

A gas retailer or exempt gas seller must not arrange for the supply of gas to a relevant customer's premises to be disconnected—

- (a) if the relevant customer is a registered life support customer; or
- (b) if there is a disconnection related complaint that is unresolved; or
- (c) if the relevant customer is receiving relevant assistance and is complying with the terms and conditions of that assistance; or
- (d) if the relevant customer advises the gas retailer or exempt gas seller, or the gas retailer or exempt gas seller is otherwise aware, that the customer has made a gas payment assistance application and the application has not been decided; or
- (e) during a protected period; or

(f) in the prescribed circumstances.

Subdivision 4—Disconnection for fraudulent or illegal taking of gas

48DV Supply of gas may be disconnected if gas taken by fraudulent or illegal means—gas retailers

S. 48DV
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

- (1) Subject to subsection (2), a gas retailer may arrange for the supply of gas at a person's premises to be disconnected if—
 - (a) a person at the premises takes the supply of gas without a supply and sale contract with the gas retailer for the taking of that gas; and
 - (b) the person does not have a deemed contract with the gas retailer under section 46(1) or (2) because of section 46(8) or (9).
- (2) A gas retailer must not arrange for the supply of gas at a person's premises to be disconnected under subsection (1) if—
 - (a) the person was a relevant customer of the gas retailer; and
 - (b) the person was a registered life support customer in relation to the gas retailer immediately before taking the supply of gas without a supply and sale contract with the gas retailer; and
 - (c) at the time at which disconnection of the supply of gas is to occur, the life support customer details of the person from when the person was a relevant customer are in the register of life support customers and residents of the gas retailer.
- (3) A gas retailer who arranges for the supply of gas at a person's premises to be disconnected under subsection (1) other than in accordance with this section, and knows, or is reckless as to whether,

the disconnection is not in accordance with this section, is guilty of an offence and liable to a penalty not exceeding—

- (a) in the case of a natural person, 1200 penalty units or 10 years imprisonment; or
 - (b) in the case of a body corporate, 6000 penalty units.
- (4) An offence against subsection (3) is an indictable offence.
- (5) A gas retailer must not arrange for the supply of gas at a person's premises to be disconnected under subsection (1) except in accordance with this section.
- (6) A gas retailer who contravenes subsection (5) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (7) Subsection (5) is a civil penalty requirement for the purposes of the **Essential Services Commission Act 2001**.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

S. 48DW
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DW Supply of gas may be disconnected if gas taken by fraudulent or illegal means—exempt gas sellers

- (1) Subject to subsection (2), an exempt gas seller specified under an applicable Code for the purposes of this section may arrange for the supply of gas at a person's premises to be

disconnected in accordance with any requirements under an applicable Code if—

- (a) the person takes the supply of gas by fraudulent or illegal means; and
 - (b) the person does not have a supply and sale contract with the exempt gas seller.
- (2) An exempt gas seller must not arrange for the supply of gas at a person's premises to be disconnected under subsection (1) if—
- (a) the person was a relevant customer (as described in section 48DD(1)(b)) of the exempt gas seller; and
 - (b) the person was a registered life support customer in relation to the exempt gas seller immediately before taking the supply of gas without a supply and sale contract with the exempt gas seller; and
 - (c) at the time at which disconnection of the supply of gas is to occur, the life support customer details of the person from when the person was a relevant customer are in the register of life support customers and residents of the exempt gas seller.
- (3) An exempt gas seller who arranges for the supply of gas at a person's premises to be disconnected under subsection (1) other than in accordance with this section, and knows, or is reckless as to whether, the disconnection is not in accordance with this section, is guilty of an offence and liable to a penalty not exceeding—
- (a) in the case of a natural person, 1200 penalty units or 10 years imprisonment; or
 - (b) in the case of a body corporate, 6000 penalty units.

- (4) An offence against subsection (3) is an indictable offence.
- (5) An exempt gas seller must not arrange for the supply of gas at person's premises to be disconnected under subsection (1) except in accordance with this section.
- (6) An exempt gas seller who contravenes subsection (5) commits an offence against that subsection and is liable to a penalty not exceeding—
 - (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (7) Subsection (5) is a civil penalty requirement for the purposes of the **Essential Services Commission Act 2001**.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

Subdivision 5—Register of life support customers and residents

S. 48DX
inserted by
No. 28/2021
s. 23 (as
amended by
No. 41/2021
ss 107–116).

48DX Register of life support customers and residents

- (1) A gas retailer or an exempt gas seller must establish and maintain a register of life support customers and life support residents.
- (2) A gas retailer or an exempt gas seller must not remove any life support customer details relating to a registered life support customer from a register of life support customers and residents except—

- (a) at the request of the registered life support customer in accordance with an applicable Code; or
 - (b) as provided under an applicable Code.
- (2A) A gas retailer or an exempt gas seller who contravenes subsection (1) or (2) commits an offence against that subsection and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units or 12 months imprisonment; or
 - (b) in the case of a body corporate, 600 penalty units.
- (2B) Subsections (1) and (2) are civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**.
- (3) A gas retailer or an exempt gas seller may maintain the register of life support customers and residents in any form and manner determined by the gas retailer or exempt gas seller.

Note

For matters relating to contraventions of provisions that are offences and civil penalty requirements, see Subdivision 4 of Division 1 of Part 7 of the **Essential Services Commission Act 2001**.

Subdivision 6—Miscellaneous

48DY Alternative verdict for charge of knowingly or recklessly disconnecting supply of gas at premises

- (1) This section applies if, on the trial of a gas retailer or an exempt gas seller charged with an offence against section 48DF(1), 48DV(3) or 48DW(3), the jury are not satisfied that the gas retailer or exempt gas seller is guilty of the offence charged, but are satisfied that the gas retailer or exempt gas

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No. 28/2021
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No. 41/2021
ss 107–116).

seller is guilty of an offence against section 48DG, 48DV(5) or 48DW(5) (as the case requires).

- (2) The jury may acquit the gas retailer or exempt gas seller of the offence charged and find the gas retailer or exempt gas seller guilty of an offence against section 48DG, 48DV(5) or 48DW(5) (as the case requires) and the gas retailer or exempt gas seller is liable to punishment accordingly.

Pt 3 Div. 4A
(Heading and
ss 48E–48K)
inserted by
No. 60/2006
s. 5.

Division 4A—Hardship policies

S. 48E
inserted by
No. 60/2006
s. 5.

48E Definitions

In this Division—

S. 48E def. of
*amended
financial
hardship
policy*
inserted by
No. 3/2014
s. 17(c).

amended financial hardship policy means a financial hardship policy that is varied or replaced in accordance with section 48GA(3)(a) or 48GB;

S. 48E def. of
*approved
financial
hardship
policy*
repealed by
No. 3/2014
s. 17(a).

* * * * *

S. 48E def. of
*domestic
customer*
amended by
No. 3/2014
s. 17(b).

domestic customer means a person supplied with gas for use for domestic purposes;

financial hardship policy means a policy or an amended financial hardship policy approved by the Commission under section 48I.

S. 48E def. of *financial hardship policy* inserted by No. 3/2014 s. 17(c).

48F Objects

Without limiting section 18(c), the objects of this Division are—

- (a) to recognise that financial hardship may be suffered by domestic customers; and
- (b) to promote best practice in gas service delivery to facilitate continuity of gas supply to domestic customers experiencing financial hardship.

S. 48F inserted by No. 60/2006 s. 5, amended by No. 49/2015 s. 26.

48G Financial hardship policies

S. 48G inserted by No. 60/2006 s. 5.

- (1) A licence to sell gas is deemed to include a condition requiring the licensee to, within 3 months after being granted a licence—
 - (a) prepare a policy to deal with domestic customers experiencing financial hardship; and
 - (b) submit the policy for approval to the Commission under section 48I.

S. 48G(1) substituted by No. 3/2014 s. 18(1).

* * * * *

S. 48G(2) repealed by No. 3/2014 s. 18(1).

- (3) A licence to sell gas is deemed to include a condition requiring the licensee to implement a financial hardship policy by the date specified in the financial hardship policy.

S. 48G(3) amended by No. 3/2014 s. 18(2).

S. 48G(4)
amended by
No. 3/2014
s. 18(3).

- (4) A term or condition in a contract for the supply or sale of gas by a licensee to a domestic customer is void to the extent that it is inconsistent with the financial hardship policy of the licensee.

S. 48GA
inserted by
No. 3/2014
s. 19.

48GA Review of financial hardship policy at the direction of Commission

- (1) This section applies if the Commission is of the opinion that a financial hardship policy of a licensee requires review.
- (2) The Commission may direct the licensee to review the policy and, if necessary—
- (a) make variations so that the policy complies with section 48GC; or
 - (b) replace the policy with a policy that complies with section 48GC.
- (3) On receiving a direction under subsection (2), a licensee must—
- (a) vary or replace the policy in accordance with any direction of the Commission; and
 - (b) submit the amended financial hardship policy to the Commission for approval under section 48I.

S. 48GB
inserted by
No. 3/2014
s. 19.

48GB Licensee may submit variation to, or replacement of, financial hardship policy for approval

A licensee may submit to the Commission a variation to, or a replacement of, a financial hardship policy for approval under section 48I.

S. 48GC
inserted by
No. 3/2014
s. 19.

48GC Content of financial hardship policies

A policy submitted in accordance with section 48G(1), or an amended financial hardship policy submitted in accordance with section 48GA(3)(b) or 48GB, must include—

- (a) flexible payment options for payment of gas bills; and
- (b) provision for the auditing of a domestic customer's gas usage (whether wholly or partly at the expense of the licensee); and
- (c) flexible options for the purchase or supply of replacement gas appliances designed for domestic use from the licensee or a third party nominated by the licensee; and
- (d) processes for the early response by both licensees and domestic customers to gas bill payment difficulties; and
- (e) any matter that a deemed Ministerial licence condition to which the licence held by the licensee is subject requires to be included in the policy or amended financial hardship policy, as the case requires.

S. 48GC(d)
amended by
No. 37/2020
s. 18(a).

S. 48GC(e)
inserted by
No. 37/2020
s. 18(b).

48H Commission may develop guidelines

- (1) The Commission may prepare and issue guidelines in relation to the development and implementation by licensees of financial hardship policies.
- (2) The Commission may amend any guidelines issued under this section.
- (3) The Commission must publish each guideline issued under this section and each amendment of a guideline.

S. 48H
inserted by
No. 60/2006
s. 5.

48I Commission approval

S. 48I
(Heading)
substituted by
No. 3/2014
s. 20(1).

S. 48I
inserted by
No. 60/2006
s. 5.

S. 48I(1)
substituted by
No. 3/2014
s. 20(2),
amended by
No. 37/2020
s. 19(1).

- (1) Subject to this section, the Commission must consider and may, if it considers appropriate, approve—
 - (a) a policy submitted in accordance with section 48G(1); or
 - (b) an amended financial hardship policy submitted in accordance with section 48GA(3)(b) or 48GB.
- (2) In deciding whether to approve a policy submitted in accordance with section 48G(1), or an amended financial hardship policy submitted in accordance with section 48GA(3)(b) or 48GB, the Commission must have regard to—
 - (a) the essential nature of the gas supply; and
 - (b) community expectations that licensees will work with domestic customers to manage customers' present and future gas usage and associated financial obligations; and
 - (c) community expectations that the gas supply will not be disconnected solely because of a customer's inability to pay for the gas supply; and
 - (d) the principle that the gas supply to premises should only be disconnected as a last resort; and

S. 48I(2)
amended by
No. 3/2014
s. 20(3).

(e) the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.

(3) The Commission must not approve a policy submitted in accordance with section 48G(1), or an amended financial hardship policy submitted in accordance with section 48GA(3)(b) or 48GB, that does not include the provisions set out in section 48GC.

S. 48I(3)
amended by
No. 3/2014
s. 20(4).

(4) In addition, the Commission must not approve a policy submitted by a licensee in accordance with section 48G(1), or an amended financial hardship policy submitted by a licensee in accordance with section 48GA(3)(b) or 48GB, if that policy or amended policy is inconsistent with a deemed Ministerial licence condition to which the licence held by the licensee is subject.

S. 48I(4)
repealed by
No. 3/2014
s. 20(5),
new s. 48I(4)
inserted by
No. 37/2020
s. 19(2).

* * * * *

S. 48J
inserted by
No. 60/2006
s. 5,
repealed by
No. 3/2014
s. 21.

* * * * *

S. 48K
inserted by
No. 60/2006
s. 5,
amended by
No. 3/2014
s. 22,
repealed by
No. 28/2021
s. 24.

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.

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

- (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**.

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.
- (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).

- (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.
- (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(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).

S. 51(2)
amended by
No. 75/2004
s. 48(2)(c).

S. 51(3)
amended by
Nos 62/2001
s. 77(c)(ii),
75/2004
s. 48(2)(c).

(3) A decision by the Commission on matters referred under subsection (1) is binding on the parties to the agreement.

S. 51(4)
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 subsection (1) varies a term or condition of an agreement, that agreement is deemed to be so varied on that decision being made.

S. 51(5)
amended by
No. 62/2001
s. 77(c)(i).

(5) The matters which may be referred to the Commission under this section do not include—

- (a) any matters relating to the class of domestic customers specified by the Secretary under section 49; or
- (b) any matters determined by the Secretary under section 49(1)(a).

Pt 3 Div. 6
(Heading and
ss 51A-51K)
inserted by
No. 55/2007
s. 14.

Division 6—Supplier of last resort

S. 51A
inserted by
No. 55/2007
s. 14.

51A Definitions

In this Division—

defaulting licensee has the meaning given by section 51D(5);

gas distribution services means services provided by means of a distribution pipeline;

insolvency official means an administrator, liquidator, provisional liquidator, receiver or receiver and manager;

MIRN means the unique identifier for a gas metering installation allocated and registered under the Retail Market Procedures within

S. 51A def. of
MIRN
substituted by
No. 57/2009
s. 18.

the meaning of the National Gas (Victoria) Law;

network tariff code means the descriptor assigned by a gas distribution company to its charges for gas distribution services or charges for classes of gas distribution services that it supplies;

related relevant customer information has the meaning given by section 51B;

relevant customer means a person, or a member of a class of persons, to whom an Order under section 51C(1) applies;

relevant customer information means the following information—

- (a) the name and contact details of a relevant customer; and
- (b) the address of a relevant customer for gas billing purposes; and
- (c) the address of a relevant customer at which the relevant customer is supplied gas if that address is different from the address for gas billing purposes; and
- (d) the MIRN for the gas metering installation at the supply point at which a relevant customer is supplied gas; and
- (e) the network tariff code or network tariff codes relating to the gas distribution services supplied by a gas distribution company to enable a relevant customer to be supplied gas; and
- (f) details of a relevant customer's average monthly gas consumption at premises where the relevant customer is supplied gas, calculated on the basis of that customer's monthly gas consumption at

the premises in the 12 months immediately prior to the occurrence of the trigger event; and

- (g) information evidencing whether a relevant customer is an eligible beneficiary (within the meaning of the **State Concessions Act 2004**); and
- (h) details of any continuous supply arrangements for a relevant customer who requires that kind of supply because of a medical condition;

relevant customer information notice means a notice given under section 51G(2) or (3);

specified relevant customer information means relevant customer information specified in a notice under section 51G(2) or (3);

supplier of last resort means a licensee who—

- (a) holds a licence the conditions of which are subject to a requirement of the kind specified in section 51D(1); and
- (b) by operation of section 51D(5), is obliged to supply or sell gas to a relevant customer in accordance with that requirement;

trigger event means an event specified in section 51D(5)(a) or (b).

S. 51B
inserted by
No. 55/2007
s. 14.

51B Meaning of related relevant customer information

Related relevant customer information is information relating to a relevant customer of a defaulting licensee (that is not relevant customer information) that the Commission considers a supplier of last resort must have in order for that supplier to perform its obligation under section 51D(5) in relation to that relevant customer.

51C Relevant customers for the purposes of this Division

S. 51C
inserted by
No. 55/2007
s. 14.

- (1) 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 Division, a relevant customer or class of relevant customers.
- (2) An Order under subsection (1) 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.
- (3) An Order under subsection (1) may confer powers and functions on, and leave any matter to be decided by, the Commission.

51D Licence condition—supplier of last resort

S. 51D
inserted by
No. 55/2007
s. 14.

- (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 to in subsection (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).
- (2) In approving the tariffs and terms and conditions of a requirement referred to in subsection (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.
- (3) A requirement referred to in subsection (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 subsection (1); or
 - (c) if to do so would be inconsistent with the licensee's obligations under the National Gas (Victoria) Law.
- (4) If the conditions to which a licence of a licensee is subject include a requirement referred to in subsection (1), the licensee is deemed to be authorised to supply or sell gas to the extent necessary to comply with the requirement.
- (5) The obligation of a licensee to supply or sell gas to a relevant customer to whom gas is supplied or sold under another licence (the ***defaulting licensee***) in accordance with the requirement referred to in subsection (1) commences when—
- (a) the defaulting licensee's licence is revoked;
or

S. 51D(3)(c)
amended by
No. 30/2008
s. 41(5).

- (b) the defaulting licensee's registration as a Registered participant in the capacity of a retailer is revoked under the National Gas Rules after a notice of suspension was issued to the licensee by AEMO under those Rules—

S. 51D(5)(b)
substituted by
No. 23/2009
s. 27.

whichever first occurs.

- (6) The obligation of the supplier of last resort ends—
- (a) 3 months after its commencement; or
 - (b) when the customer advises the supplier of last resort 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 supplier of last resort for the supply or sale of gas—

whichever first occurs.

- (7) The Commission must notify the supplier of last resort, as soon as practicable, of the commencement of the supplier of last resort's obligation under subsection (5).

51E Tariffs, terms and conditions for gas supply following trigger event

S. 51E
inserted by
No. 55/2007
s. 14.

- (1) This section applies if a trigger event occurs.
- (2) The tariffs and terms and conditions upon which a supplier of last resort will supply or sell gas to relevant customers of a defaulting licensee are—
 - (a) the tariffs and terms and conditions approved by the Commission after proposed tariffs, terms and conditions have been submitted by that supplier for approval; or

(b) if—

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

- (3) The supplier of last resort, 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.
- (4) The tariffs, terms and conditions of which notice has been published in accordance with subsection (3) are binding on the supplier of last resort and the relevant customers to which they apply and, when the supplier of last resort is acting in accordance with those tariffs, terms and conditions, they have effect despite any agreement or instrument to the contrary relating to the distribution or supply, or sale of gas to those relevant customers.
- (5) A supplier of last resort and a relevant customer to whom the supplier of last resort has an obligation under section 51D(5) to supply or sell gas are deemed to have entered into a contract on the relevant tariffs, terms and conditions published under subsection (3).

- (6) The terms and conditions of a requirement referred to in section 51D(1) may include a condition setting out circumstances in which a supplier of last resort must continue to supply or sell gas to a relevant customer to whom the supplier of last resort supplies or sells gas under an obligation under section 51D(5) after that obligation comes to an end in accordance with section 51D(6)(a).
- (7) A condition referred to in subsection (6) 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 supplier of last resort.

51F Variation of tariffs, terms and conditions for gas supply by supplier of last resort

S. 51F
inserted by
No. 55/2007
s. 14.

- (1) Terms and conditions approved or specified by the Commission under section 51E may be varied from time to time.
- (2) Section 51E applies to a variation under this section in the same manner as it applies to the approval or specification of a term or condition.
- (3) If a variation is approved or specified under this section, section 51E(4) and (5) apply to the terms and conditions as so varied.

51G Supply of specified relevant customer information after trigger event

S. 51G
inserted by
No. 55/2007
s. 14.

- (1) This section applies if a trigger event occurs.
- (2) The Commission, by written notice, may request a defaulting licensee, or if an insolvency official has been appointed for the defaulting licensee, the insolvency official, for—
 - (a) relevant customer information; and
 - (b) related relevant customer information—specified in the notice.

- (3) A supplier of last resort, by written notice, may request—
- (a) a defaulting licensee; or
 - (b) if an insolvency official has been appointed for the defaulting licensee, the insolvency official—
- for relevant customer information specified in the notice.
- (4) The Commission or the supplier of last resort is not entitled to request information under subsection (2) or (3) in respect of a relevant customer after the obligation of the supplier of last resort specified in section 51D(5) ends in accordance with section 51D(6) in respect of that customer.
- (5) A notice under subsection (2) or (3) must—
- (a) state the name of the supplier of last resort and the contact details of a representative of the supplier; and
 - (b) specify the day by when the specified relevant customer information must be given to the Commission or supplier of last resort (as the case requires), being a day that is not less than 3 days after the date of the notice; and
 - (c) set out the details of the trigger event; and
 - (d) specify the manner in which the specified relevant customer information must be given; and
 - (e) state that this notice is given under this section; and
 - (f) include a statement to the effect that if section 51H(1) is contravened, proceedings may be brought under section 51J or the

Essential Services Commission Act 2001 in respect of that contravention.

Note

A proceeding may be brought under the Essential Services Commission Act 2001 in respect of a defaulting licensee who is in breach of the licence condition specified in section 51H.

51H Compliance with a relevant customer information notice

S. 51H
inserted by
No. 55/2007
s. 14.

- (1) A defaulting licensee, or an insolvency official appointed for a defaulting licensee, must comply with a relevant customer information notice that is given to them if the defaulting licensee or insolvency official has the specified relevant customer information in their possession, custody or control.
- (2) Without limiting section 28, subsection (1) is deemed to be a licence condition of a defaulting licensee whose licence has not been revoked.

51I Commission to give specified relevant customer information it is given to supplier of last resort

S. 51I
inserted by
No. 55/2007
s. 14.

On being given specified relevant customer information, the Commission must give that information to the supplier of last resort that is obliged under section 51D(5) to supply or sell gas to the relevant customer to which that information relates.

51J Proceedings for contravention of requirement to comply with relevant customer information notice

S. 51J
inserted by
No. 55/2007
s. 14.

- (1) This section applies if—
 - (a) the Commission or a supplier of last resort gives a relevant customer information notice to a defaulting licensee or an insolvency official appointed for a defaulting licensee; and

- (b) the defaulting licensee or insolvency official does not comply with any aspect of the notice.
- (2) The Supreme Court, on an application by the Commission or the supplier of last resort that gave the relevant customer information notice may, by order, declare whether or not the defaulting licensee or insolvency official to which the application relates has contravened section 51H(1).
- (3) If the order declares the person to have contravened section 51H(1), the order may include a requirement that the defaulting licensee or insolvency official take such action, or adopt such practice, as the Supreme Court requires for remedying the contravention or preventing a recurrence of the contravention.

S. 51K
inserted by
No. 55/2007
s. 14,
amended by
No. 51/2012
s. 7.

51K Corporations Act displacement

This Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 2D and Chapter 5 of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Division 7—Trial waivers

Pt 3 Div. 7
(Headings
and ss 52–69)
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

Subdivision 1—Interpretation

52 Definitions

In this Division—

innovative trial principles—see section 53;

proponent—see section 55(1);

supply of, or demand for, gas, in relation to a trial project, includes the provision of services by means of a distribution pipeline or the sale of gas by retail;

trial project means a project that tests an approach in relation to the supply of, or demand for, gas;

trial project guidelines means the guidelines prepared and issued under section 64;

trial waiver information means—

- (a) information considered by the Commission in making a determination under section 55 or any other decision under this Division; or
- (b) information relating to the operation and administration of a trial waiver; or
- (c) information relating to a contravention by a person granted a trial waiver with conditions to which that trial waiver is subject, including any one or more of the following kinds of information—

New s. 52
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

- (i) information relating to any proceeding under the **Essential Services Commission Act 2001** in respect of such a contravention;
- (ii) information relating to the service of any provisional or final order under section 53 of the **Essential Services Commission Act 2001** in respect of such a contravention;
- (iii) information relating to the service of any notice under section 54A or 54G of the **Essential Services Commission Act 2001** in respect of such a contravention;

trial waiver order means an Order made under section 54.

53 Innovative trial principles

The following principles (the *innovative trial principles*) must be had regard to in determining whether a trial project is genuinely innovative in connection with granting a trial waiver, or continues to be genuinely innovative in connection with extending the period for which the trial waiver applying to the trial project has effect—

- (a) whether the trial project is focused, or will continue to focus, on developing new or materially improved approaches to the use or supply of, or demand for, gas;
- (b) whether the trial project is likely to contribute to the achievement of the objectives of the Commission under this Act and the **Essential Services Commission Act 2001**;

New s. 53
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

- (c) whether the trial project is able to demonstrate, or will continue to demonstrate, a reasonable prospect of giving rise to materially improved services and outcomes for customers who purchase gas;
- (d) whether the trial project maintains, or will continue to maintain, adequate customer protections for customers who purchase gas, including whether the trial project may involve risks to such customers and, if so, how those risks might be mitigated;
- (e) whether the trial project is unable to proceed, or continue to proceed, because of this Act or any instrument made under this Act;
- (f) any other principle specified under a trial waiver order.

Subdivision 2—Trial waiver orders

54 Order in Council in relation to trial waivers

- (1) The Governor in Council, by Order published in the Government Gazette, may do any one or more of the following—
 - (a) specify matters the Commission must have regard to when determining whether to—
 - (i) grant a trial waiver;
 - (ii) extend the period of a trial waiver;
 - (iii) vary a trial waiver or a condition to which a trial waiver is subject;
 - (iv) revoke a trial waiver;
 - (b) specify principles for the purposes of section 53;
 - (c) specify a condition or class of condition that the Commission must or may make a trial waiver be subject to;

New s. 54
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

- (d) specify matters that the Commission must provide for in the trial project guidelines;
 - (e) specify the process for the making or amendment of trial project guidelines by the Commission;
 - (f) direct the Commission to make amendments to any instrument made by the Commission to give effect to any matter specified in the Order;
 - (g) confer powers and functions on, and leave any matter to be decided by, the Commission.
- (2) An Order under this section may—
- (a) be of general or limited application; and
 - (b) differ according to differences in time, place and circumstances.

Subdivision 3—Grant of trial waivers

55 Trial waiver

- (1) Subject to this section, the Commission may, on application by a person or body that proposes to undertake a trial project (a *proponent*), make a determination to grant the proponent an exemption (a *trial waiver*) under which the proponent is exempted from the requirement to obtain a licence in respect of the relevant activity specified in the trial waiver.
- (2) In making a determination to grant a trial waiver, the Commission must be satisfied that the trial project that is the subject of the application is genuinely innovative, and for that purpose, the Commission must have regard to the innovative trial principles.

New s. 55
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

- (3) In addition, in making a determination to grant a trial waiver, the Commission—
 - (a) must have regard to any matter specified under a trial waiver order as a matter that the Commission must have regard to in making a determination to grant a trial waiver; and
 - (b) may have regard to any matter that the Commission considers relevant, including any matter specified under the trial project guidelines as a matter that the Commission may have regard to in making a determination to grant a trial waiver.
- (4) The Commission must not grant a trial waiver if the Commission reasonably considers that the trial project is unlikely to be carried out.
- (5) Without limiting subsection (4), the Commission may refuse to consider an application. In doing so, the Commission may have regard to any matter that the Commission considers relevant, including any matter specified under the trial project guidelines as a matter that the Commission may have regard to in refusing an application.
- (6) An application for a trial waiver must be made in accordance with the trial project guidelines.
- (7) A trial waiver granted under this section must be in writing.
- (8) To avoid doubt, a proponent may be—
 - (a) a licensee; or
 - (b) a person who is, because of an Order under section 24, exempt from the requirement to obtain a licence in respect of—
 - (i) the provision of services by means of a distribution pipeline; or
 - (ii) the sale of gas by retail.

New s. 56
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

56 Conditions of trial waiver

- (1) Subject to this section, a trial waiver granted under section 55 is subject to any conditions that the Commission considers appropriate.
- (2) If a trial waiver order specifies a condition or class of condition that the Commission must make a trial waiver be subject to, the Commission must grant the trial waiver subject to the condition or condition of the class specified in the trial waiver order.
- (3) For the purposes of subsection (1), the kinds of conditions that the Commission may consider appropriate include conditions that a trial waiver order specifies as conditions that the trial waiver may be subject to.

New s. 57
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

57 Consultation on trial waiver

Before granting a trial waiver, the Commission must undertake consultation (including with the proponent) in accordance with the trial project guidelines.

New s. 58
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

58 Publication of trial waiver

As soon as practicable after a trial waiver is made, a copy of the trial waiver must be published on the Commission's internet site.

New s. 59
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

59 Duration of trial waiver

Subject to this Division, a trial waiver has effect from the day specified in the trial waiver and for the period (not exceeding 5 years) specified in the trial waiver.

Subdivision 4—Extension of trial waivers

60 Extension of trial waiver

- (1) The Commission, in accordance with the trial project guidelines, may extend the period for which a trial waiver has effect by a period determined by the Commission (which cannot exceed one year).
- (2) In determining whether to grant an extension under subsection (1), the Commission must be satisfied that the trial project to which the trial waiver applies continues to be genuinely innovative, and for that purpose, the Commission must have regard to the innovative trial principles.
- (3) In addition, in determining whether to grant an extension under subsection (1), the Commission—
 - (a) must have regard to any matter specified under a trial waiver order as a matter that the Commission must have regard to in determining whether to extend the period of the trial waiver; and
 - (b) may have regard to any matter that the Commission considers relevant, including any matter specified under the trial project guidelines as a matter that the Commission may have regard to in determining whether to extend the period for which a trial waiver has effect.
- (4) An extension under subsection (1) must be—
 - (a) in writing; and
 - (b) published on the Commission's internet site.
- (5) An extension under subsection (1) may only be granted once in respect of a trial waiver granted under this Division.

New s. 60
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

Subdivision 5—Variation and revocation of trial waivers

New s. 61
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

61 Variation of trial waiver, or conditions of trial waiver, by Commission

- (1) Subject to this section, the Commission may, on its own initiative, vary a trial waiver, or a condition to which a trial waiver is subject—
 - (a) if the Commission is of the view that the person granted the trial waiver is contravening or has contravened a condition of the trial waiver; or
 - (b) to ensure that the conditions to which the trial waiver is subject are consistent with a condition or condition of a class specified under a trial waiver order as a condition that the trial waiver must or may be subject to; or
 - (c) if the Commission considers it appropriate to do so.
- (2) The Commission must not vary a trial waiver, or a condition to which the trial waiver is subject, under subsection (1)(a) unless—
 - (a) the Commission serves on the person notice of its intention to do so; and
 - (b) the Commission, in the notice served under paragraph (a), specifies the action the person granted the trial waiver is required to take—
 - (i) to rectify the contravention of the trial waiver or the trial waiver condition; and
 - (ii) to prevent any future contravention of the trial waiver or the trial waiver condition; and

- (c) the Commission has given the person an opportunity to make representations on the matter.
- (3) The Commission must not vary a trial waiver, or a condition to which the trial waiver is subject, under subsection (1)(b) or (c) unless—
- (a) the Commission serves on the person notice of its intention to do so; and
 - (b) the Commission has given the person an opportunity to make representations on the matter; and
 - (c) the Commission is satisfied that the variation is necessary having regard to the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**.
- (4) The Commission must not vary a trial waiver, or a condition to which the trial waiver is subject, so that the trial waiver or the conditions to which the trial waiver is subject are inconsistent with a condition or condition of a class specified under a trial waiver order as a condition or class of condition that the trial waiver must be subject to.
- (5) In determining whether to vary a trial waiver, or a condition to which a trial waiver is subject, under subsection (1), the Commission—
- (a) must have regard to any matter specified under a trial waiver order as a matter that the Commission must have regard to in determining whether to vary—
 - (i) a trial waiver; or
 - (ii) a condition to which a trial waiver is subject.

- (b) may have regard to any matter that the Commission considers relevant, including any matter specified under the trial project guidelines as a matter that the Commission may have regard to in determining whether to vary—
 - (i) a trial waiver; or
 - (ii) a condition to which a trial waiver is subject.

New s. 62
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

62 Variation of trial waiver, or conditions of trial waiver, by agreement

The Commission may, by agreement with a person granted a trial waiver, vary the trial waiver or a condition to which the trial waiver is subject.

New s. 63
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

63 Revocation of trial waiver

- (1) The Commission may, in accordance with the trial project guidelines, revoke a trial waiver.
- (2) In determining whether to revoke a trial waiver, the Commission—
 - (a) must have regard to any matter specified under a trial waiver order as a matter that the Commission must have regard to in determining whether to revoke a trial waiver; and
 - (b) may have regard to any matter that the Commission considers relevant, including any matter specified under the trial project guidelines as a matter that the Commission may have regard to in determining whether to revoke a trial waiver.

Subdivision 5A—Compliance

63A Compliance with conditions of trial waiver

- (1) A person granted a trial waiver must comply with any conditions to which the trial waiver is subject.
- (2) Subsection (1) is a civil penalty requirement for the purposes of the **Essential Services Commission Act 2001**.

S. 63A
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

Subdivision 6—Trial project guidelines

64 Preparation and issue of trial project guidelines

- (1) The Commission must prepare and issue guidelines for the purposes of this Division within one month after the commencement of this section.
- (2) Without limiting subsection (1), guidelines developed and issued under that subsection must specify the following—
 - (a) how an application under section 55 must be made, including the steps proponents under that section must take to identify confidential information submitted as part of an application;
 - (b) the approach that the Commission proposes to take in performing its functions and exercising its powers under section 55, including the timeline within which the Commission will aim to make a determination under section 55;
 - (c) the process the Commission proposes to follow when determining whether to refuse to consider a trial waiver application under section 55;
 - (d) the consultation process that the Commission must undertake under section 57;

New s. 64
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

- (e) the process the Commission proposes to follow for the purpose of determining whether to grant an extension to the period of a trial waiver under section 60;
 - (f) the process the Commission proposes to follow for the purpose of determining whether to revoke a trial waiver under section 63;
 - (g) the steps persons granted trial waivers must take to identify confidential information submitted to the Commission as part of a trial project;
 - (h) any matter that a trial waiver order requires to be specified in the guidelines.
- (3) In addition, without limiting subsection (1), guidelines developed and issued under that subsection may specify any other matter that the Commission considers necessary—
- (a) to be had regard to for the purposes of section 55(3)(b) or (5), 60(3)(b), 61(5)(b) or 63(2)(b); or
 - (b) to facilitate trial projects.

New s. 65
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

65 Amendment of trial project guidelines

The Commission may, in accordance with any procedure specified by the Commission, amend any trial project guidelines issued under section 64.

New s. 66
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

66 Consideration of AER trial project guidelines

- (1) In preparing and issuing trial project guidelines under section 64, or amending trial project guidelines under section 65, the Commission must have regard to the Trial Projects Guidelines (as defined in Chapter 10 of the National Electricity Rules).

(2) In this section—

National Electricity Rules has the same meaning as in the **Electricity Industry Act 2000**.

Subdivision 7—Information sharing with the AER

67 Information disclosure

Subject to Part 4 of the **Essential Services Commission Act 2001**, the Commission may disclose to the AER any trial waiver information in the Commission's possession or control.

New s. 67 inserted by No. 33/2021 s. 15 (as amended by No. 41/2021 s. 92).

Note

Under section 61(3)(a) of the **Essential Services Commission Act 2001**, a person may disclose confidential or commercially-sensitive information obtained during the exercise of a power or the performance of a function under, or in connection with, that Act or relevant legislation if the disclosure or use is made in the exercise of a power or the performance of a function under, or in connection with, this Act or any relevant legislation. This Act is relevant legislation—see section 17.

Subdivision 8—Miscellaneous

68 Register of trial waivers

- (1) The Commission must establish and maintain a register of trial waivers (the *register*).
- (2) The Commission must enter the following details in the register in respect of every trial waiver—
 - (a) the name of the person granted the trial waiver;
 - (b) a description of the activity that will be undertaken under the trial waiver;
 - (c) the date of expiry of the trial waiver;
 - (d) information about where a copy of a trial waiver may be accessed.
- (3) The Commission may maintain the register in any form or manner it considers appropriate.

New s. 68 inserted by No. 33/2021 s. 15 (as amended by No. 41/2021 s. 92).

- (4) The Commission must make the register publicly available, free of charge, from the Commission's internet site.

New s. 69
inserted by
No. 33/2021
s. 15 (as
amended by
No. 41/2021
s. 92).

69 Trial waiver not personal property

For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a trial waiver is declared not to be personal property.

Part 4—Gas market provisions

* * * * *

Pt 4 Div. 1
(Heading and
ss 52–59)
amended by
Nos 39/2005
s. 56(2),
35/2007 ss 7,
8, 55/2007
ss 24–27, 33,
repealed by
No. 23/2009
s. 29.

Division 2—Facilitation of retail competition

* * * * *

S. 60
amended by
No. 59/2008
s. 30(2),
repealed by
No. 23/2009
s. 29.

* * * * *

Ss 61–64
amended by
No. 62/2001
s. 77(c)(ii),
repealed by
No. 23/2009
s. 29.

* * * * *

S. 65
amended by
Nos 85/2001
s. 13, 62/2001
ss 77(c)(i),
79(1), 75/2004
s. 49, 39/2005
s. 56(3),
repealed by
No. 23/2009
s. 29.

* * * * *

Ss 66, 67
amended by
No. 62/2001
s. 77(c)(ii),
repealed by
No. 23/2009
s. 29.

**67A Commission directions to AEMO in relation to
supplier of last resort trigger events**

S. 67A
(Heading)
amended by
No. 23/2009
s. 28(1).

S. 67A
inserted by
No. 55/2007
s. 28.

S. 67A(1)
substituted by
No. 23/2009
s. 28(2).

(1) The Commission, by written notice, may direct AEMO to do a thing specified in the notice so that a relevant customer in the retail gas market regulated under the Retail Market Procedures can be supplied gas by a supplier of last resort on the occurrence of a trigger event.

S. 67A(2)
substituted by
No. 23/2009
s. 28(2).

(2) Despite anything to the contrary in this Act, the Retail Market Procedures or the National Gas Rules, AEMO must comply with a notice under subsection (1).

S. 67A(3)
def. of
*National Gas
Rules*
inserted by
No. 23/2009
s. 28(3)(a).

(3) In this section—
National Gas Rules has the same meaning as in the National Gas (Victoria) Law;

S. 67A(3)
def. of
*retail gas
market*
inserted by
No. 23/2009
s. 28(3)(a).

relevant customer has the same meaning as in section 51A;

retail gas market has the same meaning as in the National Gas (Victoria) Law;

S. 67A(3)
def. of
*Retail Market
Procedures*
inserted by
No. 23/2009
s. 28(3)(a).

Retail Market Procedures has the same meaning as in the National Gas (Victoria) Law;

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supplier of last resort has the same meaning as in section 51A;

trigger event has the same meaning as in section 51A;

| | | | | | |
|---|---|---|---|---|--|
| * | * | * | * | * | S. 67A(3) def. of <i>VENCorp</i> <i>retail gas</i> <i>market rules</i> repealed by No. 23/2009 s. 28(3)(b). |
| * | * | * | * | * | S. 68 amended by Nos 62/2001 s. 77(c)(ii), 85/2001 ss 14, 16, 11/2002 s. 3(Sch. 1 item 28.1), 25/2004 s. 16, 75/2004 s. 50, 55/2007 s. 22, expired by force of No. 31/2001 s. 68(6). |
| * | * | * | * | * | Pt 4 Div. 3 (Heading and s. 69) amended by Nos 62/2001 s. 77(c)(ii), 75/2004 s. 51, repealed by No. 23/2009 s. 29. |
| * | * | * | * | * | 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. ² |

Gas Industry Act 2001
No. 31 of 2001

Pt 6
(Headings
and ss
114–139)
amended by
Nos 44/2001
s. 3(Sch.
items 57.1–
57.5), 62/2001
s. 77(c)(d),
9/2002 s. 3
(Sch. item 7),
24/2002 s. 22,
40/2003 s. 8,
25/2004 s. 18,
75/2004
ss 52–57,
91/2004 s. 25,
55/2007 s. 31,
21/2012 s. 239
(Sch. 6 items
20.4–20.6),
repealed by
No. 11/2013
s. 10.

* * * * *

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 subsection (1) is in force in respect of a pipeline owned by a gas company—
 - (a) any licence held by the gas company under the **Pipelines Act 2005** for the pipeline is 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 2005** in relation to the pipeline.
- (3) Nothing in subsection (2) affects the rights of the parties to an agreement under subsection (1).

S. 141(2)(a)
substituted by
No. 61/2005
s. 217(2)(a).

S. 141(2)(b)
amended by
No. 61/2005
s. 217(2)(b).

S. 141(4)
amended by
No. 61/2005
s. 217(2)(b).

(4) If an agreement is entered into under subsection (1), the parties to the agreement must ensure that a copy of the agreement is given to the Minister administering the **Pipelines Act 2005**.

S. 141(5)
substituted by
No. 61/2005
s. 217(3).

(5) For the purposes of the **Pipelines Act 2005**, a gas company on which rights and obligations are conferred under this section is deemed to be a licensee.

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 subsection (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.

- (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

- (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."

- (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 subdivisions

- (1) If a proposal for subdivision 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 provision of a Code of Practice about the entry on land by a gas company.

S. 146(2)
amended by
Nos 62/2001
s. 77(c)(ii)(d),
41/2021 s. 67.

147 Easements over lands held by Crown licensees or lessees

S. 147(1)
amended by
No. 49/2015
s. 27.

(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 Environment, Land, Water and Planning.

S. 147(2)
amended by
No. 49/2015
s. 27.

(2) If an easement referred to in subsection (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 Environment, Land, Water and Planning 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

147A Definitions

S. 147A
inserted by
No. 9/2006
s. 158(1),
substituted by
No. 22/2013
s. 57.

In this Division—

S. 147A def. of
rail
infrastructure
substituted by
No. 41/2019
s. 117(Sch. 1
item 6.1(a)).

rail infrastructure has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

rail transport operator has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

S. 147A def. of *rail transport operator* substituted by No. 41/2019 s. 117(Sch. 1 item 6.1(b)).

railway operations has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

S. 147A def. of *railway operations* substituted by No. 41/2019 s. 117(Sch. 1 item 6.1(c)).

rolling stock has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria).

S. 147A def. of *rolling stock* substituted by No. 41/2019 s. 117(Sch. 1 item 6.1(d)).

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
 - (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 subsection (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 subsection (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.
- (4) In the exercise of the powers under subsection (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 subsection (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 subsection (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.
- (8) This section applies subject to any provision of a Code of Practice about the entry on land by a gas distribution company or gas transmission company..

S. 148(8)
amended by
Nos 62/2001
s. 77(c)(ii)(d),
41/2021 s. 68.

149 Power to open and break up roads etc.

- (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—

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

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- (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.

S. 149(4)
amended by
No. 61/2005
s. 217(4).

- (4) Nothing in this section affects the operation of the **Pipelines Act 2005**.

S. 149(5)
amended by
No. 61/2005
s. 217(4).

- (5) If this section is inconsistent with a provision of the **Pipelines Act 2005**, 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 provision of a Code of Practice about the entry on land by a gas distribution company or gas transmission company..
- (8) A provision of a Code of Practice about the entry on land by a gas distribution company or a gas transmission company has no effect to the extent that it—
- (a) confers, or purports to confer, any right or power which is inconsistent with the **Road Management Act 2004**; or
 - (b) imposes, or purports to impose, any obligation or duty which is inconsistent with the **Road Management Act 2004**.

S. 149(7)
amended by
Nos 62/2001
s. 77(c)(ii)(d),
41/2021
s. 69(1).

S. 149(8)
substituted by
Nos 12/2004
s. 172(4),
41/2021
s. 69(2).

* * * * *

S. 149(9)
inserted by
No. 12/2004
s. 172(4),
repealed by
No. 41/2021
s. 69(2).

149A Safety duties in relation to works on or in immediate vicinity of rail infrastructure or rolling stock

S. 149A
inserted by
No. 9/2006
s. 158(2).

- (1) A gas distribution company or gas transmission company must, when exercising a power under this Division on or in the immediate vicinity of rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that they safely exercise the power.
- Penalty: 9000 penalty units.
- (2) A person authorised in writing by a gas distribution company or gas transmission company under section 148(7) or 149(6) to exercise a power of the gas distribution company or gas transmission company under those sections must, when exercising the power on or in the

immediate vicinity of rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that they safely exercise the power.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

- (3) An offence against subsection (1) or (2) is an indictable offence.
- (4) Nothing in subsection (1) or (2) is to be construed as—
- (a) conferring a right of action in a civil proceeding in respect of a contravention of those subsections; or
 - (b) conferring a defence to an action in a civil proceeding or otherwise affecting a right of action in a civil proceeding.

S. 149A(4)
inserted by
No. 41/2019
s. 117(Sch. 1
item 6.2).

Note to
s. 149A
amended by
No. 68/2009
s. 97(Sch.
item 63.1).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

S. 149B
inserted by
No. 9/2006
s. 158(2).

149B Notification of owners or occupiers of land on which there is rail infrastructure or rolling stock

A gas distribution company or gas transmission company must, before exercising a power under this Division on land on which there is rail infrastructure or rolling stock, notify the owner or occupier of that land of the intended exercise of the power if the exercise of that power will threaten, or is likely to threaten, the safety of that rail infrastructure or rolling stock.

Penalty: 300 penalty units.

149C Notification of gas distribution and transmission companies before railway operations carried out

S. 149C
(Heading)
amended by
No. 22/2013
s. 58(1).

S. 149C
inserted by
No. 9/2006
s. 158(2).

- (1) A rail transport operator must, before carrying out railway operations that will threaten, or are likely to threaten, the safety of a gas distribution company's or gas transmission company's works, or the safe provision by a gas distribution company or gas transmission company of gas or other like services, notify that gas distribution company or gas transmission company of the rail transport operator's intention to carry out those operations.

S. 149C(1)
amended by
No. 22/2013
s. 58(2).

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

- (2) In this section—

works includes pipes, equipment, devices, structures, pipelines or undertakings.

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 subsection (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
- (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 subsection (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 subsection (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.

Gas Industry Act 2001
No. 31 of 2001

Pt 8
(Headings
and
ss 158–205)
amended by
Nos 44/2001
s. 3(Sch.
items 57.6,
57.7), 62/2001
s. 77(c)(ii),
85/2001 s. 15,
11/2002
s. 3(Sch. 1
item 28.2),
40/2003
ss 9–11,
25/2004 s. 19,
108/2004
s. 117(1)
(Sch. 3
item 87),
33/2005 s. 5,
61/2005
s. 217(5),
80/2006
s. 26(Sch.
item 45),
repealed by
No. 23/2009
s. 30.

* * * * *

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 subsection (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;

- (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;

- (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 subsection (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.

- (4) A direction (including a direction under subsection (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 subsection (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 subsection (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 sole arbitrator under the **Commercial Arbitration Act 2011**.

S. 207(9)
amended by
No. 50/2011
s. 46(Sch.
item 8).

- (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

S. 208(4)
amended by
No. 68/2009
s. 97(Sch.
item 63.2).

- (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 accused to prove that at the time of the commission of the offence, the accused—
- (a) did not know; and
 - (b) could not reasonably have known—
- of the direction, prohibition or requisition.
- (5) A person must not contravene subsection (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 subsection (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 subsection (8) is deemed to continue so long as any requirement specified in the direction, prohibition or

requisition, remains undone, whether or not the period has elapsed.

- (8) If, under subsection (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 subsection (1) is an indictable offence.

- (3) A person may be proceeded against and convicted under a provision in accordance with subsection (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 subsection (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.

213A Corporations Act displacement

This Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 2D and Chapter 5 of that Act.

S. 213A
inserted by
No. 51/2012
s. 8.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

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 or by affirmation, 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.

S. 216(2)
amended by
No. 6/2018
s. 68(Sch. 2
item 60).

- (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 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.
- (2) The inspector or a person assisting the inspector need not comply with subsection (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—

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—

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

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

Pt 9A
(Heading and
new ss 223–
225)
inserted by
No. 41/2021
s. 70.

Part 9A—Compliance and enforcement reporting

New s. 223
inserted by
No. 41/2021
s. 70.

223 Compliance and enforcement report—gas retailers

- (1) The Commission must, as soon as practicable after 30 June (but on or before 30 November) in each year publish on its Internet site a report (a *compliance and enforcement report*) on the matters referred to in subsection (2) in respect of the period of 12 months ending with 30 June in that year.
- (2) A compliance and enforcement report must include the following (in relation to the period to which the report relates)—
 - (a) a report on all enforcement action taken by the Commission in respect of each gas retailer;
 - (b) a report on all injunctions granted under Division 5 of Part 7 of the **Essential Services Commission Act 2001** (other than an injunction granted under section 54ZJ of that Act);
 - (c) a report on the extent to which each gas retailer has complied, or failed to comply, with its obligations under its licence conditions and the provisions of any Code of Practice;
 - (d) a report on the performance of each gas retailer measured against the performance indicators;
 - (e) any other matters the Commission considers appropriate.

(3) The Commission, after each quarter, must update the report in respect of that quarter, and must do so before the end of the next quarter.

(4) In this section—

enforcement action means any of the following—

- (a) the service of a compliance notice within the meaning of section 3 of the **Essential Services Commission Act 2001**;
- (b) the making of a contravention order within the meaning of section 3 of the **Essential Services Commission Act 2001**;
- (c) the acceptance of an enforceable undertaking within the meaning of section 3 of the **Essential Services Commission Act 2001**;
- (d) the making of an order under section 54ZF of the **Essential Services Commission Act 2001**;
- (e) the payment of a penalty notice within the meaning of section 3 of the **Essential Services Commission Act 2001**;
- (f) the variation of a licence condition by the Commission under section 38A;
- (g) any other prescribed action;

performance indicators means the indicators for the performance of a gas retailer determined by the Commission under section 224;

quarter means the period of 3 months ending on 30 September, 31 December, 31 March or 30 June in any year.

New s. 224
 inserted by
 No. 41/2021
 s. 70.

224 Performance indicators for compliance and enforcement reports

- (1) For the purposes of a compliance and enforcement report under section 223, the Commission must determine—
- (a) indicators for the performance of a gas retailer in relation to—
 - (i) disconnections and reconnections of the supply of gas to the premises of customers; and
 - (ii) the extent to which the gas retailer has complied with the deemed licence condition in section 48A; and
 - (iii) the number of penalty notices (if any) in relation to wrongful disconnections paid by the gas retailer under Division 2 of Part 7 of the **Essential Services Commission Act 2001**; and
 - (b) any other indicators for the performance of a gas retailer the Commission determines.

S. 224(1)(a)(iii)
 substituted by
 No. 28/2021
 s. 24A(1) (as
 amended by
 No. 41/2021
 s. 117).

(2) In this section—

S. 224(2)
 def. of *Energy Retail Code*
 repealed by
 No. 28/2021
 s. 24A(2)(b)
 (as
 amended by
 No. 41/2021
 s. 117).

* * * * *

S. 224(2)
 def. of *specified penalty notice*
 repealed by
 No. 28/2021
 s. 24A(2)(b)
 (as
 amended by
 No. 41/2021
 s. 117).

* * * * *

wrongful disconnection means the disconnection of the supply of gas to the premises of a customer arranged by a retailer other than in accordance with Subdivision 3 of Division 4AA of Part 3;

S. 224(2)
def. of
*wrongful
disconnection*
inserted by
No. 28/2021
s. 24A(2)(a)
(as
amended by
No. 41/2021
s. 117).

225 Reporting of systemic issues referred to Commission

New s. 225
inserted by
No. 41/2021
s. 70.

- (1) A person administering a customer dispute resolution scheme may refer a matter in relation to a licensee to the Commission if the person believes that there is a problem with, or change in, the licensee's policy, practice or conduct that adversely affects, or has the potential to adversely affect, a number of customers (a *systemic issue*).
- (2) Without limiting subsection (1), a systemic issue includes any of the following—
 - (a) a change to the licensee's billing, metering, supply or other systems;
 - (b) an absence of a policy, procedure or guideline in relation to a matter;
 - (c) inadequate policies, procedures or guidelines;
 - (d) a failure to comply with applicable legislation (including any regulations), licence conditions or Codes of Practice;
 - (e) the conduct of the licensee's employee, agent, officer or contractor.
- (3) If a person administering a customer dispute resolution scheme refers a systemic issue to the Commission, the Commission must—
 - (a) as soon as practicable after receiving the referral, provide a copy of the referral to the Minister; and

- (b) report to the Minister—
- (i) the action (if any) it proposes to take to address the systemic issue; and
 - (ii) the time within which it intends to take that action; and
- (c) as soon as practicable after the period referred to in paragraph (b)(ii) ends, report to the Minister the outcome of the action referred to in paragraph (b)(i).
- (4) The Minister may direct the Commission to give a copy of a report given to the Minister under subsection (3)(c) to the person who made the referral under subsection (1).
- (5) A person who refers a systemic issue to the Commission must also provide any information about the systemic issue that is available to the person to the Commission.
- (6) In this section—
- applicable legislation* means—
- (a) the **Essential Services Commission Act 2001**; or
 - (b) this Act;
- customer dispute resolution scheme* means a customer dispute resolution scheme approved by the Commission referred to in section 36.

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.

229A Offence to give false or misleading information or documents

S. 229A
inserted by
No. 28/2021
s. 26.

- (1) A licensee must not give the Commission information that the licensee is required to give to the Commission under or for the purposes of this Act that the licensee knows—
- (a) to be false or misleading in any material particular; or
 - (b) omits any matter or thing without which the information is misleading.

Penalty: In the case of a natural person,
120 penalty units or 12 months
imprisonment;

In the case of a body corporate,
6000 penalty units.

- (2) A licensee must not produce a document to the Commission that the licensee is required to produce to the Commission under or for the purposes of this Act if—
- (a) the licensee knows that the document is false or misleading in a material particular; and

(b) the licensee does not indicate the respect in which the document is false or misleading.

Penalty: In the case of a natural person,
120 penalty units or 12 months
imprisonment;

In the case of a body corporate,
6000 penalty units.

(3) An offence against subsection (1) or (2) is an indictable offence.

S. 229B
inserted by
No. 28/2021
s. 26.

229B Monetary benefits orders

(1) If a court finds a person guilty of an offence against Division 4AA of Part 3 or section 229A(1) or (2), the court may, on the application of the Commission, make an order under subsection (2).

(2) The court may order the person to pay an amount not exceeding the amount that the court is satisfied represents 3 times the amount of any monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the offence.

(3) Any amounts received by the Commission pursuant to an order under subsection (2) are to be paid into the Consolidated Fund.

S. 229C
inserted by
No. 28/2021
s. 26.

229C Determining amount to be paid under monetary benefits order

(1) When determining an amount that the person must pay under an order made under section 229B(2), the court may take into account—

(a) the person's financial circumstances; and

(b) any amount submitted to the court by the Commission under subsection (2).

(2) The Commission, or a person authorised by the Commission, may submit to the court the amount the Commission considers to be a reasonable

estimate of the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence in relation to which the order under section 229B(2) is sought, as determined in accordance with—

- (a) a prescribed guideline, method or protocol;
or
 - (b) any other method the Commission considers appropriate.
- (3) For the purposes of section 229B(2), the court may assume that an amount represents the amount of any monetary benefits acquired by a person, or accrued or accruing to the person, as a result of the commission of the offence if—
- (a) the Commission submits that amount to the court under subsection (2); and
 - (b) the Commission determined that amount in accordance with a prescribed guideline, method or protocol.
- (4) The amount of money that the court may order a person to pay under section 229B(2) is not limited by—
- (a) any penalty that may be imposed under this Act; or
 - (b) the jurisdictional limit for a civil proceeding specified under section 100(1) of the **Magistrates' Court Act 1989**.
- (5) Nothing in an order made under section 229B(2) or in this section affects the operation of Part 8 of the **Confiscation Act 1997**.

S. 229D
inserted by
No. 28/2021
s. 26.

229D Recovery of amounts ordered to be paid

If a court orders a person to pay an amount under an order made under section 229B(2)—

- (a) the amount is a debt due to the State; and
- (b) the Commission may, on behalf of the State, recover the amount in any court of competent jurisdiction.

S. 229E
inserted by
No. 28/2021
s. 26.

229E Adverse publicity orders

- (1) If a court finds a person guilty of an offence against Division 4AA of Part 3 or section 229A(1) or (2), the court may make an adverse publicity order against the person.
- (2) In making an adverse publicity order, the court may—
 - (a) specify the period within which the order must be complied with; and
 - (b) impose any other requirement that the court considers necessary or expedient to make the order effective.
- (3) This section does not limit a court's powers under any other provision of this Act or any other Act.
- (4) In this section—

adverse publicity order means an order that—

- (a) requires a person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
- (b) requires a person to publish, at the person's expense and in the way specified in the order, an advertisement

in the terms specified in, or determined
in accordance with, the order.

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 subsection (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 subsection (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 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
Nos 39/2005
s. 56(4),
23/2009 s. 31.

S. 231(2)
amended by
Nos 39/2005
s. 56(4),
23/2009 s. 31.

(2) If proceedings referred to in subsection (1) are brought by a person authorised to do so, the proceedings may be conducted by any other person authorised by Energy Safe Victoria to bring proceedings of that kind.

S. 231(3)
amended by
Nos 39/2005
s. 56(4),
23/2009 s. 31.

(3) All courts must take judicial notice of the fact that a person is authorised by Energy Safe Victoria to bring proceedings referred to in subsection (1) or conduct proceedings under subsection (2), as the case requires.

S. 231(4)
amended by
No. 11/2002
s. 3(Sch. 1
item 28.3),
substituted by
Nos 39/2005
s. 56(5),
4/2020 s. 55.

(4) In this section—

Energy Safe Victoria has the same meaning as it has in the **Energy Safe Victoria Act 2005**.

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 subsection (1) and, to the extent of that agreement, that subsection does not apply.
- (3) Nothing in subsection (1) or (2) affects the liability of a gas company under the **Gas Safety Act 1997**.

233 Exemption from liability to transmit or convey gas

- (1) Despite anything to the contrary in this or any other Act but subject to subsection (2) or in any contract—

* * * * *

S. 233(1)(a)
repealed by
No. 23/2009
s. 32(a).

- (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 distribution company may enter into an agreement with a person varying or excluding the operation of subsection (1) and, to the extent of that agreement, that subsection does not apply.
- (3) Nothing in subsection (1) or (2) affects the liability of a gas company under the **Gas Safety Act 1997**.

S. 233(2)
amended by
No. 23/2009
s. 32(b).

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.

S. 235
amended by
No. 59/2011
s. 42.

235 Supreme Court—limitation of jurisdiction

It is the intention of section 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;
- (c) prescribing provisions of this Act as civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**;

S. 236(1)(c)
repealed by
No. 29/2006
s. 3(Sch. 1
item 13.3),
new
s. 236(1)(c)
inserted by
No. 41/2021,
s. 71(1).

(ca) prescribing amounts for the purposes of section 54E(b), (c), (d), (g) or (i) of the **Essential Services Commission Act 2001**;

S. 236(1)(ca)
inserted by
No. 41/2021
s. 71(1).

(cb) prescribing amounts of notice penalties for the purposes of section 54U(b), (c), (d), (g) or (i) of the **Essential Services Commission Act 2001**;

S. 236(1)(cb)
inserted by
No. 41/2021
s. 71(1).

(cc) prescribing any other matter that is required for the operation of civil penalty orders in Division 1 of Part 7 of the **Essential Services Commission Act 2001**;

S. 236(1)(cc)
inserted by
No. 41/2021
s. 71(1).

(cd) prescribing any other matter that is required to be prescribed for the operation of the penalty notice regime in Division 2 of Part 7 of the **Essential Services Commission Act 2001**;

S. 236(1)(cd) inserted by No. 41/2021 s. 71(1).

(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.

* * * * * S. 236(2) repealed by No. 23/2009 s. 33.

* * * * * S. 236(3) amended by No. 10/2004 s. 15(Sch. 1 item 13.3), repealed by No. 23/2009 s. 33.

(4) Regulations made under this Act may be made—

(a) so as to be of general or limited application;

S. 236(4)(a) substituted by No. 41/2021 s. 71(2).

(ab) so as to differ according to time, place or circumstance;

S. 236(4)(ab) inserted by No. 41/2021 s. 71(2).

(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 or impose a duty on a specified person or a specified class of 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.

S. 236(4)(d)
substituted by
No. 41/2021
s. 71(3).

Part 11—Abolition of VENCORP

237 Definitions

In this Part—

current VENCORP transmission determination

has the same meaning as in section 34 of the
National Electricity (Victoria) Act 2005;

Dispute resolution panel has the same meaning as
in the National Gas (Victoria) Law;

liabilities means all liabilities, duties and
obligations, whether actual, contingent or
prospective;

property means any legal or equitable estate or
interest (whether present or future and
whether vested or contingent) in real or
personal property of any description;

rights means all rights, powers, privileges and
immunities, whether actual, contingent or
prospective;

specified code or specified code provision
means—

- (a) a specified code or guideline
(within the meaning of Division 3
of Part 6 of the **National Gas
(Victoria) Act 2008**); or
- (b) a specified VENCORP provision
(within the meaning of Division 3
of Part 6 of the **National Gas
(Victoria) Act 2008**); or
- (c) a specified code or guideline
(within the meaning of Division 3
of Part 5 of the **National Electricity
(Victoria) Act 2005**); or

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(Heading and
ss 237–244)
inserted by
No. 23/2009
s. 34.

- (d) a specified VENCORP provision
(within the meaning of Division 3
of Part 5 of the **National Electricity
(Victoria) Act 2005**);

transferred employee means an employee
transferred to AEMO by force of this Part;

transition day means the day on which section 34
of the **Energy Legislation Amendment
(Australian Energy Market Operator)
Act 2009** comes into operation;

tribunal includes the Dispute resolution panel;

VENCORP means the Victorian Energy Networks
Corporation continued under Part 8 as in
force immediately before the transition day.

S. 238
inserted by
No. 23/2009
s. 34.

238 Abolition of VENCORP

- (1) On the transition day—
- (a) VENCORP is abolished; and
 - (b) any person holding office as a director of VENCORP ceases to hold office.
- (2) On the transition day—
- (a) AEMO is the successor in law of VENCORP;
and
 - (b) all rights, property and assets that were
vested in VENCORP immediately before the
transition day vest, by force of this section,
in AEMO; and
 - (c) all debts, liabilities and obligations of
VENCORP become, by force of this section,
debts, liabilities and obligations of AEMO;
and

- (d) AEMO is, by force of this section, substituted as a party to any proceedings pending in any court or tribunal to which VENCorp was a party immediately before the transition day; and
- (e) AEMO is, by force of this section, substituted as a party to any arrangement or contract entered into by or on behalf of VENCorp as a party and in force immediately before the transition day; and
- (f) any reference to VENCorp in any Act or law or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed, will or other document other than a specified code or specified code provision or the current VENCorp transmission determination is, so far as it relates to any period after the transition day and if not inconsistent with the context or subject matter, construed as a reference to AEMO.

239 Transferred employees

- (1) A person who was an employee of VENCorp immediately before the transition day is to be regarded as—
 - (a) having been employed by AEMO with effect from the transition day; and
 - (b) having been employed by AEMO on the same terms and conditions as those that applied to the person, immediately before the transition day, as an employee of VENCorp; and

S. 239
inserted by
No. 23/2009
s. 34.

- (c) having accrued an entitlement to benefits, in connection with that employment by AEMO, that is equivalent to the entitlement that the person had accrued, as an employee of VENCORP, immediately before the transition day.
- (2) The service of a transferred employee as an employee of AEMO is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the transition day, as an employee of VENCORP.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of VENCORP because of this Part.
- (4) Nothing in this section prevents—
 - (a) any terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the transition day; or
 - (b) a transferred employee from resigning or being dismissed at any time after the transition day in accordance with the then existing terms and conditions of his or her employment by AEMO.

S. 240
inserted by
No. 23/2009
s. 34.

240 Financial reporting obligations

- (1) AEMO must comply with any accountability and reporting obligations under Part 7 of the **Financial Management Act 1994** in relation to VENCORP's transferred assets and liabilities for the financial year ending 30 June 2009 as if—
 - (a) a reference in Part 7 of that Act to a public body were a reference to AEMO; and

- (b) a reference in Part 7 of that Act to an accountable officer were a reference to the chief executive officer of AEMO.
- (2) AEMO, in the report required under Part 7 of the **Financial Management Act 1994** because of subsection (1), must include—
- (a) a copy of each direction given to VENCORP during the financial year ending 30 June 2009 under section 163 or 171 (as in force immediately before their repeal by section 30 of the **Energy Legislation Amendment (Australian Energy Market Operator) Act 2009**), together with a statement of VENCORP's response to each direction; and
- (b) a copy of the statement of corporate intent last completed by VENCORP before the commencement of section 30 of the **Energy Legislation Amendment (Australian Energy Market Operator) Act 2009**.
- (3) In this section—
- VENCORP's transferred assets and liabilities*
means the assets and liabilities transferred to AEMO under this Part.

241 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of VENCORP.

S. 241
inserted by
No. 23/2009
s. 34.

S. 242
inserted by
No. 23/2009
s. 34.

242 Validity of things done under this Part

- (1) Nothing effected by this Part or suffered under this Part—
- (a) is to be taken as placing any person in breach of contract or confidence, or as otherwise exposing the person to civil liability; or
 - (b) is to be taken as placing any person in breach of, or as constituting a default under, any Act or other law or any provision in any agreement, arrangement or understanding including, but not limited to, any provision prohibiting or restricting the assignment or transfer of any property or right or the disclosure of any information; or
 - (c) is to be taken as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of, or to terminate, any agreement or obligation; or
 - (d) is to be taken as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
 - (e) is to be taken as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) is to be taken as frustrating any contract; or
 - (g) releases any surety or other obligor wholly or in part from any obligation.
- (2) In this section *Act* does not include the **Charter of Human Rights and Responsibilities Act 2006**.

243 Corporations Act displacement

To the extent that any provision of this Part is incapable of concurrent operation with a provision of the Corporations Act (a *designated Commonwealth provision*), the provision of this Part is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the designated Commonwealth provision.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

* * * * *

S. 243
inserted by
No. 23/2009
s. 34.

S. 244
inserted by
No. 23/2009
s. 34, expired
by force of
No. 31/2001
s. 244(3).

Pt 12
(Heading and
new s. 244)
inserted by
No. 41/2021
s. 72.

Part 12—Savings and transitional provisions

New s. 244
inserted by
No. 41/2021
s. 72.

244 Savings and transitional provisions—Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021

- (1) Despite the substitution of section 30 by section 59 of the amending Act, a determination made under section 30 before the commencement of section 59 continues to have effect until the earlier of—
 - (a) the day on which a new determination takes effect under section 30(5); or
 - (b) the first anniversary of the day on which section 59 of the amending Act comes into operation.
- (2) In this section—

amending Act means the **Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021**.

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.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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 "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).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Gas Industry Act 2001
No. 31 of 2001
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Gas Industry Act 2001** by Acts and subordinate instruments.

Gas Industry Act 2001, No. 31/2001

| | |
|---------------------------|---|
| <i>Assent Date:</i> | 19.6.01 |
| <i>Commencement Date:</i> | S. 35(4) on 1.9.01: s. 2(2); s. 68(6) inserted on 26.5.04 by No. 25/2004 s. 16; s. 244(3) inserted on 1.7.09 by No. 23/2009 s. 34 |
| <i>Note:</i> | S. 35(4) provided that s. 35 expired on 31.8.04; s. 68(6) provided that s. 68 ceased to have effect on 31.12.08; s. 244(3) provided that s. 244 expired on 1.7.10 |
| <i>Current State:</i> | All of Act in operation |

Corporations (Consequential Amendments) Act 2001, No. 44/2001

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 27.6.01 |
| <i>Commencement Date:</i> | S. 3(Sch. item 57) on 15.7.01: s. 2 |
| <i>Current State:</i> | This information relates only to the provision/s amending the Gas Industry Act 2001 |

Essential Services Commission Act 2001, No. 62/2001

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 23.10.01 |
| <i>Commencement Date:</i> | Ss 77–80 on 1.1.02: s. 2 |
| <i>Current State:</i> | This information relates only to the provision/s amending the Gas Industry Act 2001 |

Energy Legislation (Miscellaneous Amendments) Act 2001, No. 85/2001

| | |
|---------------------------|---|
| <i>Assent Date:</i> | 11.12.01 |
| <i>Commencement Date:</i> | 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 |
| <i>Current State:</i> | This information relates only to the provision/s amending the Gas Industry Act 2001 |

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 23.4.02 |
| <i>Commencement Date:</i> | S. 3(Sch. item 7) on 23.4.02: s. 2 |
| <i>Current State:</i> | This information relates only to the provision/s amending the Gas Industry Act 2001 |

Statute Law (Further Revision) Act 2002, No. 11/2002

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 23.4.02 |
| <i>Commencement Date:</i> | S. 3(Sch. 1 item 28) on 24.4.02: s. 2(1) |
| <i>Current State:</i> | This information relates only to the provision/s amending the Gas Industry Act 2001 |

Gas Industry Act 2001
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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**

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**

Gas Industry Act 2001
No. 31 of 2001
Endnotes

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**

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**

Pipelines Act 2005, No. 61/2005

Assent Date: 20.9.05
Commencement Date: S. 217 on 1.4.07: Government Gazette 29.3.07 p. 532
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Rail Safety Act 2006, No. 9/2006

Assent Date: 4.4.06
Commencement Date: S. 158 on 1.8.06: Special Gazette (No. 181) 25.7.06 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**

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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**

Energy Legislation (Hardship, Metering and Other Matters) Act 2006, No. 60/2006

Assent Date: 29.8.06
Commencement Date: S. 5 on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 45) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment Act 2007, No. 35/2007

Assent Date: 14.8.07
Commencement Date: Ss 7, 8 on 15.8.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Further Amendment Act 2007, No. 55/2007

Assent Date: 7.11.07
Commencement Date: Ss 14–22, 24, 25(2)(3), 27–32 on 8.11.07: s. 2(1); s. 26 on 25.4.08: Government Gazette 24.4.08 p. 777; ss 23, 25(1), 33 on 25.7.08: Government Gazette 24.7.08 p. 1744
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

National Gas (Victoria) Act 2008, No. 30/2008

Assent Date: 17.6.08
Commencement Date: S. 41 on 1.7.08: Special Gazette (No. 184) 1.7.08 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

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Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008, No. 59/2008 (as amended by No. 82/2008)

Assent Date: 22.10.08
Commencement Date: Ss 29, 30(2) on 23.10.08: s. 2(1); ss 19–28 on 30.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Australian Energy Market Operator) Act 2009, No. 23/2009

Assent Date: 17.6.09
Commencement Date: Ss 21–34 on 1.7.09: Special Gazette (No. 222) 30.6.09 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy and Resources Legislation Amendment Act 2009, No. 57/2009

Assent Date: 21.10.09
Commencement Date: Ss 17, 18 on 13.12.09: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 63) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Offshore Petroleum and Greenhouse Gas Storage Act 2010, No. 10/2010

Assent Date: 23.3.10
Commencement Date: S. 800(Sch. 6 item 4) on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy and Resources Legislation Amendment Act 2010, No. 55/2010

Assent Date: 14.9.10
Commencement Date: S. 87 on 14.10.10: Government Gazette 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 12) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

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Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010

Assent Date: 19.10.10
Commencement Date: S. 26 on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Commercial Arbitration Act 2011, No. 50/2011

Assent Date: 18.10.11
Commencement Date: S. 46(Sch. item 8) on 17.11.11: Special Gazette (No. 369) 15.11.11 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Act 2011, No. 59/2011

Assent Date: 8.11.11
Commencement Date: Ss 41, 42 on 1.1.12: Special Gazette (No. 407) 13.12.11 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 20) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment Act 2012, No. 51/2012

Assent Date: 18.9.12
Commencement Date: Ss 6–8 on 27.9.12: Special Gazette (No. 324) 26.9.12 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Flexible Pricing and Other Matters) Act 2013, No. 11/2013

Assent Date: 13.3.13
Commencement Date: S. 10 on 18.4.13: Special Gazette (No. 141) 16.4.13 p. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Rail Safety National Law Application Act 2013, No. 22/2013

Assent Date: 23.4.13
Commencement Date: Ss 57, 58 on 19.5.14: Special Gazette (No. 148) 13.5.14 p. 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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Energy Legislation Amendment (General) Act 2014, No. 3/2014

Assent Date: 11.2.14
Commencement Date: Ss 15–22 on 1.4.14: Special Gazette (No. 94) 25.3.14 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Customer Metering Protections and Other Matters) Act 2014, No. 46/2014

Assent Date: 1.7.14
Commencement Date: Ss 11, 12 on 30.7.14: Special Gazette (No. 254) 29.7.14 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Publication of Retail Offers) Act 2015, No. 28/2015

Assent Date: 11.8.15
Commencement Date: Ss 5–7 on 1.10.15: Special Gazette (No. 285) 29.9.15 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Consumer Protection) Act 2015, No. 49/2015

Assent Date: 13.10.15
Commencement Date: Ss 18–27 on 1.1.16: Special Gazette (No. 403) 15.12.15 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date: 27.2.18
Commencement Date: S. 68(Sch. 2 item 60) on 1.3.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Victorian Default Offer) Act 2019, No. 6/2019

Assent Date: 26.3.19
Commencement Date: Ss 9–13 on 27.3.19: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019, No. 41/2019

Assent Date: 6.11.19
Commencement Date: S. 117(Sch. 1 item 6) on 2.12.19: Special Gazette (No. 480) 26.11.19 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Gas Industry Act 2001
No. 31 of 2001
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Energy Safety Legislation Amendment (Victorian Energy Safety Commission and Other Matters) Act 2020, No. 4/2020

Assent Date: 25.2.20
Commencement Date: S. 55 on 1.1.21: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

National Energy Legislation Amendment Act 2020, No. 28/2020

Assent Date: 20.10.20
Commencement Date: S. 8 on 1.6.21: s. 2(2)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Licence Conditions) Act 2020, No. 37/2020

Assent Date: 1.12.20
Commencement Date: Ss 12–19 on 2.12.20: s. 2
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment (Energy Fairness) Act 2021, No. 28/2021 (as amended by No. 41/2021)

Assent Date: 10.8.21
Commencement Date: Ss 27–29 on 25.10.21: Special Gazette (No. 579) 19.10.21 p. 1; ss 17–19 on 31.12.21: Special Gazette (No. 717) 14.12.21 p. 1; ss 20–26 on 1.3.22: Special Gazette (No. 87) 22.2.22 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Energy Legislation Amendment Act 2021, No. 33/2021 (as amended by No. 41/2021)

Assent Date: 14.9.21
Commencement Date: Ss 13–15 on 1.6.22: s. 2(3)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021, No. 41/2021

Assent Date: 19.10.21
Commencement Date: Ss 55–72 on 1.12.21: Special Gazette (No. 673) 30.11.21 p. 1
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

Regulatory Legislation Amendment (Reform) Act 2022, No. 13/2022

Assent Date: 29.3.22
Commencement Date: S. 68 on 30.3.22: s. 2(3)
Current State: This information relates only to the provision/s amending the **Gas Industry Act 2001**

3 Explanatory details

¹ S. 20(8): The amendment proposed by section 11(2) of the **Energy Legislation (Regulatory Reform) Act 2004**, No. 25/2004 (*repealed*) is not included in this publication as section 20(8) was substituted by section 33 of the **Essential Services Commission (Amendment) Act 2004**, No. 75/2004 (*repealed*).

Section 11(2) read as follows:

11 References to Tariff Order

(2) In sections 20(1), 20(5) and 20(8) of the **Gas Industry Act 2001** for "A Tariff Order" **substitute** "The Wimmera and Colac Tariff Order".

² S. 91(1) (*repealed*): The amendment proposed by section 15(Sch. 1 item 13.1) (*repealed*) 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 (*repealed*) with effect from 26 May 2004.

Section 15(Sch. 1 item 13.1) read as follows:

Schedule 1—Conversion of Penalties and Fees in Acts

13 Gas Industry Act 2001

13.1 In section 91(1), for "\$10 000 000" **substitute** "an amount that is 100 000 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**".