



New South Wales

# Gas Supply Amendment (Retail Competition) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Gas Supply Act 1996* so as:

- (a) to provide for the regulation of the natural gas retail market, including provision for:
  - (i) a guaranteed right of supply under a standard form customer supply contract to certain classes of customer who are connected to a distribution system and require low-volume supplies of natural gas, and
  - (ii) access by such customers to a gas industry ombudsman scheme for resolution of complaints against natural gas suppliers, and
  - (iii) the adoption of market operation rules in relation to various aspects of the operation of the retail market for natural gas, and
  - (iv) the adoption of a marketing code of conduct in relation to the marketing of natural gas to small retail customers, and

- (b) to enable the Minister administering that Act to require the Independent Pricing and Regulatory Tribunal to make gas pricing orders for the purposes of that Act, and
- (c) to enable the costs to the State of implementing retail competition in the market for natural gas to be recovered from the holders of reticulators' and suppliers' authorisations under that Act, and
- (d) to enact provisions of a savings or transitional nature, and
- (e) to enact other provisions of a minor, consequential or ancillary nature.

The Bill also makes consequential amendments to the *Electricity Supply Act 1995*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Gas Supply Act 1996* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Electricity Supply Act 1995* set out in Schedule 2.

## Schedule 1 Amendment of Gas Supply Act 1996

### Operation of natural gas retail market

**Schedule 1 [12]** inserts a proposed Part 2A into the Act. The proposed Part, which contains provisions adapted from those that have recently been inserted into the *Electricity Supply Act 1995* by the *Electricity Supply Amendment Act 2000*, deals with the operation of the natural gas retail market. The proposed Part contains 6 Divisions:

### Division 1 Standard suppliers

**Proposed section 33A** enables the authorisation by which a natural gas supplier is authorised to supply natural gas to be endorsed with a condition specifying a supply district for the supplier. A supplier whose authorisation contains such an endorsement is referred to as a *standard supplier*.

**Proposed section 33B** deals with the transfer of such endorsements between different natural gas suppliers.

## **Division 2      Gas supply**

**Proposed section 33C** entitles a small retail customer to be supplied with natural gas, under a standard form customer supply contract, by the standard supplier within whose supply district the customer is situated (but only if the customer is connected to a natural gas distribution system).

**Proposed section 33D** ensures that natural gas suppliers can supply natural gas to any customer and, in the case of standard suppliers, can do so within or outside their supply districts.

## **Division 3      Resolution of customer disputes**

**Proposed section 33E** provides for the regulation of the procedures to be adopted by suppliers in dealing with customers' applications for the review of the suppliers' decisions.

**Proposed section 33F** entitles a small retail customer, and any other person prescribed by the regulations under the Act, to apply to a gas industry ombudsman for review of a supplier's decision on the customer's dispute or complaint. Such a review is to be free of charge to the customer, and does not affect any jurisdiction of the Fair Trading Tribunal or Residential Tribunal.

**Proposed section 33G** enables the Minister to approve a gas industry ombudsman scheme for the purposes of the Act, subject to the scheme meeting certain specified criteria. It is proposed that the same scheme may be approved for the purposes of both the *Gas Supply Act 1996* and any other Act (such as the *Electricity Supply Act 1995*).

**Proposed section 33H** requires all suppliers whose authorisations permit them to supply natural gas to small retail customers to belong to, and to be bound by, an approved gas industry ombudsman scheme.

**Proposed section 33I** makes it clear that a negotiated customer supply contract may make provision for the resolution of disputes not covered by proposed sections 33E and 33F.

## **Division 4      Market operations**

**Proposed section 33J** defines *market operations rule* and *retail market business system* for the purposes of the proposed Division.

**Proposed section 33K** enables the Minister to approve market operations rules with respect to certain specified matters relating to the operation of a retail market for the natural gas industry. It is proposed that the same rules may be approved for the purposes of both the *Gas Supply Act 1996* and any other Act (such as the *Electricity Supply Act 1995*).

**Proposed section 33L** makes it an offence (and, if committed by a natural gas supplier or natural gas reticulator, a breach of condition of the relevant authorisation) for a person to contravene the market operations rules.

## **Division 5      Marketing of gas**

**Proposed section 33M** defines *gas marketer* and *Marketing Code of Conduct* for the purposes of the proposed Division.

**Proposed section 33N** enables the Minister to approve a Marketing Code of Conduct.

**Proposed section 33O** makes it an offence for a gas marketer to contravene the Marketing Code of Conduct.

**Proposed section 33P** makes it a condition of a natural gas supplier's authorisation that the supplier complies with the Marketing Code of Conduct, and ensures that any gas marketer that has arranged for a small retail customer to enter into a negotiated customer supply contract with the supplier has also complied with that Code.

**Proposed section 33Q** requires a gas marketer that arranges for a small retail customer to enter into a negotiated customer supply contract with a natural gas supplier to furnish the supplier with a statement to the effect that the gas marketer has complied with the Marketing Code of Conduct.

## **Division 6      Miscellaneous**

**Proposed section 33R** defines *small retail customer* for the purposes of the Act.

**Proposed section 33S** enables the Minister to declare certain activities as *ancillary market activities* and certain persons engaged in such activities to be *ancillary market participants* for the purposes of the Act.

**Proposed section 33T** provides that nothing in the *Gas Supply Act 1996* or the *Electricity Supply Act 1995* prevents contracts under each of those Acts from being embodied in a single document.

**Schedule 1 [5]** consequentially amends the heading to existing Part 2 of the Act.

### **Gas pricing orders**

**Schedule 1 [9]** substitutes section 27 and inserts a new section 27A.

**Proposed section 27** enables the Independent Pricing and Regulatory Tribunal (*IPART*) to make gas pricing orders establishing pricing mechanisms that regulate the tariffs, fees, charges and other payments that a standard supplier may impose for the supply of natural gas to small retail customers under standard form customer supply contracts, and requires IPART to do so if given a reference in that regard by the Minister.

**Proposed section 27A** sets out what may be contained in a pricing mechanism established by a gas pricing order, enables a standard supplier to apply for a new gas pricing order once the current order has been in force for 12 months and makes compliance with a gas pricing order a condition of a standard supplier's authorisation.

As a transitional matter, IPART will be empowered to make interim gas pricing orders (**proposed clause 19 of Schedule 2**, to be inserted by **Schedule 1 [22]**). An interim gas pricing order will have effect for a maximum of 6 months, but will be extendable (on one occasion only) for up to 3 months. Unlike for a gas pricing order under proposed section 27, a standard supplier will not have a right of review of an interim gas pricing order.

**Schedule 1 [10]** makes a consequential amendment to section 28.

**Schedule 1 [11]** amends section 28 so as to provide that a gas pricing order is unaffected by an application for review. Under the current section, the making of such an application suspends the operation of the order to which it relates.

**Schedule 1 [15]** makes a consequential amendment to section 83.

### **Recovery of costs to the State of implementing retail competition**

**Schedule 1 [7]** amends section 15 so as to ensure that the component of an annual authorisation fee that relates to the recovery of the cost to the State of administering the Act and the *Gas Pipelines Access (New South Wales) Law* (the *State's administration costs*) can include costs referable to previous years as well as costs referable to the current year.

**Schedule 1 [8]** amends section 15 so as to ensure that the State's administration costs can include the costs of implementing retail competition in the market for natural gas.

### **Savings and transitional provisions**

**Schedule 1 [20]** amends clause 1 of Schedule 2 so as to enable savings and transitional regulations to be made consequent on the enactment of the proposed Act.

**Schedule 1 [22]** inserts proposed Part 3 into Schedule 2. The proposed Part contains specific savings and transitional provisions consequent on the enactment of the proposed Act.

### **Minor, consequential or ancillary provisions**

**Schedule 1 [1]** and **[4]** make consequential amendments to section 3 to reflect the customer protection provisions of proposed Part 2A.

**Schedule 1 [2], [3], [6], [13], [21]** and **[24]** omit various references to "tariff customer" as a consequence of the replacement of that concept by the concept of "small retail customer".

**Schedule 1 [14]** amends section 83 so as to enable regulations to be made with respect to the regulation of ancillary market participants (see proposed section 33S) and the regulation of the collection, keeping, disclosure or other use of customer information.

**Schedule 1 [16]** amends section 83 so as to remove any doubt as to the power to make regulations under the Act with respect to all customer supply contracts, rather than standard form contracts only.

**Schedule 1 [17]** and **[18]** amend section 83 so as to modify the public consultation requirements for amending regulations under the Act.

**Schedule 1 [19]** amends section 87 so as to provide that the next review of the Act must occur as soon as practicable after 5 years from the date of assent to the proposed Act.

**Schedule 1 [23]** makes consequential amendments to the Dictionary.

## **Schedule 2 Amendment of Electricity Supply Act 1995**

**Schedule 2 [1]** amends section 63C so as to ensure that the same market operations rules may be approved for the purposes of both the *Electricity Supply Act 1995* and any other Act (such as the *Gas Supply Act 1996*).

**Schedule 2 [2]** amends section 63G so as to ensure that the same Marketing Code of Conduct may be approved for the purposes of both the *Electricity Supply Act 1995* and any other Act (such as the *Gas Supply Act 1996*).

**Schedule 2 [3]** amends section 90 so as to provide that, to the extent to which they are not dealt with in that section, matters relating to the constitution and procedure of a customer consultative group are to be dealt with by the regulations, rather than by the relevant electricity distributor.

**Schedule 2 [4]** amends section 92 by way of law revision.

**Schedule 2 [5]** amends section 96B by way of law revision.

**Schedule 2 [6]** amends section 96B (2) so as to clarify the classes of person who are intended to be protected by an electricity industry ombudsman scheme.

**Schedule 2 [7]** amends section 96B so as to ensure that the same industry ombudsman scheme may be approved for the purposes of both the *Electricity Supply Act 1995* and any other Act (such as the *Gas Supply Act 1996*).

**Schedule 2 [8]** amends section 99 so as to ensure that nothing in the *Gas Supply Act 1996* or the *Electricity Supply Act 1995* prevents contracts under each of those Acts from being embodied in a single document.



New South Wales

# Gas Supply Amendment (Retail Competition) Bill 2001

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New South Wales

# Gas Supply Amendment (Retail Competition) Bill 2001

No , 2001

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## A Bill for

An Act to amend the *Gas Supply Act 1996* so as to implement retail competition in the market for natural gas; to make consequential amendments to the *Electricity Supply Act 1995*; and for other purposes.

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Gas Supply Amendment (Retail Competition) Act 2001*.

**2 Commencement**

(1) This Act commences on a day or days to be appointed by proclamation.

(2) Different days may be appointed for the commencement of a single provision of Schedule 1 for the purpose of commencing the amendments effected by the provision on different days.

**3 Amendment of Gas Supply Act 1996 No 38**

The *Gas Supply Act 1996* is amended as set out in Schedule 1.

**4 Amendment of Electricity Supply Act 1995 No 94**

The *Electricity Supply Act 1995* is amended as set out in Schedule 2.

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<b>Schedule 1</b>	<b>Amendment of Gas Supply Act 1996</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 3 Objects</b>	3
	Insert “to protect the interests of customers and” after “so as” in section 3 (1) (b).	4 5
<b>[2]</b>	<b>Section 3 (4) (b)</b>	6
	Omit “tariff customers”. Insert instead “small retail customers”.	7
<b>[3]</b>	<b>Section 3 (4) (c)</b>	8
	Omit “the tariff market”. Insert instead “small retail customers”.	9
<b>[4]</b>	<b>Section 3 (4) (d)</b>	10
	Omit the paragraph. Insert instead:	11
	(d) to promote a competitive gas market.	12
<b>[5]</b>	<b>Part 2, heading</b>	13
	Omit the heading. Insert instead:	14
	<b>Part 2 Natural gas authorisations and pricing orders</b>	15
<b>[6]</b>	<b>Section 11 Conditions of authorisations</b>	16
	Omit “tariff customers” from section 11 (2) (b) (ii).	17
	Insert instead “small retail customers”.	18
<b>[7]</b>	<b>Section 15 Annual authorisation fees</b>	19
	Insert “(or the cost of doing so during any previous year to the extent to which that cost has not previously been taken into consideration in any estimate under this section)” after “during that year” in section 15 (2).	20 21 22

**[8] Section 15 (4) and (5)**

Insert after section 15 (3):

- (4) For the purposes of this section, the cost to the State of administering this Act and the *Gas Pipelines Access (New South Wales) Law* during any year in relation to the holder of an authorisation includes such proportion of the State's retail competition implementation costs as the Minister determines, in accordance with the regulations, should be borne by the holder of that authorisation.
- (5) In subsection (4), ***the State's retail competition implementation costs*** means the costs or expenses incurred by the State during that year:
  - (a) for the purpose of implementing retail competition in the market for natural gas, and
  - (b) for any other purpose (being a purpose that is ancillary to the purpose of implementing retail competition in the market for natural gas) prescribed by the regulations.

**[9] Sections 27 and 27A**

Omit section 27. Insert instead:

**27 Tribunal may make gas pricing orders**

- (1) The Tribunal may, by order published in the Gazette, establish a pricing mechanism according to which the following tariffs, fees, charges and other payments are to be fixed in relation to the supply of natural gas to small retail customers under standard form customer supply contracts (a ***gas pricing order***):
  - (a) tariffs for natural gas,
  - (b) security deposits and other payments in the nature of security deposits,
  - (c) fees and charges in relation to late or dishonoured payments,
  - (d) fees and charges in relation to the establishment or maintenance of accounts,

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| <ul style="list-style-type: none"> <li>(e) fees and charges in relation to the disconnection of premises from, or the reconnection of premises to, a distribution system,</li> <li>(f) such other fees, charges and payments as are prescribed by the regulations.</li> </ul> <ul style="list-style-type: none"> <li>(2) The Minister may give the Tribunal a written referral requiring the Tribunal to make a gas pricing order within a time specified in the referral and, in that event, the Tribunal must take all reasonable steps to comply with the requirements of the referral.</li> <li>(3) Before making a gas pricing order, the Tribunal must notify the Minister of its intention to do so (except in the case of an order given pursuant to a referral under subsection (2)).</li> </ul>  | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>  |
| <p><b>27A Gas pricing orders generally</b></p>   |   |
| <ul style="list-style-type: none"> <li>(1) A gas pricing order: <ul style="list-style-type: none"> <li>(a) may fix tariffs, fees, charges and other payments, or the methodology by which tariffs, fees, charges and other payments are to be calculated, either generally or in relation to any specified class of small retail customers, and</li> <li>(b) may prohibit the imposition of any specified fees, charges or other payments, or any class of fees, charges or other payments for any specified service or class of services, provided to small retail customers either generally or in relation to any specified class of small retail customers.</li> </ul> </li> <li>(2) A gas pricing order takes effect on the date on which it is published in the Gazette or on such later date as may be specified in the order in that regard, and continues to have effect until it is superseded by a further gas pricing order.</li> <li>(3) At any time after the expiry of 12 months from the date on which the current gas pricing order is published in the Gazette, an authorised supplier may apply to the Tribunal for a new gas pricing order on the basis that changes in circumstances (such as general inflationary trends) mean that the current gas pricing order is out of date.</li> </ul> | <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> |
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Gas Supply Amendment (Retail Competition) Bill 2001

Schedule 1

Amendment of Gas Supply Act 1996

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(4)	It is a condition of a standard supplier's authorisation that the supplier, in imposing tariffs, fees, charges and other payments on a small retail customer in relation to the supply of natural gas under a standard form customer supply contract, must do so in accordance with any relevant gas pricing order.	1 2 3 4 5
(5)	Section 42 of the <i>Interpretation Act 1987</i> applies to and in respect of a gas pricing order in the same way as it applies to and in respect of a statutory rule within the meaning of that Act.	6 7 8 9
<b>[10]</b>	<b>Section 28 Review of gas pricing orders</b>	10
	Omit "section 27 (4)" from section 28 (2).	11
	Insert instead "section 27A (3)".	12
<b>[11]</b>	<b>Section 28 (5)</b>	13
	Omit the section. Insert instead:	14
(5)	An application under this section does not affect the gas pricing order to which it relates, and that order continues to have effect unless and until it is revoked or amended by a review panel.	15 16 17
<b>[12]</b>	<b>Part 2A</b>	18
	Insert after Part 2:	19
	<b>Part 2A Operation of natural gas retail market</b>	20
	<b>Division 1 Standard suppliers</b>	21
<b>33A</b>	<b>Endorsements on suppliers' authorisations</b> (cf section 33A of Electricity Supply Act 1995)	22 23
(1)	One or more of the following endorsements may be attached to a supplier's authorisation:	24 25
(a)	a standard supplier's endorsement,	26
(b)	such other categories of endorsements as the Minister determines.	27 28

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| (2) A standard supplier's endorsement consists of:                        | 1  |
| (a) a condition that designates the endorsement as a                      | 2  |
| standard supplier's endorsement in respect of a                           | 3  |
| specified supply district, and  | 4  |
| (b) the condition referred to in section 33C (5), and                     | 5  |
| (c) any other condition imposed by the Minister or the                    | 6  |
| regulations.  | 7  |
| (3) Other categories of endorsements have such designations and           | 8  |
| are subject to such conditions as the Minister thinks fit or as are       | 9  |
| imposed by the regulations.   | 10 |
| (4) A supplier's authorisation may have no endorsements, or one           | 11 |
| or more endorsements, attached to it.                                     | 12 |
| <b>33B Transfer of endorsements</b> (cf section 33B of Electricity Supply | 13 |
| Act 1995)   | 14 |
| (1) Subject to the regulations, the provisions of this Act that apply     | 15 |
| to the transfer of authorisations extend to the transfer of               | 16 |
| endorsements referred to in section 33A.                                  | 17 |
| (2) The regulations may make provision for or with respect to the         | 18 |
| transfer of endorsements between holders of suppliers'                    | 19 |
| authorisations.   | 20 |
| (3) When approving the transfer of an endorsement, or of an               | 21 |
| authorisation together with an endorsement:                               | 22 |
| (a) the Minister may impose such additional conditions on                 | 23 |
| the authorisation as the Minister considers appropriate,                  | 24 |
| including conditions imposed for the purpose of                           | 25 |
| ensuring that the transferee will comply with the                         | 26 |
| conditions comprised in the endorsement, and                              | 27 |
| (b) the Minister may impose a condition transferring                      | 28 |
| specified small retail customers or classes of small retail               | 29 |
| customers, and  | 30 |
| (c) the Minister may amend a condition describing the                     | 31 |
| supply district of a standard supplier by varying the                     | 32 |
| supply district, whether by way of reducing or                            | 33 |
| increasing its size, or may revoke such a condition.                      | 34 |
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(4) Without limitation, the supply district of a standard supplier may be varied by the addition of the whole or a part of the supply district of another standard supplier or former standard supplier.	1 2 3 4
(5) The regulations may make provision for or with respect to the conditions that may be imposed by the Minister under subsection (3).	5 6 7
<b>Division 2 Gas supply</b>	8
<b>33C Right to supply of gas from standard supplier for small retail customers</b> (cf section 34 of Electricity Supply Act 1995)	9 10
(1) A small retail customer who owns or occupies premises:	11
(a) that are within a standard supplier's supply district, and	12
(b) that are connected to a distribution system in accordance with the regulations,	13 14
may apply to the standard supplier to be supplied with natural gas at those premises under a standard form customer supply contract.	15 16 17
(2) Such an application may be made by any person on behalf of a small retail customer referred to in subsection (1).	18 19
(3) If a small retail customer referred to in subsection (1) makes such an application, the standard supplier is under an obligation:	20 21 22
(a) to supply natural gas to the applicant's premises under a standard form customer supply contract, or	23 24
(b) to ensure that natural gas is so supplied.	25
(4) The right that a person has under this section to be supplied with natural gas to premises is subject to:	26 27
(a) any provision of this Act or the regulations that authorises the refusal, suspension or discontinuance of the supply of natural gas, and	28 29 30
(b) the capacity of the connection of the premises to the distribution system, having regard to the need to maintain the safety and reliability of the system.	31 32 33



(5) It is a condition of a standard supplier's authorisation that the supplier must fulfil the obligations imposed on the supplier by this section.	1 2 3
(6) The regulations may make provision for or with respect to applications under this section, including provisions for or with respect to the circumstances in which such an application is or may be taken to have been made.	4 5 6 7
<b>33D Supply of gas by suppliers</b> (cf section 37 of Electricity Supply Act 1995)	8
(1) A supplier may, but is not required to, supply natural gas to the premises of any customer.	9 10
(2) Without limitation, a standard supplier may, but is not required to, supply natural gas to the premises of any customer within or outside the supplier's supply district.	11 12 13
(3) However, this section does not affect any obligation that a supplier has as the holder of an endorsement under section 33A (including, for example, the obligations of a standard supplier under section 33C).	14 15 16 17
<b>Division 3 Resolution of customer disputes</b>	18
<b>33E Internal review of certain decisions disputed by customers</b> (cf section 96 of Electricity Supply Act 1995)	19 20
(1) A small retail customer may apply to a supplier for a review of a decision of the supplier in relation to any matter arising under a customer supply contract or any other matter prescribed by the regulations for the purposes of this subsection.	21 22 23 24
(2) Without limiting subsection (1), a person may apply to a supplier for a review of a decision of the supplier to classify the person as being or as not being a small retail customer.	25 26 27
(3) The regulations may make provision for or with respect to the following matters:	28 29
(a) the procedures for making an application and for dealing with an application that are to be contained in standard form customer supply contracts,	30 31 32

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| <p>(b) imposing conditions on suppliers' authorisations relating to the provision and implementation of procedures for dealing with an application.</p> <p>(4) The regulations may treat a failure to make a decision within a specified period as a decision of a particular kind.</p> <p>(5) An application made and dealt with under this section is to be free of charge to the applicant.</p> <p><b>33F Review of certain decisions under gas industry ombudsman scheme</b> (cf section 96A of Electricity Supply Act 1995)</p> <p>(1) A small retail customer, and any other person of a class prescribed by the regulations, may apply to the gas industry ombudsman under an approved gas industry ombudsman scheme for review of a decision in a dispute or complaint to which the scheme relates.</p> <p>(2) Except as provided by the scheme or by the regulations, a person does not have a right of review under this section in respect of a decision for which a review may be sought under section 33E unless the decision has been the subject of review under that section.</p> <p>(3) A review under this section is to be free of charge to small retail customers and to other persons of such classes as are prescribed by the regulations.</p> <p>(4) This section does not affect any jurisdiction that the Fair Trading Tribunal has under the <i>Consumer Claims Act 1998</i> or the Residential Tribunal has under the <i>Residential Tribunal Act 1998</i>.</p> <p>(5) The gas industry ombudsman may decline to deal with a matter if it has been, is being or should be dealt with by another person or tribunal or there are, in the ombudsman's opinion, not sufficient grounds for further investigation.</p> <p>(6) Without limiting subsection (5), the gas industry ombudsman may deal with a matter by making arrangements for it to be referred to another person or tribunal.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> |
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- 33G Gas industry ombudsman scheme** (cf section 96B of Electricity Supply Act 1995) 1  
2
- (1) The Minister may approve a gas industry ombudsman scheme 3  
for the purposes of this Act, being a scheme that provides for 4  
the appointment of a gas industry ombudsman to deal with: 5
- (a) disputes and complaints under customer supply 6  
contracts entered into with small retail customers, and 7
- (b) disputes between small retail customers and gas 8  
marketers (within the meaning of Division 5) and 9  
complaints by small retail customers about gas 10  
marketers, and 11
- (c) any other disputes and complaints of such classes 12  
(whether or not under contracts referred to in paragraph 13  
(a)) as are prescribed by the regulations. 14
- (2) Before approving such a scheme, the Minister must be satisfied 15  
that the scheme meets the following objectives: 16
- (a) that all suppliers who are required to be members of the 17  
scheme are members of the scheme, have agreed to be 18  
bound by decisions of the gas industry ombudsman 19  
under the scheme and, as members, are so bound, 20
- (b) that the scheme has satisfactory arrangements in place 21  
to deal with all disputes and complaints referred to in 22  
subsection (1), 23
- (c) that the gas industry ombudsman will be able to operate 24  
independently of all suppliers in exercising functions 25  
under the scheme, 26
- (d) that the scheme will be accessible to small retail 27  
customers and other customers prescribed by the 28  
regulations, 29
- (e) that membership of the scheme will be accessible to all 30  
potential members and will provide appropriate 31  
representation for all members in relation to the 32  
scheme's governing body, 33
- (f) that, without limiting any other application of the 34  
scheme, the scheme will apply to all disputes and 35  
complaints arising under customer supply contracts 36  
relating to small retail customers, 37
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| (g) | that the scheme will operate expeditiously and without cost to small retail customers and to other persons of such classes as are prescribed by the regulations,   | 1<br>2<br>3                      |
| (h) | that the scheme will allow customers to choose whether or not they wish to be bound by determinations under the scheme,  | 4<br>5<br>6                      |
| (i) | that the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations,  | 7<br>8<br>9<br>10                |
| (j) | that the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Minister,  | 11<br>12<br>13                   |
| (k) | that the scheme will maintain the capacity of the gas industry ombudsman, where appropriate, to refer disputes or complaints to other forums,  | 14<br>15<br>16                   |
| (l) | that the scheme will require the gas industry ombudsman to inform the Minister of substantial breaches of authorisation conditions, the Marketing Code of Conduct (within the meaning of Division 5) or of the Act of which the ombudsman becomes aware,   | 17<br>18<br>19<br>20<br>21       |
| (m) | such other objectives as are prescribed by the regulations.  | 22<br>23                         |
| (3) | A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.  | 24<br>25                         |
| (4) | The Minister may at any time revoke an approval under this section.  | 26<br>27                         |
| (5) | If a dispute or complaint involving a gas marketer (within the meaning of Division 5) or person other than a supplier is prescribed as a dispute or complaint to which an approved scheme may apply, the regulations may make it an offence for the gas marketer or person to fail to comply with a decision of the gas industry ombudsman under the scheme. | 28<br>29<br>30<br>31<br>32<br>33 |
| (6) | Notice of any approval given by the Minister under this section, and of the revocation of any such approval, is to be published in the Gazette.  | 34<br>35<br>36                   |

(7)	Subject to this section, the same scheme may be approved for the purposes of both this Act and any other Act or law.	1 2
<b>33H</b>	<b>Authorisation conditions relating to approved gas industry ombudsman schemes</b> (cf section 96C of Electricity Supply Act 1995)	3 4
	It is a condition of a supplier's authorisation under which a supplier supplies natural gas to small retail customers that:	5 6
(a)	the supplier must be a member of an approved gas industry ombudsman scheme, and	7 8
(b)	the supplier is bound by, and must comply with, any decision of the gas industry ombudsman under the scheme relating to a dispute or complaint involving the supplier and a small retail customer.	9 10 11 12
<b>33I</b>	<b>Other kinds of review</b> (cf section 96D of Electricity Supply Act 1995)	13
	Nothing in this Act prevents provision being made in negotiated customer supply contracts for the resolution of disputes with persons not covered by either or both of sections 33E and 33F.	14 15 16 17
<b>Division 4</b>	<b>Market operations</b>	18
<b>33J</b>	<b>Definitions</b> (cf section 63B of Electricity Supply Act 1995)	19
	In this Division:	20
	<i>market operations rule</i> means a rule approved under section 33K.	21 22
	<i>retail market business system</i> , in relation to the natural gas industry, means a system of practices and procedures that is designed to facilitate a competitive retail market in that industry, including practices and procedures with respect to the transfer of customers between suppliers, being a system that includes any one or more of the following features:	23 24 25 26 27 28
(a)	procedures for the identification of delivery points along a reticulator's distribution system, and for collecting, processing, recording and transmitting information associated with the delivery points so identified,	29 30 31 32

(b)	procedures for collecting, processing, recording and transmitting information arising from the metering of natural gas,	1 2 3
(c)	procedures for estimating natural gas consumption, either generally or in relation to particular customers or classes of customers,	4 5 6
(d)	procedures for the apportioning of natural gas flows among the various suppliers having customers supplied with natural gas from a single distribution system,	7 8 9
(e)	procedures for accrediting persons engaged in any of the procedures referred to in paragraphs (a)–(d), and for auditing the activities of persons so engaged,	10 11 12
(f)	procedures with respect to the administration, reporting, accounting, enforcement and review of the procedures referred to in paragraphs (a)–(e).	13 14 15
<b>33K</b>	<b>Market operations rules</b> (cf section 63C of Electricity Supply Act 1995)	16
(1)	The Minister may approve rules for or with respect to the following matters:	17 18
(a)	obligations to enter into, and the form and content of, agreements between reticulators and suppliers for the use by suppliers of the reticulators' distribution systems,	19 20 21
(b)	the circumstances in which customers may be transferred between suppliers and the procedures for the transfer, including procedures relating to consent of and notice to customers and determination of time of transfer and costs as at transfer,	22 23 24 25 26
(c)	the operation of distribution systems,	27
(d)	the establishment and operation of retail market business systems for the natural gas industry,	28 29
(e)	the ancillary market activities of ancillary market participants,	30 31
(f)	any other matter prescribed by the regulations,	32
(g)	matters ancillary to or consequential on the matters set out in paragraphs (a)–(f).	33 34

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| (2) A rule may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of any Act or statutory rule or any other publication, whether of the same or of a different kind.       | 1<br>2<br>3<br>4     |
| (3) A rule may:   | 5                    |
| (a) apply generally or be limited in its application by reference to specified exceptions or factors, or  | 6<br>7               |
| (b) apply differently according to different factors of a specified kind, or  | 8<br>9               |
| (c) authorise any matter or thing to be from time to time agreed, determined, applied or regulated by any specified person or body.   | 10<br>11<br>12       |
| (4) The Minister may from time to time approve amendments to the rules or the revocation of rules.  | 13<br>14             |
| (5) If a rule, or a rule amending or revoking a rule, is approved by the Minister:  | 15<br>16             |
| (a) written notice of the approval of the rule must be published in the Gazette, and  | 17<br>18             |
| (b) the rule takes effect on the day on which notice is so published or, if a later day is specified in the rule for commencement, on the later day so specified, and   | 19<br>20<br>21       |
| (c) the Minister must make available a copy of the rule to each supplier or reticulator.  | 22<br>23             |
| (6) A rule must not be inconsistent with this Act or the regulations, or the <i>Gas Pipelines Access (New South Wales) Law</i> or <i>Gas Pipelines Access (New South Wales) Regulations</i> , and is unenforceable to the extent of any such inconsistency. | 24<br>25<br>26<br>27 |
| (7) Subject to subsection (6), a rule may be approved for the purposes of both this Act and any other Act or law.   | 28<br>29             |
| <b>33L Obligations under rules</b> (cf section 63D of Electricity Supply Act 1995)  | 30                   |
| (1) A person must not contravene the market operations rules.<br>Maximum penalty: 200 penalty units.  | 31<br>32             |
| (2) It is a condition of a supplier's authorisation that the supplier must comply with the market operations rules.   | 33<br>34             |
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(3) It is a condition of a reticulator's authorisation that the reticulator must comply with the market operations rules.	1 2
(4) Subsection (1) does not apply to a person in the person's capacity as a customer of a supplier.	3 4
<b>Division 5      Marketing of gas</b>	5
<b>33M   Definitions</b> (cf section 63F of Electricity Supply Act 1995)	6
In this Division:	7
<i>gas marketer</i> means any of the following persons:	8
(a) a person who is a supplier,	9
(b) a person who acts as agent of a supplier for the purposes of obtaining new customers, or retaining existing customers, for the supplier,	10 11 12
(c) a person who acts as agent of one or more customers in respect of the retail supply of natural gas,	13 14
(d) a person who acts as an intermediary in any other capacity between one or more customers and a supplier in respect of the retail supply of natural gas,	15 16 17
(e) a person who engages in or carries on any other activity relating to natural gas or the natural gas industry prescribed by the regulations for the purposes of this definition.	18 19 20 21
<i>Marketing Code of Conduct</i> means the code of conduct approved by the Minister under section 33N.	22 23
<b>33N   Marketing Code of Conduct</b> (cf section 63G of Electricity Supply Act 1995)	24 25
(1) The Minister may approve a code of conduct as the Marketing Code of Conduct for the purposes of this Division.	26 27
(2) An approval may be revoked.	28
(3) If a Marketing Code of Conduct is approved by the Minister:	29
(a) the Code must be published in the Gazette, and	30



(b)	the Code takes effect on the day on which it is so published or, if a later day is specified in the Code for commencement, on the later day so specified.	1 2 3
(4)	Subject to this section, the same code of conduct may be approved for the purposes of both this Act and any other Act or law.	4 5 6
<b>33O</b>	<b>Obligations under Marketing Code of Conduct</b> (cf section 63H of Electricity Supply Act 1995)	7 8
	A gas marketer that contravenes a requirement of the Marketing Code of Conduct in relation to a small retail customer is guilty of an offence.	9 10 11
	Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).	12 13
<b>33P</b>	<b>Authorisation conditions relating to marketing activities relating to small retail customers</b> (cf section 63I of Electricity Supply Act 1995)	14 15
	It is a condition of a supplier's authorisation that:	16
(a)	the supplier must comply with the Marketing Code of Conduct, and	17 18
(b)	before entering into a negotiated customer supply contract with a small retail customer introduced to the supplier by a gas marketer, or that is arranged or facilitated by a gas marketer, the supplier must be satisfied that the gas marketer has complied with the Marketing Code of Conduct (including any requirements relating to the customer's consent).	19 20 21 22 23 24 25
<b>33Q</b>	<b>Non-licensed gas marketers to provide statements</b> (cf section 63J of Electricity Supply Act 1995)	26 27
(1)	A gas marketer (other than a supplier) must, if the marketer introduces a small retail customer to a supplier, or arranges or facilitates a customer supply contract between any such customer and a supplier, give to the supplier a written statement to the effect that the gas marketer has complied with the Marketing Code of Conduct with respect to the customer (including any requirements relating to the customer's consent).	28 29 30 31 32 33 34

(2) A gas marketer must not give to a supplier a statement under this section knowing that it is false or misleading in a material particular.	1 2 3
Maximum penalty: 100 penalty units.	4
<b>Division 6      Miscellaneous</b>	5
<b>33R    Small retail customers</b> (cf section 92 of Electricity Supply Act 1995)	6
(1) For the purposes of this Act, a <i>small retail customer</i> is:	7
(a) a person who consumes or is expected to consume natural gas at premises at a rate that is less than the prescribed rate, determined in accordance with any relevant provisions of the regulations, or	8 9 10 11
(b) a person who consumes or is expected to consume natural gas at premises used for a purpose prescribed by the regulations, or	12 13 14
(c) a person who is treated in accordance with any relevant provisions of the regulations as a small retail customer, even though the person is not a person described in paragraph (a) or (b).	15 16 17 18
(2) The regulations may make provision for or with respect to determining whether or not a person consumes or is expected to consume natural gas at a rate that is less than the prescribed rate for the purposes of subsection (1) (a).	19 20 21 22
(3) The regulations may make provision for or with respect to:	23
(a) treating a person who consumes or may consume natural gas at a rate that is the prescribed rate per year or more, or	24 25 26
(b) treating a person who consumes or may consume natural gas at premises used for a purpose referred to in subsection (1) (b),	27 28 29
as a small retail customer.	30
(4) Subject to the regulations, this section applies separately in relation to each premises at which a person consumes or is expected to consume natural gas.	31 32 33

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(5)	Without limiting any other provision of this section, a regulation made for the purposes of this section may apply to a person only in respect of the consumption of natural gas at certain premises (in which case the regulation does not apply to that person in respect of the person's consumption of natural gas at other premises).	1 2 3 4 5 6
(6)	In this Act, a reference to a small retail customer extends only to the supply of natural gas to premises in relation to which the person is such a customer and does not extend to the supply of natural gas to any other premises for which the person is not a small retail customer.	7 8 9 10 11
(7)	In this section: <i>prescribed rate</i> means the rate, expressed as a number of gigajoules per year or in any other manner, specified in the regulations.	12 13 14 15
<b>33S</b>	<b>Declaration of ancillary market activities and ancillary market participants</b>	16 17
(1)	The Minister may, by order published in the Gazette, declare any activity that is ancillary to the supply of natural gas, or that facilitates the supply of natural gas, to be an ancillary market activity.	18 19 20 21
(2)	The Minister may, by order in writing served on any person who, in the Minister's opinion, is involved in the conduct of an ancillary market activity, declare that person to be an ancillary market participant in relation to that activity for the purposes of this Act.	22 23 24 25 26
<b>33T</b>	<b>One document may serve several purposes</b> (cf section 99 of Electricity Supply Act 1995) Nothing in this Act or the <i>Electricity Supply Act 1995</i> prevents a contract under this Act and a contract under that Act from being embodied in a single document.	27 28 29 30 31
<b>[13]</b>	<b>Section 40 Conditions of licences</b>	32
	Omit "tariff customers" from section 40 (2) (b) (ii).	33
	Insert instead "small retail customers".	34

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<b>[14]    Section 83 Regulations</b>	1
Insert after section 83 (2) (c):	2
(d)    the regulation of ancillary market participants in their	3
conduct of ancillary market activities,	4
(e)    the obligations of persons who obtain or receive	5
information about customers or prospective customers	6
with respect to the collection, keeping, disclosure or	7
other use of that information and the inclusion of such	8
obligations in customer contracts,	9
<b>[15]    Section 83 (2) (l)</b>	10
Omit the paragraph. Insert instead:	11
(l)    fees, charges and payments (other than fees, charges and	12
payments of the kind for which orders may be made	13
under section 27).	14
<b>[16]    Section 83 (3) (a)</b>	15
Omit “standard form”. Insert instead “customer supply”.	16
<b>[17]    Section 83 (4)</b>	17
Insert “with appropriate representatives of consumers, the public, relevant	18
interest groups, and any sector of industry or commerce, likely to be affected	19
by those regulations and” after “consulted”.	20
<b>[18]    Section 83 (5)</b>	21
Omit the subsection.	22
<b>[19]    Section 87 Review of Act</b>	23
Omit “this Act” from section 87 (2).	24
Insert instead “the <i>Gas Supply Amendment (Retail Competition) Act 2001</i> ”.	25
<b>[20]    Schedule 2 Savings, transitional and other provisions</b>	26
Insert at the end of clause 1 (1):	27
<i>Gas Supply Amendment (Retail Competition) Act 2001</i>	28

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<b>[21] Schedule 2, clause 12 (2)</b>	1
Omit “tariff customers”. Insert instead “small retail customers”.	2
<b>[22] Schedule 2, Part 3</b>	3
Insert after Part 2:	4
 <b>Part 3 Provisions consequent on enactment of Gas Supply Amendment (Retail Competition) Act 2001</b>	 5 6 7
<b>16 Definitions</b>	8
In this Part:	9
<i>the 2001 amending Act</i> means the <i>Gas Supply Amendment (Retail Competition) Act 2001</i> .	10 11
<b>17 Reviews of suppliers’ decisions</b>	12
Section 33E, as inserted by the 2001 amending Act, extends to matters arising before the commencement of that section.	13 14
<b>18 Gas industry ombudsman</b>	15
Section 33F, as inserted by the 2001 amending Act, extends to disputes and complaints arising before the commencement of that section.	16 17 18
<b>19 Interim gas pricing orders</b>	19
(1) The Tribunal may, by order served on a standard supplier, establish an interim pricing mechanism according to which the following tariffs, fees, charges and payments are to be fixed by the supplier in relation to the supply of natural gas to small retail customers under standard form customer supply contracts (an <i>interim gas pricing order</i> ):	20 21 22 23 24 25
(a) tariffs for natural gas,	26
(b) security deposits and other payments in the nature of security deposits,	27 28
(c) fees and charges in relation to late or dishonoured payments,	29 30

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| (d) | fees and charges in relation to the establishment or maintenance of accounts,  | 1<br>2                     |
| (e) | fees and charges in relation to the disconnection of premises from, or the reconnection of premises to, a distribution system,   | 3<br>4<br>5                |
| (f) | such other fees, charges and payments as are prescribed by the regulations.  | 6<br>7                     |
| (2) | Such an order may not be made in relation to any class of small retail customers in respect of whom a gas pricing order is in force under section 27.  | 8<br>9<br>10               |
| (3) | The Minister may give the Tribunal a written referral requiring the Tribunal to make an interim gas pricing order within a time specified in the referral and, in that event, the Tribunal must take all reasonable steps to comply with the requirements of the referral. | 11<br>12<br>13<br>14<br>15 |
| (4) | Before making an interim gas pricing order, the Tribunal must notify the Minister of its intention to do so (except in the case of an order given pursuant to a referral under subclause (3)).   | 16<br>17<br>18             |
| (5) | An interim gas pricing order:  | 19                         |
| (a) | takes effect on the date on which it is served on the standard supplier concerned or on such later date as may be specified in the order in that regard, and   | 20<br>21<br>22             |
| (b) | continues in force for such period as is specified in the order, not exceeding 6 months from the date on which it takes effect,  | 23<br>24<br>25             |
|     | but may be extended by the Tribunal (on one occasion only) for up to 3 months by a further order served on the standard supplier.  | 26<br>27<br>28             |
| (6) | Section 27A (subsections (2) and (3) excepted) applies to an interim gas pricing order under this clause in the same way as it applies to a gas pricing order under section 27.  | 29<br>30<br>31             |
| (7) | Section 28 does not apply to or in respect of an interim gas pricing order under this clause.  | 32<br>33                   |
| (8) | This clause ceases to have effect on such date as may be appointed by a regulation published in the Gazette before 1 July 2003 or, if no such date is so appointed, on 1 July 2003.  | 34<br>35<br>36             |

**[23] Dictionary**

Insert in alphabetical order:

***ancillary market activity*** means an activity that is the subject of an order in force under section 33S (1).

***ancillary market participant*** means:

- (a) a person who is supplied with natural gas by means of a distribution system otherwise than by a supplier, or
- (b) a person who is the subject of an order in force under section 33S (2).

***approved gas industry ombudsman scheme*** means a scheme approved under section 33G.

***negotiated customer supply contract*** means a customer supply contract that is not a standard form customer supply contract.

***retail customer*** means a customer who owns or occupies premises to which natural gas is supplied under a contract between the customer and the holder of a supplier's authorisation.

***small retail customer***—see section 33R.

***standard form customer supply contract*** means a contract that is declared by the regulations to be a standard form customer supply contract.

***standard supplier*** means an authorised supplier to whose authorisation is attached a standard supplier's endorsement as referred to in section 33A.

***supply district*** of a standard supplier means the supply district described in its standard supplier's endorsement as referred to in section 33A (2) (a).

**[24] Dictionary**

Omit the definition of ***tariff customer***.

<b>Schedule 2    Amendment of Electricity Supply Act 1995</b>	1
(Section 4)	2
<b>[1]    Section 63C Market operations rules</b>	3
Insert after section 63C (6):	4
(7) Subject to subsection (6), a rule may be approved for the purposes of both this Act and any other Act or law.	5 6
<b>[2]    Section 63G Marketing Code of Conduct</b>	7
Insert after section 63G (3):	8
(4) Subject to this section, the same code of conduct may be approved for the purposes of both this Act and any other Act or law.	9 10 11
<b>[3]    Section 90 Constitution of customer consultative groups</b>	12
Omit “distribution network service provider or standard retail supplier, as the case requires” from section 90 (3).	13 14
Insert instead “regulations”.	15
<b>[4]    Section 92 Small retail customers</b>	16
Omit “prescribed premises for the purposes of subsection (1) (b)” from section 92 (3) (b).	17 18
Insert instead “premises used for a purpose referred to in subsection (1) (b)”.	19
<b>[5]    Section 96B Electricity industry ombudsman scheme</b>	20
Insert “who are required to be members of the scheme” after “all licence holders” in section 96B (2) (a).	21 22
<b>[6]    Section 96B (2) (g)</b>	23
Omit “customers”.	24
Insert instead “small retail customers and to other persons of such classes as are prescribed by the regulations”.	25 26



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<b>[7] Section 96B (7)</b>	1
Insert after section 96B (6):	2
(7) Subject to this section, the same scheme may be approved for	3
the purposes of both this Act and any other Act or law.	4
<b>[8] Section 99 One document may serve several purposes</b>	5
Insert at the end of the section:	6
(2) Nothing in this Act or the <i>Gas Supply Act 1996</i> prevents a	7
contract under this Act and a contract under that Act from	8
being embodied in a single document.	9