



## National Gas (New South Wales) Bill 2008

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Extract from NSW Legislative Assembly Hansard and Papers Friday 11 April 2008.

#### Agreement in Principle

**Ms NOREEN HAY** (Wollongong—Parliamentary Secretary) [10.43 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the National Gas (New South Wales) Bill 2008 because it gives effect to Council of Australian Governments [COAG] commitments ratified under the Australian Energy Market Agreement. The legislative package given effect to by the bill will improve the operation of the gas access regime nationally. It will also strengthen the quality, timeliness and national character of the governance and economic regulation of natural gas pipeline services, while increasing consistency between electricity and gas regulation and improving transparency. Under the terms of the agreement the national energy legislation operates under a national cooperative legislative scheme in which South Australia is the lead legislator.

Other States, Territories and the Commonwealth apply the relevant schedules of the South Australian legislation as laws in their respective jurisdictions through application Acts. The national gas legislation is made up of the National Gas Law [NGL], the National Gas Rules [NGR] made under that law, regulations made under the NGL, as well as each jurisdiction's Act applying the NGL in their own jurisdiction. The national gas legislation will transfer the governance and institutional arrangements of the current gas access regime to the national framework, where the Australian Energy Regulator [AER] is responsible for economic regulation and enforcement and the Australian Energy Market Commission [AEMC] is responsible for rule making and market development.

The national gas legislation also implements reforms developed by the Ministerial Council on Energy [MCE] in response to the Productivity Commission's "Review of the Gas Access Regime". The national gas legislation furthers the MCE goal of convergence of gas and electricity regulation and contains a number of common areas with the national electricity law. These areas of commonality include governance arrangements, a national gas objective, the information gathering processes and powers of the AER, performance reporting by the AER on the financial and operational performance of service providers, revenue and pricing principles, and the regime for merits review of significant regulatory decisions. The national gas legislation also strengthens consumer advocacy arrangements in the national gas sector. The NGL replaces the current Gas Pipelines Access Law as the third party access regime for gas network infrastructure. The NGR will replace the Gas Access Code. While the NGL and NGR build on the existing Gas Pipelines Access Law and Access Code, they also introduce new features.

The overall objective of the law is to promote efficient investment in and efficient use of gas services for the long-term interests of consumers. Revenue and pricing principles will allow a regulated gas service provider to earn a return commensurate with commercial and regulatory risks. There will also be a form of regulation factors based on market power to determine how gas services and the assets used to provide those services are to be regulated. The Australian Energy Market Agreement commits States and Territories to transfer responsibility for the economic regulation of gas distribution pipelines from State-based regulators to the AER. So the bill has the effect of transferring responsibility from the New South Wales Independent Pricing and Regulatory Tribunal to the AER. Responsibility for economic regulation of gas transmission pipelines in New South Wales had already been transferred to the Australian Competition and Consumer Commission, and that responsibility will now be moved to the AER.

A single national body will now be responsible for the economic regulation of both gas transmission and distribution pipelines in New South Wales and in all other participating jurisdictions. The NGL sets out functions and powers for various persons and bodies, including the AER and AEMC, and includes provisions allowing disputes about the terms and conditions of access to regulated gas infrastructure to be arbitrated by the AER. The current role of jurisdictional Ministers and the National Competition Council [NCC] involving the coverage of pipelines by regulation—based on market power factors—will continue. The NGL contains important incentives to encourage investment in gas infrastructure. These include the continuation of the greenfields pipeline incentives established in the current regime in 2006, as well as improvements to the rules around cost recovery for investment in expanding existing pipelines and the introduction of a new light-handed regulatory option where the NCC will decide whether or not light regulation may apply to certain gas transmission or distribution pipelines which are not designated pipelines.

The gas industry will continue to have the benefit of a merits review regime. The Australian Competition Tribunal will hear merits review challenges of significant economic regulatory decisions, thereby making the AER more accountable when making such regulatory decisions. The NGL also provides for the establishment of the Natural Gas Market Bulletin Board. This is the first initiative developed by the industry-led Gas Market Leaders Group and will provide improved transparency and opportunities for trading in the gas market, as well as assistance in responding to gas emergencies.

I now turn to specific provisions of the bill. Part 2 applies, as a law of New South Wales, the National Gas Law set out in the schedule to the National Gas (South Australia) Act 2008 of South Australia, as well as regulations made under that law. The bill will repeal the Gas Pipelines Access (New South Wales) Act 1998, the current New South Wales legislation that applies the National Gas Pipelines Access Law as a law in this State. Part 3 of the bill confers necessary functions and powers on the Commonwealth Minister and Commonwealth bodies, including the AER, the Australian Competition Tribunal and the NCC. It also confers functions and powers on State Ministers, including the New South Wales Minister for Energy, to do things where powers are conferred by the National Gas Legislation of other States or Territories.

Part 4 of the bill contains miscellaneous provisions. The national regime exempts parties from the payment of stamp duty and other State taxes for transactions made to comply with requirements to ring-fence or legally separate transmission or distribution functions of a business from any competitive upstream, that is production, and downstream, that is retail, functions it may undertake. The stamp duty exemption ensures that the Government makes no windfall gains from the ring-fencing requirements in the NGL or as required by an AER ring-fencing determination made under the NGL. The bill also confers power on Ministers and Supreme Courts in certain situations involving regulation of cross-border distribution or transmission pipelines.

Schedule 1 of the bill enables the making of regulations of a savings or transitional nature consequent on the enactment of the bill. Various savings and transitional provisions relating to the continuation of access arrangements, associate contract approvals, the review of decisions, and other aspects of the transition from the current regime to the new regime, are generally to be found in the NGL and the NGR, not in jurisdictional application legislation. Schedule 2 contains amendments to a number of State Acts that are consequential on the commencement of this bill, for example, changing references in State laws from "Gas Pipelines Access (NSW) Law" to "National Gas (NSW) Law". The New South Wales Government has been an active participant, through the Treasury and the Department of Water and Energy, to bring about these national gas reforms. I commend this very important bill to the House.