

GAS (AMENDMENT) ACT 1990 No. 27

NEW SOUTH WALES



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GAS (AMENDMENT) ACT 1990 No. 27

NEW SOUTH WALES



Act No. 27, 1990

An Act to amend the Gas Act 1986 to make further provision with respect to the regulation of the gas industry, and for other purposes.
[Assented to 14 June 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Gas (Amendment) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Gas Act 1986 No. 213

3. The Gas Act 1986 is amended as set out in Schedules 1 and 2.

Amendment of other Acts

4. Each Act specified in Schedule 3 is amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986

(Sec. 3)

(1) Section 3 (**Definitions**):

- (a) Section 3 (1), definition of "authorisation":

After the definition of "accounting records", insert:

"authorisation" means an authorisation in force under Part 2;

- (b) Section 3 (1), definition of "Board":

Omit the definition.

- (c) Section 3 (1), definition of "consumer":

Omit the definition.

- (d) Section 3 (1), definition of "Council":

After the definition of "Corporation", insert:

"Council" means the Gas Council of New South Wales constituted by this Act;

- (e) Section 3 (1), definition of "Fund":

Omit the definition.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (f) Section 3 (1), definition of "gas company":
Omit "company", insert instead "distributor".
 - (g) Section 3 (1), definition of "gas user":
Before the definition of "inspector", insert:
 "**gas user**" means a person, other than a gas distributor,
 to whom a gas distributor supplies gas;
 - (h) Section 3 (1), definitions of "licence" and "licensee":
Omit the definitions.
 - (i) Section 3 (1), definition of "Review Panel":
After the definition of "reticulation system", insert:
 "**Review Panel**" means a Review Panel established under
 section 87;
- (2) Section 4 (**What constitutes engaging in the reticulation of gas**):
After section 4 (2), insert:
 (3) The Minister may serve on a person who is an
 exempt supplier or distributor of gas under subsection (2)
 an order in writing to the effect that the person is no longer
 to have the benefit of that subsection, in which case the
 person ceases to be an exempt supplier or distributor of
 gas while the order is in force.
- (3) Section 7:
Omit the section, insert instead:
Duty of the Minister, Council and Review Panels
7. It is the duty of the Minister, the Council and a Review
Panel to exercise their functions under this Act in a manner
that they think is best calculated:
 (a) to ensure that gas distributors satisfy, so far as it is
 economical to do so, all reasonable demands for
 gas; and
 (b) to ensure that gas distributors are able to finance
 the provision of gas supply services; and

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (c) to protect the interests of gas users in respect of the prices charged and other terms of supply, the continuity of supply and the quality of the gas supply services provided; and
- (d) to protect the public from dangers arising from the transmission, distribution or use of gas; and
- (e) to protect the interests of gas users in respect of the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply, of gas; and
- (f) subject to paragraphs (a)-(e), to promote efficiency and economy on the part of gas distributors, and to promote the efficient use of gas; and
- (g) subject to paragraphs (a)-(e), to promote effective competition in the interests of gas users.

(4) Part 2:

Omit the Part, insert instead:

**PART 2 - AUTHORISATIONS TO RETICULATE
GAS**

Definition

8. In this Part:

"person" includes local authority.

Authorisation required to reticulate gas

9. (1) A person must not engage in the reticulation of gas unless the person is the holder of an authorisation in force under this Part.

Maximum penalty: 1,000 penalty units.

(2) The holder of an authorisation must not contravene any condition to which the authorisation is subject.

Maximum penalty: 1,000 penalty units.

Grant of authorisation

10. (1) The Minister may grant a person an authorisation to engage in the reticulation of gas.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) An authorisation is to be in writing and may be granted subject to such conditions as the Minister thinks fit and as are consistent with the Minister's duty under this Act.

(3) Provisions of this Part as to the types of conditions that an authorisation may or must be subject to are not to be construed as limiting the matters in respect of which the conditions of an authorisation may make provision.

(4) A condition of an authorisation must not be inconsistent with this Act or the regulations.

Procedure for granting authorisation

11. (1) An application for the grant of an authorisation is to be made to the Minister in a form approved by the Minister and is to be accompanied by the prescribed fee.

(2) Within 14 days after the application is made, the applicant must:

- (a) give notice of the application to any person who holds an authorisation that enables the person to engage in the reticulation of gas in any area to which the application relates; and
- (b) publish a copy of the notice as required by the regulations.

(3) The Minister is not to grant the application unless the Minister:

- (a) has consulted with the Council on the question of whether the application should be granted; and
- (b) has published notice, in the prescribed manner, of the Minister's intention to grant the application stating the reasons why the Minister intends to grant it and inviting submissions within a specified period (not less than 3 months) concerning the application; and
- (c) has considered any submissions received by the Minister within that period.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(4) If the Minister refuses to grant the application, the Minister is to notify the applicant in writing, giving reasons for the refusal.

Mandatory gas price conditions

12. (1) The conditions of an authorisation held by a gas distributor listed in Schedule 1 must include a condition relating to the price that can be charged for gas supplied by the distributor to tariff customers.

(2) Tariff customers are gas users who are each supplied with less than 10 terajoules of gas per annum.

(3) Such a condition may provide for a maximum price to be calculated in accordance with a specified formula.

(4) This section does not limit the types of conditions that may be imposed on an authorisation in connection with prices and charges.

Conditions authorising use of distribution system by third parties

13. The conditions of an authorisation may make provision:

- (a) requiring the holder of the authorisation to allow specified persons or specified classes of persons access to and the use of the holder's gas distribution system; and
- (b) specifying the terms and conditions that are to be applicable to that access and use; and
- (c) fixing the charges that are to be payable to the holder of the authorisation for and in respect of that access and use.

Further examples of authorisation conditions

14. The conditions of an authorisation may include any of the following:

- * conditions relating to the price that can be charged for gas supplied to gas users (including by reference to a maximum price calculated in accordance with a specified formula or other manner);

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- * conditions relating to prices and charges for other gas supply services (including haulage) provided by the holder of the authorisation;
- * conditions imposing restrictions on the conditions that may be imposed by the holder of the authorisation in respect of the supply of gas to gas users and imposing restrictions on the types and level of charges that can be made in connection with that supply;
- * conditions imposing restrictions on the types of gas activities that the holder of the authorisation may engage in and restrictions on the manner in which those activities may be engaged in;
- * conditions as to the area in which gas is to be supplied pursuant to the authorisation (including conditions requiring gas to be supplied to specified areas);
- * conditions imposing duties in connection with the supply and maintenance of supply of gas;
- * conditions that require or make provision for the measures to be taken by the holder of the authorisation for the protection of the environment in connection with the activities engaged in under the authorisation;
- * conditions as to the ownership of any corporation which holds the authorisation;
- * conditions requiring compliance by the holder of the authorisation with agreements with local authorities;
- * conditions as to the type of gas to be supplied, the method of supply, metering of supply and the method of charging and billing for supply;
- * conditions requiring the holder of the authorisation to keep specified records and to make specified records and information available to the Council or the Minister and requiring the publication of information and the provision of information to the public;

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- * conditions requiring the payment of fees and charges to the Crown and requiring the payment of interest on fees and charges that are overdue.

Revocation or surrender of authorisation

15. (1) An authorisation remains in force until it is revoked or surrendered in accordance with this section.

(2) An authorisation may be revoked by the Minister, without the necessity to show cause, after it has been in force for at least 10 years by giving not less than 10 years' notice in writing of revocation.

(3) An authorisation may be revoked by the Minister at any time by notice in writing to the holder of the authorisation if the holder:

- (a) becomes subject to a winding up order (whether or not on the holder's own application); or
- (b) has contravened a provision of this Act or the regulations or a condition of the authorisation and the Council has advised the Minister to revoke the authorisation on the basis of that contravention.

(4) The Council is not to advise the Minister to revoke an authorisation on the basis of a contravention unless:

- (a) the Council has given a direction in writing to the holder of the authorisation requiring the holder to remedy the contravention within a reasonable period (not less than 1 month) specified in the direction; and
- (b) the holder has failed to remedy the contravention within that period.

(5) No compensation is payable to the holder of an authorisation if the authorisation is revoked.

(6) The holder of an authorisation may surrender the authorisation by giving not less than 1 month's notice in writing to the Minister.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Alteration of conditions of authorisation

16. (1) The conditions of an authorisation may be amended (including by being varied, revoked or added to) in accordance with this section.

(2) An amendment to the conditions of an authorisation may be proposed:

- (a) by the Council, in which case the Council must give notice and details of the proposed amendment to the Minister and the holder of the authorisation; or
- (b) by the holder of the authorisation, in which case the holder of the authorisation must give notice and details of the proposed amendment to the Minister and the Council.

(3) Each party given notice of a proposed amendment has 1 month to object to it if it was proposed by the Council or 3 months to object to it if it was proposed by the holder of the authorisation.

(4) In the absence of an objection, the Council is to proceed to make the amendment but if there is an objection must refer the matter to a Review Panel for investigation and recommendation.

(5) The Council is then to make any amendment recommended by the Review Panel pursuant to the referral.

(6) An amendment is made by the Council serving written notice of it on the holder of the authorisation concerned and takes effect when that notice is served.

Special provision for alterations involving third party access to distribution system

17. (1) Despite section 16, the conditions of an authorisation cannot be amended under that section to impose or alter a condition of the type described in section 13 (Conditions authorising use of distribution system by third parties) unless the Minister consents to the amendment.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) The Minister may amend the conditions of an authorisation to impose or alter a condition of the type described in section 13 and may do so whether or not the holder of the authorisation consents to the amendment.

(3) The Minister is not to make such an amendment unless of the opinion that the amendment would:

- (a) be in the best interests of all affected gas users; and
- (b) create competition in the markets for the sale of wellhead gas and the haulage of gas; and
- (c) not prejudice the conveyance of gas needed by the gas distributor to supply its customers and meet its contractual obligations.

(4) Such an amendment is made by the Minister serving written notice of it on the holder of the authorisation concerned and takes effect when that notice is served.

Fees payable for authorisation

18. (1) On 31 March ("the due date") in each year there is payable to the Minister by the holder of an authorisation:

- (a) a fee of \$100 or such other amount as may be prescribed; and
- (b) if a condition of the authorisation so requires, an additional fee as provided by subsection (2).

(2) The additional fee is a fee equal to 1 per cent (or such lesser percentage as may be prescribed) of the revenue derived by the holder of the authorisation from the sale of gas during the period 1 January to 31 December in the previous year disregarding revenue from:

- (a) any gas sold by the holder for delivery and consumption outside the State; and
- (b) any gas sold by the holder to a gas distributor.

(3) The conditions of an authorisation can provide for the revenue of specified types of sales to be excluded from the revenue on which any such additional fee is calculated.

(4) Interest at the rate of 20 per cent (or such other percentage as may be prescribed) per annum is payable on

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

any fee (and any additional fee) that is not paid on or before the due date.

(5) Fees and interest payable under this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

Permission for gas trading undertakings etc. - local authorities

19. (1) A local authority must not:

- (a) establish or acquire a trading undertaking referred to in section 418 (1) (b) or (l) of the Local Government Act 1919; or
- (b) enter into an agreement to supply or take a supply of gas in bulk to or from any person by means of a pipe or system of pipes; or
- (c) grant or renew permission to any person to supply gas to the public within its area,

except with the permission in writing of the Minister and in accordance with any conditions to which the permission is subject.

(2) Nothing in this section affects section 9.

Local authorities - notice of gas price rise

20. A gas distributor that is a local authority must not increase the price that it charges a gas user for gas unless it has given the Council at least 30 days' notice in writing of the increase.

(5) Sections 32-37:

Omit the sections.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (6) Sections 59, 60, 62, 67-71:
Omit the sections, insert instead of section 70:
Gas Customers Reserve Account
70. (1) A gas distributor which is a subsidiary of The Australian Gas Light Company is to establish and maintain in its accounts a separate account to be called the Gas Customers Reserve Account.
(2) There is to be credited to the Gas Customers Reserve Account of a gas distributor:
(a) the amount standing to the credit of the Tariff Stabilisation Account of the distributor immediately before the substitution of this section by the Gas (Amendment) Act 1990; and
(b) half of the increase in the capital profits on assets (being assets realised after 31 December 1985) occurring since 31 December 1985 or the date of acquisition by the gas distributor (whichever is the later) less any relevant income tax payable; and
(c) any other amount required by this Act to be credited to the Gas Customers Reserve Account.
- (7) Section 72 (**Protection of Gas Customers Reserve Account on winding up**):
Omit "Tariff Stabilisation Account" wherever occurring, insert instead "Gas Customers Reserve Account".
- (8) Sections 73-82:
Omit the sections.
- (9) Parts 6, 7:
Omit the Parts, insert instead:
PART 6 - GAS COUNCIL OF NEW SOUTH WALES
Establishment of Council
84. (1) There is constituted by this Act a body corporate with the corporate name of the Gas Council of New South Wales.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) The Council is to consist of 3 part-time members appointed by the Minister.

(3) One of the members is, in and by the instrument by which the member is appointed, to be appointed as Chairperson of the Council.

(4) Schedule 2 has effect with respect to the members and procedure of the Council.

Functions of the Council

85. (1) The Council has the following functions:

- (a) to monitor the need for change in the conditions in force under authorisations from time to time and to take action under this Act to implement any such changes that it identifies as necessary or desirable;
- (b) to monitor and give directions to ensure compliance by the holders of authorisations with the provisions of this Act, the regulations and the conditions of their authorisations;
- (c) to give assistance and advice (including by making reports and recommendations) to the Minister in connection with the administration of and proposed amendments to this Act or the regulations;
- (d) to investigate, report on and propose remedies for, complaints regarding supply of gas if the complaints concern matters within the scope of this Act and are not within the scope of laws concerning the investigation and remedying of consumer complaints;
- (e) to exercise such other functions as may be conferred or imposed on the Council by or under this or any other Act.

(2) The Minister may direct the Council to investigate and report within a specified period on any specified matter relevant to the functions of the Council and may for that purpose direct the Council to consider matters in a specified order or on the basis of specified priorities.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Power of Council to demand information etc.

86. (1) The Council may require a gas distributor to do either or both of the following:

- (a) to disclose to the Council specified information relating to the operations of the gas distributor or its relationship and interaction with any of its related corporations;
- (b) to forward to the Council specified records (including accounting records), or copies of or extracts from specified records, required to be kept by the gas distributor by or under this Act or any other law.

(2) The Council may require a related corporation of a gas distributor to disclose to the Council specified information concerning the relationship and interaction between the corporation and the gas distributor.

(3) A requirement under this section is to be made in writing and served on the gas distributor or corporation and must specify the manner in which and the time within which the requirement is to be complied with.

(4) A gas distributor or corporation that fails to comply with a requirement under this section is guilty of an offence unless it satisfies the court that it is not within its power to comply with the requirement.

Maximum penalty: 1,000 penalty units.

Establishment of Review Panel

87. (1) A Review Panel may be established in accordance with this section to conduct an investigation and make a recommendation for the purposes of section 16 (Alteration of conditions of authorisation).

- (2) The members of a Review Panel are to be:
 - (a) one person who is appointed by the Minister and who is to be the Chairperson of the Review Panel; and
 - (b) no fewer than 2 and no more than 4 other persons appointed by the Chairperson of the Review Panel.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (3) A person is not to be appointed to a Review Panel if the person:
- (a) is an employee or an associate of the holder of the authorisation with which the Review Panel's investigation will be concerned; or
 - (b) is a member of the Council; or
 - (c) has a direct or indirect pecuniary interest in a matter with which the Review Panel's investigation will be concerned, other than such an interest that the person has merely as a result of being a gas user.
- (4) Schedule 2A has effect with respect to the members and procedure of a Review Panel.

Investigations etc. by Review Panel

88. (1) The terms of reference for an investigation by a Review Panel are to be as determined by the Minister if the Minister has objected to the proposed amendment that is the subject of the investigation.
- (2) In any other case, the terms of reference are to be:
- (a) as agreed between the Council and the holder of the authorisation with which the investigation will be concerned; or
 - (b) failing that agreement, as determined by the Minister.
- (3) The Council must, at the request of a Review Panel, make all information in the Council's possession that is relevant to the Review Panel's investigation available to the Review Panel.
- (4) A Review Panel is to endeavour to finalise its investigation and make its recommendation within 3 months after its establishment.
- (5) A Review Panel is to make its recommendation in the form of a report to the Council, giving full and detailed reasons for its recommendation, and the Council is to give a copy of the report to the Minister and the gas distributor concerned.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Costs of investigation by Review Panel

89. The costs of and incidental to an inquiry by a Review Panel, including any allowances payable to the members of a Review Panel:

- (a) are to be paid by the holder of the authorisation to which the inquiry relates; and
- (b) may be recovered by or on behalf of the Minister in a court of competent jurisdiction as a debt due to the Crown.

Annual report of Council to Parliament

90. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Council is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30 June in that year.

(2) The report is not to contain information that the Council considers is of a commercially sensitive nature.

(3) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(10) Section 107A:

After section 107, insert:

Duty of gas distributor to supply gas

107A. (1) It is the duty of a gas distributor:

- (a) to develop and maintain an efficient, co-ordinated and economical system of gas supply; and
- (b) subject to paragraph (a), to comply, insofar as it is economical to do so, with any reasonable request to supply gas to premises.

(2) This section does not affect any duty of a gas distributor under section 107.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (11) Sections 133 (**State Energy Research and Development Fund**),
134 (**Application of Fund**):
Omit the sections.
- (12) Section 137 (**Injunctions**):
From section 137 (1), omit "this Act", insert instead "a
provision of this Act or the regulations or a condition of an
authorisation".
- (13) Section 139 (**Regulations**):
Omit section 139 (2) (e), insert instead:
(e) prescribing the fees and charges to be paid by the
holders of authorisations in connection with the
administration of this Act;
- (14) Schedule 2:

Omit the Schedule, insert instead:

**SCHEDULE 2 - PROVISIONS RELATING TO
MEMBERS AND PROCEDURE OF THE COUNCIL**
(Sec. 84)

Definition

1. In this Schedule:

"**member**" means a member of the Council.

Qualifications of members and deputy members

2. A person is not to be appointed to be a member or a
deputy of a member unless in the Minister's opinion the
person has appropriate qualifications or experience,
having regard to the functions of the Council.

Deputies of members

3. (1) The Minister may, from time to time, appoint a
person to be the deputy of a member, and the Minister may
revoke any such appointment.

(2) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member;
and

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) The deputy of the member who is Chairperson of the Council does not have the functions of Chairperson merely because of being the Chairperson's deputy.

(4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

4. (1) Subject to this Schedule, a member holds office for such period as is specified in the member's instrument of appointment but is eligible for re-appointment.

(2) The following limitations apply to the terms of office of members:

- (a) of the first 2 members of the Council to be appointed after the commencement of this clause who are not the Chairperson, one is to be appointed for a term not exceeding 4 years and one is to be appointed for a term not exceeding 3 years;
- (b) all other appointments may be for a period not exceeding 5 years.

Allowances

5. A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

6. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

7. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

Quorum

10. The quorum for a meeting of the Council is 2 members.

Presiding member

11. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote only.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Voting

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

First meeting

13. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

Liability of members etc.

14. No matter or thing done by the Council, any member of the Council or any person acting under the direction of the Council, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects such a member or a person so acting to any action, liability, claim or demand.

**SCHEDULE 2A - PROVISIONS RELATING
TO REVIEW PANELS**

(Sec. 87)

Definition

1. In this Schedule:

"**member**" means a member of a Review Panel.

Qualifications of members and deputies

2. A person is not to be appointed to be a member or a deputy of a member unless in the opinion of the person making the appointment the person to be appointed has appropriate qualifications or experience, having regard to the matter to be investigated by the Review Panel.

Deputies of members

3. (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson of a Review Panel.

(2) The Chairperson of a Review Panel may, from time to time, appoint a person to be the deputy of any other member of the Review Panel.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (3) In the absence of a member, the member's deputy:
- (a) may, if available, act in the place of the member; and
 - (b) while so acting, has all the functions of the member and is to be taken to be a member.

(4) The deputy of the member who is Chairperson of the Review Panel has the functions of the Chairperson while acting in the place of the Chairperson.

(5) No act, determination or proceeding of a Review Panel is invalid merely because at the time of the act, determination or proceeding there is a vacancy in the office of a member of the Review Panel.

Allowances

4. A member or deputy of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member or deputy.

General procedure

5. The procedure for:
- (a) the calling of and the conduct of business at meetings of a Review Panel; and
 - (b) the conduct of investigations by a Review Panel,
- is, subject to this Act, to be as determined by the Review Panel.

Quorum

6. The quorum for a meeting of a Review Panel is:
- (a) 2 members in the case of a Review Panel consisting of 3 members; or
 - (b) 3 members in the case of a Review Panel consisting of 4 or 5 members.

Presiding member

7. (1) The Chairperson of a Review Panel or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Review Panel.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) The person presiding at any meeting of a Review Panel has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

8. A decision supported by a majority of the votes cast at a meeting of a Review Panel at which a quorum is present is the decision of the Review Panel.

Liability of members etc.

9. No matter or thing done by a Review Panel, any member of a Review Panel or any person acting under the direction of a Review Panel, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member or a person so acting personally to any action, liability, claim or demand.

(15) Schedule 3 (**Savings and transitional provisions**):

(a) Before clause 1, insert:

Part 1 - General

(b) From clause 1, omit "this Schedule", insert instead "this Part".

(c) In clause 17 (1), after "this Act", insert "or the Gas (Amendment) Act 1990".

(d) From clause 17 (2), omit "this Act", insert instead "the Act consequent on the enactment of which it is made".

(e) After clause 17, insert:

Part 2 - Gas (Amendment) Act 1990

References to "former" provisions

18. In this Part:

(a) a reference to a "former" provision of this Act is a reference to the provision as in force immediately before its substitution, repeal or amendment (as appropriate) by the Gas (Amendment) Act 1990; and

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (b) a reference to the "substitution", "repeal" or "amendment" of the provision is a reference to its substitution, repeal or amendment, respectively, by the Gas (Amendment) Act 1990.

Former licence holders entitled to authorisation

19. (1) A person who held a licence in force under former Part 2 immediately before the substitution of that Part is entitled to be granted an authorisation, on such terms and subject to such conditions as the Minister thinks fit, with effect from the substitution of that Part.

(2) Section 11 (Procedure for granting authorisation) does not apply, but the other provisions of Part 2 do apply, to the granting of such an authorisation.

Payment of fees

20. Any fee payable under former section 16 immediately before its substitution remains payable despite the substitution of that section.

Transfer of State Energy Research and Development Fund

21. (1) The balance (including any investments) standing to the credit of the State Energy Research and Development Fund under former section 133 immediately before its repeal is to be transferred to the fund of that name under section 35A of the Energy Administration Act 1987.

(2) Any amounts that became due and payable to the Fund before the repeal of former section 133 but which are unpaid on that repeal become due and payable to the Corporation under section 35B of the Energy Administration Act 1987 and can be recovered accordingly.

Completion of audits etc. already commenced

22. (1) Former sections 80 and 81 are to be regarded as continuing in force, despite their repeal, for the purposes of:

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (a) the completion of any audit, inspection or inquiry commenced under either of those sections before their repeal; and
- (b) matters incidental to any such audit, inspection or inquiry, including the recovery of costs of and incidental to them.

(2) Section 82 continues to apply to a person who exercised functions under former section 81.

Tariff Stabilisation Account

23. Substituted section 70 (2) (b) does not require an amount to be credited to the Gas Customers Reserve Account of a gas distributor if the amount had already been credited to its Tariff Stabilisation Account under former section 73 (4).

Equalisation Account

24. Of the amount standing to the credit of a gas distributor's Equalisation Account immediately before the repeal of former section 74:

- (a) half is to be credited to the gas distributor's Gas Customers Reserve Account; and
- (b) the other half can be dealt with as the gas distributor sees fit.

Removal of exemption - exempt supplier or distributor

25. The Minister is not to take action under section 4 (3) in relation to a person who was an exempt supplier or distributor of gas immediately before the commencement of that subsection unless after that commencement a substantial change occurs in the activities carried on by the person in the course of engaging in the reticulation of gas.

**SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT
1986 - CONSEQUENTIAL AND MISCELLANEOUS**

(Sec. 3)

- (1) Long title:
Omit "gas companies", insert instead "gas distributors".
- (2) Section 3 (**Definitions**):
 - (a) Section 3 (1), definition of "reticulation system":
Omit "company" wherever occurring, insert instead "distributor".
 - (b) Section 3 (1), definition of "secondary gas activity":
Omit "company" wherever occurring, insert instead "gas distributor".
 - (c) Section 3 (4):
Omit "gas companies", insert instead "gas distributors that are subsidiaries of The Australian Gas Light Company".
- (3) Section 4 (**Reticulation of gas**):
Section 4 (2):
Omit "consumers", insert instead "gas users".
- (4) Section 5 (**Application of Act**):
From section 5 (3), omit "company", insert instead "distributor".
- (5) Section 24 (**Mode of transfer**):
From section 24 (2), omit "consumers", insert instead "gas users".
- (6) Section 30 (**A.G.L. not to carry on certain gas activities**):
From section 30 (1), omit "\$10,000", insert instead "500 penalty units".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (7) Section 38 (**Companies and Securities Industry Codes to apply to A.G.L. and subsidiaries**):
From section 38 (1), omit "gas companies", insert instead "gas distributors that are its wholly owned subsidiaries".
- (8) Section 41 (**Maximum shareholding in A.G.L.**):
From section 41 (1), omit "\$10,000", insert instead "500 penalty units".
- (9) Section 43 (**Notice of suspected contravention**):
From section 43 (1), omit "\$2,000", insert instead "100 penalty units".
- (10) Section 44 (**Directions concerning approved shareholdings**):
From section 44 (1), omit "gas company" wherever occurring, insert instead "gas distributor".
- (11) Section 45 (**Powers of Minister to deal with contravention**):
From section 45 (5), omit "\$10,000", insert instead "500 penalty units".
- (12) Section 50 (**Information concerning shareholding**):
From section 50 (4), omit "\$10,000", insert instead "500 penalty units".
- (13) Section 55 (**Restrictions on dealings in shares of gas distributors**):
 - (a) From section 55 (1) (a), omit "gas company", insert instead "gas distributor".
 - (b) From section 55 (1), omit "\$10,000", insert instead "500 penalty units".
- (14) Section 56 (**Separation and self-containment of gas distributors**):
Omit "gas company", insert instead "gas distributor".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (15) Part 5, heading:
Omit "COMPANIES", insert instead "DISTRIBUTORS".
- (16) Section 58 (**Approval required for certain restructuring**):
- (a) Omit "gas company" wherever occurring, insert instead "gas distributor".
 - (b) Omit "gas companies" wherever occurring, insert instead "gas distributors".
- (17) Section 61 (**Dealings and arrangements involving gas distributors - ordinary commercial terms**):
- (a) From section 61 (1), omit "gas company", insert instead "gas distributor".
 - (b) From section 61 (1) (b), omit "the companies", insert instead "the gas distributor and the corporation".
 - (c) Omit section 61 (2).
- (18) Section 63 (**Financial assistance by gas distributors**):
From section 63 (1), omit "gas company" wherever occurring, insert instead "gas distributor".
- (19) Section 64 (**Duty of directors to gas users**):
- (a) Omit "gas company", insert instead "gas distributor".
 - (b) Omit "consumers", insert instead "gas users".
 - (c) Omit "company" where lastly occurring, insert instead "gas distributor".
- (20) Section 65 (**Minister may appoint director of gas distributor**):
- (a) Omit "gas company" wherever occurring, insert instead "gas distributor".
 - (b) From section 65 (6), omit "gas companies", insert instead "gas distributors".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (21) Section 66 (**Appointed directors - consultation, powers**):
Omit "gas company" wherever occurring, insert instead "gas distributor".
- (22) Section 83 (**Corporation's power to obtain information**):
Omit the section.
- (23) Section 103 (**Gas supply to be metered**):
From section 103 (3), omit "\$5,000", insert instead "200 penalty units".
- (24) Section 104 (**Meters etc.**):
 - (a) Omit "consumer", insert instead "gas user".
 - (b) Omit "\$5,000", insert instead "200 penalty units".
- (25) Section 107 (**Application for supply**):
 - (a) From section 107 (4), omit "company's", insert instead "distributor's".
 - (b) From section 107 (4), omit "\$1,000", insert instead "50 penalty units".
- (26) Section 113 (**Liability of gas distributors - interference with supply**):
From section 113 (3), omit "company's", insert instead "distributor's".
- (27) Section 114 (**Standards of supply**):
 - (a) From section 114 (1), omit "consumer", insert instead "gas user".
 - (b) From section 114 (1), omit "\$2,000", insert instead "100 penalty units".
- (28) Section 120 (**Definitions**):
 - (a) Omit "company inspector" wherever occurring, insert instead "gas inspector".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (b) Omit "the company", insert instead "the gas distributor which employs the inspector".
- (29) Section 121 (**Inspectors**):
 - (a) Omit "gas company" wherever occurring, insert instead "gas distributor".
 - (b) From section 121 (3), omit "the company", insert instead "the distributor".
 - (c) Omit "company inspector" wherever occurring, insert instead "gas inspector".
- (30) Section 125 (**Entry to discontinue supply**):
 - (a) From section 125 (1), omit "company inspector", insert instead "gas distributor's gas inspector".
 - (b) From section 125 (1), omit "company's", insert instead "distributor's".
- (31) Section 127 (**Search warrants**):
 - (a) From section 127 (2) (b), omit "company inspector", insert instead "gas inspector".
 - (b) From section 127 (2) (b), omit "the company", insert instead "the gas distributor concerned".
- (32) Section 128 (**Offences**):

From section 128 (2), omit "\$1,000", insert instead "50 penalty units".
- (33) Section 129 (**Interference with meters etc.**):

From section 129 (4), omit "\$2,000", insert instead "100 penalty units".
- (34) Section 130 (**Damage to reticulation system**):

From section 130 (1), omit "\$2,000", insert instead "100 penalty units".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (35) Section 132 (**Secrecy**):
Omit "\$5,000", insert instead "200 penalty units".
- (36) Section 136 (**General offence**):
Omit "\$500" and "\$2,000", insert instead "10 penalty units" and "100 penalty units" respectively.
- (37) Section 137 (**Injunctions**):
From section 137 (6), omit "gas company", insert instead "gas distributor".
- (38) Section 138 (**Proceedings for offences**):
From section 138 (2), omit "\$5,000", insert instead "\$10,000".
- (39) Section 139 (**Regulations**):
- (a) From section 139 (2) (h) and (i), omit "companies" wherever occurring, insert instead "distributors".
 - (b) From section 139 (2) (l), omit "company", insert instead "distributor".
 - (c) From section 139 (2) (l), omit "consumer's", insert instead "gas user's".
 - (d) From section 139 (3) (c), omit "company" wherever occurring, insert instead "distributor".
- (40) Sections 103, 104-114, 116, 118, 119, 122, 123, 128, 129, 130, 131, 139:
Omit "company" wherever occurring, insert instead "distributor".
- (41) Schedule 1, heading:
Omit "GAS COMPANIES", insert instead "GAS DISTRIBUTORS".

SCHEDULE 3 - AMENDMENT OF OTHER ACTS

(Sec. 4)

Electricity Act 1945 (1946 No. 13)

Section 17 (Contributions to the State Energy Research and Development Fund):

From section 17 (1), omit "section 133 of the Gas Act 1986", insert instead "section 35A of the Energy Administration Act 1987".

Energy Administration Act 1987 No. 103

(1) Section 22:

Omit the section, insert instead:

Royal Commission powers at inquiries

22. (1) For the purposes of an inquiry or examination under section 21:

- (a) the Minister, the person conducting it on behalf of the Corporation or the chairperson of the committee conducting it has the functions, protections and immunities conferred on a chairman of a Royal Commission by Division 1 of Part 2 of the Royal Commissions Act 1923; and
- (b) a member of the committee conducting it has the functions, protections and immunities conferred on a commissioner by that Division.

(2) The Royal Commissions Act 1923 (except section 13 and Division 2 of Part 2) applies to and in respect of an inquiry or examination under section 21.

(2) Section 35 (**Energy Administration Account**):

In section 35 (2) (a), after "Corporation", insert "(except under section 35B)".

(3) Sections 35A, 35B:

After section 35, insert:

State Energy Research and Development Fund

35A. (1) There is to be established in the Special Deposits Account in the Treasury a State Energy Research and Development Fund.

SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued*

- (2) There is to be paid into the Fund:
 - (a) any contribution paid to the Corporation under section 35B; and
 - (b) any other money payable into the Fund by or under this or any other Act.
- (3) There is to be paid out of the Fund such amounts as the Minister may direct for or with respect to:
 - (a) research concerning, and the development of, energy resources for the State;
 - (b) such other purposes as may be prescribed in connection with the supply and use of energy resources for the State, and related technological development.
- (4) The regulations may make provision for and with respect to the application of the Fund.
- (5) The Fund is, subject to this Act and the regulations, under the direction, control and management of the Corporation.

Contributions by holders of gas reticulation authorisations

35B. (1) The Minister may direct by order in writing that this section applies to a specified person if the person is the holder of an authorisation under the Gas Act 1986.

(2) A person to whom this section applies must pay to the Corporation an annual contribution equal to the prescribed percentage of the revenue derived by the person from the sale of gas during each year commencing 1 January, except any sale of a class prescribed as exempt from the operation of this section.

(3) The contribution is payable by 31 March in the following year and may then be recovered by the Corporation as a debt due to the Crown in a court of competent jurisdiction.

SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued*

(4) In this section:

"**prescribed percentage**" means the percentage, not exceeding 0.5 per cent, fixed by the Minister in the order applying this section to the person concerned.

[*Minister's second reading speech made in -
Legislative Assembly on 17 May 1990
Legislative Council on 29 May 1990*]



FIRST PRINT

GAS (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Gas Act 1986 to substantially change the way in which persons ("gas distributors") who carry on gas reticulation in the State are regulated. Current provisions dealing with gas undertakings by local government and with the corporate structure of the A.G.L. group will be retained.

The major changes are as follows:

- (a) annual licences to reticulate gas will be replaced with ongoing authorisations that will remain in force until revoked or surrendered;
- (b) there will be a wide power to impose conditions on authorisations and those conditions will replace many provisions of the Act that currently impose restrictions on gas distributors;
- (c) gas prices (currently imposed under the Act) will in future be imposed by way of conditions on authorisations which will be mandatory in the case of distributors currently subject to gas price restrictions;
- (d) the conditions of an authorisation will be able to make provision for third party access to the gas distribution system of the holder of the authorisation;
- (e) a 3 member Gas Council of New South Wales will be appointed by the Minister to monitor the operation of the Act and to formulate and make changes to the conditions of an authorisation;
- (f) if a proposed alteration of a condition is objected to by the Minister or the gas distributor concerned, the Council is to appoint a Review Panel to investigate and decide the matter;
- (g) provisions that operate to limit the profits of gas distributors will be repealed;
- (h) Tariff Stabilisation Accounts kept by some gas distributors will become reserves to be known as Gas Customers Reserve Accounts and will continue to operate to reduce gas prices;

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- (i) there will be a clear statement of the duties of the Minister, the Gas Council and the Review Panels under the Act;
- (j) provisions dealing with the establishment and functions of Boards of Inquiry will be repealed as there will now be no functions to be exercised by them;
- (k) penalties will be increased;
- (l) the State Energy Research and Development Fund will be transferred to the Energy Administration Act 1987.

The Bill also makes consequential amendments to the Gas Act 1986, the Electricity Act 1945 and the Energy Administration Act 1987.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Gas Act 1986 (Schedules 1 and 2).

Clause 4 is a formal provision that gives effect to the Schedule of amendments to certain other Acts (Schedule 3).

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986

Schedule 1 (1) amends definitions in the Act and inserts new definitions ("authorisation" replaces "licence", "gas user" replaces "consumer" and "gas distributor" replaces "gas company").

Schedule 1 (2) authorises the Minister to remove an exemption currently applying to certain suppliers and distributors of gas under which they are not to be regarded as engaged in the reticulation of gas.

Schedule 1 (3) sets out the duty of the Minister and the proposed Gas Council when exercising functions under the Act.

Schedule 1 (4) replaces the current licensing provisions of the Act with provisions that require persons who engage in the reticulation of gas (not just intrastate reticulation as at present) to hold an authorisation granted by the Minister. The main features of the new provisions are as follows:

- * Current licensees will be entitled to be granted authorisations.
- * An applicant for an authorisation is required to give notice to affected persons and there is provision for submissions to the Minister by interested parties.
- * An authorisation remains in force until it is surrendered or revoked.
- * Authorisations can be granted subject to a wide range of conditions.
- * An authorisation held by a gas distributor currently subject to a gas price restriction must be subject to a condition as to gas price.
- * The conditions of an authorisation can be amended by the Council but only if the Minister does not object to the amendment and the holder of the

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authorisation consents to it or a Review Panel established by the Council recommends in favour of the amendment.

- * A gas distributor can propose amendments to the conditions of its authorisation to the Council.
- * Conditions as to access by third parties to a distributor's distribution system cannot be imposed except with the consent of the Minister and can be imposed by the Minister by way of amendment to conditions.
- * The fee payable for an authorisation is to comprise a base annual fee and, if the conditions of the authorisation so require, an additional fee calculated as a percentage of revenue from gas sales.
- * The provision of the Act that deals with gas undertakings by local government authorities is re-enacted.

Schedule 1 (5) - (8) repeal sections of the Act that impose requirements and restrictions on gas distributors as to the activities they can engage in, depreciation arrangements, payment of dividends, auditing and record keeping. The conditions of an authorisation will be able to provide for those matters in future. Provisions that directly restrict the profit level of gas distributors are also repealed. The Tariff Stabilisation Account is replaced with a reserve to be called the Gas Customers Reserve Account which will continue to benefit gas users. Currently the Tariff Stabilisation Account is part of the mechanism for profit restriction.

Schedule 1 (9) repeals Parts 6 (Boards of Inquiry) and 7 (Prices, charges and conditions for supply of gas) of the Act. There will no longer be any role for Boards of Inquiry and the prices, charges and conditions of supply of gas will be regulated by the conditions of authorisations.

A new Part 6 is inserted dealing with the proposed Gas Council. The main features of the new provisions are as follows:

- * The Council is to consist of 3 part-time members appointed by the Minister.
- * The functions of the Council generally involve monitoring the operation of the Act, the regulations and authorisations and reporting to and advising the Minister.
- * The Council also initiates proposals for amendments to the conditions of an authorisation.
- * The Council has power to demand information from gas distributors.
- * A Review Panel can be established which determines whether a proposed amendment of a condition of an authorisation is to proceed if the Minister objects to it or the holder of the authorisation does not consent to it.
- * The Council is to make an annual report to the Minister which is to be tabled in Parliament.

Schedule 1 (10) states the duty of a gas distributor to make a supply of gas available.

Schedule 1 (11) repeals provisions dealing with the State Energy Research and Development Fund which will be transferred to the Energy Administration Act 1987. Gas distributors will continue to be required to contribute 0.5 per cent of their

Gas (Amendment) 1990

revenue from gas sales though this will not be restricted to intrastate gas sales as at present.

Schedule 1 (12) expands the power of the Supreme Court to grant an injunction so that an injunction can be granted in respect of a contravention of a regulation or a condition of an authorisation and not just in respect of a contravention of the Act as at present.

Schedule 1 (13) repeals a power to make regulations concerning Boards of Inquiry, which will now be obsolete, and inserts a general power to make regulations requiring the holders of authorisations to pay fees and charges.

Schedule 1 (14) repeals obsolete provisions and inserts provisions concerning the membership and procedure of the Council and Review Panels.

Schedule 1 (15) inserts savings and transitional provisions that are consequential on the enactment of the proposed Act.

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986 - CONSEQUENTIAL AND MISCELLANEOUS

Schedule 2 makes consequential amendments (such as changing "gas company" to "gas distributor" and "consumer" to "gas user") and increases penalties for offences under the Act.

The expression "penalty unit", used in the Bill, has its basis in section 56 of the Interpretation Act 1987. At present, 1 penalty unit is equivalent to \$100.

SCHEDULE 3 - AMENDMENT OF OTHER ACTS

Schedule 3 makes a consequential amendment to the Electricity Act 1945 and transfers to the Energy Administration Act 1987 provisions currently in the Gas Act 1986 dealing with the creation, funding and application of the State Energy Research and Development Fund. The Energy Administration Act 1987 is also amended so that persons conducting inquiries under that Act will have the same powers and immunities as Boards of Inquiry currently have under the Gas Act 1986.

FIRST PRINT

GAS (AMENDMENT) BILL 1990

NEW SOUTH WALES



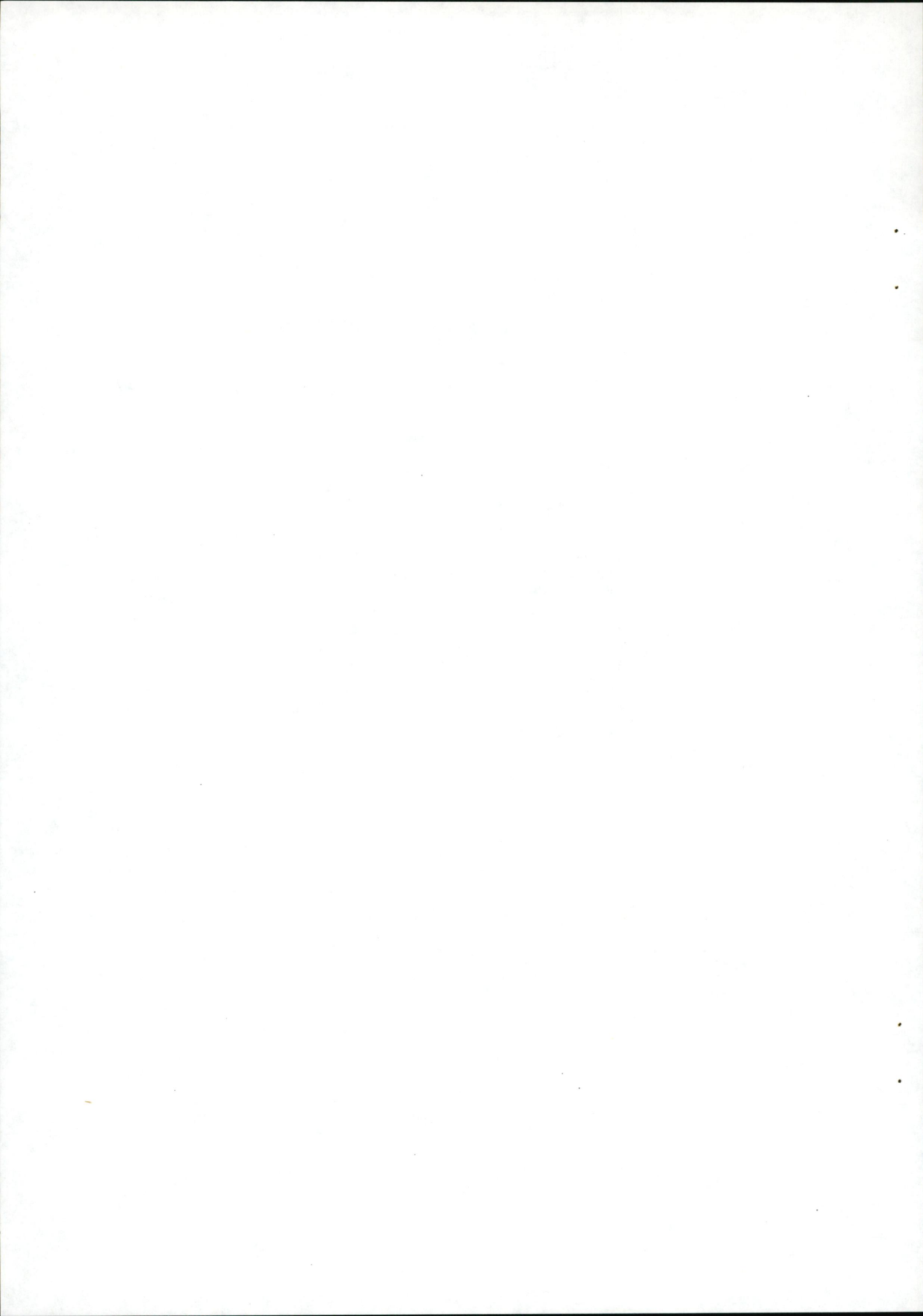
TABLE OF PROVISIONS

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SCHEDULE 1 - AMENDMENT OF GAS ACT 1986

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986 -
CONSEQUENTIAL AND MISCELLANEOUS

SCHEDULE 3 - AMENDMENT OF OTHER ACTS



GAS (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Gas Act 1986 to make further provision with respect to the regulation of the gas industry; and for other purposes.

Gas (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Gas (Amendment) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Gas Act 1986 No. 213

3. The Gas Act 1986 is amended as set out in Schedules 1 and 2.

Amendment of other Acts

4. Each Act specified in Schedule 3 is amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986

- (1) Section 3 (**Definitions**): (Sec. 3)
- (a) Section 3 (1), definition of "authorisation":
After the definition of "accounting records", insert:
"authorisation" means an authorisation in force under Part 2;
 - (b) Section 3 (1), definition of "Board":
Omit the definition.
 - (c) Section 3 (1), definition of "consumer":
Omit the definition.
 - (d) Section 3 (1), definition of "Council":
After the definition of "Corporation", insert:
"Council" means the Gas Council of New South Wales constituted by this Act;
 - (e) Section 3 (1), definition of "Fund":
Omit the definition.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (f) Section 3 (1), definition of "gas company":
Omit "company", insert instead "distributor".
 - (g) Section 3 (1), definition of "gas user":
Before the definition of "inspector", insert:
 "**gas user**" means a person, other than a gas distributor,
 to whom a gas distributor supplies gas;
 - (h) Section 3 (1), definitions of "licence" and "licensee":
Omit the definitions.
 - (i) Section 3 (1), definition of "Review Panel":
After the definition of "reticulation system", insert:
 "**Review Panel**" means a Review Panel established under
 section 87;
- (2) Section 4 (**What constitutes engaging in the reticulation of gas**):
After section 4 (2), insert:
 (3) The Minister may serve on a person who is an
 exempt supplier or distributor of gas under subsection (2)
 an order in writing to the effect that the person is no longer
 to have the benefit of that subsection, in which case the
 person ceases to be an exempt supplier or distributor of
 gas while the order is in force.
- (3) Section 7:
Omit the section, insert instead:
Duty of the Minister, Council and Review Panels
7. It is the duty of the Minister, the Council and a Review
Panel to exercise their functions under this Act in a manner
that they think is best calculated:
 (a) to ensure that gas distributors satisfy, so far as it is
 economical to do so, all reasonable demands for
 gas; and
 (b) to ensure that gas distributors are able to finance
 the provision of gas supply services; and

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (c) to protect the interests of gas users in respect of the prices charged and other terms of supply, the continuity of supply and the quality of the gas supply services provided; and
- (d) to protect the public from dangers arising from the transmission, distribution or use of gas; and
- (e) to protect the interests of gas users in respect of the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply, of gas; and
- (f) subject to paragraphs (a)-(e), to promote efficiency and economy on the part of gas distributors, and to promote the efficient use of gas; and
- (g) subject to paragraphs (a)-(e), to promote effective competition in the interests of gas users.

(4) Part 2:

Omit the Part, insert instead:

**PART 2 - AUTHORISATIONS TO RETICULATE
GAS**

Definition

8. In this Part:

"person" includes local authority.

Authorisation required to reticulate gas

9. (1) A person must not engage in the reticulation of gas unless the person is the holder of an authorisation in force under this Part.

Maximum penalty: 1,000 penalty units.

(2) The holder of an authorisation must not contravene any condition to which the authorisation is subject.

Maximum penalty: 1,000 penalty units.

Grant of authorisation

10. (1) The Minister may grant a person an authorisation to engage in the reticulation of gas.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) An authorisation is to be in writing and may be granted subject to such conditions as the Minister thinks fit and as are consistent with the Minister's duty under this Act.

(3) Provisions of this Part as to the types of conditions that an authorisation may or must be subject to are not to be construed as limiting the matters in respect of which the conditions of an authorisation may make provision.

(4) A condition of an authorisation must not be inconsistent with this Act or the regulations.

Procedure for granting authorisation

11. (1) An application for the grant of an authorisation is to be made to the Minister in a form approved by the Minister and is to be accompanied by the prescribed fee.

(2) Within 14 days after the application is made, the applicant must:

- (a) give notice of the application to any person who holds an authorisation that enables the person to engage in the reticulation of gas in any area to which the application relates; and
- (b) publish a copy of the notice as required by the regulations.

(3) The Minister is not to grant the application unless the Minister:

- (a) has consulted with the Council on the question of whether the application should be granted; and
- (b) has published notice, in the prescribed manner, of the Minister's intention to grant the application stating the reasons why the Minister intends to grant it and inviting submissions within a specified period (not less than 3 months) concerning the application; and
- (c) has considered any submissions received by the Minister within that period.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(4) If the Minister refuses to grant the application, the Minister is to notify the applicant in writing, giving reasons for the refusal.

Mandatory gas price conditions

12. (1) The conditions of an authorisation held by a gas distributor listed in Schedule 1 must include a condition relating to the price that can be charged for gas supplied by the distributor to tariff customers.

(2) Tariff customers are gas users who are each supplied with less than 10 terajoules of gas per annum.

(3) Such a condition may provide for a maximum price to be calculated in accordance with a specified formula.

(4) This section does not limit the types of conditions that may be imposed on an authorisation in connection with prices and charges.

Conditions authorising use of distribution system by third parties

13. The conditions of an authorisation may make provision:

- (a) requiring the holder of the authorisation to allow specified persons or specified classes of persons access to and the use of the holder's gas distribution system; and
- (b) specifying the terms and conditions that are to be applicable to that access and use; and
- (c) fixing the charges that are to be payable to the holder of the authorisation for and in respect of that access and use.

Further examples of authorisation conditions

14. The conditions of an authorisation may include any of the following:

- * conditions relating to the price that can be charged for gas supplied to gas users (including by reference to a maximum price calculated in accordance with a specified formula or other manner);

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- * conditions relating to prices and charges for other gas supply services (including haulage) provided by the holder of the authorisation;
- * conditions imposing restrictions on the conditions that may be imposed by the holder of the authorisation in respect of the supply of gas to gas users and imposing restrictions on the types and level of charges that can be made in connection with that supply;
- * conditions imposing restrictions on the types of gas activities that the holder of the authorisation may engage in and restrictions on the manner in which those activities may be engaged in;
- * conditions as to the area in which gas is to be supplied pursuant to the authorisation (including conditions requiring gas to be supplied to specified areas);
- * conditions imposing duties in connection with the supply and maintenance of supply of gas;
- * conditions that require or make provision for the measures to be taken by the holder of the authorisation for the protection of the environment in connection with the activities engaged in under the authorisation;
- * conditions as to the ownership of any corporation which holds the authorisation;
- * conditions requiring compliance by the holder of the authorisation with agreements with local authorities;
- * conditions as to the type of gas to be supplied, the method of supply, metering of supply and the method of charging and billing for supply;
- * conditions requiring the holder of the authorisation to keep specified records and to make specified records and information available to the Council or the Minister and requiring the publication of information and the provision of information to the public;

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- * conditions requiring the payment of fees and charges to the Crown and requiring the payment of interest on fees and charges that are overdue.

Revocation or surrender of authorisation

15. (1) An authorisation remains in force until it is revoked or surrendered in accordance with this section.

(2) An authorisation may be revoked by the Minister, without the necessity to show cause, after it has been in force for at least 10 years by giving not less than 10 years' notice in writing of revocation.

(3) An authorisation may be revoked by the Minister at any time by notice in writing to the holder of the authorisation if the holder:

(a) becomes subject to a winding up order (whether or not on the holder's own application); or

(b) has contravened a provision of this Act or the regulations or a condition of the authorisation and the Council has advised the Minister to revoke the authorisation on the basis of that contravention.

(4) The Council is not to advise the Minister to revoke an authorisation on the basis of a contravention unless:

(a) the Council has given a direction in writing to the holder of the authorisation requiring the holder to remedy the contravention within a reasonable period (not less than 1 month) specified in the direction; and

(b) the holder has failed to remedy the contravention within that period.

(5) No compensation is payable to the holder of an authorisation if the authorisation is revoked.

(6) The holder of an authorisation may surrender the authorisation by giving not less than 1 month's notice in writing to the Minister.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Alteration of conditions of authorisation

16. (1) The conditions of an authorisation may be amended (including by being varied, revoked or added to) in accordance with this section.

(2) An amendment to the conditions of an authorisation may be proposed:

- (a) by the Council, in which case the Council must give notice and details of the proposed amendment to the Minister and the holder of the authorisation; or
- (b) by the holder of the authorisation, in which case the holder of the authorisation must give notice and details of the proposed amendment to the Minister and the Council.

(3) Each party given notice of a proposed amendment has 1 month to object to it if it was proposed by the Council or 3 months to object to it if it was proposed by the holder of the authorisation.

(4) In the absence of an objection, the Council is to proceed to make the amendment but if there is an objection must refer the matter to a Review Panel for investigation and recommendation.

(5) The Council is then to make any amendment recommended by the Review Panel pursuant to the referral.

(6) An amendment is made by the Council serving written notice of it on the holder of the authorisation concerned and takes effect when that notice is served.

Special provision for alterations involving third party access to distribution system

17. (1) Despite section 16, the conditions of an authorisation cannot be amended under that section to impose or alter a condition of the type described in section 13 (Conditions authorising use of distribution system by third parties) unless the Minister consents to the amendment.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) The Minister may amend the conditions of an authorisation to impose or alter a condition of the type described in section 13 and may do so whether or not the holder of the authorisation consents to the amendment.

(3) The Minister is not to make such an amendment unless of the opinion that the amendment would:

- (a) be in the best interests of all affected gas users; and
- (b) create competition in the markets for the sale of wellhead gas and the haulage of gas; and
- (c) not prejudice the conveyance of gas needed by the gas distributor to supply its customers and meet its contractual obligations.

(4) Such an amendment is made by the Minister serving written notice of it on the holder of the authorisation concerned and takes effect when that notice is served.

Fees payable for authorisation

18. (1) On 31 March ("the due date") in each year there is payable to the Minister by the holder of an authorisation:

- (a) a fee of \$100 or such other amount as may be prescribed; and
- (b) if a condition of the authorisation so requires, an additional fee as provided by subsection (2).

(2) The additional fee is a fee equal to 1 per cent (or such lesser percentage as may be prescribed) of the revenue derived by the holder of the authorisation from the sale of gas during the period 1 January to 31 December in the previous year disregarding revenue from:

- (a) any gas sold by the holder for delivery and consumption outside the State; and
- (b) any gas sold by the holder to a gas distributor.

(3) The conditions of an authorisation can provide for the revenue of specified types of sales to be excluded from the revenue on which any such additional fee is calculated.

(4) Interest at the rate of 20 per cent (or such other percentage as may be prescribed) per annum is payable on

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

any fee (and any additional fee) that is not paid on or before the due date.

(5) Fees and interest payable under this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

Permission for gas trading undertakings etc. - local authorities

19. (1) A local authority must not:

- (a) establish or acquire a trading undertaking referred to in section 418 (1) (b) or (l) of the Local Government Act 1919; or
- (b) enter into an agreement to supply or take a supply of gas in bulk to or from any person by means of a pipe or system of pipes; or
- (c) grant or renew permission to any person to supply gas to the public within its area,

except with the permission in writing of the Minister and in accordance with any conditions to which the permission is subject.

(2) Nothing in this section affects section 9.

Local authorities - notice of gas price rise

20. A gas distributor that is a local authority must not increase the price that it charges a gas user for gas unless it has given the Council at least 30 days' notice in writing of the increase.

- (5) Sections 32-37:
Omit the sections.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(6) Sections 59, 60, 62, 67-71:

Omit the sections, insert instead of section 70:

Gas Customers Reserve Account

70. (1) A gas distributor which is a subsidiary of The Australian Gas Light Company is to establish and maintain in its accounts a separate account to be called the Gas Customers Reserve Account.

(2) There is to be credited to the Gas Customers Reserve Account of a gas distributor:

- (a) the amount standing to the credit of the Tariff Stabilisation Account of the distributor immediately before the substitution of this section by the Gas (Amendment) Act 1990; and
- (b) half of the increase in the capital profits on assets (being assets realised after 31 December 1985) occurring since 31 December 1985 or the date of acquisition by the gas distributor (whichever is the later) less any relevant income tax payable; and
- (c) any other amount required by this Act to be credited to the Gas Customers Reserve Account.

(7) Section 72 (**Protection of Gas Customers Reserve Account on winding up**):

Omit "Tariff Stabilisation Account" wherever occurring, insert instead "Gas Customers Reserve Account".

(8) Sections 73-82:

Omit the sections.

(9) Parts 6, 7:

Omit the Parts, insert instead:

PART 6 - GAS COUNCIL OF NEW SOUTH WALES

Establishment of Council

84. (1) There is constituted by this Act a body corporate with the corporate name of the Gas Council of New South Wales.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) The Council is to consist of 3 part-time members appointed by the Minister.

(3) One of the members is, in and by the instrument by which the member is appointed, to be appointed as Chairperson of the Council.

(4) Schedule 2 has effect with respect to the members and procedure of the Council.

Functions of the Council

85. (1) The Council has the following functions:

- (a) to monitor the need for change in the conditions in force under authorisations from time to time and to take action under this Act to implement any such changes that it identifies as necessary or desirable;
- (b) to monitor and give directions to ensure compliance by the holders of authorisations with the provisions of this Act, the regulations and the conditions of their authorisations;
- (c) to give assistance and advice (including by making reports and recommendations) to the Minister in connection with the administration of and proposed amendments to this Act or the regulations;
- (d) to investigate, report on and propose remedies for, complaints regarding supply of gas if the complaints concern matters within the scope of this Act and are not within the scope of laws concerning the investigation and remedying of consumer complaints;
- (e) to exercise such other functions as may be conferred or imposed on the Council by or under this or any other Act.

(2) The Minister may direct the Council to investigate and report within a specified period on any specified matter relevant to the functions of the Council and may for that purpose direct the Council to consider matters in a specified order or on the basis of specified priorities.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Power of Council to demand information etc.

86. (1) The Council may require a gas distributor to do either or both of the following:

- (a) to disclose to the Council specified information relating to the operations of the gas distributor or its relationship and interaction with any of its related corporations;
- (b) to forward to the Council specified records (including accounting records), or copies of or extracts from specified records, required to be kept by the gas distributor by or under this Act or any other law.

(2) The Council may require a related corporation of a gas distributor to disclose to the Council specified information concerning the relationship and interaction between the corporation and the gas distributor.

(3) A requirement under this section is to be made in writing and served on the gas distributor or corporation and must specify the manner in which and the time within which the requirement is to be complied with.

(4) A gas distributor or corporation that fails to comply with a requirement under this section is guilty of an offence unless it satisfies the court that it is not within its power to comply with the requirement.

Maximum penalty: 1,000 penalty units.

Establishment of Review Panel

87. (1) A Review Panel may be established in accordance with this section to conduct an investigation and make a recommendation for the purposes of section 16 (Alteration of conditions of authorisation).

(2) The members of a Review Panel are to be:

- (a) one person who is appointed by the Minister and who is to be the Chairperson of the Review Panel; and
- (b) no fewer than 2 and no more than 4 other persons appointed by the Chairperson of the Review Panel.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(3) A person is not to be appointed to a Review Panel if the person:

- (a) is an employee or an associate of the holder of the authorisation with which the Review Panel's investigation will be concerned; or
- (b) is a member of the Council; or
- (c) has a direct or indirect pecuniary interest in a matter with which the Review Panel's investigation will be concerned, other than such an interest that the person has merely as a result of being a gas user.

(4) Schedule 2A has effect with respect to the members and procedure of a Review Panel.

Investigations etc. by Review Panel

88. (1) The terms of reference for an investigation by a Review Panel are to be as determined by the Minister if the Minister has objected to the proposed amendment that is the subject of the investigation.

(2) In any other case, the terms of reference are to be:

- (a) as agreed between the Council and the holder of the authorisation with which the investigation will be concerned; or
- (b) failing that agreement, as determined by the Minister.

(3) The Council must, at the request of a Review Panel, make all information in the Council's possession that is relevant to the Review Panel's investigation available to the Review Panel.

(4) A Review Panel is to endeavour to finalise its investigation and make its recommendation within 3 months after its establishment.

(5) A Review Panel is to make its recommendation in the form of a report to the Council, giving full and detailed reasons for its recommendation, and the Council is to give a copy of the report to the Minister and the gas distributor concerned.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Costs of investigation by Review Panel

89. The costs of and incidental to an inquiry by a Review Panel, including any allowances payable to the members of a Review Panel:

- (a) are to be paid by the holder of the authorisation to which the inquiry relates; and
- (b) may be recovered by or on behalf of the Minister in a court of competent jurisdiction as a debt due to the Crown.

Annual report of Council to Parliament

90. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Council is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30 June in that year.

(2) The report is not to contain information that the Council considers is of a commercially sensitive nature.

(3) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(10) Section 107A:

After section 107, insert:

Duty of gas distributor to supply gas

107A. (1) It is the duty of a gas distributor:

- (a) to develop and maintain an efficient, co-ordinated and economical system of gas supply; and
- (b) subject to paragraph (a), to comply, insofar as it is economical to do so, with any reasonable request to supply gas to premises.

(2) This section does not affect any duty of a gas distributor under section 107.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (11) Sections 133 (**State Energy Research and Development Fund**), 134 (**Application of Fund**):
Omit the sections.
- (12) Section 137 (**Injunctions**):
From section 137 (1), omit "this Act", insert instead "a provision of this Act or the regulations or a condition of an authorisation".
- (13) Section 139 (**Regulations**):
Omit section 139 (2) (e), insert instead:
(e) prescribing the fees and charges to be paid by the holders of authorisations in connection with the administration of this Act;
- (14) Schedule 2:
Omit the Schedule, insert instead:
SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE COUNCIL
(Sec. 84)
- Definition**
1. In this Schedule:
"member" means a member of the Council.
- Qualifications of members and deputy members**
2. A person is not to be appointed to be a member or a deputy of a member unless in the Minister's opinion the person has appropriate qualifications or experience, having regard to the functions of the Council.
- Deputies of members**
3. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
(2) In the absence of a member, the member's deputy:
(a) may, if available, act in the place of the member;
and

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) The deputy of the member who is Chairperson of the Council does not have the functions of Chairperson merely because of being the Chairperson's deputy.

(4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

4. (1) Subject to this Schedule, a member holds office for such period as is specified in the member's instrument of appointment but is eligible for re-appointment.

(2) The following limitations apply to the terms of office of members:

(a) of the first 2 members of the Council to be appointed after the commencement of this clause who are not the Chairperson, one is to be appointed for a term not exceeding 4 years and one is to be appointed for a term not exceeding 3 years;

(b) all other appointments may be for a period not exceeding 5 years.

Allowances

5. A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

6. (1) The office of a member becomes vacant if the member:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

7. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

Quorum

10. The quorum for a meeting of the Council is 2 members.

Presiding member

11. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote only.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

Voting

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

First meeting

13. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

Liability of members etc.

14. No matter or thing done by the Council, any member of the Council or any person acting under the direction of the Council, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects such a member or a person so acting to any action, liability, claim or demand.

**SCHEDULE 2A - PROVISIONS RELATING
TO REVIEW PANELS**

(Sec. 87)

Definition

1. In this Schedule:

"member" means a member of a Review Panel.

Qualifications of members and deputies

2. A person is not to be appointed to be a member or a deputy of a member unless in the opinion of the person making the appointment the person to be appointed has appropriate qualifications or experience, having regard to the matter to be investigated by the Review Panel.

Deputies of members

3. (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson of a Review Panel.

(2) The Chairperson of a Review Panel may, from time to time, appoint a person to be the deputy of any other member of the Review Panel.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(3) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member;
and

(b) while so acting, has all the functions of the member
and is to be taken to be a member.

(4) The deputy of the member who is Chairperson of the Review Panel has the functions of the Chairperson while acting in the place of the Chairperson.

(5) No act, determination or proceeding of a Review Panel is invalid merely because at the time of the act, determination or proceeding there is a vacancy in the office of a member of the Review Panel.

Allowances

4. A member or deputy of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member or deputy.

General procedure

5. The procedure for:

(a) the calling of and the conduct of business at meetings of a Review Panel; and

(b) the conduct of investigations by a Review Panel,
is, subject to this Act, to be as determined by the Review Panel.

Quorum

6. The quorum for a meeting of a Review Panel is:

(a) 2 members in the case of a Review Panel consisting of 3 members; or

(b) 3 members in the case of a Review Panel consisting of 4 or 5 members.

Presiding member

7. (1) The Chairperson of a Review Panel or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Review Panel.

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

(2) The person presiding at any meeting of a Review Panel has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

8. A decision supported by a majority of the votes cast at a meeting of a Review Panel at which a quorum is present is the decision of the Review Panel.

Liability of members etc.

9. No matter or thing done by a Review Panel, any member of a Review Panel or any person acting under the direction of a Review Panel, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member or a person so acting personally to any action, liability, claim or demand.

(15) Schedule 3 (**Savings and transitional provisions**):

(a) Before clause 1, insert:

Part 1 - General

(b) From clause 1, omit "this Schedule", insert instead "this Part".

(c) In clause 17 (1), after "this Act", insert "or the Gas (Amendment) Act 1990".

(d) From clause 17 (2), omit "this Act", insert instead "the Act consequent on the enactment of which it is made".

(e) After clause 17, insert:

Part 2 - Gas (Amendment) Act 1990

References to "former" provisions

18. In this Part:

(a) a reference to a "former" provision of this Act is a reference to the provision as in force immediately before its substitution, repeal or amendment (as appropriate) by the Gas (Amendment) Act 1990; and

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (b) a reference to the "substitution", "repeal" or "amendment" of the provision is a reference to its substitution, repeal or amendment, respectively, by the Gas (Amendment) Act 1990.

Former licence holders entitled to authorisation

19. (1) A person who held a licence in force under former Part 2 immediately before the substitution of that Part is entitled to be granted an authorisation, on such terms and subject to such conditions as the Minister thinks fit, with effect from the substitution of that Part.

(2) Section 11 (Procedure for granting authorisation) does not apply, but the other provisions of Part 2 do apply, to the granting of such an authorisation.

Payment of fees

20. Any fee payable under former section 16 immediately before its substitution remains payable despite the substitution of that section.

Transfer of State Energy Research and Development Fund

21. (1) The balance (including any investments) standing to the credit of the State Energy Research and Development Fund under former section 133 immediately before its repeal is to be transferred to the fund of that name under section 35A of the Energy Administration Act 1987.

(2) Any amounts that became due and payable to the Fund before the repeal of former section 133 but which are unpaid on that repeal become due and payable to the Corporation under section 35B of the Energy Administration Act 1987 and can be recovered accordingly.

Completion of audits etc. already commenced

22. (1) Former sections 80 and 81 are to be regarded as continuing in force, despite their repeal, for the purposes of:

SCHEDULE 1 - AMENDMENT OF GAS ACT 1986 - *continued*

- (a) the completion of any audit, inspection or inquiry commenced under either of those sections before their repeal; and
 - (b) matters incidental to any such audit, inspection or inquiry, including the recovery of costs of and incidental to them.
- (2) Section 82 continues to apply to a person who exercised functions under former section 81.

Tariff Stabilisation Account

23. Substituted section 70 (2) (b) does not require an amount to be credited to the Gas Customers Reserve Account of a gas distributor if the amount had already been credited to its Tariff Stabilisation Account under former section 73 (4).

Equalisation Account

24. Of the amount standing to the credit of a gas distributor's Equalisation Account immediately before the repeal of former section 74:

- (a) half is to be credited to the gas distributor's Gas Customers Reserve Account; and
- (b) the other half can be dealt with as the gas distributor sees fit.

Removal of exemption - exempt supplier or distributor

25. The Minister is not to take action under section 4 (3) in relation to a person who was an exempt supplier or distributor of gas immediately before the commencement of that subsection unless after that commencement a substantial change occurs in the activities carried on by the person in the course of engaging in the reticulation of gas.

**SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT
1986 - CONSEQUENTIAL AND MISCELLANEOUS**

(Sec. 3)

- (1) Long title:
Omit "gas companies", insert instead "gas distributors".
- (2) Section 3 (**Definitions**):
 - (a) Section 3 (1), definition of "reticulation system":
Omit "company" wherever occurring, insert instead "distributor".
 - (b) Section 3 (1), definition of "secondary gas activity":
Omit "company" wherever occurring, insert instead "gas distributor".
 - (c) Section 3 (4):
Omit "gas companies", insert instead "gas distributors that are subsidiaries of The Australian Gas Light Company".
- (3) Section 4 (**Reticulation of gas**):
Section 4 (2):
Omit "consumers", insert instead "gas users".
- (4) Section 5 (**Application of Act**):
From section 5 (3), omit "company", insert instead "distributor".
- (5) Section 24 (**Mode of transfer**):
From section 24 (2), omit "consumers", insert instead "gas users".
- (6) Section 30 (**A.G.L. not to carry on certain gas activities**):
From section 30 (1), omit "\$10,000", insert instead "500 penalty units".

**SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued***

- (7) **Section 38 (Companies and Securities Industry Codes to apply to A.G.L. and subsidiaries):**
From section 38 (1), omit "gas companies", insert instead "gas distributors that are its wholly owned subsidiaries".
- (8) **Section 41 (Maximum shareholding in A.G.L.):**
From section 41 (1), omit "\$10,000", insert instead "500 penalty units".
- (9) **Section 43 (Notice of suspected contravention):**
From section 43 (1), omit "\$2,000", insert instead "100 penalty units".
- (10) **Section 44 (Directions concerning approved shareholdings):**
From section 44 (1), omit "gas company" wherever occurring, insert instead "gas distributor".
- (11) **Section 45 (Powers of Minister to deal with contravention):**
From section 45 (5), omit "\$10,000", insert instead "500 penalty units".
- (12) **Section 50 (Information concerning shareholding):**
From section 50 (4), omit "\$10,000", insert instead "500 penalty units".
- (13) **Section 55 (Restrictions on dealings in shares of gas distributors):**
- (a) From section 55 (1) (a), omit "gas company", insert instead "gas distributor".
 - (b) From section 55 (1), omit "\$10,000", insert instead "500 penalty units".
- (14) **Section 56 (Separation and self-containment of gas distributors):**
Omit "gas company", insert instead "gas distributor".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (15) Part 5, heading:
Omit "COMPANIES", insert instead "DISTRIBUTORS".
- (16) Section 58 (**Approval required for certain restructuring**):
- (a) Omit "gas company" wherever occurring, insert instead "gas distributor".
 - (b) Omit "gas companies" wherever occurring, insert instead "gas distributors".
- (17) Section 61 (**Dealings and arrangements involving gas distributors - ordinary commercial terms**):
- (a) From section 61 (1), omit "gas company", insert instead "gas distributor".
 - (b) From section 61 (1) (b), omit "the companies", insert instead "the gas distributor and the corporation".
 - (c) Omit section 61 (2).
- (18) Section 63 (**Financial assistance by gas distributors**):
From section 63 (1), omit "gas company" wherever occurring, insert instead "gas distributor".
- (19) Section 64 (**Duty of directors to gas users**):
- (a) Omit "gas company", insert instead "gas distributor".
 - (b) Omit "consumers", insert instead "gas users".
 - (c) Omit "company" where lastly occurring, insert instead "gas distributor".
- (20) Section 65 (**Minister may appoint director of gas distributor**):
- (a) Omit "gas company" wherever occurring, insert instead "gas distributor".
 - (b) From section 65 (6), omit "gas companies", insert instead "gas distributors".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (21) Section 66 (**Appointed directors - consultation, powers**):
Omit "gas company" wherever occurring, insert instead "gas distributor".
- (22) Section 83 (**Corporation's power to obtain information**):
Omit the section.
- (23) Section 103 (**Gas supply to be metered**):
From section 103 (3), omit "\$5,000", insert instead "200 penalty units".
- (24) Section 104 (**Meters etc.**):
 - (a) Omit "consumer", insert instead "gas user".
 - (b) Omit "\$5,000", insert instead "200 penalty units".
- (25) Section 107 (**Application for supply**):
 - (a) From section 107 (4), omit "company's", insert instead "distributor's".
 - (b) From section 107 (4), omit "\$1,000", insert instead "50 penalty units".
- (26) Section 113 (**Liability of gas distributors - interference with supply**):
From section 113 (3), omit "company's", insert instead "distributor's".
- (27) Section 114 (**Standards of supply**):
 - (a) From section 114 (1), omit "consumer", insert instead "gas user".
 - (b) From section 114 (1), omit "\$2,000", insert instead "100 penalty units".
- (28) Section 120 (**Definitions**):
 - (a) Omit "company inspector" wherever occurring, insert instead "gas inspector".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (b) Omit "the company", insert instead "the gas distributor which employs the inspector".
- (29) Section 121 (**Inspectors**):
- (a) Omit "gas company" wherever occurring, insert instead "gas distributor".
 - (b) From section 121 (3), omit "the company", insert instead "the distributor".
 - (c) Omit "company inspector" wherever occurring, insert instead "gas inspector".
- (30) Section 125 (**Entry to discontinue supply**):
- (a) From section 125 (1), omit "company inspector", insert instead "gas distributor's gas inspector".
 - (b) From section 125 (1), omit "company's", insert instead "distributor's".
- (31) Section 127 (**Search warrants**):
- (a) From section 127 (2) (b), omit "company inspector", insert instead "gas inspector".
 - (b) From section 127 (2) (b), omit "the company", insert instead "the gas distributor concerned".
- (32) Section 128 (**Offences**):
- From section 128 (2), omit "\$1,000", insert instead "50 penalty units".
- (33) Section 129 (**Interference with meters etc.**):
- From section 129 (4), omit "\$2,000", insert instead "100 penalty units".
- (34) Section 130 (**Damage to reticulation system**):
- From section 130 (1), omit "\$2,000", insert instead "100 penalty units".

SCHEDULE 2 - FURTHER AMENDMENT OF GAS ACT 1986
- CONSEQUENTIAL AND MISCELLANEOUS - *continued*

- (35) Section 132 (**Secrecy**):
Omit "\$5,000", insert instead "200 penalty units".
- (36) Section 136 (**General offence**):
Omit "\$500" and "\$2,000", insert instead "10 penalty units"
and "100 penalty units" respectively.
- (37) Section 137 (**Injunctions**):
From section 137 (6), omit "gas company", insert instead
"gas distributor".
- (38) Section 138 (**Proceedings for offences**):
From section 138 (2), omit "\$5,000", insert instead
"\$10,000".
- (39) Section 139 (**Regulations**):
- (a) From section 139 (2) (h) and (i), omit "companies"
wherever occurring, insert instead "distributors".
 - (b) From section 139 (2) (l), omit "company", insert instead
"distributor".
 - (c) From section 139 (2) (1), omit "consumer's", insert instead
"gas user's".
 - (d) From section 139 (3) (c), omit "company" wherever
occurring, insert instead "distributor".
- (40) Sections 103, 104-114, 116, 118, 119, 122, 123, 128, 129, 130, 131,
139:
Omit "company" wherever occurring, insert instead
"distributor".
- (41) Schedule 1, heading:
Omit "GAS COMPANIES", insert instead "GAS
DISTRIBUTORS".

SCHEDULE 3 - AMENDMENT OF OTHER ACTS

(Sec. 4)

Electricity Act 1945 (1946 No. 13)

Section 17 (Contributions to the State Energy Research and Development Fund):

From section 17 (1), omit "section 133 of the Gas Act 1986", insert instead "section 35A of the Energy Administration Act 1987".

Energy Administration Act 1987 No. 103

(1) Section 22:

Omit the section, insert instead:

Royal Commission powers at inquiries

22. (1) For the purposes of an inquiry or examination under section 21:

- (a) the Minister, the person conducting it on behalf of the Corporation or the chairperson of the committee conducting it has the functions, protections and immunities conferred on a chairman of a Royal Commission by Division 1 of Part 2 of the Royal Commissions Act 1923; and
- (b) a member of the committee conducting it has the functions, protections and immunities conferred on a commissioner by that Division.

(2) The Royal Commissions Act 1923 (except section 13 and Division 2 of Part 2) applies to and in respect of an inquiry or examination under section 21.

(2) Section 35 (**Energy Administration Account**):

In section 35 (2) (a), after "Corporation", insert "(except under section 35B)".

(3) Sections 35A, 35B:

After section 35, insert:

State Energy Research and Development Fund

35A. (1) There is to be established in the Special Deposits Account in the Treasury a State Energy Research and Development Fund.

SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued*

- (2) There is to be paid into the Fund:
 - (a) any contribution paid to the Corporation under section 35B; and
 - (b) any other money payable into the Fund by or under this or any other Act.
- (3) There is to be paid out of the Fund such amounts as the Minister may direct for or with respect to:
 - (a) research concerning, and the development of, energy resources for the State;
 - (b) such other purposes as may be prescribed in connection with the supply and use of energy resources for the State, and related technological development.
- (4) The regulations may make provision for and with respect to the application of the Fund.
- (5) The Fund is, subject to this Act and the regulations, under the direction, control and management of the Corporation.

Contributions by holders of gas reticulation authorisations

35B. (1) The Minister may direct by order in writing that this section applies to a specified person if the person is the holder of an authorisation under the Gas Act 1986.

(2) A person to whom this section applies must pay to the Corporation an annual contribution equal to the prescribed percentage of the revenue derived by the person from the sale of gas during each year commencing 1 January, except any sale of a class prescribed as exempt from the operation of this section.

(3) The contribution is payable by 31 March in the following year and may then be recovered by the Corporation as a debt due to the Crown in a court of competent jurisdiction.

SCHEDULE 3 - AMENDMENT OF OTHER ACTS - *continued*

(4) In this section:

"prescribed percentage" means the percentage, not exceeding 0.5 per cent, fixed by the Minister in the order applying this section to the person concerned.
