

National Gas (New South Wales) Act 2008

As at 1 July 2013

Long Title

An Act to establish a framework to enable third parties to gain access to certain natural gas pipeline services, to consequentially amend certain other Acts, to repeal the *Gas Pipelines Access (New South Wales) Act 1998*; and for other purposes.

Part 1 – Preliminary

1 Name of Act

This Act is the *National Gas (New South Wales) Act 2008*.

2 Commencement

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

3 Interpretation

(1) In this Act: "**National Gas (NSW) Law**" means the provisions applying because of section 7. "**National Gas (NSW) Regulations**" means the provisions applying because of section 8. "**South Australian Act**" means the *National Gas (South Australia) Act 2008* of South Australia.

(2) Words and expressions used in the *National Gas (NSW) Law* and in this Act have the same respective meanings in this Act as they have in that Law.

(3) This section does not apply to the extent that the context or subject-matter otherwise indicates or requires.

4 Crown to be bound

This Act, the *National Gas (NSW) Law* and the *National Gas (NSW) Regulations* bind the Crown, not only in right of New South Wales but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5 Application to coastal waters

(1) This Act, the *National Gas (NSW) Law* and the *National Gas (NSW) Regulations* apply in the coastal waters of this State as if the coastal waters were within the limits of the State.

(2) In this section: "**adjacent area in respect of the State**" means the adjacent area of this jurisdiction under the *National Gas (NSW) Law* (as defined in section 9 (1) of this Act). "**coastal waters**", in relation to this State, means any sea that is on the landward side of the adjacent area in respect of the State but is not within the limits of the State.

6 Extra-territorial operation

It is the intention of the Parliament that this Act, the *National Gas (NSW) Law* and the *National Gas (NSW) Regulations* should, so far as possible, operate to the full extent of the extra-territorial legislative power of the State.

Part 2 – National Gas (NSW) Law and National Gas (NSW) Regulations

7 Application in New South Wales of National Gas Law

(1) The National Gas Law set out in the Schedule to the South Australian Act, as in force for the time being:

- (a) applies as a law of New South Wales, and
 - (b) as so applying may be referred to as the *National Gas (NSW) Law*.
- (2) Division 2A of Part 6 of Chapter 2 of the National Gas Law set out in the Schedule to the South Australian Act applies to, and in relation to, New South Wales.

8 Application in New South Wales of regulations under National Gas Law

The regulations in force for the time being under Part 3 of the South Australian Act:

- (a) apply as regulations in force for the purposes of the *National Gas (NSW) Law*, and
- (b) as so applying may be referred to as the *National Gas (NSW) Regulations*.

9 Interpretation of expressions in National Gas (NSW) Law and National Gas (NSW) Regulations

(1) In the *National Gas (NSW) Law* and the *National Gas (NSW) Regulations*: "**adjacent area of another participating jurisdiction**" means the offshore area of a State (other than this State) or the Northern Territory within the meaning of section 8 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth. "**adjacent area of this jurisdiction**" means the offshore area of the State within the meaning of section 8 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth. "**Court**" means the Supreme Court of New South Wales. "**designated Minister**" means the Commonwealth Minister. "**Legislature of this jurisdiction**" means the Parliament of New South Wales. "**National Gas Law**" or "**this Law**" means the *National Gas (NSW) Law*. "**this jurisdiction**" means the State of New South Wales.

(2) The *Acts Interpretation Act 1915*, and other Acts, of South Australia do not apply to:

- (a) the National Gas Law set out in the Schedule to the South Australian Act in its application as a law of New South Wales, or
- (b) the regulations in force for the time being under Part 3 of the South Australian Act in their application as regulations in force for the purposes of the *National Gas (NSW) Law*.

Part 3 – Cross vesting of powers

10 Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State

(1) The Commonwealth Minister and the Commonwealth bodies have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the national gas legislation of another participating jurisdiction.

(2) In this section: "**Commonwealth bodies**" means any of the following:

- (a) AER,
- (b) NCC,
- (c) the Tribunal.

11 Conferral of powers on Ministers of participating States and Territories to act in this State

The Minister of a participating jurisdiction has power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on the Minister by the national gas legislation of another participating jurisdiction.

12 Conferral of functions or powers on State Minister

If the national gas legislation of another participating jurisdiction confers a function or power on the Minister, the Minister:

- (a) may perform that function or exercise that power, and
- (b) may do all things necessary or convenient to be done in connection with the performance or exercise of that function or power.

Part 3A – Related matters

12A Regulation-making power for National Gas (New South Wales) Law

The Governor may make such regulations as are contemplated by the *National Gas (New South Wales) Law* as being made under this Act as the application Act of this jurisdiction.

12B Validation of instruments and decisions made by Australian Energy Regulator

(1) This section applies to an instrument or a decision made by the AER if:

- (a) the instrument or decision was made:
 - (i) at or after the time that the amendments to the *National Gas (South Australia) Act 2008* of South Australia by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted, but
 - (ii) before the time (the "**application time**") that the amendments first started to apply under this Act as a law of New South Wales, and
- (b) had the amendments started so to apply, the making of the instrument or decision would have been authorised by one of the following laws (the "**authorising laws**"):
 - (i) the *National Gas (NSW) Law*,
 - (ii) the *National Gas (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation made under this Act, and
- (c) if the making of the instrument or decision would be so authorised subject to the satisfaction of any conditions or other requirements (for example, consultation or publication requirements)--the AER has done anything that would, if the amendments had started so to apply, be required under the authorising law for the instrument or decision to be so authorised.

(2) For the purposes of the authorising law:

- (a) the instrument or decision is taken to be valid, and
- (b) the instrument or decision has effect from the application time:
 - (i) as varied, and unless revoked, by any other instrument or decision to which this section applies, and
 - (ii) subject to that law so applying.

(3) For the purposes of this section:

- (a) guidelines are an example of an instrument, and
- (b) the following are examples of decisions:
 - (i) appointments,
 - (ii) determinations,
 - (iii) approvals.

12C Australian Energy Regulator--authorisation of preparatory steps

(1) This section applies if:

- (a) the AER is required to do something (a "**preparatory step**") before making a decision or making an instrument under one of the following (the "**authorising law**"):
 - (i) the *National Gas (NSW) Law*,
 - (ii) the *National Gas (NSW) Regulations*,
 - (iii) this Act,
 - (iv) a regulation under this Act, and
- (b) the AER takes the preparatory step:
 - (i) at or after the time that the amendments to the *National Gas (South Australia) Act 2008* of South Australia by the *Statutes Amendment (National Energy Retail Law) Act 2011* of South Australia were enacted,

but

(ii) before the time that the amendments first started to apply under this Act as a law of New South Wales.

(2) For the purposes of the authorising law, the AER is taken to have complied with the requirement to take the preparatory step.

Part 4 – Miscellaneous

13 Exemption from taxes

(1) Any duty or other tax imposed by or under a law of this State is not payable in relation to:

- (a) an exempt matter, or
- (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, an exempt matter.

(2) In this section: "**exempt matter**" means a transfer of assets or liabilities:

- (a) that is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of the national gas legislation or for the purpose of the separation of certain businesses or business activities from other businesses or business activities of a person as required by an AER ring fencing determination, and
- (b) that the Treasurer declares from time to time by notice in the Gazette to be an exempt matter for the purposes of this section.

14 Actions in relation to cross boundary pipelines

(1) If a pipeline is a cross boundary pipeline, any action taken under the national gas legislation of a participating jurisdiction in whose jurisdictional area a part of the pipeline is situated:

- (a) by, or in relation to, a relevant Minister, or
- (b) by the Court within the meaning of that legislation in relation to the action taken by, or in relation to, a relevant Minister,

is taken also to be taken under the national gas legislation of each participating jurisdiction in whose jurisdictional area a part of the pipeline is situated ("**that other legislation**"):

- (c) by, or in relation to, a relevant Minister within the meaning of that other legislation, or
- (d) by the Court within the meaning of that other legislation,

as the case requires.

(2) Despite subsection (1), no proceeding for judicial review or for a declaration, injunction, writ, order or remedy may be brought before the Court to challenge or question any action, or purported action, of a relevant Minister taken, or purportedly taken, in relation to a cross boundary distribution pipeline unless this jurisdiction has been determined to be the participating jurisdiction with which the cross boundary distribution pipeline is most closely connected.

(3) A reference in this section:

- (a) to an action that is taken includes a reference to:
 - (i) a decision or determination that is made, or
 - (ii) an omission that is made, and
- (b) to a purported action that is purportedly taken includes a reference to a purported decision or determination that is purportedly made.

(4) In this section: "**cross boundary pipeline**" means:

- (a) a cross boundary transmission pipeline, or
- (b) a cross boundary distribution pipeline.

15 Conferral of functions and powers on Commonwealth bodies

- (1) Clause 2 of Schedule 2 to the *National Gas (NSW) Law* has effect in relation to the operation of any provision of this Act, or any regulation forming part of the *National Gas (NSW) Regulations*, as if the provision or regulation formed part of the *National Gas (NSW) Law*.
- (2) Subsection (1) does not limit the effect that a provision or regulation would validly have apart from the subsection.

16 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

17-19 (Repealed)

20 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings and transitional provisions

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - this Act and any Act that amends this Act
 - National Energy Retail Law (Adoption) Act 2012*
- (2) If the regulations so provide, they have effect despite any provisions of the *National Gas (NSW) Law*, the *National Gas (NSW) Regulations* or the *National Gas (NSW) Rules*.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Savings and transitional provisions consequent on NERL

- (1) If a regulation made under this Schedule or under section 12 (3) of the *National Energy Retail Law (Adoption) Act 2012* so provides, an applicable consumer law has effect despite the provisions of an access arrangement with respect to a pipeline located in this State that was in force under the *National Gas (NSW) Law* immediately before the commencement of this clause.
- (2) The following are "**applicable consumer laws**" for the purposes of this clause:
 - (a) any such regulation,
 - (b) the *National Gas (NSW) Law*, the *National Gas (NSW) Regulations* or the

National Gas (NSW) Rules,

(c) the *National Energy Retail Law (NSW)* and any rules in force under that Law,

(d) the *National Energy Retail Regulations (NSW)*.

Note National Gas Law

For the National Gas Law as published in this Act on its enactment see <http://www.legislation.nsw.gov.au>. For the updated text of the Law see the National Gas (South Australia) Act 2008 at <http://www.legislation.sa.gov.au>.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *National Gas (New South Wales) Act 2008 No 31*.

Assented to 19.6.2008. Date of commencement, 1.7.2008, sec 2 and GG No 76 of 27.6.2008, p 5868 and South Australian Government Gazette 26.6.2008, p 2553. This Act has been amended by sec 19 of this Act and as follows:

2008	No 114	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2008</i> . Assented to 10.12.2008. Date of commencement of Sch 4, assent, sec 2 (1).
2010	No 13	<i>National Gas (New South Wales) Amendment (Short Term Trading Market) Act 2010</i> . Assented to 28.4.2010. Date of commencement, 7.5.2010, sec 2 and 2010 (169) LW 7.5.2010.
2011	No 27	<i>Statute Law (Miscellaneous Provisions) Act 2011</i> . Assented to 27.6.2011. Date of commencement of Sch 2.33, 8.7.2011, sec 2 (2).
2012	No 38	<i>Energy Legislation Amendment (National Energy Retail Law) Act 2012</i> . Assented to 21.6.2012. Date of commencement, 1.7.2013, sec 2 and 2013 (163) LW 26.4.2013.

Table of amendments

Sec 7	Am 2010 No 13, sec 3.
Sec 9	Am 2008 No 31, sec 19; 2011 No 27, Sch 2.33.
Part 3A (secs 12A-12C)	Ins 2012 No 38, Sch 4 [1].
Secs 17-19	Rep 2008 No 114, Sch 4.
Sch 1	Rep 2008 No 114, Sch 4. Ins 2012 No 38, Sch 4 [2].