

UPDATES TO THE *GAS SUPPLY (GAS QUALITY SPECIFICATIONS) BILL 2009* FROM THE PUBLIC CONSULTATION VERSION TO THE VERSION TABLED IN PARLIAMENT

NB1: Clause references are for the final version of the Bill tabled in Parliament, unless otherwise specified.

NB2: The public consultation version is draft 17 distributed by the Office of Energy on 3 July 2009

- In the Bill's title, the word 'specification' modified to 'specifications'.
- The definition of 'access determination' has been modified to refer to the Gas Access Law.
- Definitions for 'authority' and 'department' have been moved from Part 1 to Part 5.
- The definition for 'gas distribution system' has been moved from Part 5 to Part 1.
- Definitions for 'exempt contract', 'pipeline', 'relevant effects' and 'user' have been added.
- The definition of 'upstream gas supply agreement' has been removed, as it is no longer required.
- The definition of 'gas producer' has been narrowed to only those persons who supply or propose to supply gas that will flow into a transmission pipeline.
- The definition of 'gas transmission pipeline' now refers to the *Petroleum Pipelines Act 1969*, with the power to include and exclude in the regulations.
- The definition of 'pipeline service agreement' now also includes access determinations.
- References to 'gas quality reference specification' and 'standard gas quality specification' have been changed to 'reference specification' and 'standard specification' respectively, to improve readability.
- References to the 'National Third Party Access Code for Natural Gas Pipeline Systems' have been changed to 'Third Party Access Code'.
- New provisions, s.3(2) and (3), require the Minister to consult before amending a reference specification or the standard specification and ensure that the amendment does not take effect until the expiry of the disallowance period. While there is no intention for this Government to change either specifications a future Government could do so. The amendments will enable aggrieved parties to express concern to Parliamentarians before the changes take effect.
- S.4(b) has been slightly amended, so that it now refers to 'relevant' effects on a pipeline being dealt with in a way that does not 'materially' disadvantage the pipeline operator. S.4(c) has likewise been amended to 'materially disadvantaged'.
- A new section 5 defines a PIA pipeline as a gas transmission pipeline declared to be a PIA pipeline by the Minister in accordance with the criteria and procedure provided for in the regulations.
- S.6, which deals with controlling the flow of gas into PIA pipelines, has been restructured for clarity.

- A new provision, s.6(6), makes it explicit that the statutory rights granted to operators of pipelines by s.6(3) and (4) are in addition to their contractual or other rights.
- S.6(7) now requires the Minister to consider whether there would be a material impact on the operator of the gas distribution system (in addition to other affected parties) before reducing the 18 month notice period for downstream parties.
- A new provision, s.6(8), ensures that the *Criminal Code* section 177 does not apply to the obligation on gas producers to not supply broad specification gas to a PIA pipeline without a PIA, as criminal sanctions are not appropriate.
- S.8 outlining the formation of a PIA now refers both to gas that flows into a PIA pipeline or will flow (i.e. the PIA can be agreed before the flow of gas begins).
- The previous s.8 and s.9 in draft 17 that dealt with modifying PSAs and GSAs have been removed, as everything that they were intended to do can still be done under s.14, and there was a risk that they would cause unintended consequences. The policy intent regarding the modification of contracts remains the same.
- The regulation-making powers in s.9(1), s.11(1), s.16(1), s.20 and s.34(2)(a) have been amended to include the making of regulations ‘in relation to’ as well as ‘for’ certain matters. This will enable regulations to be prescribed for matters such as dispute resolution and provision of information.
- S.9(2)(d), 11(2)(d) and 16(2)(d) have been removed. They allowed the regulations to provide for the relationship between the resolution of disputes under that section and the Gas Access Law. They have been replaced with a new s.30, that allows the regulations to provide for the Bill and the Gas Access Law.
- S.10, which deals with ‘short term situations’, has been restructured for clarity.
- S.10(4) now allows the Minister to extend the duration of a ‘short term situation’ to up to three months, from 336 hours in the previous draft.
- A new provision, s.10(6), requires the Minister to lay reasons before each House of Parliament if the Minister extends a ‘short term situation’ under s.10(4). This was added because the Minister can extend the period of a ‘short term situation’ to 3 months and the regulation making powers and the Minister’s powers during a ‘short term situation’ are broad.
- S.11(2) and s.16(2) have been amended to ensure the regulations may provide for resolution of prescribed disputes by a Technical Expert or arbitrator in respect to the compensation schemes.
- Where the Bill referred to the power of a court to grant injunctions, it now specifies the Supreme Court.
- S.14 now defines ‘gas contract’ and has been restructured to allow the modification of contracts to allow gas broader than the standard specification to be blended in pipelines, provided the blend delivered at the outlet point is within the standard specification.
- S.15 now includes definitions of ‘plant and equipment costs’ and ‘relevant gas quality specification’. References to ‘downstream gas supply agreement’ have been changed to ‘downstream agreement’, and ‘prescribed pipeline’ to ‘Part 4 pipeline’.

- S.16(1)(b) now clarifies that a gas storage operator is entitled to compensation for loss of capacity resulting from being delivered gas that does not comply with the reference specification for that storage facility. This clarification is mirrored in s.19(1)(c) to ensure that the operator of a gas storage facility cannot be doubly compensated for this loss of capacity.
- S.16(2)(b) ensures that certain disputes regarding the compensation scheme may be resolved by an expert and the determination of such disputes may be final and binding on the parties.
- S.16(4) now allows for modification of the application of Part 4 in relation to the exempt contract.
- S.17(3), which deals with the compensation scheme to certain consumers, now includes a new subsection (a), regarding restoring any reduction in capacity resulting from being delivered broad specification gas. This is now more closely aligned with s.18(4). This is to address the risk that because s.18(4) specified both restoring any reduction in capacity and plant and equipment costs, then 'plant and equipment costs' in s.17(3) could be read down to exclude restoring any reduction in capacity.
- S.20 now enables the regulations to provide for a transition process from a Part 4 pipeline to a PIA pipeline, including any transitional issues regarding compensation. This is intended to include an entitlement to compensation to the pipeline operator, shipper and the gas consumer for being deprived of the loss of capacity while that capacity is being reinstated.
- S.29, which deals with the beginning of the reimbursement period under Part 5, has been restructured for clarity.
- A new section, s.30, enables the regulations to provide for the relationship between this Act and a Gas Access Law.
- A new section, s.31, now makes it a function of the Coordinator of Energy to monitor the operation of the Act and inquire into or investigate matters that arise in relation to the Act.
- Amendments to s.34(2)(a) now allow for the verification of information provided.
- A new provision, s.34(2)(b), limits the liability a person has in relation to information provided under the legislation.
- New provisions s.34(2)(c) and (d) provide for the imposition of standards for equipment to measure gas quality and quantity, and for that equipment to be treated as accurate in certain circumstances.
- S.34(2)(f) and (g) now allow regulations to provide for the exclusive jurisdiction of a technical expert or arbitrator under s.9, s.11 or s.16, and provide for the extent to which the rules of evidence apply during the resolution of disputes under these sections.
- New sections, s.35 and s.36, repeal s.26(3), (4) and (5) of the Energy Coordination Act 1994, as they are wholly overtaken by the Bill.
- A number of minor wording changes throughout.