

GAS PIPELINES ACCESS (QUEENSLAND) BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The objectives of the Bill are to—

- apply in Queensland, the *Gas Pipelines Access Law* as enacted in South Australia¹;
- provide for derogations from the *Gas Pipelines Access Law* for certain Queensland pipelines;
- provide transitional arrangements before the full application of the *Gas Pipelines Access Law* in Queensland; and
- establish the Queensland Gas Appeals Tribunal.

Amend the *Gas Act 1965* to—

- make the Act consistent with the *Gas Pipelines Access Law*; and
- provide a legislative framework which establishes the transitional timetable for the introduction of competition into natural gas franchise areas.

Amend the *Petroleum Act 1923* to—

- make the Act consistent with the *Gas Pipelines Access Law*; and
- remove requirements within the Act inconsistent with the Natural Gas Pipeline Access Agreement signed in November 1997.

Amend the *Petroleum (Submerged Lands) Act 1982* to—

- make the Act consistent with the *Gas Pipelines Access Law*.

¹ Given that the Queensland legislation is adopting the South Australian legislation, the Queensland Act will prevail to the extent of any inconsistency.

Reasons for the objectives and how they will be achieved***Apply the Gas Pipelines Access Law in Queensland***

National gas reform has been pursued by all State and Territories through the Council of Australian Governments since 1994. Essentially, the reform has been aimed at removing all legislative and regulatory impediments to free and fair trade in natural gas and to establishing a national regulatory framework to govern third party access to natural gas transportation throughout Australia.

This approach to gas reform has been pursued on the basis that it will:

- reduce uncertainty by market participants;
- facilitate efficient development and operation of national natural gas market and safeguard against monopoly abuse;
- promote competitive markets for gas;
- provide a right of access to pipeline networks on fair and reasonable terms; and
- encourage the development of an integrated pipeline network.

The reform process culminated in the signing of the Natural Gas Pipeline Access Agreement by all jurisdictions on 7 November 1997. This Agreement commits Queensland to enacting legislation to apply the *Gas Pipelines Access Law* by the end of June 1998. The *Gas Pipelines Access Law* will make the obligations, placed on pipeline operators and users by the Code, legally binding.

Under the Agreement, South Australia was made the lead legislator for the *Gas Pipelines Access Law*. The South Australian legislation was enacted in December 1997. The *Gas Pipelines Access Law* comprises Schedule 1 to the South Australian Act, and the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) which is set out in Schedule 2 to the South Australian Act.

The Commonwealth is soon to pass legislation to extend the Access regime to areas where State and Territories legislation do not operate (eg. offshore waters, relevant external territories and to the Moomba-Sydney pipeline system). Commonwealth legislation was also necessary to enable the Australian Competition and Consumer Commission (ACCC), National

Competition Council (NCC) and Australian Competition Tribunal (ACT) to perform regulatory functions under the national access arrangements.

This Bill provides for the application of *Gas Pipelines Access Law* in Queensland, and supports the nationally consistent approach taken to third party access to natural gas pipelines.

Provide for derogations from the Gas Pipelines Access Law

Derogations are modifications, variations or exemptions to one or more of the provisions of the *Gas Pipelines Access Law* in relation to existing pipelines. Derogations to the *Gas Pipelines Access Law* are required to protect existing pipeline access principles (tariffs in particular) in Queensland as they were negotiated prior to the development of the *Gas Pipelines Access Law*. As pipeline licensees were unable to know the contents of the then proposed *Gas Pipelines Access Law* when negotiating their access principles, and the retrospective application of the Law could jeopardise the commercial position of pipeline licensees.

To achieve this, the Bill provides for:

- The listed pipelines, which are currently under construction or soon to be constructed, to be deemed to be covered for the purposes of the *Gas Pipelines Access Law*.
- The listed pipelines may have their tariff arrangements approved by the Minister by gazette notice. These approved tariff arrangements are then deemed to be approved under the *Gas Pipelines Access Law* as the reference tariffs and reference tariff policies for those pipelines until the date given in those reference tariff policies.

The PNG to Queensland pipeline is strategically important to the economic development of the State, and will provide a new source of gas which will generate greater gas on gas competition and the building blocks for new industries. The regulatory processes currently underway have, with the agreement of the Commonwealth and in conjunction with the ACCC, been run by the Department of Mines and Energy. These processes aim to produce access arrangements which are as far as possible consistent with the *Gas Pipelines Access Law*. Some variation may occur, but if the Code processes are imposed mid-stream, this strategic project could be jeopardised.

Therefore, the Bill provides that the access principles approved for the PNG to Queensland pipeline by the Minister, and with the agreement of the ACCC, will be taken to be the access arrangements under the *Gas Pipelines Access Law* until the date given within those access arrangements.

Provide transitional arrangement before full application of Gas Pipelines Access Law

The Bill applies the existing access principles developed under the *Petroleum (Qld) Act 1923* to natural gas pipelines until the responsible regulator under the national Code makes a determination in relation to their access arrangements. This transition clause is necessary to ensure that some regulatory framework is applied to pipelines during the possible lengthy period before the ACCC makes a determination on access arrangements for a number of Queensland gas pipelines.

Establish the Queensland Gas Appeals Tribunal

During the development of the Code, industry and user groups strongly supported the inclusion of appeal provisions. The *Gas Pipelines Access Law* provides for merit appeals on decisions made by the Designated Minister and the Regulator relating to:

- coverage decisions;
- ring fencing decisions;
- regulator imposed access arrangements;
- approval of affiliate contracts; and
- decisions covering information disclosure.

The South Australian lead legislation sets out the process for lodging appeals, as well as the functions and powers of the appeals body. This appeals body is also required to be independent of the decision-makers under the *Gas Pipelines Access Law*.

It was agreed by all jurisdictions (as part of the Natural Gas Pipeline Access Agreement) that the Australian Competition Tribunal would be the body responsible for hearing appeals associated with transmission pipelines. However, there was still a need to establish an appeals body in Queensland to deal with appeals on distribution pipelines and determine the

administrative processes within such a body.

This Bill provides for the establishment of a Queensland appeals body (the Queensland Gas Appeals Tribunal), providing it with sufficient powers and protections to enable the body to effectively exercise its functions within Queensland.

Establishment of legislative framework for the transitional introduction of competition into natural gas franchises

The Bill gives effect to the Queensland Government's policies regarding natural gas distribution market reform. The process of moving from current arrangements to new market arrangements imposes some problems and costs on incumbent distributors. The purpose of the transition arrangements is to share the burden of the costs between the incumbent distributors, new retailers and consumers.

Therefore, a threshold reduction strategy was developed which provides for the phased introduction of contestability into natural gas franchise areas to allow sufficient time for market incumbents to prepare themselves for full competition. The implementation of this strategy is intended to occur through the application of restrictions on the sale of natural gas in franchise areas and in relation to bypass².

The threshold reduction strategy provides for the introduction of contestable customers into the Queensland gas distribution market whereby customers which consume greater than 100 TJ become contestable as of 1 January 2000 and all remaining customers become contestable as of 1 September 2001.

In order to protect incumbent franchise holders, the sale of natural gas within franchise areas, by gas suppliers other than existing franchise holders, will be restricted to contestable customers only. Furthermore, bypass will only be permitted to contestable consumers, and may be permitted for new non-contestable consumers on a case by case basis.

² Bypass occurs when a consumer elects to build (or have built by a third party) a new pipeline instead of utilising existing network assets.

Remove requirements within the Petroleum Act which are inconsistent with the Natural Gas Pipelines Access Agreement

The Natural Gas Pipelines Access Agreement signed at the Council of Australian Government meeting on 7 November 1997 made clear commitments in relation to franchising and licensing arrangements within each jurisdiction. Particularly, bypass to, and interconnection to, contestable consumers should be allowed. Furthermore, licensing requirements and conditions should be open to all appropriately qualified pipeline service operations. For Queensland, this translates into the separation of licensing from the approval processes for access principles.

Therefore, the Bill amends the *Gas Act 1965* to allow the construction or maintenance of gas distribution pipelines within franchise areas, by persons other than the franchise-holder, if it is for the purpose of supplying gas to a contestable consumer. Furthermore, the Bill amends the *Petroleum Act 1923* to allow the granting of pipeline licences for natural gas pipelines which have no access principles under the *Petroleum Act*.

Consistency with the Gas Pipelines Access Law

While the Bill provides for the application in Queensland of the *Gas Pipelines Access Law*, a necessary legislative step is to also make amendments to the *Acts Interpretation Act*, *Gas Act*, *Petroleum Act* and *Petroleum (Submerged Lands) Acts* to ensure that these Acts do not affect the scope or operation of the *Gas Pipelines Access Law*.

The Bill provides for the necessary consequential amendments. The significant changes are as follows:

- inserting definitions of the *Gas Pipelines Access (Queensland) Law* and *Gas Pipelines Access (Queensland) Regulations* into the *Acts Interpretation Act*;
- inserting a general clause within the *Gas Act*, *Petroleum Act* and *Petroleum (Submerged Lands) Acts* to ensure the *Gas Pipelines Access Law* prevails in the case of any inconsistency.

Administrative cost to the Government of implementation

The financial implications associated with the Bill will include the costs of operating the National Gas Pipelines Advisory Committee (NGPAC)

and the Queensland Gas Appeals Tribunal.

The NGPAC is a national body responsible for the administration of the Code, which will involve monitoring, reviewing and reporting on the operations of the *Gas Pipelines Access Law*, and providing advice to Ministers on needed Code amendments. It is expected that the Commonwealth will pay one third of the costs of funding NGPAC (including any damages or legal costs arising out of the Code Registrar performing its functions under the Code) with the balance to be shared by the other jurisdictions based on population.

Consistency with Fundamental Legislative Principles

The *Gas Pipelines Access Law* was enacted by South Australia and is to be given force in Queensland through the application of the South Australian legislation. This arrangement is in accordance with the Natural Gas Pipelines Access Agreement which the State signed on 7 November 1997. This means that a law will apply in Queensland that has not been passed, and will not be amended, by the Parliament of Queensland. It can be argued that this arrangement infringes the sovereignty of the Queensland Parliament. There are, however, a number of precedents, including the National Electricity Law and the National Road Transport Legislation.

In response to this issue, a copy of the lead legislation has been attached to the Bill, provision made for the notification of Parliament of any amendments to the lead legislation, and the requirement established to update the attachment upon the first reprint of the Act after an amendment has been made to Gas Pipelines Access Law.

The derogations from the Gas Pipelines Access Law (which imposes the reference tariffs and tariff policy upon the Regulator) will be given effect by way of gazette notice.

Access principles are the commercial and technical rules upon which pipeline owners give access to their pipelines. These documents are drafted by the pipeline owners and submitted to the regulator for approval. Once approved by the Regulator they are automatically given legal effect under the *Petroleum Act*. These documents have no set format, and their contents are determined by the Regulator at that time. The *Petroleum Act* also requires that the documents are available to the public.

The derogations are reworded portions of these original access principles,

which have been altered to fit the general requirements of the Code, while maintaining their intended original meaning.

Given the technical and commercial nature of the access principles, the difficulty associated with ensuring conformance to the current access principles and the requirements of the Code, it has been necessary to give effect to the derogations outside the legislation process.

Consultation

The Departments of Premier and Cabinet, Treasury, Mines and Energy and the Office of Rural Communities were consulted on the development of the Bill.

Natural gas pipeline owners (for the derogated pipelines) and associated parties were consulted on the details of the derogation provisions.

Other States and Territories have been consulted concerning the contents of the proposed Bill, in accordance with the Natural Gas Pipeline Access Agreement.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title for the Bill.

Clause 2 provides for the commencement of the Act on a day to be fixed by proclamation.

Clause 3: Definitions

The definitions included for the purposes of the Act distinguish between the **Gas Pipelines Access Law** as a law to be applied in the jurisdictions of the scheme participants, and the **Gas Pipelines Access (Queensland) Law** being the law as it applies to this State.

The National Third Party Access Code for Natural Gas Pipelines Systems is included as part of the Law and is set out in schedule 2 to the South Australian Act.

The clause provides that definitions included in the Gas Pipelines Access Law also apply for the purposes of the Act.

Clause 4: Words and expressions used in Gas Pipelines Access Law

Words and expressions used in this Act have the same meaning as those used in *Gas Pipelines Access Law*.

Clause 5: Crown to be bound

This clause provides that the legislation binds the Crown.

Clause 6: Application to coastal waters

This clause applies the legislation to the coastal waters of the State.

Clause 7: Extra-territorial operation

This clause provides for the extra-territorial operation of the legislation.

PART 2—GAS PIPELINES ACCESS (QUEENSLAND) LAW AND GAS PIPELINES ACCESS (QUEENSLAND) REGULATIONS

Clause 8: Application in Queensland of the Gas Pipelines Access Law

This clause applies the Gas Pipelines Access Law set out in Schedule 1 and 2 of the South Australian Act as a law of Queensland. The clause also provides that the Law as so applying may be referred as the *Gas Pipelines Access (Queensland) Law*.

Clause 9: Application in Queensland of regulations under Gas Pipelines Access Law

This clause provides that the regulations in force under Part 3 of the South Australian Act apply as regulations in force for the purposes of the *Gas Pipelines Access (Queensland) Law* and *Gas Pipelines Access (Queensland) Regulations*.

Clause 10: Attachment

This clause outlines the measures which will allow Parliament to be advised of subsequent changes to the lead legislation.

Clause 11: Interpretation of some expressions in the Gas Pipelines Access (Queensland) Law and the Gas Pipelines Access (Queensland) Regulations

This clause contains a number of definitions for the purposes of the *Gas Pipelines Access (Queensland) Law* and the *Gas Pipelines (Queensland) Regulations*.

PART 3—NATIONAL ADMINISTRATION AND ENFORCEMENT

Division 1—Conferral of functions and powers

Clause 12: Conferral of functions and powers on Commonwealth Minister and Commonwealth bodies

Functions and powers are conferred on the Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal for the purposes of the Law.

Clause 13: Conferral of power on Commonwealth Minister and Commonwealth bodies to do acts in this State

Powers to act in this State are conferred on the Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal in relation to functions conferred on them by a corresponding law of another scheme participant.

Clause 14: Conferral of power on Ministers, Regulators and appeal bodies of other scheme participants

Powers to act in this State are conferred on the local Minister, local Regulator and local appeals body of another scheme participant in relation to functions conferred on them by a corresponding law of another scheme participant.

Clause 15: Conferral of functions on, and delegation of powers by, Code Registrar

The Code Registrar (established under the South Australian Act) is to have the functions conferred on the Code Registrar by the Law or the Natural Gas Pipelines Access Agreement or by unanimous resolution of the relevant Ministers of the scheme participants. The Code Registrar may also delegate powers to an appropriately qualified person.

Clause 16: Functions and powers conferred on Queensland Minister, Regulator and appeals body

This clause provides for acceptance of a conferral of functions or powers on a Queensland entity by the corresponding legislation of another scheme participant.

Clause 17: Functions of QCA as local Regulator

The clause ensures that, for natural gas pipelines, the Queensland Competition Authority (QCA) does not have functions or powers outside those considered by the *Gas Pipelines Access Law*. Also, the clause provides that the QCA is not subject to Ministerial direction in relation to the exercise of its powers under this Act.

Division 2—Federal Court

Clause 18: Jurisdiction of Federal Court

Criminal and civil jurisdiction necessary for the purposes of the Law is conferred on the Federal Court.

Clause 19: Conferral of jurisdiction on Federal Court not to affect cross-vesting

The cross-vesting legislation is not to be affected.

Division 3—Administrative decisions

Clause 20: Application of Commonwealth AD(JR) Act

This clause applies the *Commonwealth Administrative Decisions (Judicial Review) Act* as a law of this State in relation to decisions of the listed Code bodies made under the *Gas Pipelines Access (Queensland) Law*. This clause indirectly applies the *Queensland Judicial Review Act 1991* to decisions of local Code bodies (ie. local appeals body, local Minister, local Regulator and arbitrator) made on distribution pipelines located completely within Queensland's borders.

Clause 21: Application of Commonwealth AD(JR) Act in relation to other scheme participants

This clause applies the *Commonwealth Administrative Decisions (Judicial Review) Act* as a law of this State in relation to decisions of the listed Code bodies made under the corresponding legislation of another scheme participant. This will mean that the *Commonwealth Administrative Decisions (Judicial Review) Act* will be applied to decisions of local Code bodies (ie. local appeals body, local Minister, local Regulator and arbitrator) in relation to cross-boundary pipelines (see clause 52).

PART 4—LOCAL APPEALS BODY

Division 1—Establishment, function and powers of Queensland Gas Appeals Tribunal

Clause 22: Establishment of tribunal

This clause establishes a local appeals body for the purposes of the legislation. The Tribunal is to be constituted from time to time as the need arises. The Tribunal will consist of six members which includes a chairperson and a pool of five panel members.

Clause 23: Function of tribunal

The function of the Tribunal is to conduct reviews of decisions made under the *Gas Pipelines Access (Queensland) Law*.

Clause 24: Powers of tribunal

The powers of the Tribunal are governed by the *Gas Pipelines Access (Queensland) Law* and other procedural powers conferred on it under this part.

Division 2—Provisions about tribunal members, registrar and other staff

Clause 25: Qualifications of tribunal members

The chairperson is nominated by the Premier and must have been a Supreme or District Court judge or a lawyer of at least five years standing. The Premier having regards to certain desirable knowledge requirements also nominates members of the pool.

Clause 26: Appointment of members

Provides for the Governor in Council to appoint the members. The appointments will not be under the *Public Service Act 1996*.

Clause 27: Duration of appointment

Provides that members of the Tribunal will be appointed for a term no longer than three years.

Clause 28: Vacation of office

Provides that a member may resign by signed notice to the Premier and that a member loses office automatically if found guilty of an indictable offence. The clause also provides for the circumstances when the Governor in Council may terminate the appointment of a member.

Clause 29: Remuneration of members

Provides that members are to be paid the remuneration and allowances decided by the Governor in Council.

Clause 30: Appointment of registrar and other staff

Provides for the appointment of a registrar and other staff to assist the

Tribunal to perform its duties. The registrar and other staff are to be employed under the *Public Service Act 1996*.

Division 3—Reviews by the tribunal

Clause 31: How application for review made

Provides that a review is started by the filing of a written notice of appeal with the registrar. A copy of this application for appeal must be given to either the local Regulator or local Minister (depending on the originating decision upon which the appeal is made).

Clause 32: Who constitutes tribunal for review

In reviewing a decision, the Tribunal will be constituted by a chairperson and 3 members selected (by the chairperson) from the pool of five. The clause provides the basis for the choice of panel members.

Clause 33: Conduct of proceeding

Details what the Tribunal is required to consider in a review of a decision and how the Tribunal can conduct its proceedings.

Clause 34: Venues

Provides for the Tribunal to sit at times and places which the chairperson decides.

Clause 35: Right of appearance

Allows the appearance of agents or lawyers on behalf of parties.

Clause 36: Way questions decided

Questions of law are to be determined by the chairperson and other questions by unanimous or majority decision of the members of the Tribunal. If the opinion of the Tribunal is equally divided, the question will be resolved by the chairperson's opinion.

Clause 37: Notice of decision

The registrar must send a copy of the tribunal's determination and reasons for it to the applicant and the local Regulator or local Minister (depending on the originating decision upon which the appeal is made).

Division 4—Procedural provisions about reviews by the tribunal

Clause 38: Procedural powers of tribunal

This clause governs various procedural matters, including providing the Tribunal with power to issue summonses.

Clause 39: Inspection of documents

Provides the Tribunal with powers to inspect, copy, or seize documents or other things, and permit other persons to inspect or copy those documents or things.

Clause 40: Offences

Describes the offences and penalties relating to the attendance of persons to, and evidence given by persons at a Tribunal proceedings.

Clause 41: Self-incrimination

Provides for the excuse of self-incrimination for failing to answer a question or produce a document.

Clause 42: False or misleading information

Describes the offence and penalties relating to the provision of misleading information.

Clause 43: False or misleading documents

Describes the offence and penalties relating to the provision of misleading documents.

Clause 44: Tribunal to keep records of proceedings

The Tribunal must keep records of its proceedings in a way it considers appropriate.

Division 5—Other provisions about the tribunal

Clause 45: Disclosure of interests

A member of the Tribunal must disclose interests that could conflict with

the proper performance of his or her functions in relation to proceedings, and without the consent of all parties to the proceedings, must not take part in those proceedings. The chairperson may also direct the member to not take part, nor continue to take part, in proceedings, but must in any event cause the disclosure of such interests.

Clause 46: Contempt of tribunal

Describes the offence and penalties relating to contempt of the Tribunal.

Clause 47: Protection of members, legal representatives and witnesses

Provides for protection of members of the tribunal, parties or agents of parties, and witnesses, from legal action.

Clause 48: Authentication of documents

The signature of a Tribunal member is sufficient authentication of Tribunal documents.

Clause 49: Judicial notice of certain signatures

Judicial notice must be given to a signature of a member of the Tribunal appearing on a Tribunal document.

Clause 50: Confidentiality

Describes the offence and penalties relating to the disclosure of confidential information which past and present members of or staff of the Tribunal may have had access to. Some information may be disclosed based on defined reasons.

Division 6—Subcommittees

Clause 51: Advisory and technical subcommittees

Provides for the appointment of subcommittees to advise the Tribunal.

Clause 52: Proceedings of subcommittees

Specifies the way the proceedings of subcommittees must follow.

Clause 53: Regulation-making power for pt 4

Provides general regulation making power in relation to the application of this Part.

PART 5—MISCELLANEOUS

Clause 54: Exemption from taxes

Certain service providers may be required by the ring fencing requirements of sections 4.1 and 4.3 of the Code to reorganise their businesses by transferring assets or liabilities. Where the local Minister and Treasurer are satisfied that the sole purpose of a transfer is to comply with the ring fencing requirements of the Code, stamp duty and other taxes will not to be payable.

Clause 55: Actions in relation to cross-boundary pipelines

Where a pipeline crosses State borders, action taken in one of the jurisdictions under the Law applicable in that jurisdiction is to be regarded as also having been taken under the Law applicable in the other jurisdiction.

PART 6—LOCAL TRANSITIONAL PROVISIONS

Clause 56: Definition for pt 6

Defines the terms “pipeline licence”, “PNG to Queensland pipeline” and “Queensland part of the PNG to Queensland pipeline”.

Clause 57: Pipelines taken to be covered pipelines

The listed pipelines are taken to be covered pipelines for the purposes of the *Gas Pipelines Access Law*.

Clause 58: Reference tariffs for certain pipelines

The Minister may, by gazette notice, approve a tariff arrangement for the listed pipelines. These approved tariff arrangements are taken to be approved under the *Gas Pipelines Access Law* as the reference tariffs and reference tariff policies for the listed pipelines. The revisions submission date and the revisions commencement date, that are mentioned in those reference tariff policies, are to be accepted as those dates for the accepted access arrangements.

Clause 59: Access principles for PNG to Queensland pipeline

This clause only applies if access principles are submitted to the local Minister within one year of the commencement of the Act and approved within 1 year after that submission. If this is the case, the provisions of the *Petroleum Act 1923* dealing with access, continue to apply to the pipeline until access principles are approved by the local Minister and agreed to by the ACCC. Once approved by the local Minister, they are taken to approved under the *Gas Pipelines Access Law* as the access arrangements for the pipeline. The revisions submission date mentioned in those approved access principles are taken to be the revisions submission date in the approved access arrangements.

Clause 60: Access principles for certain other pipelines

Part 8 of the *Petroleum Act 1923* continues to apply to the listed pipelines until the relevant Regulator approves access arrangements for those pipelines.

PART 7—CONSEQUENTIAL AMENDMENTS

Division 1—Amendment of Acts Interpretation Act 1954

Clause 61: Act amended in div 1

This division amends the *Acts Interpretation Act 1954*.

Clause 62: Amendment of s 36 (Meaning of commonly used words and expressions)

Insert new definitions for the terms “Gas Pipelines Access (Queensland) Law” and “Gas Pipelines Access (Queensland) Regulations” as defined in sections 7 and 8 of the Act.

Division 2—Amendment of Gas Act 1965

Clause 63: Act amended in div 2

This division amends the *Gas Act 1965*.

Clause 64: Amendment of s 5 (Definitions)

Inserts new terms in section 5 “contestable consumer” and “non-contestable consumer”, and refers to sections 5B and 5C for the definitions. The process of moving from current arrangements to new market arrangements imposes some problems and costs on incumbent distributors. The purpose of sections 5B and 5C is to describe the Government’s threshold reduction strategy (which provides for the phased introduction of contestability into natural gas franchise areas to allow sufficient time for market incumbents to prepare themselves for full competition).

Clause 65:

Insertion of new s 5B

Inserts new section 5B which defines the term “contestable consumer”,

Insertion of new s 5C

New section 5C defines the terms “non-contestable consumer” and “new non-contestable consumer”.

Clause 66: Insertion of new s 11

Insert a new section 11 to ensure that the *Gas Pipelines Access (Queensland) Law* will prevail in the case of any inconsistency between the *Gas Act 1965* and *Gas Pipelines Access (Queensland) Law*.

Clause 67: Amendment of s 20 (Provisions applicable to a reticulation system)

Insert the words “or 52D” after the words “52C” in this section.

Clause 68: Amendment of s 52C (Restriction of constructing and maintaining pipe)

Insert a new sub-section causing section 52C to no longer apply to pipes as defined under the *Gas Pipelines Access (Queensland) Law*.

Clause 69:

Insertion of new s 52D: Restriction on constructing and maintaining distribution pipeline

Provides that a person must not construct or maintain a gas distribution pipeline (as defined under the *Gas Pipelines Access (Queensland) Law*) within any area, with the purpose of supplying gas to a consumer, unless at

least one of the stated conditions are met. The clause provides an unrestricted regulation-making power to authorise a person to construct or maintain a gas distribution pipeline in an area (other than a franchise area). For a franchise area, there is a limited regulation-making power for contestable and new non-contestable consumers only.

The implementation of the Government's threshold reduction strategy is intended to occur through the application of restrictions in relation to bypass and on the sale of natural gas in franchise areas. This clause imposes is the first part of the necessary restrictions.

In order to protect incumbent franchise holders, bypass will only be permitted to contestable consumers, and may be permitted for new non-contestable consumers on a case by case basis.

The clause also describes the offence and penalties relating to a failure to comply with subsection (1).

Insertion of new s 52E: Restriction on sale of gas in franchise area

Provides that a person must not sell gas to a consumer within a franchise area unless that consumer is a contestable consumer or that person is the current franchise holder. The clause provides a regulation making power to authorise a person to sell gas in a franchise area to a new non-contestable consumer.

The implementation of the Government's threshold reduction strategy is intended to occur through the application of restrictions in relation to bypass and on the sale of natural gas in franchise areas. This clause imposes is the second part of the necessary restrictions.

In order to protect incumbent franchise holders, the sale of natural gas within franchise areas, will be restricted to only contestable customers, and may be permitted for new non-contestable consumers on a case by case basis.

The clause also describes the offence and penalties relating to a failure to comply with subsection (1).

Clause 70: Amendment of s 64 (Regulation-making power)

Insert a new subsection which ensures that the *Gas Pipelines Access (Queensland) Law* will prevail in the case of any inconsistency between a regulation made under the *Gas Act 1965* and *Gas Pipelines Access (Queensland) Law*.

Division 3—Amendment of Petroleum Act 1923

Clause 71: Act amended in div 3

This division amends the *Petroleum Act 1923*.

Clause 72: Amendment of s 7 (Application of Act)

Insert a new subsection to ensure that the *Gas Pipelines Access (Queensland) Law* will prevail in the case of any inconsistency between the *Petroleum Act 1923* and *Gas Pipelines Access (Queensland) Law*.

Clause 73: Amendment of s 69 (Pipeline licences)

Insert a new subsection which allows the granting of pipeline licences for gas pipelines (defined under the *Gas Pipelines Access (Queensland) Law*) which do not have access principles approved under the *Petroleum Act 1923*, or a regulation of exemption. This is to ensure consistency Queensland legislation and the Natural Gas Pipeline Access Agreement signed on 7 November 1997.

Clause 74: Amendment of s 70 (Access principles to be approved before grant of pipeline licence)

Insert a new subsection which provides that s 70 does not apply to gas pipelines (defined under the *Gas Pipelines Access (Queensland) Law*). This clause allows the granting of pipeline licences for gas pipelines which do not have access principles approved under the *Petroleum Act 1923*. This is to ensure consistency between Queensland legislation and the Natural Gas Pipeline Access Agreement signed on 7 November 1997.

Clause 74: Amendment of s 104 (Application of part to pipelines)

Omits section 104(1), and inserts a new s 104(1) which applies Part 8 of the *Petroleum Act* to all licensed pipelines, and pipelines owned by the corporation sole, except those pipelines defined under the *Gas Pipelines Access Law* (subject to sections 59 and 60 of this *Gas Pipelines Access Law*), or those pipelines declared under a regulation.

Division 4—Amendment of Petroleum (Submerged Lands) Act 1982

Clause 76: Act amended in div 4

This division amends the *Petroleum (Submerged Lands) Act 1923*.

Clause 77: Insertion of new s 6A

Insert a new section after section 6 which ensures that the *Gas Pipelines Access (Queensland) Law* will prevail in the case of any inconsistency between the *Petroleum (Submerged Lands) Act 1923* and *Gas Pipelines Access (Queensland) Law*.