

Serial 66
Gas Pipelines
Access (Northern
Territory)
Mr Poole

NORTHERN TERRITORY OF AUSTRALIA

GAS PIPELINES ACCESS (NORTHERN TERRITORY) BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to make provision for the regulation of third party access to natural gas pipeline systems and for other purposes

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PREAMBLE

The Council of Australian Governments agreed, in February 1994, to general principles of competition policy reform to enable third parties, in particular circumstances, to gain access to essential facilities.

The Council of Australian Governments, as part of that commitment to reform, agreed to more specific proposals for the development of free and fair trade in natural gas.

The Commonwealth, the states of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the Territory and the Australian Capital Territory agreed in November 1997 to the enactment of legislation in the Commonwealth and those States and Territories so that a uniform national framework applies for third party access to all gas pipelines that -

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- (a) facilitates the development and operation of a national market for natural gas;
- (b) prevents abuse of monopoly power;
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders;
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines and persons wishing to use the services of those pipelines; and
- (e) provides for resolution of disputes.

PART 1 - PRELIMINARY

1. PURPOSE

The purpose of this Act is to make provision for the regulation of third party access to natural gas pipeline systems.

2. SHORT TITLE AND COMMENCEMENT

(1) This Act may be cited as the *Gas Pipelines Access (Northern Territory) Act 1998*.

(2) This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

(1) In this Act -

"Gas Pipelines Access Law" means -

- (a) Schedule 1 to the South Australian Act -
 - (i) as enacted; or
 - (ii) if amended, as amended and in force for the time being; and
- (b) The National Third Party Access Code for Natural Gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as so amended and in force for the time being;

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"Gas Pipelines Access (Northern Territory) Law" means the provisions applying because of section 7;

"Gas Pipelines Access (Northern Territory) Regulations" means the provisions applying because of section 8;

"South Australian Act" means the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

(2) Words and expressions used in Schedule 1 to the South Australian Act, as applying because of section 7, and in this Act have the same respective meanings in this Act as they have in that Schedule as so applying.

(3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

4. CROWN TO BE BOUND

This Act, the Gas Pipelines Access (Northern Territory) Law and the Gas Pipelines Access (Northern Territory) Regulations bind the Crown, not only in the right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5. APPLICATION TO COASTAL WATERS

(1) This Act, the Gas Pipelines Access (Northern Territory) Law and the Gas Pipelines Access (Northern Territory) Regulations apply in the coastal waters of the Territory.

(2) In subsection (1), "coastal waters", in relation to the Territory, means any sea that is on the landward side of the adjacent area of the Territory but is not within the limits of the Territory.

6. EXTRA-TERRITORIAL OPERATION

(1) It is the intention of the Legislative Assembly that the operation of this Act, the Gas Pipelines Access (Northern Territory) Law and the Gas Pipelines Access (Northern Territory) Regulations should, as far as possible, include operation in relation to the following —

- (a) things situated in or outside the Territory;
- (b) acts, transactions and matters done, entered into or occurring in or outside the Territory;

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- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a State, the Commonwealth, another Territory of the Commonwealth or a foreign country.

(2) Nothing in subsection (1) has effect in relation to a pipeline to the extent that the pipeline is situated, or partly situated, beyond the jurisdictional areas of all the scheme participants.

PART 2 - GAS PIPELINES ACCESS (NORTHERN TERRITORY) LAW
AND GAS PIPELINES ACCESS (NORTHERN TERRITORY) REGULATIONS

7. APPLICATION IN TERRITORY OF GAS PIPELINES ACCESS LAW

The Gas Pipelines Access Law -

- (a) applies as a law of the Territory; and
- (b) as applying may be referred to as the Gas Pipelines Access (Northern Territory) Law.

8. APPLICATION OF REGULATIONS UNDER GAS PIPELINES ACCESS 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 Gas Pipelines Access (Northern Territory) Law; and
- (b) as applying may be referred to as the Gas Pipelines Access (Northern Territory) Regulations.

9. INTERPRETATION OF SOME EXPRESSIONS IN GAS PIPELINES ACCESS (NORTHERN TERRITORY) LAW AND GAS PIPELINES ACCESS (NORTHERN TERRITORY) REGULATIONS

(1) In the Gas Pipelines Access (Northern Territory) Law and the Gas Pipelines Access (Northern Territory) Regulations -

"Code" means the National Third Party Access Code for Natural gas Pipeline Systems (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2 to the South Australian Act) or, if that Code is amended in accordance with Schedule 1 to that Act, that Code as amended and in force for the time being, as it applies because of section 7 as a law of the Territory;

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"Court" means the Supreme Court or the Federal Court;

"designated appeals body" means the Australian Competition Tribunal;

"designated Minister" means the local Minister;

"Gas Pipelines Access Law" or "this Law" means the Gas Pipelines Access (Northern Territory) Law;

"Legislature" means the Legislative Assembly;

"local appeals body" means the Australian Competition Tribunal;

"local Minister" means the Minister responsible for the administration of this Act;

"local regulator" means the ACCC;

"this scheme participant" means the Northern Territory;

"Supreme Court" means the Supreme Court of the Northern Territory.

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

(a) the Gas Pipelines Access Law set out in Schedule 1 to the South Australian Act in its application as a law of the Territory; 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 Gas Pipelines Access (Northern Territory) Law.

PART 3 - NATIONAL ADMINISTRATION AND ENFORCEMENT

Division 1 - Conferral of Functions and Powers

10. CONFERRAL OF FUNCTIONS ON COMMONWEALTH MINISTER AND COMMONWEALTH BODIES

(1) The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have the functions and powers conferred or expressed to be conferred on them respectively under the Gas Pipelines Access (Northern Territory) Law.

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(2) In addition to the powers mentioned in subsection (1), the Commonwealth Minister and the bodies referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

11. CONFERRAL OF POWER ON COMMONWEALTH MINISTER AND COMMONWEALTH BODIES TO DO ACTS IN TERRITORY

The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have power to do acts in or in relation to the Territory in performing or exercising a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of another scheme participant.

12. CONFERRAL OF POWER ON MINISTERS, REGULATORS AND APPEALS BODIES OF OTHER SCHEME PARTICIPANTS

The local Minister, the local Regulator and the local appeals body within the meaning of the gas pipelines access legislation of another scheme participant have power to do acts in or in relation to the Territory in performing or exercising a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of that other scheme participant.

13. CONFERRAL OF FUNCTIONS ON CODE REGISTRAR

(1) The Code Registrar —

- (a) has the functions and powers conferred or expressed to be conferred on the Code Registrar under the Gas Pipelines Access (Northern Territory) Law or under the National Gas Agreement; and
- (b) any other functions and powers conferred on the Code Registrar by unanimous resolution of the relevant Ministers of the scheme participants.

(2) In addition to the powers mentioned in subsection (1), the Code Registrar has power to do all things necessary or convenient to be done in connection with performing or exercising the functions and powers referred to in that subsection.

(3) The Code Registrar may delegate to any person any of the functions conferred on the Code Registrar by this section, other than this power of delegation

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14. FUNCTIONS AND POWERS CONFERRED ON TERRITORY MINISTER, REGULATOR AND APPEALS BODY

If the gas pipelines access legislation of another scheme participant confers a function or power on --

- (a) the Minister;
- (b) the local Regulator; or
- (c) the local appeal body,

the Minister, local Regulator or local appeal body --

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

Division 2 - Federal Court

15. JURISDICTION OF FEDERAL COURT

Jurisdiction is conferred on the Federal Court with respect to --

- (a) civil and criminal matters arising under the Gas Pipelines Access (Northern Territory) Law; and
- (b) applications made to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as applying as a law of the Territory under section 17 or 18.

16. CONFERRAL OF JURISDICTION ON FEDERAL COURT NOT TO AFFECT CROSS-VESTING

Section 15 does not affect the operation of any law relating to cross-vesting of jurisdiction.

Division 3 - Administrative Decisions

17. APPLICATION OF COMMONWEALTH AD(JR) ACT

(1) The *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth applies as a law of the Territory to any matter arising in relation to a decision of a Code body under the Gas Pipelines Access (Northern Territory) Law as if that Law were an enactment within the meaning of that Act and not a law of the Territory.

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(2) For the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as a law of the Territory, a matter arising in relation to a decision of a Code body under the *Gas Pipelines Access (Northern Territory) Law* -

- (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if the *Gas Pipelines Access (Northern Territory) Law* were a law of the Commonwealth; and
 - (b) is taken not to be a matter arising in relation to laws of the Territory.
- (3) In this section, "Code body" means -
- (a) the NCC;
 - (b) the ACCC;
 - (c) the Australian Competition Tribunal;
 - (d) the local appeals body within the meaning of the *Gas Pipelines Access (Northern Territory) Law*;
 - (e) the local Minister within the meaning of the *Gas Pipelines Access (Northern Territory) Law*;
 - (f) the local Regulator within the meaning of the *Gas Pipelines Access (Northern Territory) Law*;
or
 - (g) an arbitrator appointed under Part 4 of the *Gas Pipelines Access (Northern Territory) Law*.

18. APPLICATION OF COMMONWEALTH AD(JR) ACT IN RELATION TO OTHER SCHEME PARTICIPANTS

(1) The *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth applies as a law of the Territory to any matter arising in relation to a decision of a Code body under the gas pipelines access legislation of another scheme participant as if that legislation were an enactment within the meaning of that Act and not a law of that scheme participant.

(2) For the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as a law of the Territory, a matter arising in relation to a decision of a Code body under the gas pipelines access legislation of another scheme participant -

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- (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that legislation were a law of the Commonwealth; and
- (b) is taken not to be a matter arising in relation to laws of that scheme participant.
- (3) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside the Territory.
- (4) In this section, "Code body" means —
 - (a) the NCC;
 - (b) the ACCC;
 - (c) the Australian Competition Tribunal;
 - (d) the local appeals body within the meaning of the Gas Pipelines Access (Northern Territory) Law;
 - (e) the local Minister within the meaning of the Gas Pipelines Access (Northern Territory) Law;
 - (f) the local Regulator within the meaning of the Gas Pipelines Access (Northern Territory) Law;
or
 - (g) an arbitrator appointed under Part 4 of the Gas Pipelines Access (Northern Territory) Law.

PART 4 — GENERAL

19. EXEMPTION FROM TAXES

- (1) Any stamp duty or other tax imposed by or under a law of the Territory 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 that the Minister and the Treasurer are satisfied is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of the Code or for the purpose of separating certain

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activities from other activities of a person as required by the Code, and for no other purpose.

20. ACTIONS IN RELATION TO CROSS-BOUNDARY PIPELINES

(1) If a pipeline is a cross-boundary pipeline, any action taken under the gas pipelines access legislation of a scheme participant in whose jurisdictional area a part of the pipeline is situated -

- (a) by, or in relation to, a relevant Minister, or a relevant Regulator, within the meaning of that legislation;
- (b) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that legislation; or
- (c) by the Federal Court, or by the Supreme Court, or the relevant appeals body, within the meaning of that legislation, in relation to the action taken by, or in relation to, a person or body referred to in paragraph (a) or (b),

is taken also to be action taken under the gas pipelines access legislation of each other scheme participant in whose jurisdictional area a part of the pipeline is situated ("that other legislation") -

- (d) by, or in relation to, a relevant Minister, or relevant Regulator, within the meaning of that other legislation;
- (e) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that other legislation; or
- (f) by the Federal Court, or by the Supreme Court, or relevant appeals body, within the meaning of that other legislation,

as the case requires.

(2) In this section, "cross-boundary pipeline" means a transmission pipeline, or a distribution pipeline, that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants.

(3) A reference in this section to an action that is taken includes a reference to a decision that is made.